

In Confidence

Office of the Minister of Forestry
Office of the Minister of Climate Change

Chair, Cabinet Environment, Energy and Climate Committee

New Zealand Emissions Trading Scheme (NZ ETS): Final policy decisions on regulations for forestry

Proposal

1. This paper seeks Cabinet approval to:
 - 1.1. amend the Climate Change (Forestry Sector) Regulations 2008 (Forestry Regulations) to implement policies introduced by the Climate Change (Emissions Trading Reform) Amendment Act 2020 (the Amendment Act); and
 - 1.2. delegate authority to the Minister of Climate Change and Minister of Forestry to approve associated minor and technical changes to the Forestry Regulations.

Relation to government priorities

2. This proposal contributes to Priority 1 of the Government's new priorities, namely building a modern economy by supporting the transition to a clean, green and carbon neutral New Zealand.

Executive Summary

3. The 2020 Amendment Act introduced significant policy changes to forestry provisions in the New Zealand Emissions Trading Scheme (NZ ETS), most of which come into force on 1 January 2023. The changes included:
 - 3.1 A new carbon accounting approach, called 'averaging accounting';
 - 3.2 A new activity in the NZ ETS for permanent post-1989 forests (the permanent forest activity);
 - 3.3 A new exemption from carbon liabilities for forests partly or fully cleared as a result of a temporary adverse event; and
 - 3.4 Technical improvements to make the NZ ETS easier to participate in.
4. Amendments to the Forestry Regulations are required to provide the operational detail for how the Amendment Act policies will work in practice. This paper seeks approval of policy decisions on four substantive areas of regulation:
 - 4.1 A package of changes to implement averaging accounting – we propose a simple accounting framework, which is different to the accounting approach previously agreed to by Cabinet;
 - 4.2 A definition of events covered by the temporary adverse event exemption;
 - 4.3 The size of penalties for clear-felling a permanent forest; and
 - 4.4 How to apply the Field Measurement Approach to new policies.

5. We are also seeking delegated authority to approve changes to the Forestry Regulations on minor and technical matters, including the detailed rules to implement existing policy decisions.

Background

Eligible forests can register in the NZ ETS to earn credits for carbon sequestration

6. Owners of eligible forests can register with the NZ ETS to earn New Zealand Units (NZUs/units, also known as carbon credits) as their forests grow. They can sell those units on the market, for example to emitters of greenhouse gases, who are required by law to surrender units to meet their ETS obligations.
7. Forests in the NZ ETS are split into two classifications:
 - 7.1 Pre-1990 exotic forests – Owners of exotic forests planted before 1990 cannot register their forests with the NZ ETS to earn units. They can harvest and replant their forests at no cost; however, they cannot deforest (i.e. change land use) without paying units to the Crown for the emissions associated with deforestation. The NZ ETS creates an incentive for pre-1990 exotic forests to remain as forest.
 - 7.2 Post-1989 forests – Owners of forests planted from 1990 can voluntarily register their forest in the NZ ETS to earn units as the forest grows. They currently must pay back a portion of units if the forest is harvested, and all of the units if the forest is deforested. The NZ ETS creates an incentive for new forests to be planted.

Primary legislation has been reformed to incentivise forest establishment and reduce complexity in the NZ ETS

8. Amendments to the Climate Change Response Act 2002 (the Act) from the passing of the Amendment Act delivered a range of improvements to the NZ ETS to incentivise new post-1989 forests to be planted, and make the scheme simpler and less costly for participants. For forestry, the amendments include:
 - 8.1 a new carbon accounting approach called 'averaging' that will be mandatory for post-1989 rotational¹ forests registered from 2023 and optional for forests registered from 2019²;
 - 8.2 a new permanent forest activity for permanent post-1989 forests which will replace the Permanent Forest Sink Initiative³ administered under the Forests Act 1949⁴;
 - 8.3 a new exemption from carbon liabilities for forests cleared by a temporary adverse event; and
 - 8.4 operational and technical improvements for forestry⁵.

¹ Rotational forests are grown for timber; each planting and harvesting cycle is a rotation.

² CBC-19-SUB-0008, decisions 1 and 2.2 and 2.3 refer; DEV-19-MIN-0113; and CAB-19-MIN-0337 refer.

³ The Permanent Forest Sink Initiative is a Government sustainable forestry programme that enabled landowners to receive units through the creation of permanent forests.

⁴ ENV-18-MIN-0047, decisions 7 and 25 refer; and DEV-19-MIN-0043 refer.

⁵ ENV-18-MIN-0047; DEV-19-MIN-0043; and CAB-19-MIN-0337 refer.

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9. Post-1989 participants must regularly calculate and report changes in carbon stock in their forest – called carbon accounting. This determines if they will earn or need to surrender units.
10. The introduction of averaging accounting means there are now two accounting approaches used in the scheme. Post-1989 forests registered before 2019 will continue to use the existing ‘stock change’ accounting approach⁶. Forests registered in the new permanent forest activity will also use this approach.

Regulations are needed to implement these forestry policy changes in the Amendment Act

11. Most new forestry provisions in the Amendment Act will commence on 1 January 2023. The Amendment Act devolves much of the detail for the forestry policy changes to regulations. In this paper we are seeking approval for four substantive proposals to provide those regulatory changes:
 - 11.1 Establishing the settings and rules to implement averaging accounting;
 - 11.2 Defining events as ‘temporary adverse events’ to let participants access an exemption from surrendering units if their forest is temporarily cleared due to something like a fire, or a storm;
 - 11.3 Setting the size of penalties for clear-felling a forest in the new permanent forest activity; and
 - 11.4 Setting out how to apply the 100-hectare threshold for using the Field Measurement Approach (FMA)⁷ to calculate carbon storage and applying the FMA:
 - 11.4.1 to new policies introduced by the Amendment Act (such as forests registered under averaging accounting);
 - 11.4.2 during the 2023 to 2025 Mandatory Emissions Return Period; and
 - 11.4.3 to forests transitioned out of the Permanent Forest Sink Initiative and into the NZ ETS.
12. These proposals have been developed after two rounds of public consultation and engagement with a Technical Advisory Group of ETS experts.⁸ The second round of consultation focussed on the details of averaging accounting.
13. This paper also seeks approval to delegate authority for policy decisions on minor and technical changes to the Ministers of Climate Change and Forestry.
14. Decisions on the design of the Regulations are needed now in order to provide enough time for drafting and testing the Regulations before they are finalised and Gazetted on 1 October 2022, and come into force on 1 January 2023.

⁶ Stock change accounting accounts for all increases and decreases in carbon stored in a forest. This means that rotational forests earn units up until they harvest and then must pay back most of the units earned to account for the emissions from harvest.

⁷ The FMA applies to participants with over 100ha of forest in the NZ ETS. Participants using the FMA are required to measure the size of their trees at least every 5 years. It can be expensive (around \$10,000 - \$15,000 per participant, with higher costs for larger participants).

⁸ See: DEV-21-MIN-0005 for 2021 consultation, decisions 3 and 4 refer; and ENV-19-MIN-0054 decision 4 refers for the 2019 – 2020 consultation.

Establishing the settings and rules to implement averaging accounting

The high level design of averaging accounting has already been agreed by Cabinet

15. Averaging accounting was introduced to incentivise new planting of rotational forests in the NZ ETS by removing the carbon liability associated with emissions when forests are harvested, and reducing long-term administrative requirements for participants. It is intended to be simpler than the current stock-change carbon accounting approach, and better aligns our domestic settings with how we account for carbon stored in rotational forests internationally.
16. Cabinet previously agreed⁹ to the following principles for averaging accounting:
 - 16.1 Newly registered first rotation forests¹⁰ will earn units from when they are registered in the NZ ETS until the forest reaches its long-term average carbon stock (the 'average age') – units won't typically need to be paid back provided the forest is replanted; and
 - 16.2 Changes in the long-term average carbon stock will be accounted for in both the first and subsequent rotations – forests would earn more units for harvesting later than is typical and surrender units for harvesting earlier, and any changes in forest type¹¹ would be accounted for.
17. To implement averaging accounting, Regulations are required to:
 - 17.1 Determine the average age of each forest type; and
 - 17.2 Create the accounting framework for how and when forests will earn or surrender units under averaging.

Determining the average age for each forest type

18. The 'average age' of a forest is the age when the forest stores the amount of carbon it will store on average over many cycles of growth and harvest. Cabinet previously decided it should be based on¹²:
 - 18.1 The forest type; and
 - 18.2 The age the forest type is typically harvested.
19. Different forest types grow at different rates, and the typical harvest age has a large influence over how much average carbon is stored in a forest (i.e. a forest which is harvested at an older age will have a higher average carbon stock).

⁹ DEV-19-MIN-0113, decisions 6, 26, and 27 refer.

¹⁰ A first rotation forest is defined in the Amendment Act. It is a forest which is planted on land that has not previously been in forest that has been harvested and replanted.

¹¹ Instead of species, the ETS groups forests into 'forest types'. These represent different groups of species. There are five forest types within the NZ ETS. The categories include radiata pine, Douglas fir, exotic softwood, exotic hardwood, and indigenous species.

¹² DEV-19-MIN-0113, decision 7 refers.

20. The typical harvest age, and proposed ‘average age’ of each forest type is set out in Table One below. The typical harvest ages have been derived from a mixture of sector-wide data on actual harvest ages in the forestry estate, surveys of the intentions of forest owners around when they will harvest their forests, and feedback from public consultation. The average age is derived from the carbon stored over the second rotation using those typical harvest ages.
21. Indigenous forests are currently assumed to be harvested at age 50 because this is the furthest out the existing carbon tables in the ETS go for most forest types. If the carbon table is extended in the future, the average age for indigenous forests could be increased. We expect that most indigenous forests would be registered as permanent post-1989 forest, which allows the forest to continue earning units until age 50 rather than stopping when the trees reach age 23, as would occur under averaging accounting.
22. We seek your agreement to the average ages proposed in Table One.

Table One: The typical harvest ages and proposed average ages, by forest type

Forest type	Typical harvest age	Average age
Radiata pine	28	16
Douglas fir	47	26
Other exotic softwoods	40	22
Exotic hardwoods	21	12
Indigenous	50	23

Determining the framework for earning and surrendering units

23. The average ages in Table One above can be considered the “default” average age that these forest types will be allocated when they register into the NZ ETS.
24. Cabinet agreed¹³ that a forest harvested significantly later or earlier than its typical harvest age would have a different average age to the default to allow forestry participants to trade-off carbon and timber prices to maximise their returns. This meant that:
 - 24.1 If participants delayed harvest they would earn additional units – forests harvested later than usual would have a higher average carbon stock, and therefore a higher average age; and
 - 24.2 If participants harvested earlier than is typical they would have to surrender units – they would have a lower average carbon stock than was assumed and they would have a lower average age.
25. It was envisaged that this could apply both on the first rotation and for subsequent rotations over multiple decades of a forest being harvested and replanted. An incentive to extend typical harvest ages would also lead to modest increases in carbon sequestration over the lifetime of the forest.

¹³ DEV-19-MIN-0113, decisions 26 – 30 refer.

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26. To enable increases or decreases in average age from the default, averaging accounting would have groupings of harvest age ranges by forest type. Forest ages within the same harvest range would have the same default average age (e.g. forests harvested between 25 and 30 would have the same average age, and those harvested between 30 and 35 would have a higher average age).
27. There are design choices that need to be made in Regulations about how many and how wide these groupings are, and whether to apply detailed accounting over multiple rotations, influencing how precise the accounting framework is:
 - 27.1 Having more, narrow groups of harvest ages increases precision of unit earning, while having fewer, wide groups increases flexibility for forest management; and
 - 27.2 Having detailed carbon accounting over multiple rotations increases precision of unit earning, while having detailed accounting on only the first rotation increases flexibility of forest management in later rotations.
28. During the policy development process, Te Uru Rākau – New Zealand Forest Service officials consulted on a number of frameworks to provide for these principles. These frameworks ranged from more ‘precise’ – with several harvest age groupings and detailed accounting over multiple rotations (closely reflecting the principles agreed by Cabinet), to more ‘simple’ – with few groupings of harvest ages and detailed accounting on only the first rotation (reflecting the focus on simplifying the NZ ETS for forestry).
29. Feedback from public consultation on preferred accounting frameworks was mixed. Submitters generally preferred a more precise approach on the first rotation which would enable them to maximise carbon returns. However, the majority also preferred the flexibility to manage their forests freely on subsequent rotations that a simpler approach would provide.
30. We considered a hybrid framework where a participant could earn units for delaying harvest, but was under no obligation to maintain that additional carbon storage. We discounted this approach as there would be a significant risk of over-crediting forests. This is because the additional units earned for a delayed harvest are not locked in, posing a risk to the integrity of forestry units.

Further analysis has shown that a precise framework will be more challenging to implement than initially envisaged

31. A precise framework for earning and surrendering units in averaging accounting as initially agreed to by Cabinet would require any changes to the average age of a forest in the first or subsequent rotations to be accounted for in great detail.
32. The major benefit of the precise approach is that participants could choose to maximise their carbon returns by delaying harvest, which in turn could increase the total amount of carbon stored by the forest estate.

33. However, following public consultation and work with a Technical Advisory Group, our officials have advised us that a precise accounting framework will be more complex to implement than originally envisaged, and could have wider implications for the forestry sector such as reducing certainty around log supply.

Implementation challenges

34. Officials have identified two main challenges to implementing a precise accounting approach for averaging in practice:
- 34.1 *Reduced flexibility to manage forests differently to the first rotation* – because participants will need to account for any changes made to the long term average carbon stock, the management decisions in the first rotation set the “starting point” for future rotations. This impacts decisions on harvest ages and species choice in later rotations. For example, if the participant on the first rotation extends their harvest age this will need to be repeated in later rotations or units will need to be surrendered. Similarly, if the first rotation is radiata pine, any change to a different species on the second rotation will incur a large unit surrender. This ‘lock in’ effect is strong and will reduce land-use flexibility in the future.
- 34.2 *Detailed accounting of changes in carbon stock would need to be provided over long time frames* – detailed accounting is required to ensure any additional units earned for a delayed harvest have integrity. Foresters would need to continue to provide a detailed account of changes in carbon stock over successive rotations, with subsequent costs and complexity for participants. Detailed accounting may have to be re-started by new owners decades after previous decisions.

Wider implications

35. Because a precise approach enables financial returns from carbon to be maximised, the higher the carbon price the stronger the incentive is to keep delaying harvest. This effect would be particularly strong with weaker timber prices and/or higher harvesting costs and would reduce the certainty of timber supply from forests registered under averaging. If the carbon price increases dramatically, forest owners would be financially better off to delay harvest (e.g. to age 45 or 50) for as long as they continue to earn units, even if it impacted their returns from timber.
36. The additional benefit from carbon revenue of a precise accounting approach is likely to be eroded with higher carbon prices as the carbon revenue benefit is much greater in the permanent forest activity. It would make more economic sense for the kinds of forests likely to significantly extend harvest ages under averaging close to age 50 (i.e. those with lower timber revenue) to switch into the permanent forest activity and take advantage of higher carbon revenue.

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We consider that a simpler approach can deliver the key benefits of averaging without the drawbacks associated with a more precise framework

37. Given the drawbacks of a precise accounting framework, we are recommending Cabinet agree to a simpler accounting framework for earning and surrendering units under averaging. Note that this would require Cabinet to change its decision to account for long-term changes in carbon stock under averaging.¹⁴
38. Under a simple accounting framework, a participant with a first-rotation forest will be able to earn units annually until the forest reaches the default average age of its forest type. Once a forest reaches its average age no further accounting of changes in the forests' carbon stock will be required.
39. Participants will then only need to demonstrate their registered forest area remains forest land, and they would only be required to surrender units if they deforest (this is similar to how pre-1990 forests account for deforestation). In the future, a post-1989 forest participant using averaging could change forest species, or choose to harvest at different ages, without impacting their units.
40. To prevent very short rotations earning units like a typical forest, if a first-rotation forest is harvested very early (i.e. before ten years old), the participant will have to surrender almost all the units they earned.¹⁵
41. This simpler accounting approach will provide existing and future forest owners with the flexibility to manage their forests appropriately to suit market and environmental conditions, while minimising uncertainty for future log supply from the post-1989 estate. The trade-off is that they won't have the option to earn additional units above their forests average age.
42. The most recent projections by MPI estimate that a carbon price between \$35 to \$50 per unit¹⁶ could incentivise around 298,000 to 367,000 hectares of exotic production afforestation registered into averaging from 2019 to 2030. Applying a simple accounting framework instead of a precise framework is not projected to change afforestation rates. This is because the afforestation incentive is more strongly driven by the carbon price than the details of averaging accounting.
43. Modelling suggests a simple accounting framework for averaging could result around 24 to 31 million tonnes by 2050 from additional afforestation.¹⁷ The additional carbon potentially stored by extending harvest ages under a more precise approach is relatively small (an additional two to three million tonnes in the year 2050). The additional sequestration from a precise approach only occurs after 2040, so has no impact on emissions budgets or New Zealand's 2030 target. This is heavily dependent on future carbon and log prices.

¹⁴ DEV-19-MIN-0113, decisions 26 and 27 refer.

¹⁵ This harvested forest will have an average age of three years. Participants will have to account for the difference in carbon stored by their forest prior to harvest and a three year old forest of the same type.

¹⁶ The current carbon price is at the higher end of this range.

¹⁷ At a carbon prices of \$35 to \$50 per unit, including permanent and production exotic forests.

44. While a simple accounting approach enables participants to change to a lower carbon-storing forest in later rotations without penalty (i.e. by earlier harvest or a change in species), we consider the risk of significant over-crediting to be low. This is because the species mix of New Zealand's exotic forest estate has been consistent over time due to strong returns from radiata pine.
45. Our officials will continue to monitor the forest types of post-1989 registered forest to ensure no issues with over-crediting emerge over time to safeguard the integrity of forestry units in the scheme.
46. We are confident that implementing a simpler approach will still achieve the policy intent of encouraging afforestation while keeping participation in the scheme relatively simple.

The simple framework can be adapted easily once the Government's response to the Climate Change Commission's advice on how to meet our targets has been finalised

47. The Climate Change Commission had a number of recommendations about the future of forestry in the NZ ETS. We do not consider those in this paper, other than noting that implementing averaging through a simple accounting framework will contribute to meeting the afforestation targets for exotic forests in the Commission's report.
48. However, in future, should delaying harvest ages to gain additional benefits in sequestration from our post-1989 forest estate be desired to meet our targets, we consider a simple accounting framework provides the best base design which could be built on as required. In comparison, a more precise accounting framework would be more difficult to unwind in order to align it with future strategic directions for forestry in the NZ ETS.

Further work has been commissioned to prevent averaging settings from under-crediting forests in remote or difficult-to-harvest areas

49. During consultation, several Māori organisations and individuals, as well as other stakeholders, expressed concern that an assumed harvest age based on a national average would under-credit forests that are likely to be un-economic to harvest at typical harvest ages (but are otherwise productive). For example, it may be optimal to harvest a radiata forest located far from port or in a difficult-to-access area at age 40, rather than the typical harvest age of 28. In this situation, the average age of these forests would be higher than age 16.
50. Because Māori disproportionately own land in remote or difficult-to-access areas which could otherwise be suitable for forestry, this issue particularly impacts the potential benefits of registering in the NZ ETS for many Māori.
51. While more precise accounting frameworks partly mitigate the issue of under-crediting these forests as they could earn some additional units when they grow above the default average age, the issue applies regardless of whether a simple or precise framework is implemented.

52. There is insufficient time to delay decisions on the design of averaging to accommodate solutions for this land, and have the Regulations in place by 1 January 2023 for averaging to come into force.
53. However, we have directed officials to undertake further work on this issue and we expect significant progress towards a solution prior to the implementation of averaging in 2023. Implementing regulations on averaging remains the key priority by 1 January 2023, so implementation of additional regulations, if needed, will be after this date.

Two new rules are needed for land registering into averaging accounting

A rule is needed to prevent registering land that was once forest into the NZ ETS as a new forest and earning units under averaging

54. An existing forest which is older than its average age will not earn units under averaging accounting. However, it could be very profitable for a landowner to deforest an existing forest and then enter it into the NZ ETS as a first rotation forest to earn units under averaging. This would be both a cost to the Crown, and create risks to the integrity of forestry in the NZ ETS.
55. Cabinet has previously agreed¹⁸ to implement a 'stand-down' period in regulations, so that land deforested after 2021 cannot enter back into the NZ ETS and earn units under averaging until the 'stand-down' period expires.
56. We have consulted on the length of the stand-down period and consider a period of 15 years appropriate to prevent people taking advantage of the opportunity, and is short enough to accommodate genuine land-use change.

We propose a rule to allow forests planted over existing tree species to enter the NZ ETS under averaging accounting and earn units

57. The Act has strict rules around clearing forest in averaging accounting. The Act prescribes that any clearing and replanting makes the replanted forest 'subsequent rotation', and therefore has limited ability to earn units. Subsequent rotation forests would only be able to earn units under 'precise' accounting rules for averaging and in the permanent forest activity.
58. Submitters from the forestry industry were concerned because commercial forests can often be planted after clearing land of existing vegetation (scrub). This can include naturally growing forest and shrubland species (ranging from gorse, to naturally regenerating indigenous species like mānuka, to wilding pines). Without an additional rule in the Forestry Regulations, forests under averaging that were planted after such vegetation is cleared would become 'subsequent rotation'.

¹⁸ DEV-19-MIN-0113, decision 53 refers; and ENV-19-MIN-0035, recommendations 19 and 20 refer

59. The only current option available to landowners to benefit from the carbon sequestration provided by establishing new forest on this land would be through the permanent forest activity. The permanent forest activity is not suitable for forests harvested for timber under clear-felling regimes, and would not bring the same economic benefits to the land owner and regional economy. The other option would be for landowners to over-look this land and invest in averaging forests on land clear of vegetation, which may be better suited to other land uses but will give a more certain return under averaging accounting.
60. In order to ensure averaging can enable afforestation of commercial forestry, we propose a new rule which will mean that existing, naturally-occurring vegetation could have been cleared and the land would not be considered 'second rotation'.
61. This will apply to clearing of vegetation made up of tree species meeting the definition of 'forest land' in the NZ ETS¹⁹, where the predominant tree species *has not yet reached its average age*. This will prevent clearing existing commercial forests and regenerating native forests which have reached their long-term average age (currently proposed as 23 years). Any emissions from clearing the forest land would have to be accounted for in the NZ ETS after someone registers the new forest.
62. We consider the risk of encouraging the clearance of native vegetation on private land to be low. This is because anyone registering forest land in the NZ ETS to earn units must be compliant with the Resource Management Act 1991 (RMA) and any council rules under the RMA in relation to that land, going back to 1 January 2008. This includes, but is not limited to, compliance with rules relating to the removal of existing vegetation and forest species. If a person were to clear indigenous biodiversity without meeting requirements under the RMA, the person could not join the ETS to earn units for the area cleared. During the registration process in the NZ ETS, applicants must confirm their compliance with the RMA or they will be unable to join the NZ ETS.
63. The Ministry for the Environment notes that while management of indigenous (native) biodiversity is required by the RMA, councils have taken different approaches to implement these requirements. Where native ecosystem values have not been locally identified, they may not be adequately protected. The proposed National Policy Statement for Indigenous Biodiversity will be an important addition to RMA rules in assisting councils to adequately protect native vegetation (including forest/shrubland species) with significant biodiversity values.
64. We consider that restricting new forest under averaging to land without existing woody vegetation would prevent landowners from making an economic return from land that may otherwise have low production value, and leaving the land with little pest control or active management. It may also inadvertently push new forestry onto pastoral land with higher production values. This new rule will also put afforestation under averaging on the same footing as existing commercial forestry in or outside the NZ ETS, and as the permanent forest activity.

¹⁹ The tree species must be able to reach 5m high and achieve 30 percent tree crown cover across at least 1ha.

- 65. We are satisfied that the rule is justified, noting it must be accompanied by adequate local biodiversity protection. The proposed National Policy Statement for Indigenous Biodiversity will strengthen and clarify those rules.
- 66. Officials have confirmed this proposed rule will not affect decisions on the eligibility of land under the NZ ETS. Some landowners have difficulty providing evidence that their land is eligible post-1989 forest land and there is work underway to improve the process for determining land eligibility and to update the default carbon tables for native tree species²⁰.
- 67. The work on eligibility rules and look-up tables will go some way to making it easier for some landowners to enter land in the NZ ETS, and to clarify the earning potential of sequestration from regenerating native forest. Nonetheless, the discussion above does highlight the lack of existing financial incentive for landowners to manage regenerating native forest for climate and biodiversity benefits (amongst others), rather than to plant in exotic forestry. s 9(2)(f)(iv)

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Defining events that are covered by a new Temporary Adverse Event exemption

- 68. Events outside a participant's control, like a fire or a storm, can clear large areas of forest. Currently, if an event affects NZ ETS registered post-1989 forest and destroys the trees, the participant is liable to surrender units for the loss of carbon from the event, treating it as if it was harvested. A large risk is created for participants, and this is a deterrent to NZ ETS participation.
- 69. The Amendment Act introduces a new exemption for the loss of carbon from forests partly or fully removed because of a 'Temporary Adverse Event' ('an event'). If a registered area of forest is affected by an event, instead of surrendering units for the associated loss of carbon, the area has its carbon accounting 'paused'. Over the 'paused' period no units are earned or surrendered until the area affected is replanted and reaches the same carbon stock as prior to the event. The minimum area for an exemption is one hectare.

²⁰ The current table may under-credit native forests in some parts of the country. Updating the table would give confidence to landowners who want to encourage native forest reversion rather than plant an exotic forest.

70. Regulations are needed to specify the events covered by the exemption. We are proposing to define these events in the Forestry Regulations using a broad list of events that cause clearance of forest. This includes:
- 70.1 natural events (e.g. windthrow); or
 - 70.2 accidental events that cause clearing (e.g. accidental fire); or
 - 70.3 the harvesting of mortally affected trees by an event (e.g. salvage logging of disease infected timber); and also includes
 - 70.4 “associated clearing” that is best practice in response to an event²¹.
71. Some of these events will clear trees directly – for example windthrow will cause trees to fall and be cleared. However, some events such as pests or disease impact trees much slower: they may infect trees, but the trees would not die for years following the first sign of infection. These trees would be considered “mortally affected.” It is best practice to remove these trees before they lose their value, and it would potentially prevent further spread of a pest or disease. We consider including this is appropriate to ensure best practice forest management can be followed, and the exemption can still apply to the landowner who’s trees were affected by disease.
72. The definition of an event will be more restrictive for forests in the permanent forest activity, which are not allowed to be clear-felled by participants. Participants registered in this activity will not be allowed to harvest mortally affected trees or be able to conduct associated clearing for removing damaged trees or prevent future disturbances. While these activities are standard management practice in plantation forests, we don’t consider they align with the purpose of permanent forests, which are intended to be long term carbon sinks. Disease and ongoing disturbances are features of natural carbon sinks.

Setting the size of penalties for clear-fell harvesting forests under the new permanent forest activity

73. The permanent forest activity is available to participants from 1 January 2023. Participants are allowed to harvest forest registered in the permanent forest activity, provided they retain 30 percent tree crown cover across a hectare²². Harvesting in way which drops tree crown cover below 30 percent across a hectare is considered ‘clear-felling’.
74. Cabinet has agreed to introduce a penalty for clear-felling forests registered in the permanent forest activity in the NZ ETS²³ to deter participants from clear-felling. If clear-felling occurs, the court can impose a penalty equal to the value of the trees harvested beyond the 30 percent tree crown cover limit. To reflect the harvest *in excess* of what is allowed, the penalty values in this paper represent 30 percent of the total value of a hectare of clear-felled forest.

²¹ This is clearing in addition to the impacted area, conducted for health and safety purposes, site access, removing damaged trees, and preventing future disturbances. Associated clearing will be in addition to the one hectare affected by events in a. – c. above.

²² This approach was confirmed during the Select Committee stages of passing the Amendment Act, and is reflected in section 190F of the Amendment Act.

²³ DEV-19-MIN-0043, decisions 27-31 refer.

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75. Participants who clear permanent forest must also surrender units to account for emissions from the clearing, alongside the penalty for clear-felling.
76. The Amendment Act provides for regulations to determine the value of any timber removed in a clear-fell event. The value will be the maximum penalty which can be applied by the court when determining the size of the fine.
77. We propose to determine the value of the clear-felled area based on:
 - 77.1. The type of forest (and region, for radiata pine); and
 - 77.2. The age and size of the forest (using the tonnes of carbon dioxide equivalent stored in the trees as a proxy for size).
78. The final values we propose to use are based on research by the University of Canterbury, which calculated average net returns from harvesting to the forest owner, based on a typical harvest age²⁴, recent market prices, and the locations of post-1989 forests. The maximum penalty values in Table Two represent 30 percent of the average return from harvesting a hectare of that forest type.
79. We also consider the best approach is for the fine to increase with the age of the trees which are clear-felled. This means that younger forests will receive lower fines and landowners will not be deterred from participation in the permanent forest activity, and the fine will keep up with the increasing size (and value) of forests as they continue to grow after typical harvest ages.
80. To make the penalty scale with tree age and size, we propose to prescribe a deemed value in dollars per tonne of carbon dioxide equivalent (equal to one unit in the NZ ETS). Tonnes of carbon dioxide equivalent is a good proxy for forest size as it increases at a similar rate to tree size and volume of harvestable logs but is easily calculated using existing methods in the NZ ETS. MPI and participants will easily be able to calculate the size of the penalty from the carbon stock of the forest prior to clearing.
81. Log prices can be volatile and fluctuate over time, changing the returns a forester will get from a cleared area. To ensure participants are penalised appropriately, our officials have recommended reviewing the penalties for each Mandatory Emissions Return Period, which is roughly every five years. If major changes to the log market and prices occur during a Period, we would consider updating the Regulations sooner than the start of the next Period.
82. The proposed values are set out below in Table Two. We are seeking delegated authority from Cabinet to determine the exact method for calculating the penalty from these values.

²⁴ The values for exotic hardwoods have been moderated, as most commercial forests harvested at very young ages and may be different from the forests which are planted in the permanent category. There was little data for indigenous forests, so we have assumed a price per tonne that is equal to the most valuable log per tonne – douglas fir.

Table Two: Deemed values per hectare of permanent post-1989 forests (at average harvest ages)

Forest type	Region	Deemed value of a hectare (if harvested at typical age*	Maximum fine value if harvested at typical age*	Value per t/CO ₂ e-**
Radiata pine	Auckland	\$26,100	\$7,800	\$10
Radiata pine	Waikato/Taupo	\$23,300	\$7,000	\$9
Radiata pine	Bay of Plenty	\$33,900	\$10,200	\$14
Radiata pine	Gisborne	\$36,900	\$11,100	\$14
Radiata pine	Hawkes Bay/SNI	\$27,600	\$8,300	\$10
Radiata pine	Nelson/Marlborough	\$26,300	\$7,900	\$12
Radiata pine	Canterbury/West Coast	\$20,800	\$6,200	\$12
Radiata pine	Otago	\$23,000	\$6,900	\$11
Radiata pine	Southland	\$23,100	\$6,900	\$10
Douglas Fir	N/A	\$43,000	\$12,900	\$15
Exotic softwoods	N/A	\$18,100	\$5,400	\$12
Exotic hardwoods	N/A	\$8,600	\$2,600	\$5
Indigenous	N/A	\$16,300	\$4,900	\$15

* Rounded to nearest \$100; ** Rounded to nearest \$1.

Applying the Field Measurement Approach

83. The FMA is a method used to assess carbon stock in a post-1989 forest based on tree measurements. Because participants incur significant costs from using the FMA, only those with more than 100 hectares of registered forest are required to use it. Participants with less than 100 hectares registered must use default carbon tables, prescribed in regulations.
84. Te Uru Rākau – New Zealand Forest Service processes the FMA data collected by an NZ ETS participant and develops a carbon table specific to the participant’s forest, giving a more accurate reflection of carbon stored. The table is then used to complete carbon accounting and reporting.

Applying the Field Measurement Approach 100-hectare threshold

85. Cabinet previously agreed that the current 100-hectare threshold for determining whether participants are required to use the FMA applies to all post-1989 forest land, regardless of whether it is using the averaging accounting approach or the existing carbon stock change approach²⁵. Regulations are needed to clarify how to apply this decision.
86. We are proposing FMA participation be based on the total area of an NZ ETS participant’s registered post-1989 forest land. This means from 1 January 2023, a participant will be required to use the FMA if they have 100 or more hectares of post-1989 forest land registered in the NZ ETS (including the Permanent Forest Activity, existing stock change forest, and forests using averaging accounting) at any time in a mandatory emissions return period.

²⁵ DEV-19-MIN-0113, decision 20 refers.

87. Applying the 100-hectare threshold in this way will keep the FMA threshold simple to understand and comply with. This approach was supported in consultation as it will maximise the number of participants who will reach the threshold (participants generally prefer the additional accuracy of the FMA).

Applying the FMA when forest is not 'actively accounting'

88. New policies in the Amendment Act will create situations where forest is registered in the NZ ETS but is not 'actively accounting' – where the actual forest carbon emissions and removals are not reflected in an emissions return due to accounting rules. This includes land that has been affected by a temporary adverse event, or land that has reached its default average age.
89. Collecting data and using the FMA tables from areas of forest which are not 'actively accounting' would add unnecessary cost, and lead to less accurate FMA tables for land which is still actively accounting. Therefore, we propose there be no requirement to collect FMA data from forest which is not 'actively accounting' for the duration of a Mandatory Emissions Return Period.
90. The existing FMA rules will need updating to ensure that forest measurement data is captured appropriately from forests subject to the new averaging accounting approach²⁶ and temporary adverse event rules. We are seeking delegation from Cabinet to the Minister of Forestry and Minister of Climate Change for decision-making authority on technical regulations relating to application of the FMA threshold and the application of the FMA to forests subject to new policies under the Amendment Act.

Application of the FMA during the 2023 to 2025 Mandatory Return Period

91. Cabinet previously agreed to a shorter Mandatory Emissions Return Period between 2023 and 2025 to better match the Paris Agreement's reporting requirements and that officials would prepare proposals for regulation changes to reduce operating costs for participants during that Period²⁷.
92. In 2019, we consulted on making it optional for existing NZ ETS participants using the FMA to collect FMA information in the '2023 to 2025 Mandatory Emissions Return Period' to avoid incurring the high cost of FMA measurement obligations in the shortened Period²⁸. Feedback from participants was positive.
93. Under this proposal, existing FMA participants will be able to use their existing carbon tables generated from FMA information collected during the present (2018 to 2022) Mandatory Emissions Return Period.

²⁶ Current FMA rules apply to post-1989 forests subject to the stock change accounting approach.

²⁷ DEV-19-MIN-0043, decisions 13 and 14 refer.

²⁸ FMA costs can be significant – for a 100-hectare forest, it would cost around \$10,000 - \$12,000 to measure a forest. For each Mandatory Emissions Return Period, FMA costs are estimated to be about \$8,000,000 across all forests in the NZ ETS.

94. We also propose that existing FMA participants who increase their registered post-1989 forest land to 100 hectares or more in the 2023 to 2025 Period, or new FMA participants (who enter the NZ ETS), have the option to either use the general default tables for the 2023 to 2025 Period, or to use the FMA approach to measure the carbon stock on their forest land. It will become mandatory to use the FMA from 2026.
95. Technical regulations will be needed to guide how existing FMA tables will apply, particularly to the addition and removal of land by, and transmissions of interest to and from, existing FMA participants during the 2023 to 2025 Mandatory Emissions Return Period.
96. Under normal circumstances, FMA participants must use FMA data for their emissions returns (there are existing regulations that govern this). We propose to confirm that during the 2023 to 2025 Mandatory Emissions Return Period when it is optional to take FMA measurements, that if participants decide to remeasure their forest and submit new data to Te Uru Rākau – New Zealand Forest Service, they will be required to base their emissions return on the participant-specific table generated from that new data.

Moving the Permanent Forest Sink Initiative into the NZ ETS will require specific rules for the FMA

97. By 2024, transition of covenants from the Permanent Forest Sink Initiative to the NZ ETS will need to have been completed²⁹. Covenant-holders do not need to use the FMA, but some have received approval to do so creating four 'categories' of covenant-holder in relation to the FMA:
 - 97.1 Those that use the FMA;
 - 97.2 Those with at least 100 hectares of forest land that do not use the FMA but will become mandatory FMA participants once they transition to the NZ ETS;
 - 97.3 Those with less than 100 hectares of forest land in the Permanent Forest Sink Initiative, and that own some NZ ETS registered post-1989 forest, who will have at least 100 hectares in the NZ ETS when their Permanent Forest Sink Initiative forest and NZ ETS forests are combined; and
 - 97.4 Those with less than 100-hectare of forest land in the Permanent Forest Sink Initiative, and that will have less than 100 hectares in the NZ ETS once they transition.
98. Each of these situations poses slightly different considerations when transitioning to the NZ ETS and will likely need some specific, detailed regulations to address the transition and how the FMA applies.
99. We propose, in principle, to apply the same optionality for measuring carbon stock in the 2023 to 2025 Mandatory Emissions Return Period, to the transition of Permanent Forest Sink Initiative covenant-holders into the NZ ETS.

²⁹ In 2023 PFSI covenant holders can elect to move into a combination of Averaging or the Permanent Activity. On 1 January 2024 any remaining covenants are moved into the Permanent Activity.

100. In addition, there are a small number of Permanent Forest Sink Initiative covenant-holders who will have unique configurations of forest land and fall outside the above 'categories'. We propose to implement the new rules in the least costly way for those covenant holders, while maintaining the accuracy and integrity of the FMA.
101. We are seeking delegation from Cabinet to the Minister of Forestry and Minister of Climate Change for decision-making authority on technical regulations relating to the application of the FMA to NZ ETS participants and to Permanent Forest Sink Initiative covenant-holders transitioning into the NZ ETS.

Delegation to Ministers for authority to make minor and technical updates to the Regulations, and determine detailed rules in the Regulations to implement existing policy decisions

102. We seek delegation from Cabinet to the Ministers of Forestry Climate Change for decision-making authority on updates to the Regulations to implement Cabinet decisions on minor and technical matters and detailed rules. The specific areas we seek delegated authority to decide on, and issue drafting instructions for, are outlined in Appendix One.
103. All the technical amendments covered by this recommendation:
- 103.1. Have been granted an exemption from Regulatory Impact Assessment (RIA) requirement; and
 - 103.2 Are implementing or operationalising previous Cabinet decisions made between 2018 to 2020 when decisions were made on inclusions in the Amendment Act.
104. We are also seeking agreement from Cabinet to revoke its previous decisions from 2018 on the definitions of 'sub-areas', an accounting concept.³⁰ Following the introduction of the Amendment Act, an updated definition of 'sub-area' can be implemented which will simplify the NZ ETS for participants and reduce costs. We are seeking delegation from Cabinet to determine the new definition to 'sub-areas' as part of the wider delegation for minor and technical decisions.

Financial Implications

105. There are no direct financial implications for these proposals. Previous decisions on averaging accounting have covered the implications in detail.³¹ The implementation costs will be covered by funding approved for the ETS Transformation Programme in Budget 2020. The programme was allocated \$79 million to update the technology platform that administers forestry in the NZ ETS.

Legislative Implications

106. The proposals in this paper amend existing Regulations made under the Act.

³⁰ ENV-18-MIN-0040, decision 8.4 refers.

³¹ DEV-19-MIN-0013; CBC-19-MIN-0008

107. There is likely to be significant drafting required for these amendments to the Regulations.
108. There is a three month period required from the amendments being gazetted before they can come into force. Final amendments will need to be completed and gazetted by 1 October 2022 in order to come into force on 1 January 2023.

Impact Analysis

Regulatory Impact Statement

109. The Regulatory Quality Team has determined that impact analysis is not required for the following regulatory decisions because they are implementing previous Cabinet decisions and the detail has already been addressed by existing impact analysis:
 - 109.1 Implementation of the new Permanent Forestry activity (ENV-18-MIN-0047).
 - 109.2 Making it optional to collect FMA information in the 'mini' Mandatory Emissions Return Period (DEV-19-MIN-0043).
 - 109.3 Carbon stock calculations once land affected by a temporary adverse event has been separated into a Carbon Accounting Area (CAA) (DEV-19-MIN-0043 and ENV-20-MIN-0017).
110. Furthermore, impact analysis is not required for the Regulatory decisions on the technical changes proposed in this paper (in Appendix One) because they will have only minor impacts on businesses, individuals, or not-for profit entities.
111. The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment 'Amendments to the Climate Change (Forestry Sector) Regulations 2008' produced by Te Uru Rākau – New Zealand Forest Service: Ministry for Primary Industries and dated September 2021. The Panel considers that it meets the Quality Assurance criteria.
112. Overall, the Panel is convinced that the problems should be addressed by the preferred options that are identified in each section. The Panel considers that the analysis is clear and convincing, despite the complex and technical nature of the New Zealand Emissions Trading Scheme and the issues that are being canvassed. Although the RIA is long, the Panel has determined that the analysis is as concise as it can be and that this should not materially impact Cabinet decision-making.

Climate Implications of Policy Assessment

113. The Climate Implications of Policy Assessment (CIPA) team has been consulted and determined quantitative CIPA is not required for the Forestry Regulations. Most of the impact on national net emissions results from the increase in afforestation resulting from averaging accounting compared to the existing stock-change approach, rather than different frameworks for implementing averaging accounting. Implementation of the simple averaging framework proposed would not reach the threshold for emissions in the CIPA framework. Furthermore, forest management decisions with an impact on

emissions, are not likely to occur in forests subject to averaging accounting (or in forests in the new permanent forestry activity), within the CIPA 30-year timeframe.

114. However, given the importance of forestry in meeting New Zealand's climate change emissions targets, the climate implications considered when developing the policy proposals in this Cabinet paper are described in the associated Regulatory Impact Assessment (RIA).

Population Implications

115. This paper has no population implications.

Treaty of Waitangi Obligations

116. Section 3A of the Climate Change Response Act 2002 requires the Minister of Climate Change to be satisfied that representatives of iwi and Māori who are likely to have an interest in any legislative and regulatory changes have been consulted.
117. MPI engaged with Māori landowners, iwi, peak bodies, advisors, and other Māori with an interest in forestry and the NZ ETS during both rounds of consultation, and in an additional hui on 1 June 2021. Their feedback on how proposed averaging settings affect marginal land that is far from port has instigated further work, and we intend to engage with Māori further to resolve this issue.
118. The Minister of Climate Change is satisfied that this meets the requirements of Section 3A of the Climate Change Response Act 2002.

Human Rights

119. This paper has no human rights implications.

Consultation

Public consultation

120. In 2019 Cabinet approved public consultation on proposed amendments to the Forestry Regulations.³² Public consultation was held from 5 November 2019 to 15 January 2020. The first round of public consultation in 2019/20 included a national series of consultation meetings and three regional hui with Māori landowners, organisations, and NZ ETS participants in Whangārei, Rotorua and Gisborne, as well as one-to-one meetings. Feedback from submitters was clear on most proposals, however responses were mixed on options for averaging accounting settings and rules.

³² ENV-19-MIN-0054, decision 4 refers

121. Officials revised some proposals and Cabinet agreed³³ to further consultation on a second smaller package of proposals from 1 March 2021 to 9 April 2021. The second round of consultation included a recorded webinar, and two regional hui with Māori landowners, organisations and NZ ETS participants in Rotorua and Gisborne. An additional hui with Māori landowners was also held on 1 June 2021, where the issue of remote and hard-to-access land was discussed.
122. The Minister of Climate Change is satisfied consultation undertaken meets the requirements of Section 3B of the Climate Change Response Act 2002.
123. In general, submitters, including Māori, were supportive of:
- 122.1. a precise approach to a first rotation, which would allow forest owners to maximise their carbon returns on a first rotation by having the option to delay harvest to earn additional units; and
 - 122.2 a simpler approach on second rotations which would preserve long term land use flexibility.
124. There were some strong submissions and feedback from Māori groups that, as a package, a precise approach to first and second rotation accounting would be preferred over a simple approach that offered no units for delaying harvest beyond typical ages, i.e. it was more important to enable greater economic return up front than to retain land use flexibility in the future.
125. We have considered feedback from Māori and other submitters, and consider the overall benefits of simple averaging for the NZ ETS outweigh the additional benefit landowners may receive from a more precise approach, noting we have directed officials to undertake further work on the issues around hard-to-access and remote land.

Agency consultation

126. The following agencies were consulted and provided comments in the drafting of this paper: the Ministry for Primary Industries, the Ministry for the Environment, Te Arawhiti, Te Puni Kōkiri, the Ministry of Justice, the Department of Conservation, and the Treasury. The Ministry of Business, Innovation and Employment, and the Ministry of Foreign Affairs and Trade were informed.

Communications

127. We intend to release communications to stakeholders regarding the decisions made by Cabinet. This includes updates to the MPI website and notifications through the MPI NZ ETS bulletin and major publications.

Proactive Release

128. Following Cabinet consideration, we intend to release this paper in full.

³³ DEV-21-SUB-0005, decisions 3 and 4 refer

Recommendations

We recommend that the Committee:

1. Note that amendments to the Climate Change (Forestry Sector) Regulations 2008 are required to implement the package of forestry policy changes in the Climate Change Response (Emissions Trading Reform) Amendment Act 2020.
2. Note that public consultation on a package of regulatory amendments to the Climate Change (Forestry Sector) Regulations 2008 took place from 5 November 2019 to 15 January 2020, and further consultation on a small number of proposed amendments, occurred from 1 March to 9 April 2021.
3. Note the Minister of Climate Change is satisfied that consultation requirements have been met under section 3A and 3B of the Climate Change Response Act 2002.

Decisions on averaging accounting

High level approach to averaging accounting

4. Note averaging accounting is a new accounting method which is mandatory for post-1989 forests registered in the Emissions Trading Scheme from 1 January 2023, unless the participant joins the Permanent post-1989 forest activity. It rewards participants for changes in the long term average carbon stock of an area of forest.
5. Note that forests can be either 'first rotation' or 'subsequent rotation' under averaging accounting. These forests account for carbon stock changes very differently. A first rotation forest, in general terms, is a forest which has not been cleared previously. After an area of forest has been cleared, it becomes 'subsequent rotation.'
6. Note that the Amendment Act has implemented these decisions, but uses specific, and complex language for various concepts discussed in this paper. The recommendations will describe the policy for accounting and refer to specific terms in the Amendment Act in brackets, to provide precision for drafting.

Proposal for averaging accounting on a first rotation

7. Note Cabinet previously agreed [DEV-18-MIN-0113 refers] that first rotation post-1989 forest registered under averaging accounting will use the existing 'stock change' accounting approach to account for carbon stock changes, until the forest reaches its 'default' average age or is harvested. The Amendment Act authorises regulations to prescribe the method for determining the default average ages.

IN CONFIDENCE

8. Agree that the 'default' average age (reflecting the 'typical average carbon stock' in the Amendment Act) will apply to forests harvested at ages ten and above. The default average ages for each forest type are:
 - 8.1. For radiata pine, age 16
 - 8.2. For indigenous, age 23
 - 8.3. For Douglas fir, age 26
 - 8.4. For exotic softwoods, age 22
 - 8.5. For exotic hardwoods, age 12
9. Agree that first rotation forests cleared at ages nine or lower, will have to account to an average age of three (reflecting the 'nominal average carbon stock' of forests harvested at ages nine or lower in the Amendment Act). This closes a loophole where participants could clear forests at very young ages and earn units to the default average age.

Previous Cabinet decisions on averaging created a precise accounting framework for averaging accounting

10. Note Cabinet agreed [DEV-19-MIN-0113] that forests in averaging accounting should always account for emissions and removals between the average age of different harvest ages and forest types when:
 - 10.1. An area of forest has harvest significantly delayed compared to a typical harvest age or, if the forest was subsequent rotation, the area's prior harvest age;
 - 10.2. An area of forest is harvested significantly earlier compared to a typical harvest age or, if the forest was subsequent rotation, the area's prior harvest age;
 - 10.3. An area of forest changes forest type.
11. Note a simpler framework for carbon accounting after a forest reaches its default average age or has been harvested can deliver the major afforestation benefits of a more precise accounting framework, while being simpler for participants and more flexible for forest owners.

We propose a new, simpler accounting framework for averaging accounting

12. Agree to a new, simpler accounting framework for averaging accounting where:
 - 12.1. once a forest reaches the default average age of its forest type; or
 - 12.2. becomes subsequent rotation forest,it will no longer account for changes in forest type or harvest age (it will always be considered to remain at the nominal average carbon stock of its first rotation).
13. Agree that per recommendation 12 above, first rotation forest that has reached the default average age of its forest type should be treated the same as a subsequent rotation forest.

IN CONFIDENCE

14. Note the Amendment Act still requires a participant to surrender units at deforestation, equal to the 'unit balance' of the area deforested (the unit balance is a measure of how many net units an area of land has earned since it joined the Emissions Trading Scheme).
15. Note the Amendment Act authorises regulations to:
 - 51.1. prescribe methodologies for determining the circumstances in which a participant is or is not liable to surrender, or entitled to receive, units for emissions and removals;
 - 15.2. provide that a participant is not required to calculate emissions and removals in those circumstances or submit emissions returns;
 - 15.3. declare land to have a first rotation or subsequent rotation forest; and
 - 15.4. prescribe methodologies for determining the carbon stock measures and prior clearing age.
16. Agree to delegate authority for determining how the simple averaging accounting framework described in the recommendations above is implemented and drafted in regulations to the Minister of Climate Change and Minister of Forestry.

Further work on land which is remote or hard to harvest

17. Note that during consultation, submitters, particularly Māori, raised concerns about averaging accounting under-crediting land which is not economic to harvest at typical ages, and is likely to be harvested far later.
18. Note that we have directed officials to undertake further work on how averaging accounting applies to this land, and are expected to have solutions well developed by 1 January 2023 when the averaging accounting enters into force.

A rule is needed to prevent entering areas that were once deforested into the NZ ETS as a new forest and earning units under averaging

19. Note Cabinet agreed to close an over-crediting loophole called the 'deforestation loophole' [DEV-18-MIN-0113 refers]. This is addressed through a 'stand-down period' in the Amendment Act, so forests which are replanted following recent deforestation will remain 'subsequent rotation' forests under averaging accounting, rather than becoming first rotation forests and earning units under averaging. The Amendment Act empowers regulations to set the stand-down period.
20. Agree to set the 'stand-down period' as 15 years from the year the land is deforested. This will mean any land deforested after 2021 must remain out of forest for 15 years before it will be considered 'first rotation forest' when it is replanted.

We propose a rule to allow forests planted over existing regenerating forest to enter the NZ ETS under averaging accounting and earn units

21. Note that 'subsequent rotation' forest earns no units under averaging accounting, and a rule is needed to ensure clearing small existing vegetation which is 'forest land' prior to planting a forest does not make the land 'subsequent rotation.'
22. Agree first rotation forest land that has not reached its default average age, and was not established by direct planting, will remain first rotation land if it is cleared.
23. Agree carbon stock loss due to the clearing of the existing forest land is accounted for by the participant (the 'stock change approach' will apply).

Decisions on penalty rates for clear-felling permanent post-1989 forests

24. Note Cabinet agreed to introduce a pecuniary penalty for clear-felling forest in the Permanent post-1989 forest activity [DEV-19-MIN-0043 refers], with a maximum fine based on the deemed value of the clear-felled area as calculated by regulations. The Amendment Act authorises regulations to set the deemed value.
25. Agree the deemed value will increase as forest increase in age and size, using the carbon stock of an area as a proxy for the size of the trees which were cleared. This will allow simple calculation of the deemed value by participants and the regulator, using existing methods in the NZ ETS.
26. Agree the deemed value of clear-felled forest is determined by multiplying the carbon stock of the area clear-felled (in tonnes of carbon dioxide equivalent) immediately prior to the clear-felling, by the deemed value of the forest types (and region for radiata pine) which were cleared.
27. Agree the deemed values per tonne of carbon dioxide equivalent for each forest type (and region for radiata pine) will equal the values in Table Two of this Cabinet paper.
28. Agree the precise method to calculate the deemed value is delegated to the Minister of Climate Change and Minister for Forestry.
29. Agree to delegate authority to the Minister of Climate Change and Minister of Forestry to update the deemed values in future to reflect changing log prices.

Decisions on Temporary Adverse Events exemptions

30. Note the Amendment Act authorises regulations to prescribe the kinds of events that are adverse events, and prescribe minimum area thresholds and criteria for approval.

IN CONFIDENCE

31. Agree to define the kinds of events that qualify as a Temporary Adverse Event as:
 - 31.1 a natural cause or event; or
 - 31.2 an accidental event that causes clearing e.g. fire, herbicide, or browsing; or
 - 31.3 the removal of trees by mechanical means to clear mortally affected trees directly affected by an event described in 31.1) to 31.2) above; and includes
 - 31.4 associated clearing for health and safety purposes, site access, removing damaged trees, and preventing future disturbances.
32. Note at least one hectare of clearing is required by for the event to qualify as a Temporary Adverse Event under the Amendment Act.
33. Agree that for land affected by a Temporary Adverse Event involving “associated clearing”, the associated clearing must be in addition to the one hectare of land affected by the events referred to in recommendation 31 a. – c. above.
34. Agree that forests registered in the Permanent post-1989 Activity will only be able to undertake associated clearing for health and safety and site access purposes.
35. Agree to delegate authority for determining the specific list of events which qualify as Temporary Adverse Events to the Minister of Climate Change and the Minister of Forestry.

Decisions on applying the Field Measurement Approach

Application of the FMA threshold

36. Note the Climate Change (Forestry Sector) Regulations 2008 require participants with 100 or more hectares of post-1989 forest land registered in the NZ ETS to use the Field Measurement Approach (the ‘FMA threshold’) as part of the methodology for calculating carbon stock of the forest land.
37. Agree that NZ ETS participants who on or after 1 January 2023, have 100 or more hectares of post-1989 forest land registered in the NZ ETS (‘standard’ and permanent post-1989 forest land) at any time during a Mandatory Emission Return Period, will be required to use the Field Measurement Approach.
38. Agree that forest land which is not actively accounting will still contribute to the FMA threshold. Forest land not actively accounting includes, for example, forests in a temporary adverse event area, or forests registered in averaging accounting which are subsequent rotation or have met their ‘default’ average age.
39. Agree that, in principle, forest land which is not actively accounting for the duration of a Mandatory Emissions Return Period will not be measured for FMA purposes.

Application of the FMA during the 2023 to 2025 Mandatory Emissions Return Period

40. Note that Cabinet previously agreed to a shorter Mandatory Emissions Return Period between 2023 to 2025 to better match the Paris Agreement's reporting requirements and that officials would prepare proposals for regulation changes to reduce operating costs for participants during that Period [DEV-19-MIN-0043, decisions 13 and 14 refer].
41. Agree that existing NZ ETS participants using the FMA will have the option to take FMA measurements or to use their existing carbon tables during the 2023 to 2025 Mandatory Emissions Return Period.
42. Agree that where NZ ETS participants increase their registered forest land to 100 hectares or more, or new NZ ETS participants register forest land of 100 hectares or more, during the 2023 to 2025 Mandatory Emissions Return Period, that they have the option to take FMA measurements or to use the default tables.
43. Confirm that any FMA participant who submits FMA data to Te Uru Rākau – New Zealand Forest Service during the 2023 to 2025 Mandatory Emissions Return Period, will be required to use the resulting carbon tables.
44. Note that there will be specific regulations needed to address the addition and removal of land by, and transmissions of interest to and from existing FMA participants during the 2023 to 2025 Mandatory Emissions Return Period.

Moving the Permanent Forest Sink Initiative into the NZ ETS

45. Note the Amendment Act enables Permanent Forest Sink Initiative covenant-holders to register their land as standard or permanent forestry in the NZ ETS.
46. Agree that in principle, Permanent Forest Sink Initiative forest land entering the NZ ETS that was not previously subject to FMA obligations, will have no obligation to measure the carbon stock on their forest land in the 2023 to 2025 Mandatory Emissions Return Period, regardless of the size of the registered areas.
47. Agree that in principle, Permanent Forest Sink Initiative forest land entering the NZ ETS will follow the same approach to FMA data collection being applied to existing FMA participants in the NZ ETS during the 2023 to 2025 Mandatory Emissions Return Period.
48. Note that there will be specific regulations needed to address the transition of Permanent Forest Sink Initiative covenant-holders with unique configurations of forest land that will be subject to the FMA when they transition the NZ ETS.

IN CONFIDENCE

49. Agree to delegate the decisions for determining technical regulations, consistent with the recommendations above, relating to the FMA, including application of the FMA threshold, applying the FMA to new policies and accounting approaches introduced in the Climate Change Response (Emissions Trading Reform) Amendment Act 2020, and on the transition of the Permanent Forest Sink Initiative transition to the NZ ETS, to the Minister of Forestry and the Minister of Climate Change.

Miscellaneous Decisions

50. Agree to the release of an exposure draft of amendments to regulations resulting from decisions in this paper, including any minor and technical decisions made by the Minister of Forestry and Minister of Climate Change, and an accompanying commentary document to ensure testing with the sector can occur, subject to the final approval of the Minister of Forestry and the Ministry of Climate Change.
51. Agree to delegate authority to the Minister of Forestry and Minister of Climate Change to approve minor and technical changes to the Forestry Regulations. Minor and technical decisions include those listed in Appendix One of this Cabinet Paper, covering decisions to implement and update:
 - 51.1. Averaging accounting;
 - 51.2. The Permanent post-1989 Forest Activity;
 - 51.3. Reporting and undertaking Emissions Returns;
 - 51.4. Accounting for grant-funded forests;
 - 51.5. Post-1989 and Pre-1990 Forest Offsetting;
 - 51.6. Temporary Adverse Events;
 - 51.7. Tree Weed Exemptions;
 - 51.8. The Field Measurement Approach;
 - 51.9. Sub-areas; and
 - 51.10 Best practice forest management.
52. Agree to rescind the decision in recommendation 8.4 of ENV-18-MIN-0040 relating to the definition of a sub-area, as this will now be updated using a new definition which will better reduce costs and simplify the NZ ETS for participants.

Drafting instructions

53. Invite the Minister of Climate Change (in consultation with the Minister of Forestry) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions.

IN CONFIDENCE

54. Authorise the Minister of Climate Change, in consultation with the Minister of Forestry to make final decisions on detail and make changes consistent with the policy intent described in this paper, and in previous Cabinet decisions relating to policies for the NZ ETS for forestry introduced via the Amendment Act, and on any issues that may arise during the drafting process.

Authorised for Lodgement

Hon Stuart Nash
Minister of Forestry

Hon James Shaw
Minister of Climate Change

Appendix One: List of areas that require minor and technical updates to regulations

Proactive Release

Proactive Release