

FORESTRY in the EMISSIONS TRADING SCHEME

GUIDANCE NOTES for SMALL FOREST OWNERS

October 2011



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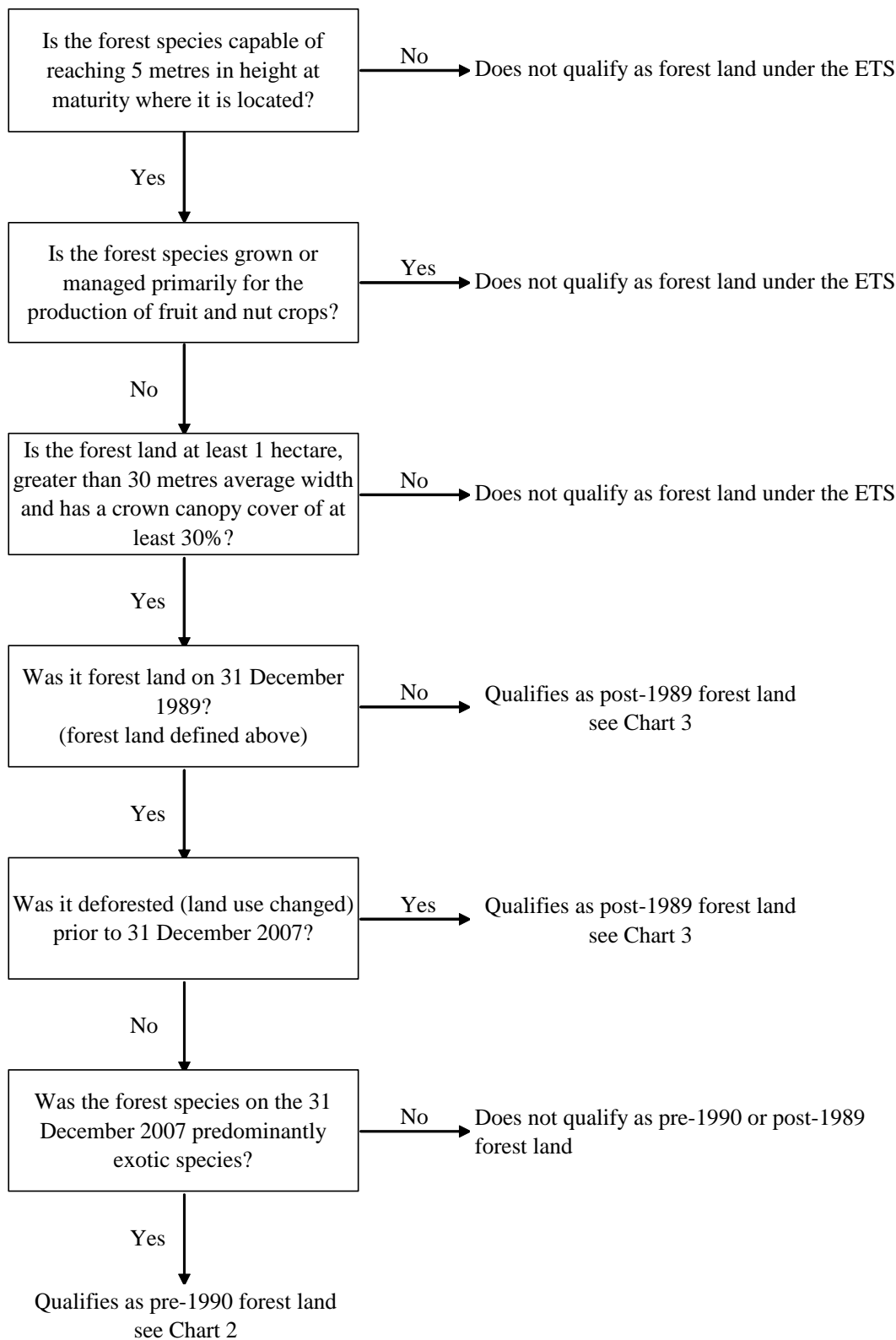
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CHART 1 PRE-1990 or POST-1989 FOREST LAND?

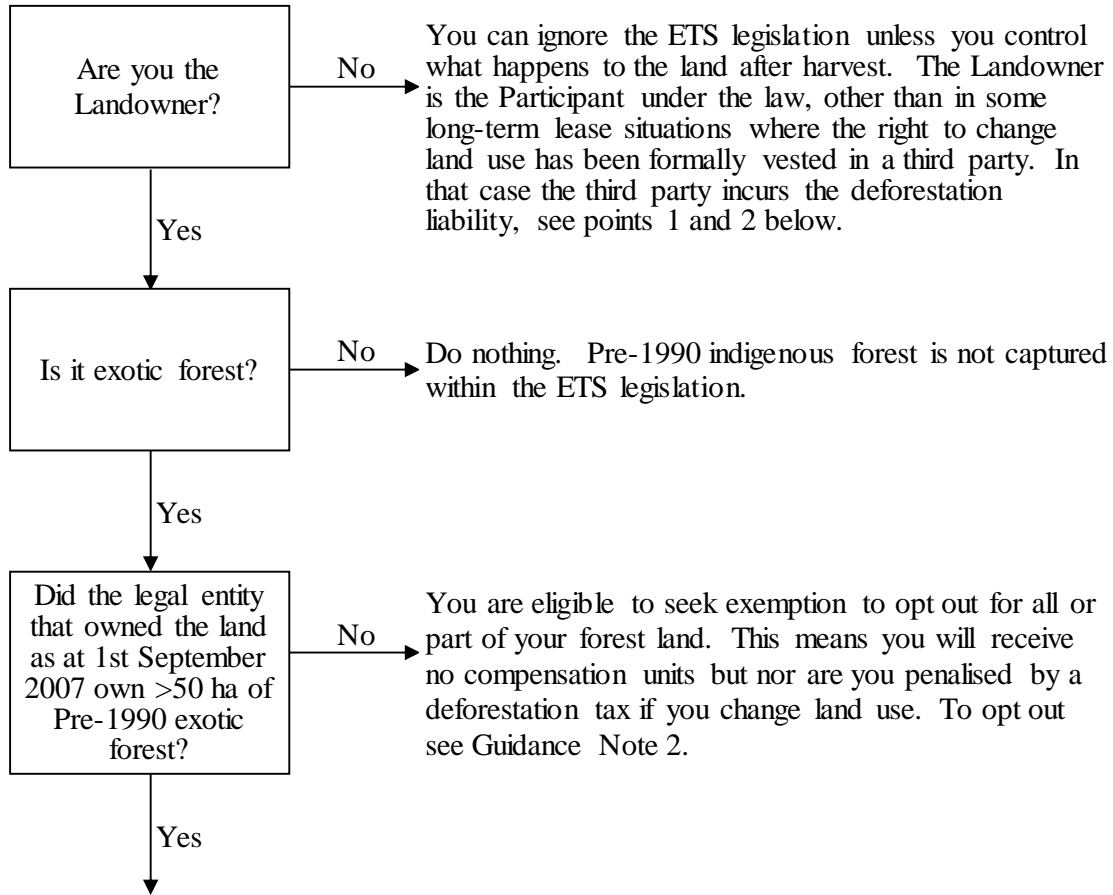


Note - If forest land is harvest cutover and is likely to meet the forest land definitions above in the future, it is still considered forest land, just temporarily unstocked.

CHART 2 PRE-1990 FOREST LAND

Pre-1990 Forest Land is in the ETS by law – unless exempt

See Guidance Note 1 for Pre-1990 Forest Land definition



You are in the ETS. This means:

1. You will be liable for loss of carbon to the atmosphere if you convert >2.0 ha of your forest land to non-forest land (deforestation) during any 5-year period commencing 1st January 2008. This liability could exceed \$20,000/ha (depending on the cost of purchasing NZUs or other carbon units to surrender) so should not be taken lightly. MAF can detect changes in land use via satellite imagery.
2. Harvesting is not deforestation. If you replant or let a forest regenerate after harvesting, you have no liability for carbon loss.
3. You are eligible to apply for NZUs as partial compensation for loss of land value as a result of the implementation of the ETS. For details see Guidance Note 3. You may apply from September 2010 and the final date for applications is 30 November 2011. Don't leave it too late as consultants and MAF expect to be swamped with applications. Once you own these units you can sell them without any tax exposure on the income from sale. For How To Apply see Guidance Note 4.

Some FAQ Relating to Pre-1990 Forest Land

1. Do I get credits for carbon growing in my pre-1990 forest?

No. Pre-1990 forest land is in the ETS for loss of carbon if land use is changed out of forest cover, but is not eligible to earn credits.

2. What if I harvest and sell the land before replanting?

Harvesting is not deforestation. The person/entity that has the right and discretion to decide whether to replant / regenerate forest or change land use is the person that will be held responsible for any loss of carbon on deforestation. In most cases this will be the landowner. Buyers of land need to be aware of this.

3. What if I own the crop only, under a Forestry Right or lease agreement, and have to hand the land back following harvest?

This is similar to the situation above. As the owner of pre-1990 trees held under a lease or forestry right you will not have any liabilities for deforestation under the ETS. Nor are you eligible to receive partial compensation units. Unless the lease or forestry right vests the discretion in you to deforest the land you do not need to do anything.

4. If I don't apply for the pre-1990 allocation, am I able to deforest (change land use) without incurring the deforestation penalty?

No. Whether you apply for the allocation or not, the deforestation liability still applies. So you should apply for the allocation as no additional liability will be incurred as a result.

5. Can I deforest (change land use) and plant another area of my farm in lieu to avoid the deforestation liability?

No. This is known as offsetting and is currently not allowed under ETS rules. There is the possibility that offsetting will be allowed after 2012, depending on the outcome of international negotiations.

6. I harvested my pre-1990 forest and replanted after 1989, is the land now post-1989 forest land?

No, pre-1990 forest land is determined from when the land was originally planted, not when it was replanted after harvesting.

7. Are pre-1990 forestry allocation NZUs taxable?

No tax is payable on the sale of NZUs under the Forestry Allocation Plan. They are also zero-rated for GST purposes.

Guidance Note 1. Definition of Pre-1990 Forest Land

Forest land that:

- was forest land on 31 December 1989;
- remained as forest land on 31 December 2007; and
- where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species.

Does not include any forest land that meets the definition above but:

- has been deforested and any liability arising from that deforestation has been satisfied;
- was declared to be exempt land, has been deforested, and the number of units that would have been required to be surrendered had the land not been exempt land have been surrendered.

Only forests comprising predominately exotic forest species are subject to the ETS as pre-1990 forest land (noting that the definition above prevents exotic forest from being converted to indigenous forest after 31 December 2007 and then deforesting the indigenous forest without obligations).

(Source: *Guide to Forestry in the ETS – May 2010. MAF*)

Guidance Note 2. Applying for <50 ha Exemption

Applications for a less than 50 hectares exemption may be submitted online at www.maf.govt.nz/sustainable-forestry/ets/ets-transactions.htm or by downloading and completing a paper-based application form available on the site. Deadline for applying for the exemption is 30 September 2011.

Information required to apply for an exemption includes:

- the name of the person who is applying for the exemption;
- evidence of ownership of the land on the date that the deforestation occurred, or date the final Forestry Allocation Plan was issued (as applicable), in the form of computer freehold registers (titles) from Land Information NZ (LINZ), or other relevant records (such as Māori Land Court records);
- the total area of pre-1990 forest land for which the exemption is sought and evidence the land is pre-1990 forest land and has been deforested (as applicable);
- a shape file that includes all pre-1990 forest land for which the exemption is being sought. MAF is considering providing an online tool for applicants to use to create a shapefile. Alternatively, applicants may upload their own shapefile from existing spatial data, so long as it complies with the format in the *Geospatial Mapping Information Standard. The Standard and A Guide to Mapping Forest Land for the Emissions Trading Scheme* are available at <http://www.maf.govt.nz/sustainable-forestry/ets-mapping-guide.pdf>
- a statutory declaration from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) that the person owned (with any associated persons) less than 50 hectares of pre-1990 forest land on 1 September 2007.

(Source: *Guide to Forestry in the ETS – May 2010. MAF*)

Guidance Note 3. Pre-1990 Allocation of NZUs

The number of NZUs provided per hectare will vary depending on the date that the land was purchased.

- 39 NZUs for each hectare of eligible land that was transferred:
 - on or after 1 November 2002; or
 - to a body corporate prior to 1 November 2002 where there have been changes in ownership (including beneficial ownership) since acquiring the land in the manner and to the extent specified in the Forestry Allocation Plan.
- 60 NZUs for each hectare of eligible land not covered by the categories above.

The allocation of 39 NZUs per hectare reflects the position that purchasers acquiring pre-1990 forest land after 31 October 2002 could reasonably have been expected to take account of the Government's announced intention to introduce deforestation controls in the price they paid for the forest land.

The allocation will be transferred in two tranches. The first tranche of 38 percent of the landowners' overall entitlement will be transferred by 31 December 2012, and the second tranche of 62 percent of their overall entitlement will be transferred after 31 December 2012.

The Government has signalled it may reduce the second tranche if international rules permit offsetting after 2012 as the impact of the ETS on pre-1990 land values would be reduced.

When an applicant gets their NZUs will depend on when they apply, and how long their application takes to process.

(Source: Guide to Forestry in the ETS – May 2010. MAF)

Guidance Note 4. Applying for Pre-1990 Allocation

Applications for a less than pre-1990 forestry allocation may be submitted online at www.maf.govt.nz/sustainable-forestry/ets/ets-transactions.htm or by downloading and completing a paper-based application form available on the site. Deadline for applying for the allocation is 30 November 2011.

Step 1 – Identify the correct applicant name

Determine the correct applicant name by referring to either the certificates of title or other relevant documents. The name of the applicant must match the legal name that appear on the relevant documents.

Step 2 – Apply to the NZ Emissions Unit Registry for a Holding Account

Apply online for a NZEUR holding account at www.eur.govt.nz. This is where NZUs are transferred once your application has been approved. If you have already obtained a holding account when registering your post-1989 forest and the applicant name is still correct, you can use the same holding account.

The NZEUR holding account name must match the name of the applicant applying for the pre-1990 allocation i.e. must match the legal name on the relevant documents in step 1. The exception is with unincorporated bodies, they can use any name they want but the account holder names of the holding account must match the legal names on the relevant document in step 1.

Step 3 – Apply to MAF for Pre-1990 Allocation

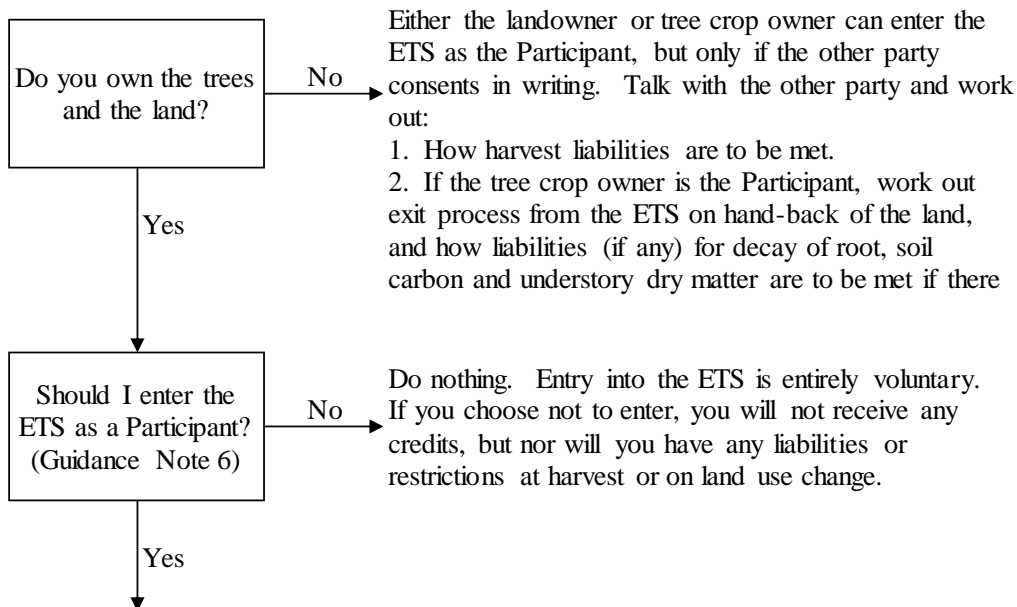
The registration process requires applicants to provide the following:

- the name and contact details of the person applying for the pre-1990 allocation;
- the applicants NZEUR holding account number;
- an electronic shape file delineating the area of pre-1990 forest land;
- evidence that the land is eligible for the allocation as pre-1990 forest land;
- evidence of land ownership as at 31 October 2002 (certificates of title) if applying for the allocation of 60 NZUs per hectare;
- declarations and acknowledgments relating to the accuracy of the application.

CHART 3 POST-1989 FOREST LAND

Entry into the ETS is voluntary

See Guidance Note 5 for Post-1989 Forest Land definition



1. Entry into the ETS is a 3 step process. It can be done on-line at any time. For How to Enter see Guidance Note 7.
2. Depending on the size and complexity of proving the eligibility of the forest as Post-1989 forest the process could take from 2 days to 2 months or more.
3. If you enter into the ETS you can claim credits for any increase in carbon stocks since 1st January 2008, provided that your application is fully processed by 31st December 2012. Note that with high pressure on MAF personnel, and possible delays associated with proving Post-1989 eligibility, you should apply sooner rather than later. If your application is not processed by the deadline you stand to lose out on claiming any carbon accumulated between 1 January 2008 and 31 December 2012.
4. MAF have produced a Mapping Standard for defining the area of Post-1989 Forest. This standard deals with stocking gap and boundary definitions that are different from those used by most foresters in defining net stocked areas. The difference in area is not likely to be material for small blocks of forest, but can be for larger forest areas. You will need to decide whether to spend money or effort to define your Post-1989 forest area to maximise your carbon sequestration claims.
5. For any forest that has trees planted before 1996 that are likely to be harvested over multiple reporting periods (a reporting period is a minimum of once every 5 years and maximum of annually) you should break your forest up into Carbon Accounting Areas (CAA) that resemble, as closely as you can determine, likely harvest areas. This matters when it comes to accounting for harvest liabilities that are capped at NZUs claimed for each CAA. But don't make them smaller than you have to either. If you own more than 100 ha of forest you will need to establish permanent measurement plots and these need to be completed by the end of 2012.

Some FAQ Relating to Post-1989 Forest Land

1. I am a Landowner. The tree crop owner (held under lease or Forestry Right) has asked for my consent for it to enter into the ETS as a Participant. Should I consent?

Provided that the terms of your consent require the crop owner to exit as a Participant following harvest prior to handback of the land, you will not be exposed to any liabilities (nor get any credits) for change in carbon stocks on your land unless and until you choose to enter into the ETS yourself as a Participant. If the crop owner defaults on its obligations to report and meet any liabilities for loss of carbon due to harvest or decay, the government regulators will chase the crop owner (as Participant) not the Landowner.

Note that the Participant is not liable to pay back any more carbon than it has been issued to it during the growing phase even if the land is then deforested (change of land use).

2. I have decided to enter the ETS. When should I enter?

Sooner the better for two reasons:

- a. The application process may take longer than you expect. MAF have limited resources to process applications and may require additional proof to determine Post-1989 status.
- b. If MAF reject some or all of your Post-1989 application, then the land could be Pre-1990 forest land. You need to know that in time to meet the 30 November 2011 deadline to apply for Pre-1990 compensation credits.

3. How often do I need to report change in carbon stocks?

You must report opening and closing carbon stocks at least once in each 5-year period commencing 1st January 2008, within 3 months of the end of that period. You are permitted to voluntarily report each year within 3 months of the end of the year and claim credits annually.

4. How do I determine opening and closing carbon stocks?

Currently, only the regional look-up table approach is available for determining carbon stock changes. Participants with less than 100ha can only use the regional look-up tables without field measurement. Participants with over 100 ha have to establish permanent field measurement plots before the end of 2012 and this measurement data has to be used for calculating mandatory carbon stock change calculations in 2013 and measured once in each reporting period. The number and location of plots will be determined by MAF so as to afford reasonable statistical confidence.

5. If my forest land does not qualify as post-1989 forest land, is it eligible for the compensation credits under the pre-1990 Forestry Allocation Plan?

Yes, provided it was forest land on the 31st December 1989 and predominately exotic forest species on the 31st December 2007

Guidance Note 5. Determining Post-1989 Status

1. The onus is on the applicant to show that their forest is on land that was not “forest land” as at 31st December 1989, or has been converted since then to non-forest land and then planted. Proving this can be challenging but typically requires historic aerial photography, farm records or invoices.
2. Post-1989 Forest Land is defined as:
Forest land that:
 - was not in forest land on 31 December 1989; or
 - was forest land on 31 December 1989 but was deforested (that is, converted to another land use) between 1 January 1990 and 31 December 2007; or
 - was pre-1990 forest land, other than exempt land:
 - that was deforested on or after 1 January 2008; and
 - in respect of which any liability to surrender units arising in relation to deforestation has been satisfied; or
 - was exempt land:
 - that has been deforested; and
 - in respect of which the number of units that would have been required to be surrendered in relation to deforestation, had the land not been exempt land, have been surrendered.

Both exotic and indigenous forest species are eligible to participate in the ETS as post-1989 forest land.

(Source: Guide to Forestry in the ETS – May 2010. MAF)

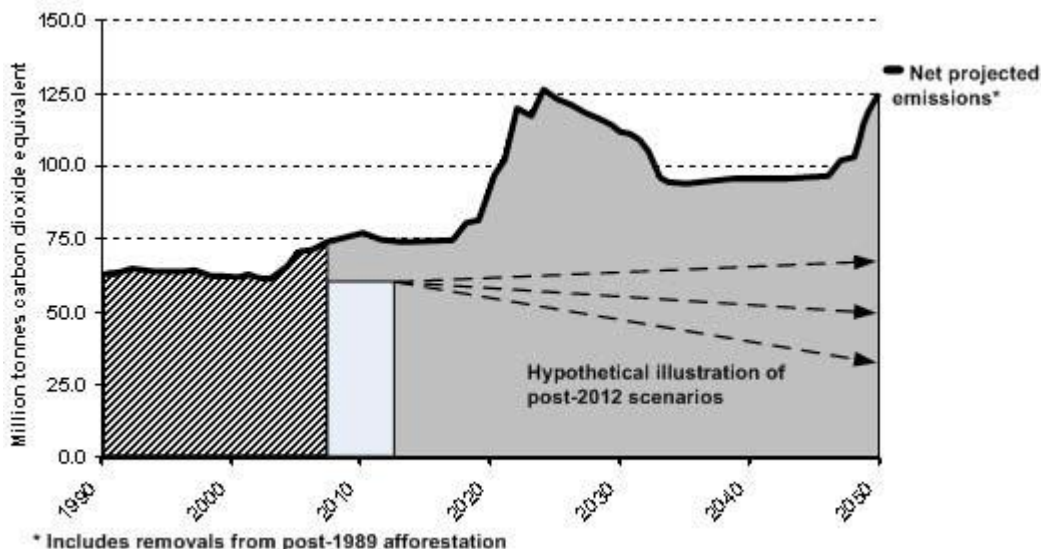
Note: If the land was in gorse, blackberry, broom or bracken as at 31 December 1989 then it will qualify, but generally manuka / kanuka will not.

Guidance Note 6. Should I enter into the ETS?

There is no simple answer to this question. The factors to consider are:

1. Am I in a position to sell some credits but still accumulate enough to cover my obligations to surrender credits following harvest? For owners of forests planted in the mid-1990s, that have no trees planted since then and are not in a position to plant new forests now, the answer will be no. For any forest planted since about 2002 one would expect to have credits in excess of harvest liabilities.
2. Will any opportunities emerge for me to sell credits as they accumulate, even at low price, to an entity that agrees to pay back the credits I need to cover harvest liabilities? By entering the ETS you lock in an option to sell credits if the right circumstances emerge.
3. What is the cost of joining the ETS and of on-going measurement and reporting? The cost to join comprises an application fee of \$562 (inclusive of GST) plus any consultant fees to re-map and join. Ongoing costs are reporting opening and closing stocks at least once in a 5-year period. Refer FAQ 4 above.

- Is there a risk that a future government might require forest owners to account for carbon stock changes regardless of whether they are in the ETS or not? This concern arises from the forecast of NZ emissions profile.



The large hump in emissions from 2020 is driven mainly from harvesting of commercial forests planted since 1990. While no government can bind another, such move would be a serious breach of good faith over the introduction of the Climate Change Response Act 2002. We consider the risk of such draconian action to be low in a civilised democracy, but you must make your own judgement on that.

Guidance Note 7. How do I register my post-1989 forest into the ETS?

Step 1 – Identify the correct Participant name

Determine the correct Participant name by referring to either the certificates of title, or registered forestry right, or Crown conservation contract. The name of the Participant must match the legal name that appear on the relevant documents.

Step 2 – Apply to the NZ Emissions Unit Registry for a Holding Account

Participants apply online for a NZEUR holding account at www.eur.got.nz. This is where NZUs are transferred to for net carbon stock increases in your forest and where NZUs are surrendered for reductions in net carbon stocks in your forest. If you have already obtained a holding account in applying for the pre-1990 allocation and the Participant name is still correct, you can use the same holding account.

The NZEUR holding account name must match the name of the Participant to be registered i.e. must match the legal name on the relevant documents in step 1. The exception is with unincorporated bodies, they can use any name they want but the account holder names of the holding account must match the legal names on the relevant document in step 1.

Step 3 – Apply to MAF to be registered as a Participant.

Applications to be registered as a Participant are made to MAF, either online at www.maf.govt.nz/sustainable-forestry or by downloading and completing a paper based registration form from www.maf.govt.nz/sustainable-forestry/ets/forms/ets-p89--join.pdf. The registration process requires applicants to provide the following:

- the name and contact details of the person submitting the application;
- the name of the person who wishes to be registered as a Participant;
- the Participant’s NZEUR holding account number;
- an electronic shape file delineating the area of post-1989 forest land;
- evidence that the land is eligible to enter the ETS as post-1989 forest land;
- contact details for anyone deemed an “interested party”;
- a declaration on the prescribed form that any actions by the applicant on the post-1989 forest land since 1 January 2008 complied at the time of application with the Resource Management Act 1991, the Biosecurity Act 1993 and regional and district pest management strategies, and the Forests Act 1949.
- payment of MAF’s registration application fee of \$562 incl. GST

Disclaimer

These ETS guidance notes are intended only as a guide for small forest owners and they do not cover every circumstance a small forest owner may find themselves in. Professional advice should be sought.

The information in these guidance notes has no statutory or regulatory effect and is of a guidance nature only. The information 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 these guidance notes is accurate, PF Olsen Ltd and its employees do 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.

Further Information

A guide to Classifying Land for Forestry in the Emissions Trading Scheme – May 2010. Ministry of Agriculture and Forestry. <http://www.maf.govt.nz/sustainable-forestry/2010-classifying-land-for-forestry-ets.pdf>

A guide to Forestry in the Emissions Trading Scheme – May 2010. Ministry of Agriculture and Forestry. <http://www.maf.govt.nz/sustainable-forestry/2010-ets-guide.pdf>

Introduction to Forestry in the Emissions Trading Scheme – April 2010. Ministry of Agriculture and Forestry. <http://www.maf.govt.nz/sustainable-forestry/2010-introduction-to-forestry-in-ets.pdf>

Further information can be obtained from MAF at www.maf.govt.nz/sustainable-forestry/ or 0800 CLIMATE (254 628).

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