<NZFOA Letterhead>

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Submission Climate Change (Forestry Sector) Regulations
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SUBMISSION: EXPOSURE DRAFT OF THE CLIMATE CHANGE (FORESTRY SECTOR) REGULATIONS

Thank you for the opportunity to present the New Zealand Forest Owners' Association position on the exposure draft of the Climate Change (Forestry Sector) Regulations relating to the Emission Trading Scheme.

The NZ Forest Owners' Association (NZFOA) represents the majority of owners of New Zealand's commercial plantation forests. The Association and its members are committed to the highest standards of sustainable land use, environmental practice and workforce safety.

1. The Generalised Nature of the Look-Up Tables – Potential Inequities

Within the regulations there is an attempt to generalise too broadly in the absence of more detailed understanding of:

- The considerable regional variation within and among forests in relation to growth biomass and Carbon sequestration;
- Current and likely future silvicultural treatments affecting mid rotation stocking, final crop stocking, rotation length, and tending, and
- The likely establishment of alternative species suited to Carbon sequestration such as plantation grown redwood (*Sequoia sempervirens*).

This generalisation is particularly evident in the look-up tables. NZFOA is concerned that what Government might view as an exercise in 'streamlining the management of the regulations' will result in anomalies and inequities.

1.1. Potential inequities – Particular Forests not Representative of Regional Look up Tables

One of those potential inequities would occur where an actual forest might vary considerably in biomass (and hence sequestered carbon) from those look up tables 1 and 2 of Schedule 4 (Pre-1990 forests), and tables 1, 2, 3 and 4 of Schedule 6 (Post-1989 forests). This creates the very ***real potential for inequitable liabilities*** on both pre-1990 and post-1989 forest land, which is at odds with the stated justification for an ETS that is a least-cost means of economic adjustment to climate change. This is more particularly the case where a forest that

may be deforested is more likely to be a poor performing forest on a poor forest growing site relative to any regional average. From a flexible land use perspective, it is just these poorer forests that would be the target for deforestation, potentially to be replaced with a forest with better growing conditions within the same region (and a potential Pinot Noir vineyard on a river gravel site once occupied by trees). The potential inequity is particularly relevant for any deforestation of pre-1990 forests given the tax liabilities and the penalties of prosecution commensurate with non-compliance relating to what might be an inequitable position. Whether or not Government policy is to disincentivise land use change (deforestation), officials have an onus to base any penalty on accurate data.

1.2. Potential inequities – Regional Tables Incorrectly Amalgamated

NZFOA has particular concerns with the amalgamation of Hawkes Bay and the Southern North Island in look-up tables, and with the amalgamation of Canterbury and the West Coast National Exotic Forest Description (NEFD) wood supply regions. These areas exhibit marked differences in growth pattern both within and among the areas proposed for amalgamation. The variations are mainly associated with differences in rainfall, soil quality, temperature relating to changes in latitude, and wind exposure. Amalgamating these already highly variable regions compounds the problems.

The situation is inequitable in terms of credits claimed (for instance, a Canterbury Plains forest grower claiming more credits than would ordinarily be justified, and a forest owner on a highly productive Canterbury foothills site being disadvantaged). It is in the interest of the Government and growers to provide a more complete suite of look-up tables that take into account inter- and intra-regional differences. It appears that Government may be ignoring real differences for administrative convenience.

1.3. Problems with the Derivation of the Regional Tables

It is understood that the NEFD yield tables have been used in the preparation of the look-up tables (noting that the underlying data come primarily from NZFOA members). These NEFD yield tables can vary greatly in quality given:

- The variable availability and quality of the yield tables data used in their construction
- The broadness of the NEFD ‘crop type’ delineators that made no reference to stocking levels,
- The historic position of the estate at the time when the yield tables were developed. The tables fail to recognise that both the genetics and the silvicultural treatment (thinning and final crop stocking parameters) of the national planted forest estate is in the process of a radical change.

The NEFD yield tables were primarily intended to provide the basis of wood-flow projections, requiring yield tables reflecting the weighted age-class at the time. Many of the data sets used in the compilation were themselves estimates from growth models that may not now reflect actual growth conditions. In Southland the emergence of *Armillaria* and the very

poor growth on climatically-limited sites suffering snow, wind and temperature constraints are not adequately addressed in these yield tables.

Each time regional yield tables have been developed, those developing them made the point that ongoing revisions at five-yearly intervals are needed to ensure the estate changes are reflected in the models. It must be emphasised that the NEFD yield tables do not reflect the 'average' stand over a long period of time, but rather the 'weighted average' stand over a relatively short period of time. Their utility as some 'accuracy' provider to use in combination with growth modelling (300-index or 500-index) over the long-term is seriously limited, and will become more and more limited with time, because of changes in silvicultural treatment and genetic improvements. Periodic revision by Government will be required in order to ensure what accuracy there is in the look-up data is maintained.

It is probably through the effect of such temporal and weighted-average variation evident in the NEFD yield tables that some of the look-up table data appear not to reflect common sense prediction; the Southland radiata pine look-up table being perhaps a case in point.

1.4. Potential Consequences of Constraining Silvicultural Treatment & Conflict with Estate Changes – Emergence of New Treatments

Two issues that create potentially serious distortions in estate management relate to the mid-rotation Douglas-fir, and other non-radiata pine species look-up tables.

The Douglas-fir table (table 2 of Schedule 6) shows a drop in volume around year 20 associated with a modelled thin-to-waste silviculture regime. This drop creates complications that increase administration and compliance costs, and is unlikely to reflect the reality of stand management. Worse, future stand management practices (decisions on thinning regimes) may be distorted by owners seeking to maximise short term Carbon sequestration. In the interests of preventing such anomalies, any look-up tables ought to be smoothed as continually positive increments. There may be other less obvious events in other tables.

A second issue identified relates to the potential emergence of new species and treatments. An obvious example is the increasing plantings of redwood (*Sequoia sempervirens*) whose growth habits are not reflected in the 'other softwood' look-up tables. These 'other' look-up tables reflect some of the problems associated with the discussion of NEFD yield tables discussed in 1.3 above

Relief sought with regard to generalised look-up tables:

Should pre-1990 plantation forests be captured in the ETS (NZFOA believes that pre-1990 plantations should be excluded), then fairness and equity requires that:

- *A forest grower's individual liability should be restricted to the actual liability relating to the actual biomass on that forest owners land. The choice of using a measurement approach must be available to pre-1990 forest owners.*
- *The costs of measurement should remain the liability of Government for <u>all</u> pre-1990 forests in recognition of the fact that the liability relating to these forests is an arbitrary imposition that has arisen as a result of Government agreement to a Kyoto*

Protocol target, rather than any action by the individual forest owner. This is recognised as a principle in the discussion relating to fees and charges due to the fact that participation in the ETS is mandatory (unless scale or wilding exemptions apply).

For post-1989 forests, fairness and equity requires that:

- *The West Coast and Canterbury amalgamated look-up table, and the Hawkes Bay-Southern North Island amalgamated look-up table be split back into their respective NEFD datasets. Where appropriate, improvements to data sets should be considered where intra-regional differences are marked (e.g. dry eastern plains relative to moist hill country).*
- *The Government should periodically update the look-up table data as the estate continues to change. NEFD yield tables ought only be used with an understanding of their limitations, and the potentially incompatible purpose of their development. Wood density differences and changes in traditional stocking parameters are particularly relevant to the calculation of carbon levels, as are changes in the proportion of the estate incorporating new species and silvicultural treatments. These ought to be considered in future updates.*
- *Remove any mid-rotation decrement phases in any look-up tables to avoid anomalies such as the inequitable charging of forest owners whose actual practice does not reflect the effect, or the incentive to manage stands in a way that reduces their quality and value through the avoidance of timely thinning*

The tables should not imply a precision to one decimal place. The underlying field measurements techniques and carbon modelling may not justify such precision.

2. Geo-Spatial information (Mapping)

The precision and accuracy of geo-spatial information must be matched to the precision and accuracy of Carbon sequestration modelling (refer to the substantive submission by PF Olsen Ltd).

Given that user pays service charges will be levied, the Government must have systems that mesh with NZ forest owners' field measurement and modelling tools, and operational inventory. Parallel industry and Government systems must be avoided. The requirement to provide data in a narrow range of electronic format assumes a level of software compatibility, expertise, and internet connectivity standards that may not be realistic for smaller forest owners.

Relief sought:

Amend the regulations to include more reasonable provisions for smaller forest owners whose forest management is of a scale or stage of development where sophisticated GIS software is not likely to be available, by including acceptance of GPS data captured by small forest owners.

3. Fees and Charges

There is no assurance at all the fees suggested in the regulation will reflect optimum performance by Government administrators. A particular concern that there appears to be little if any incentive built in to ensure administrative efficiency is maintained, especially overhead costs. This lack of surety relating to efficiency, and the uncertainty of any future costs, act as disincentives to entry into the ETS. MAF's fees and charges structure is wide open to a "cost-plus" administrative approach, and being uncapped there is clear potential for runaway administration costs.

Post-1989 forest owners who enter the ETS early may be particularly exposed as the actual cost of administration relates to the economies of scale of those participating, as well as the learning curve of the MAF officials charged with administering the scheme. While fees and charges should come down as more enter the ETS and administrators learn, those forest growers that enter the ETS early ought not to be asked to pay for actual early administrative costs associated with small scale and early inefficiency. Participants in the ETS have a right to demand and expect excellence from day one.

NZFOA acknowledges that owners with small areas will pay more per hectare than those with large areas because certain MAF administration costs are fixed regardless of forest size, but fees are unnecessarily high for owners just exceeding the proposed 50 and 500 ha fee thresholds – better cost smoothing is required.

With respect to fees for indigenous afforestation initiatives, any reduction of fees to encourage indigenous forest planting should be a subsidy from the general taxpayer, reflecting the national good. A subsidy from exotic forest owners would be unacceptable.

Relief sought:

Fee smoothing is required to eliminate the "saw-tooth" fee schedule as currently proposed.

Fees and charges ought to be set such that the initially poor economies of scale are borne by the Government to prevent disincentives for smaller landowners from entering the ETS. Any <u>initial</u> charges ought to reflect the likely <u>future</u> economies of scales from projected entries into the scheme, plus national good of carbon offsets and associated ecosystem services provided by afforestation.

While it is noted that the fee structure is "designed to focus on direct costs", there is little assurance of what level of "focus" this will involve, or how the future cost of overheads will influence fees. In the interest of transparency, the actual overhead and direct costs of administration ought to be made available to participating forest growers. Some element of external review or contestability ought to be provided to ensure an incentive is provided for Government agents to be efficient and reasonable in their charging.

4. Determination of Liable Party Contribution (Transmission Line Corridors and Regulatory Deforestation Impositions)

The Climate Change (Emissions Trading and Renewable Preference) Bill and the draft Regulations propose a land owner as ultimately liable in the event of deforestation of pre-1990 forests. The Bill makes explicit provision for emissions liability to accrue to a third party where that third party imposes a deforestation obligation on a land owner by way of statute, regulation or contract.

New Zealand's pre-1990 forest estate is encumbered with innumerable public and private easements with varying degrees of legal precision as to the liability of directly affected parties for action and inaction affecting individual interests. The boundaries associated with electricity transmission corridors and adjoining forestry are one example. It has been asserted at various times that less than 2% of pre-1992 electricity transmission and distribution corridors are clearly defined by way of easement or contract with the consequence that liability for losses to the land and line owner as a result of action or inaction by the other party remain unresolved. It is highly unlikely that any pre-1992 easement or agreement for network utility services such as power lines could have foreseen and contemplated a liability for the emission of carbon as a result of deliberate destruction of biomass.

It is unreasonable that a forest owner should be subject to a penalty in the form of a retrospective liability under the Climate Change Bill because an action was taken to avoid a pre-existing requirement to clear biomass away from electricity distribution and other infrastructure.

A distinct but related issue pertains to regulatory imposition of setback obligations under Resource Management and related legislation. Replanting setbacks are frequently imposed as a condition of consent at harvest in the interests of landscape and amenity, preservation and enhancement of natural surface waters and avoidance of adverse shady effects on adjoining titles. As with liability and setback obligations associated with infrastructure imposed by easement or private treaty with the land owner, regulatory impost of riparian and similar set back obligations should be excluded from any determination of deforestation liabilities under these regulations or be expressly imposed on the regulatory body promulgating the obligation to deforest.

Relief sought:

Amend the regulations to make explicit that a deforestation liability required by a third party will result in that third party incurring <u>all</u> consequential liability under the Climate Change (Emissions Trading and Renewable Preference) Bill and these regulations, including any fees and or penalty in the event of miscalculation or under reporting of emissions from deforestation.

Thankyou

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