



OIA16-0097

12 APR 2016

Dear

OFFICIAL INFORMATION ACT REQUEST

I refer to your official information request on 11 March 2016 relating to swamp kauri exports. You requested:

- *The amount, in cubic metres, of swamp kauri that was exported in 2015; and*
- *Since September 2015, any advice, briefings or documents on the export of swamp kauri.*

The first part of your request is refused under section 18(d) as the information requested is publicly available. Reports that set out information on the quantities of swamp kauri being milled and exported, as regulated by MPI under the Forests Act 1949, are available online at: <http://www.mpi.govt.nz/exporting/forest-products/wood-and-wood-products/swamp-kauri>. There are currently three quarterly reports available covering the period from 1 April 2015 to 31 December 2015.

I also refer to Official Information Act release for Swamp Kauri OIA15-017 available online at: <http://www.mpi.govt.nz/document-vault/9391>. This release contains a table of all swamp kauri exports from 2009 to 27 May 2015.

We have interpreted the second part of your request as relating to reports and advice to the Minister (i.e. it excludes export documentation, much of which has been released under the Official Information Act and can be found online at: <http://mpi.govt.nz/news-and-resources/resources/official-information-act-responses/swamp-kauri/>).

In addition, the following information is released to you under the Official Information Act 1982 (OIA):

- AM15-121 [11 Sep 2015] Report by the Auditor-General into Regulation of the Swamp Kauri Industry (the attachment can be found online at: <http://www.oag.govt.nz/media/2015/swamp-kauri>);

- Report to the Minister dated 11 September 2015 included the following paragraph:

Subject: Auditor-General's Report on Swamp Kauri Regulation

The Auditor-General recently completed an investigation into ancient swamp kauri management by the Ministry for Primary Industries (MPI) under the Forests Act. She concluded she had seen no evidence that MPI is allowing the export of illegal timber or timber products.

In reporting on her decision, the Auditor-General made a number of suggestions on how MPI could improve oversight of the swamp kauri industry, and increase transparency and public access to information. However, most of her suggestions are already covered by the improvements announced by you in Northland in July. The Auditor-General acknowledges that those improvements are appropriate to address some of the risks she has identified.

MPI's website has been updated to reflect the release of the Auditor-General's decision and reactive communications messages prepared.

- B15-346 [07 Dec 2015] Update on Regulation of the Swamp Kauri Sector (Appendix One can be found online at <http://www.mpi.govt.nz/exporting/forest-products/wood-and-wood-products/swamp-kauri>).

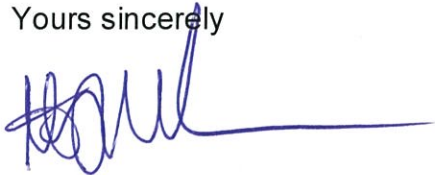
Some information from the above reports has been withheld under the following sections of the Official Information Act, as applicable:

- section 6(c) – the making available of that information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; and
- section 9(2)(a) – to protect the privacy of natural persons.

MPI is satisfied that in the circumstances of this case, the withholding of the information is not outweighed by other considerations which render it desirable in

the public interest to make the information available. You have the right under section 28(3) of the OIA to seek an investigation and review by the Ombudsman of our decision to withhold information and refuse part of your request.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mat', with a long horizontal line extending to the right.

Mat Bartholomew
Acting Director Spatial, Forestry & Land Management

AM15-121

Ministry for Primary Industries
Manatū Ahu Matua



Aide-memoire:

From: Scott Gallacher
Deputy Director-General, Regulation and Assurance
for Director-General

Contact: Craig Trotter, Director Spatial, Forestry and Land Management s 9(2)(a)

To: Hon Nathan Guy
Minister for Primary Industries

Date: 11 September 2015

Report by the Auditor-General into Regulation of the Swamp Kauri Industry

Purpose

1. To summarise the findings of the Auditor-General arising from an inquiry into the regulation of the swamp kauri industry by the Ministry for Primary Industries (MPI), together with MPI's response.

Issue

2. Environmental agencies have a continuing concern about MPI's management of the swamp kauri industry, and in particular about MPI's interpretation under the Forests Act ("the Act") of what comprises a "finished product". Such products do not need a permit under the Act to be exported (though most exporters now request voluntary inspection by MPI, as MPI certification adds value).
3. On 28 May 2015, Forest and Bird (Far North), and the Northland Environmental Protection Society, requested that the Auditor-General carry out an inquiry into how MPI and New Zealand Customs regulate and oversee the swamp kauri industry. The Auditor-General subsequently decided the inquiry need not extend beyond MPI to answer the allegations made.

Findings of the Auditor-General's Inquiry

4. The Auditor-General released her report on the inquiry on 10 September 2015. The primary conclusions were that:
 - a) there is no evidence that MPI is allowing export of illegal timber or timber products;

Security Level – In Confidence

- b) the recent changes (announced by you in Northland in July), made by MPI to provide better oversight and public transparency of the swamp kauri industry, would address some of the risks she had otherwise identified – but (as expected) will take time to have effect; and
 - c) the interpretation of legislation relating to what constitutes a “finished product” is a matter for the courts – although it was also noted that in relation to finished products “... the legislative requirements are well understood by the Ministry's staff.”
5. The Auditor-General notes some exporters have clearly “tested” the limits of what constitutes a “finished product”. This is both acknowledged by MPI, and to be expected as it is a matter subject to some interpretation under the Act.
6. The Northland Environmental Protection Society announced yesterday that it intends to pursue the matter of what constitutes a “finished product” through court action, though on what grounds has not yet been made clear.
7. The remaining improvements to swamp kauri management suggested by the Auditor-General fall in areas that are not strictly MPI's responsibility (e.g., determining the cultural, heritage and scientific values of the swamp kauri resource). MPI will, however, investigate how the suggested improvements can best be advanced.
8. There is only one slight criticism of MPI in the report: “Information from the Ministry has not convinced us that previous milling controls were sufficient to verify the source of extracted logs. Milling statements have been issued based on a high-trust system, with minimal physical inspection of pre- or post-extraction sites”. The Auditor-General adds that the recent improvements to swamp kauri management announced by MPI (information sharing with the Northland District Council) will address this issue.
9. It is correct that MPI has in the past relied significantly on extraction being a legal activity, as we have no regulatory authority over extraction unless it is on “forest land” – with extraction being a permitted activity in Northland, controlled under the Resource Management Act. However, the statements by the Auditor-General do not reflect the fact that a substantial risk-based compliance/inspection regime does in fact exist to check for extraction from forest land, informed strongly by the local knowledge of Northland staff as to the identity of swamp kauri operators, the locations of their extraction sites, and their history of compliance.
10. MPI's website has been updated to reflect the release of the Auditor-General's decision, and reactive communications messages have been prepared for media release should these be needed.

Minister / Minister's Office

Seen / Referred

/ /2015

Distribution
Minister
Minister's Advisor
Minister's Office

Ministry for Primary Industries
Manatū Ahu Matua



7 December 2015

Document Number: B15-346

Update on Regulation of the Swamp Kauri Sector

Purpose:

The purpose of this briefing is to update you on key work areas in relation to the administration of swamp kauri activities under the Forests Act 1949.

Minister	Action Required:	Minister's Deadline
Minister for Primary Industries	Note the contents of this brief.	At your convenience.

Contact for telephone discussion

	Name	Position	Work	After Hours
Responsible Manager	Mat Bartholomew	Manager Sustainable Forest Management	04 894 3430	s 9(2)(a)
Principal Author	s 9(2)(a)	Senior Forestry Analyst	s 9(2)(a)	

Key Messages

1. Operational changes announced in July are being implemented and are delivering improved oversight and regulation of the swamp kauri sector. Cooperation with the Northland Regional Council has ensured greater oversight of extraction activities. Likewise, work with New Zealand Customs is proving beneficial in increasing oversight at the border.
2. Our experience of the new operational measures is that the swamp kauri sector continues to operate in compliance with the Forests Act. No systematic issues of non-compliance have been identified as a result of increased oversight.
3. Our ongoing focus is to continue operationalising the changes, and to raise public awareness of the level of oversight of the sector.
4. In September, the Auditor-General released her findings in respect of a request for an inquiry into the regulation of the swamp kauri industry. The Auditor-General decided that an inquiry into MPI's regulation of the swamp kauri sector is not needed, and that there is no evidence that MPI is allowing the export of illegal timber or timber products. The Auditor-General made recommendations to promote better oversight of the sector, increase transparency and increase understanding of the swamp kauri resource.
5. MPI is taking steps to implement the recommendations made by the Auditor-General. The next steps are to commission research into the size and distribution of the swamp kauri resource, and into the cultural, scientific and heritage values of the resource. A request for proposals for research on the extent of the swamp kauri resource will be released before Christmas. Proposals for research on the non-economic values of the resource will follow early in 2016.
6. The Northland Environmental Protection Society has requested a judicial review of swamp kauri export decisions made by MPI since 2010. A hearing is scheduled for the second half of 2016. Work associated with the judicial review has impacted the timelines associated with some of our work on the Auditor-General's recommendations.

Recommendations

7. MPI recommends that you:

a) **Note** the contents of this brief; and

Noted

b) **Note** that MPI will provide you with quarterly updates on regulation of the swamp kauri sector.

Noted

Scott Gallacher
Deputy Director-General
Regulation & Assurance
for the Director-General

Hon Nathan Guy
Minister for Primary Industries

/ / 2015

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OFFICIAL INFORMATION ACT

Background

Implementation of Operational Changes

8. In July of this year, you announced operational changes to improve the transparency, clarity and enforcement of rules around swamp kauri. Those operational measures established greater oversight of all steps of the swamp kauri supply chain, from extraction, to milling and through to export. The aim of these measures is to increase public confidence that the swamp kauri industry is being appropriately regulated. MPI has employed an additional Forestry Analyst based in Whangarei to support implementation of the additional operational measures.

Extraction and Milling

9. MPI and the Northland Regional Council (NRC) are working together to ensure further collaboration in the regulation of swamp kauri extraction activities. Both agencies regularly inform each other and share information on relevant swamp kauri activities, supported by voluntary industry notification of extraction activities. To date, notification has been received regarding five proposed extraction sites in the Far North district, and one site in the Whangarei district. MPI has inspected all of these sites and exchanged our site assessment outcomes with the NRC.
10. As an example of these measures working, MPI was able to identify a situation where salvage activities were undertaken on indigenous forest land. While such activities are not prohibited, different considerations arise around giving permission to mill the timber. ^{s 6(c)}

11. MPI is in the process of publishing a swamp kauri log book which operators will use in the new year to record finer scale information on their extraction activities. This will complement revised milling statement and export forms, improve the tracking and traceability of swamp kauri timber, and reduce the potential for substitution of legally sourced swamp kauri timber with other timber.

Export

12. Recent export activity is broadly unaffected by the ongoing media interest and the new measures implemented. A copy of MPI's most recent public quarterly report (published to the MPI web site) of swamp kauri activity is appended to this briefing (Appendix 1). It shows that there were 32 approved exports totalling 1,122 cubic metres of swamp kauri.

13. Two of these requests were initially declined for not meeting the definition of a finished product under the Forests Act. The exporters in both cases were required to further finish the product before it could be approved. These decisions do not reflect a higher threshold being applied to export decisions, and were taken under business as usual procedures. MPI and AsureQuality are maintaining more detailed records on situations where exports are declined.
14. MPI is working with New Zealand Customs (Customs) to increase oversight at the border. We have established additional export alerts on potential swamp kauri exporters, and have implemented a protocol to re-inspect containers immediately prior to loading onto a ship. This allows MPI to ensure that no substitution of swamp kauri products has occurred.
15. A trial inspection confirmed that the swamp kauri products contained in a recent export were consistent with those previously inspected and approved for export. MPI is now working with Customs to establish a protocol to x-ray swamp kauri export consignments (as an alternative to opening and re-examining containers).
16. MPI has continued to monitor the sale of swamp kauri products online and has undertaken two related inspections of swamp kauri sawmills to confirm compliance with the Forests Act. Similarly, MPI has made contact with an off-shore buyer of swamp kauri and a known exporter of swamp kauri to ensure that their advertising of swamp kauri timber is consistent with the Forests Act and avoids creating public confusion.

Sector Compliance

17. Our experience of the new operational measures over the past four months is that the swamp kauri sector continues to operate in compliance with the Forests Act. One matter has been identified for further investigation (see paragraph 9), though it is unclear at this stage if there has been a breach of the Forests Act. No systematic issues of non-compliance have been identified as a result of increased oversight.

Review of Measures

18. In announcing the measures in July, you made it clear that MPI would closely monitor them and suggest further changes if they do not deliver greater transparency. MPI is comfortable at this point that the operational changes are delivering on their intentions and ensuring robust regulation of the swamp kauri sector.
19. Looking ahead, MPI will consider how the regular public quarterly report (Appendix 1) can evolve to provide more information to ensure the public understands and is aware of the steps being taken and the results being achieved.

Office of the Auditor-General

20. On 10 September, the Auditor-General released her findings in respect of a request for an inquiry into the regulation of the swamp kauri industry. You were previously briefed on these findings on 11 September (AM15-121 refers). The Auditor-General expressed support for the operational changes you announced in July, noting that they will require time to take effect. Importantly, the Auditor-General found no evidence that MPI is allowing the export of illegal timber or timber products.
21. The Auditor-General made four recommendations to promote better oversight of the sector, increase transparency and increase understanding of the swamp kauri resource:
 - a) compile and publish information on the size and extent of the available swamp kauri resource (in progress);
 - b) work more closely with territorial authorities to inspect and monitor extraction activities (implemented);
 - c) increase public awareness of operational changes and efforts to ensure compliance (implemented); and
 - d) work with the Ministry for Culture and Heritage to explore the cultural, heritage, and scientific values of swamp kauri (in progress).
22. Recommendations b) and c) are considered consistent with the operational changes announced and implemented. For example, the public quarterly report of activity (Appendix 1) details efforts to ensure compliance. MPI also continues to publish the outcomes of all swamp kauri Official Information Act requests.
23. Recommendations a) and d) broadly call for more information to be collected on the nature of the resource. Progress on responding to these recommendations has been slowed by the High Court judicial review of export decisions, launched by the Northland Environmental Protection Society immediately following the Auditor-General's report.
24. In respect of recommendation a), a request for proposals for a suitable method to determine the quantity and spatial extent of the resource will be released by MPI before Christmas. We expect this work to be completed by May 2016.
25. MPI is also in discussion with the Ministry for Culture and Heritage (MCH) regarding the best approach to collate and release information on the cultural, scientific and heritage values of swamp kauri (recommendation b). MCH has advised that this type of work is beyond their capability. MPI will therefore be working with MCH to scope a request for proposals to engage external providers to undertake this research. A call for proposals is expected to be made in early 2016 with completion by mid 2016.
26. These two pieces of work will not provide information directly relevant to implement the requirements of the Forests Act. The outputs will more usefully inform discussions about whether there are considerations that question how the resource is best managed.

Judicial Review of Export Decisions

27. The day after the Auditor-General releasing her findings, an application for judicial review of export decisions was launched by the Northland Environmental Protection Society. That judicial review broadly alleges that MPI has been making incorrect decisions in respect to approving exports under section 67C of the Forests Act.
28. Crown Law is representing MPI in these proceedings with a two-day hearing scheduled for the second half of 2016. The current focus is on discovery and the Northland Environmental Protection Society is seeking access to a large volume of records relating to export decisions between 2010 and 2015. MPI is currently fulfilling agreed discovery orders, and will be making submissions to the Court in the new year in relation to matters that have not been agreed.

Next Steps

29. Alongside continued oversight of the swamp kauri sector, MPI will be focussed on implementation of the Auditor-General's recommendations and concluding the judicial review.
30. As quarterly reports of swamp kauri activity are published, MPI will provide you with a copy of those reports and a briefing on further progress on these matters. The next quarterly report will be published in early February 2016.

[Appendix One: Quarterly Report on Swamp Kauri Activity is publicly available online at: <http://www.mpi.govt.nz/exporting/forest-products/wood-and-wood-products/swamp-kauri>]