



Forests (Permanent Forest Sink) Regulations 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 19th day of November 2007

Present:

His Excellency the Governor-General in Council

Pursuant to sections 67Y and 67ZL of the Forests Act 1949, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Forests (Permanent Forest Sink) Regulations 2007.

2 Commencement

These regulations come into force on 1 December 2007.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Forests Act 1949

active establishment—

- (a) means the direct human-induced conversion of unforested land to an eligible forest through planting, seeding, or promotion of natural seed sources; but
- (b) excludes the clearance on or after 1 December 2007 of 5 or more hectares of land predominantly in naturally occurring indigenous tree species

approved harvesting practice means—

- (a) a harvesting practice that is consistent with continuous cover forestry; or
- (b) any other harvesting practice approved by the Minister under regulation 8

assigned amount unit has the same meaning as in section 4(1) of the Climate Change Response Act 2002

basal area means the total cross-sectional area of all trees, excluding bark, measured at a point that is 1.4 metres from ground level on the uphill side of the tree, expressed in square metres per hectare

carbon stock, in relation to a forest sink, means the total carbon stored in a forest sink

continuous cover forestry means the management of a forest sink where the harvesting of trees retains a minimum of 80% of the pre-harvest basal area on each hectare for the first harvesting operation, and for subsequent harvesting, either a minimum of 80% of the existing pre-harvest basal area on each hectare or 80% of the previous pre-harvesting basal area on each hectare, whichever is the greater

Example

If the basal area for a given hectare is 100 square metres, then 80% of this basal area must be retained at the end of the initial harvest. Subsequent harvesting may only occur if the basal area is above 80 square metres for the hectare and may not drop the basal area below 80 square metres. If the landowner leaves the forest to grow to a basal area greater than 100 square metres after a harvest, then the 80% retention requirement applies to the greater basal area (that is, if the basal area increased to 140 square metres, the subsequent harvests may not drop the basal area below 112 square metres).

eligible forest—

- (a) means an area of land of at least 1 hectare that has, or will at maturity have, tree crown cover (or equivalent stocking level) of more than 30% in each hectare in which—
 - (i) the trees have the potential to reach a minimum height of 5 metres at maturity in the place where they are located; and
 - (ii) the forest consists of—
 - (A) closed forest formations where trees of various heights and undergrowth cover a high proportion of the ground; or
 - (B) open forest; and
- (b) includes areas normally forming part of a forest that are temporarily unstocked as a result of human intervention or natural causes but that are expected to revert to forest; but
- (c) does not include—
 - (i) a shelter belt where the tree crown cover at maturity has or is expected to have an average width of less than 30 metres; or
 - (ii) areas of land where the tree crown cover at maturity has or is expected to have an average

width of less than 30 metres, unless the area is contiguous with other eligible forest; or

- (iii) horticultural crops

first commitment period has the same meaning as in section 4(1) of the Climate Change Response Act 2002

forest sink means eligible forest that is growing or will be grown on Kyoto-compliant land as the result of active establishment

forest sink area means the area specified as the forest sink area in a forest sink covenant

forest sink plan means the plan completed by the landowner, and includes the requirements that the landowner must meet for the—

- (a) active establishment of the forest sink; and
(b) management of the forest sink

harvesting means the felling and removal of timber from a forest sink area

Kyoto-compliant land means any land not covered by an eligible forest as at midnight on 31 December 1989

Registry has the same meaning as in section 4(1) of the Climate Change Response Act 2002

restricted period, in relation to a forest sink covenant, means 99 years from the date on which the covenant is registered under section 67ZD of the Act

units has the same meaning as in section 4(1) of the Climate Change Response Act 2002.

4 Application to enter into forest sink covenants

- (1) A landowner may apply to the Minister to enter into a forest sink covenant.
- (2) The application must be—
- (a) in writing addressed to the Minister on a form provided for that purpose by the Secretary; and
- (b) signed by or on behalf of the landowner.
- (3) The application must be accompanied by—
- (a) a forest sink plan; and
- (b) information that establishes that the land is Kyoto-compliant land; and

- (c) for areas greater than 50 hectares, a geospatial data file derived from an orthographically corrected aerial photograph or a survey plan capable of being deposited under the Land Transfer Act 1952 that verifies the boundaries of any proposed forest sink area; and
 - (d) for areas less than 50 hectares, either—
 - (i) the information required under paragraph (c); or
 - (ii) GPS co-ordinates from a GPS device that captures bounding co-ordinates of the proposed forest sink area; and
 - (e) the applicable fee, charge, or levy specified in Schedule 1; and
 - (f) the landowner's holding account details in the Registry.
- (4) The information supplied under subclause (3)(c) or (d) must identify whether the co-ordinate system used was a New Zealand Map Grid projection or a New Zealand Transverse Mercator projection.

5 Minister may require further information

- (1) The Minister may require a landowner who has made an application under regulation 4 to provide further information relevant to evaluating the application.
- (2) The application lapses if the landowner does not supply the required further information within 90 days after the date on which the Minister informs the applicant in writing that it is required.
- (3) The landowner must submit a new application under regulation 4 (and pay any applicable fee, charge, or levy specified in Schedule 1) if—
 - (a) an application lapses; and
 - (b) the landowner still intends to enter into a forest sink covenant.

6 Minister may enter into forest sink covenants if certain conditions are met

The Minister may enter into a forest sink covenant with a landowner who has made an application under regulation 4 on the terms that the Minister thinks fit if the Minister is satisfied—

- (a) with the landowner's application; and

- (b) that—
 - (i) the land is Kyoto-compliant land; and
 - (ii) the landowner has paid any applicable fees, charges, or levies specified in Schedule 1; and
 - (iii) the landowner has submitted a suitable forest sink plan for the proposed forest sink.

7 Harvesting within forest sink areas restricted

Subject to the terms of the relevant forest sink covenant, harvesting may not take place within a forest sink area during the restricted period unless the harvesting is consistent with approved harvesting practice.

8 Minister may approve certain harvesting practices in certain circumstances

The Minister may approve a harvesting practice other than a practice that is consistent with continuous cover forestry if the Minister is satisfied that the practice is—

- (a) necessary to salvage timber from a forest sink area that is affected by a natural disturbance; or
- (b) required as a result of the exercise of any power that relates to a public work.

9 Civil penalty for breaching harvesting requirements

Any person who breaches regulation 7 is liable to a civil penalty that is the sum of—

- (a) any units received in respect of the proportion of the forest sink harvested in breach of regulation 7; and
- (b) any additional units calculated on the basis of an annual compounding rate of 10% applied to each year's increase in carbon stock from that proportion of the forest harvested in breach of regulation 7 for the period beginning on the date that the covenant came into force and ending on the date that the breach occurred.

10 Landowner may request transfer of units

- (1) A landowner may, after 1 January 2009, submit a request to the Secretary to receive units.
- (2) A landowner may only make 1 request under subclause (1) per calendar year.

- (3) To receive units in relation to the first commitment period, a landowner must submit a request to the Secretary to receive units by 31 March 2013.
- (4) If a landowner makes a request under subclause (1) or (3), and is entitled to receive units, the Secretary must arrange for the transfer of the units to the landowner's holding account in the Registry.
- (5) Subclauses (1) to (4) are subject to the terms of the relevant forest sink covenant.
- (6) A landowner may only make a request under subclause (1) or (3) if the Minister has entered into the relevant forest sink covenant.

11 Types of units transferred

- (1) The landowner is entitled to receive assigned amount units for the net increase in carbon stock by the forest sink area during the first commitment period.
- (2) If the landowner is obliged to transfer units to the Crown, the units must be units that can be held and transferred from the landowner's holding account in the Registry.
- (3) However, the Crown may, at its sole discretion, accept payment in New Zealand dollars for the value of the units that the landowner is obliged to transfer to the Crown.
- (4) The landowner is entitled to receive units, of a type approved by the Minister, for the net increase in carbon stock by the forest sink area after the first commitment period.
- (5) Prior to making a decision to approve a certain type of unit under subclause (4), the Minister must consult with the landowners that would be affected by the decision.
- (6) Subclauses (1), (2), and (4) are subject to the terms of the relevant forest sink covenant.
- (7) A landowner is not entitled to units under subclause (1) or (4) and is not obliged to transfer units to the Crown under subclause (2) unless the Minister has entered into a forest sink covenant with the landowner.

12 Record-keeping requirements

- (1) The landowner of a forest sink area must keep records of—

- (a) all carbon stock measurements in respect of the forest sink, including (but not limited to)—
 - (i) raw data;
 - (ii) statistical analysis;
 - (iii) data collection techniques;
 - (iv) forest inventory methodology; and
 - (b) harvesting within the boundaries of the forest sink, including (but not limited to)—
 - (i) measurements of the pre-harvest and post-harvest basal area;
 - (ii) maps showing the location and boundaries of areas subject to harvesting;
 - (iii) the dates of harvesting;
 - (iv) the volume of timber harvested; and
 - (c) any changes of ownership of the forest sink; and
 - (d) any records required by the relevant forest sink covenant.
- (2) The records required under subclause (1) must be—
- (a) accurate in all respects, including (but not limited to) the events, measurements, and activities that the records purport to represent; and
 - (b) complete; and
 - (c) reliable.

13 Information that must be provided to Minister

- (1) The landowner, or landowners, of a forest sink area—
- (a) must provide the Minister with the following information:
 - (i) any changes of ownership of the forest sink; and
 - (ii) details of any person acting on behalf of the landowner in respect of the forest sink; and
 - (iii) details for accessing the forest sink, including (but not limited to)—
 - (A) a description of how access may be gained; and
 - (B) the contact particulars of the person to be notified if access is required; and
 - (iv) any information required to be provided to the Minister by the relevant forest sink covenant:

- (b) must, on the request of the Minister, provide the Minister with any information required to be kept under regulation 12.
- (2) The information required under subclause (1) must be—
 - (a) accurate in all respects, including (but not limited to) the events, measurements, and activities that the records purport to represent; and
 - (b) complete; and
 - (c) reliable.

14 Fees, charges, and levies

- (1) The fees, charges, and levies set out in Schedule 1 are payable in respect of the matters specified in that schedule.
- (2) The fees, charges, and levies are payable—
 - (a) on the making of the relevant application or on the performance of the relevant service (as the case may require); or
 - (b) in the case of fees or levies payable annually, within 10 days (or within a longer period that the Secretary may allow) after receipt of a demand for the appropriate amount from the Secretary.

15 Fees, charges, and levies exclusive of GST

The fees, charges, and levies specified in Schedule 1 are exclusive of goods and services tax.

16 Exemptions and waivers

The Secretary may grant an exemption from, or waive or refund, in whole or in part, any fee, charge, or levy specified in these regulations in any appropriate case or class of cases.

17 Forms

The forms set out in Schedule 2 are the forms that must be used, as appropriate, for the purposes of—

- (a) section 67ZG of the Act, that is, for—
 - (i) variation of a forest sink covenant (form 1);
 - (ii) cancellation of a forest sink covenant (form 2);
 - (iii) termination of a forest sink covenant (form 3);
- (b) section 67ZD of the Act, that is, for—
 - (i) registration of a forest sink covenant (form 4);

- (ii) redefinition of a forest sink covenant area (form 5).
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rr 4(3), 5(3), 6(b)(ii), 14(1),
15

Schedule 1

Fees, charges, and levies

Activity	Items included	Cost recovery method	Fee, charge, or levy
Application processing	Acknowledging application, checking for completeness, opening file, entering data and recording information, checking land eligibility, approving forest sink plan, preparing and signing covenant, and transferring data to national carbon accounting system	One-off application fee and then hourly rate	\$500 fixed fee plus \$115 per hour for every hour over 4 hours
Travel	Travelling to and from site to assess application and land eligibility	Rate per kilometre, actual and reasonable costs, and hourly rate for travel	69 cents per kilometre for motor vehicle travel, actual and reasonable costs for meals, accommodation, and transportation (including airfares), and \$115 per hour of travel

Schedule 2

Forms

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Form 1

Variation of forest sink covenant

Section 67ZG, Forests Act 1949

Land registration district:

Grantor: [*name of owner of land that is subject to forest sink covenant*]

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry

Variation of forest sink covenant

The terms and conditions contained in the forest sink covenant set out in Schedule A are varied as set out in Schedule B.

Dated:

Attestation

Signature (common seal) of grantor:

Signed in my presence by the grantor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Signature of grantee:

Signed in my presence by the grantee

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Schedule A

Forest sink covenant: [*specify computer register or document number*]

Form 1—*continued*

Land affected by forest sink covenant: [*specify computer register for land or description of land if land is not in a computer register*]

Schedule B

The terms and conditions of the forest sink covenant identified in Schedule A are varied as follows:

Consent to variation of forest sink covenant

Consentor: [*full name of consentor*]

Consentor's capacity and interest: [*set out capacity and interest of consentor, eg, mortgagee under mortgage*]

For the purposes of section 67ZA of the Forests Act 1949, I, the consentor, as the holder of a registered interest in the land pursuant to the capacity and interest set out above, consent to the grantor entering into this variation of the forest sink covenant.

Dated:

Attestation

Signature (common seal) of consentor:

Signed in my presence by the consentor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Form 2
Cancellation of forest sink covenant
Section 67ZG, Forests Act 1949

Land registration district:

Grantor: [*name of owner of land that is subject to forest sink covenant*]

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry

Cancellation of forest sink covenant

The grantee, being the registered grantee of the forest sink covenant set out in Schedule A, cancels that forest sink covenant and the grantor accepts the cancellation.

Dated:

Attestation

Signature (common seal) of grantor:

Signed in my presence by the grantor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Signature of grantee:

Signed in my presence by the grantee

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Schedule A

Forest sink covenant: [*specify computer register or document number*]

Land affected by forest sink covenant: [*specify computer register for land or description of land if land is not in a computer register*]

Form 2—*continued*

Consent to cancellation of forest sink covenant

Consentor: *[full name of consentor]*

Consentor’s capacity and interest: *[set out capacity and interest of consentor, eg, mortgagee under mortgage]*

For the purposes of section 67ZA of the Forests Act 1949, I, the consentor, as the holder of a registered interest in the land pursuant to the capacity and interest set out above, consent to the grantor entering into this cancellation of the forest sink covenant.

Dated:

Attestation

Signature (common seal) of consentor:

Signed in my presence by the consentor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Form 3
Termination of forest sink covenant
Section 67ZG, Forests Act 1949

Land registration district:

Grantor: [*name of owner of land that is subject to forest sink covenant*]

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry

Termination of forest sink covenant

*The grantee, being the registered grantee of the forest sink covenant set out in Schedule A over the land set out in Schedule B, hereby terminates that forest sink covenant on the grounds that [*authority for right to terminate*].

or

*The grantor, being the owner of the land (set out in Schedule B) to which the forest sink covenant (set out in Schedule A) applies, terminates that forest sink covenant on the grounds that [*authority for right to terminate*].

*Delete whichever is inapplicable.

Dated:

Attestation

Signature (common seal) of grantor/signature of grantee*:

Signed in my presence by the grantor/grantee*

Signature of witness:

Witness name: †

Witness occupation: †

Witness address: †

*Delete whichever is inapplicable.

†Witness to complete in block letters unless legibly printed.

Schedule A

Forest sink covenant: [*specify computer register or document number*]

Form 3—*continued*

Schedule B

Land affected by forest sink covenant: [*specify computer register for land or description of land if land is not in a computer register*]

Form 4
Registration of forest sink covenant
Section 67Y, Forests Act 1949

Land registration district:

Grantor: [*name of landowner*]

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry

Grant of forest sink covenant

The grantor, being the registered proprietor of the land set out in Schedule A, enters into a forest sink covenant with the grantee pursuant to section 67Y of the Forests Act 1949 over the land, subject to the terms and conditions set out in Schedule B.

*The grantor and grantee request under section 67ZD of the Forests Act 1949 that the Registrar-General of Land create a computer register for this covenant. A surveyor's certificate is attached confirming that the covenant area is within the boundaries of the land set out in Schedule A.

*Delete if land is already in a computer register.

This covenant has been entered into pursuant to an agreement dated [*date*].

Dated:

Attestation

Signature (common seal) of grantor:

Signed in my presence by the grantor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Signature of grantee:

Signed in my presence by the grantee

Signature of witness:

Witness name:*

Form 4—*continued*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Schedule A

Description of the land of the grantor: [*specify by reference to any computer register(s) or, if none, by reference to the parcel (lot and plan, etc)*]

Forest sink area

The attached diagram/aerial photo* shows the area of the land to which the forest sink covenant applies in relation to the title/parcel* boundaries.

*Delete whichever is inapplicable.

Schedule B

The applicable terms and conditions are as follows:

Consent to enter into forest sink covenantConsentor: [*full name of consentor*]Consentor's capacity and interest: [*set out capacity and interest of consentor, eg, mortgagee under mortgage*]

For the purposes of section 67ZA of the Forests Act 1949, I, the consentor, as the holder of a registered interest in the land pursuant to the capacity and interest set out above, consent to the grantor entering into this forest sink covenant.

Dated:

Attestation

Signature (common seal) of consentor:

Signed in my presence by the consentor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Form 5
Redefinition of forest sink covenant area
Section 67ZD, Forests Act 1949

To the Registrar-General of Land:

Land registration district:

Grantor: [*name of landowner*]

Grantee: Her Majesty the Queen in right of New Zealand acting by and through the Minister of Forestry

Please take notice that the land identified by diagram or aerial photograph in the forest sink covenant set out in Schedule A has been redefined by the deposited plan set out in Schedule B with the agreement of the Minister of Forestry.

The grantor requests the Registrar-General of Land to update the relevant computer register with a memorial that indicates that the description of the land in the diagram or aerial photograph has been superseded by the description on the deposited plan set out in Schedule B.

Dated:

Attestation

Signature (common seal) of grantor:

Signed in my presence by the grantor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Signature of grantee:

Signed in my presence by the grantee

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Form 5—*continued***Schedule A**

Forest sink covenant: [*specify computer register or document number for covenant*]

Schedule B

Land affected by forest sink covenant: [*computer register for land or description of land if land is not in a computer register*]

Consent to redefinition of forest sink covenant

Consentor: [*full name of consentor*]

Consentor's capacity and interest: [*set out capacity and interest of consentor, eg, mortgagee under mortgage*]

For the purposes of section 67ZA of the Forests Act 1949, I, the consentor, as the holder of a registered interest in the land pursuant to the capacity and interest set out above, consent to the grantor entering into this redefinition of the forest sink covenant.

Dated:

Attestation

Signature (common seal) of consentor:

Signed in my presence by the consentor

Signature of witness:

Witness name:*

Witness occupation:*

Witness address:*

*Witness to complete in block letters unless legibly printed.

Rebecca Kitteridge,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2007, set out the various requirements in relation to the establishment and maintenance of permanent forest sinks.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 November 2007.

These regulations are administered by the Ministry of Agriculture and Forestry.
