

Timber Legality Risk Assessment New Zealand

Version 1.1 | August 2017



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This risk assessment has been developed by NEPCon with support from the LIFE programme of the European Union, UK aid from the UK government and FSC™.



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B. Overview of legality risks

Timber Risk Score: 100 / 100 in 2017

This report contains an evaluation of the risk of illegality in New Zealand for five categories and 21 sub-categories of law. We found:

- Low risk for 19 sub-categories.
- No legal requirements for 2 sub-categories.

Timber source types and risks

There are four timber source types found in New Zealand. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all four of these source types and found that if legislation is in place for the specific source type, the risk is the same.

Natural forest on private land	Natural forest on individual property parcels of land, managed by private landowners or their contractors according to sustainable harvest, subject to approved Sustainable Forest Management Plan (SFMP) on 84,000 ha. Species are Podocarps and Beech (<i>Nothofagus</i> spp).
Natural forest on native land	Natural forest on native land, Maori or otherwise, managed by contractors on behalf of Iwi. Species are Podocarps, Beech (<i>Nothofagus</i> spp).
Plantation forest on central government or local council land	Plantation forest on central government or local council land, managed by Crown Forestry through specific contracts, or by each council. Plantations are clearfelled and replanted. Species are Radiata pine, Douglas fir, Eucalypt spp.
Plantation forest on Private or Tribal (ex-crown land)	Plantation forest on Private or Tribal (ex-crown land), managed by Crown Forestry through specific contracts, or by each council. Plantations are clearfelled and replanted. Species are Radiata pine, Douglas fir, Eucalypt spp.

This matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Risk conclusion
		All forest
Legal rights to harvest	1.1 Land tenure and management rights	Low risk
	1.2 Concession licenses	Low risk
	1.3 Management and harvesting planning	Low risk
	1.4 Harvesting permits	Low risk
Taxes and fees	1.5 Payment of royalties and harvesting fees	Low risk
	1.6 Value added taxes and other sales taxes	Low risk
	1.7 Income and profit taxes	Low risk
Timber harvesting activities	1.8 Timber harvesting regulations	Low risk
	1.9 Protected sites and species	Low risk
	1.10 Environmental requirements	Low risk
	1.11 Health and safety	Low risk
	1.12 Legal employment	Low risk
Third parties' rights	1.13 Customary rights	Low risk
	1.14 Free prior and informed consent	N/A
	1.15 Indigenous/traditional peoples rights	Low risk
Trade and transport	1.16 Classification of species, quantities, qualities	Low risk
	1.17 Trade and transport	Low risk
	1.18 Offshore trading and transfer pricing	Low risk
	1.19 Custom regulations	Low risk
	1.20 CITES	Low risk
	1.21 Legislation requiring due diligence/due care procedures	N/A

C. Overview of the forest sector in New Zealand

New Zealand's forests cover 37.8% of NZ's total land area. According to recent satellite imagery, and reported in New Zealand's Third Country Report to the Montreal Process (2015), the total forest area in NZ is about 10.161 million ha. This figure is broken into 6.833 m ha of "tall indigenous forest"; 1.234 m ha of "regenerating indigenous forest"; and 2.094 m ha of exotic or plantation forest. Thus Natural forests cover about 30% of the country, and exotic plantation forests cover 7.8%.

New Zealand has a strong legislative and regulatory framework, supported by an independent judicial system that governs timber harvesting.

The vast majority of NZ's timber harvest (29.581 million m³ out of 29.602 million m³ in 2014/15) is from exotic forests. New Zealand's exotic forests are mostly privately owned; about 950,000 ha are large-scale and are managed by specialised private companies. Harvesting of exotic forests is a common and normal rural activity, the legality of which is governed by a suite of commercial legislation - the Land Transfer Act 1952, the Crown Forests Assets Act 1989, the Companies Act 1993, the Commerce Act 1986 and the Crimes Act 1961.

At local government level, the Resource Management Act (RMA) 1991, gives local Councils the powers to prepare local Plans which attempt to control the environmental effects of all rural activities, including harvesting. There are voluntary Forest Practice Codes in place, particularly for environmental management and health and safety, which are followed by most, if not all, plantation forest owners. Code violations are rare.

The exotic forests which were owned and managed by the Crown prior to 1987 are mostly now in a situation where the underlying land is "owned" by the maori tribe which could prove a relationship to that land around 1840 (the year of the signing of the Treaty of Waitangi), and the cutting rights to the forest crop are owned by a forest management company. A further approximately 1 million ha of exotic forest is owned by small-scale land owners (farmers) or investors, and is scattered throughout the country. These forest blocks are treated as another farm asset and managed accordingly, and are subject to the same legislative and regulatory controls as the large forests.

In 2014, the NZ Government issued a Country Specific Guideline regarding the legality of its forest operations, specifically illegal logging, outlining how its logging operations are controlled.

NZ has a high score on all of the World Bank Worldwide Governance Indicators. The World Bank Worldwide Governance Indicators show that on a 100 score ranking NZ has scores of 98.6 for Government Effectiveness; 99 for Regulatory Quality; 98.6 for Rule of Law; and 100 for Control of Corruption, all supporting a "Low Risk" designation.

NZ is ranked #2 by Transparency International.

NZ is not designated as a source of conflict timber.

(i) Natural forests cover 8.067 million hectares of NZ's land area. 5.539 m ha is public conservation land managed by the State through the Department of Conservation (DOC). A further 206,000 ha is privately or Maori owned but covenanted for conservation purposes.

Of the remaining area, 1.222 m ha is privately owned, with 84,000 ha subject to Sustainable Forest Management Plans or Permits under the Forests Amendment Act (1993). 11,916 ha of

privately owned indigenous forest has FSC certification. 1.1 m ha is Maori land, tribally (communally) owned. 57,500 ha of this is "Silna" Forest (Indigenous forests allocated to Maori under 1908 legislation), of which 9,000 ha may be logged without a Sustainable Forest Management Plan.

(ii) About 2.094 m ha of New Zealand is covered by exotic (Plantation) forest, 1.572 m ha of which is radiata pine. 93.5% of these forests are privately owned, with Central government and SOE's owning 3.8%, and Local government owning 2.7%.

(iii) Management (in this case harvesting) of natural forests under public ownership, or privately owned and subject to covenants, is not permitted. Management of 84,000 ha of privately owned indigenous forest requires a Sustainable Forest Management Plan (SFMP) or a Permit approved by the Ministry for Primary Industries (MPI). No permit or license is required for exotic forest management, but some activities associated with harvesting require "Resource Consents" issued under the Resource Management Act (RMA) by the relevant local Council.

(iv) Regulation of Natural forest harvesting on private land is via a formal and complex Sustainable Forest Management Plan (SFMP) which requires, amongst other things, a full inventory of each species present and prescribes an annual volume that may be harvested. Mills that saw indigenous logs must be registered with MPI, and provide an annual return of indigenous logs purchased and log outturn. There is no regulation of the exotic forest harvest.

(v) MPI is the Government agency with the legal authority to review and approve Sustainable Forest Management Plans for private indigenous forests and to monitor indigenous forest harvesting and utilization from those forests. This is carried out through annual returns and periodic checks of each SFMP area against the Management Plan requirements.

References: Sustainable Management of New Zealand's Forests: NZ's Third Country Report on the Montreal Process Criteria and Indicators. MPI, August 2015.

NZ Forest Owners Association: Facts and Figures 2014 See <http://www.nzfoa.org.nz/resources/publications/facts-and-figures>

MPI Forestry Statistics. See <http://www.mpi.govt.nz/news-and-resources/statistics-and-forecasting/forestry/>

FSC website for details on NZ's FSC-certified companies. See <http://info.fsc.org/certificate.php#result>

D. Legality Risk Assessment

LEGAL RIGHTS TO HARVEST

1.1. Land tenure and management rights

Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.

1.1.1. Applicable laws and regulations

- Land Transfer Act, 1952. Public Act 1952 No 52. Assent 23 October 1952. Part 4 - Certificate of Title. Available at: http://www.legislation.govt.nz/act/public/1952/0052/latest/DLM269032.html?search=ts_act_Land+Transfer+Act_resel_25_a&p=1
- Te Ture Whenua Maori Act 1993 -Maori Land Act 1993. Public Act 1993 No 4. Date of assent 21 March 1993. Part 1 - Maori Land Court; Part 2 - Maori Appellate Court; Part 6 - Status of Land; Part 9 - Powers of Assembled Owners; Part 10 - Representation of Owners; Part 11 - Leases; Part 12 - Trusts; Part 13 - Incorporations. Available at: <http://www.legislation.govt.nz/act/public/1993/0004/latest/DLM289882.html?src=qs>
- Land Act 1948. Public Act 1948 No 64. Date of assent 2 December 1948. Governs the administration of Crown Land, including Leases. Part 2 - Surveys; Part 3 - Purchase and development of land; Part 4 - Classification and Alienation of Crown Land; Part 5 - Leases and Licenses. Available at: <http://www.legislation.govt.nz/act/public/1948/0064/latest/DLM250586.html?src=qs>
- Commerce Act 1986. Public Act 1986 No 5. Date of assent 28 April 1986. Part 2 - Restrictive Trade Practices, including Price Fixing and Resale Price Maintenance; Part 3 - Business Acquisitions; Part 6 - Enforcement, Remedies and Appeals. Available at: <http://www.legislation.govt.nz/act/public/1986/0005/latest/DLM87623.html?src=qs>
- Companies Act, 1993. No 105, 28 September 1993. Parts 4 (Company name), 10 (Registration), 11 (Accounting records and financial reporting). Available at: <http://www.legislation.govt.nz/act/public/1993/0105/latest/DLM319570.html?src=qs>
- Crown Forests Assets Act, 1989. Public Act 1989 No 99. Date of assent 25 October 1989. Part 1 - Crown forest land; Part 2 - Crown forestry assets and Crown forestry licenses; Part 3 - Return of Crown forest land to Maori ownership and compensation; Part 4 - Amendments to Treaty of Waitangi Act 1975. Available at: <http://www.legislation.govt.nz/act/public/1989/0099/latest/whole.html>
- Forestry Rights Registration Act, 1983. Public Act 1983 No 42. Date of assent 29 November 1983. Part 2A - Creation of forestry rights; Part 3 - Forestry rights to be Profits

a prendre; Part 4 - Forestry covenants; Part 5 - Plan requirements. Allows for the creation of a forest asset by investors on private land, with access guaranteed against the title. Available at: <http://www.legislation.govt.nz/act/public/1983/0042/latest/whole.html>

1.1.2. Legal authority

- Ministry of Business, Innovation and Enterprise - MBIE (Former Ministry of Commerce)
- Land Information New Zealand (LINZ)
- Te Puni Kokiri (TPK) for Maori land

1.1.3. Legally required documents or records

- Certificate of Title to prove ownership of land (and forest)
- Signed lease document to prove legality of lease
- Company Annual Return to the Companies Office, to show company is operating legally
- Crown Forest License. These were issued when State exotic forests were sold in 1987. They create a cutting right to the tree crop for 2 rotations. The land rental is paid to the Crown Forestry Rental Trust with accumulated rentals being paid to the successful claimant on Treaty of Waitangi settlement.
- Forestry Right documentation, as well as the CT to show the existence of the Forestry Right

1.1.4. Sources of information

Government sources

- Linz.govt.nz (2016). *Property Titles and plans* [Online]. Available at: <http://www.linz.govt.nz/land/land-records/types-land-records/property-titles-plans> [Accessed on 20 February 2017].
- Mpi.govt.nz (2016). *Applications* [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/illegal-logging> [accessed on 20 February 2017].

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perception Index 2016* [Online]. Available at: <http://www.transparency.org/country/#NZL> [Accessed on 20 February 2017]
- FSC (2014). *New Zealand Controlled Wood Risk Assessment*. Individual company reports filed by Certifying Bodies.
- World Bank (2016). *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington DC, World Bank Group.

1.1.5. Risk determination

Overview of Legal Requirements

All land in NZ is covered by a Certificate of Title (CT), issued under the Land Transfer Act, 1952. This document proves ownership of land and describes the rights and restrictions that apply to that land. These CT's have been in electronic form since 2002 and are publicly available to view on line at the official government website of "Land information New Zealand"; <http://www.linz.govt.nz/land/land-records/types-land-records/property-titles-plans>.

Crown land is owned by the Government, i.e. is in public ownership, and is governed by the requirements of the Land Act, 1948. Under the Treaty of Waitangi Act, 1975, Crown land, especially that land in exotic forest, may be used to satisfy the terms of a Treaty of Waitangi settlement agreed between the Crown and an identified Iwi (Native Maori tribes), to redress wrongs against that Iwi since 1840. The land transfer to Iwi ownership is governed by the Crown Forest Assets Act, 1989 and is identified on the CT. The growing forest is subject to a Crown Forest Licence (CFL) for a period of 35 years, and then reverts to a common lease between the Iwi and the forest investor/manager.

Private land may be owned by 1 or more individuals or a company. Overseas owners must prove a net benefit to NZ in order to purchase land. A land owner may seek external investors to assist with a forestry project; these investors' tenure over the trees is protected by a "Right" issued under the Forestry Rights Registration Act, 1983. The management of the trees is subject to a separate Management Plan agreed between the land owner and forest investor.

All companies, including forestry companies, must register under the Companies Act, 1993. They are allocated a company number by the Companies Office and a tax number by the IRD. Financial and taxation reporting requirements are specified.

All individuals have a tax number. If their income is regular, they are taxed at the source of that income through the Pay As You Earn (PAYE) process, otherwise they are required to register for Provisional Tax where tax is paid in advance.

Maori commercial forest structures may be 1 of either a Trust, a Lease or an Incorporation. All are subject to the same tax rules as other businesses.

Crown Forestry, the forest management arm of the Ministry for Primary Industries (MPI), acts as a commercial business in all respects. It pays tax as a normal business.

Description of Risk

In August 2012, NZ's Ministry for Primary Industries (MPI) produced a country-specific guideline for NZ which describes how NZ assures legality in its forest operations, including land tenure. The ownership of land, and any tenure rights on it, is very clear and unambiguous. There is a central, electronic repository of all land ownership (Land Titles), and a formal process for buying and selling land. There are controls over foreign ownership of land. The boundaries of each land parcel are surveyed, pegged and clear.

Maori have a well-organised system of communal ownership of Maori land, with a formal governance structure empowering elected Trustees to sign leases on behalf of their Iwi.

There have been no conflicts over land tenure, no conflicts between various forms of land ownership. The buying and selling of land is a common, legal and normal rural activity.

The World Bank's Doing Business ranking for NZ in Registering Property category was 1st out of 189 countries. The OECD average rank was 43.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.1.6. Risk designation and specification

Low risk

1.1.7. Control measures and verifiers

N/A

1.2. Concession licenses

Legislation regulating procedures for the issuing of forest concession licenses, including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.

1.2.1. Applicable laws and regulations

Not applicable (concession licenses are not used in NZ.)

1.2.2. Legal authority

N/A

1.2.3. Legally required documents or records

N/A

1.2.4. Sources of information

N/A

1.2.5. Risk determination

N/A

1.2.6. Risk designation and specification

N/A

1.2.7. Control measures and verifiers

N/A

1.3. Management and harvesting planning

Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.

1.3.1. Applicable laws and regulations

- Forests Act (1949) as amended. Public Act 1949 No 19. Date of assent 11 October 1949. Available at: <http://www.legislation.govt.nz/act/public/1949/0019/latest/whole.html>
- Sustainable Forest Management Plans under the Forests Act (1949) Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM256627.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1
- Schedule 2 of that Act details the information to be included in the Management Plan. Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM257427.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1#DLM257427
- Conservation Act (1987). Public Act 1987 No 65. Date of Assent 31 March 1987. Available at: <http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html>

1.3.2. Legal authority

- Ministry for Primary Industries (MPI)

1.3.3. Legally required documents or records

- SFMP document for privately-owned indigenous forests to be harvested
- Resource consent if required

1.3.4. Sources of information

Government sources

- Archive.mpi.govt.nz (2016). *Indigenous forestry*. [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 20 February 2017].

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products*. [Online]. Available at: <http://www.illegal-logging.info/sites/files/chlogging/uploads/LegalityofNewZealandforestproducts.pdf> [Accessed on 20 February 2017].
- illegal-logging.info (2016). *New Zealand*. [Online.] Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 20 February 2017].

1.3.5. Risk determination

Overview of Legal Requirements

No harvesting is permitted from Government-owned indigenous forests.

For harvesting operations from privately-owned indigenous forests on private land a formal, approved Sustainable Forest Management Plan is required. The planning and monitoring details to be included are outlined in Schedule 2 of the Act.

There are no legal requirements covering management or harvest planning in exotic forests. Depending on the location and conditions, some owners and managers of exotic forests may require Resource Consents for particular aspects of their harvesting operation. The requirement for a resource Consent for a specific activity, e.g. stream crossing, moving more than a given volume of soil during road preparation, or operating a quarry to obtain roading metal, will be specifically stated in a regional or District Plan prepared by the local Council and sent for public consultation before adoption. A forest owner will know what Local Government plans and rules apply to his or her property, as they will have been directly consulted by the Council as part of the Plan preparation. The Resource Consent applies to the property and is registered against the title when granted. It will be current for a finite period. A professional carrying out the harvest planning work will know what Resource Consent are required as part of the planning process, and will generally assist the forest owner in the application, in accordance with the voluntary Codes of Practice. There are no other legal constraints.

Some District Councils require all forest owners to submit a "Harvesting Notice" before harvest. This is for transport (road maintenance) planning rather than for silvicultural purposes.

Harvesting in Government-owned indigenous forests is not permitted under the Forests Act nor under the Conservation Act.

Description of Risk

Controls on the sale and use of indigenous sawn timbers are such that private owners of indigenous forests must undertake the formal planning process, including inventory, before having SFMP's reviewed prior to approval. SFMP's are not approved if the planning has not been carried out. Only a very small volume of indigenous logs are produced (21,000 m³ in the year ended 31 March 2015. Source: Sector Data and Analysis, MPI). The risk is low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities.

1.3.6. Risk designation and specification

Low risk

1.3.7. Control measures and verifiers

N/A

1.4. Harvesting permits

Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where

required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.

1.4.1. Applicable laws and regulations

- Forests Act (1949) as amended. Public Act 1949 No 19. Date of assent 11 October 1949. Available at: <http://www.legislation.govt.nz/act/public/1949/0019/latest/whole.html>
Sustainable Forest Management Plans. Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM256627.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1
- Schedule 2 of that Act details the information to be included in the Management Plan. Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM257427.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1#DLM257427

1.4.2. Legal authority

- Ministry for Primary Industries (MPI)

1.4.3. Legally required documents or records

- The Sustainable Forest Management Plan (SFMP) must be approved by MPI.
- Logging must be in accordance with the Local Council's District Plan - so a Resource Consent may be required.

1.4.4. Sources of information

Government sources

- Archive.mpi.govt.nz (2016). *Indigenous forestry*. [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 20 February 2017].

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products*. [Online]. Available at: <http://www.illegal-logging.info/sites/files/chlogging/uploads/LegalityofNewZealandforestproducts.pdf> [Accessed on 20 February 2017].
- illegal-logging.info (2016). *New Zealand*. [Online.] Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 20 February 2017].

1.4.5. Risk determination

Overview of Legal Requirements

Harvest permits can only be issued for logging in privately-owned indigenous forests after a formal and comprehensive Sustainable Forest Management Plan (SFMP) has been prepared by the forest owner and approved by MPI. For detailed requirements of the 10 Chapters for each SFMP, please refer to Schedule 2 of the Forests Act, 1949.

No harvest permits are required for exotic forests.

Description of Risk

The NZ public takes conservation of indigenous forests very seriously and reports of indigenous forest harvesting, legal or not, are followed up by MPI staff. The most recent prosecution for over-harvest of indigenous timber was in August 2011. An extra 215 m³ harvested over the 588 m³ harvest entitlement resulted in significant personal and company fines.

The requirements for detailed forest inventory in Chapter 6 of the SFMP are such that it would be difficult to manipulate data. MPI staff run their own checks of inventory data. The base requirement is for a non-diminishing annual yield in perpetuity.

Low risk.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.4.6. Risk designation and specification

Low risk

1.4.7. Control measures and verifiers

N/A

TAXES AND FEES

1.5. Payment of royalties and harvesting fees

Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. It also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery of officials in charge of controlling the classification.

1.5.1. Applicable laws and regulations

- Commodity Levies Act (1990). Public Act 1990 No 127. Date of assent 7 September 1990. Available: <http://www.legislation.govt.nz/act/public/1990/0127/latest/DLM226674.html>
- Commodity Levies (Harvested Wood Material) Order 2013. Available at: http://www.fglt.org.nz/images/forestvoice/FinalSignedLevy_Order_reduced.pdf

NOTE: There is no legislation for establishing stumpage rates on exotic logs from private or from State or local government forests.

1.5.2. Legal authority

- Ministry for Primary Industries (MPI)
- Forest Growers Levy Trust Board (FGLTB)

1.5.3. Legally required documents or records

- An independent Third party has been contracted by the FGLT Board to supply and manage an automated levy collection system. Collection agents at domestic mills or export ports use an automated data collation and transfer system to generate Levy invoices to log owners. Thus there is a specific electronic document trail for levy collection purposes, but no physical document.
- For exotic forests, there will be a Harvesting contract between forest owner and the harvesting contractor;
- A Sales contract or Agreement between the forest owner and the log purchaser.
- Log docket given to log transporter showing forest/compartment/contractor. Weight given at registered weighbridge. This docket forms the basis of payment for the logging contractor and the transport operator, as well as the basis for payment for the logs to the forest owner by whoever buys the logs.
- For tax purposes, receipts for any costs related to the tree crop, or any costs incurred in the maintenance of the forestry business during each year, as these are deductible in the year incurred from any income for that year. The Levy is a tax deductible expense for the forest owner.

1.5.4. Sources of information

Government sources

- Archive.mpi.govt.nz (2016). *Indigenous forestry*. [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 20 February 2017].

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products*. [Online]. Available at: <http://www.illegal-logging.info/sites/files/chlogging/uploads/LegalityofNewZealandforestproducts.pdf> [Accessed on 20 February 2017].
- illegal-logging.info (2016). *New Zealand*. [Online.] Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 20 February 2017].
- fglt.org.nz (N.Y.). *Various documents* [Online] Available at: <http://www.fglt.org.nz/> [Accessed on 21 February 2017].

1.5.5. Risk determination

Overview of Legal Requirements

There are no legal royalties or fees linked to natural or indigenous forest harvesting. The Levy does not apply to indigenous logs.

Indigenous logs can only be harvested from private land, with the forest owner establishing a contract for sale and purchase of logs.

Exotic logs are sold in a variety of ways, such as a block sale, stumpage, or by volume (usually weight) for given products. This is based on formal commercial contracts.

However, owners of exotic forests are charged a Levy, set under the Commodity Levies (Harvested Wood Material) Order #2013, dated 18 November 2013, at the rate of 27 cents per tonne. This is levied at the point where logs are being assembled prior to the next stage of wood use - i.e. at a mill or port. The current owner of the logs is sent an invoice for the levy, but previous owners in the supply chain have the right to recover the levy until the levy is ultimately paid by the forest owner. All products from exotic forests are covered. There is no differentiation based on species - all exotic species are levied at the same rate.

Description of Risk

Because there is no requirement to pay royalties, the risk is low. The payment of the Levy is worked as follows: An independent third party has been contracted by the FGLTrust to supply and manage an automated levy collection system. Collection agents at domestic mills and export ports use an automated data collation and transfer system that has links to the weighbridge or measurement posts. Log measurement data is used to generate levy invoices to the current log owner. Thus there is no way to avoid paying the levy. The statistical reports from the levy collection company match very precisely with the production data collected by MPI. There is no reported evidence, nor any anecdotal evidence, of the levy not being paid. Detailed monthly reports are available.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities.

1.5.6. Risk designation and specification

Low risk

1.5.7. Control measures and verifiers

N/A

1.6. Value added taxes and other sales taxes

Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.

1.6.1. Applicable laws and regulations

- Income Tax Act (2007). Public Act 2007 No 97. Particularly Part B (Core Provisions). Available at: http://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1512301.html?search=qs_act_GST_resel_25_h&p=1&sr=1
- Goods and Services Tax Act (1985). Public Act. 1985 No 141. Particularly Part 2 - Imposition of tax; Part 3 - Returns and payment of tax; Part 4 - Assessment of tax; Part 10 - Penalties; Part 11 - General Provisions. Available at: http://www.legislation.govt.nz/act/public/1985/0141/latest/DLM81035.html?search=qs_act_GST_resel_25_h&p=1&sr=1

1.6.2. Legal authority

- Inland Revenue Dept (IRD)

1.6.3. Legally required documents or records

- GST-receipts for any costs incurred during the GST period
- GST invoices for the GST collected during the period
- GST calculation sheet showing the GST collected and paid during the period, with the net amount owing to IRD or to be paid by IRD.

1.6.4. Sources of information

Government sources

- ird.govt.nz (2016). *IRD GST Guide* [Online]. Available at: <http://www.ird.govt.nz/forms-guides/title/forms-g/ir375-guide-gstguide.html?id=homepage> [Accessed on 21 February 2017].

Non-Government sources

- Transparency.org (2016). *Transparency International's Corruption Perception Index 2016* [Online] Available at: <http://www.transparency.org/country/#NZL> [Accessed on 21 February 2017].
- World Bank 2016. *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington DC: World bank Group. Publication on New Zealand.

1.6.5. Risk determination

Overview of Legal Requirements

All businesses must register for tax purposes. All companies and entities with a turnover of over NZD 40,000 must be GST registered and use their GST number in any transactions. All entities must account for the GST collected and paid at defined intervals, either monthly, 2-monthly or 6 monthly.

Everyone must pay Goods and Services Tax (GST) at 15% on all goods and services bought and sold in NZ. This is the same as VAT in other countries. There are no exemptions.

Description of Risk

The World Bank organisation "Doing Business" ranks NZ very highly for the ease of paying taxes, and therefore a low risk of non-payment. The ranking for this category was 22 out of 189 countries; the OECD average rank was 52.

Because every person and every business has to pay GST, and there are comprehensive checks and regular IRD audits to ensure that businesses do pay, the risk is very low.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities.

1.6.6. Risk designation and specification

Low risk

1.6.7. Control measures and verifiers

N/A

1.7. Income and profit taxes

Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.

1.7.1. Applicable laws and regulations

- Income Tax Act (2007). Public Act 2007 No 97. Particularly Part B (Core Provisions); Part C Income; sub parts CB 24 and CB 25 - Timber; Sub part DP - Forestry expenditure. Available at: http://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1512301.html?search=qs_act_GST_resel_25_h&p=1&sr=1

1.7.2. Legal authority

- Inland Revenue Dept (IRD)

1.7.3. Legally required documents or records

- For tax purposes, receipts for any costs related to the tree crop, or any costs incurred in the maintenance of the forestry business during each year, as these are deductible in the year incurred from any income for that year.
- Registered forest valuation for sale and purchase agreement for an exotic forest
- SFMP for a block of indigenous forest sold, if applicable.

1.7.4. Sources of information

Government sources

- ird.govt.nz (2016). *IRD Business Tax Newsletter* [Online]. Available at: <http://www.ird.govt.nz/aboutir/newsletters/business-tax-update/> [Accessed on 21 February 2017].

Non-Government sources

- transparency.org (2016): Transparency International's Corruption Perception Index 2016 [Online.] Available at: <http://www.transparency.org/country/#NZL> [Accessed on 21 February 2017].
- World Bank 2016. *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington DC: World bank Group. Publication on New Zealand.

1.7.5. Risk determination

Overview of Legal Requirements

All companies must pay tax on their profits for the year. The profit is the difference between the income from log sales and the cost of generating those logs for sale.

All individuals involved in forestry operations must pay tax on their income; this is generally taxed at source through a nation-wide system known as Pay As You Earn (PAYE).

Description of Risk

All businesses, including those involved in forest harvesting, must register for tax purposes. The nature of this registration determines how they pay tax. Companies and Partnerships are required to pay Provisional Tax at the corporate rate (28%) on their budgeted profit 3 times during the year, with Terminal tax paid after the end of the Financial Year. Underpayment of tax attracts a "Cost of Money" fee for the difference over the Financial Year, so there are in-built incentives to get the financial and tax planning correct. The business tax number is used for all business purchases and must be shown on tax invoices for goods and services (including logs).

The IRD is able to run checks on all businesses, and there is a large audit department within IRD to carry out both regular- and spot-audits of all businesses. There are periodic articles in news media about court cases over tax issues.

The World Bank's Doing Business rates NZ highly in terms of ease of paying tax. NZ ranks 22nd out of 189 countries; the OECD average is 52.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities.

1.7.6. Risk designation and specification

Low risk

1.7.7. Control measures and verifiers

N/A

TIMBER HARVESTING ACTIVITIES

1.8. Timber harvesting regulations

Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and bridges etc. shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered.

1.8.1. Applicable laws and regulations

- Forests Act (1949). Public Act 1949 Number 19. Particularly Part 3 (Administration of Private Forests); Part 3A Indigenous private forests. Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM255626.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1&sr=1
- Schedule 2 inserted by Section 6 of the Forests Amendment Act (1993). Public Act 1993 No 7. Covers legal requirements for Sustainable Forest Management Plans.

NOTE: No legislation is applicable to exotic forest harvesting. There are no limits on coup size, felling age or treatment of land following harvest.

1.8.2. Legal authority

- Ministry for Primary Industries (MPI)

1.8.3. Legally required documents or records

- Approved SFMP for harvesting of indigenous forest on private land.

1.8.4. Sources of Information

Government sources

- Archive.mpi.govt.nz (2016). *Indigenous forestry*. [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 20 February 2017].

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products*. [Online]. Available at: <http://www.illegal-logging.info/sites/files/chlogging/uploads/LegalityofNewZealandforestproducts.pdf> [Accessed on 20 February 2017].
- illegal-logging.info (2016). *New Zealand*. [Online] Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 20 February 2017].
- nzfoa.org.nz (2016). *Forestry Bulletin* [Online]. Available at: <https://www.nzfoa.org.nz/> [Accessed on 21 February 2017]. *NZ Forest Owners Association*

1.8.5. Risk determination

Overview of Legal Requirements

It is illegal to harvest logs from Government-owned indigenous forest.

There is a legal requirement to prepare, and have approved, a Sustainable Forest Management Plan (SFMP) before harvesting privately owned indigenous forest. The details for the harvesting plan and resulting forest condition required are set out in Schedule 2 of the Act, and guide MPI inspectors when approving and then inspecting indigenous harvesting operations. For any harvesting of indigenous forests on private land, to comply with the Act and Regulations, the SFMP must specify the coupe size, species to be taken, forest condition remaining, skid tracks to be used and re-instated, run-off controls amongst other things. If natural regeneration, following harvesting, is insufficient MPI can require seedlings to be planted at the harvest site. Before harvesting can take place, operators must also provide MPI with an annual logging plan. This provides information on the area the trees shall come from, approved harvest volumes (by species), proposed harvest methods, location of tracks, and any requirements for specific actions, for example, directional felling to protect any adjacent forest. Operators are also encouraged to actively harvest trees with different ages and sizes and to source trees that are at risk of dying naturally.

The Standards and Guidelines for Sustainable Management of Indigenous Forests (MPI, 2007) reflect Part3A of the Forests Amendment Act (the 1993 amendment to the 1949 Act previously referenced). Each Criterion and subsets provide guidance on how MPI will apply provisions of the Act.

There are no other harvesting regulations for indigenous harvesting, but the SFMP requirements are very prescriptive for the Annual Logging plan.

There are no legal regulations that apply to harvesting of exotic forests, only voluntary Codes:

1. The NZ Forest Accord (1991) commits members of the NZ Forest Owners Association and Farm Forestry Association to meeting acceptable standards of environmental practice and social behaviour.
2. The NZ Environmental Code of Practice for Plantation Forestry, 2007, identifies the 18 key Best Environmental Management Practices for sound exotic forest management, including harvesting. All FSC-certified companies, and many that have not achieved FSC certification, have this Code incorporated into their Environmental Management Systems and Management Plan documentation.
3. A NZ National Standard for Sustainable Forest Management has been accepted as NZS AS 4708:2014, under the status of the NZ Standards Council, under the Standards Act 1988. It has been endorsed on behalf of the Council of Standards Australia on 17 May 2013.

Description of Risk

Risk is reduced through strict adherence to the requirements of the SFMP. These logging operations are regularly inspected. Prosecutions for non-compliance have been taken by MPI. The most recent prosecution for over-harvest of indigenous timber was in August 2011. An extra 215 m3 harvested over the 588 m3 harvest entitlement resulted in significant personal and company fines.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.8.6. Risk designation and specification

Low risk

1.8.7. Control measures and verifiers

N/A

1.9. Protected sites and species

International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.

1.9.1. Applicable laws and regulations

- Resource Management Act (1991). Available at: <http://legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html> Public Act 1991 No 69
- Conservation Act (1987). Public Act 1987 No 65. Available at: http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act+Conservation+Act+resel+25+h&p=1&sr=1
- Heritage New Zealand Pouhere Taonga Act 2014. Public Act 2014 No 26. Available at: http://www.legislation.govt.nz/act/public/2014/0026/latest/DLM4005414.html?search=qs_act+Heritage+NZ+resel+25+h&p=1&sr=1
- Wildlife Act 1953. Public Act 1953 No 31. Available at: http://www.legislation.govt.nz/act/public/1953/0031/latest/DLM276814.html?search=qs_act+Wildlife+Act+resel+25+h&p=1&sr=1
- Environment Act 1986. Public Act 1986 No 127. Available at: <http://www.legislation.govt.nz/act/public/1986/0127/latest/DLM98975.html>
- National Parks Act 1980. Public Act 1980 No 66. Available at: <http://legislation.govt.nz/act/public/1980/0066/latest/DLM36963.html?src=qs>
- Reserves Act 1977. Public Act 1977 No 66. Available at: <http://legislation.govt.nz/act/public/1977/0066/latest/DLM444305.html?src=qs>
- Queen Elizabeth II National Trust Act 1977. Public Act 1977 No 102. Available at: <http://legislation.govt.nz/act/public/1977/0102/latest/DLM8801.html?src=qs>

1.9.2. Legal authority

- District and Regional Councils

- Department of Conservation (DOC).
- Heritage NZ.
- Ministry for the Environment (MfE)
- NZ Customs (For border protection)

1.9.3. Legally required documents or records

- Resource Consent, if required
- For harvesting around a protected site in an exotic forest - a certificate of approval from Heritage NZ to modify or destroy a particular site or sites.
- SFMP to identify protected sites

1.9.4. Sources of Information

Government sources

- archive.mpi.govt.nz (2016). *Montreal Process* [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/international-forestry/montreal-process> [Accessed on 21 February 2017].

Non-Government sources

- panda.org (N.Y.). *New Zealand Temperate Forests*. [Online]. Available at: http://wwf.panda.org/about_our_earth/ecoregions/newzealand_temperate_forests.cfm [Accessed on 21 February 2017].
- nzfoa.org.nz (2005). *Wellington Region* [Online]. Available at: <http://rarespecies.nzfoa.org.nz/regions/wellington.htm> [Accessed on 21 February 2017].

1.9.5. Risk determination

Overview of Legal Requirements

All Crown-owned indigenous forests are fully protected. All privately-owned indigenous forests with QE II covenants are fully protected with a lien recorded on the Certificate of Title.

In indigenous forests, rare & threatened plant and reptile species are fully protected. Rare and threatened bird species have specific restoration programmes managed by the Department of Conservation (DOC) with commercial funder support. // In exotic forests, such species are also fully protected. // Protected historic sites, defined as being over 100 years old, are protected from exploitation. Where such sites may be low value or well-represented elsewhere, the land owner may apply to Heritage NZ for approval to modify the site.

Description of Risk

Rural land owners, particularly forest owners, are conscious of the threat to NZ's natural heritage and have been supporting Government agencies in protecting sites. Evidence of this can be seen arising from the NZ Forest Accord and from the actions of FSC-certified forestry companies protecting large areas of indigenous vegetation.

There have been media reports of attempt to smuggle Tuatara (a lizard-like dinosaur, now being managed to population recovery) and native skinks and lizards out of the country. Customs agents have caught the perpetrators and they were prosecuted. There has been no reported commercial harvesting of protected trees, but there are periodic reports of urban dwellers felling urban protected trees. However, logging of urban protected trees happens at a low scale and the risk of these entering the commercial timber chain is low.

Enforcement is via DOC officers for CITES species and Customs officers at the border.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.9.6. Risk designation and specification

Low risk

1.9.7. Control measures and verifiers

N/A

1.10. Environmental requirements

National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by harvesting, acceptable level for soil damage, establishment of buffer zones (e.g. along water courses, open areas, breeding sites), maintenance of retention trees on felling site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.

1.10.1. Applicable laws and regulations

- Resource Management Act (1991). Public Act 1991 No 69. Available at: <http://legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html>
- Conservation Act (1987). Public Act 1987 No 65. Available at: http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act+Conservation+Act+resel+25+h&p=1&sr=1
- Forests Act (1949). Public Act 1949 Number 19. Public Act 1993 No 7. Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM255626.html?search=qs_act+Forests+Amendment+Act+resel+25+h&p=1&sr=1

1.10.2. Legal authority

- Regional Councils
- District Councils

- Department of Conservation
- Ministry for Primary Industries (MPI)

1.10.3. Legally required documents or records

- SFMP for a given property if harvesting indigenous forest.
- Resource consents, if required. This would be if certain forestry activities, such as might be related to road building or stream crossing, were controlled or made conditional under either a Regional Plan or a District Plan
- Monitoring programme and results, if required under the Resource Consent conditions.
- Environmental Impact Assessments - by FSC-certified forestry companies

1.10.4. Sources of information

Government sources

- mfe.govt.nz (2015). *Environment Aotearoa* [Online] Available at: <http://www.mfe.govt.nz/publications/environmental-reporting/environment-aotearoa-2015> [Accessed on 21 February 2017].

1.10.5. Risk determination

Overview of Legal Requirements

All operations must comply with the requirements of the relevant Regional and District Plans. Regional and District Councils (i.e. local government) has the delegated responsibility for identifying the key environmental issues in their regions, and formulating Regional or District Plans to deal with those. All land owners in the area covered by the Plan are consulted during the District or regional Plan formulation process. Maps are produced showing areas of greatest concern about the effects of particular activities. All land owners have the opportunity to make presentations on the Draft Plan. When the Plan is finalised land owners are made aware of the impacts of the Plan on their property; hence they know if and when they need to apply for Resource Consent.

Economic activities, in this case exotic forest operations, may need to gain Resource Consents from the relevant Council in order to proceed with certain forestry operations. This is particularly the case with roadworks before harvesting, soil disturbance before and during harvesting, and stream or river crossing.

For indigenous harvesting on private land, the landowner must comply with the SFMP, which must be written to comply with the relevant local government Plan requirements.

Description of Risk

The risks are that the forest owner may not be aware of the legal requirements in the District or Regional Plan. This is unlikely as the Planning process requires and involves extensive consultation with property owners during the formulation of District and Regional Plans. Councils have the ability, through analysis of aerial imagery, to target properties with forest cover on them.

Also a risk that a forestry contractor may not follow the conditions imposed either through the SFMP or a Resource Consent. Although this does happen occasionally, MPI, Council staff

and the forest owner's supervisor (a contractor or a trained member of the forestry staff) quickly detect any non-conformance and set-up migratory systems. Significant fines can also be imposed by the relevant Regional or District Council, although this is generally a last resort.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities.

1.10.6. Risk designation and specification

Low risk

1.10.7. Control measures and verifiers

N/A

1.11. Health and safety

Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.

1.11.1. Applicable laws and regulations

- Health and Safety in Employment Act (1992). Superseded by Health and safety at Work Act, 2015. Public Act 2015 No 70. Available at: <http://www.legislation.govt.nz/act/public/1992/0096/latest/DLM278829.html>
- Hazardous Substances and New Organisms Act (1996). Public Act 1996 No 30. Available at: http://www.legislation.govt.nz/act/public/1996/0030/latest/DLM381222.html?search=qs_act_Hazardous+Substances_resel_25_h&p=1&sr=1

1.11.2. Legal authority

- Worksafe Inspectors are employed by the Ministry of Business, Innovation and Employment (MBIE), formerly "The Department of Labour".
- Hazardous substances responsibilities lie with Regional Councils.

1.11.3. Legally required documents or records

- Form for Notification to Worksafe of hazardous work sites
- Hazard identification forms for each work site, updated daily. Hazard management plans to go with identification forms.
- Harvesting site plans prepared by harvesting contractors and company supervisors.

- Safety audit forms (at least monthly) carried out by forest owner.
- Training records of all crew members involved and an annual training plan for the crew.
- Contractors' Health and Safety Plan

1.11.4. Sources of information

Non-Government sources

- Worksafe media centre with links to Safe Manual Tree Felling - Best practice Guidelines; Approved Code of Practice for Health and Safety in Forest Operations.
- Safer Forest Harvesting Project - Phase 1 Breaking Out - report to sector.
- NZ Forest Owners Association Booklets and Newsletters
- safetree.nz (2016). *Various articles* [Online] Available at: www.safetree.nz [Accessed on 21 February 2017]
- business.govt.nz (2016). *Safer Forest Harvesting* [Online] Available at: <http://www.worksafe.govt.nz/worksafe/information-guidance/national-programmes/safer-forest-harvesting> [Accessed on 21 February 2017]
- law.resource.org (2004). *Management of Agrochemicals* [Online]. Available at: <https://law.resource.org/pub/nz/ibr/nzs.8409.2004.pdf> [Accessed on 22 February 2017].
- radionz.co.nz (2015). *New chair for Forest safety council* [Online]. Available at: <http://www.radionz.co.nz/news/rural/274825/new-chair-for-forest-safety-council> [Accessed on 22 February 2017]
- business.govt.nz (2015). *WorkSafe welcomes new forest safety council.* [Online]. Available at: <http://www.business.govt.nz/worksafe/news/releases/2015/worksafe-welcomes-new-forest-safety-council> [Accessed on 22 February 2017].
- fridayoffcuts.com (2015). *Various Articles* [Online]. Available at: <http://www.fridayoffcuts.com/index.cfm?id=660#5> [Accessed on 22 February 2017].

1.11.5. Risk determination

Overview of Legal Requirements

Legal requirements on all involved in the forest industry - from Director to worker - are to keep safe at work. To do this people must identify and document hazards and develop hazard management plans to isolate, eliminate or mitigate those hazards. The new legislation that came into force on 4 September 2015, changes the focus to clearly identify those who must be responsible for ensuring worker safety. Thus a forest owner must now have a Health and Safety policy and management plan that meet defined standards, and also ensure that all the contractors working in the relevant forest have H&S plans that mesh with the Forest Owner's plan and that the contractors are complying with it.

Description of Risk

During 2013, a spate of serious injuries (169) and deaths (10) in NZ forests prompted an independent forestry safety review in 2014. This was led by the industry and supported by unions and Government. It complemented other workplace safety reforms. The initiatives and subsequent legislation were widely supported. A number of prosecutions under Health and

Safety legislation were taken by the NZ government in relation to the forestry deaths and injuries. The results were mixed; in some cases, the contractors were found guilty, in other cases they were not guilty.

Prosecutions were effected after a change in policy in the Department of Labour. In previous years the Department's Bush Inspectors visited contractor logging crews on a regular basis and were able to coach, mentor and instruct crews on good safety methods and systems. A change in government policy required the Bush Inspectors to police the Act and so the visits ceased and prosecutions increased. See:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11193890

The forest industry responded to the alarming statistics and in 2014 there was one death, and the number of serious harm injuries dropped by about 60% to 107. Nevertheless, as a result of the safety review, a new structure – the Forest Industry Safety Council (FISC) – was created in May 2015 comprising representatives of the sector, the unions, and contractors, and an independent Chair appointed.

See <http://www.radionz.co.nz/news/rural/274825/new-chair-for-forest-safety-council>.

See also <http://www.business.govt.nz/worksafe/news/releases/2015/worksafe-welcomes-new-forest-safety-council>

This trend continued for 2015: no deaths reported and 79 serious harm incidents. See <http://www.fridayoffcuts.com/index.cfm?id=660#5> The Chief Executive of WorkSafe NZ recently stated that "the forestry sector has gone from being the pariah in H&S in 2013 to an exemplar for other sectors to learn from".

These statistics provide evidence that Health and Safety laws are taken seriously by the NZ forestry sector and there is no evidence of any widespread disregard of the legislation and other requirements.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.11.6. Risk designation and specification

Low risk

1.11.7. Control measures and verifiers

N/A

1.12. Legal employment

Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic

or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.

1.12.1. Applicable laws and regulations

- Holidays Act (2003). Public Act 2003 No 129. Available at:
http://www.legislation.govt.nz/act/public/2003/0129/latest/DLM236387.html?search=qs_act_Holidays_resel_25_h&p=1&sr=1
- KiwiSaver Act (2006). Public Act 2006 No 40. Available at:
http://www.legislation.govt.nz/act/public/2006/0040/latest/DLM378372.html?search=qs_act_Holidays_resel_25_h&p=1&sr=1
- Minimum Wage Act (1983). Public Act 1983 No 115. Available at:
http://www.legislation.govt.nz/act/public/1983/0115/latest/DLM74093.html?search=qs_act%40bill%40regulation%40deemedreg_Minimum+wage_resel_25_h&p=1&sr=1
- Employment Standards Bill 2015. This will update Parental leave provisions, Employment relations legislation, Holidays Act, Minimum Wage Act Wages Protection legislation. Has not yet been enacted. Available at:
<http://www.legislation.govt.nz/bill/government/2015/0053/18.0/DLM6553716.html>
- Bill of Rights Act (1990). Public Act 1990 No 109. Available at:
<http://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html?src=qs>
- Industry Training and Apprenticeship Act (1992). Public Act 1992 No 55. Available at:
<http://www.legislation.govt.nz/act/public/1992/0055/latest/DLM266246.html>
- Employment Relations Act (2000). Public Act No 24, 2000. Available at:
<http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html>

1.12.2. Legal authority

- Ministry of Business, Innovation and Employment. (Worksafe Inspectors)

1.12.3. Legally required documents or records

- Contract or signed Collective Agreement
- PAYE number for deducting income tax at source
- Kiwisaver number if employee elects to join Kiwisaver (Superannuation scheme)

1.12.4. Sources of information

Government sources

- employment.govt.nz (2016). *Minimum rights as employees* [Online] Available at:
<https://www.employment.govt.nz/starting-employment/rights-and-responsibilities/minimum-rights-of-employees/> [Accessed on 22 February 2017]
- newzealandnow.govt.nz (2017). *Employment rights* [Online]. Available at:
<https://www.newzealandnow.govt.nz/work-in-nz/employment-rights> [Accessed on 22 February 2017].

Non-Government sources

- Various Trade Union sites. No 1 Trade Union services forestry sector.

1.12.5. Risk determination

Overview of Legal Requirements

To be legally employed a person must be over the school leaving age (15), and be registered for income tax (Have a PAYE number or tax code). To be employed in the forestry sector, a person must also be registered on the NZ Qualifications Authority (NZQA) network and have a personal training plan so as to demonstrate competence in the tasks to be carried out.

A range of minimum rights and employer obligations are provided for under NZ law. The exploitation of children is expressly prohibited, and the Bill of Rights guarantees freedom from discrimination and the rights of minorities.

Description of Risk

NZ was a founding member of the ILO, joining in 1919. It has provided leadership over a number of years and has ratified the majority of ILO conventions. There is no evidence of violation of ILO fundamental principles. There are no unresolved complaints against NZ recorded by the ILO or UN. Any non-compliance with NZ Laws (which mirror ILO Conventions) are detected and dealt with by Worksafe inspectors. The cases of illegal employment practices that have been reported recently have not been in the forestry sector but are mostly in the restaurant business.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.12.6. Risk designation and specification

Low risk

1.12.7. Control measures and verifiers

N/A

THIRD PARTIES' RIGHTS

1.13 Customary rights

Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.

1.13.1. Applicable laws and regulations

- NZ Treaty of Waitangi Act (1975). Public Act 1975 No 114. Available at: http://www.legislation.govt.nz/act/public/1975/0114/latest/DLM435368.html?search=qs_act%40bill%40regulation%40deemedreg_Waitangi_resel_25_h&p=1&sr=1
- Te Ture Whenua Maori Act (1993). Maori Land Act 1993. Public Act 1993 No 4. Available at: <http://www.legislation.govt.nz/act/public/1993/0004/latest/DLM289882.html?src=qs>
- Māori Trustee Act (1953). Public Act 1953 No 95; Date of assent 26 November 1953. Available at: <http://www.legislation.govt.nz/act/public/1953/0095/latest/DLM282038.html>
- Conservation Act (1987). Public Act 1987 No 65. Available at: http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act_Conervation+Act_resel_25_h&p=1&sr=1

1.13.2. Legal authority

- Te Puni Kokiri (TPK) (Previously known as the Ministry for Maori Affairs)
- Maori Trustee
- Ministry of Justice

1.13.3. Legally required documents or records

- Certificate of Title
- Lease documents

1.13.4. Sources of information

Government sources

- nzhistory.net.nz (2014). *The Treaty Debated* [Online]. Available at: <http://www.nzhistory.net.nz/politics/treaty/the-treaty-in-practice/the-treaty-debated> [Accessed on 22 February 2017].
- nzhistory.net.nz (2014). *The Treaty Debated- further info* [Online]. Available at: <http://www.nzhistory.net.nz/politics/treaty/treaty-in-practice/further-info> [Accessed on 22 February 2017].
- beehive.govt.nz (2003). *Customary rights orders* [Online]. Available at: <http://www.beehive.govt.nz/foreshore/recommendations/chapter-7-customary-rights-orders.pdf> [Accessed on 22 February 2017].
- teara.govt.nz (2008). *Story: Take whenua – maori land tenure* [Online]. Available at: <http://www.teara.govt.nz/en/take-whenua-maori-land-tenure/page-1> and also

<http://www.teara.govt.nz/en/take-whenua-maori-land-tenure/page-2> [Accessed on 22 February 2017].

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* [Online] Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].
- Rotorangi, Stephanie (2012). *Planted forests on ancestral land: the experiences and resilience of Māori land owners* [Online]. Available at: <https://ourarchive.otago.ac.nz/handle/10523/2221> [Accessed on 22 February 2017]. Also published in Canadian Journal of Forest Research 2012, 42 (9): 1678 – 1686
- Asher, George (2003). *Maori Plantation Forestry - Paper to The UNFF Intersessional Experts Meeting* [Online].

1.13.5. Risk determination

Overview of Legal Requirements

There is no legislation specific to forestry or forest harvesting in relation to customary rights.

Rights to forest access for recreation and for Non Timber Forest Products are governed by property laws, e.g. Trespass. Access to public forests is generally free and unencumbered, except for safety concerns during periods of high fire danger. Access to private forests is controlled by the owners or managers of those forests.

In New Zealand the rights of indigenous people are no different from those of the rest of the population. Laws relating to Maori lands are different, but there is a Maori Land Court and Maori Appellate Court to safeguard the rights of indigenous people on land matters generally, not specific to forestry or forest harvesting.

Matters relating to Maori land in general are dealt with under the Maori land Act 1993. This ensures that all legal rights pertaining to such lands are upheld. When Maori land is used for forestry purposes, a number of mechanisms may be used to meet governance criteria defined in the Act, and to ensure the benefits of any uses of customary lands are evenly distributed amongst beneficial owners.

Description of Risk

Māori customary law generally refers to the body of rules developed by the indigenous peoples of New Zealand (Māori) to govern themselves. Such custom is regarded as originating from fundamental principles and beliefs established with reference to intimate and long-established holistic interrelationships between themselves (social), between physical, nonhuman entities (social/environmental), and between the metaphysical and intangible elements of the Māori world (spiritual). Māori have demonstrated a historically strong adherence to basic customary principles and beliefs despite the influence and imposition of a minefield of statutes and policy based almost exclusively on English law that has sometimes been deliberately targeted at the destruction of foundations of customary Māori law. (G Asher, 2003).

There is no evidence that any customary rights that may be relevant to forest harvesting are disregarded. The results of recent studies (S Rotorangi, 2012) suggest that the Maori landowners' overall view of forestry is more critically influenced by political frameworks than by forest management techniques. The structures of governance and tenure and the legislation affecting the land are viewed as complicated and constraining. However, after decades of experience, Māori have successfully incorporated plantation forests into their sense of people and place. Despite difficulties and disappointments, the land use of forestry and forest regimes are, overall, viewed favorably by the landowners, consistent with environmental considerations and their culture and values.

Areas of exotic forest were established on Maori land in the 1950's and 1960's by the Crown, represented by the NZ Forest Service, and by some private companies. The Crown and investors paid an annual lease for the land and promised a share of the returns on harvest. Describing one example, Asher noted that protection of significant spiritual, cultural and historical aspects within the forest estates included the identification, demarcation and mapping of all culturally significant sites and features by tribal elders, and steps taken to protect these sites and the information pertaining to their location and significance. This has been undertaken by use of the New Zealand Archaeological Association site recording system. Sites and features are recorded within the GIS database, which is linked to stand record system for easy identification during forestry operations. There was recording of the history of tribal settlements and land occupation. A particular feature was the establishment of protocols to ensure that contractors are aware of the existence of sacred sites prior to harvesting and replanting and steps taken to enhance their comfort and safety. In this case there was provision of exclusive access for landowners, spouses and their descendants to hunt, fish, extract plants and maintain contact with their ancestral taonga and sacred places.

When the NZ Forest Service was disbanded in 1987, either the Maori tribe or private forestry companies were able to purchase the cutting rights to the forests, with the land remaining under Maori control. Other State forests, established on land purchased from private individuals, have had the land made available to Maori tribes which could demonstrate and prove a close association with that land at the time of the Treaty signing (1840). A process or processes similar to those described by Asher ensured that customary rights were not compromised.

For most indigenous forests on Maori land, the requirement for a SFMP is not regarded as detrimental to customary rights. However, for Silna owners, the SFMP process imposed conditions on what was a compensation payment, and so 9,000 ha of those lands was exempt from the SFMP requirement but the export ban on indigenous forest produce remained.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.13.6. Risk designation and specification

Low risk

1.13.7. Control measures and verifiers

N/A

1.14. Free prior and informed consent

Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.

1.14.1. Applicable laws and regulations

- NZ Treaty of Waitangi Act (1975). Public Act 1975 No 114. Available at: http://www.legislation.govt.nz/act/public/1975/0114/latest/DLM435368.html?search=qs_act%40bill%40regulation%40deemedreg_Waitangi_resel_25_h&p=1&sr=1
- Te Ture Whenua Maori Act (1993). Maori Land Act 1993. Public Act 1993 No 4 <http://www.legislation.govt.nz/act/public/1993/0004/latest/DLM289882.html?src=qs>

1.14.2. Legal authority

- Te Puni Kokiri (TPK)
- Ministry of Justice

1.14.3. Legally required documents or records

- Lease documents signed by representatives of the land "owning" tribe.

1.14.4. Sources of information

Government sources

- teara.govt.nz (2008). *Story: Take whenua – maori land tenure* [Online]. Available at: <http://www.teara.govt.nz/en/take-whenua-maori-land-tenure>

Non-Government sources

- Rotorangi, Stephanie (2012). *Planted forests on ancestral land: the experiences and resilience of Māori land owners* [Online]. Available at: <https://ourarchive.otago.ac.nz/handle/10523/2221> [Accessed on 22 February 2017]. Also published in Canadian Journal of Forest Research 2012, 42 (9): 1678 – 1686
- Asher, George (2003). *Maori Plantation Forestry - Paper to The UNFF Intersessional Experts Meeting* [Online].

1.14.5. Risk determination

Overview of Legal Requirements

There is no legislation specific to forestry or forest harvesting in relation to Free, Prior and Informed Consent.

However, in the plantation forestry sector, the signing of a lease to use Maori land for commercial forestry purposes must go through a process involving the beneficial owners of the tribe, as represented by the governing committee of a Trust or Incorporation established to manage the land. This is regarded as "Free, Prior and Informed Consent" (FPIC).

Description of Risk

FPIC is granted at the inception of a lease or other agreement between a forest manager and mandated representatives of the Tangata Whenua organisation (Maori). There are conditions, particularly around the protection of significant spiritual, cultural and historical values within the forest estate around the granting of such FPIC. Asher has described the situation for 2 prominent Maori lease forests where such FPIC includes protection, identification, demarcation and mapping of all culturally significant sites and features by tribal elders and steps taken to protect these sites and the information pertaining to their location and significance. This was undertaken by use of the New Zealand Archaeological Association site recording system. Sites and features were recorded within the Trust's GIS database, which is linked to stand record system for easy identification during forestry operations. There was recording of the history of tribal settlements and land occupation. Protocols were established to ensure that contractors continue to be aware of the existence of sacred sites prior to harvesting and replanting and steps taken to enhance their comfort and safety. There is provision of exclusive access for landowners, spouses and their descendants to hunt, fish, extract plants and maintain contact with their ancestral taonga and sacred places. Rotorangi also notes that her studies showed that Māori have successfully incorporated plantation forests into their sense of people and place. Despite difficulties and disappointments, the land use of forestry and forest regimes were, overall, viewed favorably by the landowners, consistent with environmental considerations and their culture and values.

The nature of the relationship between the managers of the exotic forest cutting rights and the relevant tangata whenua has meant that there is no evidence of FPIC being abused.

No complaints against New Zealand in regard to potential violation of ILO Convention 169 have been recorded by the ILO or UN.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.14.6. Risk designation and specification

Low risk

1.14.7. Control measures and verifiers

N/A

1.15. Indigenous/traditional peoples' rights

Legislation that regulates the rights of indigenous/traditional people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.

1.15.1. Applicable laws and regulations

- NZ Treaty of Waitangi Act (1975). Public Act 1975 No 114. Available at: http://www.legislation.govt.nz/act/public/1975/0114/latest/DLM435368.html?search=qs_act%40bill%40regulation%40deemedreg_Waitangi_resel_25_h&p=1&sr=1

- Te Ture Whenua Maori Act 1993; Maori Land Act 1993. Public Act 1993 No 4. Available at: <http://www.legislation.govt.nz/act/public/1993/0004/latest/DLM289882.html?src=qs>
- Māori Trustee Act (1953). Public Act 1953 No 95; Date of assent 26 November 1953. Available at: <http://www.legislation.govt.nz/act/public/1953/0095/latest/DLM282038.html>
- Conservation Act (1987). Public Act 1987 No 65. Available at: http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act+Conservation+Act+resel+25+h&p=1&sr=1

1.15.2. Legal authority

- Te Puni Kokiri (TPK) (Previously known as the Ministry for Maori Affairs)
- Maori Trustee
- Ministry of Justice

1.15.3. Legally required documents or records

- Certificate of Title
- Lease documents

1.15.4. Sources of information

Government sources

- nzhistory.net.nz (2014). *The Treaty Debated* [Online]. Available at: <http://www.nzhistory.net.nz/politics/treaty/the-treaty-in-practice/the-treaty-debated> [Accessed on 22 February 2017].
- nzhistory.net.nz (2014). *The Treaty Debated- further info* [2014]. Available at: <http://www.nzhistory.net.nz/politics/treaty/treaty-in-practice/further-info> [Accessed on 22 February 2017]
- beehive.govt.nz (2003). *Customary rights orders* [Online]. Available at: <http://www.beehive.govt.nz/foreshore/recommendations/chapter-7-customary-rights-orders.pdf> [Accessed on 22 February 2017].
- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* [Online]. Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].

Non-Government sources

- teara.govt.nz (2008). *Story: Take whenua – maori land tenure* [Online]. Available at: <http://www.teara.govt.nz/en/take-whenua-maori-land-tenure/page-1> and also <http://www.teara.govt.nz/en/take-whenua-maori-land-tenure/page-2> [Accessed on 22 February 2017].
- Rotorangi, Stephanie (2012): *Planted forests on ancestral land: the experiences and resilience of Māori land owners* [Online]. Available at: <https://ourarchive.otago.ac.nz/handle/10523/2221> [Accessed on 22 February 2017]. Also published in Canadian Journal of Forest Research 2012, 42 (9): 1678 – 1686.

- Asher, George (2003). *Maori Plantation Forestry - Paper to The UNFF Intersessional Experts Meeting* [Online].

1.15.5. Risk determination

Overview of Legal Requirements

In New Zealand the rights of indigenous people are no different from those of the rest of the population. Laws relating to Maori lands are different, but there is a Maori Land Court and Maori Appellate Court to safeguard the rights of indigenous people on land matters generally, not specific to forestry or forest harvesting.

Matters relating to Maori land in general are dealt with under the Maori land Act 1993. This ensures that all legal rights pertaining to such lands are upheld.

When Maori land is used for forestry purposes, a number of mechanisms may be used to meet governance criteria defined in the Act, and to ensure the benefits of any uses of customary lands are evenly distributed amongst beneficial owners.

Description of Risk

Māori customary law generally refers to the body of rules developed by the indigenous peoples of New Zealand (Māori) to govern themselves. Such custom is regarded as originating from fundamental principles and beliefs established with reference to intimate and long-established holistic interrelationships between themselves (social), between physical, nonhuman entities (social/environmental), and between the metaphysical and intangible elements of the Māori world (spiritual). Māori have demonstrated a historically strong adherence to basic customary principles and beliefs despite the influence and imposition of a minefield of statutes and policy based almost exclusively on English law that has sometimes been deliberately targeted at the destruction of foundations of customary Māori law. (G Asher, 2003).

There is no evidence that any customary rights that may be relevant to forest harvesting are disregarded. The results of recent studies (S Rotorangi, 2012) suggest that the Maori landowners' overall view of forestry is more critically influenced by political frameworks than by forest management techniques. The structures of governance and tenure and the legislation affecting the land are viewed as complicated and constraining. However, after decades of experience, Māori have successfully incorporated plantation forests into their sense of people and place. Despite difficulties and disappointments, the land use of forestry and forest regimes are, overall, viewed favorably by the landowners, consistent with environmental considerations and their culture and values.

Areas of exotic forest were established on Maori land in the 1950's and 1960's by the Crown, represented by the NZ Forest Service, and by some private companies. The Crown and investors paid an annual lease for the land and promised a share of the returns on harvest. Describing one example, Asher noted that protection of significant spiritual, cultural and historical aspects within the forest estates included the identification, demarcation and mapping of all culturally significant sites and features by tribal elders, and steps taken to protect these sites and the information pertaining to their location and significance. This has been undertaken by use of the New Zealand Archaeological Association site recording system. Sites and features are recorded within the GIS database, which is linked to stand record system for easy identification during forestry operations. There was recording of the

history of tribal settlements and land occupation. A particular feature was the establishment of protocols to ensure that contractors are aware of the existence of sacred sites prior to harvesting and replanting and steps taken to enhance their comfort and safety. In this case there was provision of exclusive access for landowners, spouses and their descendants to hunt, fish, extract plants and maintain contact with their ancestral taonga and sacred places.

When the NZ Forest Service was disbanded in 1987, either the Maori tribe or private forestry companies were able to purchase the cutting rights to the forests, with the land remaining under Maori control. Other State forests, established on land purchased from private individuals, have had the land made available to Maori tribes which could demonstrate and prove a close association with that land at the time of the Treaty signing (1840). A process or processes similar to those described by Asher ensured that customary rights were not compromised.

For most indigenous forests on Maori land, the requirement for a SFMP is not regarded as detrimental to customary rights. However, for Silna owners, the SFMP process imposed conditions on what was a compensation payment, and so 9,000 ha of those lands was exempt from the SFMP requirement but the export ban on indigenous forest produce remained.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.15.6. Risk designation and specification

Low risk

1.15.7. Control measures and verifiers

N/A

TRADE AND TRANSPORT

1.16. Classification of species, quantities, qualities

Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).

1.16.1. Applicable laws and regulations

- Forests Act (1949). Public Act 1949 Number 19. Public Act 1993 No 7. (for indigenous timber milled from private land). Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM256611.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1

1.16.2. Legal authority

- Ministry for Primary Industries (MPI)

1.16.3. Legally required documents or records

- Approved Sustainable Forest Management Plan, showing species and volumes able to be harvested in 1 particular period. Justified by inventory.
- Harvest records
- Log dockets
- Sawmill records

1.16.4. Sources of information

Government sources

- archive.mpi.govt.nz (2017). *Indigenous Forestry* (Online). Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 22 February 2017].

Non-Government sources

- fglt.org.nz (2015). *Report December 2015* (Online). Available at: http://www.fglt.org.nz/images/contentimages/report_december_2015.pdf [Accessed on 22 February 2017].
- illegal-logging.info (2016). *New Zealand* (Online). Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 21 February 2017].
- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* (Online). Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].

1.16.5. Risk determination

Overview of Legal Requirements

A landowner with a SFMP on natural forests must provide an annual summary of the volumes harvested by species, however there is no requirement on how to classify the species and quality of the timber. No levy is to be paid.

Owners of exotic forests are charged a Levy, set under the Commodity Levies (Harvested Wood Material) Order #2013, dated 18 November 2013, at the rate of 27 cents per ton. This is levied at the point where logs are being assembled prior to the next stage of wood use - ie at a mill or port. The charge is filed by the forest owner and the levy can be charged back to the forest owner. All products from exotic forests are covered. There is no differentiation based on species - all exotic species are levied.

Species are defined at the point of sale. As there is no difference in the levy paid, species may be listed accurately. The levy, and most domestic sawlog sales, are on the basis of weight as recorded by registered weigh bridge. The weight figure from the weighbridge is used by the Levy Management company to invoice the owner of the logs. That same figure is used as the basis of sale between the forest owner and the processor or exporter. And the same figure is used by the transport operator to invoice the forest owner for log transport, and by the harvesting contractor to invoice for harvesting costs.

Indigenous forests/wood is excluded from payment of levies. There are only requirements on the classification of species and volumes. The harvesting has to meet the prescribed annual report, and the information is drawn from waybill over a certified waybridge. If there is a registered portable sawmill then there will be specific measurement using a volume table for each species. This is checked by the MPI officials and there are no reports and issues of concerns raised.

Description of Risk

The risk of incorrect reporting of plantation species and volumes is low as there is little or no evidence of this occurring, and measurement and sales systems are closely interlinked.

MPI audits the harvesting, milling and export of native timber. Sawmills processing native timber must be registered with MPI, and operators are required to provide regular production records. This ensures that New Zealand has a robust, workable regulatory system which supplies assurances to consumers around legality of source.

In addition, over 60 percent of the native timber produced in New Zealand has secured international recognition and certification by the Forest Stewardship Council.

See file: <///F:/Users/User/Downloads/2013-Indigenous-Forestry-on-Private-Land.pdf>

And file: [///F:/Users/User/Downloads/2013-indigenous-forestry-FS-web%20\(2\).pdf](///F:/Users/User/Downloads/2013-indigenous-forestry-FS-web%20(2).pdf)

The rate of levy collection is in accordance with previously reported exotic forest harvest levels. The Forest Growers Levy Trust Board regularly reports on volumes levied and the dollars invoiced, and these reports are publicly available.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.16.6. Risk designation and specification

Low risk

1.16.7. Control measures and verifiers

N/A

1.17. Trade and transport

All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.

1.17.1. Applicable laws and regulations

- Forests Act (1949). Public Act 1949 Number 19. Public Act 1993 No 7. (for indigenous timber milled from private land). Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM256611.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1

1.17.2. Legal authority

- Ministry for Primary Industries (MPI)

1.17.3. Legally required documents or records

- Trading permits are not required for domestic logs.
- Export permits are required for indigenous timbers, which must be surplus to domestic requirements.
- Log dockets for each truck load of logs showing forest, contractor and weight from a certified weighbridge.

1.17.4. Sources of information

Government sources

- archive.mpi.govt.nz (2017). *Indigenous Forestry* [Online] Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/indigenous-forestry> [Accessed on 22 February 2017].

Non-Government sources

- illegal-logging.info (2016). *New Zealand* [Online] Available at: <http://www.illegal-logging.info/regions/new-zealand> [Accessed on 21 February 2017].

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* [Online] Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].

1.17.5. Risk determination

Overview of Legal Requirements

Indigenous logs must have documentation showing their source. So the log docket that accompany them will show the forest and landowner's name. The forest owner must have a legal sales agreement with the owner of the sawmill registered to saw indigenous timbers. No export of indigenous timber is permitted under the Forests Act - special permits are required. MPI staff check documentation against harvest plans as part of their detailed checks of the annual reports from each of the SFMP's, and the annual returns of each of the sawmills permitted to mill indigenous logs.

Truckloads of exotic logs must be accompanied by a docket generated by the forest owner or manager, showing source data (forest name, compartment, contractor) and weight of the load. Because plantation forestry in NZ is a self-regulated industry, forestry authorities do not check this documentation, but transport authorities may check to see that the trucks are not exceeding weight limitations for the roads. The final check is between forest owner and the log buyer, and the same log docket documentation is used to pay the logging contractor and the transport operator.

Description of Risk

Indigenous logs must be sawn by registered sawmills, as they must be sold before they can be transported. There has been no recent evidence of non-compliance.

There are no restrictions on the production and sale of logs & other produce from exotic forests. Logs transported from forests must meet the legal requirements for weight and length for transport on public roads.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.17.6. Risk designation and specification

Low risk

1.17.7. Control measures and verifiers

N/A

1.18. Offshore trading and transfer pricing

Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore

trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.

1.18.1. Applicable laws and regulations

- Forests Act (1949). Public Act 1949 Number 19. Public Act 1993 No 7. (for indigenous timber milled from private land) Available at: http://www.legislation.govt.nz/act/public/1949/0019/latest/DLM255626.html?search=qs_act_Forests+Amendment+Act_resel_25_h&p=1&sr=1
- Income Tax Act (2007). Public Act 2007 No 97. Available at: http://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1512301.html?search=qs_act_GST_resel_25_h&p=1&sr=1

1.18.2. Legal authority

- Ministry for Primary Industries (MPI)
- NZ Customs,
- Inland revenue Dept

1.18.3. Legally required documents or records

- Export permit for indigenous timber
- NB. Non-processed indigenous logs may not be exported
- Export permit for Swamp Kauri products

1.18.4. Sources of information

Government sources

- mpi.govt.nz (N.Y.). *Swamp Kauri* [Online]. Available at: <https://mpi.govt.nz/growing-and-producing/forestry/indigenous-forestry/swamp-kauri/> [Accessed on 22 February 2017].
- mpi.govt.nz (N.Y.). *Forestry* [Online]. Available at: <http://www.mpi.govt.nz/news-and-resources/statistics-and-forecasting/forestry/> [Accessed on 22 February 2017].

Non-Government sources

- Private forestry consulting firm databases (not available to non-clients)
- World Bank 2016. *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington DC: World Bank Group
- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* [Online]. Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].

1.18.5. Risk determination

Overview of Legal Requirements

No indigenous timber may be exported unless the domestic market for that product is satisfied. MPI consults the sector to determine the level of domestic demand. However, because the level of production of indigenous timber is so low (about 24,000 m³) this is seldom an issue. No unprocessed indigenous logs may be exported.

No restrictions, beyond international trade agreements, on the export of exotic logs and sawn timber.

Description of Risk

There are few, if any, forest owning companies directly involved in the export of exotic logs. Usually, the logs are sold to a local agent who collects boat loads of logs for sale to an international buyer. Thus there can be no false pricing as all transactions are transparent.

Domestically, logs are sold to independent sawmills at market prices. This is because there is a market within New Zealand for exotic forests, both mature and immature. The NZ Institute of Forestry has published a method of valuing forests that has been accepted by the IRD. The valuation method requires and relies on up-to-date data on log prices. MPI surveys the processing industry quarterly to obtain log price information; a 'best fit' is applied by survey respondents to align company log grade specification with the generic specifications. This information is published on the MPI web site. Individual forest consulting firms also maintain their own private databases on log prices. Log prices for both domestic and export are publicly known.

The IRD is able to run checks on all businesses, and there is a large audit department within IRD to carry out both regular- and spot-audits of all businesses. There are periodic articles in news media about court cases over tax issues. The World Bank's Doing Business rates NZ highly in terms of ease of paying tax.

Low risk.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.18.6. Risk designation and specification

Low risk

1.18.7. Control measures and verifiers

N/A

1.19. Custom regulations

Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).

1.19.1. Applicable laws and regulations

- Customs and Excise Act 1996 Public Act 1996 No 27. Particularly Parts 3, 4 and 5. Available at: <http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM377337.html>

1.19.2. Legal authority

- NZ Customs Service,
- Ministry for Primary Industries (MPI)

1.19.3. Legally required documents or records

- Customs clearance
- Export permit from MPI

1.19.4. Sources of information

Government sources

- mpi.govt.nz (N.Y.). *Swamp Kauri* [Online]. Available at: <https://mpi.govt.nz/growing-and-producing/forestry/indigenous-forestry/swamp-kauri/> [Accessed on 22 February 2017]

Non-Government sources

- illegal-logging.info (2013). *The Legality of New Zealand's Forest Products* [Online]. Available at: <https://www.illegal-logging.info/content/legality-new-zealand%E2%80%99s-forest-products> [Accessed on 21 February 2017].

1.19.5. Risk determination

Overview of Legal Requirements

Any exporter of indigenous timber is required to fill in MPI form ITE1. See file: <https://www.mpi.govt.nz/exporting/forest-products/wood-and-wood-products/forms-and-templates/>

The information required is to ensure the export meets Section 67C of the Forests Act 1949; specifically that the timber has been taken from an area subject to, and managed in accordance with, a registered sustainable forest management plan or permit. It may be any indigenous timber product in its final shape ready to be installed or used without further processing. Indigenous timber that is dressed or rough sawn timber (including veneer), mouldings, paneling, furniture blanks, joinery blanks, building blanks or similar items may not be exported. Exports of logs and woodchips of all indigenous species are prohibited.

There is no authority required to export exotic timber or logs, apart from the phytosanitary requirements of the importing country.

Description of Risk

There is no risk. Without the export certificate, no indigenous forest produce may be exported. There are constant checks by MPI and Customs staff to ensure that all goods exported are properly checked and have the correct documentation before they can be loaded on the boat.

Risk Conclusion

This indicator has been evaluated as low risk. Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.19.6. Risk designation and specification

Low risk

1.19.7. Control measures and verifiers

N/A

1.20. CITES

CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).

1.20.1. Applicable laws and regulations

- Conservation Act (1987). Public Act 1987 No 65. Available at: [http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act Conservation resel 25 h&p=1&sr=1](http://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html?search=qs_act+Conservation+resel+25+h&p=1&sr=1)

1.20.2. Legal authority

- Department of Conservation,
- NZ Customs

1.20.3. Legally required documents or records

- Export permit for CITES material. See <http://www.doc.govt.nz/about-us/international-agreements/endangered-species/permits/>

1.20.4. Sources of information

Government sources

- doc.govt.nz (N.Y.). *CITES Species* [Online]. Available at: <http://www.doc.govt.nz/about-us/international-agreements/endangered-species/cites-species/> [Accessed on 22 February 2017].
- doc.govt.nz (N.Y.). *Cites permits* [Online]. Available at: <http://www.doc.govt.nz/about-us/international-agreements/endangered-species/permits/> [Accessed on 22 February 2017].
- customs.govt.nz (2012). *Prohibited Exports* [Online]. Available at: <http://www.customs.govt.nz/outprivate/sendingitems/prohibitedexports/Pages/default.aspx?s=3> [Accessed on 22 February 2017].

- archive.mpi.govt.nz (2016). *Montreal Process* [Online]. Available at: <http://archive.mpi.govt.nz/forestry/forestry-in-nz/international-forestry/montreal-process> [Accessed on 21 February 2017].

Non-Government sources

- wildlife.org.nz (2007). *CITES* [Online]. Available at: <http://www.wildlife.org.nz/conservation/cites/default.htm> [Accessed on 22 February 2017].
- CITES Checklist (NY): *New Zealand. Plantae*. [Online]. Available at: http://checklist.cites.org/#/en/search/country_ids%5B%5D=179&output_layout=alphabetical&level_of_listing=0&show_synonyms=1&show_author=1&show_english=1&show_spanish=1&show_french=1&scientific_name=Plantae&page=1&per_page=20

1.20.5. Risk determination

Overview of Legal Requirements

No CITES material may be exported without specific approval from DOC. No timber species from NZ are on the CITES list. The tree ferns listed are used domestically for ornamental and landscaping uses.

Description of Risk

No timber species from NZ are on the CITES list. Tree ferns are listed but there is no evidence of exports of these species, nor of attempts to export.

NZ is a member of CITES. There is no evidence of widespread trade in illegal fauna or flora.

The NZ Customs service provides border control security.

NZ is a signatory to the Convention on Biological Diversity.

NZ is a member of the International Union for Conservation of Nature (IUCN) and the Montreal Process Criteria and Indicators Working Group (MPCI).

Risk Conclusion

This indicator has been evaluated as low risk as no woody species for NZ is on the CITES list.

Identified laws are upheld. Cases where law/regulations are violated are efficiently followed up via preventive actions taken by the authorities and/or by the relevant entities.

1.20.6. Risk designation and specification

Low risk

1.20.7. Control measures and verifiers

N/A

1.21. Legislation requiring due diligence/due care procedures

Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.

1.21.1. Applicable laws and regulations

N/A

1.21.2. Legal authority

N/A

1.21.3. Legally required documents or records

N/A

1.21.4. Sources of information

N/A

1.21.5. Risk determination

N/A

1.21.6. Risk designation and specification

N/A

1.21.7. Control measures and verifiers

N/A

Annex I. Timber source types

The table **Timber Source Types in New Zealand** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.

TIMBER SOURCE TYPES IN New Zealand						
Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural forest	National	Permanent conservation estate	Crown	No Management -natural processes	Not applicable	Ecosystem Sources. No Harvesting is allowed
		Private land	Individual property parcels	Managed by private landowners or their contractors	Sustainable Forest Management Plan (SFMP)	Sustainable harvest, subject to approved Sustainable Forest Management Plan (SFMP) on 84,000 ha. Species are Podocarps and Beech (Nothofagus spp)
		Native land, Maori or otherwise	Tribal	Managed by contractors on behalf of Iwi	None, or if under Silna Act, Forest Management Plans, specific harvest plans	Sustainable harvest where SFMP's are in place. Species are Podocarps, Beech (Nothofagus spp)
Plantation forest	National	Exotic forest	Private or Tribal (ex-crown land)	Managed by Crown Forestry, through	Forest Management Plans, or Harvest Plans	Clear fell with replanting. Species are Radiata pine, Douglas fir, Eucalypt spp

		Exotic Forest		specific contracts	Forest Management Plans, or Harvest Plans	Clear fell with replanting. Species are Radiata pine, Douglas fir, Eucalypt spp
Plantation Forest		Exotic Forest	Central government or local council	Managed by Crown Forestry through specific contracts, or by each council	Forest Management Plans, or Harvest Plans	Clear fell with replanting. Species are Radiata pine, Douglas fir, Eucalypt spp
		Exotic Forest			Forest Management Plans, or Harvest Plans	Clear fell with replanting. Species are Radiata pine, Douglas fir, Eucalypt spp



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About

Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

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