

## FORESTS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill implements new policies relating to indigenous forests. The new provisions are inserted into the Forests Act 1949 as a new *Part IIIA*.

*Clause 1* relates to the Short Title and commencement. The Bill comes into force when it receives the Royal assent.

*Clause 2* inserts into the principal Act various definitions for the purposes of the new *Part IIIA*.

Attention is drawn to the following new definitions:

- (a) “Indigenous” means a species of flora present in New Zealand in 1769;
- (b) “Sustainable management” has 2 elements. First, an area of indigenous forest land must be managed in a way that maintains the ability of forest growing on the land to provide products and amenities in perpetuity. Secondly, the natural ecological processes and genetic diversity must be retained and enhanced for the benefit of future generations;
- (c) “Sustainable management plan” means a plan approved under the new *Part IIIA* of the Bill. Indigenous forests will have to be managed in accordance with such a plan. The new *Third* Schedule set out in the Schedule to the Bill sets out the various matters to be included in such plans;
- (d) “West Coast indigenous production forest” means a forest specified in the new *Second* Schedule set out in the Schedule to the Bill. These forests are presently managed pursuant to a deed of agreement between the Crown and Timberlands West Coast Limited.

*Clause 3* inserts into the principal Act new *Part IIIA* (comprising new *sections 67A to 67T*), which contains the provisions relating to indigenous forests.

*Section 67A* describes the land to which the new *Part III* does not apply and provides that, subject to the exemptions listed below, the Part binds the Crown.

The new *Part IIIA* does not apply to the following:

- (a) Any West Coast indigenous production forest;
- (b) Any land permanently reserved under the South Island Landless Natives Act 1906 and having the status of Maori land or General land owned by Maoris under the Maori Affairs Act 1953:

- (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 planted indigenous forest land.

*Section 67B* states the purpose of the new *Part IIIA* as the promotion of the sustainable management of indigenous forest land.

#### *Export Controls*

*Section 67c* prohibits the export of indigenous timber or wood chips, except the following:

- (a) Sawn beech and sawn rimu (other than wood chips), where—
  - (i) Notice of intention to export has been given (which notices are presently issued under regulation 13 of the Forest Product Import and Export Regulations 1989 (S.R. 1989/235)); and
  - (ii) The Secretary is satisfied that the timber has been taken from an area managed in accordance with a registered and approved sustainable management plan:
- (b) Any finished or manufactured indigenous timber product. These are products that require no further sawing, planing, sanding, drilling, turning, or other machining before being ready for final use:
- (c) Such timber from tree fern trunks as is allowed by the Secretary.

Indigenous timber must be inspected and approved by a Forestry Officer before being exported.

#### *Sawmill Controls*

*Section 67D* requires sawmills to be registered before they are used to mill indigenous logs and also imposes restrictions on the areas from which logs may be taken.

The section does not prevent the milling of logs at a registered sawmill where—

- (a) The logs have been taken from land subject to a sustainable management plan; or
- (b) The Secretary is satisfied that the logs have been felled or will be felled for specified public purposes; or
- (c) The Secretary approves the removal of the logs for the owner's personal use (with a maximum of 10 cubic metres).

#### *Sustainable Management Plans.*

*Section 67E* provides for the Secretary of Forestry to approve sustainable management plans for the purposes of the new *Part IIIA*. A plan will be current for the period specified in the plan itself, being a period of at least 50 years, or for the balance of the term of the interest in land to which the plan relates.

*Section 67F* sets out the procedure for the approval of plans. The relevant land owner or a group of landowners may lodge a draft at any office of the Ministry of Forestry. The Secretary is required to consult the Director-General of Conservation in all cases and consult the chief executive of the Ministry of Maori Development if the draft relates to Maori land. At the conclusion of this process, the Secretary may require the plan to be amended and approve it with or without amendments.

*Section 67G* confers on the Secretary specific powers to amend a draft plan. These powers are additional to the power of amendment in *section 67F*.

*Section 67H* enables—

- (a) The parties to a plan to amend it by agreement while the plan is in force:

- (b) The Secretary to amend the plan of his or her own motion if a traumatic natural event or an act constituting an offence against the principal Act reduces the indigenous timber available for removal or renders the plan inoperative;
- (c) The Secretary to require a plan to be amended at 5-yearly or longer intervals.

This process is also subject to the consultation requirements set out in *section 67F*.

Plans may be renewed by the Secretary when they expire.

*Section 67I* provides that the provisions set out in the *Third Schedule* (as set out in the *Schedule* to the Bill) apply in relation to sustainable management plans and enables the Secretary to grant exemptions from those requirements.

*Section 67J* empowers the Secretary to prescribe, by notice in the *Gazette*, the standard rates of harvest for the purposes of sustainable management plans.

*Section 67K* requires plans to be recorded by District Land Registrars in the appropriate folium of the Register. This section is based on section 22 of the Queen Elizabeth the Second National Trust Act 1977, which provides for the recording of open space covenants and states their effect.

A plan will run with and bind the land to which it relates and is deemed to be an interest in land for the purposes of the Land Transfer Act 1952.

Provisions in the Forestry Rights Registration Act 1983, which enable diagrams or aerial photographs to be used instead of a plan complying with section 167 of the Land Transfer Act 1952, are also contained in the section.

*Section 67L* provides that the plan approval process does not make the land concerned subject to the subdivision requirements of the Local Government Act 1974 or the Resource Management Act 1991.

#### *Miscellaneous Provisions*

*Section 67M* sets out the matters the Secretary must take into account when determining the size of representative areas (which must be set aside and be unavailable for logging) and enables owners to seek a variation of the beech coupe size requirements of the *Third Schedule*.

*Section 67N* confers rights of appeal to the Planning Tribunal against decisions of the Secretary made under *section 67M*.

*Section 67O* requires operators of sawmills milling indigenous timber to maintain records in accordance with regulations made under the principal Act.

*Section 67P* sets out the powers of entry and seizure of Forestry Officers for the purposes of the new *Part IIIA*. A Forestry Officer has power to enter a sawmill or land on which an indigenous forest exists and seize indigenous timber.

When a Forestry Officer is exercising a power of entry, he or she must comply with the requirements set out in section 71B of the principal Act (such as giving reasonable notice and producing a warrant of authority on initial entry).

*Section 67Q* provides for the forfeiture of indigenous timber seized under *section 67P*. The section provides for the release of seized timber by enabling the Secretary, the Minister, or a District Court to grant a release. Similar provisions are to be found in section 80 of the Fisheries Act 1983 and section 46 of the Conservation Act 1987.

*Section 67R* sets out offences in relation to indigenous timber. The principal offence is exporting indigenous timber in contravention of *section 67c*.

*Section 67s* provides that a person convicted of the most serious offences against *section 67R* is liable on summary conviction to a fine not exceeding \$200,000, and to a further fine not exceeding \$10,000 a day in the case of a

continuing offence. The penalties are based on those set out in section 339 of the Resource Management Act 1991.

*Section 67T* requires an owner to obtain the resource consents (if any) required under the Resource Management Act 1991 before cutting or removing indigenous timber pursuant to a sustainable management plan.

*Clause 4* amends the regulation making powers in section 72 of the principal Act—

- (a) To provide for the registration of sawmills;
- (b) To enable fees to be prescribed in respect of any matter under the Act, and providing for the manner in which fees are to be assessed;
- (c) To regulate the registration of sustainable management plans.

*Clause 5* adds the new *Second* and *Third* Schedules to the principal Act.

*Clause 6* contains transitional provisions relating to the commencement of the prohibition on milling contained in *section 67D*. The provisions are as follows:

- (a) Operators of sawmills milling indigenous timber will have 2 months to register their mills;
- (b) In the first 4 years after 3 July 1992, any amount of indigenous timber to which *section 67D* applies, not exceeding the allowable cut specified by the Secretary, may be milled. The Minister may vary the allowable cut.

*Clause 7* relates to compensation for persons affected by export bans imposed by the Minister of Customs under the Customs Act 1966 or the Export Prohibition Regulations 1953. The clause applies only to decisions made on or after 3 July 1990 and before 31 December 1993.

Those persons who have received compensation from the Crown will have no further right to compensation. However, any claims not dealt with before 3 July 1992 are required to be determined by the Crown on the same basis as similar claims determined before that date.

The clause also removes the right to claim compensation against the Crown for anything effected or authorised by or under the Bill.

*Clause 8* effects consequential amendments to the principal Act.

The new *Second* Schedule set out in the Schedule to the Bill describes the Crown's West Coast indigenous production forests.

The new *Third* Schedule set out on the Schedule to the Bill sets out the matters to be included in sustainable management plans, including prescriptions relating to harvesting of indigenous timber.

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Hon. J. H. Falloon

## FORESTS AMENDMENT

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### A BILL INTITULED

#### **An Act to amend the Forests Act 1949**

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the Forests Amendment Act 1992, and shall be read

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

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

\*R.S. Vol. 23, p. 473

**2. Interpretation**—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:

- “‘Approved’, in relation to a sustainable management plan, means approved by the Secretary under **section 67F** of this Act: 10
- “‘Coupe’ means an area of timber that—
  - “(a) Has been harvested or is to be harvested; and 15
  - “(b) Is surrounded by or is adjacent to timber that has not been harvested and is not to be harvested until regeneration has occurred:
- “‘Exotic’, in relation to a species of flora, means a species that is not an indigenous species: 20
- “‘Finished or manufactured indigenous timber product’ means any indigenous wood product that requires no further sawing, planing, sanding, drilling, turning, or other machining before it is ready for final use:
- “‘Indigenous’, in relation to a species of flora, means a species that was present in New Zealand in 1769: 25
- “‘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: 30
- “‘Owner’—
  - “(a) Means any person who owns any landholding; 35
  - 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: 40

- 5 “ ‘Planted indigenous forest land’ means any area wholly or predominantly under the cover of planted indigenous trees, being an area that the Secretary considers was not wholly or predominantly under the cover of indigenous flora immediately before such planting;
- “ ‘Registered’ means,—
- 10 “(a) In relation to a sustainable management plan, recorded in accordance with section 67k of this Act:
- “ (b) In relation to a sawmill, registered in accordance with section 67b of this Act:
- 15 “ ‘Sawmill’ means any factory or industrial plant (whether permanently fixed or portable) that is directly dependant 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:
- 20 “ ‘Sustainable 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 products and amenities in perpetuity, while retaining or enhancing the natural ecological processes and genetic diversity for the benefit of future generations:
- 25 “ ‘Sustainable management plan’ or ‘plan’ means a sustainable management plan approved under section 67f of this Act:
- “ ‘Tree fern’ means any member of the species *cyatheaceae*:
- 30 “ ‘West Coast indigenous production forest’ means a forest specified in the Second Schedule to this Act:
- “ ‘Working day’ means any day except—
- 35 “(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.”

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

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## “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 land permanently reserved under the South Island Landless Natives Act 1906 and having the status of Maori land or General land owned by Maoris under the Maori Affairs Act 1953: 5

“(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 planted indigenous forest land. 10

“(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 management of indigenous forest land. 15

*“Export Controls*

“67C. **Prohibition on export of certain indigenous forest produce**—(1) No person shall export from New Zealand any indigenous timber or wood chips produced from indigenous timber, except the following: 20

“(a) Any grade of sawn beech or sawn rimu (other than wood chips), where—

“(i) A notice of intention to export has been given in accordance with any regulations for the time being in force under this Act; and 25

“(ii) The Secretary has stated in writing that he or she is satisfied that the timber has been taken from an area managed in accordance with a registered and approved sustainable management plan:

“(b) Any finished or manufactured indigenous timber product, regardless of the source of the product: 30

“(c) Any timber from tree fern trunks that is determined by the Secretary in writing not to be from an area of indigenous forest land.

“(2) No indigenous timber (other than any product referred to in subsection (1) (b) of this section) shall be exported from New Zealand unless it has been inspected and approved by a Forestry Officer. 35

*“Sawmill Controls*

“67D. **Prohibition on milling logs**—(1) No person shall mill at any sawmill any indigenous logs, unless— 40



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

“(b) Either—

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“(i) The logs have been taken from an area subject to an approved and registered sustainable management plan; or

“(ii) The Secretary is satisfied that the logs have been or will be felled—

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“(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

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“(C) For construction or maintenance of an access way or water impoundment, or for any purpose directly necessary or desirable for scientific research; or

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“(iii) The Secretary is satisfied that the logs are from windthrown trees or felled standing dead trees; or

“(iv) The Secretary has granted an approval under **subsection (2)** of this section.

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“(2) On the application of the owner of any area of land not subject to a sustainable management plan, the Secretary may approve the removal and milling, for the owner’s personal use, of not more than 10 cubic metres of indigenous logs; and the Secretary may grant such an approval only once in respect of that area.

#### “Sustainable Management Plans

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

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

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“(3) A sustainable 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

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“(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.

“67F. **Procedure for approval of sustainable management plans**—(1) The owner may seek the Secretary’s

approval of a draft sustainable 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 lodgement of a draft plan and before making a decision in respect of it, the Secretary shall— 5

“(a) Consult the Director-General of Conservation in every case, and also consult the chief executive of the Ministry of Maori Development if the draft plan relates to any Maori land; and 10

“(b) Have regard to any views expressed about the draft plan by the Director-General and, where appropriate, the chief executive.

“(3) The Secretary may require the owner to incorporate in the draft plan such amendments as the Secretary may specify in writing. 15

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

“(5) Where the Secretary grants an approval or exemption, or makes an amendment, in respect of a plan, he or she shall notify that approval, exemption, or amendment 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. 20

“67C. **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 management plan, require the owner to amend the draft plan— 25

“(a) To correct any description of area or areas to which the plan relates: 30

“(b) To increase or 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: 35

“(d) To increase or 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: 40

“(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 **Third Schedule** to this Act,—

5 “(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:

10 “(c) If the Secretary does not approve the annual logging plan or require the plan to be amended within 20 days after receiving the plan, he or she shall be deemed to have approved the plan.

15 “67H. **Other provisions relating to review and amendment of sustainable management plans**—(1) While a sustainable management plan is current,—

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

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

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

25 “(ii) 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 (3)** of this section, may require such amendments to be made to it as he or she thinks fit.

30 “(3) At the expiration of the term of the plan, the Secretary, after consulting the owner and having regard to the views expressed by the owner, may renew the plan subject to such amendments as he or she may require.

35 “(4) Before amending or renewing the plan, the Secretary shall—

“(a) Consult the Director-General of Conservation in every case, and also consult the chief executive of the Ministry of Maori Development if the plan relates to any Maori land; and

40 “(b) Have regard to any views expressed about the proposal by the Director-General and, where appropriate, the chief executive.

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

“(2) Where the Secretary is satisfied that compliance by an owner with any provision of a sustainable management plan is unreasonable or impracticable, he or she may, after consultation with the Director-General of Conservation and also with the chief executive of the Ministry of Maori Development if the plan relates to any Maori land, and after having regard to any views expressed by the Director-General and, where appropriate, the chief executive, exempt the owner from compliance with that provision on such conditions as he or she thinks fit.”

**“67J. Power of Secretary to prescribe standard harvest rates—**(1) The Secretary, after consultation with the Director-General of Conservation, may from time to time, by notice in the *Gazette*, prescribe standard harvest rates in respect of either or both of the following:

“(a) Any area or areas:

“(b) Any species or groups of species of indigenous trees.

“(2) Sustainable management plans shall not derogate from a standard harvest rate prescribed under subsection (1) of this section, except where the Secretary, after consultation with the Director-General of Conservation and subject to subsection (3) of this section, approves a lower rate or a higher rate in any case.

“(3) When granting an approval or exemption, or requiring an amendment, in respect of a plan, the Secretary—

“(a) May approve a lower rate of harvest under subsection (2) of this section if he or she is satisfied that the standard rate is unsustainable:

“(b) May approve a higher rate under that subsection if he or she is satisfied that it will not result in unsustainable harvesting.

**“67K. Sustainable management plan to be recorded against certificate of title—**(1) Every owner of land to which a sustainable 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.

5 “(4) No sustainable 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  
10 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  
15 request the appropriate District Registrar of the Maori Land Court to notify the sustainable management plan on the Block file relating to the land; and the Registrar shall notify that file accordingly and that notification shall be sufficient compliance with the requirements of this section.

20 “(6) Notwithstanding any rule of law or equity to the contrary, every sustainable 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.

25 “(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.

30 “(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 deposit a plan in accordance with section 167 (5) of the Land Transfer Act 1952 and in  
35 accordance with the regulations for the time being in force in that behalf, which plan shall define such area or areas as may be mutually agreed upon by the Secretary and the owner, and shall for all purposes supersede the diagram or aerial photograph or relevant part of the diagram or aerial  
40 photograph, and such plan, when deposited, shall 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  
45 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 management plan shall not constitute a subdivision of land for the purposes of the Local Government Act 1974 or the Resource Management Act 1991. 5

*“Miscellaneous Provisions*

“67M. **Provisions relating to representative area to be set aside and beech coupe size**—(1) The representative area to be set aside and to be unavailable for logging in accordance with **clause 10 (2) (a)** of the **Third Schedule** to this Act shall be determined by the Secretary in accordance with the following provisions: 10

“(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: 15

“(b) The Secretary shall approve the representative area proposed by the owner if satisfied that— 20

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

“(ii) The flora, fauna, and other conservation values are adequately protected in the representative area together with contiguous or adjacent indigenous forest land protected under any Act: 25

“(c) If the Secretary is not satisfied that the representative area proposed by the owner meets the requirements specified in **paragraph (b)** of this subsection, he or she shall determine an increased representative area or different location, or both of those things; and the plan shall be amended accordingly. 30

“(2) Notwithstanding anything in **clause 10 (2) (c)** of the **Third 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. 35

“(3) The Secretary may approve the felling of beech in coupes of such area not exceeding 20 hectares as he or she thinks appropriate, subject to the following provisions: 40

“(a) The Secretary shall consider the application only if he or she is satisfied that there is prima facie evidence that

a coupe of 0.5 hectares is commercially unviable or more environmentally damaging to the indigenous forest area's ecology than a larger coupe:

5 “(b) Where the Secretary decides to consider the application, he or she shall have regard to whether coupes exceeding 0.5 hectares would result in any of the following:

“(i) A significant adverse impact on flora and fauna:

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

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

15 “(iv) A significant impact on forest regeneration:

“(v) A significant adverse impact on scenic, cultural, and landscape values in the forest:

“(c) The matters referred to in paragraph (b) of this subsection shall be considered in relation to the region concerned and nationally.

20 “67N. **Rights of appeal**—(1) An owner may appeal to the Planning Tribunal against a decision of the Secretary under section 67M of this Act not to grant the approval sought by the owner under that section.

25 “(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 67F (5) of this Act, appeal against a decision of the Secretary to the Planning Tribunal if—

30 “(a) The decision is to approve the reservation of an area of less than 10 percent of the total forest area; or

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

35 “(c) The decision is the granting of an exemption under section 67I (2) of this Act from any requirement imposed by the Secretary under section 67M of this Act.

40 “(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.

“67O. **Records**—The operator of any sawmill milling indigenous timber shall maintain a record of such particulars relating to the source of such timber, and in such form, as may be prescribed by regulations made under section 72 of this Act.

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

- “(a) To enter any land, premises, vehicle, conveyance, ship, aircraft, 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 5
- “(b) To search therein for any indigenous timber; and
- “(c) To enter any indigenous forest land; and 10
- “(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. 15

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

- “(a) The Secretary shall cause a notice of the seizure to be given to— 20
  - “(i) The person from whom the timber was seized; and
  - “(ii) Every other person whom he or she reasonably believes is an owner of or has an interest in the timber; and 25
- “(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. 30
- “(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. 35
- “(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— 40
  - “(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 “(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

10 “(b) The provisions of this section shall thereupon apply to the property as if it had been seized pursuant to section 67P 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

15 “(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

20 “(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.

30 “(6) Where any information or charge has been laid in respect of the alleged offence for which the timber was seized under section 67P 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

35 “(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.

40 “(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 67P of this Act shall be made as soon as reasonably practicable after the property is seized, taken possession of, or detained.

“(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.

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“(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.

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“67R. **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

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“(c) Falsifies any milling records required under this Part of this Act; or

“(d) Cuts any indigenous timber or removes any indigenous logs contrary to an approved and registered sustainable management plan; or

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“(e) Wilfully damages any indigenous timber in an area subject to an approved and registered sustainable management plan; 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

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“(g) Fails to keep records required under **section 67o** of this Act; or

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“(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.

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“67s. **Penalties**—(1) Every person who commits an offence against any of **paragraphs (a) to (f)** of **section 67R** 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.

5     “(2) Every person who commits an offence against any of paragraphs (g) to (i) of section 67R 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.

10     “(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

15     “(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.

20     “67T. **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 management plan, the owner shall obtain the resource consents (if any) required under the Resource Management Act 1991 for that activity.”

25     **4. 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:

30     “(ba) Providing for the registration of sawmills and other related factories or industrial plants; and prescribing the mode of registration and the fees to be paid in respect of registration:

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

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

40     “(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:”.

**5. New Second and Third Schedules added to principal Act**—The principal Act is hereby amended by adding the Second and Third Schedules set out in the Schedule to this Act.

**6. 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)— 5

(a) Sawmills are not required to be registered until 2 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 sawmill. 10

(2) For the purposes of this section, the term “allowable cut”, in relation to any sawmill, means the quantity of indigenous timber that the Secretary states in writing was removed from land that is subject to Part IIIA of the principal Act (as so inserted) and was cut at the sawmill during the 2-year period ending with the close of the 2nd day of July 1992. 15

(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. 20

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

**7. Compensation**—(1) Notwithstanding any other enactment or rule of law,— 25

(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 of the Minister of Customs made under the Customs Act 1966 or the Export Prohibition Regulations 1953, being a decision made before the 31st day of December 1993 restricting or prohibiting the export of indigenous timber: 30

(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: 35

(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 40

making the Crown guilty of a civil wrong or making the Crown liable to pay compensation to any person.

- 5 (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 on the same basis as similar claims determined by the Crown before that date.

- 10 **8. 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”.

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## SCHEDULE

Section 5

NEW SECOND AND THIRD SCHEDULES ADDED TO PRINCIPAL ACT

## "SECOND SCHEDULE

Section 2

"CROWN'S WEST COAST INDIGENOUS PRODUCTION FORESTS

<i>Plan No.</i>	<i>Forest Name</i>	<i>Area (hectares)</i>
<i>Nelson Land District</i>		
1/007 (SO 14667)	.. North Karamea	310
55/006 (SO 14669 Sheet 1)	Mokihinui	3535.7
50/001 (SO 14666)	.. Orikaka	5900
58/006 (SO 14661)	.. Ohikanui	1153.4
57/014 (SO 14665)	.. Charleston	7212.8
51/012 (SO 14794 Sheets 1, 5, 6, 11, 15, 16, 17)	.. Victoria	28,343.8
52/006 (SO 14772)	.. Te Wharau	6753.8
<i>Westland Land District</i>		
34/011 (SO 11645)	.. Paparoa	8824.2
47/011 (SO 11634)	.. Granville	9124.2
26/020 (SO 11669 Sheet 1)	Hochstetter	13367.5
24/001 (SO 11641)	.. Tutackuri	175
25/007 (SO 11666)	.. Otira Kopara	8050
33/008 (SO 11671)	.. Mawhera	6764.4
32/004 (SO 11658)	.. Omoto	1141.9
31/026 (SO 11640 Sheet 1)	Nemona	6041.7
30/010 (SO 11662)	.. Hohonu	1015
46/001 (SO 11649)	.. Kumara	145.3074
43/016 (SO 11664 Sheet 1)	Waimea	2329.1
20/004 (SO 11668)	.. Kawhaka	2950
19/023 (SO 11652)	.. Kaniere	2168.7194
18/002 (SO 11682)	.. Toaroha	460
15/003 (SO 11648)	.. Totara	1620
14/002 (SO 11646)	.. Mikonui	1580
12/002 (SO 11655)	.. Poerua	1266
11/006 (SO 11639)	.. Waitangi	747.3
49/002 (SO 11637)	.. Kakapotahi	435
42/024 (SO 11654)	.. Ianthe	1435
41/014 (SO 11665)	.. Wanganui	545
40/002 (SO 11647)	.. Saltwater	3850
39/002 (SO 11675)	.. Okarito	5350

SCHEDULE—*continued*

NEW SECOND AND THIRD SCHEDULES ADDED TO PRINCIPAL ACT—*continued*

Section 67:

“THIRD SCHEDULE

“PROVISIONS RELATING TO SUSTAINABLE 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 mark clearly the areas of podocarp, kauri, beech, and other hardwood species.

**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. Produce to be removed**—The plan shall specify the names and species of indigenous timber and tree ferns that are proposed to be removed from the indigenous forest land, and details of the proposed volume of production.

**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 measures to be taken to protect the forest, and, in particular, regenerating forest from pest, stock, fire, and other threats.

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

(2) 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.

**10. Sustainable management prescriptions**—(1) The principal sustainable 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-

SCHEDULE—*continued*NEW SECOND AND THIRD SCHEDULES ADDED TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*”

“PROVISIONS RELATING TO SUSTAINABLE MANAGEMENT PLANS—*continued*  
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 shall 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 podocarp, kauri, or broadleaved hardwood is harvested and abundant advanced growth is lacking, at least 5 seedlings of at least 60 centimetres in height shall be planted for each tree removed:
  - (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 the use of seedlings raised from seed collected in the region:
  - (g) Not more than 50 percent of tree ferns in any natural forest shall be harvested in any period of 50 years and not more than 20 percent of such stock shall be harvested in any period of 5 years.”