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1993, No. 7

An Act to amend the Forests Act 1949

[24 March 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Forests Amendment Act 1993, and shall be read

together with and deemed part of the Forests Act 1949 (hereinafter referred to as the principal Act).

(2) Section 4 of this Act shall come into force on the day on which this Act receives the Royal assent.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the 1st day of July 1993.

2. Interpretation—(1) Section 2 (1) of the principal Act (as amended by section 2 of the Forests Amendment Act 1976, section 2 of the Forests Amendment Act 1983, section 32 of the State-Owned Enterprises Act 1986, and section 3 of the Forests Amendment Act 1987) is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Amenity values’ means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes:

“‘Approved’, in relation to a sustainable management plan, means approved by the Secretary under section 67F of this Act:

“‘Coupe’ means an area of forest that has been or is to be harvested:

“‘Exotic’, in relation to a species of flora, means a species that is not an indigenous species:

“‘Finished or manufactured indigenous timber product’—

“(a) Means any indigenous wood product that has been manufactured into its final shape and form and is ready to be installed or used for its intended purpose without the need for any further machining or other modification; and

“(b) Includes a complete item or a component of an item (whether assembled or in kitset form) such as joinery, furniture, toys, tools, and household utensils, household fixtures such as rails and toilet seats, ornaments such as picture frames and carvings, and similar items; but

“(c) Does not include dressed or rough sawn timber, mouldings, panelling, furniture blanks, joinery blanks, building blanks, or similar items:

“‘Indigenous’, in relation to a species of flora or fauna, means a species that occurs naturally in New Zealand or arrived in New Zealand without human assistance:

“‘Indigenous forest land’ means land wholly or predominantly under the cover of indigenous flora:

- “ ‘Landholding’ includes any estate, right, title, or interest of any kind in or over any indigenous forest land in New Zealand, otherwise than by way of charge or security, by which indigenous timber may be harvested:
- “ ‘Owner’—
- “(a) Means any person who owns any landholding; and
- “(b) Includes—
- “(i) The owners of any landholding where it is owned by 2 or more persons; and
- “(ii) A group of owners of landholdings who are operating under the same sustainable management plan:
- “ ‘Planted indigenous forest’ means any indigenous trees or tree ferns that have been planted on land that was not indigenous forest land immediately before such planting and was not indigenous forest land immediately before the land was prepared for such planting:
- “ ‘Registered’ means,—
- “(a) In relation to a sustainable management plan or sustainable forest management permit, recorded in accordance with section 67K of this Act:
- “(b) In relation to a sawmill, registered in accordance with section 67D of this Act:
- “ ‘Salvaged timber’ means—
- “(a) Timber from trees that have fallen naturally; or
- “(b) Timber from trees that were felled to waste before the 3rd day of July 1989; or
- “(c) Stumps and roots remaining from any timber felled before the 3rd day of July 1989;—
- and ‘salvaged stump or root’ has a corresponding meaning:
- “ ‘Sawmill’ means any factory or industrial plant (whether permanently fixed or portable) that is directly dependent on supplies of logs and produces sawn timber or wood chips from the timber, whether for sale, use, or further treatment or processing; and includes any chipmill that produces woodchips and any industrial plant (whether permanently fixed or portable) used to process tree ferns:
- “ ‘Sustainable forest management’ means the management of an area of indigenous forest land in a

way that maintains the ability of the forest growing on that land to continue to provide a full range of products and amenities in perpetuity while retaining the forest's natural values:

“‘Sustainable forest management permit’ means a sustainable forest management permit executed under section 67_M of this Act:

“‘Sustainable forest management plan’ or ‘plan’ means a sustainable forest management plan approved under section 67_F of this Act:

“‘Tree fern’ means all species of the families *Cyatheaceae* and *Dicksoniaceae*:

“‘West Coast indigenous production forest’ means any area of Crown forest land identified as indigenous production forest on the record plans (within the meaning of section 2 (1) of the Crown Forest Assets Act 1989) of Crown forest land lodged in the offices of the Chief Surveyors of the Nelson and Westland Land Districts:

“‘Working day’ means any day except—

“(a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

“(b) A day in the period commencing with the 20th day of December in any year and ending with the 15th day of January in the following year.”

(2) Section 2 (1) of the principal Act is hereby amended by adding to the definition of the term “timber” the words “; and includes tree ferns, woodchips, timber products, and the roots and stumps of trees”.

3. New Part IIIA inserted—The principal Act is hereby amended by inserting, after Part III, the following Part:

“PART IIIA

“PROVISIONS RELATING TO INDIGENOUS FORESTS

“67A. **Application of this Part**—(1) Nothing in this Part of this Act applies to the following:

“(a) Any West Coast indigenous production forest:

“(b) Any indigenous timber from or on any land permanently reserved under the South Island Landless Natives Act 1906 and having the status of Maori land or General land owned by Maori under Te Ture Whenua Maori Act 1993:

“(c) Any indigenous timber from or on any land held, managed, or administered by the Crown under the Conservation Act 1987 or any of the Acts specified in the First Schedule to that Act:

“(d) Any indigenous timber from any planted indigenous forest.

“(2) Except as provided in subsection (1) of this section, this Part of this Act binds the Crown.

“67B. **Purpose**—The purpose of this Part of this Act is to promote the sustainable forest management of indigenous forest land.

“Export Controls

“67C. **Prohibition on export of certain indigenous forest produce**—(1) No person shall export from New Zealand indigenous timber, except the following:

“(a) Any grade of sawn beech or sawn rimu (other than wood chips), where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan or registered sustainable forest management permit:

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

“(c) Any personal effects:

“(d) Any stump or 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 subject to, and managed in accordance with, a registered sustainable forest management plan:

“(e) Any salvaged stump or 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:

“(f) Any tree fern trunk or part of a tree fern trunk, or fibres from a tree fern trunk,—

“(i) Where the Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan; or

“(ii) From indigenous forest land, where the Secretary has, subject to subsection (2) of this section, given his or her prior written approval to the removal of that timber; or

“(iii) Where the Secretary has stated in writing that he or she is satisfied that that timber is from land that is not indigenous forest land.

“(2) Before giving approval under subsection (1) (f) (ii) of this section, 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.

“(3) No indigenous timber (other than personal effects) shall 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

“(b) The timber has been presented to a Forestry Officer for inspection and he or she has inspected and approved it.

“(4) For the purposes of this section, ‘sawn beech’ or ‘sawn rimu’ means sawn beech or sawn rimu timber, respectively, having dimensions not exceeding 300 mm by 100 mm and of any length.

“Sawmill Controls

“67D. **Prohibition on milling indigenous timber—**
(1) No person shall mill at any sawmill any indigenous timber unless—

“(a) The sawmill is registered in accordance with regulations made under section 72 of this Act; and

“(b) Either—

“(i) The timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan; or

“(ii) The Secretary has stated in writing that he or she is satisfied that 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 as defined in the Crown Minerals Act 1991; or

“(C) For construction or maintenance of an access way or water impoundment, or for any

purpose directly necessary or desirable for scientific research; or

“(iii) The timber is salvaged timber, 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; or

“(iv) The timber is tree fern trunks or from tree fern trunks, 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; or

“(v) The timber is tree fern trunks, or from tree fern trunks, from indigenous forest land that is not subject to a registered sustainable forest management plan, with the prior written approval of the Secretary given subject to subsection (2) of this section; or

“(vi) The Secretary has stated in writing that the timber—

“(A) Is from windthrown trees or felled standing dead trees that have become windthrown or have died as a result of natural causes; and

“(B) Is from land not subject to a registered sustainable forest management plan or registered sustainable forest management permit; or

“(vii) The Secretary has stated in writing that he or she is satisfied that the timber has been taken from a West Coast indigenous production forest or from any lands reserved under the South Island Landless Natives Act 1906 or from a planted indigenous forest; or

“(viii) The Secretary has stated in writing that he or she is satisfied that the timber was first milled before the date of commencement of this section; or

“(ix) The timber has been harvested under a sustainable forest management permit granted under section 67M of this Act; or

“(x) The Secretary has granted an approval under subsection (3) of this section.

“(2) Before giving approval under subsection (1) (v) of this section, 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, which yield shall include

the harvesting of windthrown or dead tree ferns as they become available.

“(3) On the application of the owner of any area of land not subject to a sustainable forest management plan, the Secretary may, in consultation with the Director-General of Conservation,—

“(a) Approve the harvesting and milling, for the owner’s personal use, of not more than 50 cubic metres of indigenous timber (being roundwood) in any 10-year period; and

“(b) Define the area from which the timber may be harvested and milled.

“Sustainable Forest Management Plans

“67E. **Sustainable forest management plans**—(1) For the purposes of this Part of this Act, the Secretary may approve sustainable forest management plans under section 67F of this Act.

“(2) A sustainable forest management plan may relate to a specified area or areas of indigenous forest land.

“(3) A sustainable forest management plan in respect of any area of land shall have effect,—

“(a) In the case of an interest in land having a term of less than 50 years, for the balance of that term; or

“(b) In any other case, for such period being not less than 50 years as may be specified in the plan;—

and may be renewed from time to time in accordance with section 67I of this Act.

“67F. **Procedure for approval of sustainable forest management plans**—(1) The owner may seek the Secretary’s approval of a draft sustainable forest management plan in respect of any landholding or landholdings by lodging the draft plan for his or her approval at any office of the Ministry.

“(2) As soon as practicable after lodgment of a draft plan and before making a decision in respect of the draft, the Secretary shall consult the Director-General of Conservation in every case, and shall also consult the chief executive of the Ministry of Maori Development if the land concerned includes any Maori land.

“(3) The Secretary may require the owner to incorporate in the draft plan such amendments as the Secretary may specify in writing.

“(4) The Secretary may approve the draft plan with or without amendments.

“67G. Notice requirements—Where the Secretary—

“(a) Approves; or

“(b) Amends; or

“(c) Grants any exemption in respect of,—

the beech coupe size provisions in a sustainable forest management plan, he or she shall notify that approval, amendment, or exemption by a notice in writing to the owner and by a notice to the public published in one or more daily newspapers circulating in the area concerned.

“67H. Secretary’s power to require amendments to plans—(1) Without limiting the generality of section 67F (3) of this Act, the Secretary may, before approving a draft sustainable forest management plan, require the owner to amend the draft plan—

“(a) To correct any description of area or areas to which the plan relates:

“(b) To reduce the proposed annual or periodic cut for any species:

“(c) To provide for a recording system for the purposes of the plan, or to amend the proposed recording system:

“(d) To reduce the size of, or to change the shape or location of, any coupe specified in the plan:

“(e) To amend the low impact techniques specified in the plan for the single tree or small group harvesting:

“(f) To incorporate such additional details as the Secretary may specify.

“(2) In the case of an annual logging plan submitted to the Secretary in accordance with clause 9 of the Second Schedule to this Act,—

“(a) No work shall be carried out under the annual logging plan unless the plan has been approved by the Secretary:

“(b) The Secretary may require the annual logging plan to be amended in such manner as he or she may specify in writing:

“(c) The Secretary may require that the annual logging plan specify trees to be harvested and trees to be retained or may specify the trees to be harvested and the trees to be retained; and such trees shall be harvested or retained accordingly:

“(d) As soon as practicable after receiving an annual logging plan, the Secretary shall either approve the plan or require the plan to be amended.

“(3) The Secretary shall give the owner notice in writing of any requirement under this section and shall include in the notice a statement to the effect that the owner has an opportunity to comment to the Secretary about the requirement.

“67I. Other provisions relating to review and amendment of sustainable forest management plans—

(1) While a sustainable forest management plan is current,—

“(a) The Secretary and the owner may amend the plan at any time by agreement:

“(b) The Secretary may amend the plan with or without the agreement of the owner, if either a natural event or an act constituting an offence against this Act—

“(i) Reduces significantly the amenity values or other natural values in the area to which the plan applies; or

“(ii) Reduces significantly the indigenous timber available for removal under the plan; or

“(iii) Otherwise renders the plan inoperative.

“(2) At 5-yearly or longer intervals, the Secretary, after consulting the owner and having regard to the views expressed by the owner, may review the plan and, subject to subsection (4) of this section, may require such amendments to be made to it as he or she thinks fit.

“(3) At the expiration of the term of the plan, the Secretary, after consulting the owner, may renew the plan subject to such amendments as the Secretary may require.

“(4) Before amending or renewing the plan, the Secretary shall consult with the Director-General of Conservation in every case, and shall also consult the chief executive of the Ministry of Maori Development if the land concerned includes any Maori land.

“(5) The Director-General of Conservation may require the Secretary to review any plan after 5 years has elapsed since the approval or last renewal of the plan.

“67J. Matters to be incorporated in sustainable forest management plans—(1) The provisions of the Second Schedule to this Act shall apply in relation to sustainable forest management plans.

“(2) Where satisfied that compliance by an owner with any provision of a sustainable forest management plan is unreasonable or impractical, the Secretary may, after consultation with the Director-General of Conservation and also with the chief executive of the Ministry of Maori Development

if the land concerned includes any Maori land, exempt the owner from compliance with that provision on such conditions as he or she thinks fit.

“67K. Sustainable forest management plan to be recorded against certificate of title—(1) Every owner of land to which a sustainable forest management plan relates shall, as soon as practicable after the plan has been approved, request the appropriate District Land Registrar to record the plan in accordance with this section.

“(2) The District Land Registrar for the land registration district in which the land concerned is situated shall, at the request of the owner, enter in the appropriate folium of the register relating to the land a notification of the plan.

“(3) Where no certificate of title for the land has been issued, the District Land Registrar shall constitute a notification of the plan a separate folium of the register.

“(4) No sustainable forest management plan shall be received for notification as a separate folium of the register unless there is endorsed thereon a certificate by a registered surveyor to the effect that the land to which that plan relates is within the boundaries of a parcel of land identified on a plan lodged in the office of the Chief Surveyor or District Land Registrar for the district in which the land is situated.

“(5) Where the land concerned is Maori land (as defined in section 2 (1) of the Maori Affairs Act 1953) and that land is not within the boundaries of a parcel of land identified on a plan lodged in terms of subsection (4) of this section, the owner shall request the appropriate District Registrar of the Maori Land Court to enter on the Block file relating to the land a notification of the sustainable forest management plan; and the Registrar shall make the entry on that file accordingly and that entry shall be sufficient compliance with the requirements of this section.

“(6) Notwithstanding any rule of law or equity to the contrary, every sustainable forest management plan shall run with and bind the land to which it relates and shall be deemed to be an interest in land for the purposes of the Land Transfer Act 1952.

“(7) Where any of the land to which the plan relates comprises part of land in a certificate or instrument of title, the owner may, instead of complying with section 167 of the Land Transfer Act 1952, indicate the boundaries of the land by reference to a diagram or an aerial photograph.

“(8) No action shall lie against the Crown under Part XI of the Land Transfer Act 1952 in respect of any such boundary not defined in accordance with the said section 167.

“(9) The owner may at any time, in accordance with section 167 (5) of the Land Transfer Act 1952 and in accordance with the regulations for the time being in force in that behalf, deposit a plan which shall—

“(a) Define such area or areas as may be mutually agreed upon by the Secretary and the owner; and

“(b) For all purposes supersede the diagram or aerial photograph or relevant part of the diagram or aerial photograph; and

“(c) When deposited, be deemed to be incorporated in the interest in land comprising the plan.

“(10) On the deposit of such plan, the District Land Registrar shall, if necessary, amend the description of the parcels included in the plan and shall endorse on any relevant certificate of title, lease, licence, or profit a memorial to the effect that the boundaries or such of the boundaries as are defined, have been surveyed.

“67L. **Plan not to constitute subdivision**—The approval or registration of a sustainable forest management plan shall not constitute a subdivision of land for the purposes of the Local Government Act 1974 or the Resource Management Act 1991.

“Miscellaneous Provisions

“67M. **Sustainable forest management permits**—(1) An owner of any landholding that is not subject to a registered sustainable forest management plan may apply to the Secretary for a sustainable forest management permit to allow the harvesting and milling of timber in accordance with the permit.

“(2) A sustainable forest management permit shall—

“(a) Authorise the harvesting and milling of a quantity of timber (being timber capable of being milled) fixed by the Secretary, being—

“(i) Not more than 250 cubic metres of podocarp or kauri or shade-tolerant exposure-sensitive broadleaved hardwood species; and

“(ii) Not more than 500 cubic metres of beech or other light-demanding hardwood species; and

“(iii) Not more than 10 percent of the quantity of timber standing on the landholding; and

“(b) Define the area from which the timber may be harvested and milled.

“(3) A second or subsequent sustainable forest management permit shall not be issued in respect of any podocarp or kauri or shade-tolerant exposure-sensitive broadleaved hardwood species unless and until the Secretary is satisfied that the quantity of timber (being timber capable of being milled) standing in the area to which the permit will apply is at least equivalent to the quantity standing in the area at the date of the grant of the previous permit.

“(4) A second sustainable forest management permit shall not be issued in respect of any landholding until the expiration of 10 years after the date of issue of the first sustainable forest management permit issued in respect of that landholding.

“(5) Before harvesting any coupe under a sustainable forest management permit, being a coupe within a distance from a harvested coupe equal to the width of the harvested coupe, regeneration on the harvested coupe must—

“(a) Have reached a predominant mean height of 4 metres; and

“(b) Have reached a stocking of the harvested species equal to or greater than the forest before harvesting.

“(6) Where a sustainable forest management permit is in force in respect of any landholding, no logging in excess of the quantity specified in the permit shall be carried out on the landholding except in accordance with another sustainable forest management permit or a sustainable forest management plan.

“(7) The provisions of sections 67I, 67K, and 67L of this Act and the provisions and prescriptions set out in clauses 9 and 10 of the Second Schedule to this Act shall apply with the necessary modifications to every sustainable forest management permit as if the permit were a sustainable forest management plan.

“67N. **Provisions relating to representative area to be set aside**—The representative area that may be set aside and accordingly be unavailable for harvesting in accordance with clause 10 (2) (a) of the Second Schedule to this Act may be determined by the Secretary in accordance with the following provisions:

“(a) In exercising his or her discretion to determine the representative area in any case, the Secretary shall have regard to the flora, fauna, and other

conservation values within the total area that is subject to, or is to be subject to, the plan:

“(b) The Secretary may determine a representative area if satisfied that—

“(i) The area is of an adequate size and location to be accurately representative in the region concerned and adequately protective of such flora, fauna, and other conservation values in that region; or

“(ii) The flora, fauna, and other conservation values are adequately protected in the representative area together with any indigenous forest land protected under any Act in the region concerned.

“67o. **Beech coupe size**—(1) Notwithstanding anything in clause 10 (2) (c) of the Second Schedule to this Act, an owner may apply to the Secretary for approval of the felling of beech in coupes having an area exceeding 0.5 hectares.

“(2) Subject to subsection (3) of this section, the Secretary may approve the felling of beech in coupes of such area not exceeding 20 hectares as he or she thinks appropriate.

“(3) In considering an application under this section, the Secretary shall have regard to whether coupes exceeding 0.5 hectares would result in any of the following:

“(a) A significant adverse impact on flora and fauna, or other natural values:

“(b) A significant increase in soil erosion or in the risk of soil erosion:

“(c) A significant adverse impact on drainage or aquatic ecosystems:

“(d) A significant impact on indigenous forest regeneration:

“(e) A significant adverse impact on the amenity values of the forest.

“(4) The matters referred to in subsection (3) of this section shall be considered in relation to the region concerned and nationally.

“67p. **Rights of appeal**—(1) An owner may appeal to the Planning Tribunal against a decision of the Secretary under section 67o of this Act not to grant the approval sought by the owner under that section.

“(2) Any person or organisation having any interest in the decision greater than the public generally may, within 15 working days after the date on which the decision is notified under section 67c of this Act, appeal against a decision of the Secretary to the Planning Tribunal if—

“(a) The decision is to approve a beech coupe size exceeding 0.5 hectares; or

“(b) The decision is the granting of an exemption under section 67J (2) of this Act in respect of beech coupe size provisions in a sustainable forest management plan.

“(3) For the purposes of this section, Part XI of the Resource Management Act 1991 shall apply, with the necessary modifications, as if the decision appealed against were a resource consent under that Act.

“67Q. **Records**—(1) The operator of any sawmill milling indigenous timber shall maintain in such form as may be prescribed by regulations made under section 72 of this Act a record of particulars relating to the source of such timber, including separate records specifically relating to—

“(a) Timber from areas of land subject to a sustainable forest management plan; and

“(b) Timber harvested pursuant to an exemption given under this Act.

“(2) The owner of any land subject to a registered sustainable forest management plan or a registered sustainable forest management permit shall maintain in such form as may be prescribed by regulations made under section 72 of this Act a record of particulars relating to the volume, type, and destination of timber harvested under the plan.

“67R. **Powers of entry and seizure**—For the purposes of this Part of this Act, the Secretary and any Forestry Officer shall have power—

“(a) To enter any land, premises, vehicle, conveyance, ship, aircraft, railway, railcar, or bulk cargo container for the purpose of inspecting any indigenous timber from any indigenous forest land or seeing whether any such timber exists there; and

“(b) To search therein for any indigenous timber; and

“(c) To enter any indigenous forest land; and

“(d) To require the production and surrender of any document relating to indigenous timber; and

“(e) To seize any indigenous timber that he or she reasonably believes is being or about to be removed in contravention of this Part of this Act.

“67s. **Forfeiture of seized indigenous timber**—(1) Where a Forestry Officer has seized any indigenous timber under section 67R of this Act,—

“(a) The Secretary shall cause a notice of the seizure to be given to—

“(i) The person from whom the timber was seized; and

“(ii) Every other person whom he or she reasonably believes to be an owner of or has an interest in the timber; and

“(b) The Secretary shall retain the timber pending the trial of the person who is alleged to have committed the offence in respect of which it was seized.

“(2) If satisfied that any indigenous timber seized under this Part of this Act may perish, rot, or spoil, the Secretary may arrange for its sale (at a price that is reasonable in the circumstances) in any manner, the Secretary thinks fit.

“(3) If no proceedings are taken in respect of the offence concerned within 12 months of the seizure of any produce under this Act, or if the information concerned is dismissed, the timber or, as the case may be, the proceeds from its sale, shall be released from the custody of the Crown.

“(4) The Secretary may, at any time until an information or charge is laid in respect of the alleged offence for which the timber was seized, on application by—

“(a) The person from whom the timber was seized; or

“(b) The owner or person entitled to the possession of the timber seized,—

release the timber to any such person under bond in such sum and under such sureties and conditions (if any) as the Secretary may specify.

“(5) Where any person to whom timber is released under subsection (4) of this section fails to comply with the conditions of any bond or with any condition specified by the Secretary,—

“(a) The timber may be resealed at any time at the direction of the Secretary; and

“(b) The provisions of this section shall thereupon apply to the property as if it had been seized pursuant to section 67R of this Act; and

“(c) The Secretary may, in the case of failure to comply with the conditions of any bond, apply to a District Court for an order for estreat of the bond; and

“(d) Where the Secretary so applies the Registrar shall fix a time and place for the hearing of the application, and shall, not less than 7 days before the time fixed, cause to be served on every person bound by the bond a notice of the time and place so fixed; and

“(e) If on the hearing of any such application it is proved to the satisfaction of the Court that any condition of the bond has not been kept, the Court may make an order to estreat the bond to such an amount as it thinks fit to any person bound thereby on whom notice is proved to have been served in accordance with this subsection; and

“(f) Any penalty payable in accordance with this subsection shall be recoverable as if it were a fine.

“(6) Where any information or charge has been laid in respect of the alleged offence for which the timber was seized under section 67R of this Act, and that timber remains in the custody of the Crown, the Court may at any time, on application by—

“(a) The person from whom the timber was seized; or

“(b) The owner or person entitled to the possession of the timber seized,—

release the timber to any such person, and any such release may be subject to such sureties and conditions as the Court may specify.

“(7) The decision whether or not to lay any information or charge in respect of an alleged offence for which any timber is seized under section 67R of this Act shall be made as soon as reasonably practicable after the property is seized, taken possession of, or retained.

“(8) On the conviction of any person for any offence against this Act, any indigenous timber to which the offence relates that has been seized under this Act may, on the direction of the Court, be forfeited to the Crown; and in that case shall be disposed of as the Secretary thinks fit.

“(9) Any person whose timber has been forfeited to the Crown under this section or any person having a legal or equitable interest in any such timber (not being, in either case, a person convicted of an offence out of which the forfeiture arose) may apply to the Minister within 30 days of the conviction concerned for the release of the timber forfeited; and the Minister may order the release of the timber on payment to the Crown of any amount the Minister thinks appropriate, being an amount not exceeding the amount the items forfeited are estimated by the Secretary to be likely to realise if sold by public auction in New Zealand.

“67T. **Offences**—Every person commits an offence who—

“(a) Exports from New Zealand any indigenous timber in contravention of section 67c of this Act; or

- “(b) Mills any indigenous logs contrary to section 67D of this Act; or
- “(c) Falsifies any milling records required under this Part of this Act; or
- “(d) Contravenes any provision of a registered sustainable forest management plan or registered sustainable forest management permit; or
- “(e) Wilfully damages any indigenous timber in an area subject to a registered sustainable forest management plan or registered sustainable forest management permit; or
- “(f) Transports, mills, chips, cuts for firewood, or pulps any timber removed from an indigenous forest, knowing that the timber has been removed in contravention of this Part of this Act; or
- “(g) Fails to keep records required under section 67Q of this Act; or
- “(h) Fails, without lawful excuse, to comply with the requirements of any Forestry Officer under this Part of this Act; or
- “(i) Gives to any Forestry Officer, under this Part of this Act, any particulars knowing that they are false or misleading in any material respect.

“67U. **Penalties**—(1) Every person who commits an offence against any of paragraphs (a) to (f) of section 67T of this Act is liable on summary conviction to a fine not exceeding \$200,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence continues.

“(2) Every person who commits an offence against any of paragraphs (g) to (i) of section 67T of this Act is liable on summary conviction to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.

“(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved—

- “(a) That the act that constituted the offence took place with his or her authority, permission, or consent; or
- “(b) That he or she knew or could be reasonably expected to have known that the offence was to be or was being

committed and failed to take all reasonable steps to prevent or stop it.

“67v. Owner to obtain necessary resource consents under Resource Management Act 1991 before cutting or felling—Before cutting or felling any indigenous timber pursuant to a sustainable forest management plan, the owner shall obtain the resource consents (if any) required under the Resource Management Act 1991 for that activity.”

4. Powers relating to ships—The principal Act is hereby amended by inserting, after section 71B (as inserted by section 6 (1) of the Forests Amendment Act 1983), the following section:

“71c. (1) Without limiting anything in section 71B of this Act, but subject to subsection (2) of this section, any person who has the power under any provision in this Act or any regulations made under this Act to enter any ship or vessel and who has reasonable grounds to suspect that a ship or vessel in the territorial sea or internal waters of New Zealand (as defined in sections 3 and 4 of the Territorial Sea and Exclusive Economic Zone Act 1977) contains any organism that poses a threat to any trees or forest in New Zealand may—

“(a) Direct the master or other person in charge of the ship or vessel to stop the ship or vessel at a place not less than 8 kilometres from the New Zealand coastline:

“(b) Direct the master or other person in charge of the ship or vessel to move the ship or vessel to a place not less than 8 kilometres from the New Zealand coastline.

“(2) Before exercising a power conferred by subsection (1) of this section, the person who proposes to exercise the power shall consult with the Comptroller of Customs and the Director-General of Agriculture and Fisheries, or cause the Comptroller and the Director-General to be consulted.

“(3) Every master or other person in charge of a ship or vessel commits an offence against this Act who fails to comply with a direction given under subsection (1) of this section.”

5. Regulations—(1) Section 72 (1) of the principal Act (as substituted by section 17 of the Forests Amendment Act 1987) is hereby amended by inserting, after paragraph (b), the following paragraphs:

“(ba) Providing for the registration of sawmills and other related factories or industrial plants; authorising the Secretary to require sawmill operators to furnish

information for the purposes of this Act; and prescribing the mode of registration and the fees to be paid in respect of registration:

“(bb) Prescribing such matters as are necessary or expedient for regulating the registration of sustainable forest management plans under the Land Transfer Act 1952:

“(bc) Providing for the establishment and functions of advisory committees, consisting of persons to be appointed by the Minister, to advise the Minister on phytosanitary matters arising in relation to forestry:”.

(2) Section 72 (1) of the principal Act (as so substituted) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Prescribing the matters in respect of which fees are payable under this Act, the amounts of those fees or the method by which they are to be assessed, and the persons liable for payment of the fees:”.

6. New Second Schedule added to principal Act—The principal Act is hereby amended by adding the Second Schedule set out in the Schedule to this Act.

7. Transitional provisions relating to section 67D of principal Act—(1) Notwithstanding anything in section 67D of the principal Act (as inserted by section 3 of this Act)—

(a) Sawmills are not required to be registered until 3 months after the commencement of this Act:

(b) During the period beginning with the 3rd day of July 1992 and ending with the close of 4 years after that date, any quantity of indigenous timber to which the said section 67D applies not exceeding the relevant allowable cut may be milled at a registered sawmill:

(c) For the purposes of paragraph (b) of this subsection, every sawmill shall be deemed to be a registered sawmill under the principal Act during the period referred to in paragraph (a) of this subsection; but, if the sawmill is not registered under the principal Act before the expiration of that period, the rights conferred by the said paragraph (b) shall be deemed to be suspended on the expiration of that period and those rights shall not be exercisable until the mill is registered under the principal Act.

(2) For the purposes of this section, the term “allowable cut”, in relation to any sawmill, means—

(a) The quantity of indigenous timber that the Secretary states in writing—

(i) Was removed from land subject to Part IIIA of the principal Act (as so inserted); and

(ii) Was cut at the sawmill during the 2-year period ending with the close of the 2nd day of July 1992; or

(b) The allowable cut determined by the Minister under subsection (4) of this section.

(3) In any year during the period specified in subsection (1)(b) of this section, an operator of any sawmill shall not mill more than half of the total allowable cut in respect of that period.

(4) On the application of the operator or owner of a sawmill, the Minister may vary the allowable cut.

8. Compensation—(1) Notwithstanding any other enactment or rule of law,—

(a) Subject to subsection (2) of this section, the Crown shall not be liable to pay compensation to any person or in any other manner in respect of or as a result of any decision or purported decision of the Minister of Customs made under the Customs Act 1966 or the Export Prohibition Regulations 1953, being a decision or purported decision made before the 31st day of December 1993 restricting or prohibiting the export of indigenous timber:

(b) All amounts paid by the Crown in respect of claims arising out of any such decision by the Minister of Customs shall be deemed to have been paid in full and final settlement of such claims, but shall not be regarded as an admission of liability by the Crown:

(c) Nothing effected or authorised by or under any provision inserted in the principal Act by this Act, or by any other provision of this Act, shall be regarded as making the Crown guilty of a civil wrong or making the Crown liable to pay compensation to any person.

(2) Every claim against the Crown in respect of or as a result of any decision referred to in subsection (1)(a) of this section, being a claim received but not determined by the Crown before the 3rd day of July 1992, shall be determined by the Crown having regard to similar claims (if any) determined by the Crown before that date.

9. Repeals and savings—(1) Section 73 (1) of the principal Act is hereby amended by inserting, before the word “Schedule” where it first occurs, the word “First”.

(2) The Schedule to the principal Act is hereby consequentially amended by inserting, before the word “SCHEDULE”, the word “FIRST”.

SCHEDULE

Section 6

NEW SECOND SCHEDULE ADDED TO PRINCIPAL ACT

Section 67j

“SECOND SCHEDULE

“PROVISIONS RELATING TO SUSTAINABLE FOREST MANAGEMENT PLANS

1. Description of land—The plan shall describe the indigenous forest land to which the plan relates and its status, and shall include a map or plan showing clearly the extent and boundaries of the forest.

2. Description of forest areas—The plan shall include—

- (a) A map showing the indigenous forest types; and
- (b) A description of any previous logging.

3. Owner—(1) The plan shall state the full name and address of the owner of the land.

(2) The address to be stated—

- (a) Shall, in the case of a body corporate, be the owner’s registered office;
- (b) May, in the case of multiple owners of Maori land, be the office of the appropriate Registrar of the Maori Land Court.

4. Plan to specify relevant requirements under Resource Management Act 1991—The plan shall specify the relevant details of all applicable district plans and regional plans under the Resource Management Act 1991.

5. Term—The plan shall specify the period for which the plan shall be in force.

6. Forestry inventory and produce to be removed—The plan shall specify—

- (a) The names and species of indigenous timber and tree ferns that are proposed to be removed from the indigenous forest land; and
- (b) Details of the proposed volume of timber to be harvested; and
- (c) Forest inventory information to justify the proposed level of harvest.

7. Management—The plan shall specify details of the manner in which it is proposed to manage the indigenous forest land, including re-establishment of the forest.

8. Protection—The plan shall specify—

- (a) Any necessary measures to be taken to protect the forest, and, in particular, to protect the regenerating forest from pest, stock, fire, and other threats; and

SCHEDULE—*continued*NEW SECOND SCHEDULE ADDED TO PRINCIPAL ACT—*continued*“SECOND SCHEDULE—*continued*”“PROVISIONS RELATING TO SUSTAINABLE FOREST MANAGEMENT PLANS—
continued”

- (b) Any necessary measures to retain and enhance flora and fauna and soil and water quality.

9. Annual logging plan—(1) A logging plan or plans shall be submitted to the Secretary annually for approval under section 67H (2) of this Act.

(2) The Secretary may require the owner to mark, in such manner as the Secretary may specify, the trees that are intended to be harvested during the period to which the logging plan applies.

(3) A logging plan shall—

- (a) Delineate the area proposed to be felled during the annual period of the logging plan; and
- (b) Describe the proposed methods of harvesting; and
- (c) Show the location of all roads, tracks, and landings that exist or are proposed to be constructed; and
- (d) Specify all special logging requirements, such as directional felling; and
- (e) Show all waterways, and mark and describe all topography.

10. Sustainable forest management prescriptions—(1) The principal sustainable forest management prescription is that the rate of harvest from a forest or group of forests managed as a unit shall be limited to a level at which the forest can continue to supply an annual or periodic non-diminishing yield in perpetuity, which yield shall include the harvest of windthrown or dead trees as they become available.

(2) The other sustainable management prescriptions are as follows:

- (a) An area that is representative of the forest area and does not exceed 20 percent of the total forest area to which the plan relates may be set aside and be unavailable for logging;
- (b) Podocarp and kauri species shall be harvested only by single tree or small group harvesting using low impact techniques. Harvesting shall, as far as possible, be restricted to the selective removal of trees predisposed to windthrow or early death. Throughout the term of the sustainable management plan, the character and structure of all parts of the forest shall be maintained;
- (c) Beech and other light-demanding hardwood species shall be harvested only in coupes of 0.5 hectares or less;
- (d) Shade-tolerant and exposure-sensitive broadleaved hardwood species shall be harvested only by single tree or small group harvesting using low impact techniques. In creating gaps, regard shall be had for natural regeneration characteristics of the species targeted for logging;
- (e) Where any podocarp, kauri, or shade-tolerant or exposure-sensitive broadleaved hardwood species is harvested and sufficient advanced growth is lacking, there shall be planted for each tree removed at least 5 seedlings of at least 60 centimetres in height of the same species which seedlings shall, where practicable, be

SCHEDULE—*continued*NEW SECOND SCHEDULE ADDED TO PRINCIPAL ACT—*continued*“SECOND SCHEDULE—*continued*”“PROVISIONS RELATING TO SUSTAINABLE FOREST MANAGEMENT PLANS—
continued”

raised from seed collected from the district in which such seedlings are to be planted:

- (f) Where there is a failure of regeneration in a light-demanding hardwood forest, the failure shall be corrected by the planting of nursery-raised seedlings with preference being given to using seedlings of the same species which seedlings shall, where practicable, be raised from seed collected from the district in which the seedlings are to be planted.
- (3) Before harvesting any coupe within a distance from a harvested coupe equal to the width of the harvested coupe, regeneration on the harvested coupe must—
 - (a) Have reached a predominant mean height of 4 metres; and
 - (b) Have reached a stocking of the harvested species equal to or greater than the forest before harvesting.”

This Act is administered in the Ministry of Forestry.
