

# Four International Maritime Environmental Conventions/Protocols Discussion Document - Submission Analysis

## Purpose

1. This document presents a collation and analysis of the 10 submissions received on the *Four International Maritime Environmental Conventions/Protocols* discussion document.

## Background

2. The Ministry of Transport (MoT) released the discussion document *Four International Maritime Environmental Conventions/Protocols* (Four Conventions) for public comment in November 2007. The discussion document examines the background, risks, legislative implications and potential costs and benefits of New Zealand becoming party to each of four international maritime environmental conventions/protocols promulgated by the International Maritime Organization (IMO). The four conventions/protocols are:
  - International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (**Bunkers Convention**) - concerned with establishing a liability regime to compensate parties affected by marine pollution by bunker oil;
  - Protocol of 1996 to amend the International Convention on the Limitation of Liability for Maritime Claims 1976 (**LLMC Protocol**) - relates to the limitation of liability for maritime claims against shipowners and salvors;
  - The Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973, as amended (**Intervention Protocol**) - allows intervention measures to be taken by the State against any manner of sea-going vessel or craft to prevent, mitigate or eliminate pollution or the threat of pollution by harmful substances other than oil after a maritime casualty; and
  - The Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000 (**OPRC-HNS Protocol**) - would establish national and regional measures for New Zealand to prepare and respond to pollution incidents from hazardous and noxious substances (other than oil).
3. The closing date for submissions was 19 December 2007, allowing six weeks for responses. The Ministry subsequently advised that it would accept submissions until 18 January 2008.

## Consultation process

4. Following the completion of the Four Conventions discussion document, invitations were sent out to 570 stakeholders notifying them of the availability of the document and of a series of informative workshops which were held on 14, 15 and 16 November 2007 in Christchurch, Auckland and Wellington respectively. Four stakeholders attended the session on the Four

Conventions in Christchurch, 19 in Auckland and 25 in Wellington. The discussion document was available to be posted in hardcopy, emailed, or downloaded from the Ministry website. 186 hard copies were distributed and a further 19 were sent out electronically by email. A total of 222 downloads of the document occurred in November and December 2007.

## Analysis Method

- Submissions were received via email or post with an optional template format to focus questions from the document for each of the four conventions/protocols. They were classified to provide information on the types of respondents. Data was entered into a spreadsheet before being collated and analysed.

## Classification of Submissions

- Ten submissions were received which were classified in the following stakeholder categories:

Organisation / Submitter	Submitter Type	Submission Number
Forest & Bird	Environmental Group	1
Individual – Mr F R Keer-Keer <sup>1</sup>	Other (harbourmaster)	2
Individual - Dr Mike Patrick <sup>2</sup>	Other (former PEPANZ representative)	3
Petroleum Exploration and Production Association of NZ (PEPANZ)	Industry Association	4
NZ Shipping Federation (Shipping Federation)	Industry Association	5
Department of Conservation (DOC)	National Government Agency	6
Maritime New Zealand (MNZ) <sup>3</sup>	National Government Agency	7
New Zealand Fire Service (Fire Service) <sup>4</sup>	National Government Agency	8
Wellington City Council	Territorial Local Authority	9
Environment and Conservation Organisations of NZ Inc. (ECO)	Environmental Group	10

<sup>1</sup> Mr Keer-Keer is a contract harbourmaster for Environment Canterbury.

<sup>2</sup> Dr Patrick is submitting as an individual. He is a former Maritime Safety Authority staff member and the former representative of New Zealand's oil and gas exploration and production industry (the Petroleum Exploration & Production Association of NZ or PEPANZ)

<sup>3</sup> While MNZ were involved in developing the discussion document, it was agreed that, as they would be directly involved in implementing the conventions/protocols, their independent views on the final document would be valuable.

<sup>4</sup> The Fire Service was involved in the development of the section on the OPRC-HNS Protocol. The Fire Service is currently the only agency with expertise and capability to respond to HNS incidents in the marine environment.

7. The choice of both communication and submission format varied:

	Template submissions	Non-template submissions	Total
Hardcopy submissions	1	2	3
Email submissions	2	5	7
<b>Total</b>	<b>3</b>	<b>7</b>	<b>10</b>

### **Submitters' comments on the Bunkers Convention**

8. All eight submitters who commented on this Convention agree that New Zealand should become party to the Bunkers Convention. There is a general consensus that the Convention will have little cost or fiscal impact on industry participants. MNZ (who would be the lead implementing agency for the Convention) states that it "would anticipate being able to [administrate] within existing resources for port state control and through existing cost recovery mechanisms to meet flag state responsibilities."
9. The Shipping Federation notes the need to ensure New Zealand legislation is consistent with the terms of the Convention.
10. ECO note the limiting definition of "pollution damage" in the Convention, calling for an expansion to include all impacts on the environment, not just those which have a financial impact.
11. Mr Keer-Keer is the only submitter to mention the possibility of extending the requirements to warships and advocates this inclusion.

### **Submitters' comments on the LLMC Protocol**

12. Eight submitters commented on this Protocol. All support the adoption of the Protocol because it would increase compensation limits. MNZ proposes incorporating the text of the Protocol as a schedule of the Maritime Transport Act 1994 so "New Zealand thus receives the benefit of strict alignment with international law".

#### ***On the inclusion of Hazardous and Noxious Substances (HNS)***

13. The Protocol offers the option for State parties to exclude HNS from the LLMC Protocol and two submitters responded to this issue. Dr Patrick highlights the need for an "availability of sufficient funds in the event of such incidences" but has "no firm view either way on whether or not this is achieved via this Protocol or via some other means perhaps with no upper limitations." The Shipping Federation advocates inclusion of HNS in the Protocol.

### **Submitters' comments on the Intervention Protocol**

14. Eight submitters comment on this Protocol. Seven support New Zealand becoming party to the Protocol because they believe it is in the best interests

of NZ. MNZ notes that becoming party to the Protocol would align the country with other Pacific nations. ECO notes that the Protocol came into force internationally in 1983 and comments that “it is about time NZ ratified” the Protocol.

15. Mr Keer-Keer does not support becoming party and argues that New Zealand should continue to “rely on the provisions of the Maritime Transport Act” (which already provides to the Director of MNZ for some intervention powers within NZ’s Exclusive Economic Zone).

## **Submitters’ comments on the OPRC-HNS Protocol**

### **General comments**

16. Nine submitters commented on the OPRC-HNS Protocol. Six (Forest & Bird, Mr Keer-Keer, MNZ, the Fire Service, ECO and Wellington City Council) support New Zealand becoming party to the Protocol.
17. The two industry associations, PEPANZ and the Shipping Federation, do not support adopting the Protocol. They argue that the likelihood of occurrence of a major maritime HNS incident in New Zealand is small, and therefore the costs of preparedness and response estimated in the discussion document outweigh the potential benefits.
18. Dr Patrick sees a need for adoption at the “higher level”, but can see no specific justification which would warrant its immediate implementation. He advocates further research to gain better data on the risks of an HNS spill and suggests seeking advice from Oil Pollution Advisory Council (OPAC)<sup>5</sup> and Australia.
19. Mr Keer-Keer cites the need for a “proper legal framework” as a reason for acquiescence.
20. A number of submitters expressed concern over the initial estimate of \$2 million annual cost of preparedness and response. Dr Patrick comments that the budget “of \$2m per year would only eventuate if Maritime NZ were to take charge of HNS response. In such a case there might be some economies of scale in one agency assuming total control.”
21. ECO disagrees with the argument that the cost of ratifying this Protocol exceeds the costs of acceptance. It cites the following grounds in support of ratification:
  - “New Zealand’s wide obligations and area covered for search and rescue requirements;
  - New Zealand’s commitments to Antarctica and the Southern Ocean;
  - Increased international co-ordination to avoid international disasters and to assist New Zealand;
  - Acknowledge that marine mammals and seabirds that breed in or inhabit New Zealand shores travel vast distances in the Pacific and throughout

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<sup>5</sup> OPAC’s meeting on 29 November 2007 discussed the OPRC-HNS Protocol and decided not to make a submission as a group but encouraged its individual members to do so. (PEPANZ, the Shipping Federation and MNZ are represented on OPAC).

the Southern Ocean (eg whales, albatross, petrels and migratory seabirds) and could be impacted elsewhere by poor practice;

- As a good international citizen to avoid free-loading on other countries;
- Allows us to argue that other countries should ratify this agreement and the 1996 (HNS Convention).”

22. PEPANZ argues that, if the Protocol was to be implemented, “perhaps all that is required ... is a national plan, without any response capability ... in our view Maritime NZ could fulfil that function at a relatively cheap cost.”

### ***Framework options***

23. Respondents were asked what would be their preferred operational framework and funding options should the Protocol be adopted. The three framework options suggested were:

- a. Framework Option 1: Expand the oil spill response framework into a marine pollution spill response framework. This would draw upon the existing structure, expand the current resources, mandate to develop a capability for response to HNS incidents, and create a new marine pollution levy out of the existing oil pollution levy;
- b. Framework Option 2: Mirror the oil spill response framework by creating a stand-alone HNS spill response framework. This would create an HNS Spill Advisory Committee and a separately targeted HNS levy; and
- c. Framework Option 3: Adapt and expand the land-based Hazardous Substances Technical Liaison Committee framework into a regional and national maritime hazardous substance response framework. Membership and role of this already existing group could be modified to take on the responsibility of preparedness and response to maritime HNS incidents.

24. Each of the three framework options receives some support:

- a. MNZ advocates Framework Option 1, arguing it is “easily the most efficient approach.”
- b. PEPANZ cites a preference for Framework Option 2 as it would remove the likelihood of cross-subsidisation with the Oil Pollution Levy.
- c. The Fire Service argues for Framework Option 3 “or a variant that draws on the knowledge and experience of existing agencies combined with that of agencies with a maritime role.” A “strengthened” version of this option is also supported by Dr Patrick.

25. Mr Keer-Keer is concerned about the lack of mechanisms to deal with a “problem vessel which is only scheduled to be in port for a limited time, say 24 hours. By the time a problem is detected and confirmed, the vessel may want to sail.” Mr Keer-Keer argues for a form of bond to be lodged to stop the vessel leaving if they are declared hazardous, before a damage and clean-up assessment is completed.

### ***Operational options***

26. The discussion document presents two proposals for the chain of command and operational response to an HNS maritime incident:

- a. Operational Option A: Three tiered response – mirroring the current oil spill model and applying it to HNS incidents; and
- b. Operational Option B: Two level response – based on minor or catastrophic incidents.

27. The Fire Service supports Operational Option A. Dr Patrick and MNZ advocate Operational Option B as being the most efficient.
28. Mr Keer-Keer suggests a roster team of two should be on call 24/7 to “give advice to Heads of Departments and Ministers of the Crown on how best to deal and contain the effects.”
29. PEPANZ proposes that MNZ heads and organises a national plan with the expectation of the Fire Service to cover all marine areas out to the Exclusive Economic Zone. PEPANZ notes the lack of specific capability of the Fire Service to deal with maritime incidents or recovery of HNS cargoes and training “based on the level of risk to which NZ is exposed.”

### **Funding options**

30. Four funding options for the OPRC-HNS Protocol preparedness and response costs were presented in the discussion document:
  - a. Funding Option 1: Expand Oil Pollution Levy to maritime pollution levy;
  - b. Funding Option 2: Marine Safety Charge to include new environmental levy component;
  - c. Funding Option 3: Separate, stand alone environmental levy; and
  - d. Funding Option 4: Separate, stand alone HNS levy.
31. Four of the six submitters (Dr Patrick, PEPANZ, the Shipping Federation and MNZ) who responded on this issue express concern about cross-subsidisation from the oil pollution levy. They all cite Funding Option 4 as their preferred funding option. The Fire Service prefers Funding Option 2 and Mr Keer-Keer prefers to “not get bogged down by user pays, the talks could go on for years while the community is exposed to the potential risk.”

### **Other Issues**

32. ECO argues in favour of ratifying a number of additional International Maritime Organization environmental conventions:
  - a. Marine Pollution (MARPOL) Annexes IV and VI:
    - i. Annex IV: Prevention of pollution by sewage from ships, entered into force in 2003. A revised Annex was adopted in 2004.
    - ii. Annex VI: Prevention of Air Pollution from Ships 1997, entered into force in 2005.
  - b. International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Anti-fouling);
  - c. International Convention for Control and management of Ships' Ballast Water and Sediments, 2004 (Ballast Water)<sup>6</sup>;
  - d. Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund Protocol); and

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<sup>6</sup> The Ministry of Transport has been working with the Ministry of Agriculture and Forestry / Biosecurity New Zealand on the Ballast Water Management Convention. Biosecurity NZ is preparing a joint briefing to the Minister of Agriculture and Forestry and the Minister for Transport Safety with their summary of submissions on the Ballast Water Management Convention discussion document and recommendations for Cabinet.

- e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention).

## Summary

- 33. There is unanimous agreement from submitters to adopt the Bunkers Convention and LLMC Protocol.
- 34. There is near unanimous support from respondents to adopt the Intervention Protocol. Submitter Mr Keer-Keer argues that New Zealand should continue to “rely on the provisions of the Maritime Transport Act” which already provides the Director of MNZ with some intervention powers within NZ’s Exclusive Economic Zone.
- 35. There is a split over support for the OPRC-HNS Protocol with six of the nine submitters in favour of adopting the Protocol. Both industry association submitters oppose adopting the OPRC-HNS Protocol citing their view that the likelihood of occurrence of a major maritime HNS incident in New Zealand is small, and therefore the costs of preparedness and response estimated in the discussion document outweigh the potential benefits. However they support the development of a national plan for response to maritime HNS incidents. One individual (Dr Patrick) supports further investigation on the level of risk.
- 36. In terms of framework options for the Protocol, each receives some support:
  - a. MNZ advocates Framework Option 1 (expand the oil spill response framework into a marine pollution spill response framework), arguing it is “easily the most efficient approach.”
  - b. PEPANZ cites a preference for Framework Option 2 (mirror the oil spill response framework) as it would remove the likelihood of a cross-subsidisation with the Oil Pollution Levy.
  - c. The Fire Service argues for Framework Option 3 (adapt and expand the land-based Hazard Substances Technical Liaison Committee) “or a variant that draws on the knowledge and experience of existing agencies combined with that of agencies with a maritime role.” A “strengthened” version of this option is also supported by Dr Patrick.
- 37. Opinions on operational options for the OPRC-HNS Protocol are split. The Fire Service supports Operational Option A (a three tiered response). Dr Patrick and MNZ advocate Operational Option B (a two tiered response) as being the most efficient.
- 38. Four of the six submitters (Dr Patrick, PEPANZ, the Shipping Federation and MNZ) who responded on the issue of funding express concern about cross-subsidisation from the Oil Pollution Levy. They all cite Funding Option 4 (a separate, stand alone HNS levy) as their preferred funding option. The Fire Service prefers Funding Option 2 (Marine Safety Charge to include new environmental levy component) and Mr Keer-Keer does not want user pays.