Office of the Minister of Transport

Chair
Cabinet Business Committee

NEW ZEALAND OIL POLLUTION LEVY

Proposal

1. This paper seeks Cabinet approval to:

1.1 increase the annual revenue raised for preparing for and responding to oil spills to meet current expenditure levels

1.2 impose a levy, collected over three years, for the purchase of response equipment (including skimmers and booms)

1.3 impose a further levy, collected over three years, to increase the capability of the Oil Pollution Response Service

1.4 clarify which marine operators are required to pay the New Zealand Oil Pollution Levy (the Levy), and to define the term 'persistent oil'

Executive summary

2. The Levy, which was last increased in 1998, currently collects monies from industry[1] for the New Zealand Oil Pollution Fund (the Fund). The Fund meets the cost of Maritime New Zealand's (Maritime NZ) oil pollution preparedness and response functions as set out in the Maritime Transport Act 1994 (the Act).

3. The Fund is administered by Maritime NZ, but is independent from Maritime NZ's operational finances. The provisions for the Levy are contained within the Act, and were not considered by the Maritime NZ funding review.

4. When the Fund was first established, revenue was well in excess of expenditure, as capability requirements were established and then developed. A decision was made in 1998 to recover less funds from industry than was needed, as the Fund had accumulated money that could be spent down. After fifteen years it is necessary to increase funds to recover the actual cost of oil pollution preparedness and response services.

5. The Levy fails at current rates to raise the $4.5 million required for the Fund to fulfil our domestic and international obligations for responding to oil spills. A new Order in Council enabling increased levies and increased Oil Pollution Fund revenue needs to be in place by 1 July 2013. This is to ensure that the Marine Pollution Response Service has sufficient revenue to meet its obligations.

[1] Industry, in this situation, includes passenger and cargo vessels, oil tankers, off-shore oil installations, and the domestic fishing sector.

6. In 2010 an independent report *Review of New Zealand's Oil Pollution Preparedness and Response Capability* by Thompson Clarke Shipping (the Thompson Clarke Review) examined whether 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 offer value for money. The Thompson Clarke Review determined the following:

   6.1 New Zealand's current oil pollution response regime is adequate for the risks identified at the time, and service delivery is sufficient to meet those risks.

   6.2 The current level of operating expenditure (about $4.5 million per annum) is appropriate and good value for money.

   6.3 New capital expenditure (about $1.95 million over three years) was required for new equipment for containing and cleaning up oil spills. $76,000 of this has since been purchased, leaving $1.87 million in capital equipment still required.

7. Internal reviews undertaken by Maritime NZ in 2011 and 2012, post the *Rena* incident, have identified a number of areas where increased capability is required. Firstly, additional temporary resources are required during the first year of the Levy, to develop and roll-out a comprehensive work programme, undertake policy and process improvement work. Secondly, there is a shortfall in environmental support, operational policy support and exercise coordination and oversight that needs to be rectified, and thirdly, training requirements for the National Response Team will be improved. The total cost of this capability is $1.2 million.

8. Industry broadly accepts the need for this capability, and its ongoing extent will be considered in the regular reviews of the Levy.

9. Following several industry discussion documents and consultation with the Oil Pollution Advisory Committee[2], the Maritime NZ Authority has written to me recommending changes to the Levy.

10. Accordingly I am now seeking Cabinet policy agreement to:

   9.1 a $1.43 million per annum increase to the Levy from 1 July 2013, so that revenue matches the operational expenditure of the Marine Pollution Response Service

   9.2 a limited time Capital Equipment Levy on industry of $1.87 million to be collected annually for three years (averaging $600,000 per annum). This is in order to meet the needs for new capital expenditure, as recommended by the Thompson Clarke Review, to replace, upgrade, and purchase the latest

[2] The Oil Pollution Advisory Committee is a body appointed by the Minister of Transport to represent industry and comprises the New Zealand Shipping Federation, the fishing industry, major oil companies, the oil distribution and exploration sector, Regional Councils, the NZ Association of Ship Owners and Agents and officials from the Ministry for the Environment, Te Puni Kōkiri, Department of Conservation and the Ministry of Transport.

oil pollution response equipment (e.g. skimmers, booms) designed to meet the assessed oil spill risks

9.3 an additional three year Capability Levy on industry, in order to increase capability and implement improvements to the system, of $400,000 per year

9.4 use the updated risk assessments to calculate the Levy responsibility of each sector

9.5 use gross tonnage of a vessel as a proxy for its bunker oil (fuel) carrying capacity

9.6 clarify the minimum dimensions of vessels which are liable for levy payments

9.7 clarify the status of freshwater vessels 24 metres or greater and exceeding 100 gross tonnes

9.8 determine the status of New Zealand Defence Force Vessels

9.9 determine the status of off-take tankers

9.10 redefine the term ‘persistent oil’

9.11 set an annual Levy for operators of oil wells, oil pipelines and floating production storage and offloading units

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

9.13 revise the method of calculating the Levy payable for domestic tankers carrying oil as cargo

11. I recommend that the Committee invite me to issue drafting instructions to the Parliamentary Counsel Office to prepare an Order in Council for new Oil Pollution Levies to commence on 1 July 2013.

12. The Levy will be subject to a three-yearly review, undertaken by Maritime NZ and the Ministry of Transport. This will ensure that the Fund continues to provide good value for money, and that New Zealand will have an adequate marine oil pollution response service. The review will also enable any equipment or capability gaps to be identified and factored into revised rates as soon as possible.

13. Further decisions will be required regarding the best way to ensure the Fund has the minimum level of financial reserves as required by the Act. It may or may not be influenced by the results of the independent inquiry into the *Rena* response, which may comment on the adequacy of the current oil spill response capability and on the future minimum level of financial reserves. Maritime NZ and the Ministry of Transport will be providing further advice on this matter in the coming months.

Background

14. The Levy currently provides a cost effective way of collecting monies from industry for the Fund. The Fund is used to support Maritime NZ's oil pollution preparedness and response functions as set out in the Act. The Fund also enables New Zealand to comply with our international obligations under the International Maritime Organization's International Convention on Oil Pollution Preparedness, Response and Co-operation (1990), to which it is a party.

15. Currently a Levy is collected from commercial domestic and foreign passenger and cargo ships (including oil tankers) that visit New Zealand ports, New Zealand fishing vessels, offshore petroleum rigs and platforms and oil pipelines. This is consistent with the ‘user-pays’ principle upon which the Levy is based.

16. The Levy only applies to commercial vessels that have a gross tonnage greater than 100 tonnes. Vessels less than 24 metres in length are not required to maintain a gross tonnage record. As the gross tonnage of smaller vessels (those less than 24 metres) does not need to be provided to Maritime New Zealand, there is no way to apply the Levy to the operators of those vessels. No changes are proposed to include smaller vessels in any new Levy order.

17. In a financial year the Levy collects $3.07 million from industry. This falls well short of the $4.5 million per annum required by Maritime NZ for oil spill preparedness and response services.

18. The balance has been met by a level of funds that were built up over time and transferred from the Treasury in 1998. For the last 15 years Levy revenue has been intentionally maintained at a level below that needed to recover the costs of the service. This decision was taken to reduce the level of the Fund to more appropriate levels. Fund monies have been reduced from around $8.5 million in 2002/03 to just under $3 million by the end of 2011/12.

19. These fund monies were used to provide for the immediate response following the *Rena* incident. The funds have now been exhausted and only $300,000 will remain in the fund at the end of the 2012/13 financial year.

20. Maritime NZ manages the Fund in consultation with the Oil Pollution Advisory Committee. Oil Pollution Advisory Committee members are appointed by the Minister of Transport to represent the views of the shipping and offshore oil industry who are the contributors to the Fund through the Levy. The Oil Pollution Advisory Committee's role is established under the Act, and they are required to be consulted on key decisions, including the annual expenditure budget for the Fund and any proposed changes to the Levy.

21. The current method of determining the Levy is set out in the Oil Pollution Levies Order 1998. For international ships, coastal trade ships and New

Zealand fishing boats the Levy is based on the gross tonnage[3] of a vessel. Oil production facilities and pipelines are at a flat rate based on an assessed level of risk.

Problem definition

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

23. Clarification is required as to the applicability of the Levies on several sectors.

How the Levy is set

24. The Levy payable by each sector is determined by the amount of risk that sector contributes to total oil spill risk. Risk is calculated by combining the likelihood of a spill occurring with the consequences should that spill occur.

25. The consequences of an oil spill are in part determined by the type of oil spilt, in particular whether it is persistent or non persistent oil. Persistent oil has a higher density and is less able to dissipate, so the environmental consequences are more severe if it is spilt.

26. The gross tonnage of a vessel is used as a proxy for its fuel carrying capacity.

27. The risk assessment on which current levy rates are based was undertaken in 1998, and reflects the size of each sector at that time. Increases in the size of the oil industry and international cargo ships since that time have necessitated an update of that assessment.

28. Maritime NZ hired Navigatus Consulting to update the risk assessment on a per sector basis in late 2012. This assessment was in turn based upon the Marine Oil Spill Risk Assessment 2010, which analysed the likelihood and consequence of an oil spill in all areas of New Zealand. The current risk assessment has the support of the Oil Pollution Advisory Committee and Maritime NZ.

Process undertaken for proposed changes to the Levy

29. Maritime NZ commissioned Thompson Clarke Shipping in 2010 to conduct an independent Review of New Zealand's Oil Pollution Preparedness and Response Capability (The Thompson Clarke Review). The Thompson Clarke Review sought to clarify the amount, location and nature of services needed to fulfil New Zealand oil pollution response obligations.

[3] Gross tonnage is a measure referring to a ship's overall internal volume. The current Levy is charged at a rate based on the gross tonnage of the levied ship plus a charge per tonne on the type of oil carried (persistent or non-persistent). The base rate for coastal trade ships and New Zealand fishing boats is 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. Other contributing ships pay a rate for each entry into port.

30. This determined the appropriate future level of funding required to maintain an adequate preparedness and response capability.

31. The Thompson Clarke Review determined that:

    30.1 New Zealand's current oil pollution response regime is adequate for the risks identified at that time and confirmed that current service delivery is sufficient to meet these risks

    30.2 new capital expenditure (about $1.95 million over three years) was required for new equipment for containing and cleaning up oil spills

    30.3 the current level of operating expenditure (about $4.5 million per annum) is appropriate and good value for money

32. The Thompson Clarke Review confirmed the amount of funds required from the Levy to maintain the operational and capital needs for the Marine Pollution Response Service.

33. Maritime NZ has since purchased some of the items which the Thompson Clarke Review advised as necessary, dispersant spray systems, leaving $1.87 million in further purchases to be funded by the proposed Capital Equipment Levy.

Analysis of policy proposals

34. There are three policy questions that relate directly to the amount of levies raised, and 11 questions that relate to the application of the levy. The policy questions that relate to the amount of the Levy are:

    33.4 Should the Oil Pollution Levies revenue be increased by $1.43 million per annum to meet the historic, and current, level of expenditure?

    33.5 Should industry be subject to an additional 3 year Capital Equipment Levy on industry for the purchase of oil pollution response equipment?

    33.6 Should industry be subject to an additional 3 year Capability Levy on industry to increase training and implement recommendations from the *Rena* debriefs?

35. These three policy questions are discussed below.

36. A full analysis of the policy process is detailed in the attached Regulatory Impact Statement.

Sustainability of Levy revenue

37. The current amount of Levy collected is not sustainable. The Thompson Clarke Review and Maritime NZ confirm that on average $4.5 million in annual expenditure over the next three years will be required to maintain the required level of oil spill preparedness and response capability. However Maritime NZ

collects around $3.07 million annually from direct Levy payments from operators. This revenue needs an overall increase of 39.5% ($1.43 million per annum) to move to full cost recovery.

38. Industry has been aware for many years that it has been levied at a lower than sustainable rate, and it has long been signalled that their Levy contributions would need to significantly increase when a new Levy order comes into effect. The Levies have not increased since 1998.

39. The independent Thompson Clarke Review was underpinned by a Marine Oil Spill Risk Assessment that was completed by Maritime NZ in 2010. The Thompson Clarke Review assessed the effectiveness of New Zealand's current marine oil pollution capability in general, and in particular whether Maritime NZ is meeting its obligations under the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC90), Maritime Transport Act 1994, and the Maritime NZ Statement of Intent. The Thompson Clarke Review examined whether 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.

40. Specifically, the Thompson Clarke Review

    39.1 compared response capability and funding with international practices

    39.2 determined the appropriateness of current arrangements, including funding, to deliver a marine oil spill response in New Zealand

41. The Thompson Clarke Review identified no significant gaps in the response system, and determined that:

    40.1 New Zealand's oil pollution response regime is adequate for the risks identified and confirmed that service delivery is sufficient to meet these risks

    40.2 the current level of operating expenditure, of $4.5 million per annum, is appropriate and good value for money

42. I recommend a $1.43 million per annum increase to the Oil Pollution Levy from 1 July 2013, so that revenue matches the operational expenditure of the Marine Pollution Response Service.

Capital Equipment Levy

43. The Thompson Clarke Review identified a number of areas where changes could be made to improve New Zealand's ability to respond to an oil spill, including purchase of new oil spill response equipment. This new equipment will improve the immediate, rapid response to a regional oil spill scenario. The Review recommended $1.95 million in new capital purchases for in-shore oil spill response equipment, including booms and skimmers. Maritime NZ, with the support of the Oil Pollution Advisory Committee, developed an action plan

to address all the issues reported by the Thompson Clarke Review. As stated in paragraph 33 above, some equipment has since been purchased, leaving $1.87 million required over the next three years.

44. The ‘gaps’ in equipment, as identified in the Thompson Clarke Review, mean that New Zealand’s oil spill preparedness and response capability has some gaps should a significant oil spill occur in particular marine environments, including within a harbour. This exposes the taxpayer to unnecessary financial risks, in that the alternative to ownership is to urgently import hired equipment at substantial cost premiums, and at significant delay to the speed of the initial response.

45. Prior to the *Rena* oil spill in October 2011, Maritime NZ had planned to employ funds from the Fund, above the Government mandated minimum reserve level of $2 million, to support the purchase of these capital items. However it is now unable to do so, as responding to the *Rena* spill has depleted the Fund.

46. At its February 2013 meeting, the Oil Pollution Advisory Committee indicated that it does not support the proposed $1.87 million Capital Equipment Levy increase. While industry supports the purchase of the capital equipment, it strongly opposes the proposal that industry should pay for it. As the proposed Capital Equipment Levy is a result of depletion of available funds arising from the *Rena* incident, industry argues that requiring industry to fund the capital purchase would in effect have it paying twice.

47. The Oil Pollution Advisory Committee has specifically requested the communication of industry’s view that replenishing the Fund’s minimum financial reserves to the required level of $2 million should be a first call on any settlement monies received by government from the *Rena’s* insurer. The Oil Pollution Advisory Committee consider that not refunding the $2 million paid from the Fund is inconsistent with the ‘polluter pays’ principle upon which the oil pollution response service is based.

48. The Crown has secured a settlement with the owner of the *Rena* of $27.6 million. Crown spending on the response to the incident has been approximately $47 million to date. Therefore, the full amount of the settlement will be transferred to the Crown account following completion of legal proceedings relating to the incident.

49. The options regarding funding of the Fund’s capital equipment requirements are:

    48.1 *Option 1* Do not proceed with the capital purchase of the recommended oil spill response equipment at this time

    48.2 *Option 2* Find new budget funds from government of $1.87 million to purchase the capital equipment

    48.3 *Option 3* Impose a limited three year Capital Equipment Levy on industry amounting to $600,000 per annum.

50. The risks of not proceeding with the capital purchase in the near term are:

- Potential for the Marine Pollution Response Service to be unable to deliver an optimum clean-up response in the event of an oil spill
- Government may be criticised for failing to adequately resource oil spill clean up capability in a post-*Rena* environment. This is a particular risk at a time when the safety and environmental standards of offshore oil exploration and development are under scrutiny.
- NZ could be seen internationally as not meeting its obligations for preparedness and response under the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990, in particular Article 6(2)(a)

51. Capital equipment Option 1 is not supported as it would give rise to the risks identified above in paragraph 50.

52. Capital equipment Option 2 is constrained by the current government fiscal position and budget. Maritime NZ are not able to fund this from existing budgets, so new funding would be required.

53. Capital equipment Levy (Option 3) is the only feasible short-term option for ensuring that Maritime NZ is able to purchase, in a reasonable timeframe, the new oil spill response equipment recommended by the Thompson Clarke Review.

54. Accordingly, I recommend a three year Capital Equipment Levy on industry of $1.87 million (averaging $600,000 per annum for three years). Maritime NZ also supports this position.

Capability Levy

55. An internal review undertaken by Maritime NZ in 2012 identified three areas where more funding is required to ensure training and capability requirements are met.

56. The three areas which have a total cost of $400,000 per year, are listed below:

56.1 Implementation of recommendations from *Rena* debriefs. After the *Rena* incident Maritime New Zealand undertook a number of debriefs covering key aspects of the response. The debriefs make recommendations falling into three main areas: strategy and planning, human resources, and stakeholder management. To complete all the work required it will be necessary to supplement the Marine Pollution Response Service team with additional, temporary resources during the first year of the levy to develop a comprehensive work programme, undertake the policy and process improvement work and roll-out the revised processes and procedures.

56.2 Marine Pollution Response Service systemic capability. Shortfalls have been identified in environmental support, operational policy support and exercise coordination and oversight. Environmental support is critical both to the development of plans and also to ensuring efficient and effective responses. The ability to revise and develop operational policy allows New Zealand to keep up with international developments in oil spill prevention and response. A key area where work is required is off-shore oil exploration and exploitation. Exercises are fundamental to the ability to deliver an effective response in the event of a spill and Maritime NZ has a key compliance role in this area.

56.3 Training for the National Response Team. The National Response Team is a critical, core element of the national level response capability. It comprises personnel from across the country from Government, Regional Councils and supporting agencies who come together to provide the large scale incident management capability required for the response to major spills. Formal review of the Team has identified, detailed and costed training requirements but this has not been previously funded and so has not been put in place.

57. The options for funding the capability requirements are;

57.1 *Option 1* Do not procure the additional capability at this time

57.2 *Option 2* Find new budget funds from government of $1.2 million to purchase the additional capability

57.3 *Option 3* Impose a three year Capability Levy on industry amounting to $400,000 per annum.

58. Deciding not to fund these capability elements at this time risks failing to address known shortfalls and could lead to weaknesses in future responses.

59. Option 2 is constrained by the current government fiscal position and budget. Maritime NZ are not able to fund this from existing budgets.

60. The Oil Pollution Advisory Committee is of the view that additional capability should be supported, as part of a comprehensive oil pollution response strategy, but that Maritime NZ should provide detailed information as to how the money will be spent. Maritime NZ supports this position, and has indicated that they will work with the Oil Pollution Advisory Committee, should the Capability Levy be implemented.

61. Accordingly, I recommend a three year levy on industry of $400,000 per annum to support capability.

Questions relating to the application of the Levy

62. There are 11 questions that relate to the Levy, the vessels that it can be applied to, and the terms used to define them, as set out in paragraphs 9.4 to 9.13 above.

63. These 11 questions are discussed below.

Question 1: Contributing vessels

64. The Act defines ships liable to contribute to the Levies as a "contributing ship," that being "a ship in excess of 100 gross tonnage, whose principal means of propulsion is mechanical". The Act does not specify a minimum length, but only ships of 24 metres or more in length are required under Maritime Rule Part 48 to advise Maritime NZ of their tonnage.

65. The parameters of the review of the Levy did not include a review of the statutorily prescribed definition of "contributing ship", therefore no consideration was given to including smaller vessels in the scope of the Levy.

66. I propose that the Levy continue to be applied only to those commercial vessels that have a gross tonnage of 100 tons or more, and whose length is 24 metres or greater.

Question 2: The use of the per-sector risk assessment to calculate Levy contribution

67. The current system for assessing the levies payable by each sector of industry is based on a risk model, which assigns a portion of the total Levy costs to an industry, depending on how likely it is that that sector would cause a spill, and the consequences should that happen. However some sectors, including the oil exploration and extraction sector, are paying according to a set fee rather than on assessed risk. Those that are paying by risk, are paying according to an assessment that is 14 years old.

68. An assessment of marine oil spill risk was undertaken in 2012 by Navigatus Limited. That assessment has been used to inform a per-sector risk assessment, using current data and applying it to all sectors within the marine industry. The exceptions to this are New Zealand Defence Force Vessels and off-take tankers4, which are discussed below. The updated risk assessment provides a thorough and fair way of imposing Levies.

69. I propose that the sector risk assessment undertaken by Navigatus Limited be used as the basis for setting per sector contributions and for calculating the levies payable by individual operators within each sector.

[4] An off-take tanker is a vessel which unloads oil from offshore oil installations, and transports it out of New Zealand waters

Question 3: Gross tonnage as a proxy for carrying capacity

70. All vessel operators who are required to pay the Levies must pay for any oil that is carried as fuel. The gross tonnage of a vessel, which is the same regardless of which point a vessel is at in its journey, has been used to measure the fuel capacity of that vessel. As larger vessels carry more fuel, and smaller vessels less, it is fundamentally fair and treats all operators the same.

71. I propose that the gross tonnage of a vessel continue to be used to calculate the Levies payable for oil carried as fuel.

Question 4: Clarification of the Levy status of freshwater vessels

72. The Levy in its current form does not apply to freshwater vessels, as they do not fall into any of the categories for a contributing ship. This is considered fair, as the purposes for which the Levy funds may be used is limited to 'marine oil spills', which expressly excludes spills in a freshwater context.

73. I propose that freshwater vessels continue to not be required to pay the Levies.

Question 5: Clarification of the Levy status of New Zealand Defence Force vessels

74. The New Zealand Defence Force currently owns 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. This is consistent with international practice.

75. I propose that New Zealand Defence Force vessels continue to not be required to pay the Levies.

Question 6: Clarification of the status of harbour tugs

76. The current Oil Pollution Levies Order does not require tugs to pay the Levies if they do not leave the harbour in which they operate. Under the risk assessment criteria, harbour tugs should be paying the Levy, as the environment in which they operate is considered very sensitive to a marine oil spill. The most recent marine oil spill risk assessment did not specifically include harbour tugs in its percentage risk calculation.

77. The closest approximation to harbour tugs, in terms of voyage patterns, the nature of the activity, and average vessel size, is the domestic passenger ferry category. I propose that harbour tugs be required to pay the Levy, and be included in the domestic passenger ferry category for calculation purposes5.

Question 7: Clarification of the Levy status of off-take tankers

[5] There are less than 30 harbour tugs in New Zealand that would be liable to pay the Levies. The average Levy payable per tug would be approximately $600.

78. An off-take tanker is a vessel which unloads oil from offshore oil installations, and transports it out of New Zealand waters. Off-take tankers do not enter New Zealand ports, but may come within a few kilometres of shore to pick up or offload a pilot. As the current Oil Pollution Levies Order requires that a vessel enter port for it to be required to pay the Levy, off-take tankers have not been in scope of the Order.

79. 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 covered by the Levy charged to the installation.

80. For the next marine oil spill risk assessment, more information about the voyage patterns and oil carriage volumes of off-take tankers will be collected, in order to determine whether all the risk is indeed being picked up by the installations, and whether off-take tankers should be a subject to the Levy.

81. I propose that off-take tankers continue to not be required to pay the Levies. It is important to note that this matter will be reconsidered in the three yearly review of the Levy. Further, notwithstanding not being required to pay the Levy, in the event of a significant spill occurring from an off-take tanker, the “polluter pays” principle would apply, and compensation would be sought to recover any costs to the crown.

Question 8: Determination of the definition of ‘persistent oil’

82. The current definition of ‘persistent oil’, as set out in the Oil Pollution Levies Order, is circuitous, and includes the catch-all ‘or any other persistent oil’. As the per tonne charges for persistent and non persistent oil are markedly different, it is important that the definition of persistent oil is clear.

83. I propose that the definition of persistent oil is amended, to bring it into line with the international definition as set out by the International Maritime Organization in MARPOL Annex 1 Regulation 21(2). This definition determines persistent oil by its density, viscosity, and specific ingredients.

Question 9: Clarification of the Levy responsibilities of oil wells, oil pipelines, and floating production storage and offloading units

84. The current Oil Pollution Levies Order applies a set rate to all oil wells, oil pipelines, and floating production storage and offloading units, reflecting the fact that when the Order was developed the sector was so small that it was not included in the sector risk assessment.

85. The Navigatus risk assessment found that the activities of the gas and oil industry represent four percent of the risk of a marine oil spill. Maritime NZ has since examined the operations within the industry, and calculated the Levy responsibilities for each individual operator.

86. I propose that oil wells, oil pipelines, and floating production storage and offloading units be responsible for four percent of the Levy, and that each pay a set amount per annum which correlates to their risk assessment.

Question 10: Clarification of the Levy payable when both persistent and non persistent oil are carried as cargo

87. The current Oil Pollution Levies Order has no ability to charge vessels which carry both persistent and non persistent oil as cargo, but relies on vessels carrying only one type of cargo. Allowing operators who are carrying both types of oil as cargo to choose whether to pay a higher Levy for all oil carried, or a smaller Levy with the requirement that proportional oil quantity information is submitted, achieves a balance between efficiency and equity. I propose that the new Oil Pollution Levies Order reflect that where both types of 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.

Question 11: Clarification of the Levy calculation for domestic tankers carrying oil as cargo

88. I propose that for oil carried as cargo by domestic tankers, the Levy 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.

89. I propose that the new Levies Order provide for a reconciliation at year end after comparison with actual figures of oil carried as cargo.

Financial reserves

90. Section 332(6) of the Act requires that reserves are in place within the Fund. These were previously set at $2 million. During the response to the Rena all the surplus funds in the Fund were expended, including the $2 million of reserves. Only a minimum level of operating funds was retained to support business as usual activities.

91. I am working with the Minister of Finance to consider options to either return the $2 million to the Fund from the *Rena* settlement or to provide an indemnity arrangement to underpin the Fund while a longer term solution is developed.

92. Section 333(4) of the Act enables the Minister of Transport to recommend that an Order in Council be made imposing a Levy for the purposes of providing money for the Fund.

93. Such recommendation can be made provided that I am satisfied that:

    a. the planned expenditure from the Fund is reasonable and the Levies recommended will enable expenditure to be met without reducing the level of reserves below the current minimum level

94. I am satisfied that the requirements in section 333(4) of the Act have been complied with.

Consultation with industry

95. Maritime New Zealand consulted publicly between December 2012 and February 2013. All submissions were analysed, and views expressed were considered. The full summary of submissions by Maritime NZ is attached as Appendix 3.

96. Six submitters commented on the overall proposal to increase base levies to $4.5 million. Three accept the increase as necessary, two consider that the increase is too high, and one stated that the increase wasn't high enough.

97. Section 334 of the Maritime Transport Act 1994 requires Maritime NZ to consult the Oil Pollution Advisory Committee on any changes to the Levy.

98. The Oil Pollution Advisory Committee met on 25 February 2013, and agreed to all proposals put forward, with the exception of the Capital Equipment Levy. The Oil Pollution Advisory Committee appreciate that increases in the base Levy are needed.

Consultation with Government

99. The following departments were consulted in the drafting of this paper: Ministry of Business, Innovation and Employment, Environment Protection Authority, Te Puni Kōkiri, Maritime NZ, the Treasury, Ministry for the Environment, Department of Conservation, and the Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet were informed.

100. The Ministry of Business, Innovation and Employment have stated that the risk assessment for oil installations underestimates the risk that these pose, especially as the offshore oil industry in New Zealand grows. They support the proposed increases as an interim measure, and recommend that a further review be undertaken.

101. I have received a letter from Maritime NZ requesting a new Order in Council be made for new Oil Pollution Levies based on the policy proposals recommended in paragraphs 9.1 to 9.13. The letter confirms the Oil Pollution Advisory Committee has been consulted pursuant to section 334 of the Act.

Financial implications for operators

102. The below table provides information about the impact of the proposed Levies on individual operators. The figures include both the Capital Equipment and Capability Levies, and Goods and Services Tax.

Sector	Sector percentage increase/ (decrease)	Example vessel	Levies payable by vessel 2011/12	Levies payable by vessel 2013/14
NZ passenger and cargo vessels	234	The *Arahura,* a Cook Strait Ferry	$16,256	$54,251
NZ oil tankers	64	A 22,000 gross tonne tanker carrying 80 percent non-persistent oil	$235,259	$355,738
NZ fishing sector	134	The *San Enterprise,* a 1,899 gross tonne fishing vessel	$1,529	$3,500
International passenger and cargo vessels	(10)	A 23,207 gross tonne vessel	$2,962	$2,669
International oil tankers	221	A 60,000 gross tonne vessel	$4,614	$11,333
Oil platforms	(83)	Not applicable	$10,222	$1,725
Floating Production Storage and Offloading units	487	The *Raroa*	$10,222	$118,650
Oil pipelines	(87)	Not applicable	$10,222	$1,380
Oil exploration wells	(96)	Not applicable	$10,222	$460

103. As the total revenue required per annum, including the two fixed-term levies, will increase by 71.4 percent, most industry sectors will pay more than they have been. The examples below include both limited time levies.

104. Many sectors have experienced large changes in their size, which is reflected in the change to the Levy they are subject to. Thus while the increase for domestic tankers

carrying non-persistent oil is 1,863.2 percent, an average vessel within that class, for example a 22,000 gross tonne tanker carrying 80 percent non-persistent oil will face an increase in levies of 51 percent.

105. The domestic passenger and cargo sector will see an increase in levies of 233.9 percent. The increase for the Arahura, a Cook Strait ferry, will be 233 percent per annum, with total levies now $54,251.

106. The New Zealand fishing sector's levies will increase by 134.3 percent, starting from a small base. The San Enterprise, a 1,899 gross tonne fishing vessel will pay $3,500 in 2013/14, a 134 percent increase from 2011/12.

107. Foreign cargo and passenger vessels will experience a decrease in levies.

108. A floating storage production and offloading unit, of which there are two in New Zealand, will have a 486.6 percent increase in levies payable. Each unit will now pay $118,650 per year.

109. Appendix 1 provides further details about these impacts per sector.

Gender, Human rights, and Disability implications

110. There are no gender, human rights, or disability implications with these recommendations

Legislative implications

111. Implementation of the proposed changes to the Oil Pollution levy regime will require revocation of the Oil Pollution Levies Order 1998 and the drafting of a new Order in Council by the Parliamentary Counsel Office.

Regulatory Impact Analysis

112. A Regulatory Impact Statement is required with respect to the proposals in this paper. A Regulatory Impact Statement has been prepared by the Ministry of Transport and is attached to this Cabinet paper as appendix 2. The Regulatory Impact Statement and associated supporting material has been assessed by the Ministry of Transport RIS Panel as meeting the quality assurance criteria.

Publicity

113. If Cabinet agrees to proposals to change the Levies, Maritime NZ will contact and inform the key stakeholders, operators and Levy payees of the changes to the system.

Recommendations

114. I recommend that the Committee:

Policy Decisions

1. **note** that the current amount of funds recovered by the Oil Pollution Levy for the New Zealand Oil Pollution Fund is not sustainable to meet domestic and international obligations

2. **agree** to raise the annual revenue for the New Zealand Oil Pollution Fund collected by the Oil Pollution Levy to $4.5 million per annum, to bring the New Zealand Oil Pollution Fund up to full cost recovery

3. **agree** to impose on industry an annual Capital Equipment Levy of $600,000 per annum for three years

4. **note** that at its February 2013 meeting the Oil Pollution Advisory Committee stated that it does not support the proposed $1.87 million Capital Equipment Levy

5. **agree** to impose on industry an additional Capability Levy of $400,000 for three years to increase the capability of the Marine Pollution Response Service

6. **agree** that the Oil Pollution Levies will be imposed annually on 1 July

7. **agree** that the Oil Pollution Levies are payable only by commercial vessels greater than 24 metres in length and exceeding 100 gross tonnes

8. **agree** that the Oil Pollution Levies should be calculated using the sector risk assessment as outlined in the report by Navigatus Consulting Limited

9. **agree** that the gross tonnage of a vessel should be used as a proxy for its carrying capacity

10. **agree** that freshwater vessels will not be required to pay the Oil Pollution Levies

11. **agree** that New Zealand Defence Force vessels will not be required to pay the Oil Pollution Levies

12. **agree** that harbour tugs should be required to pay the Oil Pollution Levies irrespective of whether they leave or re-enter a New Zealand port

13. **agree** that off-take tankers will not be required to pay the Oil Pollution Levies

14. **agree** that the definition of ‘persistent oil’ should be the same definition as set out by the International Maritime Organization in MARPOL Annex 1 Regulation 21(2)

15. **agree** that oil wells, oil pipelines, and floating production storage and offloading units should be subject to the Oil Pollution Levies, at a fixed amount equivalent to four percent of the total Oil Pollution Levies payable

16. **agree** 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 in proportion to the oil types carried

17. **agree** that for oil carried as cargo by domestic tankers, the Oil Pollution Levies be applied to actual amounts of oil carried

18. **agree** that the replacement Oil Pollution Levies order provide for domestic tanker operators to undertake reconciliation at year end after comparison with actual figures of oil carried as cargo

Order in Council

19. **authorise** the issue of drafting instructions to the Parliamentary Counsel Office to prepare amendments to give effect to recommendations 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, and 18 above and make any necessary consequential amendments.

20. **authorise** the Minister of Transport to determine matters of minor and consequential policy detail that may arise in the course of preparing the new Order in Council

21. **note** that a further Cabinet paper with a draft Order in Council will be submitted by the Minister of Transport to the Cabinet Legislation Committee in May 2013

Hon Gerry Brownlee
Minister of Transport

Dated: _____

Appendix 1: Impacts of increased levies, by sector

Sector	Levies payable 2011/12	Levies payable 2013/14 – base	Levies payable 2013/14 – with Capital Equipment Levy	Levies payable 2013/14 – with Capability Levy	Levies payable 2013/14 – Capital Equipment and Capability Levies	Percentage of risk assigned to sector
Domestic passenger and cargo (excludes freshwater, but includes tugs)	$217,211	$590,625	$672,394	$643,562	$725,331	13.125%
Domestic tankers – oil as cargo						
Persistent	$337,642	$286,875	$326591	$312,587	$352.304	6.375%
Non Persistent	$11,260	$180,000	$204,920	$196,133	$221,053	4.000%
New Zealand fishing sector	$58,979	$112,500	$128,075	$122,583	$138,158	2.500%
Foreign passenger and cargo	$1,762,152	$1,288,800	$1,467,227	$1,404,315	$1,582,742	28.640%
Foreign tankers – oil as cargo						
Persistent	$503,662	$1,544,400	$1,758,214	$1,682,824	$1,896,637	34.320%
Non Persistent	$209,335	$316,800	$360,659	$345,195	$389,054	7.040%
Oil industry – total	$124,444	$180,000	$204,920	$196,133	$221,053	4.000%
Platforms	$44,444	$6,030	$6,865	$6,570	$7,405	0.134%
FPSOs (Umuroa, Raroa)	$35,556	$169,830	$193,342	$185,052	$208,564	3.774%
Pipelines	$35,556	$3,870	$4,406	$4,217	$4,753	0.086%
Exploration Well	$8,889	$270	$307	$294	$332	0.006%
Total Oil Pollution Levy	*$3,224,685*	*$4,500,000*	*$5,159,000*	*$4,903,333*	*$5,562,333*	*100.00%*