

Forests Amendment Bill

Government Bill

As reported from the Local Government and
Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Forests Amendment Bill and recommends that it be passed, by majority, with the amendments shown.

Background

The Forests Amendment Bill was referred to the Transport and Environment Committee on 13 July 1999. That committee called for, and heard submissions, but did not finish its consideration prior to the dissolution of Parliament before the 1999 general election. As a consequence, the bill was carried forward and referred to the Local Government and Environment Committee of the 46th Parliament, and then subsequently referred to the current Local Government and Environment Committee.

Since the bill's introduction, a number of policy decisions have been made that impact on the provisions of the original bill. These include the transfer of the Crown's West Coast indigenous production forests from Timberlands West Coast Limited to the Department of Conservation in 2001–02, the announcement of the South Island Landless Natives Act 1906 (SILNA) policy package on 12 May 2002, and the Cabinet decision to drop a proposed amendment that would have widened the list of products that could be exported to include sustainably produced wood-chips and other sawn timber from species other than rimu and beech.

This commentary discusses some of the issues covered during the Transport and Environment Committee's consideration of the original bill and our consideration of the new amendments.

Introduction

SILNA forests

The bill is strongly linked to issues concerning forests on lands originally reserved under the South Island Landless Natives Act 1906. Under the Act, land was granted to some Maori to provide for their social and economic needs. Recipients of the land qualified by having less than a minimum figure of 40 to 50 acres of land per head, which was considered insufficient for their support and maintenance. ¹ Much of the SILNA land is located in Otago and Southland with significant areas covered by native forest of various kinds.

Extent of indigenous forest in New Zealand

About 24 percent of New Zealand remains covered with indigenous forest. Of this, 83 percent is held in Crown-owned national parks and reserves and 17 percent is privately owned. ² SILNA lands total about 57,000 hectares, of which about 35,000 hectares is forested. Other privately owned forests (unless otherwise protected) were brought under the Forests Act 1949 in 1993, so the amount of additional indigenous forest land brought under Part IIIA by the bill is relatively small.

Previously exempted forests brought under Part IIIA of the Forests Act

In 1993, the Forests Act was amended to include most privately owned forests under sustainable management provisions, provided by a new Part IIIA. However, the legislation specifically exempted four categories of indigenous forests from those provisions. This bill removes those general exemptions from Part IIIA but provides for specific controls and exemptions for specific categories of forest in various other clauses of the bill. This bill seeks to ensure that the export and milling of indigenous timber will continue to be linked with sustainable forest management practices.

¹ *Crown Law Office Historical Research on the South Island Landless Natives Act 1906 (SILNA)*, 2001, p.1

² *New Zealand Forest Statistics*, Ministry of Agriculture and Forestry, 2000, p.5

Provisions to accommodate certain forests

While the general exemptions for certain forests are removed, there are provisions to accommodate their different circumstances. The owners of indigenous forests on SILNA land may be included in the milling provisions by voluntary agreement. Part IIIA of the Forests Act bans felling and harvesting of timber from forests on land administered by the Department of Conservation. The bill also exempts planted indigenous forests from milling controls and provides that products from these forests are expressly exempted from controls under the export provisions.

Customs regulations found unlawful

SILNA forests are currently exempt from the sustainable forest management, sawmilling and generic export controls of the Forests Act. Exports from forests exempt from the Forests Act, including SILNA forests, were subject to customs regulations until, in 1999, the High Court found that it was unlawful for the Crown to use customs regulations to control the export of indigenous timber from SILNA lands. As a consequence, SILNA owners can currently harvest, mill, and sell on both the domestic and the international market, unsustainably harvested indigenous timber products, including sawn timber, logs and wood-chips. This bill re-establishes export controls over indigenous timber and wood-chips from SILNA land, making these lands subject to the same export provisions as all other indigenous forests.

Issues raised by submitters in 1999

The Transport and Environment Committee received 370 submissions on the bill, 44 of which were heard orally. The largest proportion of submissions came from groups and individuals with environmental, recreational and conservation interests. Key issues raised included strong opposition to wood-chip and log exports, and opposition to the transitional provisions relating to the West Coast indigenous production forests. These concerns have now been addressed by the proposed amendment to clause 4 relating to export controls and by the transferral of the West Coast indigenous production forests to the Department of Conservation.

Although many submitters were supportive of the inclusion of SILNA forests under the provisions of Part IIIA of the Forests Act, many SILNA landowners were opposed to the application of export

controls to SILNA lands. This issue was raised again in the 2003 submissions to the current Local Government and Environment Committee. It is further discussed later in the commentary.

Many submitters were concerned about clauses 25 and 26 relating to issues of compensation. Some felt that ruling out compensation was an appropriation of existing property rights. In relation to SILNA forests, some submitters were concerned the bill does not provide for compensation for loss in forest value as a consequence of the removal of the general exemption for their lands. Some submitters considered the Government's approach does not deal with historic grievances in relation to the allocation of SILNA land in 1906. This issue was also raised in the 2003 submissions and is discussed later in the commentary.

A significant proportion of submitters expressed general opposition to the harvesting of indigenous forests. Many raised general philosophical or policy issues, or addressed provisions in the Forests Act that are not specifically amended by the bill. The Transport and Environment Committee noted these views with considerable interest, and discussed them with submitters during hearings. However, the committee's approach was to focus on matters that relate specifically to provisions in the bill, and not to deal here with the broader issues.

The Transport and Environment Committee appreciated the standard of many submissions and the numerous people who made themselves available at short notice to give oral evidence. The committee was aware that strong passions are aroused in discussing the economic and ecological future of New Zealand's remaining indigenous forests.

Consideration of the proposed amendments in 2003

We note the comments of the Transport and Environment Committee in relation to its consideration of the submissions received on the bill as introduced in 1999. We believe it is unlikely that the key concerns expressed by submitters in 1999 have changed substantially since that time, as opinions about indigenous forests have been ranged along a similar spectrum of views for many years. In our consideration of the proposed amendments in 2003 we were concerned, however, that SILNA owners affected by these amendments should be given the chance to comment on them.

Submissions sought from SILNA representatives

In June 2003, we sought selected submissions on the proposed amendments from a number of SILNA trustees and owners because we were aware that the export provisions for sustainably managed forests have been amended since submissions were heard on the bill as introduced in 1999. Under the SILNA policy package introduced by the Government in 2002, SILNA owners have three choices:

- voluntary conservation arrangements with the Crown. The Nature Heritage Fund has resources to assist with this.
- voluntary inclusion in Part IIIA of the Forests Act. This would bring the forests under the sustainable provisions of the Act, which permits export of sawn timber and finished products but not logs or chips. The Ministry of Agriculture and Forestry has funding to assist with the costs of funding sustainable management plans.
- unsustainable milling or clearfelling without export.

The proposed amendment to the bill relating to export provisions affects SILNA owners who may opt for sustainable forest management as set out in Part IIIA of the Forests Act. Our purpose in calling for these recent submissions was to gauge the view of these SILNA owners, especially the more recently established SILNA representative groups, on the new policy.

Response to the bill from SILNA representatives

The submissions indicated that SILNA owners are mixed in their support for the proposed amendments. While they favour the tax amendments and, in some cases, the sustainable management provisions, they generally oppose the export restrictions. Submitters tended also to restate concerns raised in the submissions in 1999. They were less specific about individual clauses in the bill but more concerned about the implied loss of economic benefit, lack of consultation, and lack of compensation in recognition of economic loss. They believe the bill obstructs their efforts to gain the full economic returns from the lands as originally offered under the South Island Landless Natives Act 1906.

The committee sought advice about the present value of extraction and the potential value of future extraction.

Export controls under the principal Act are retained

Current generic export controls in the Forests Act ban the export of wood-chips and logs, but allow the export of sustainably produced beech and rimu sawn-timber and finished products and personal effects. The bill as introduced would have widened the list of products that could be exported to include 'sustainably produced' wood-chips and other species of sawn timber. A change in Government policy has resulted in the decision to retain the export controls as set out in the principal Act. Consequently, we recommend, by majority, that clause 4 of the bill as introduced be amended.

This change to the export provisions is the most significant amendment to affect SILNA owners. It affects those SILNA owners who choose the sustainable forest management option under the SILNA forest policy. Many submitters are concerned about the loss of export markets, especially from non-sawlog hardwood, which has previously been exported as chipwood. Others saw the re-imposition of export controls as counter to the principle of unrestricted economic benefit from SILNA land. We understand that SILNA forests are often of poor quality and note that some submitters consider chipping a necessity in receiving a viable economic return from the land. Several submitters considered the export controls as the core of the problem of economic loss and claimed they could substantially devalue their land. Advice provided to us by officials indicates loss of economic value would depend entirely on forest type and quality. Forests logged in the past and carrying little good quality timber are likely to be most affected.

We have explored the economic issue fully, especially the likely impact of the restriction on export from sustainably managed forests, which is the most significant amendment proposed. We appreciate that this matter is of fundamental concern to SILNA landowners.

SILNA owners believe the export controls will adversely affect them. The committee received advice that the extent to which export controls are likely to materially affect SILNA owners is not clear-cut. Factors such as changing international markets, the scale of operations, and the prospects for changing domestic markets and values all affect current and future prospects for commercial forestry.

National, New Zealand First, ACT and United Future believe that export controls are not needed, given the standards that apply under

existing legislation to promote sustainable forest management, as well as the increasing worldwide recognition of the move towards third-party forest certification requirements.

Tax exemption for SILNA owners entering conservation covenants

As part of the SILNA policy implementation package, an income tax exemption is to be granted for payments received by SILNA owners entering conservation covenants. This is provided for in proposed new clause 26A. Submitters were in favour of the tax amendment. This exemption is considered beneficial to the process for enabling SILNA owners to enter into conservation covenants. We recognise this dispensation in part recognises the unique circumstances of SILNA lands that were granted and were intended to provide for the social and economic needs of SILNA owners. A similar and retrospective tax exemption applying to the 1997 Waitutu Forest Settlement is provided for in proposed new clause 26B.

Further proposed amendments not addressed by submitters

Sections relating to the Crown's West Coast indigenous production forests deleted

The Crown's West Coast indigenous production forests were transferred from Timberlands West Coast Ltd to the Department of Conservation in 2001–02. As Government policy on these forests has already been implemented, the relevant sections of the bill, as introduced, are now redundant and we propose to delete them. We note that, as a consequence, many of the issues raised by submitters in relation to the previous Crown West Coast production forests, the operations in these forests by Timberlands West Coast Ltd, and the provision of transitional measures for these forests as set out in the original bill, are no longer relevant.

Export exemption for planted indigenous forests

The Forests Act currently provides that planted forests are exempted from Part IIIA of the Act. To clarify that this situation is to continue despite the removal of the proposed generic export control provisions, proposed new clause 4 inserts a new section 67C(1)(g) in the principal Act to ensure that the exemption for planted forest products from existing export controls is retained. The amended clause

does not require timber from planted forests for export to have been harvested under sustainable forest management plans or permits. This is to ensure there is no economic disincentive for private landowners to establish forests using indigenous species.

Clause 28 deleted

A further minor change is the proposed removal of clause 28, which relates to the revoking of the Customs Export Prohibition Order 1996, struck down by the High Court decision in 1999. This provision has been made unnecessary by the Customs Export Prohibition Amendment Order 1999 and the passage of time and events since it was first included in the bill.

Minor technical amendments

We propose a number of minor technical amendments to the bill. These amendments remove ambiguities, clarify certain meanings and assist with better administration of the Forests Act.

Conclusion

In reporting back this bill with the proposed amendments, we consider the bill's provisions will assist in the sustainable management of New Zealand's forests, which we believe will achieve the best gains for the environment. The High Court decision in June 1999 opened up a possibility of uncontrolled export of indigenous timber from forests currently exempted under the Forests Act. We believe that the provisions in the bill, by linking export provisions with sustainable forest management regimes, will close that loophole. We also note that the bill is consistent with the policy for SILNA forests, including allowing for voluntary inclusion in sustainable forest management, restored export controls on unsustainable logging, and exemption from domestic milling controls.

New Zealand First minority view

New Zealand First recommends that the bill not be passed as the passage of the bill will not allow SILNA owners to be able to harvest, mill, and sell, on the international market, indigenous timber products including sawn timber, logs and wood-chips.

New Zealand First agrees with those submitters who are concerned that the passage of this bill will result in the loss of commercial

opportunity and no recognition of the current value of economic benefit.

The South Island Landless Natives Act 1906, a unique Act, recognised the need for individual land for Maori, landless, as a result of the failure of the Crown to follow earlier purchases with sufficient grants for Maori.

The Act resulted from years of inquiry which culminated in the Government of the day introducing a bill which recognised that ‘. . . the agitation for a settlement had been going on for years. . .’. When James Carroll, the Native Minister, spoke in the second reading debate on 4 September 1906 he stated ‘. . . we are coming now to a point where we have to settle. . . Generations have passed away with promises unfulfilled’.

Although SILNA owners may have a historical claim under the Treaty of Waitangi, the passage of this bill would guarantee that the SILNA solution of 1906, and those promises, would not have been honoured.

Appendix

Committee process

The Forests Amendment Bill was referred to the Transport and Environment Committee on 13 July 1999. The closing date for submissions was 10 August 1999. Three hundred and seventy submissions from interested groups and individuals were received and considered by that committee. In addition to these, it received over 400 form campaign letters. It heard 44 submissions. Hearing of evidence took 10 hours and 50 minutes.

This committee sought further submissions on proposed amendments from representatives of SILNA owners. Ten submissions were received, nine of which were heard.

The Transport and Environment Committee received advice from the Ministry of Agriculture and Forestry and the Department of Conservation, and was briefed by the Office of the Parliamentary Commissioner for the Environment. We also received advice from the Ministry of Agriculture and Forestry, the Department of Conservation and the Inland Revenue Department.

Committee membership

Jeanette Fitzsimons (Chairperson)

David Parker (Deputy Chairperson)*

Shane Ardern

Larry Baldock

Dr Ashraf Choudhary

Sandra Goudie

Ann Hartley

Nanaia Mahuta

Hon Damien O'Connor

Jim Peters

Hon Ken Shirley

Hon Dr Nick Smith

*David Parker withdrew from consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Pete Hodgson

Forests Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Forests Amendment Act **1999**.
- (2) In this Act, the Forests Act 1949¹ is called "the principal Act".

¹ 1949 No 19

1A Commencement

This Act comes into force on the *<date>* *<day after the date>* on which it receives the Royal assent.

Part 1**Amendments to principal Act**

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2 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **landholding**, and substituting the following definition:

“**landholding** means an estate, right, title, or interest of any kind in or over an area of land by or under which indigenous timber may be harvested; but does not include an interest by way of charge or security”.

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- (2) Section 2(1) of the principal Act is amended by inserting in the definition of the term **planted indigenous forest**, after the words “means any indigenous”, the word “timber”.

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- (3) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **Secretary**, the following definition:

“**specified Maori land** means land having the status of Maori land or General land owned by Maori, as defined in section 4 of Te Ture Whenua Maori Act 1993, and originally reserved or granted under—

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“(a) the South Island Landless Maori Act 1906; or

“(b) section 12 of the Maori Land Amendment Act 1914; or

“(c) section 88 of the Reserves and other Lands Disposal and Public Bodies Empowering Act 1916; or

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“(d) section 110 of the Maori Purposes Act 1931”.

- (4) Section 2(1) of the principal Act is amended by repealing the definition of the term **timber**, and substituting the following definition:

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“**timber**—

“(a) means—

“(i) trees (excluding cuttings, suckers, and shoots); and

“(ii) woody plants able to be milled; and

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“(b) includes branches, roots, and stumps of trees and other woody plants able to be milled, logs, woodchips, wood products, veneer, tree ferns, and tree fern fibre”.

- (5) Section 2(2) of the Forests Amendment Act 1993 is consequentially repealed.

3 New sections 67A and 67AB substituted

- (1) The principal Act is amended by repealing section 67A, and substituting the following sections: 5

“67A Part binds the Crown

This Part binds the Crown.

“67AB Part does not permit felling or harvesting other than in accordance with relevant enactment

In the case of land held, managed, or administered by the Crown under the Conservation Act 1987 or any Act listed in the First Schedule of that Act, this Part does not permit the felling or harvesting of timber other than in accordance with the provisions of the Act under which the land on which the timber is growing is held, managed, or administered.” 10

- (2) Section 2 of the Forests Amendment Act (No 2) 1996 is consequentially repealed. 15

Struck out (majority)

4 New section 67C substituted

- (1) The principal Act is amended by repealing section 67C, and substituting the following section: 20

“67C Prohibition on export of certain indigenous forest produce

- “(1) No person may export indigenous timber from New Zealand, except the following:

“(a) any indigenous timber, including sawn indigenous timber, woodchips, and logs, where the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from an area subject to, and managed in accordance with, a registered sustainable forest management plan or registered sustainable forest management permit: 25 30

“(b) any finished or manufactured indigenous timber product, regardless of the source of the timber used in the product:

“(c) any personal effects: 35

Struck out (majority)

- “(d) any salvaged stump or salvaged root, whether whole or sawn, where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area that is not indigenous forest land:
- “(e) any tree fern trunk or part of a tree fern trunk, or fibres from a tree fern trunk,— 5
- “(i) where the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from an area subject to, and managed in accordance with, a registered sustainable forest management plan or registered sustainable forest management permit; or 10
- “(ii) from indigenous forest land, where the Secretary has, subject to **subsection (2)**, given prior approval to the removal of that timber; or 15
- “(iii) where the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from land that is not indigenous forest land:
- “(f) any indigenous timber— 20
- “(i) from a planted indigenous forest, if that timber is, or is from, a shrub, bush, seedling, or sapling; or
- “(ii) other than indigenous timber to which **subparagraph (i)** applies, if the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from a planted indigenous forest. 25
- “(2) Before giving approval under **subsection (1)(e)(ii)**, the Secretary must be satisfied that the area concerned can continue to supply an annual or periodic non-diminishing yield of tree fern trunks in perpetuity. 30
- “(3) No indigenous timber (other than personal effects) may be exported from New Zealand unless—
- “(a) a notice of intention to export has been given in accordance with any regulations for the time being in force under this Act; and 35
- “(b) the notice of intention includes or is accompanied by a statement of the source of the timber; and

Struck out (majority)

- “(c) the timber has been presented to a Forestry Officer for inspection and he or she has inspected and approved it.”
- (2) Section 3 of the Forests Amendment Act 1995 is consequentially repealed.

New (majority)

- 4 Prohibition on export of certain indigenous forest produce** 5
- (1) Section 67C(1) of the principal Act is amended by adding the following paragraph:
- “(g) any indigenous timber—
- “(i) from a planted indigenous forest, if that timber is, or is from, a shrub, bush, seedling, or sapling; or 10
- “(ii) other than indigenous timber to which **subparagraph (i)** applies, if the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from a planted indigenous forest.” 15
- (2) Section 67C of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) No indigenous timber (other than personal effects and any finished or manufactured indigenous timber products) may be exported from New Zealand— 20
- “(a) unless—
- “(i) a notice of intention to export has been given to the Secretary in a form approved by the Secretary; and 25
- “(ii) the notice of intention includes or is accompanied by a statement of the source of the timber; and
- “(iii) the timber has been presented to a Forestry Officer for inspection and he or she has inspected and approved it; and 30
- “(b) until the expiry of a period (if any) specified for the purposes of this paragraph in the notice of intention.”
- (3) The Forests (Notice of Intention to Export Indigenous Timber) Regulations 2003 (SR 2003/75) are consequentially revoked. 35

New (majority)

- (4) Despite **subsection (3)**, the Forests (Notice of Intention to Export Indigenous Timber) Regulations 2003 continue in force until the Secretary approves a form under section 67C(3)(a) of the principal Act.

5 Prohibition on milling indigenous timber

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- (1) Section 67D of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- “(1) No person may mill any indigenous timber at a sawmill unless the sawmill is registered in accordance with regulations made under section 72, and at least 1 of the following paragraphs applies to the harvesting of the timber:

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- “(a) the timber has been harvested from an area of land subject to, and managed in accordance with, a registered sustainable forest management plan or a registered sustainable forest management permit and the harvest is in accordance with *⟨that plan or permit⟩* ⟨an annual logging plan approved under section 67H⟩:

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- “(b) the Secretary has stated in writing that he or she is satisfied that—

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- “(i) the timber has been or will be harvested from—

- “(A) specified Maori land that is not land on which a forest specified in an Order in Council made under **section 67DA** is situated; or

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- “(B) land held, managed, or administered by the Crown under the Conservation Act 1987 or any Act listed in the First Schedule of that Act; or

- “(C) a planted indigenous forest; or

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- “(ii) the timber has been or will be felled—

- “(A) for a public work as defined in the Public Works Act 1981; or

- “(B) with the approval of the owner, for a mining operation; or

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- “(C) for construction or maintenance of an access way or water impoundment, or for a

purpose directly necessary or desirable for scientific research; or

“(iii) the timber was first milled before 1 July 1993; or
 “(iv) the timber is salvaged timber that has been or will be harvested from an area of land that is not indigenous forest land; or

“(v) the timber has been or will be harvested from windthrown trees or trees (whether standing or not) that have died from natural causes on land that is not subject to either a registered sustainable forest management plan or a registered sustainable forest management permit, and that he or she is satisfied that the forest’s natural values will be maintained:

“(c) the timber is a tree fern trunk, or is from a tree fern trunk, and the Secretary has stated in writing that he or she is satisfied that the timber has been or will be harvested from an area of land that is not indigenous forest land:

“(d) the timber is a tree fern trunk, or is from a tree fern trunk, and has been or will be harvested, with the prior written approval of the Secretary, from an area of land that is not subject to either a registered sustainable forest management plan or a registered sustainable forest management permit:

New (majority)

“(e) the timber has been seized under section 67R and sold, released, or disposed of under section 67S and the Secretary has stated in writing that the person to whom the timber is sold, released, or disposed was not involved in the felling and harvesting of the timber in contravention of this Part.

“(2) Before giving an approval under **subsection (1)(d)**, the Secretary must be satisfied that the area concerned can continue to supply an annual or periodic non-diminishing yield of tree fern trunks in perpetuity, and that yield must include the harvesting of windthrown ferns or dead ferns as they become available.”

New (majority)

(1A) Section 67D(3) of the principal Act is amended by inserting, after the word “plan”, the words “or a sustainable forest management permit”.

- (2) The following provisions are consequentially repealed:
- (a) section 4 of the Forests Amendment Act 1995: 5
 - (b) section 3 of the Forests Amendment Act (No 2) 1996.

6 New sections 67DA and 67DB and heading inserted

The principal Act is amended by inserting, after section 67D, the following sections and heading:

“67DA Forests on specified Maori land to which sawmill controls apply 10

“(1) The Governor-General may from time to time, by Order in Council, specify forests on specified Maori land to which **section 67D(1)(b)(i)(A)** does not apply.

“(2) The Governor-General may make an Order in Council under **subsection (1)** in relation to a forest only if he or she is satisfied 15

that the owner of the forest has agreed with the Minister to—

“(a) surrender the right to mill indigenous timber harvested from the forest; or

“(b) surrender the right to mill indigenous timber harvested 20
from the forest other than in accordance with a registered sustainable forest management plan or a registered sustainable forest management permit.

“Felling controls

“67DB Prohibition on felling indigenous timber 25

Where any land is specified in a registered sustainable forest management plan or a registered sustainable forest management permit as land to which that plan or permit applies, no person may fell indigenous timber on that land except in accordance with that plan or permit *<or in accordance with an approval given under section 67D(3) if that land is subject to a permit>.* 30

- 7 Sustainable forest management plans**
 Section 67E of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:
- “(2) A sustainable forest management plan applies to the area or areas of indigenous forest land specified in that plan. 5
- “(3) A sustainable forest management plan applies to the land specified in that plan,—
- “(a) in the case of a landholding having a term of less than 50 years, for the balance of that term; or 10
- “(b) in any other case, for the period specified in the plan, which period—
- “(i) must not be less than 50 years; and
- “(ii) may be renewed from time to time in accordance with section 67I.” 15
- 8 Procedure for approval of sustainable forest management plans**
- (1) Section 67F of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(1) The owner of a landholding for an area of indigenous forest land may apply to the Secretary for approval of a draft sustainable forest management plan for all or part of that area. 20
- “(1A) An application may be made by lodging the draft plan at a Ministry office.”
- (2) Section 67F(2) of the principal Act is amended by omitting the words “land concerned”, and substituting the words “area of indigenous forest land specified in the plan as the area of land to which the plan applies”. 25
- 9 Notice requirements**
 Section 67G of the principal Act is amended by inserting, after the words “forest management plan,”, the words “and that approval, amendment, or exemption enables beech to be harvested in coupes of more than 0.5 hectares,”. 30
- 10 Secretary’s power to require amendments to plans**
- (1) Section 67H(1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph: 35

- “(a) to correct the description of the area or areas specified in the plan as the area or areas to which the plan applies:”.
- (2) Section 67H of the principal Act is amended by inserting, after subsection (1), the following subsection: 5
- “(1A) Work for the harvesting of timber (including, but not limited to, the felling of timber and the construction of roads, tracks, or landings) must not be carried out on an area of land specified in a registered sustainable forest management plan unless that work is carried out in accordance with an annual logging plan approved by the Secretary.” 10
- 11 Other provisions relating to review and amendment of sustainable forest management plans**
- Section 67I(1)(b)(ii) of the principal Act is amended by omitting the word “removal”, and substituting the word “harvesting”. 15
- 12 Sustainable forest management plan to be recorded against certificate of title**
- Section 67K of the principal Act is amended—
- (a) by omitting from subsection (1) the words “to which a sustainable forest management plan relates”, and substituting the words “specified in a sustainable forest management plan”: 20
- (b) by omitting from subsection (4) the words “to which that plan relates”, and substituting the words “specified in that plan”: 25
- (c) by omitting from subsection (6) the words “to which it relates”, and substituting the words “specified in the plan”.
- 13 New section 67M substituted** 30
- (1) The principal Act is amended by repealing section 67M, and substituting the following section:
- “67M Sustainable forest management permits**
- “(1) An owner of a landholding for an area of indigenous forest land may apply to the Secretary for a sustainable forest management permit for all or part of that area to allow the harvesting and milling of indigenous timber. 35

- “(2) A sustainable forest management permit has effect for 10 years from the date that permit is registered and—
- “(a) authorises the harvesting and milling of indigenous timber in accordance with the permit from an area within the area of land specified in the permit; and 5
 - “(b) specifies the area of land to which the permit applies; and
 - “(c) specifies the quantity of timber fixed by the Secretary (being timber capable of being milled irrespective of its quality) that may be harvested and milled in accordance with the permit. 10

Struck out (majority)

- “(3) A sustainable forest management permit must not authorise the harvesting and milling of more than 10% of the quantity of indigenous timber (excluding roots) capable of being milled standing on the area of land specified in the permit; and the quantity of indigenous timber authorised by that permit to be harvested and milled must not include more than— 15
- “(a) 250 cubic metres of podocarp or kauri or shade-tolerant, exposure-sensitive, broadleaved hardwood species; and
 - “(b) 500 cubic metres of beech or other light-demanding hardwood species. 20

New (majority)

- “(3) A sustainable forest management permit must not authorise the harvesting and milling—
- “(a) of more than 10%— 25
 - “(i) of the quantity of indigenous timber (excluding roots) capable of being milled standing on the area of land specified in the permit; and
 - “(ii) of the quantity of each species of indigenous timber (excluding roots) capable of being milled standing on the area of land specified in the permit; and 30
 - “(b) of more than the following volumes of indigenous timber:

New (majority)

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| <p>“(i) 250 cubic metres of podocarp or kauri or shade-tolerant, exposure-sensitive, broadleaved hardwood species; and</p> <p>“(ii) 500 cubic metres of beech or other light-demanding hardwood species.</p> | 5 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|
- “(4) A second or subsequent sustainable forest management permit must not be issued in respect of any *<podocarp or kauri or shade-tolerant, exposure-sensitive, broadleaved hardwood species>* *<indigenous timber>* unless and until the Secretary is satisfied that the quantity of *<each species of>* indigenous timber (being timber capable of being milled, irrespective of its quality, but excluding roots) standing in the area to which the permit will apply is at least equivalent to the quantity *<of each species>* standing in the area at the date of the grant of the previous permit. 10
- “(5) A sustainable forest management permit expires 18 months after the date of issue of the permit unless it is registered before the close of that period. 15
- “(6) The Secretary must not grant a permit for an area of indigenous forest land that is specified— 20
- “(a) in a sustainable forest management plan as an area of land to which that plan applies; or
- “(b) in a permit, issued within the previous 18 months, as an area to which that permit applies; or
- “(c) in a permit, registered within the previous 10 years, as an area to which the permit applies. 25
- “(7) The provisions of sections 67F(2), **67H(1A)**, (2), and (3), 67I, 67K, and 67L and the provisions and prescriptions set out in clauses 8, 9, and 10 of the Second Schedule, with the necessary modifications, apply— 30
- “(a) to every proposal under this section as if it were a draft sustainable forest management plan; and
- “(b) to every permit under this section as if it were a sustainable forest management plan.”
- (2) Section 6 of the Forests Amendment Act 1995 is consequentially repealed. 35

14 Records

- (1) Section 67Q(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(a) timber harvested from areas of land subject to a sustainable forest management permit; and”.

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Struck out (majority)

“(ab) timber harvested under any provision in Part 2 of the Forests Amendment Act 1999; and”.

- (2) Section 67Q(2) of the principal Act is amended by adding the words “or permit”.

15 Powers of entry and seizure

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Section 67R(e) of the principal Act is amended by omitting the words “is being or about to be removed”, and substituting the words “is about to be, is being, or has been milled or exported, or has been felled or harvested,”.

16 Offences

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Section 67T of the principal Act is amended by repealing paragraph (f), and substituting the following paragraphs:

“(f) carries out work <for the harvesting of timber (including, but not limited to, the felling of timber and the construction of roads, tracks, or landings)> on an area of land subject to a registered sustainable forest management plan, or a registered sustainable forest management permit, other than in accordance with an annual logging plan approved under section 67H *<or on an area of land subject to a permit an approval under section 67D(3)>*; or

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“(fa) transports, mills <(other than under section 67D(1)(e))>, chips, cuts for firewood, or pulps any timber harvested from an indigenous forest, knowing that the timber is about to be, is being, or has been felled, harvested, milled, or exported in contravention of this Part; or

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“(fb) fells any indigenous timber on land subject to a registered sustainable forest management plan, or a registered sustainable forest management permit, other than in accordance with that plan or permit *<or other than in*

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accordance with an approval given under section 67D (3)»; or

New (majority)

“(fc) harvests or mills indigenous timber that is subject to an approval under section 67D(3) other than in accordance with the approval; or”.

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17 New section 67V substituted

- (1) The principal Act is amended by repealing section 67V, and substituting the following section:

“67V **Relationship of Part with Resource Management Act 1991**

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Nothing in this Part derogates from any provision of the Resource Management Act 1991.”

- (2) Section 8 of the Forests Amendment Act 1995 is consequentially repealed.

Part 2

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〈*Transitional*〉 〈*Miscellaneous*〉 provisions

Struck out (majority)

18 Interpretation

In this Part, unless the context otherwise requires,—

affected forests means the forests listed in the Schedule and identified by a description of the land on which the forest is situated, being West Coast indigenous production forests in the Buller subregion

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total allowable harvest means the quantity of logs specified in **section 24** as able to be milled from affected forests.

19 This Part binds Crown

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This Part binds the Crown.

Struck out (majority)*Transitional provision for export of timber*

- 20 Transitional provision for export of indigenous timber from West Coast indigenous production forests**
- (1) Where the Minister consents in writing to the export of indigenous timber under this section, the provisions of this section apply during the period applicable under **subsection (2)** in place of section 67C of the principal Act (as amended by section 4 of this Act) so long as the export complies with any conditions to which the Minister's consent is subject. 5
- (2) The Minister may consent to an export of indigenous timber from a West Coast indigenous production forest (other than an affected forest) if— 10
- (a) the export takes place on or before the earlier of—
- (i) 31 December 2000; or 15
- (ii) the date on which the Secretary approves a sustainable forest management plan that applies to the land on which the forest is situated; and
- (b) the Minister is satisfied that the forest is being managed in a manner that is generally consistent with sustainable forest management. 20
- (3) The Minister's consent given under **subsection (2)** may be subject to such conditions as the Minister thinks fit.

Transitional provisions for milling of timber

- 21 Transitional provision for milling of timber from West Coast indigenous production forests** 25
- Section 67D of the principal Act (as amended by **section 5** of this Act) does not apply to the milling of indigenous timber from a West Coast indigenous production forest (other than an affected forest) until the earlier of—
- (a) 31 December 2000; or 30
- (b) the date on which the Secretary approves a sustainable forest management plan that applies to the land on which the forest is situated.

Struck out (majority)

- 22 Application of sections 23 and 24 to affected forests**
Sections 23 and 24 apply to indigenous timber if the Secretary has stated in writing that he or she is satisfied that the timber has been harvested from an affected forest.
- 23 Transitional provisions to apply for fixed time or fixed harvest** 5
- (1) Section 67D of the principal Act (as amended by **section 5** of this Act) does not apply to the milling of indigenous timber from affected forests until the earlier of—
- (a) 1 January 2001; or 10
- (b) the date the Secretary publishes a notice in the *Gazette* in accordance with **subsection (2)**.
- (2) The Secretary must, when he or she is satisfied that a quantity of indigenous timber from affected forests, equal to or exceeding the total allowable harvest specified in **section 24**, has been milled at sawmills, publish a notice in the *Gazette* to that effect. 15
- 24 Establishment of total allowable harvest**
- The total allowable harvest of indigenous timber from affected forests for the period beginning on 1 January 1999 and ending with 31 December 2000 is 45 596 cubic metres of logs. 20
- 25 Compensation**
- (1) No person is entitled to compensation from the Crown in respect of any diminution, by reason of the enactment of this Act, in— 25
- (a) the rights, or value of the rights, of that person under a contract relating to indigenous timber on any specified Maori land *<or from a West Coast indigenous production forest (including an affected forest)>*; or
- (b) the value of indigenous timber on any specified Maori land *<or from a West Coast indigenous production forest (including an affected forest)>*; or 30
- (c) the value of any specified Maori land.
- (2) This section is subject to **section 26**.

- 26 Power to specify criteria and method of assessment in relation to payment of assistance**
- (1) The Governor-General may, by Order in Council, specify the criteria and methods of assessment that must be applied by the Crown in determining any claim for financial losses suffered in relation to a specified contract as a direct result of the enactment of **section <4> <3>**. 5
- (2) In this section, **specified contract** means a written contract that—
- (a) relates to the export of indigenous timber harvested *<from a West Coast indigenous production forest (including an affected forest) or>* from specified Maori land; and 10
- (b) was entered into before 13 July 1999, being the date on which this Act was introduced as a Bill into the House of Representatives. 15

New (majority)

- 26A Power to specify payment of money in relation to conservation covenant not gross income of recipient**
- (1) The Governor-General may, by Order in Council, made in accordance with a recommendation of the Minister of Finance, specify that a payment of money made in consideration of the entering into of a conservation covenant over specified Maori land is not gross income of the recipient. 20
- (2) An Order in Council under this section may relate to a payment of money that is made in any income year, beginning with the 2002–03 income year. 25
- (3) In this section **gross income** has the same meaning as in section BD 1 of the Income Tax Act 1994.
- 26B Certain payments of money under deed of settlement relating to Waitutu Block not assessable income or gross income** 30
- (1) This section applies to payments of money made—
- (a) in any of the 1995–96 to 1999–2000 income years; and
- (b) to the Proprietors of Waitutu Incorporated under the deed of settlement in relation to that portion of the Waitutu Block that is specified Maori land. 35

New (majority)

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| (2) | A payment of money made in the 1995–96 or 1996–97 income year is not assessable income of the Proprietors of Waitutu Incorporated. | |
| (3) | A payment of money made in any of the 1997–98 to 1999–2000 income years is not gross income of the Proprietors of Waitutu Incorporated. | 5 |
| (4) | In this section,— | |
| | assessable income has the same meaning as in the Income Tax Act 1994 as in force immediately before the commencement of the 1997–98 income year | 10 |
| | deed of settlement has the same meaning as in the Waitutu Block Settlement Act 1997 | |
| | gross income has the same meaning as in the Income Tax Act 1994 as in force at the commencement of the 1997–98 income year | 15 |
| | Proprietors of Waitutu Incorporated has the same meaning as in the Waitutu Block Settlement Act 1997 | |
| | Waitutu Block has the same meaning as in the Waitutu Block Settlement Act 1997. | |

Struck out (majority)

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| 27 | Variation of schedule
The Governor-General may from time to time, by Order in Council, amend the description of land for any forest listed in the Schedule. | 20 |
| 28 | Revocation of clause 4 of Customs Export Prohibition Order 1996 | 25 |
| (1) | Clause 4 of the Customs Export Prohibition Order 1996 (SR 1996/233) is revoked. | |
| (2) | Any decision made by the Minister in reliance upon clause 4 of the Customs Export Prohibition Order 1996 is, and always has been, valid. | 30 |

Struck out (majority)

**29 Relationship of Part with Resource Management Act
1991**

Nothing in this Part derogates from any provision of the
Resource Management Act 1991.

Struck out (majority)

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Schedule List of affected forests

Forest	Description of land	
Charleston Forest	7874.5700 hectares being Sections 1 and 2 Survey Office Plan 15151 and Section 1 Survey Office Plan 15152	5
Mokihinui Forest (part)	2342.0580 hectares being Sections 1, 2, 3, and 4 Survey Office Plan 15021	
Ohikanui Forest	1184 hectares being that area west of the protection covenant A within Section 3 Survey Office Plan 15024 excluding Lots 1 and 2 DP 16060 (Exotics)	10
Orikaka Forest	6440.000 hectares being Section 1 Survey Office Plan 15014	

Legislative history

13 July 1999	Introduction, first reading, second reading and referral to Transport and Environment Committee (Bill 311-1)
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