

Forest Land Transactions in the Emissions Trading Scheme

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Ministry of Agriculture and Forestry



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If you are involved in land transactions you should be aware of the implications that the Emissions Trading Scheme (ETS) may have for land that is or was forest land.

This provides a summary of the effect of the ETS on land classified under the scheme as pre-1990 or post-1989 forest land.

More detailed information on the ETS and in particular, terms and definitions used here, are available in *A Guide to Forestry in the Emissions Trading Scheme* at www.maf.govt.nz.

Post-1989 forest land

Post-1989 forest land is land that was established in forest after 31 December 1989. Land that was in forest before this date, but was subsequently deforested between 1 January 1990 and 31 December 2007 (i.e. the land use was changed to something other than forestry) is also eligible¹ if it has since been re-established as forest. Post-1989 land can be exotic or indigenous species, providing it meets the forest land requirements.

ETS registration

A person may voluntarily register as a Participant in the ETS and earn New Zealand Units (NZUs) as their forests grow if they own post-1989 forest land, or hold a lease, forestry right or Crown conservation contract over post-1989 forest land.

When post-1989 forest land is registered in the ETS, a notice is lodged on the land title records stating that the land or part of the land is post-1989 forest land. This notice provides a flag to prospective purchasers that the land is affected by the ETS.

Where the applicant to register is not the landowner, the consent of the landowner is required. When a landowner is deciding whether to give consent, or considering any conditions or arrangements required for consent, they should obtain independent professional advice on what the impact might be to them of granting their consent.

Participants are responsible for the carbon sequestration or emissions that occur during the period they are the participants: they are entitled to claim New Zealand Units (NZUs) for an increase in the carbon stocks, and have an obligation to surrender NZUs for any decrease in carbon stocks.

At registration all of the forest land to be registered must be allocated to one or more Carbon Accounting Areas (CAAs).

Emissions returns

Participants calculate the change in carbon stocks and submit emissions returns for each CAA. The types of emissions returns are:

Voluntary emissions returns

Voluntary emissions returns may be submitted for any accounting areas. They cover the period **from** the later of:

- the first day of the mandatory emissions return period;
- the date the land became forest land;
- the date of constitution of the CAA; or
- the day after the last emissions return;

to 31 December of the last year of the emissions return period.

Mandatory emissions returns

If registered on the last day of the mandatory emissions return period, the Participant is required to submit an emissions return for all CAAs, covering the period **from** the later of:

¹ There are other cases where land is eligible – refer to *A Guide to Forestry in the Emissions Trading Scheme* for more detail.

- the first day of the mandatory emissions return period;
- the date the land became post-1989 forest land;
- the date of constitution of the CAA; or
- the day after a transmission of interest;

to the last day of the mandatory emissions return period (31 December 2012).

If a voluntary emissions return has already been submitted, the mandatory emissions return includes a reconciliation, and must:

- record the units transferred or surrendered under the voluntary emissions returns; and
- contain an assessment of the difference between the net units already transferred or surrendered, and the gross number of units as determined under the mandatory emissions return.

If this assessment shows the Participant is entitled to more units than those already received under the voluntary return(s), they are entitled to receive the difference. Where the assessment shows the Participant received more units than entitled, the Participant will be required to surrender NZUs for the difference. Differences can arise from a change in the methodology for determining carbon stocks during the period covered by the return.

Voluntary emissions returns for an area to which a transmission of interest, or addition or removal of remove land is proposed

These emissions returns cover any accounting areas, and may be submitted when considering a transmission of interest in registered post-1989 forest land, an expiry of interest is imminent, or when reconfiguring CAAs. These returns also include a reconciliation process as described above, and cover the period from the later of:

- the first day of the mandatory emissions return period;
- the date the land became post-1989 forest land;
- the date of constitution of the CAA; or
- the day after the last emissions return;

to the date of submission of the emissions return.

Emissions returns for part years

Due to the rules for calculating age, only the owner on 31 December is entitled to claim, or required to surrender, units for that whole year. Participant entitlements and obligations as determined by an emissions return are not calculated on a pro-rata basis for part years.

Carbon accounting records and unit balances

A permanent Carbon Accounting Record (CAR) is kept for each CAA for each Participant by MAF. It records the New Zealand Units (NZUs) issued or surrendered over time through Participant's emissions returns. The running balance of the NZUs in the CAR is called the unit balance.

The unit balance is important because:

- When forest is withdrawn from the ETS a mandatory emissions return is required to bring the unit balance up to date and all the NZUs on the unit balance at the date of withdrawal must be surrendered to return the unit balance to zero.
- While the forest is registered in the ETS, the unit balance runs with the land regardless of who owns the forest or the land, whether the post-1989 Participant changes, or who has claimed or surrendered units.

- When land, a forestry right, a forestry lease or a Crown conservation contract is transferred or expires while the forest is still registered in the ETS, then the unit balance and responsibility for complying with the ETS goes to the new Participant.

The opening unit balance for a new Participant's CAA is the closing balance for a previous Participant's CAA for the same area of land. Unit balances cannot be less than zero as debits cannot exceed credits. That is, liabilities are capped at the number of units previously received for the CAA.

Key Points

- Unit balances run with the land (but not the NZUs) while the forest land is registered in the ETS, regardless of who owns the land.
- Participants are responsible for the NZU entitlements and liabilities (as shown through the unit balance calculations) as a result of carbon sequestration or emissions that occur for the period when they are the participants.
- There is a contingent liability associated with the unit balance for each CAA while it remains registered in the ETS. This is realised when carbon stocks drop below a previously reported level.

Transfers of registered interests in the ETS

When a post-1989 ETS Participant (transferor) transfers, by way of sale, assignment, or by operation of law, an interest in all or part of the forest land, the ETS participation automatically transfers to the new ETS Participant (transferee) as shown below².

Existing ETS Participant	Interest entered into	New ETS Participant
Landowner	Forestry right	Forestry right holder
Landowner	Lease	Leaseholder
Owner of Crown land	Crown conservation contract	Party to the Crown conservation contract

Existing ETS Participant	Interest transferred	New ETS Participant
Landowner	Post-1989 forest land	New landowner
Forestry right holder	Forestry right	New forestry right holder
Leaseholder	Lease	New leaseholder
Party to a Crown conservation contract	Crown conservation contract	New party to the Crown conservation contract

Existing ETS Participant	Interest expired or terminated*	New ETS Participant
Forestry right holder	Forestry right	Landowner
Leaseholder	Lease	Landowner
Party to a Crown Conservation contract	Crown conservation contract	Owner of Crown land

* Including where expiry or termination arises under the operation of any relevant contractual or statutory insolvency provision.

Within 20 working days of the date of any transfer of an interest in post-1989 forest land shown in the table above, both the transferor and transferee must notify the chief executive of MAF of the transfer. Forms are available online at www.maf.govt.nz.

² See section 193 of the Climate Change Response Act 2002 for more detail.

Emissions returns required on transfers of an interest

Within 20 working days of the date of any one of the transfers above, the transferor must submit a mandatory emissions return in relation to any affected CAA. The emission return period finishes on the date of transfer, termination or expiry.

This emissions return crystallises the transferor's obligations and entitlements up to the date of transfer. The resulting NZUs are issued to the transferor, or surrendered by the transferor, accordingly. The CARs of the affected CAAs are updated at the date of transfer. Any changes in carbon stocks after the transfer date are the responsibility of the transferee as a new Participant in the ETS. As described above, there is a contingent liability for the transferee where the opening unit balance (as determined by the mandatory emissions return for the transfer) is greater than zero.

If part of a CAA is involved in a transfer, the unit balance is apportioned between the transferor and transferee portions of the CAA on a pro-rata by area basis. Similarly, if part of an area is transferred or withdrawn from the ETS, the unit balance for the remaining area is calculated on a pro-rata basis.

Purchases of land, forestry rights and leases

Prospective purchasers of land for future registration as post-1989 forest land in the ETS should investigate the history of the land to confirm it is eligible. If there was regenerating exotic or indigenous forest on the land on 31 December 1989, the land is not eligible. Historical photos, satellite imagery and farm records can help determine the status of the land at that date.

Key considerations for a prospective purchaser of an interest in post-1989 forest land that is already registered in the ETS include:

- Purchase or sale transactions themselves do not affect ETS registration.
- A prospective purchaser may request information from MAF such as prior emissions returns and the unit balance for the forest land.
- If the forest land is not withdrawn from the ETS before the date of transfer, the CAR unit balance as determined from an emission return (submitted within 20 working days from the date of the transfer) will attach to and be the responsibility of the purchaser as the new Participant in the ETS.
- If ETS registered forest land is transferred to a purchaser who subsequently withdraws the forest from the ETS, the purchaser is responsible for surrendering NZUs to restore the CAR unit balance to zero.
- If the vendor withdraws the land from the ETS prior to settlement of the sale, they will be responsible for restoring the unit balance to zero, and that may require a surrender of units. Once the land is withdrawn, the notice that the land is affected by the post-1989 provisions of the ETS is removed from the land title.
- Once the vendor has withdrawn the land from the ETS, that land will not have ETS obligations for the new owner.

Termination or expiry of forestry rights or leases

When a forestry right, lease or Crown conservation contract expires or is terminated (usually on completion of harvesting) the landowner automatically becomes the Participant. Although the forest may have been harvested and an emissions return submitted at the termination/expiry date, the new Participant (the landowner) is responsible for any ongoing emissions from the decay of harvesting residues.

Landowners who do not wish to become participants in the ETS on the expiry or termination of a forestry right, lease or Crown conservation contract should obtain independent professional advice on

ways to protect themselves and limit the risk of becoming an unintended Participant in the ETS (for example, by requiring the forest land to be removed from the ETS before expiry or termination).

Where a forestry right or lease holder is the Participant, and they default on the terms of their forestry right or lease, and as a result the forestry right or lease is terminated while the land is still registered in the ETS, the landowner becomes the ETS Participant and is responsible for the unit balance and compliance with all aspects of the ETS from the date they become the Participant.

Default by a Participant

If a Participant fails to submit an emissions return when required to do so, MAF may make an assessment of what should have been in the emissions return (a default assessment). Where there has been any change in Participant due to a transfer of an interest in the ETS registered forest land, the default assessment will be made as at the transfer date. The transferor is notified of the details of the assessment. If the assessment results in an obligation to surrender units, that Participant must surrender the units and pay any penalties within 90 days of the date of the notice. If the assessment results in an entitlement to units, MAF must arrange for the transfer of units within 20 working days.

If a Participant who was notified as having to repay units and pay penalties, does not repay the units within 1 year of the date of the penalty notice or enters into an insolvency process, MAF must purchase the outstanding units and surrender them on the Participant's behalf. The Crown would take steps to recover the cost of the units and any administrative costs incurred.

Requests for information about post-1989 forest land

MAF must, on receipt of a written request, provide information about any CAA to:

- the landowner, where the holder of a forestry right, lease or Crown conservation contract over that land is a Participant;
- a prospective transferee, holder of a forestry right, lease or Crown conservation contract who has the written consent of a landowner who is a Participant.

The CAA information provided includes any emissions returns that have been submitted, the period covered by the returns, and the unit balance.

Requests can be made by calling **0800 CLIMATE (254 628)**.

Key Points

- Where a forestry right, lease or Crown conservation contract has been registered in the ETS, the landowner becomes the new Participant when the forestry right, lease or contract terminates or expires.
- The landowner will not become a Participant if the forest land is withdrawn from the ETS before the termination, expiry or transfer of the Crown conservation contract, forestry right or lease.
- Prospective purchasers of forest land registered in the ETS may check the unit balance for the land.
- Information on unit balances is available on request from MAF.

Operation of the carbon accounting record (CAR)

The examples below demonstrate the operation of the CAR, the liabilities cap and the unit balance. Numbers are indicative only.

Liabilities cap

Activity	Unit Balance (NZUs) Participant A
Participant A registers 1 hectare of post-1989 forest land in the ETS	Opening balance: 0
Emissions return and issue of NZUs	Opening: 0 Emissions return: +100 Closing: +100
Emissions return and issue of NZUs	Opening: +100 Emissions return: +100 Closing: +200
Emissions return and issue of NZUs	Opening: +200 Emissions return: +100 Closing: +300
Participant A harvests the forest land. The mandatory emissions return shows emissions of 500 NZUs: The liability of 500 is capped at the number previously received for that forest land. Participant A surrenders 300 NZUs.	Opening: +300 Emissions as calculated: -500 Emissions liability with cap: -300 Closing (A): 0

Sale of ETS-registered land

Activity	Unit Balance (NZUs)	
	Participant A	Participant B
Participant A registers 1 ha of post-1989 forest land in ETS	Opening balance (A): 0	
Emissions return and issue of NZUs	Opening: 0 Emissions return: +100 Closing: +100	
Emissions return and issue of NZUs	Opening: +100 Emissions return: +100 Closing: +200	
Emissions return and issue of NZUs	Opening: +200 Emissions return: +100 Closing: +300	
Participant A sells the land to Participant B. Participant A notifies MAF of the transmission of interest and completes a mandatory emissions return.	Opening: +300 Emissions return: +50 Closing (A): +350	
Participant B is the new ETS Participant. The unit balance goes with the land in ETS: B's opening unit balance = A's closing unit balance.		Opening (B): +350
Emissions return and issue of NZUs		Opening: +350 Emissions return: +150 Closing: +500
Participant B harvests the post-1989 forest land. Completes an emissions return and surrenders NZUs. Participant B is required to surrender more NZUs than they received, due to the opening unit balance for that CAA not being zero.		Opening: +500 Emissions return: -300 Closing (B): +200

Sale or transfer of ETS-registered forestry right

Activity	Unit Balance (NZUs)	
	Participant A: forestry right holder	Participant B: forestry right holder
Landowner consents to the land being registered in the ETS. Participant A registers 1 ha post-1989 forest land.		
Emissions return and issue of NZUs	Opening (A): 0 Emissions return: +100 Closing: +100	
Emissions return and issue of NZUs	Opening: +100 Emissions return: +100 Closing: +200	
Emissions return and issue of NZUs	Opening: +200 Emissions return: +100 Closing: +300	
Forest right transfers to a new forestry right holder		
Participant A sells the forestry right to B. Participant A notifies MAF of the transmission of interest, completes a mandatory emissions return, and is issued NZUs.	Opening: +300 Emissions return: +100 Closing (A): +400	
Participant B is the new ETS Participant. The unit balance goes with the land: B's opening unit balance = A's closing unit balance.		Opening (B): +400
Emissions return and issue of NZUs		Opening balance: +400 Emissions return: +100 Closing (B): +500

Expiry scenarios for a forestry right registered in the ETS

Activity	Unit Balance (NZUs)	
	Participant B: forestry right holder	Landowner (L)
<i>Continuing from example above</i>		
Participant B harvests the post-1989 forest land. Forest is replanted in the next year, and the forestry right expires. Mandatory emissions return and surrender of NZUs.	Opening (B): +500 Emissions return: -300 Closing (B): +200	
Scenario 1: Landowner requires forestry right holder to withdraw land from the ETS on expiry (as a condition of granting consent)		
Participant B withdraws the land from the ETS. Emissions return unit reconciliation and surrender of NZUs.	Opening (B): +200 Emissions return (unit reconciliation): -200 Closing (B): 0	
Scenario 2: Forestry right expires, and ETS participation transfers to the landowner who later withdraws		
Landowner becomes the ETS Participant		Opening (L): +200
Carbon stocks continue to decline for 10 years after harvest. Emissions return and surrender of NZUs.		Opening: +200 Emissions return: -50 Closing (L): +150
Emissions return and issue of NZUs		Opening balance: +150 Emissions return: +50 Closing: +200
Landowner removes the land from the ETS. Emissions return unit reconciliation and surrender of NZUs. Participant B is required to surrender more NZUs than they received, due to the opening unit balance for that CAA not being zero.		Opening: +200 Emissions return (unit reconciliation): -200 Closing (L): 0

In the examples, if a Participant's emissions return shows an obligation to surrender NZUs and they do not have enough in their holding account, they must purchase or otherwise acquire some. There is a cash option of \$25 per NZU for liabilities incurred prior to the end of 2012.

Unit balances and carbon stocks

The case studies following show how the unit balance relates to actual carbon stocks for post-1989 forest land, given different planting dates and transfer arrangements.

All examples demonstrate radiata pine grown on a 25-year rotation with annual emissions returns. The forest is replanted immediately after harvest.

Case 1: A forest planted in 2003 is sold after harvest and left in the ETS

In this case study the forest was planted in 2003, but is only eligible to earn NZUs for the change in carbon from 2008 and onwards – as this was when forestry entered the ETS³.

At harvest, there are liabilities for the emissions from harvesting, but all the carbon on the site is not treated as being emitted immediately (see graph below). Some residual carbon remains in the wood on the site, and in the roots and soil.

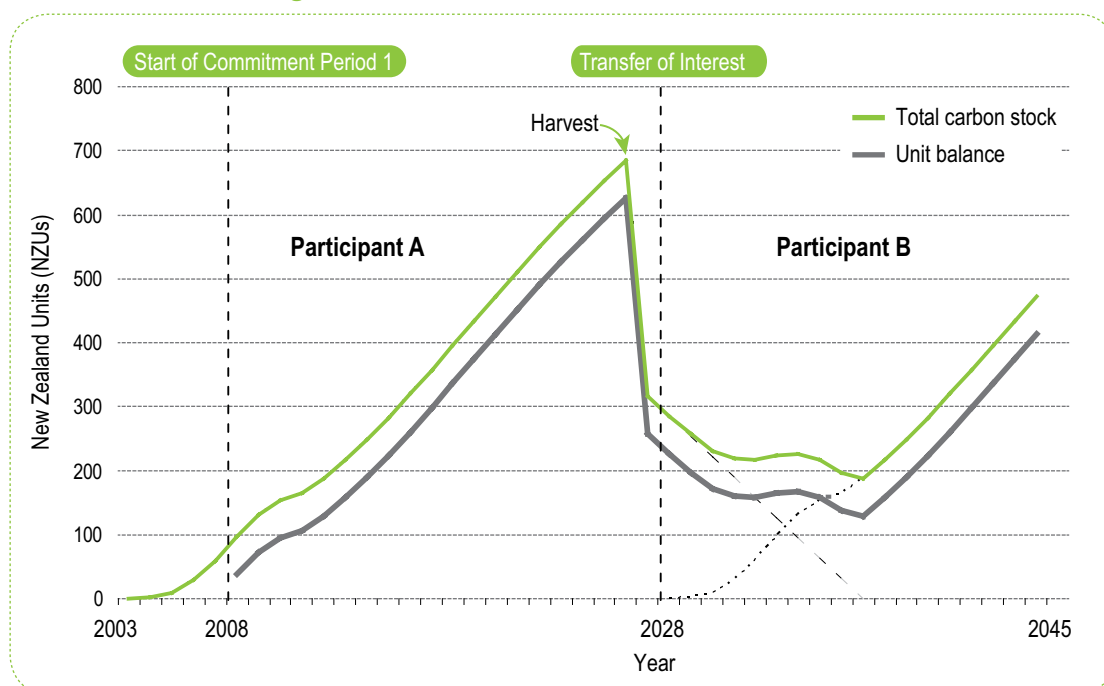
After harvest the land is sold, but remains in the ETS. The vendor (Participant A) is required to complete a mandatory emissions return which quantifies their entitlements/obligations up to the date of transfer on the sale⁴. The purchaser (Participant B) takes on the land with a unit balance of approximately 227 NZUs per hectare.

For 10 years after harvest, the carbon stocks in the forest continue to decline as a result of the emissions from the residue on the site breaking down. The purchaser (Participant B) is liable for these emissions as the unit balance running with the land is still greater than zero.

After 10 years, the carbon stocks in the forest increase steadily again, and the purchaser earns NZUs.

Overall, the unit balance largely follows the actual carbon stocks – less the carbon stored in the forest between 2003 and 2007.

Transfer of land remaining in the ETS



³ The forest is not eligible to earn NZUs prior to this as international rules under the Kyoto Protocol do not recognise forest growth before this date.

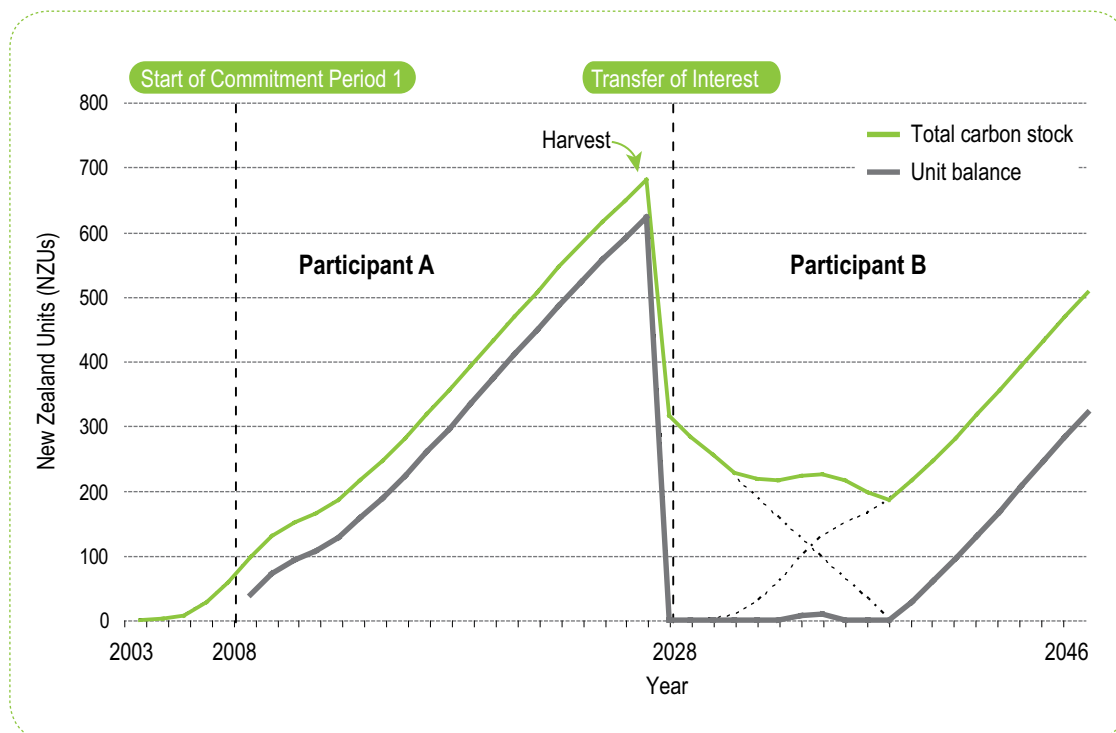
⁴ Note possession and transfer date can be different.

Case 2: A forest planted in 2003 is sold after harvest and withdrawn from, and re-enters, the ETS

In the case study, the details are the same except for the following differences:

- Under the terms of the sale/purchase agreement, the vendor (Participant A) was required to withdraw the forest land from the ETS after harvesting. The vendor is required to surrender NZUs for the entire unit balance of approximately 626 NZUs per hectare.
- The purchaser has no obligations with respect to the ETS, and may voluntarily opt to rejoin the ETS.
- For 10 years after harvest, the carbon stocks in the forest continue to decline as a result of the emissions from the residue on the site breaking down. It is unlikely it is worthwhile for the purchaser to register in the ETS until the net change in carbon stocks in the forest is positive after 10 years.

Transfer of land by withdrawing from the ETS



Case 3: A forest planted in 1990 is sold after harvest

In this case study the forest was planted in 1990. Again, it is only eligible to earn NZUs for the change in carbon from 2008 and onwards.

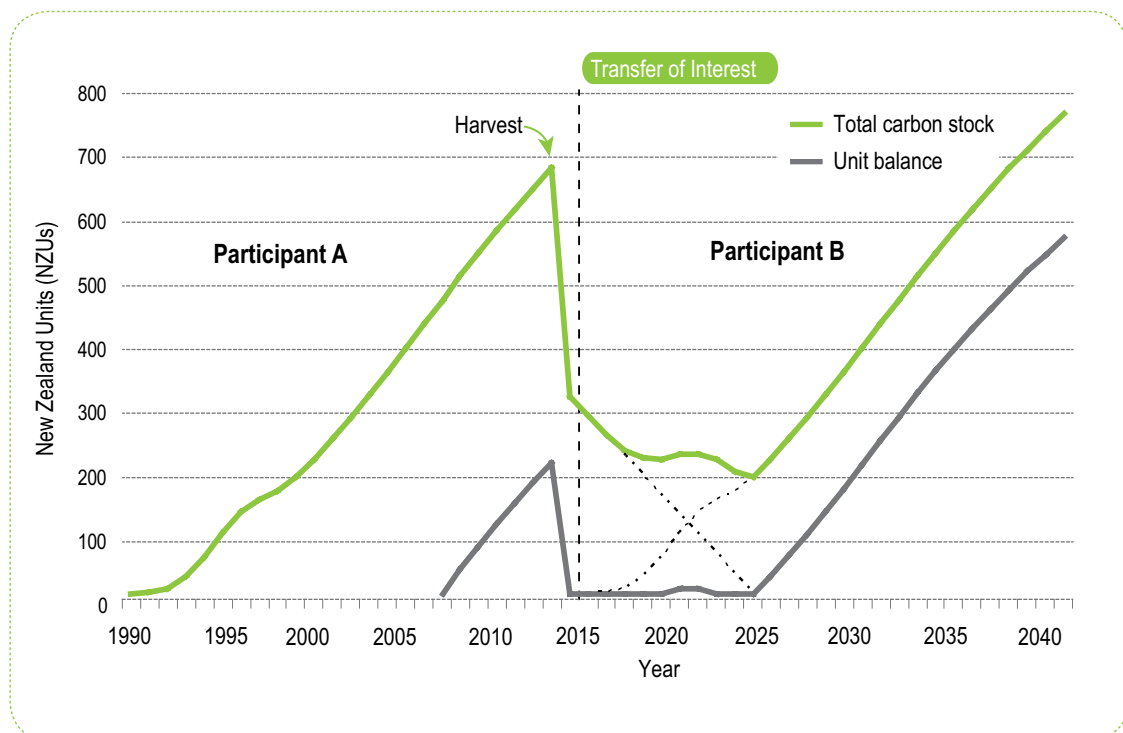
At harvest, all the NZUs previously claimed must be repaid, but liabilities cannot be more than have been previously claimed. The unit balance returns to zero.

After harvest, the forest is replanted immediately. However, the carbon stocks in the forest continue to decline over 10 years as a result of the emissions from the residual wood on the site breaking down.

After 10 years, the carbon stocks in the forest increase steadily again.

There is little difference for the purchaser (Participant B) between the vendor withdrawing from the ETS, and leaving the land in the ETS as the unit balance is close to zero for 10 years after harvest. During this period, if the land is left in the ETS, the purchaser does not face any liabilities, but does have to complete mandatory emissions returns.

Transfer of land remaining in the ETS (1990 planting)



Pre-1990 forest land

Pre-1990 forest is land that was in forest on 31 December 1989 and remained in predominantly exotic forest on 31 December 2007. Old-growth indigenous forest is not subject to the rules of the ETS, and therefore not pre-1990 forest.

Under the ETS, owners of pre-1990 forest land will be required to surrender NZUs if they deforest. Deforestation is clearance of more than 2 hectares of forest land in each five-year commitment period from 1 January 2008, followed by:

- a change in land use out of forestry (for example, into dairy farming); or
- the forest species not reaching specified thresholds.

Pre-1990 forest owners do not receive NZUs as their forest grows, but they can apply for a one-off allocation of NZUs or an exemption to the deforestation rules of the ETS.

Land title notices

When an application for an allocation or an exemption for pre-1990 forest land is received from a landowner, MAF checks that the land is pre-1990 forest land. Once this is confirmed, a notice is lodged on the land title records that the land is pre-1990 forest land (and hence effected by the deforestation provisions of the ETS) or is exempt from the ETS. Pre-1990 notices do not show the exact areas affected. The notice simply flags to prospective purchasers that the some part of the land is affected.

Deforestation obligations

Deforestation obligations apply to owners of pre-1990 forest land regardless of whether there is a notice on the title, whether an allocation has been received or not, and who received the allocation. Importantly, the absence of a notice on land title records is not evidence that the land or part of it is not pre-1990 forest land.

Pre-1990 forest land allocation and the less than 50 hectare exemption

Only landowners of eligible pre-1990 forest land on 20 July 2010 may apply for the allocation of NZUs. If land was acquired after 20 July 2010, the new landowner is not eligible to apply for the allocation.

Landowners who have recently acquired pre-1990 forest land may apply for a less than 50 hectare exemption by 30 September 2011, but this requires a declaration from the landowner on 1 September 2007 that they, together with any associated persons owned less than 50 hectares in total on that date.

For more information, refer to [A Guide to the Pre-1990 Forestry Allocation and Exemptions](#) available on [MAF's website](#).

Deforestation of land being transferred

Purchasers of pre-1990 forest land that has been harvested or otherwise cleared, but not re-established in forest, should confirm the status of the land as either of these cases may apply:

- If the land was deforested before the transfer date, any deforestation liability lies with the transferor, and the transferee is not acquiring forest land and therefore has no ETS obligations.
- If the land is transferred as temporarily unstocked pre-1990 forest land, the transferee is acquiring pre-1990 forest land and is liable for the deforestation if the land is not replanted.

Both the transferee and transferor should have a clear mutual understanding of the land status under the ETS. Generally, land is considered to be deforested if actions have been taken on the land that is inconsistent with it remaining forest land. Refer to *A Guide to Classifying Forest Land in the Emissions Trading Scheme* on MAF's website for more information.

Permitted deforestation

Deforestation of 2 hectares per commitment period per Participant (landowner) is permitted. If a previous landowner deforested less than 2 hectares in total in Commitment Period 1 (1 January 2008 to 31 December 2012), and the land is sold, the new landowner is also entitled to deforest up to 2 hectares of pre-1990 forest land in total prior to the end of Commitment Period 1.

Key Points

- A pre-1990 notice on a land title flags to prospective purchasers that the land is affected by the deforestation obligations under the ETS.
- The absence of a notice does not mean the land or part of it is not pre-1990 forest land.
- Prospective purchasers should clearly establish the status of pre-1990 land that has been cleared but not yet deforested, and their options.
- Landowners are not eligible to apply for an allocation of NZUs or a less than 50 hectare exemption for land acquired after 20 July 2010.

Further information and next steps

Further information

For information on forestry and agriculture in the Emissions Trading Scheme, contact the Ministry of Agriculture and Forestry:

Website: www.maf.govt.nz

Email: climatechange@maf.govt.nz

Tel: **0800 CLIMATE (254 628)**

Information and forms for post-1989 and pre-1990 forest land in the ETS are available online at www.maf.govt.nz/forestry/forestry-in-the-ets. The website also provides downloadable forms for paper-based applications, notifications and emissions returns.

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