

Information document:

New Zealand Emissions Trading Scheme

Draft Forestry Allocation Plan

and

Deforestation Exemption Policies for Pre-1990 Forest Land

11 October 2008

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This document has two parts – the first is an information overview document. This has no statutory or regulatory effect and is intended to provide guidance on the Draft Forestry Allocation Plan. The second part is the Draft Forestry Allocation Plan, which is a formal statutory instrument.

The information in the first part of the document should not be relied upon as a substitute for the wording of the Climate Change Response Act 2002. While every effort has been made to ensure the information in this publication is accurate, the Crown does not accept any responsibility or liability for error of fact, omission, interpretation or opinion that may be present, nor for the consequences of any decisions based on this information. Individuals should seek advice from a qualified professional/expert where they require more detailed advice for their individual specific situation or, where relevant, seek formal legal advice.

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EXECUTIVE SUMMARY

This document provides information about the pre-1990 forest land allocation policy and the pre-1990 forest exemption policies under the New Zealand Emissions Trading Scheme (NZ ETS). It is designed to help pre-1990 forest landowners decide whether to apply for either an allocation of New Zealand Units¹ (NZUs) or an exemption from the NZ ETS. It elaborates on the information in the Draft Forestry Allocation Plan (which is attached and is being consulted on).

The Kyoto Protocol creates a distinction between forests established before and after 1 January 1990. The NZ ETS maintains that distinction and therefore includes different rules for pre-1990 and post-1989 forest land.

Deforestation of more than 2 ha of pre-1990 forest land during 2008-2012 (and any subsequent 5 year period) is automatically included in the NZ ETS, unless an exemption is obtained. To offset some of the impact of these deforestation requirements, 55 million NZUs will be allocated to pre-1990 forest landowners.

Post-1989 forest land does not have the same deforestation requirements, and landowners can choose whether or not to join the NZ ETS. Thus, they do not receive an allocation of NZUs free of charge. If they join, they are able to earn NZUs (credits) for additional carbon sequestered, and are liable for reductions in forest carbon stock.

The definition of pre-1990 forest land under the Climate Change Response Act 2002 (the Act) refers only to exotic forest species. *Indigenous* forests do not receive an allocation as they are not subject to the deforestation provisions of the NZ ETS. Therefore this information document and attached Draft Forestry Allocation Plan do not apply to owners of pre-1990 indigenous forest land.

If you are an owner of exotic pre-1990 forest land, one of the key decisions you need to make in the first half of 2009, is whether to:

- apply for an allocation of NZUs free of charge; or
- if you are eligible, apply to have your land permanently exempt from the NZ ETS (under the "50 ha threshold exemption" or the "tree weed exemption").

The deadline for submissions on the Draft Forestry Allocation Plan is 28 February 2009.

If you would like more in-depth background information relating to the forestry elements of the Kyoto Protocol, or the NZ ETS, please refer to the following website www.maf.govt.nz/sustainable-forestry. It is recommended that you also refer to a supplementary guidance document – titled *Forestry in the Emissions Trading Scheme Guide* – available from the above website.

¹ The primary unit of trade for the New Zealand ETS is the New Zealand Unit (NZU), which is the unit created and distributed by the Government. One NZU is equivalent to one tonne of carbon dioxide equivalent emissions.

INTRODUCTION

The Purpose of this Document

This document provides information for pre-1990 forest landowners about the allocation policy and the forest exemption policy under the NZ ETS. It is designed to help you to decide whether to apply for either an allocation of New Zealand Units (NZUs) or an exemption.

This document has two parts – the first is an information overview, which is intended to provide guidance on the Draft Forestry Allocation Plan (and has no statutory or regulatory effect).

The second part – the Draft Forestry Allocation Plan – is a statutory document written in a legal style. It includes only the information required under the Climate Change Response Act 2002 (the Act). The Draft Forestry Allocation Plan also includes important details which are required, but not prescribed, in the Act. Feedback is sought on these aspects of the Draft Forestry Allocation Plan.

If you have questions about the pre-1990 Forestry Allocation Plan or deforestation exemptions from the NZ ETS, you can phone the Climate Change contact centre on 0800 CLIMATE (254 628), visit the Ministry of Agriculture and Forestry's (MAF) website at www.maf.govt.nz/sustainable-forestry or seek independent advice from a forestry consultant or other expert.

SUBMISSIONS PROCESS

The Government has invited submissions on the Draft Forestry Allocation Plan via public notice. A copy of the public notice is attached in **Annex 1**. You can make submissions on the form attached to the Draft Forestry Allocation Plan. Submissions can be made by email to FAPsubmissions@maf.govt.nz or sent to FAP Submissions, Ministry of Agriculture and Forestry, PO Box 2526, Wellington 6140. Submissions close on **28 February 2009**.

Following the public submission period, the Director-General of MAF (acting under delegated authority) will prepare a report on the submissions for the Minister Responsible for Climate Change Issues. The Minister will consider that report and may change the Draft Forestry Allocation Plan as he or she considers fit. The Minister will then recommend to the Governor-General that a finalised Forestry Allocation Plan be issued by Order in Council.

You should note that some of the details included in the Draft Forestry Allocation Plan, such as the overall level of NZUs to be allocated and the number of NZUs to be given to each class of landowner, are prescribed by the Act (see section 71 of the Act, which is reproduced in **Annex 2**). Those fixed details are identified in this document and on the submission form and cannot be changed by the Minister, regardless of the outcome of this submissions process.

CONSULTATION PROCESS

Public Workshops

Public workshops about forestry and the NZ ETS will be held around the country early next year. The workshops will include details of the proposed approach to forestry allocation, and specifically the key contents of the Draft Forestry Allocation Plan. They will also provide information on exemptions under the NZ ETS, and other aspects of the scheme relevant to forestry. Once dates for workshops are finalised, information on them will be posted on the MAF website. Please refer to www.maf.govt.nz/sustainable-forestry or phone the Climate Change contact centre on 0800 CLIMATE (254 628).

Copies of this Document

Additional copies of this document can be obtained from:

- the MAF and MfE websites (via www.maf.govt.nz/sustainable-forestry and www.mfe.govt.nz, or www.climatechange.govt.nz);
- MAF's Climate Change contact centre on **0800 CLIMATE** (254 628) or by emailing ets@maf.govt.nz;
- the head office of the Ministry of Agriculture and Forestry, 25 The Terrace Wellington (tel 04 984 0100) or the head office of the Ministry for the Environment, 23 Kate Sheppard Place Wellington (tel 04 439 7400).

If you have specific questions, please contact MAF's Climate Change Contact Centre on **0800 CLIMATE** (254 628) or ets@maf.govt.nz, or contact the head office of the Ministry of Agriculture and Forestry.

CHOOSING AN ALLOCATION OR AN EXEMPTION

If you own pre-1990 forest land, one of the key decisions you need to make in the next six months is whether to:

- apply for an allocation of NZUs free of charge; or
- if you are eligible, apply to have your land permanently exempt from the NZ ETS (under the “50 ha threshold exemption” or the “tree weed exemption”).

You are not obliged to apply for either an allocation of NZUs or an exemption but it may be in your financial interests to do so. The Government expects most, if not all, eligible landowners to apply for one of the two options (deadlines are discussed later in this document).

The following text box illustrates the value of applying for either an exemption or allocation:

Example of the value of an exemption

Deforestation of more than 2 ha of any pre-1990 forest land between 1 January 2008 and 31 December 2012 (and any subsequent 5 year period) is automatically subject to the NZ ETS, unless an exemption is obtained. By way of example, a typical hectare of mature *Pinus radiata* forest contains around 800 tonnes of carbon dioxide². An exemption from the NZ ETS of, say, 40 ha of such pre-1990 forest land that the owner wishes to deforest, will save the landowner up to \$800,000 in NZ ETS deforestation liabilities (assuming a price of carbon of \$25 per tonne). The value of this to the landowner is the total profit they would make on deforesting the 40 ha, without charge, less the benefit they forego by not applying for an allocation of units.

Examples of the value of an allocation

A successful applicant for an allocation of NZUs who bought their land after October 2002 would receive 39 NZUs per hectare. If that applicant owned 500 ha of eligible land they would receive 19,500 NZUs (worth \$487,500 assuming an average price of \$25 per unit).

An owner that bought the same area of eligible land prior to 1 November 2002 would receive a considerably higher number of units. The actual number of units per hectare is not certain at this stage (see section ‘*Quantity of NZUs to be Allocated to Each Landowner*’), but is estimated to be in the order of 60 units per hectare (equivalent to 30,000 units with a value of \$750,000).

If you wish to apply, **you must choose** between the two options - you cannot receive both an allocation of NZUs and an exemption **for the same area of land**. However, in some instances you will be able to apply for an exemption for parts of your land holdings and a free allocation for other parts. For example:

- If you have bought land that is eligible for the 50 ha exemption after 1 September 2007 and also own other forest land, you can apply for the eligible parts of your forest landholdings to be exempt and apply for the remaining parts to receive an allocation; or
- If you own land that is eligible for the 50 ha exemption, you can apply for part of it to be exempt and part of it to receive an allocation.

² Actual deforestation liabilities will differ depending on the region in which a forest is located, the tree species and the age of the trees. You can determine the actual deforestation liability you would face if you deforested your land by referring to the Climate Change (Forestry Sector) Regulations 2008 available from MAF and on MAF’s website at www.maf.govt.nz/sustainable-forestry.

You have a limited time to make this decision and submit the relevant application. Applications for an exemption under the 50 ha threshold must be submitted by **30 June 2009** and applications for an allocation (once called for) are likely to be required by **(tentatively) 31 July 2009**. You will only be able to submit a late **exemption** application at the discretion of the Director-General of MAF.

You will not have another chance to apply for the 50 ha threshold exemption after 30 June 2009 or an allocation after (tentatively) 31 July 2009. You will also be unable to change your mind at a later date about which option you want to apply for. This applies also for the tree weed exemption.

Applications for tree weed exemptions will be subject to a tender process, announced via public notice. The process is currently being developed and further information will be posted on MAF's website later in the year.

Given the financial importance of this decision for most owners of pre-1990 forest land, and the deadlines that have been set, the Government is encouraging all pre-1990 landowners to carefully consider their decision as soon as possible.

BACKGROUND

Forestry in the NZ ETS

The NZ ETS is New Zealand's main price-based means of reducing greenhouse gas emissions and encouraging forest carbon sinks. Forestry is New Zealand's largest potential carbon sink.

The NZ ETS has now commenced with the forestry sector being subject to the Act from 1 January 2008.

The Kyoto Protocol creates a distinction between forests established before and after 1 January 1990. The NZ ETS maintains that distinction and therefore includes different rules for pre-1990 and post-1989 forest.

Pre-1990 forests:

Deforestation of more than 2 ha of any pre-1990 forest land in the 5 year period between 1 January 2008 and 31 December 2012 (and any subsequent 5 year period) is automatically included in the NZ ETS, unless an exemption is obtained. In most cases, landowners are responsible for any emissions that occur as a result of the conversion of forested land to non-forest uses, such as farmland.

Pre-1990 forest landowners will not be responsible for the emissions that occur when a forest is harvested and then replanted or allowed to regenerate. Similarly, they will not be eligible to receive credits if they increase the levels of carbon stored in their forests. They will however be eligible to apply for an allocation of NZUs free of charge, as explained later in this document.

Note that the term "Pre-1990 forest land" specifically relates to exotic forest species only. Unlike post-1989 forest land, indigenous species are not included under this definition, therefore if you are an owner of indigenous forest, you are not eligible to apply for either an exemption or allocation under the legislation or the Forestry Allocation Plan process.

Post-1989 forests (exotic and indigenous):

Owners of land that became forest *on or after* 1 January 1990 (known as post-1989 forest land) can join the NZ ETS if they wish, and will gain credits and incur liabilities for carbon changes in their forests. This applies to both exotic and indigenous post-1989 forest land. Where they choose to join, landowners will be entitled to receive one NZU for each tonne of carbon dioxide built up in their forests after 1 January 2008, and in turn will be required to surrender a unit for each tonne released when harvesting or as a result of any event such as fire or windthrow. The NZ ETS (like the Kyoto Protocol) does not recognise carbon stock increases or decreases that occurred prior to 1 January 2008 (the start of the Kyoto Protocol's first commitment period).

Where post-1989 forest landowners choose not to join the NZ ETS, the Crown will retain all credits and liabilities for these forests, including for deforestation.

Unlike pre-1990 forest landowners, these post-1989 forests are not eligible to receive a free allocation of NZUs. This is because, unlike pre-1990 forests, participation is voluntary, and they are able to earn NZUs for carbon stock increases.

FORESTRY ALLOCATION ISSUES

Total Quantity of NZUs to be Allocated

As required under the Act, the Draft Forestry Allocation Plan provides for a total of **55 million NZUs** for allocation. The Act specifies that the total number of NZUs allocated must be reduced by one NZU for each tonne of emissions the Minister estimates is likely to result from:

- deforestation on land that has been exempted; or
- deforestation by each forest landowner of 2 ha or less in each 5 year period.

More detail on the pre-1990 forest exemptions, and how to apply, is provided in the section of this report called *Outline of NZ ETS Exemptions for Pre-1990 Forest Land*.

Eligibility to Receive an Allocation of NZUs

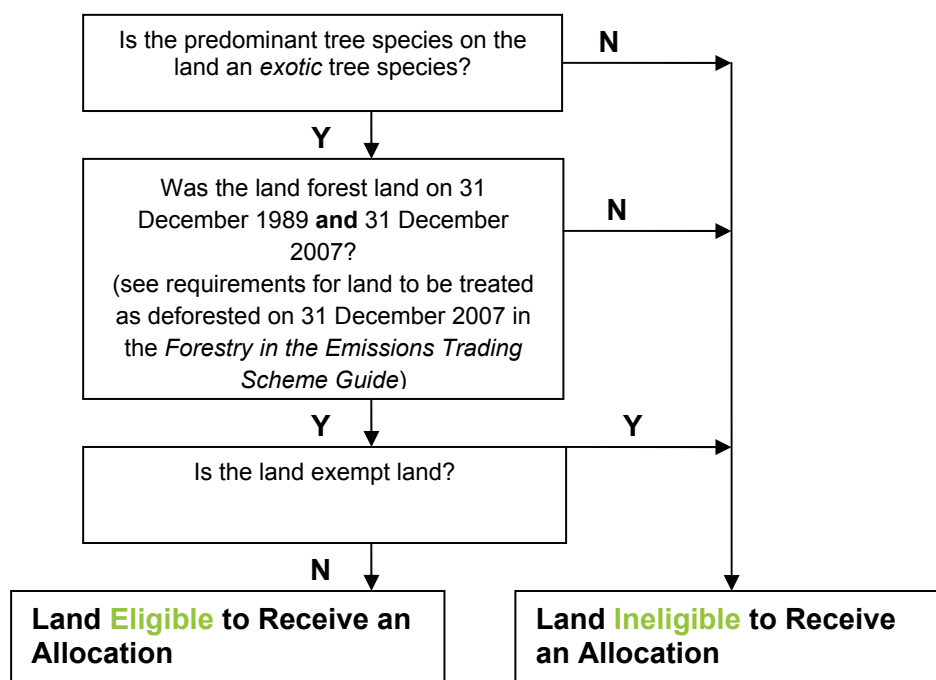
Land Eligible to Receive an Allocation of NZUs

Unless it has been declared exempt under the 50 ha threshold or tree weed exemption, all owners of exotic pre-1990 forest land will be eligible to receive an allocation of NZUs free of charge.

The number of NZUs provided per hectare will vary depending on the date that the land was purchased or otherwise transferred, and whether it is Crown forest licence land that has been, or will be, transferred to an iwi under a Treaty of Waitangi Settlement on or after 1 January 2008.

To be eligible to receive an allocation of NZUs, the land in question must meet the definition of pre-1990 forest land under the Act (see **Annex 3**). The interaction of the different definitions and rules for determining whether an area of land is eligible to receive an allocation is shown in **Figure 1** below.

Figure 1 – Land eligibility for an allocation



Any owner that is not clear whether their land is eligible to receive an allocation can contact MAF's Climate Change contact centre on **0800 CLIMATE** (254 628) or seek independent advice from a forestry consultant or other expert.

Landowner **Eligible to Receive an Allocation**

Pre-1990 forest land is relatively frequently bought and sold. Rules are therefore needed to determine **who** is eligible to apply for and receive NZUs allocated under the Forestry Allocation Plan where the land in question has changed ownership.

These rules vary depending on whether the land has been deforested between 1 January 2008 and the date that the finalised Forestry Allocation Plan is issued by Order in Council (the date the Plan is issued is expected to occur in early to mid-2009):

- Where the land in question remains pre-1990 forest land on the date the Forestry Allocation Plan is issued, the landowner on that date is responsible for submitting the application and entitled to receive any NZUs allocated. That landowner will also have the choice of applying for the land to be exempted from the NZ ETS, should it be eligible. The landowner will retain that right and responsibility even if they sell the land in question between the date the Forestry Allocation Plan is issued and the closing date for allocation or exemption applications.
- Where the land in question has been deforested at some point between 1 January 2008 and the date the Forestry Allocation Plan is issued, the landowner at the time that the deforestation occurred is responsible for submitting the allocation or exemption application and is entitled to receive any NZUs allocated.

These rules will apply even where a landowner's obligations under the Act have been transferred to a third party (such as a forestry right holder) that has the right to decide to deforest. The landowner will remain eligible to receive any NZUs even where this clause applies, because it is the landowner that will bear the impact of the deforestation requirements of the NZ ETS on land value.

Quantity of NZUs to be Allocated to Each Landowner

As required under the Act, the total pool of 55 million NZUs will be allocated to the following categories of landowners in the following amounts:

1. **18 NZUs** for each hectare of eligible Crown forest licence land that was, or will be, transferred to an iwi under a Treaty of Waitangi settlement after 1 January 2008.
2. **39 NZUs** for each hectare of eligible land that was:
 - transferred to an eligible landowner *on or after* 1 November 2002;
 - transferred to a body corporate prior to 1 November 2002 but where the changes in ownership since that date are greater than 51% as described in the “*Changes in Shareholdings*” section below.
3. All of the remaining NZUs from the 55 million forestry pool (i.e. those not allocated to landowners in I and II above, or set aside to meet the cost of emissions from the deforestation of exempt land) will be distributed equally on a per hectare basis across all other eligible landowners. The allocation is expected to be **approximately 60 NZUs** per hectare. However this number cannot be confirmed until the Minister releases the Final Forestry Allocation Determination in late 2009. See below for more information about the “Draft Determination” and “Final Determination” processes.

The landowners that will receive the higher level of allocation under III above are:

- any body corporate that was transferred land prior to 1 November 2002 **and** where the changes in ownership since that date are 51% or less, as described in the “*Changes in Shareholdings*” section below; or
- any other eligible landowner that was transferred eligible land prior to 1 November 2002.

The scheme provides a higher level of allocation to these landowners because the Government first announced its intention to introduce deforestation controls in October 2002. Owners that acquired eligible land after that announcement could reasonably have been expected to take the impact of those future deforestation controls into account when determining the price they paid for the land. This rule only applies to land that has been purchased; other forms of transfer, such as under a Will, are not affected.

The Government intends to use the “settlement date” agreed by the seller and purchaser of a piece of pre-1990 forest land as the date that ownership transferred. This is effectively the date that a buyer paid the remaining balance to the seller and all documents enabling transfer of the property were exchanged.

This settlement date may differ slightly from the registration date shown on your computer freehold register (title). If you are unclear of the exact date that you settled, but believe that it may be close to 1 November 2002, you may need to contact the lawyer who acted on your behalf during the transaction.

As required by the Act, one exception will be made in applying the cut-off purchase date of 1 November 2002: namely, the Crown forest licence land transferred under the Te Uri o Hau Claims Settlement Act 2002. This land will receive the higher allocation of an estimated 60 NZUs per hectare in recognition that the negotiations underpinning the settlement, and related valuation of the land, occurred well before 1 November 2002.

Changes in Shareholdings

Where eligible forest land was bought prior to 1 November 2002 by a body corporate (such as a company), it will only be eligible to receive the higher rate of allocation of an estimated 60 units per hectare if:

- ownership of the body corporate has changed by 51% or less between 1 November 2002 and the date the Allocation Plan is issued. Where there is a lower level of commonality of ownership, the company will be allocated 39 units per hectare.

The principal reason for not providing the higher level of allocation for body corporates whose ownership changed by more than 51% is that any shareholder that purchased shares after that date could reasonably have been expected to recognise the likelihood of deforestation controls being introduced, and taken some consideration of this when determining the price they were willing to pay for them.

The 51% ownership change threshold mirrors existing tax laws that require 49% commonality of shareholding for the carry forward of tax losses.

Note that this rule only applies to body corporates (such as companies) and not to jointly owned land (including jointly owned Maori land).

When will I know how many NZUs I will receive?

After the Government issues the finalised Forestry Allocation Plan and receives applications for allocations, the Minister will create a *Draft Determination*. The Draft Determination will identify each eligible landowner and the total number of NZUs each landowner will be allocated. Eligible landowners, and anyone else who applied, will have 20 working days to identify any errors, after which the Minister will publish a Final Determination and arrange for the transfer of the NZUs. More details on the full process for finalising the Forestry Allocation Plan, and subsequently making the Draft and Final Determinations under it, are set out in the “*Application and Determination Process and Timelines*” section below.

If you already own the land in question, and the land is eligible for an allocation of either 18 or 39 NZUs per hectare under the rules outlined above, it should be straightforward for you to calculate how many NZUs you will receive. However, you should not count on receiving those NZUs until your eligibility and land area have been confirmed.

If your land is eligible for the higher allocation of an estimated 60 NZUs per hectare, you will not know *exactly* how many NZUs you will receive per hectare or in total, until the Minister releases the Final Determination in late-2009. This delay is unavoidable, as the Government cannot calculate the number of NZUs per hectare until it has assessed how many hectares of exempt land are likely to be deforested and processed applications for allocations of 18 and 39 units.

Post-Dating of Some NZUs

The first 21 million of the 55 million unit allocation pool, which relate to the period 1 January 2008 to 31 December 2012, will be able to be immediately surrendered to cover emissions under the NZ ETS. In contrast, the Act prevents the surrender of the 34 million units (relating to the period 1 January 2013 to 31 December 2021) before 1 January 2013 and allows the Forestry Allocation Plan to specify dates after 1 January 2013 before which some or all of the 34 million New Zealand Units cannot be surrendered or converted³.

With the exception of a small pool of NZUs for managing the impact of any errors (see “*Transfer of 95% of NZUs in Year One*” section) the Minister has chosen to allocate and transfer the majority of the 55 million NZUs on the same date in late 2009 or early 2010. However, the 34 million NZUs relating to the period after 2013 will be “post-dated”.

³ NZUs can only be converted for sale overseas, and this entails changing them into Assigned Amount NZUs (AAUs) which must be deposited straight into the overseas registry that you are selling to.

It is proposed the pool of 55 million NZUs will be allocated in the following three tranches:

1. the first tranche of **21 million** NZUs will immediately be able to be surrendered or converted (i.e. 38% of the total allocation);
2. a second tranche of **21 million** NZUs will only be able to be surrendered or converted on or after 1 January 2013 (i.e. another 38% of the total allocation);
3. a third tranche of the remaining **13 million**⁴ NZUs will only be able to be surrendered or converted on or after 1 January 2018 (i.e. the remaining 24% of the total allocation).

The tranche from which you receive your NZUs, and therefore the date from which the NZUs can be surrendered or converted, will depend on the age of your trees. The rationale for this is that the majority of landowners who wish to deforest will do so when the trees have reached maturity, so that is when they will need the units for surrendering. Thus:

- owners of trees that are close to harvesting age will receive NZUs from the first tranche;
- owners of trees that are close to the average age of New Zealand’s overall pre-1990 estate will receive NZUs from the second tranche;
- owners of relatively young trees that are not likely to be harvested for 1-2 decades will receive NZUs from the third tranche.

To apply for an allocation of NZUs, you will therefore be required to provide information on the age of your trees (see ‘*Information Required with Applications for an Allocation*’ section for more information).

The exact cut-off ages for each tranche of NZUs will only be finalised when the Final Determination is released in late-2009 or early-2010. However, it is currently estimated that the cut-off ages should be in the order of:

| Estimated age of trees on the date the Plan is issued | Tranche | Date of NZUs |
|---|---------|--------------------------------|
| 24 years and older | 1 | current |
| 11 – 23 years old | 2 | post-dated from 1 January 2013 |
| Up to 10 years old | 3 | post-dated from 1 January 2018 |

Post-dating 34 million of the total 55 million NZU forestry allocation pool in this way will give all owners certainty over the number of NZUs they will receive, while ensuring that owners with trees closest to harvest receive NZUs that can be immediately surrendered to cover emissions. Post-dated NZUs will be able to be traded before they become “active”, however it is expected that they may trade at a discounted price.

Another reason for post-dating these NZUs is that negotiations are underway on the international framework that will apply post-2012, including the rules for the second commitment period of the Kyoto Protocol. If the rules change, for example if restrictions on the deforestation of pre-1990 forests are removed, the Government will wish to review its intention to allow the post-dated 34 million NZUs to be surrendered or converted. The Act allows the post-dated NZUs to be cancelled if there are no longer any controls on deforestation under the NZ ETS.

⁴ As noted earlier, each of these three tranches of NZUs will be reduced by an amount necessary to meet emissions resulting from deforestation on land that has been exempted under the 50ha, tree weed or 2ha thresholds.

Transfer of 95% of NZUs in Year One

For owners eligible to receive the higher allocation of an estimated 60 NZUs per hectare, the Government proposes to transfer 95% of these NZUs in year one and the remaining 5% in year three.

This gives the Government the ability to address issues which cannot be foreseen, or any errors that may be identified in the allocation process (for example, errors resulting from inaccurate information being provided in applications). Landowners will receive the remaining 5% in year three unless a new determination is made by the Minister.

The proposal to initially retain 5% of NZUs will not apply to owners receiving either 39 or 18 NZUs per hectare; only those entitled to the higher allocation.

Entity to Hold NZUs Allocated to Crown Forest Licence Land

The Act allows for the NZUs allocated to land that was Crown forest licence land on 1 January 2008 but has not been transferred to an iwi as part of a Treaty of Waitangi settlement on the date the allocation is issued, to be transferred to an entity that will hold the NZUs in trust for the future owners. The Minister will appoint this entity prior to the transfer of NZUs and the Government will hold additional discussions with iwi on its establishment.

Information Required with Application for an Allocation

Any landowner that chooses to apply for an allocation of NZUs will be required to provide the following information to support their application. All information provided must be consistent with the relevant definitions in the Act (the key ones being repeated in **Annex 3**). Where an application involves multiple properties, those elements of the information that vary between properties, such as the settlement date, must be provided for each property:

- a. the name of the landowner who is applying for the allocation;
- b. evidence of ownership of the land on the date the Forestry Allocation Plan was issued, or date that the deforestation occurred (as applicable), in the form of all the computer freehold registers (titles) from LINZ, or other relevant records (such as Māori Land Court records) that pertain to the application;
- c. where the higher rate of allocation is being sought:
 - proof of the settlement date that the current landowner purchased the property
 - where the current land owner is a body corporate, and where the date of purchase of the land was before 1 November 2002, evidence the ownership interests in the body corporate have changed by less than 51% between the dates of 1 November 2002 and the date the Forestry Allocation Plan is issued
- d. the total area in hectares of pre-1990 forest land on the property as at 1 January 2008 (rounded to the nearest hectare);
- e. the landowner's holding account number in the New Zealand Emissions Unit Registry (which any NZUs will ultimately be transferred into);
- f. a shapefile, including a schedule of eligible pre-1990 forest area by age (see '*Allocation Application Shapefile Requirements*' section below);
- g. a statement that land is not exempt land and/or an application has not been made for the land to be exempted.

Each applicant will be required to provide a declaration stating that all of the information that has been provided is true and accurate.

There will be no fee to apply for an allocation of NZUs.

The information provided must be consistent with the relevant definitions provided in the Act (reproduced in **Annex 3**).

How to tell if a forest is pre-1990 or post-1989 forest

Most exotic forest owners will know the year in which their forest was established. However, this will not always be clear for regenerating forests. The *Forestry in the Emissions Trading Scheme Guide* provides more information on the steps you can take to determine this.

Allocation Application Shapefile Requirements

Applicants must provide:

1. a shapefile (for an explanation of this term refer to Annex 4 – definitions) that includes all pre-1990 forest land for which units are being applied. To minimise the mapping effort required, the shapefile may include some areas of ineligible land (such as indigenous forest and non-forest land). However, it must not include post-1989 land; and
2. for each shapefile, a schedule of eligible pre-1990 forest area by age (measured in years since planting or regeneration) as at 1 January 2008.

Boundaries included in the shapefile may be defined at the level of pre-1990 forest management units (e.g. stands, compartments), or at the entire pre-1990 forest level. Shapefile attribute data is not required.

MAF will provide an on-line tool for applicants to use to create a shapefile. Alternatively, applicants may upload their own shapefile from existing spatial data, so long as they comply with the format prescribed in a standard that will be published on MAF's website soon.

The schedule of pre-1990 forest area by age is a summary table only, for the applicant's total forest land holding broken down by each shapefile. However, all intermediate calculations used to arrive at the data summary in the schedule must be available for audit, if required.

Application and Determination Process and Timelines

The Minister must follow a number of steps before publishing the Forestry Determination in accordance with the finalised Forestry Allocation Plan, and transferring NZUs to eligible landowners.

As soon as practicable after the Forestry Allocation Plan is issued, the Minister will give public notice inviting applications for allocations. Upon receiving applications, the Minister will apply the criteria and methodologies in the Allocation Plan to make a *Draft Determination*. The Draft Determination will specify the total number of NZUs available for allocation, the identity of each eligible landowner, the total number of NZUs allocated to each eligible landowner and the year or years in which eligible landowners will receive their NZUs.

The key steps in the process the Minister will follow are:

- Minister gives public notice of the Draft Forestry Allocation Plan (done);
- public submissions on the Draft Forestry Allocation Plan (due by 28 February 2009);
- report and recommendations in respect of submissions;
- Minister considers the report and makes changes (if any) to the Plan;
- Allocation Plan issued by Order in Council;
- Minister invites people to apply for an allocation;
- persons who consider themselves eligible apply and supply information within 40 working days;
- Minister makes the Draft Determination and notifies each eligible person specified in it, and every person who made an application for an allocation;
- these notified persons may supply further information within 20 working days to identify any errors or miscalculations that have been made in the Draft Determination;

- Minister makes Final Determination and it is published;
- transfer of NZUs to eligible persons.

There is a very tight timeframe up to the intended point of transferring NZUs some time between December 2009 (at the earliest) and April 2010. The timeframe will be reassessed in April 2009 when the finalised Allocation Plan is issued. Unless specified, the indicative dates given below are therefore all subject to review:

| Indicative Dates | Activity |
|---|---|
| 28 February 2009 (this date is fixed in the Act) | Close of submissions on the Draft Forestry Allocation Plan. |
| April 2009 | Order In Council issuing the finalised Forestry Allocation Plan. |
| 30 June 2009 (this date is fixed in the Act) | Closing date for applications for <i>exemptions</i> under the 50 ha threshold. |
| 31 July 2009 | Closing date for applications for an <i>allocation</i> . |
| August 2009 | Release of Draft Determination. |
| October 2009 | Deadline for any party that applied for an allocation to notify the Minister where they consider that there is an error in the Draft Determination. |
| Between December 2009 – April 2010 | Final Determination published and NZUs transferred. |

OUTLINE OF NZ ETS EXEMPTIONS FOR PRE-1990 FOREST LAND

NZ ETS Exemptions

Exemptions under the NZ ETS are available for:

- Forest land of **less than 50 ha** that was owned on 1 September 2007⁵ by a person who owned less than 50 ha (details of the 50 ha exemption are provided on the following page).
- Deforestation of **tree weeds** on pre-1990 forest land in accordance with a Notice to be issued by the Director General of MAF, up to a limit of 0.8 million units in Commitment Period 1 (2008-2012). The Government does not wish the NZ ETS to restrict the removal of tree weeds. At future date(s), the Government will give public notice of the availability of exemption(s) in relation to the deforestation of tree weeds on pre-1990 forest land.

Deforestation of **2 ha or less** of a person's total pre-1990 landholding(s) in the 5 year period from 2008–2012, and each subsequent 5 year period, is automatically excluded from the NZ ETS.

Landowners who receive an allocation for a particular area of land will be able to deforest up to 2 ha in any 5 year period without liability, but will not be eligible for the tree weed exemption or the 50 ha exemption on that same area of land.

The 50 ha Exemption and its Relation to the Forestry Allocation

Effect of the 50 ha Exemption

The 50 ha exemption will help to ensure that the compliance and administration costs of the NZ ETS are not disproportionate to the environmental benefits.

If an exemption application is approved, the landowner will have the right to deforest the exempt land at any time without reporting the resulting emissions or surrendering NZUs.

A notice will appear on the computer register (title) or Māori Land Court record pertaining to the land, which will note that the land is exempt land. It will apply from the date of the exemption, and will stay attached to that land while that land remains exempt land, even if it is sold.

Pre-1990 forest land that has been granted an exemption will not be eligible for an allocation of NZUs under the Forestry Allocation Plan. Similarly, land which has received an allocation of NZUs can not be declared exempt land.

Exempt land that is deforested and then replanted or allowed to regenerate, can join the NZ ETS as post-1989 forest land, provided the NZUs that would have had to be surrendered if the deforested land had not been exempt, are voluntarily surrendered to the Government.

Eligibility for a 50 ha Exemption

There are two elements to determining eligibility for a 50 ha exemption: the eligibility of the land in question; and the eligibility of the landowner.

⁵ The fixed date of 1 September 2007 is necessary to avoid unlimited exemptions through subdivision and sale. This date was about the time this rule was proposed.

Eligibility of the land

For pre-1990 forest land to be eligible to receive an exemption under the 50 ha rule, it must have been owned on 1 September 2007 by a person or persons that owned in total less than 50 hectares of pre-1990 forest land (either individually or collectively). If the forest land was owned as tenants in common, each owner may apply for an exemption for their own share of the land provided it is less than 50 hectares.

Eligibility of the owner

As for allocation applications, it is the landowner on the date the finalised Forestry Allocation Plan is issued that must apply for the exemption – unless the land had been deforested between 1 January 2008 and the date the finalised Forestry Allocation Plan is issued, in which case the landowner who deforested must apply. This means that the applicant for the exemption might not be the current landowner. When applying for the exemption, the applicant will need to provide a statutory declaration from each person who owned the land on 1 September 2007 that they owned in total, on that date, less than 50 hectares of pre-1990 forest land.

Landowners that have applied for a free allocation of NZUs will be ineligible to receive an exemption for the same area of land and vice versa. If you wish to apply, **you must choose** between the two options. However in some instances you will be able to apply for an exemption for parts of your land holdings and a free allocation for other parts. For example:

- if you have bought land that is eligible for the 50 ha exemption after 1 September 2007 and also own other forest land, you can apply for the eligible parts of your forest landholdings to be exempt and apply for the remaining parts to receive an allocation; or
- if you own land that is eligible for the 50 ha exemption, you can apply for part of it to be exempt and part of it to receive an allocation.

The Exemption Application Process

Applications for exemption:

- must be made by 30 June 2009. This date is fixed in the Act, and late applications may only be accepted at the Director-General of MAF's discretion.
- may be submitted by using MAF's online application process (which will be available on MAF's website www.maf.govt.nz/sustainable-forestry) or by downloading and completing a paper-based application form from that site.

The process for exemption applications has been aligned as much as possible with the allocation application process. Specifically:

1. the rules determining which landowner (if the land has recently been bought and sold) has the right to apply for an exemption are the same as those for allocation applications, namely:
 - where the land in question remains under forest on the date the finalised Forestry Allocation Plan is issued, the owner on that date will be responsible for submitting the exemption application;
 - where the land in question has been deforested at some point between 1 January 2008 and the date the finalised Forestry Allocation Plan is issued, the owner of the land at the time that the deforestation occurred will be responsible for submitting the exemption application.

2. similar information will be required, including:
- the name of the person who is applying for the exemption;
 - evidence of ownership of the land on the date the Forestry Allocation Plan was issued, or date that the deforestation occurred (as applicable), in the form of all the computer freehold registers (titles) from LINZ, or other relevant records (such as Māori Land Court records) that pertain to the application;
 - the total area of exotic pre-1990 forest land for which the exemption is sought;
 - evidence that the land is pre-1990 forest land;
 - a shapefile (see 'Shapefile Requirements' section below);
 - a statutory declaration that each person that owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) owned with any associated persons less than 50 ha of pre-1990 forest land on 1 September 2007.

Exemption Application Shapefile Requirements

Applicants must provide a shapefile (refer to Annex 4 for a definition) that includes all pre-1990 forest land for which the exemption is being applied. MAF will provide an on-line tool for applicants to use to create a shapefile. Alternatively, applicants may upload their own shapefile from existing spatial data, so long as they comply with the format prescribed in a standard that will be published on MAF's website soon.

Applications for an exemption will not incur a fee.

More information about the exemption application process is provided in MAF's '*Forestry in the Emissions Trading Scheme Guide*'. You may also like to get more information by attending one of the public workshops to be organised by MAF (see '*Public Workshops*' section above).

VERIFICATION AND CHECKING APPLICATIONS

The Government reserves the right to undertake verification and checking of allocation and exemption applications (which may include field verification via a compliance audit process) at any time before or after the Final Determination and the transfer of NZUs, or the granting of an exemption.

Information to be Retained by Applicants

Applicants must keep copies of all information required to generate the shapefile and the schedule of the pre-1990 forest area by age, as part of their allocation application, and copies of the information submitted with the application for a minimum of **seven years**.

Any applicants that are found to have provided misleading or inaccurate information may be subject to penalties under the Act, required to return some or all of the NZUs they were given, or have their land's exempt status revoked.

MORE INFORMATION

More information on the treatment of forests under the NZ ETS (including the allocation and exemption application processes) can be found in the document *Forestry in the Emissions Trading Scheme Guide* published by the Ministry of Agriculture and Forestry in October 2008. A copy of that document can be downloaded at: www.maf.govt.nz/sustainable-forestry or obtained by phoning MAF's Climate Change contact centre on 0800 CLIMATE (254 628).

APPENDICES

- Appendix 1 Draft Forestry Allocation Plan
- Appendix 2 Forestry Allocation Plan Matters Prescribed in the Act
- Appendix 3 Definitions from the Climate Change Response Act 2002

Appendix 1

Draft Forestry Allocation Plan

Public Notice under section 78(3) of the Climate Change Response Act 2002

Draft Forestry Allocation Plan

Background

Under section 78(3) of the Climate Change Response Act 2002 the Minister must give public notice of the Draft Forestry Allocation Plan and ensure the Draft Forestry Allocation Plan is made available in hardcopy at the offices of and via the website of the Ministry for the Environment and at such other places as the Minister thinks fit.

Public Notice

Under section 78(3) of the Climate Change Response Act 2002, I give public notice of the Draft Forestry Allocation Plan.

A hard copy of the Draft Forestry Allocation Plan may be obtained by request in writing from the head office of either:

Ministry for the Environment,
23 Kate Sheppard Place,
PO Box 10362
Wellington 6143

Ministry of Agriculture and Forestry,
25 The Terrace,
PO Box 1127
Wellington

The Draft Forestry Allocation Plan is also available via the website of Ministry for the Environment, www.mfe.govt.nz or Ministry of Agriculture and Forestry, www.maf.govt.nz/sustainable-forestry and as part of an explanatory Information Document available from the same locations.

Any person may make a submission on the Draft Forestry Allocation Plan. Submissions must be made in writing on the form attached to the Draft Forestry Allocation Plan and sent to the Director-General of the Ministry of Agriculture and Forestry at the address above, or emailed to FAPsubmissions@maf.govt.nz, by 28 February 2009.

Minister Responsible for Climate Change Issues
Dated

NZ Emissions Trading Scheme

Draft Forestry Allocation Plan prepared under section 78(3) of the Climate Change Response Act 2002

11 October 2008

EXPLANATORY NOTE

Under section 71 of the Climate Change Response Act 2002 (the Act), the Minister responsible for Part 4 of the Act – the Minister Responsible for Climate Change Issues - must ensure that an allocation plan applies from 1 January 2008 to 31 December 2021 in relation to pre-1990 forest land. An allocation plan is issued by the Governor-General by Order in Council on the recommendation of the Minister. Prior to the Minister recommending the making of the allocation plan for forestry, the Minister must prepare and seek public submissions on a Draft Forestry Allocation Plan.

Because of the legal requirements on the content and style of this Draft Forestry Allocation Plan, we have prepared an accompanying information document. That document, written in a more accessible style, explains the rules set out in this Draft Forestry Allocation Plan and should be read in conjunction with it.

The Draft Forestry Allocation Plan is issued under section 78 of the Act and must specify the matters contained in that section and the matters specific to allocation of New Zealand units in relation to pre-1990 forest land specified in section 71 of the Act.

These matters include:

- an allocation of New Zealand units free of charge to:
 - landowners or former landowners of pre-1990 forest land; or
 - an entity appointed by the Minister to hold New Zealand units in relation to certain Crown forest licence land.
- an allocation of 55 million units reduced by 1 unit for each tonne of emissions the Minister estimates will result from deforestation of pre-1990 forest land that is exempt land as defined under the Act
- 18, 39 or a higher amount, currently estimated at 60 units, to be allocated in respect of each hectare of eligible land depending on whether:
 - the land was Crown forest licence land on 1 January 2008;
 - the land was transferred to the eligible owner on or after 1 November 2002; or
 - in the case of land owned by a body corporate on 31 October 2002, the shareholding of the body corporate has changed by more than the prescribed amount.

The Draft Forestry Allocation Plan also provides further detail of the allocation in relation to pre-1990 forest land namely:

- the landowners eligible for an allocation are those landowners at the date the finalised Forestry Allocation Plan is issued (or where land was deforested between 1 January 2008 and that date, the landowner at the date of deforestation).
- all the New Zealand units will be transferred at one time, although 34 million units cannot be surrendered or converted until after 1 January 2013. These 34 million units will be post-dated and allocated on the basis of the age of the trees on the land that is the subject of an allocation. This will mean that 21 million units will be able to be surrendered or converted from 1 January 2013 and 13 million units will be able to be surrendered or converted from 1 January 2018⁶.
- the transfer of 5% of the units for those persons eligible to receive the higher allocation under clause 5(1)(c) will be deferred for two years. The principal reason for this is that there may be unforeseen matters or errors in the determination (for example, resulting from inaccurate information being provided in relation to an allocation), which might result in landowners receiving an incorrect number of units. The 5% of the units being

⁶ (It should also be noted that the Act provides that the 34 million New Zealand units that cannot be surrendered until after 1 January 2013 can be cancelled if the Act does not require a person to surrender units for deforestation of pre-1990 forest land)

transferred at a later date should avoid the need to reclaim units from landowners who receive them incorrectly.

- the information that an eligible person must submit with their application, what information must be retained and the period it must be retained for.

The Draft Forestry Allocation Plan is required to specify the principal reasons for including the criteria and methodologies in the finalised Forestry Allocation Plan. The principal reasons for the inclusion of the criteria and methodologies relating to the determination of the total number of New Zealand units available for allocation and the total number of units allocated to each person are that they are contained in the Act.

Similarly, the principal reasons for the criteria and methodologies relating to the persons eligible for an allocation of New Zealand units included in this Plan are that they are required by the Act. However, the proposal that the landowner on the date this Plan is issued, or the date the land was deforested (if applicable), was chosen to reflect the fact that a landowner who deforests pre-1990 forest land after 1 January 2008 has obligations under the Act to surrender units. Therefore, whether or not they are still landowners they should be entitled to an allocation to assist with meeting those obligations.

The principal reason for allocating all units at one time is to give all landowners certainty over the number of NZUs they will receive as soon as possible.

The principal reason for not providing the higher level of allocation for body corporates whose ownership changes by more than 51% between 1 November 2002 and the date this Plan is issued is that any shareholder that purchased shares from 1 November 2002 could reasonably have been expected to have been aware of the likelihood of deforestation controls when buying the shares and taken some consideration of this when determining the price they were willing to pay for those shares.

The information required with the application is to ensure that only those people that are eligible, receive an allocation of New Zealand units.

1. TITLE

This allocation plan is the Draft Forestry Allocation Plan.

2. INTERPRETATION

(1) In this allocation plan, unless the context requires otherwise—

Act means the Climate Change Response Act 2002

Clause means a clause in this Draft Forestry Allocation Plan

Crown forest licence land means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989

eligible land means pre-1990 forest land other than land that has been declared to be exempt land under section 183 or 184 of the Act

eligible person means a person who meets the eligibility criteria in clause 4

forest land—

- (a) means an area of land of at least 1 hectare that has, or is likely when the forest species reach maturity to have, tree crown cover from forest species of more than 30% in each hectare; and
- (b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but
- (c) does not include—
 - (i) a shelter belt of forest species, where the tree crown cover at maturity has, or is likely to have, an average width of less than 30 metres; or
 - (ii) an area of land where the forest species have, or are likely to have, a tree crown cover at maturity of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b)

forest species means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located

issue date means the date the final allocation plan that provides for the matters in section 71 is issued by the Governor-General under section 79 of the Act

landowner—

- (a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2(2) of the Crown Minerals Act 1991); and
- (b) in relation to land other than Crown land, means—
 - (i) the legal owner of a freehold estate in the land; or
 - (ii) if the land is Māori customary land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Māori Act 1993; or
 - (iii) if the land is Māori freehold land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the legal owner of the land

Minister means the Minister for Climate Change Issues

pre-1990 forest land—

- (a) means forest land—
 - (i) that was forest land on 31 December 1989; and
 - (ii) that remained as forest land on 31 December 2007 (taking into account section 4 (4) of the Act); and
 - (iii) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but
- (b) does not include any forest land that met the definition in paragraph (a), but—
 - (i) has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or
 - (ii) was declared to be exempt land, has been deforested, and the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3 had the land not been exempt land have been surrendered under section 187(2)(b) of the Act.
- (2) Any other word or expression defined in the Act and used in this allocation plan has the same meaning as it has in the Act; and
- (3) The explanatory note forms part of the allocation plan but,
 - (a) is included to assist in understanding only, and
 - (b) does not limit the other provisions of the allocation plan and in the event there is an inconsistency between the explanatory note and another provision of the plan, the provision prevails.

3. PERIOD OF THE ALLOCATION PLAN

This allocation plan applies from 1 January 2008 to 31 December 2021.

4. ELIGIBILITY CRITERIA

A person is an eligible person for the purposes of this allocation plan if the person -

- (a) is the landowner of eligible land that has not been deforested on the issue date; or
- (b) was the landowner of eligible land that was deforested between 1 January 2008 and the issue date, on the date the land was deforested; or
- (c) is a person appointed by the Minister under section 72.

5. ALLOCATION OF UNITS PER HECTARE

- (1) An eligible person is eligible for an allocation under this allocation plan of the following number of New Zealand units in respect of eligible land of which the person was the landowner at the relevant date in clause 4(a) or (b), (or in the case of the person appointed under section 72 the eligible land in respect of which the person is required by that section to apply for an allocation of New Zealand units):
- (a) 18 New Zealand units per hectare in respect of eligible land that was Crown forest licence land on 1 January 2008; and -
 - (i) has been transferred to iwi as part of a Treaty of Waitangi settlement on or after 1 January 2008 but before the issue date; or
 - (ii) has not been transferred to iwi as part of a Treaty of Waitangi settlement by the issue date:
 - (b) 39 New Zealand units per hectare in respect of eligible land that was transferred to that person -
 - (i) on or after 1 November 2002; or
 - (ii) prior to 1 November 2002, if the eligible person is a body corporate whose ownership has changed by more than 51% between 31 October 2002 and the issue date:
 - (c) The number of New Zealand units per hectare calculated in accordance with the following formula in respect of eligible land other than land referred to in paragraph (a) or (b):

$$A = (B-C) / D$$

where:

- A is the number of New Zealand units per hectare to be allocated in respect of eligible land other than land referred to in paragraphs (a) and (b).
- B is the total number of New Zealand units available for allocation under the plan (as referred to in clause(6)).

- C is the total number of New Zealand units to be allocated under the plan in respect of eligible land referred to in paragraph (a) and (b).
- D is the number of hectares of eligible land other than land referred to in paragraphs (a) or (b).
- (2) Despite subclause (1)(b), Crown forest licence land that was transferred pursuant to the Te Uri o Hau Claims Settlement Act 2002 is to be treated as if it is eligible land referred to in subclause (1)(c).
- (3) For the avoidance of doubt, for the purposes of subclauses (1)(b) -
- (a) the date eligible land is to be treated as transferred is the settlement date; and
 - (b) transfer does not include transmission⁷ other than by vesting under a statute where the vesting occurs on a settlement date

6. TOTAL NUMBER OF NEW ZEALAND UNITS AVAILABLE FOR ALLOCATION UNDER THE PLAN

- (1) Subject to subclause (2), the total number of New Zealand units available for allocation under this allocation plan is –
- (a) 21 million New Zealand units in the period 1 January 2008 to 31 December 2012
 - (b) 34 million New Zealand units in the period 1 January 2013 to 31 December 2021
- (2) The total number of New Zealand units available for allocation under this allocation plan in each of the periods in subclause (1) is to be reduced by one New Zealand unit for each tonne of emissions that the Minister estimates will result in that period from –
- (a) deforestation on pre-1990 forest land that has been declared exempt under sections 183 or 184 of the Act; or
 - (b) deforestation of pre-1990 forest land of 2 hectares or less for which no obligation to surrender units is imposed under the Act.

7. YEARS OF TRANSFER OF NEW ZEALAND UNITS ALLOCATED UNDER PLAN

- (1) Subject to subclause (2) and sections 84 and 85 of the Act, an eligible person specified in a determination made by the Minister under section 82(7) of the Act in relation to this allocation plan will receive all the New Zealand units allocated to that person in the year the determination is made.

⁷ Note – transmission includes devolution of a deceased person's estate or interest in land to that person's executor or administrator, acquisition of land by survivorship, vesting of land in the Official Assignee on bankruptcy and vesting of land by virtue of an order of a Court.

- (2) A person who is specified in a determination as entitled to receive a number of New Zealand units in respect of eligible land referred to in clause 5(1)(c):
- (a) will receive 95% of those units in the year the Minister makes the determination;
 - (b) subject to any new determination under section 84, will receive the remaining 5% in the year 2 years after the date 95% of the units were received by that person.

8. REQUIREMENTS FOR PROVISION OF DATA AND INFORMATION

- (1) In order to receive an allocation of New Zealand units under this allocation plan an eligible person must provide, in relation to all eligible land in respect of which the person applies for an allocation of units, the following information:
- (a) The eligible person's name.
 - (b) Except in the case of a person appointed under section 72, evidence of the eligible person's ownership of the eligible land at the relevant date in clause 4(a) or (b) in the form of a copy of the relevant computer freehold registers (titles), or other relevant records such as Māori Land Court records that pertain to the eligible land.
 - (c) Where the eligible land is land referred to in clause 5(1)(c):
 - (i) evidence of the eligible person's ownership of the eligible land at 31 October 2002; and
 - (ii) if the eligible person is a body corporate, evidence that at least 49% of the ownership of the body corporate has remained unchanged between 1 November 2002 and the issue date.
 - (d) The total area in hectares of eligible land for which an allocation is sought under each of subclauses (1)(a), (1)(b) and (1)(c) of clause 5, (with each area rounded to the nearest hectare).
 - (e) The eligible person's holding account number in the New Zealand Emissions Unit Registry⁸.
 - (f) A shapefile:
 - (i) of the eligible land which may also include other land containing exotic and indigenous forest species, or non-forest land, but must not include post-1989 forest land⁹; and
 - (ii) that is accompanied by a schedule listing in relation to the eligible land, the area in hectares of forest species of each age (measured in years since planting or regeneration) as at 1 January 2008; and
 - (iii) that complies with any additional format requirements for shapefiles prescribed under section 90 of the Act.

⁸ Also known as the New Zealand Emissions Unit Register administered by the Ministry of Economic Development.

⁹ Post-1989 forest land is defined in section 4 of the Act.

- (g) A statement that the land is not exempt land.
- (h) A signed declaration stating that all of the information that has been provided is true and correct.

9. RECORD KEEPING REQUIREMENTS

Any person receiving an allocation of New Zealand units under this allocation plan must retain for a minimum of 7 years from the date of the receipt of the units:

- (a) copies of all information provided as part of their application for an allocation under this plan; and
- (b) the information required to create the shapefile and the schedule that was submitted with the application.

10. RULES FOR ALLOCATION OF DIFFERENTLY DATED UNITS

- (1) The Minister must allocate New Zealand units to eligible persons under this allocation plan as follows:
 - (a) the units referred to in clause 6(1)(b) must be allocated in respect of eligible land on which are growing at 1 January 2008 the -
 - (i) youngest 24% of the exotic forest species growing on the eligible land; and
 - (ii) next oldest 38% of the exotic forest species growing on the eligible land; and
 - (b) the units referred to in clause 6(1)(a) must be allocated in respect of eligible land on which are growing at 1 January 2008 the oldest 38% of the exotic forest species growing on the eligible land.
- (2) The units allocated in respect of the eligible land referred to in –
 - (a) subclause (1)(a) may not be surrendered or converted until on or after 1 January 2018; and
 - (b) subclause (1)(b) may not be surrendered or converted until on or after 1 January 2013.
- (3) The percentages referred to in subclause (1) must be determined by reference to the information about the age of trees growing on eligible land provided by applicants in the schedules provided under clause 8(f)(ii).

SUBMISSION FORM

DRAFT FORESTRY ALLOCATION PLAN

Please use this form to comment on the Draft Forestry Allocation Plan.

For background information refer to the MAF information document *Draft Forestry Allocation Plan and Deforestation Exemption Policies for Pre-1990 Forest Land* (11 October 2008). Further information can be found in MAF's *Forestry in the Emissions Trading Scheme Guide* (October 2008) and other information available on the MAF website www.maf.govt.nz/sustainable-forestry

Please post your feedback to:

FAP Submissions
Ministry of Agriculture and Forestry
PO Box 2526
Wellington 6140

Or fax to: 04 894 0743

By: 28 February 2009

WHO ARE YOU?

Name _____

Company/Organisation (if relevant): _____

Address: _____

Email: _____

Phone: _____

Please indicate your sector(s)/interest(s)/type(s) of organisation:

Agriculture – description/type: _____

Forestry – description/type: _____

Māori – description/type: _____

Local government – description/type: _____

Other – description/type: _____

NB: Make sure you save a copy of your submission for your own records.

Appendix 2

Forestry Allocation Plan Matters Prescribed in the Act

Sections 71 and 72 of the Climate Change Response Act 2002:

71 Allocation in respect of pre-1990 forest land

(1) The Minister must exercise his or her powers under this subpart to ensure that an allocation plan that provides for the matters in this section and **section 78(2)** is in force for the period from **1 January 2008 to 31 December 2021**.

(2) The matters that an allocation plan must provide for are:

(a) an allocation of New Zealand units free of charge to:

(i) landowners, or former landowners, of eligible land who are eligible persons; or

(ii) a person appointed in accordance with **section 72** to hold any New Zealand units allocated in respect of the eligible land covered in **paragraph (c)(i)(A)**; and

(b) a total number of New Zealand units available for allocation free of charge under the allocation plan consisting of:

(i) 21 million New Zealand units in the period from **1 January 2008 to 31 December 2012**, reduced by 1 New Zealand unit for each tonne of emissions that the Minister estimates will result from the activities specified in **subsection (5)** in that period; and

(ii) 34 million New Zealand units in the period from **1 January 2013 to 31 December 2021**, reduced by 1 New Zealand unit for each tonne of emissions that the Minister estimates will result from the activities specified in **subsection (5)** in that period; and

(c) an allocation of New Zealand units free of charge consisting of:

(i) 18 New Zealand units for each hectare of eligible land that was Crown forest licence land on **1 January 2008** and—

(A) will not have been transferred to iwi as part of a Treaty of Waitangi settlement by the date on which the allocation plan is issued; or

(B) has been, or will have been, transferred to iwi as part of a Treaty of Waitangi settlement either on or after **1 January 2008** but before the date on which the allocation plan is issued:

(ii) 39 New Zealand units for each hectare of eligible land that was transferred to the landowner, or former landowner, of the land—

(A) after **31 October 2002**; or

(B) prior to **1 November 2002** if, since that date, ownership of any body corporate owning the land has changed in the manner and to the extent specified in the allocation plan:

(iii) for any hectare of eligible land not covered in **subparagraph (i) or (ii)**, the number of New Zealand units calculated in accordance with the following formula:

$$A = \frac{B - C}{D}$$

where

A is the number of units for each hectare of eligible land not covered in **subparagraph (i) or (ii)**

B is the total number of New Zealand units available for allocation under **subsection (2)(b)**

C is the total number of New Zealand units to be allocated in accordance with **subparagraph (i) and (ii)**

*D is the number of hectares of eligible land not covered in **subparagraph (i) or (ii)**.*

*(3) In addition to the matters provided for in **subsection (2)**, an allocation plan: transferred for the purposes of this section.*

*(4) Despite **subsection (2)(c)**, the allocation plan must treat any Crown forest licence land transferred pursuant to the Te Uri o Hau Claims Settlement Act 2002 as if it were eligible land covered by **subsection (2)(c)(iii)**.*

*(5) For the purposes of **subsection 2(b)(i) and (ii)**, the activities are:*

- (a) deforestation on exempt land; and*
- (b) deforestation of 2 hectares or less of pre-1990 forest land for which no obligation to surrender units is imposed under this Act.*

(6) An allocation plan that provides for the matters in this section may:

- (a) provide for the New Zealand units referred to in **subsection (2)(b)(ii)** to be allocated at any time; and*
- (b) specify dates before which some or all of those New Zealand units may not be surrendered or converted by any person.*

(7) For the purposes of this section, eligible land is to be treated as transferred on the settlement date, unless the allocation plan specifies another date or event upon which any or all eligible land is to be treated as transferred.

*(8) For the purposes of this section, **Crown forest licence land** means eligible land subject to a Crown forestry licence under section 14 of the Crown Forest Assets Act 1989.*

72 Minister to appoint person to hold certain New Zealand units

*(1) The Minister must, prior to making a determination in respect of eligible land covered by **section 71(2)(c)(i)(A)**, by notice in the Gazette:*

- (a) appoint a person to:*
 - (i) apply for an allocation of New Zealand units in respect of the land; and*
 - (ii) hold on trust for the future owners of the land any New Zealand units allocated in respect of the land; and*
- (b) determine:*
 - (i) the structure, composition, and functions of the person; and*
 - (ii) the terms and conditions upon which the person is to hold the New Zealand units.*

*(2) If the Minister has not appointed a person in accordance with **subsection (1)** prior to issuing a notice under **section 82(1)** inviting persons to apply for an allocation of New Zealand units under an allocation plan providing for the matters in **section 71**, then the Minister must, by notice in the Gazette, appoint a person to apply for an allocation of New Zealand units in respect of the land covered by **section 71(2)(c)(i)(A)** on behalf of the person to be appointed under **subsection (1)**.*

Appendix 3

Definitions from the Climate Change Response Act 2002

DEFINITIONS FROM THE CLIMATE CHANGE RESPONSE ACT 2002

For ease of reference, the relevant definitions from the Act needed by landowners to assess the eligibility of their land to receive an allocation or an exemption are repeated below. See also, the explanation provided in the section of this report called *Land Eligible to Receive an Allocation of NZUs*.

Additional terms have also been included to assist in the understanding of this document.

Definitions under the Act

associated person

A person is an associated person in relation to one or more other persons if:

- (a) each person is a body corporate and each of the bodies corporate—
 - (i) consist substantially of the same members or shareholders; or*
 - (ii) are under the control of the same persons; or**
- (b) any of the bodies corporate—
 - (i) has the power, directly or indirectly, to exercise, or control the exercise of, 25% or more of the voting power at a meeting of the other; or*
 - (ii) is able to appoint or control 25% or more of the governing body of the other.**

clear, *in relation to a tree,—*

- (a) includes—
 - (i) felling, harvesting, burning, removing by mechanical means, spraying with a herbicide intended to kill the tree, or undertaking any other form of human activity that kills the tree; and*
 - (ii) felling, burning, killing, uprooting, or destroying by a natural cause or event; but**
- (b) does not include pruning or thinning*

deforest *in relation to forest land –*

(a) means to convert forest land to land that is not forest land; and

(b) includes clearing land, where the following applies

A hectare of forest land must be treated as deforested if the forest species on that land have been cleared and:

- *4 years after clearing, the hectare has not:
 - *been replanted with at least 500 stems of forest species; or*
 - *naturally established a covering of at least 500 stems of forest species; or**
- *10 years after clearing, predominantly exotic forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height; or*
- *20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height.*

Deforestation does not include forest land that is replanted or allowed to regenerate after harvesting has occurred. Deforestation is treated as occurring on the date that the hectare is cleared as part of the deforestation process.

exempt land—

- (a) means pre-1990 forest land that has been declared to be exempt land—
 - (i) under section 183; or
 - (ii) under section 184 and in respect of which the conditions in section 184(6) have been met; but
- (b) does not include any forest land that met the definition in paragraph (a), but has been deforested, and in respect of which the number of NZUs that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2)

exotic forest species means a forest species that is not an indigenous forest species

forest land—

- (a) means an area of land of at least 1 hectare that has, or is likely when the forest species reach maturity to have, tree crown cover from forest species of more than 30% in each hectare; and
- (b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but
- (c) does not include—
 - (i) a shelter belt of forest species, where the tree crown cover at maturity has, or is likely to have, an average width of less than 30 metres; or
 - (ii) an area of land where the forest species have, or are likely to have, a tree crown cover at maturity of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b).

forest species means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located

indigenous forest species means a forest species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance

landowner

landowner—

- (a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2(2) of the Crown Minerals Act 1991); and
- (b) in relation to land other than Crown land, means—
 - (i) the legal owner of a freehold estate in the land; or
 - (ii) if the land is Māori customary land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Māori Act 1993; or
 - (iii) if the land is Māori freehold land (as defined in section 4 of Te Ture Whenua Māori Act 1993), the legal owner of the land

pre-1990 forest land—

- (a) *means forest land—*
- (i) *that was forest land on 31 December 1989; and*
 - (ii) *that remained as forest land on 31 December 2007 (taking into account para (c)); and*
 - (iii) *where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but*
- (b) *does not include any forest land that met the definition in paragraph (a) but*
- (i) *has been deforested and in respect of which any liability to surrender NZUs arising in relation to an activity listed in Part 1 of Schedule 3 of the Act has been satisfied; or*
 - (ii) *was declared to be exempt land, has been deforested, and the number of NZUs that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3 of the Act had the land not been exempt land, have been surrendered under section 187(2).*
- (c) *pre-1990 exotic forest land in respect of which conversion to non-forest land had commenced prior to 31 December 2007, is to be treated as deforested on 31 December 2007 if, on that date, the land had—*
- (i) *no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or was likely at maturity to have, tree crown cover of an average width of less than 30 metres; and*
 - (ii) *no other merchantable timber from exotic forest species.*

GLOSSARY OF TERMS

Carbon credit

A tradable unit representing the right to emit one tonne of carbon dioxide emissions. (See “New Zealand Unit”).

Carbon stock

The total carbon in a forest including stemwood, bark, branches, leaves, litter, woody debris, stumps and roots.

Commitment period (CP)

A range of years within which Parties to the Kyoto Protocol are required to meet their greenhouse gas emissions target. The target is averaged over the years of the commitment period. The first commitment period is 2008–12. The targets are set relative to greenhouse gas emissions in the base year (in New Zealand’s case, 1990), multiplied by five.

Crown forest licence land

Between 1990 and 1992 the Crown sold the majority of its exotic plantation forests but retained the land for use in future Treaty of Waitangi settlements. This land is now Crown forest land. The Crown granted Crown forest licences to private companies to plant and harvest trees.

Emissions

The release of greenhouse gases into the atmosphere.

Greenhouse gases (GHGs)

Greenhouse gases are constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation. Greenhouse gas emissions covered by the emissions limitation or reduction commitment for the first commitment period of the Kyoto Protocol are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆).

Kyoto Protocol

A protocol to the United Nations Framework Convention on Climate Change that includes emissions limitation or reduction commitments for ratifying countries listed in its Annex B (developed countries and economies in transition) (see <http://unfccc.int/resource/docs/convkp/kpeng.html> for further information).

New Zealand Emissions Unit Register (NZEUR)

See www.eur.govt.nz.

New Zealand Unit (NZU)

An instrument created under law that can be bought and sold, and used to meet an entity’s obligations under an emissions trading scheme. In the New Zealand Emissions Trading Scheme, one New Zealand Unit corresponds to one metric tonne of carbon dioxide equivalent emissions. Sometimes called an ‘emission unit.’

Sequestration

The uptake and storage of carbon. Carbon can be sequestered by plants and soil and in underground/deep sea reservoirs.

Shapefile

An electronic file that is used for digital mapping and is a standard mapping format used within the New Zealand forest industry. It is a data storage format for storing the location, shape and attributes (characteristics and properties) of geographic features. The Climate Change Regulations 2008 use the term "Geospatial mapping information" to refer to what is commonly known as a shapefile. Schedule 5 of the Regulations provide more detail on the information that a shapefile must contain. For people who do not have access to the software necessary to create a shapefile, MAF provides an online mapping tool for land owners to meet this requirement.

Attribute data is what is known about a feature. Examples of attributes include address, name, size, value etc. Attributes are usually stored in databases or spreadsheets and can be linked to Geographical Information System (GIS) spatial data.