Regulatory Impact Statement

Revision of New Zealand's Oil Pollution Levy

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Transport.

It provides an analysis of options to increase the level of revenue raised for the New Zealand Oil Pollution Fund through the Oil Pollution Levy. It also analyses the costs and benefits of the proposed amendment to the way the current Oil Pollution Levy is set for most operators. Finally, it evaluates ways of funding $1.87 million of capital equipment required for clean-up of in-shore oil spills, and $1.2 million of increased capability for the Marine Protection Response Service.

The nature of the costs and benefits arising from the options can be readily identified. However, it is not possible to completely quantify the value or magnitude of the equity and durability gains that a risk-based model of levy setting brings. Instead we have relied on estimates of the likely impact on individual participants to give some indication of the magnitude of benefits.

The analysis has been informed by the views of industry through consultation. The Oil Pollution Advisory Committee, which is a committee of industry and government representatives, were also involved in the consultation process.

None of the options considered will impair private property rights, restrict market competition, reduce the incentives on business to innovate and invest, or be likely to override fundamental common law principles.

The preferred option will result in a levy system that better meets the objectives set out in the government's policy statement Better regulation, Less regulation.

Katie Reid
Adviser, Maritime and Freight
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Status quo

New Zealand's oil pollution obligations

1. New Zealand is a party to the International Maritime Organization's International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, which requires New Zealand to establish:
   - a national system for responding to oil pollution incidents
   - a designated national authority (Maritime New Zealand) responsible for preparedness and response
   - local contingency plans to be coordinated through a National Plan
   - a minimum level of pre-positioned equipment appropriate to the risk assessment
   - a programme of exercises and training.

2. New Zealand implements these international obligations through the Maritime Transport Act 1994 (the Act). The Act provides the statutory basis for New Zealand's oil pollution preparedness and responsiveness. The Act requires a marine oil spill response strategy to be in place, tasks Maritime New Zealand (Maritime NZ) with ensuring New Zealand is prepared and able to respond to marine oil pollution spills, requires establishment of the Oil Pollution Fund (the Fund) and provides for levies to be charged for the purposes of providing revenue for the Fund.

3. Maritime NZ has $12 million of equipment stored throughout New Zealand, with each region holding equipment most likely to be needed by them. New Zealand also has agreements for equipment-sharing with countries including Australia, Singapore, and the United Kingdom.

The Oil Pollution Fund

4. The Oil Pollution Fund (the Fund) meets the cost of Maritime NZ's oil pollution preparedness and response functions as set out in the Act.

5. It also funds the administration of the Oil Pollution Advisory Committee (OPAC), which is a statutory committee of industry and government representatives that provides advisory support to Maritime NZ. The Fund is administered by Maritime NZ.

The Oil Pollution Levy

6. Revenue for the Fund is provided through the Oil Pollution Levy (the Levy) which is collected from the maritime, offshore oil production, oil exploration and fishing industries. Any costs recovered by Maritime NZ from polluters for oil spills are reinvested in the Fund.

7. The levies are payable under the Oil Pollution Levies Order 1998 (the Order) which is made pursuant to section 333 of the Act. The Order imposes levies on passenger and cargo ships (including oil tankers), fishing vessels, offshore petroleum rigs and platforms and oil pipelines. It applies to vessels in excess of 100 gross tons, whose principal means of propulsion is mechanical. Vessels that are less than 24 metres in length are not

required to maintain a gross tonnage record, therefore a levy cannot be effectively applied. The levy is charged at:

- a rate[1] based on the gross tonnage of the levied ship plus a charge per ton on persistent or non-persistent[2] oil carried as cargo, or

- a flat fee for certain activities such as offshore petroleum production installations.

Problem definition

8. The quantum of funds currently raised by the Oil Pollution Levy is insufficient to provide a level of oil spill preparation and response that is appropriate for New Zealand.

9. Clarification is required as to the Levy status of several sectors and their Levy obligations.

The level of revenue raised by the Levy is insufficient

10. The intent is for the Oil Pollution Response Service to be fully funded by industry contributions. However, for the last 12 years the Levy has been set at a level below that needed to recover the costs of meeting New Zealand's oil pollution requirements. The decision to set the Levy at a level below full cost recovery was taken to reduce the level of the Fund's cash reserves to appropriate levels. Cash reserves have been reduced through time, from around $8.5 million in 2002/03 and the total money in the Fund is forecast to be $300,000 at the end of the 2012/13 financial year.

11. In 2010 Maritime NZ commissioned Thompson Clarke Shipping to conduct an independent review of New Zealand's oil spill response preparedness. The review sought to clarify the amount, location and nature of services needed to fulfil New Zealand's oil pollution response requirements. The information from this review was used to determine the future level of funding required to maintain an adequate preparedness and response capability.

12. The review found that the structure, equipment and people resources that underpin New Zealand's marine oil pollution preparedness and response system are provided in a cost effective manner and therefore offer value for money.

13. The review concluded that New Zealand's current response regime is adequate for the risks identified. This confirms that current service delivery is sufficient to meet the current risks. The expenditure required for the current level of service delivery is estimated to be $4.56 million per annum over the period 2012–2015.

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[1] The Oil Pollution Levy Order 1998 sets the levy rates for a contributing ship that is a coastal trade ship as 111 cents per gross ton of the contributing ship; and either 837 cents per gross ton of the contributing ship that is a carrier of persistent oil as cargo; or 419 cents per gross ton of the contributing ship that is a carrier of oil (other than persistent oil) as cargo.
In the case of a contributing ship that is a New Zealand fishing boat the rate is 70 cents per gross ton of the contributing ship. For other contributing ships the levy rate is 1.11 cents per gross ton and either 9.78 cents per tonne of persistent oil that is carried or loaded as cargo; or 4.44 cents per tonne of oil (other than persistent oil) that is carried or loaded as cargo.

[2] Persistent oil is defined as oil that, when spilt, remains in the environment for an appreciable period of time. Non-persistent oil is defined as oil that dissipates relatively quickly from the environment when spilt.

14. In 2010/11 operating cash flows were $770,000 below that needed to fund the required level of oil preparedness and response services.

The current equipment-levels are inadequate

15. The Thompson Clarke Shipping independent review also concluded that $1.95 million was needed to purchase new oil spill equipment over a three year period. Maritime NZ has already bought equipment worth $76,000. Therefore an estimated $1.87 million in additional capital expenditure over the 3-years from 2012/13 is required to enable Maritime NZ to provide an adequate level of oil spill preparation and response capability.

16. Maritime NZ had intended to deploy funds from the Fund's reserves to purchase these capital items, but is now unable to do so, as the reserve was depleted following the *Rena* spill.

17. The Oil Pollution Advisory Committee believes that the funds recovered from the insurers of the *Rena* should be used to replace the monies spent by the Fund, which would significantly reduce the need for the capital expenditure levy. Treasury has now confirmed that the funds expended by the Fund on the response to the *Rena* will not be returned to the Fund.

Additional capability required

18. A 2012 review undertaken by Maritime NZ identified three areas of the Marine Pollution Response Service with additional funding requirements. The review identified areas where capability requirements had increased since 2010. The total amount required to fund these areas is $1.2 million.

    a. Debriefs following the *Rena* incident identified areas where the capacity of the Marine Response Service, Oiled Wildlife Team, and National On Scene Commanders could be improved. This will cost $175,000 over three years.

    b. Further work is required to ensure that the Marine Protection Response Service has adequate environmental, operational, and exercise coordination support. Providing this support requires the establishment of 1.5 fulltime equivalent staff, at a cost of $175,000 per annum for three years.

    c. The National Response Team, who respond to serious oil spills, are currently lacking a governance group and co-ordinated incident management systems training. A formal training programme and establishment of a governance group would cost $170,000 per year for three years.

19. The extra capacity is required to maintain the current level of skill held by the Marine Pollution Response Team. Deciding not to fund the capacity at this time risks not maintaining or potentially lowering the skills of the oil pollution response teams, which would have an impact should a spill occur.

20. Problem number two, 'Clarification is required as to the Levy status of several sectors and their Levy obligations' is considered in the second half of this paper.

Objectives

21. The public policy objectives are to:

    a. Have a robust preparedness and response capability to mitigate oil spills in New Zealand waters, and to meet New Zealand's obligations under the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990

    b. Ensure that the method of charging and collecting the Levy is:

        i. efficient - compliance and administrative costs are minimised and proportionate to the amount of levy collected. Industry should be certain about the amount of Levy they are required to pay

        ii. equitable – those who pose a similar degree of risk are levied at a similar rate and those who pose a greater risk pay more than those posing a lesser risk

        iii. effective - the total levy is sufficient to support full cost recovery of New Zealand's oil spill response and preparedness services

        iv. durable – is unlikely to require significant modification through time as it is transparent, enforceable and likely to be supported by industry and government.

Assumptions

Throughout the analysis, the following assumptions have been made:

a) The assumptions about the risk level of each sector are correct. The risk assessments are made on the basis of a risk assessment undertaken by Navigatus Consulting Limited in 2012, using information gathered between 2010 and 2012. The risk assessment assigns a risk value to each sector, which is developed by multiplying the likelihood of an oil spill occurring by the consequences should a spill occur. Sectors which spend more time in sensitive areas or carry more oil are assigned a greater proportion of overall risk.

b) The assessments carried out by Thompson Clarke and Maritime NZ, which state that extra capital equipment and extra capability respectively were needed, were accurate and remain so. The view that these were needed has been supported by industry consultation, and is not disputed by OPAC.

Regulatory impact analysis

22. Three options, and the status quo, were considered to address the issue of the inadequacy of the amount of funds currently collected by the Levy:

- Option 1: The status quo.

- Option 2: Continue with the risk-based model for charging levies but update the methodology used, and increase the amount collected to maintain the sustainability of the Fund.

- Option 2b: Continue with the risk-based method for charging levies but increase the amount collected to maintain the sustainability of the Fund. Additionally, impose two three-year levies on industry to purchase capital equipment and increase capability.

- Option 3: Move to threat-based model for determining levies and increase the amount collected to maintain the sustainability of the Fund.

How the risk-based model (status quo and options 2 and 2b) works

23. The likelihood of an oil spill occurring, multiplied by the consequences should that spill eventuate, is used as a basis for estimating total oil spill risk in New Zealand waters. Each vessel that carries oil, as fuel or cargo, is an oil spill risk. Larger vessel which carry more fuel have a greater risk, as the amount of fuel spilt, and thus the consequences of that spill, increase.

24. The gross tonnage of a vessel is used as a proxy to determine the fuel carrying capacity of the vessel. The number of vessels and amount of trips they undertake is determined for a sector, and each sector is then allocated the appropriate amount of risk.

25. The total cost of providing oil spill response training and planning is assigned to each sector based on the percentage of risk they represent. With a total cost of $4.5 million, each percentage of risk requires a sector to pay $45,000.

26. The two additional limited time levies under option 2b would be applied proportionally to industry in the same manner as the initial levy. Only option 2b allows for the purchase of the capital equipment and additional capability required.

How the threat-based model (option 3) would work

27. The threat-based model would seek to ensure that individual levy contributions of threat generators (foreign vessels, domestic passenger and tanker ships, fishing, coastal shipping and offshore oil platforms) are proportionate to the degree of threat posed to the environment and economic wellbeing.

28. The model's underlying premise is that the threat of oil spills arises from the presence of oil that is being transported or stored, and this threat can not be removed through the management of typical causal factors. For example, some causes of oil spills are difficult to avoid, such as extreme weather conditions or human error.

29. The threat-based model would use the factors that influence threat as the basis for calculating levies. The factors are:

- the type and volume of oil carried as bunker fuel and cargo

- the environmental and human sensitivity factors of the areas traversed during a vessel's journey

- the time spent in each specific sensitive area.

30. The model would use these factors to ascribe threat units to categories of threat generators. For each vessel or operation the higher the level of threat posed, the greater the number of threat units accrued.

31. The annual levy payable by each vessel or operation would be determined by their respective threat units multiplied by a cents/threat unit calculation. The latter would be based on the revenue required for the Fund. In its simplest form the levy payable by an individual operator on an individual journey or for a full year's operations is:

    Oil Pollution Levy Payable = actual threat units x dollar value per threat unit

32. Operators would be able to adjust the number of threat-units they accrue where they can modify the variables within the formula. That is, the nature and amount of oil carried, voyage patterns followed, and the frequency of voyages.

33. The threat-based model relies on the total amount of oil being carried in a year being known. The per threat-unit varies depending on the total amount of oil carried, and differences in oil movements could result in over or under collection.

34. The threat-based model would not be applied to all sectors, including the fishing industry and some domestic coastal traffic, as the complexity of the model is too difficult to apply to them.

35. Threat-based levies could incentivise changes in vessel operator behaviour. For instance, companies may look to optimise their bunker oil levels in order to reduce their levies. As well the international lines may look to reduce the number of port calls.

Analysis of the Options

36. An analysis of the options against the criteria of efficiency, equity, effectiveness and durability is given in Table 1.

Table 1: Assessment of each option

Criteria	Option 1(Status quo)	Option 2 (Risk-based levy setting with increase revenue raised)	Option 2b (Risk-based levy setting with increased revenue raised and two limited term levies imposed	Option 3 (Threat-based model and increase revenue raised)
Efficient	High *Levy cost certainty* High. The basis for charging the levy – gross tonnage – does not change. Greatest levy cost certainty for industry in the short term as there would be no increase. *Compliance and administration costs* Low industry compliance, and government administration and audit costs. *Costs proportionate to amount of levy raised* Compliance and administration costs are modest relative to amount of levy paid.	High *Levy cost certainty* High. The basis for charging the levy – gross tonnage – does not change. *Compliance and administration costs* Low industry compliance, and government administration and audit costs. *Costs proportionate to amount of levy raised* Compliance and administration costs are modest relative to amount of levy paid.	High *Levy cost certainty* High. The basis for charging the levy – gross tonnage – does not change. The two additional levies are charged proportionally with the main Levy. *Compliance and administration costs* Low industry compliance, and government administration and audit costs. *Costs proportionate to amount of Levy raised* Compliance and administration costs are the lowest of the 4 options relative to amount of levy paid (due to increase in amount of levy raised).	Low *Levy cost certainty* Some uncertainty for industry participants as basis for charging levy is not widely understood. Some domestic operators will not know their annual charge until the actual year is complete. *Compliance and administration costs* Some increase in industry compliance costs e.g. submission of voyage data and reporting cargo and oil type. Increase in MNZ administration and audit costs. *Costs proportionate to amount of levy raised* Compliance and administration costs are the highest of the 3 options relative to amount of levy paid.
Equitable	Medium Current levies are set on the basis of a 2008 risk assessment, which is now outdated.	High An analysis of the risk imposed by each sector undertaken by Navigatus Consulting identifies the amount of levy that each sector will be paying. All vessels which carry or use fuel are subject to the same risk assessment.	High An analysis of the risk imposed by each sector undertaken by Navigatus Consulting identifies the amount of levy that each sector will be paying. All vessels which carry or use fuel are subject to the same risk assessment.	Low Some operators are levied based on the level of threat posed and the potential adverse impact. Operators posing similar levels of threat and impact pay a similar amount. Because of the

				complexity of the model other operators would pay an annual levy and some a percentage increase on existing levy – neither of which would be relative to threat posed.
Effective	Low The Fund would have insufficient revenue to maintain New Zealand's oil spill preparedness and response services at a level that would give effect to our international obligations and statutory requirements.	Medium Sufficient funds would be raised to fully fund an appropriate level of response and preparedness to oil spills. The funds would be raised in a manner that is understood and supported by those paying.	High Sufficient funds would be raised to fully fund an appropriate level of response and preparedness to oil spills. There would also be funding available for the purchase of capital equipment and increased capability, which would increase the effectiveness of the Marine Pollution Response Service.	Medium Sufficient funds would be raised to fully fund an appropriate level of response and preparedness to oil spills. This method of determining levy rates is intellectually sound, but high complex. This complexity may lead to a perception of a lack of transparency.
Durable	Low Will require change to ensure New Zealand has a levy in place that provides sufficient revenue to allow it to give effect to its international obligations and statutory requirements. Poses risk to industry of significant levy increases in the future. Poses largest risk to the Crown, as equipment will not be available should a spill occur.	Medium Would ensure a quantum of funds was available that meets the oil pollution response deemed necessary for New Zealand. Funds the 'business as usual' for the Fund, but does not allow for the purchase of capital equipment or increased capability.	High This option would ensure that New Zealand has capacity and capability to respond to oil spills in the short and long term, and is backed by the risk-based model which is considered fair by the people who pay the Levy.	Medium Would provide the quantum of funds required by the fund, but the complexity and lack of transparency in the model would maintain a desirability for policy change. Funds the 'business as usual' for the Fund, but does not allow for the purchase of capital equipment or increased capability.

37. The need to increase the level of revenue raised for the Fund makes Option 1 untenable over the medium term. Option 1 would cause a reduction in the quality and level of oil spill preparedness and response services, meaning New Zealand would no longer be giving effect to its international obligations and domestic statutory requirements. It would also create the largest fiscal risk to the Crown of the three options. This risk would be realised if the immediate costs of dealing with a large oil spill are beyond the level of equipment retained by the Fund. Option 1 also poses a risk to industry of significant levy increases in the future, and makes no provision for the new capital equipment required.

38. Option 3, whilst also providing the increased revenue required by the fund, has increased administrative costs, and is highly complex. It is less efficient, effective, and equitable than options 2 and 2b.

39. Option 2 will

- provide a fair way of apportioning the costs of oil spill preparedness and response services among industry participants.

- ensure levies better reflect the differing degrees of adverse impact that spills have on the environment, economic activity and cultural well-being

- ensure the Fund has sufficient revenue to fully fund the cost of providing an appropriate level of preparedness and response services

- offer a levy mechanism that will serve New Zealand over the long-term.

40. In addition to the benefits provided by Option 2, Option 2b also ensures that New Zealand has the equipment and capability required to provide a robust oil pollution response service to New Zealand.

Magnitude and value of benefits of Option 2b

41. The key advantages of Option 2b over the status quo are the equity, efficiency and durability gains. However, it is not possible to quantify the value or magnitude of these gains.

42. Table 2 provides an analysis of the likely impacts of option 2b on individual participants.

Table 2: Impact of option 2b, by sector

Sector	Proposed percentage share of risk	Revenue from sector 2011/12 (excluding GST)	Proposed levies for sector 2013/14 (excluding GST)	Percentage increase in sector levies from 11/12 to 13/14
Domestic passenger and cargo (excludes freshwater, but includes tugs)	13.125%	$217,211.18	$725,331.21	233.9%
Domestic tankers – oil as cargo				
Persistent	6.375%	$337,642.17	$352,303.73	4.3%
Non Persistent	4.000%	$11,259.71	$221,053.32	1,863.2%
New Zealand fishing sector	2.500%	$58,978.98	$138,158.33	134.3%
Foreign passenger and cargo	28.640%	$1,762,151.77	$1,582,741.77	(10.2%)
Foreign tankers – oil as cargo				
Persistent	34.320%	$503,662.46	$1,896,637.49	276.6%
Non Persistent	7.040%	$209,334.69	$389,053.84	85.9%
Oil industry – total	4.000%	$124,444.46	$221,053.33	77.6%
Platforms	0.134%	$44,444.45	$7,405.29	(83.3%)
FPSOs (Umuroa, Raroa)	3.774%	$35,555,56	$208,563.81	486.6%
Pipelines	0.086%	$35,555.56	$4,752.65	(86.6%)
Exploration Well	0.006%	$8,888.89	$331.58	(96.3%)
Total Oil Pollution Levy	*100.000%*	*$3,224,685.42*	*$5,526,333.02*	*71.4%*

Note: some sectors have been impacted by large increases in their size, which requires substantial increases in their levy. The impact on individual operators will be significantly less substantial; for example, a domestic tanker of 22,000 GT carrying predominantly non-persistent oil (say over 80% of its million ton cargo) will have a 23 percent increase in their levies, far less than the 1,863.2 percent increase in levies for the sector.

Changes to Levy setting method

43. In addition to increases in revenue, analysis is required about the way in which the Levy is set. There are 11 policy issues covered in the Cabinet Paper, which are addressed below.

Updated risk assessments to calculate the levy responsibilities of each sector

44. The current levies are based on a risk assessment undertaken in 2004. Since that time the relative sizes and risk-levels of each sector has changed, and many sectors are now paying more or less than they should be. It is proposed that the updated risk assessment undertaken by Navigatus Consulting in 2012 should be used instead, as it provides a more up-to-date study of which sectors are responsible for each proportion of total oil spill risk.

45. The updated risk assessment is more equitable, as it applies levies based on current rather than historical data. The domestic and international tankers which carry oil as cargo are impacted the most heavily.

Gross tonnage of a vessel used as a proxy for its fuel carrying capacity

46. Using the gross tonnage of a vessel as its proxy for its fuel carrying capacity is more efficient and effective than requiring owners of vessels to record the amount of fuel carried on each voyage at different stages in the voyage. Using the amount of fuel carried during each voyage would increase administration and compliance costs, and is likely to increase the total Levy required.

47. Although it may be less equitable, as some large vessels may be carrying smaller amounts of fuel than their maximum capacity, on balance we believe that the gross tonnage of a vessel is an acceptable proxy for fuel carrying capacity. Industry is happy with this compromise, so we believe it is also a durable solution.

Minimum dimensions of vessels which are liable for levy payments

48. Only vessels 24 metres or more in length are required to provide Maritime NZ with their gross tonnage capacity. Limiting the Levy requirements to those vessels which are greater than 24 metres and 100 gross tonnes ensure that owners are not required to undertake more compliance than they would otherwise. The quantum of funds that would be gained from vessels less than 24 metres in length or less than 100 gross tons would be less than the administration costs needed to ensure compliance.

49. The status quo, which limits the Levy to vessels greater than 24 metres or 100 gross tonnes, is efficient, effective, and durable.

Status of freshwater vessels

50. Freshwater vessels have always been exempt from a requirement to pay the Levy. This is considered equitable, as the funds raised by the Levy are prohibited from being used to clean up a freshwater spill.

51. There is currently only one freshwater vessel in New Zealand that is greater than 100 gross tonnes and 24 metres in length, so it is also more efficient and effective to exclude freshwater vessels.

Status of New Zealand Defence Force Vessels

52. The New Zealand Defence Force currently possesses 18 vessels, all of which are ‘warships’ as defined by the Act. This definition is consistent with international definitions of defence vessels. As these vessels are not currently used for commercial purposes, they are not required to pay the Levy. If in the future the vessels are used commercially, it will become appropriate to Levy them.

53. Excluding Defence Force vessels from the Levy requirement is effective, efficient, equitable, and durable.

Status of harbour tugs

54. Harbour tugs operate in some of New Zealand’s most sensitive marine environments, and so on the basis of the risk assessment, should be levied appropriately. Harbour tugs, as they are excluded from the current Oil Pollution Levies Order, were not part of the risk assessment undertaken by Navigatus Consulting Limited. Further work undertaken by Navigatus Consulting Limited and Maritime NZ have established that harbour tugs, in

terms of voyage patterns, the nature of the activity, and average vessel size, are most equivalent to the domestic passenger ferry category.

55. Requiring harbour tugs to pay the Levy is equitable and durable, and does not lessen the effectiveness or efficiency of the Levy.

Status of off-take tankers

56. Off-take tankers are currently excluded from a requirement to pay the Levy, as the oil industry operates on a fixed Levy schedule. The most recent risk assessment assigned risk to oil installations, and stated that the majority of risk posed by off-take tankers was picked up in the Levy charged to the installation.

57. An assumption of this Regulatory Impact Statement was that the risk assessment undertaken by Navigatus Consulting Limited was correct. Accordingly, excluding off-take tankers from the requirement to pay the Levy should be considered equitable. It is also efficient and effective.

Definition of 'persistent oil'

58. The current definition of 'persistent oil' is circular, and includes the catch-all 'or any other persistent oil'. Updating this definition so it is in line with the International Maritime Organization definition, as set out in MARPOL Annex 1 Regulation 21(2) will bring New Zealand into line with international practice.

Annual levy for operators of oil wells, oil pipelines and floating production storage and offloading units (FPSOs)

59. The risk-assessment based method for setting levies is based on the amount of oil carried by a vessel. Oil wells, oil pipelines and FPSOs do not 'carry oil', but still pose a risk of an oil spill. Navigatus Consulting Limited assessed oil wells, pipelines, and FPSOs as making up four percent of total oil spill risk. Establishing an annual Levy requirement is efficient, effective and equitable, as it ensures that the oil industry is paying against their share of risk and know how much they are required to pay. OPAC and the oil industry accept the annual levy, which means it will be durable.

Levy payable when both persistent and non-persistent oil is carried as cargo

60. The current Oil Pollution Levies Order has no ability to charge vessels that carry both persistent and non persistent oil as cargo, but relies on vessels carrying only one type of cargo. Establishing a fair method of calculating the Levy payable when vessels carry both persistent and non persistent oil is equitable, efficient, effective, and durable.

The method of calculating the levy payable for domestic tankers carrying oil as cargo

61. For oil carried as cargo by domestic tankers, the Levy would be applied to actual amounts of oil carried rather than using the vessel's gross tonnage. This will more closely align the Levy to the risks posed by individual tankers and be consistent with the methodology being applied to foreign tankers. It would also allow operators to reconcile levies paid against actual oil carried at the end of the year, which is equitable.

62. **Table 3: Levy setting methods analysis**

	Efficient	Equitable	Effective	Durable
Updated risk assessments to calculate the levy responsibilities of each sector	√	√	√	√
Gross tonnage of a vessel used as a proxy for its fuel carrying capacity	√	X	√	√
Minimum dimensions of vessels which are liable for levy payments	√	X	√	√
Status of freshwater vessels	√	√	√	√
Status of New Zealand Defence Force Vessels	√	X	√	√
Status of harbour tugs	√	X	√	√
Status of off-take tankers	√	√	√	√
Definition of 'persistent oil'	√	√	√	√
Annual levy for operators of oil wells, oil pipelines and floating production storage and offloading units (FPSOs)	√	√	√	√
Levy payable when both persistent and non-persistent oil is carried as cargo	√	√	√	√
The method of calculating the levy payable for domestic tankers carrying oil as cargo	√	√	√	√

Consultation

63. Maritime New Zealand released a consultation document, Review of the Oil Pollution Levy – Industry Consultation Document, in December 2012. Nine submissions were received. Overall submitters supported the proposed changes, and noted that increases to the Levy were required.

64. Overall, the key issues raised by submitters were as follows:

    a. Five submitters commented on the use of the risk model. All supported the model, but two were unsure about the risk ascribed to each sector; one felt that the portion attributed to the fishing sector was too low, and one that it was too high.

    b. Two submitters felt that the proposed increases to the Levy were too high, and one submitter that the increases were too low.

    c. All submitters commented on the proposed Capital Equipment Levy, with seven stating that industry should not be paying for the equipment as the funds used to support the cleanup from the *Rena* would otherwise have been available for the purchase of the equipment.

    d. Six submitters commented on the proposed Capability Levy. Three submitters felt that Maritime NZ should be operating under financial restraint and have no increased expenditure. One submitter felt that the Levy was too small, one supported it outright, and one supported it but was concerned that the Levy would not conclude after three years.

65. The Ministry of Transport worked with Treasury and the Minister's of Transport and Finance to examine whether the Fund monies used on the *Rena* response should be returned. Crown spending on the *Rena* response to date has been approximately $47 million, and $27.6 million has been received from the *Rena's* insurers, the full amount of the settlement will be transferred to the Crown account following completion of the legal proceedings relating to the incident and no funds will be returned to the Fund.

66. Given that the funds used on the *Rena* response will not be returned to the Fund, the Ministry of Transport and Maritime NZ examined whether there were additional sources of revenue which could be used to provide the Capital Equipment. Neither the Ministry of Transport or Maritime NZ can fund the equipment through existing budgets, and so a Levy on industry is the only way in which the revenue can be gathered to provide the equipment.

67. Alongside the public consultation, the Oil Pollution Advisory Committee (OPAC) was formally consulted as required in the Act. OPAC is chaired by the Director of Maritime NZ and has representative membership (appointed by the Minister of Transport) as follows:

- New Zealand Shipping Federation
- Fishing Industry (including Seafood Industry Council)
- Major oil companies
- Oil distribution and exploration (Petroleum Exploration Association NZ) industries
- NZ Association of Ship Owners and Agents (Shipping NZ)
- NZ government officials (Ministry for the Environment, Department of Conservation, Te Puni Kōkiri, Ministry of Transport).

68. At its February 2013 meeting, OPAC indicated that it does not support the proposed $1.87 million Capital Equipment Levy increase. While industry does not oppose the purchase of the capital equipment, they strongly oppose the proposal that industry should pay for it. As the proposed Capital Equipment Levy is a direct result of depletion of

reserve funds arising from the *Rena* incident, industry argues that requiring industry to fund the capital purchase would in effect have them paying twice.

69. OPAC support all other proposals.

Conclusions and recommendations

70. We recommend that option 2b be implemented. Having a comprehensive, resourced oil spill response strategy is important for New Zealand. Independent reviews undertaken suggest that the response service provided is cost-effective and thorough, but that more equipment and capability is required.

71. New Zealand is required as a party to the International Maritime Organization's International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 to prepare for and respond to oil spills in the marine environment. Key to fulfilling this obligation is ensuring the Fund provides a sustainable revenue base to allow the Government to maintain oil spill preparedness and response services at appropriate levels. Key too is an effective, efficiency and equitable levy mechanism that apportions the cost of the services between industry participants.

72. We recommend that the Levy is payable only to ships greater than 100 gross tonnes and 24 metres in length.

73. We recommend calculating the Levy based on the sector risk assessments.

74. We recommend retaining the use of the gross tonnage of a vessel as the proxy for its fuel carrying capacity.

75. We recommend that freshwater vessels are excluded from the requirement to pay the Levy.

76. We recommend that New Zealand Defence Force Vessels are excluded from the requirement to pay the Levy.

77. We recommend that harbour tugs are required to pay the Levy.

78. We recommend that off-take tankers are excluded from the requirement to pay the Levy.

79. We recommend that the definition of 'persistent oil' is updated to reflect international practice

80. We recommend that oil wells, oil pipelines, and floating production storage and offloading units are required to pay an annual set Levy.

81. We recommend that when both persistent and non-persistent oil are carried as cargo, the operator must pay either the higher rate for the entire oil cargo, or two different rates proportionate to the oil types carried

82. We recommend that the Levy is payable for actual oil carried for domestic tankers carrying oil as cargo

83. We also recommend that the analysis and review of the Levy and the Fund due to be completed in three years is undertaken, and that OPAC continue to monitor the spending of the Fund.

Implementation

84. A new Order in Council will be required to increase the level of revenue raised and implement the additional limited term levies. It is intended that this be in place from 1 July 2013.
85. The Order in Council will also establish the levies payable by the different sectors, as established in table 1.

Monitoring, evaluation and review

86. If Cabinet endorse the proposals in the attached Cabinet paper, a 3-yearly review would be undertaken of both the Levy and the Fund. This review will allow for changes in shipping activity and associated risks so they can be better reflected in the Levy setting. The issue of whether three years remains the appropriate interval for reviewing the total annual Levy and Levy rate would also be considered. This 3-yearly review is included in the recommendations to be put before Cabinet.

87. Alongside this review, Maritime NZ undertakes an oil pollution preparedness and response capability review every five years. These reviews update and clarify the type, location and amount of oil spill services needed to fulfil New Zealand's oil pollution response obligations and the amount of expenditure required (and therefore Levy revenue needed). The subsequent action plan then assesses the costs (or savings) associated with any change in New Zealand's preparedness and response regime.