

Port and Harbour and Navigation Safety Management Discussion Document - Submissions Analysis

Executive Summary

1. This document presents a collation and analysis of the 29 submissions received on the Ministry of Transport's Port and Harbour and Navigation Safety Management Discussion Document.
2. Two main themes emerge from submissions on the discussion document:
 - a) Many submitters advocate a cautious approach to any legislative change to formally support the New Zealand Port and Harbour Marine Safety Code 2004 (the Code), citing a need to wait until the Code has had time to bed in fully;
 - b) There is no dominant preference for any single approach to the issues canvassed in the document: submitters' opinions tend to reflect their particular role and interests within the maritime sector.

Background

3. The Ministry of Transport (MoT) released the discussion document for public comment entitled *Port and Harbour and Navigation Safety Management* in November 2007. This document discusses issues raised by the development of the New Zealand Port and Harbour Marine Safety Code 2004 (the Code) which establishes best practice guidelines to address harbour safety management shortcomings. The Code is voluntary because the relevant legislation does not provide for formal implementation of such measures. This has raised questions over the implications of continued reliance on voluntary measures. Four possible approaches to the matter are considered, as well as the possibility of a centralised model for harbour safety delivery. The four approaches are:
 - a) Retain the entirely voluntary approach;
 - b) Provide for formal recognition of the Code;
 - c) Introduce statutory provisions to supplement the existing Code or a formal code of practice; and
 - d) Make the Code mandatory.
4. 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

5. Following the completion of the Port and Harbour and Navigation Safety 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, 16 November 2007 in Christchurch, Auckland and Wellington respectively. Nine stakeholders attended the session on port and harbour safety in Christchurch, 25 in Auckland and 36 in

Wellington. The discussion document was available to be posted in hardcopy, emailed, or downloaded from the MoT website. 117 copies were requested and posted out and 17 emails were sent with the document as an attachment. A total of 338 downloads of the document occurred in November and December.

Analysis Method

- Submissions were received via email or post with an optional template format to focus questions from the document (appendix A). They were classified by stakeholder category and data was entered into a spreadsheet before being collated and presented in its current format.

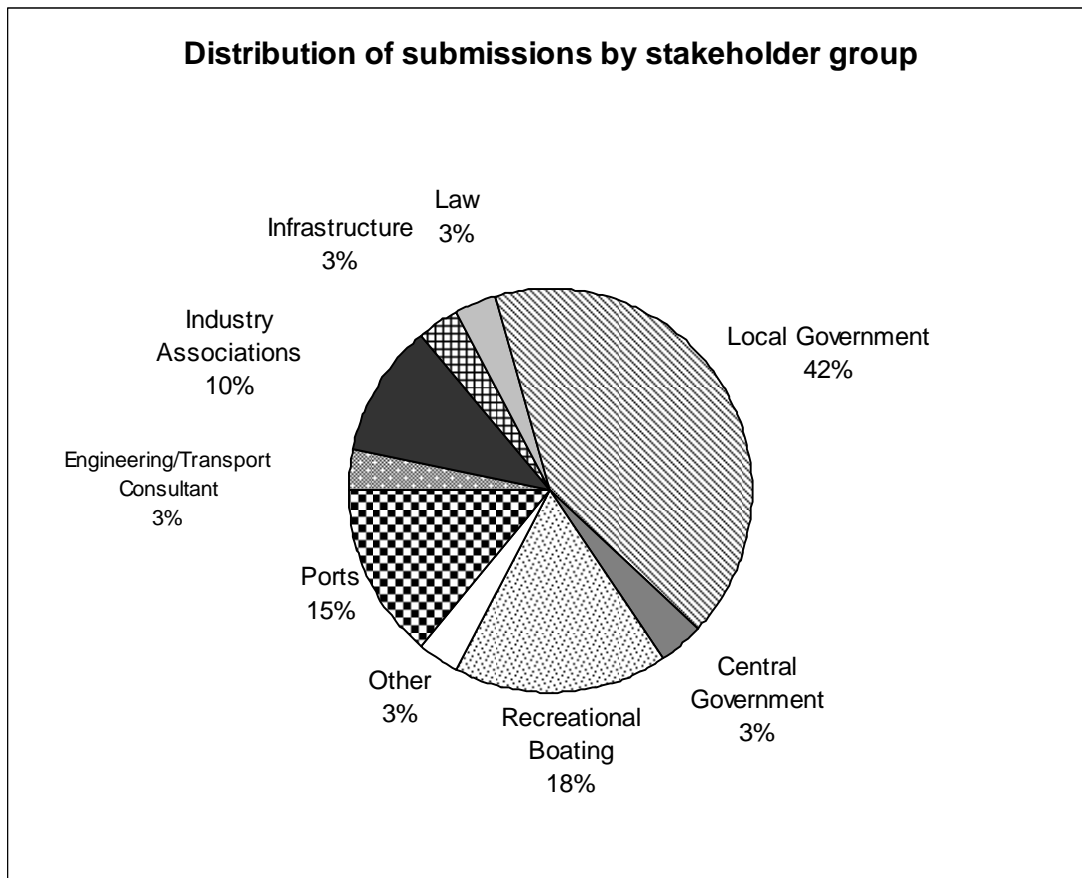
Analysis of Total Submissions

- A total of 29 submissions were received and were classified in the following stakeholder categories:

1	Environment Canterbury	Local Government
2	Far North Holdings Ltd	Infrastructure
3	Marlborough District Council	Local Government
4	Individual	Other
5	Yachting New Zealand	Recreational Boating
6	River City Port Ltd	Ports
7	NZSF	Industry Associations
8	Auckland Regional Council	Local Government
9	Buller Port Services Ltd	Ports
10	Taranaki Regional Council	Local Government
11	Environment Southland	Local Government
12	Otago Yachting Association Inc	Recreational Boating
13	Wellington City Council	Local Government
14	Port Chalmers Yacht Club	Recreational Boating
15	Dawson and Associates Maritime and Commercial Lawyers	Law
16	Whangarei Cruising Club and Whangarei Harbour Marina Management	Recreational Boating
17	Greater Wellington Regional Council	Local Government
18	Petroleum Exploration and Production Association	Industry Associations
19	Barrie Saunders - on behalf of CEOs of 15 port companies	Ports
20	Marico Marine Group	Engineering/Transport Consultant
21	Northland Regional Council	Local Government
22	Hawke's Bay Regional Council	Local Government
23	Port Marlborough NZ Ltd	Ports
24	Maritime New Zealand (Maritime NZ) ¹	Central Government
25	Environment Bay of Plenty	Local Government

¹ While Maritime NZ was involved in developing the discussion document, it was agreed that, because of the agency's direct involvement in implementing maritime safety measures, its independent views on the final document would be valuable.

26	Shipping New Zealand	Industry Associations
27	Paremata Boating Club Inc	Recreational Boating
28	Queenstown Lakes District Council	Local Government
29	Wanganui District Council	Local Government



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

	Template submissions	Non-template submissions	Total
Hardcopy submissions	4	8	12
Email submissions	11	6	17
Total	15	14	29

Submitters' comments on issue analysis

9. Eleven submissions responded about the issue analysis and eight mostly agree with the issues raised (3, 8, 9, 12, 14, 20, 22, 25).
10. Submission 1 feels that the analysis did not consider all relevant legislation and consideration should be given to (for example) the Resource Management Act (RMA) 1991 and the Local Government Act (LGA) 2002. Submission 17 states that the maritime incidents such as that involving Jody F. Millennium were partially caused by deficiencies in legislation introduced in 1990s, and it is important that such 'legislative errors' not be repeated.

11. While agreeing with the issue analysis, submission 12 observes that not all participants have fulfilled their responsibilities to date, which can result in “minimal maintenance of existing facilities, a reduction in navigable waterways and growing risks for recreational users”, a situation that warrants action. (Port Chalmers Yacht Club)
12. Submission 15 sees the Code not as a solution but as a “band aid” and argues that “the current legislative underpinnings of Port and Harbour Safety in NZ are an unhealthy mix of statutes which have different objectives and seek to regulate different things, using different methodologies. The Code seeks to straddle these and with the result that it further confuses the legal landscape which will have the effect of:
 - complicating enforcement;
 - blurring legal obligations;
 - further exacerbating the current confusion in the law.” (Dawson and Associates Maritime and Commercial Lawyers)
13. Submission 20 notes that “the assumption that recreational boating does not pose the same scale of risk to life is incorrect. The risk data shows that loss of life is significantly more likely on a recreational craft than it is on a large commercial vessel. Commercial vessel incidents often have significant environmental outcomes.” (Marico Marine Group)

Additional issues raised by submissions

14. Four submissions (1, 8, 21, 22) were concerned with the issue of financial liability for shipping incidents/accidents. They note differences between councils’ level of insurance and call to address the suitable level of liability insurance. Submission 22 asks: “Would a centralised system have an interest in managing this issue or would regional councils continue to have this responsibility as specified in the Local Government Act?” (Hawke’s Bay Regional Council)
15. Submission 22 raises three further matters:
 - harbourmaster liability – “most regional councils carry insurance to cover any damages claims with regard to the actions of the harbourmaster. Would liability insurance premiums under a centralised system be lesser or greater than the present regime, and would central government carry this liability at no cost to the regions?”;
 - conflict of interest issues – there is a “need to ensure that navigational safety risk is managed properly without undue commercial influence”;
 - strategy – the submission suggests that “a timeline and details for further development of port and harbour navigation safety management system be prepared for future discussion papers.” (Hawke’s Bay Regional Council)
16. Submission 26 agrees that “whilst RCs (regional councils) are shareholders of ports they should fund their commercial marine [operations] from their dividends ... if RCs withdraw from port ownership ... then they should levy the commercial port operators a reasonable fee”. The submission notes that, for all ports (except in the Bay of Plenty), the incorporation of RC costs takes place and forms part of the vessel port costs. Environment Bay of Plenty’s different approach to port charges needs to be addressed, as it has caused much dissatisfaction from ship owners and agents. (Shipping New Zealand)

17. Submission 29 contends that Maritime Rule Part 91, Navigational Safety, “is totally unsatisfactory for controlling [a] long narrow waterway ... [with] no local enforcement regime in place and [Maritime NZ] would only involve itself locally to investigate any river use fatalities”. A proposal is made to “see a mechanism where the bylaw making powers of the RC would also be undertaken by the District Council.” (Wanganui District Council)

Submitters’ comments on option 1: Status quo – retain an entirely voluntary approach

Support

18. Over a third (12/29) of the submitters saw no need to change the Code in the short term (Submissions 1, 2, 4, 7, 8, 10, 17, 19, 21, 25, 26, 28). The main argument cited was that the Code is still in its early stages and it is too early to conclude that a voluntary approach will or will not be reliable in the long term. Submission 19 broadly captures submitters’ views:
1. “There is no systemic port and harbour safety problem that needs to be addressed. Over the past 10 years there have been two ship accidents of consequence and some incidents, but no deaths or serious injuries in areas covered by the Code that we are aware of.
 2. Laws cannot eliminate all accidents or incidents as can be seen on the roads where there is no shortage of laws and many accidents involving trucks.
 3. The Code was developed on a voluntary basis by MNZ (Maritime New Zealand) and the industry. If it were known at the time the Code would become mandatory, a more cautious approach would have been followed because of the risk that an overzealous regulator could jeopardise the efficiency of ports.
 4. There are powerful commercial incentives for shipping lines and port companies to minimise risks to their staff, their investments and the environment. These will always be far more effective than any regulation. MNZ has an audit regime under the Code and the impact of a failed audit on directors’ liability and insurance premiums will ensure that compliance levels remain high.
 5. The fact the Code was led by MNZ and sits on its website, means that it has official recognition already.” (Barrie Saunders - On behalf of CEOs of 15 port companies)

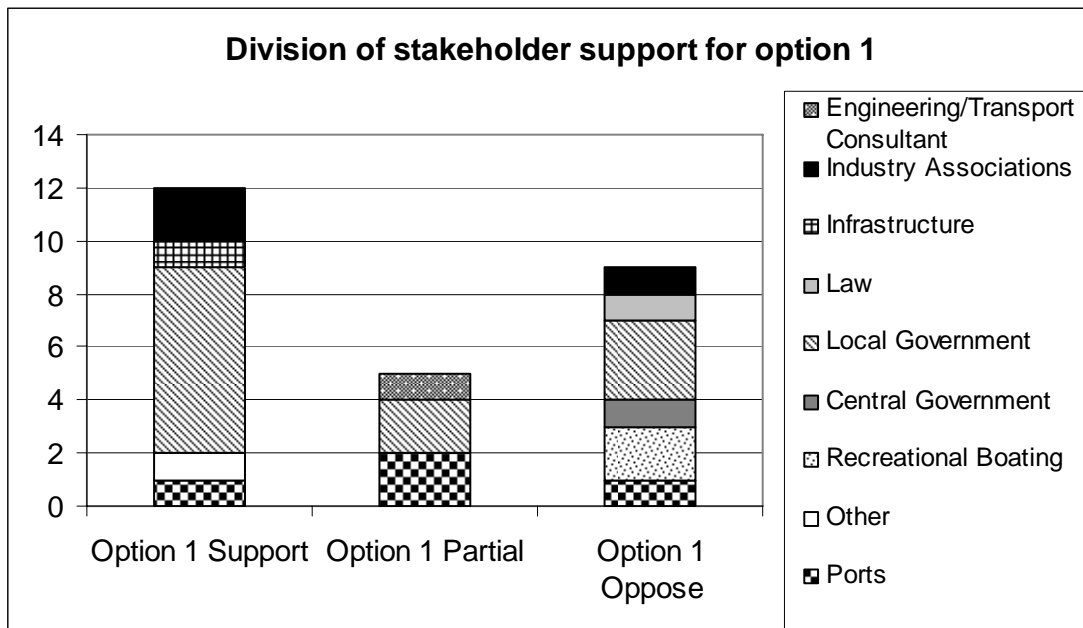
Partial support

19. Partial support is offered by five submissions (6, 9, 11, 20, 22), submission 9 is happy with the voluntary approach but suggests that it could be “more formal”, and submission 21 says that it is a good system for the moment but will need to be looked at in time, which is a general sentiment. Submission 6 suggests “addition of an audit of the controls and systems currently in place” as opposed to future formalisation of the code. (River City Port Ltd).

Oppose

20. Nine submissions (3, 12, 13, 14, 15, 18, 23, 24, 29) oppose retaining the voluntary approach, and submission 3 feels strongly that this would lead to:
- inconsistency in safety delivery;
 - risk profile methodology inconsistencies between regions;
 - issues with staggered timing of NZ delivery;
 - potential for whole process to degrade over time;

- variable resourcing leads to variable results; and
 - potential for political intervention at a local level.
- Submission 12 states that some regional council (RC) inaction has “shown that a voluntary approach is insufficient” (Otago Yachting Association Inc). Submission 14 argues that “without formal statutory support other imperatives will provide pressure to avoid costs of implementing the Code.” (Port Chalmers Yacht Club)
 - Submission 24 argues that “the long term interest of all stakeholders is best served by a robust legislative system where responsibilities and accountabilities are clearly defined.” (Maritime NZ)



Submitters’ comments on option 2: Provide for formal recognition of the Code

Support

- 16 submitters responded to this option. Eight (5, 9, 13, 14, 15, 22, 25) support it. Submission 15 prefers this to option 1, as it would give a “consistent national framework with centralised control and avoid competing local influences.” (Dawson and Associates Maritime Commercial Lawyers)

Formal approval process

- Submissions 12 and 14 advocate “input from all stakeholders to establish both minimum acceptable practice and best practice. The resulting draft should be open to public submission (with a timeframe suitable to voluntary bodies), prior to adoption and implementation.” (Otago Yachting Association Inc, Port Chalmers Yacht Club)
- Submissions 17 and 25 note the existence of a National Advisory Committee to help with stakeholder input.
- Submission 1 advocates the use of the maritime rules process. Submission 17 considers that this approach would be counterproductive and make the Code harder to change.

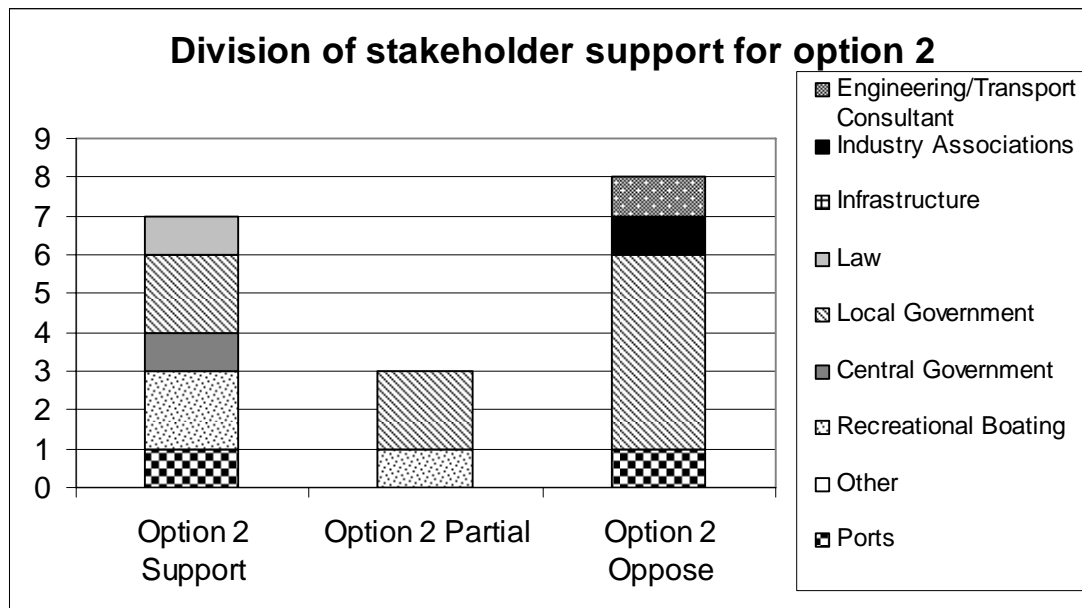
27. Submissions 14 and 22 support the idea of an arrangement based on section 20(9) of the Health and Safety in Employment Act 1992 (HSE Act).

Partial support

28. Three submissions (11, 12, 21) partially support this option. Submissions 11 and 21 recognise it as a possibility but have higher preferences. Submission 12 remains sceptical about compliance, arguing that, if an RC does not already comply, formal recognition will not change things.

Oppose

29. Eight submissions (1, 3, 10, 17, 18, 20, 23, 24) see no value in option 2. In particular, the Code “would be difficult to modify quickly” if locked into a statutory formal recognition process. (Marlborough District Council)



Submitters’ comments on option 3: Introduce statutory provisions to supplement the existing Code or a formal code of practice

Support

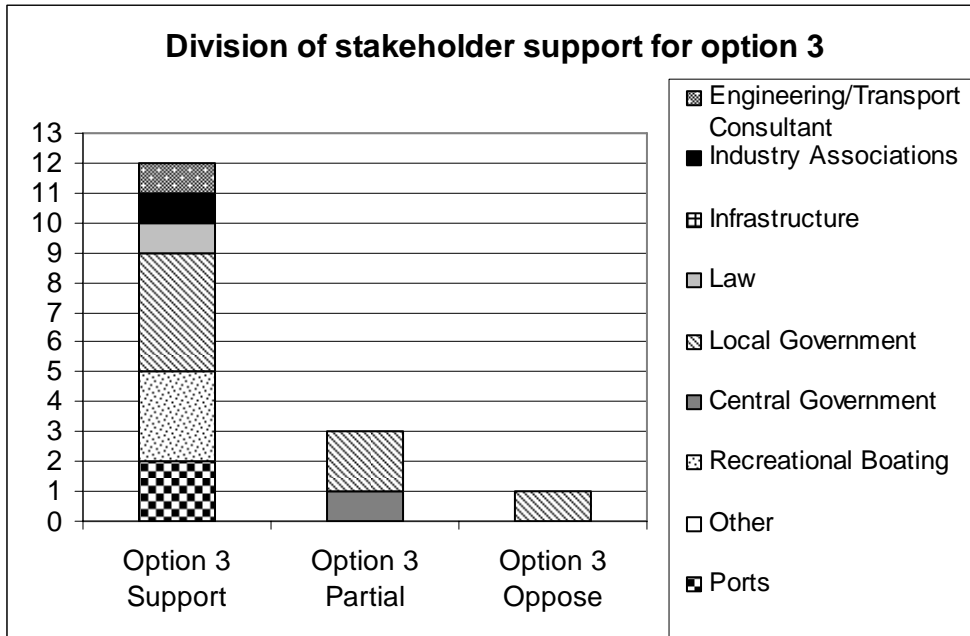
30. Twelve (3, 9, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23) of the fourteen responses support the introduction of statutory provisions, believing a system is needed to ensure compliance with the Code. Submission 15 wishes to “disconnect the RC s and pull the statutory functions back to MNZ.” (Dawson and Associates Maritime and Commercial Lawyers)
31. Submission 24 suggests a legislative scheme, drawing on ideas considered under option 3, and considers that, if such a scheme eventuated, the Code will “largely have served its purpose”. Technical guidance contained in the Code could be placed in an advisory circular supporting rules. (Maritime NZ)

Partial support

32. Submissions (24, 25, 29) partially support option 3. Submission 29 suggests that the Code be voluntary for very small ports but compulsory for all others.

Oppose

33. One submission (10) opposes Option 3, arguing that “There is insufficient evidence to support a statutory intervention.” (Taranaki Regional Council)
34. Nine submissions (1, 2, 4, 7, 8, 10, 17, 19, 21) do not necessarily oppose Option 3 but consider it too early to say whether such action is warranted: “the current system should run for at least five years before consideration of other options.” (Barrie Saunders - on behalf of CEOs of 15 port companies)



Regional council functions and duties

Functions

35. Submission 24 considers RCs should “retain the ability to delegate certain navigation safety functions to other parties” but recognises that this may involve a conflict of interest if the harbourmaster role is delegated to a port company employee. The submission therefore recommends that “the Code requirements in respect of potential conflicts arising from any delegations be spelled out when specifying the duties of RCs.” (Maritime NZ)
36. Four submissions (1, 17, 23, 24) see specific RC harbour control functions and duties as a viable option that would remove uncertainty. Submissions 3 and 20 believe this approach is needed only if the status quo continues.
37. Submission 25 considers specifying RC functions and duties to be unnecessary because the Code achieves the same effect.

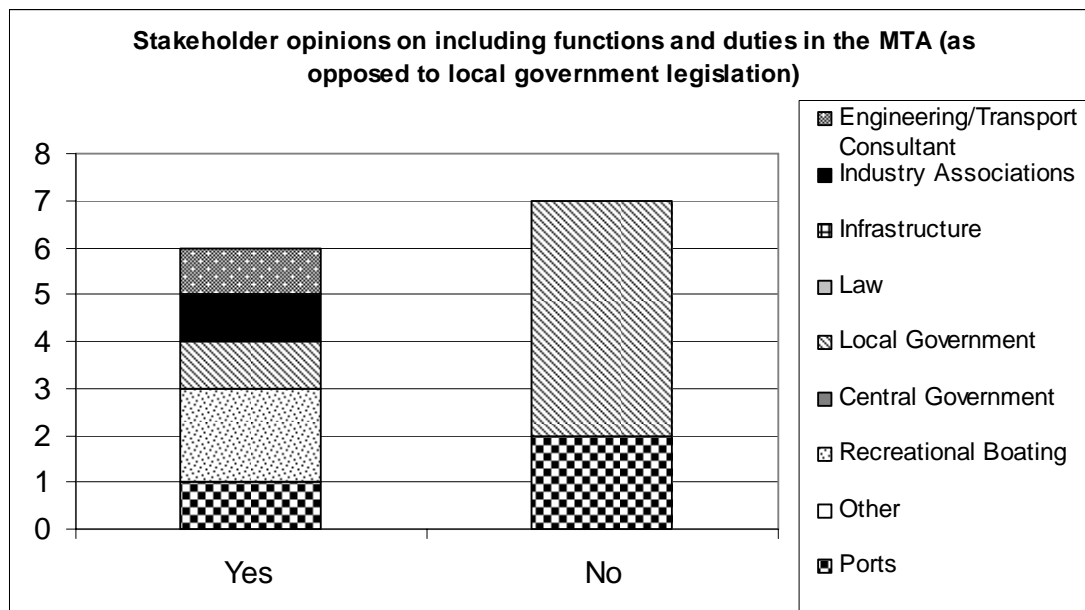
Duties

38. Submissions propose matching a range of duties to the harbour control function:
 - appointment of harbourmaster (1, 12, 17, 19, 24);
 - harbourmaster training (19, 22);
 - adoption of navigation safety bylaws (1, 17);
 - monitoring of harbour depths (12);
 - marking regularly used navigable channels (12);

- identifying and publicising available anchorages or berths for visiting small craft (12);
 - undertaking such harbour works as the harbourmaster recommends as necessary in the interests of harbour safety (12);
 - define local navigation safety functions and make RCs responsible for those functions throughout all the waters of their regions (24).
39. Submissions 12 and 14 argue that “Supporting duties should be determined by an open process allowing full participation by stakeholders.” (Otago Yachting Association Inc; Port Chalmers Yacht Club)

Preferred legislative coverage

40. Six submissions (3, 12, 14, 18, 20, 23) support including functions and duties in the Maritime Transport Act 1994 (MTA). Submission 18 argues that Maritime NZ should be the lead and national agency and local harbour control should be a statutory function of RCs. This should be specified in the MTA.
41. Seven submissions (1, 9, 17, 19, 21, 22, 25) would prefer including functions and duties in local government law. Submission 21 suggests that Part 39A of the LGA 1974 be revised to make RCs “more proactive when dealing with maritime emergencies rather than being required to wait until the emergency has occurred before reacting” (Northland Regional Council). Submission 19 suggests amending the LGA so that “regional councils must take on the role of the Statutory Harbour Authority and must appoint an appropriately-qualified harbourmaster”. (Barrie Saunders - on behalf of CEOs of 15 port companies)



Clarification of harbourmaster’s role

Support

42. 16 of the 18 respondents to the question: “Does the legal authority of harbourmasters need clarification?” answered in the affirmative (1, 3, 4, 7, 8, 9, 11, 14, 15, 17, 18, 20, 22, 23, 24, 25). Two submissions believe that the best way to achieve this is through maritime rules (4, 11) as opposed to the MTA and submission 15 argues to make them employees of MNZ.

43. Submissions 18 and 20 suggest Part 39A of the LGA 1974 be reviewed to make it mandatory for RCs to appoint a qualified harbourmaster instead of taking on the job themselves.
44. Submission 24 advocates enhancing harbourmaster responsibilities in areas such as accident investigation, marine emergency response and maritime rule enforcement.
45. Submission 3 notes that the powers of the harbourmaster currently appear slightly 'out of step' with the Code's expectations, and a review of the legislation may be appropriate to clarify matters.

Oppose

46. Of the two submissions that consider the legal authority of harbourmasters needs no clarification, submission 10 argues that the definitions are already provided and submission 12 calls for the collective opinion of existing harbourmasters before commenting.

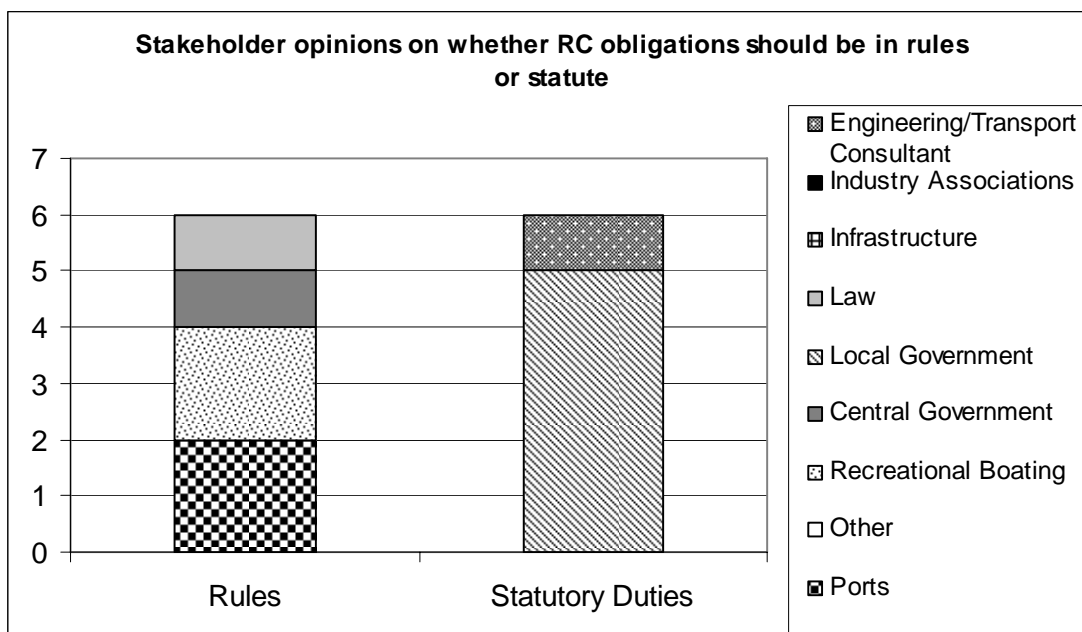
The use of maritime rules rather than statute to prescribe regional council obligations relating to port and harbour safety management

Support

47. Six (9, 12, 14, 15, 23, 24) of the eleven submissions on this issue favour using maritime rules. Two agree that "such Rules include suitable means of dealing with non-compliance" and consider rules to be less subject to political interference and more easily updated than bylaws. (Otago Yachting Association Inc, Port Chalmers Yacht Club)
48. Submission 24 considers that "specifying requirements in respect of port and harbour management within a maritime rule and requiring participants to be document holders will lend a greater level of clarity and certainty as to obligations of all parties from a legal perspective." (Maritime NZ)
49. Submission 24 suggests a maritime rule for port and harbour management, including:
 - a requirement for RCs and port facility operators to "develop, maintain and operate a harbour safety management system (SMS), including a risk assessment, for their respective areas of control and operation.";
 - SMS monitoring, review and audit and certification by the Director of Maritime NZ);
 - harbourmaster qualifications, documents, duties, powers and standards for service performance;
 - vessel traffic service (VTS) and pilotage requirements; and
 - flexibility for local solutions that meet the intended safety objectives.
50. Submission 24 notes that Civil Aviation Rule Part 139 (Aerodromes – Certification, Operation and Use) has, since 1993, set out requirements for the issue of certificates, conditions of validity, monitoring and auditing by the regulator.

Oppose

51. Six submissions (1, 3, 17, 20, 22, 25) prefer obligations to be stipulated as statutory duties, with reference to the Code.



Other suggestions

52. Other suggestions offered are:

- keeping areas beyond pilotage districts as optional RC responsibilities with the option to extend safety responsibility beyond 200m from shore (Environment Canterbury);
- review Part 39A, LGA 1974, making it clear that “the option to not appoint a Harbour Master, in effect means, that the Council is taking on that role itself.” (Marlborough District Council);
- “Supporting duties should be determined by an open process allowing full participation by stakeholders.” (Port Chalmers Yacht Club);
- the current key issue is the marine qualifications structure and should concentrate on that before considering introducing a “maritime document structure into port marine service providers.” (Marico Marine Group)

Imposing a general safety duty on port facility operators and marine service providers

Support

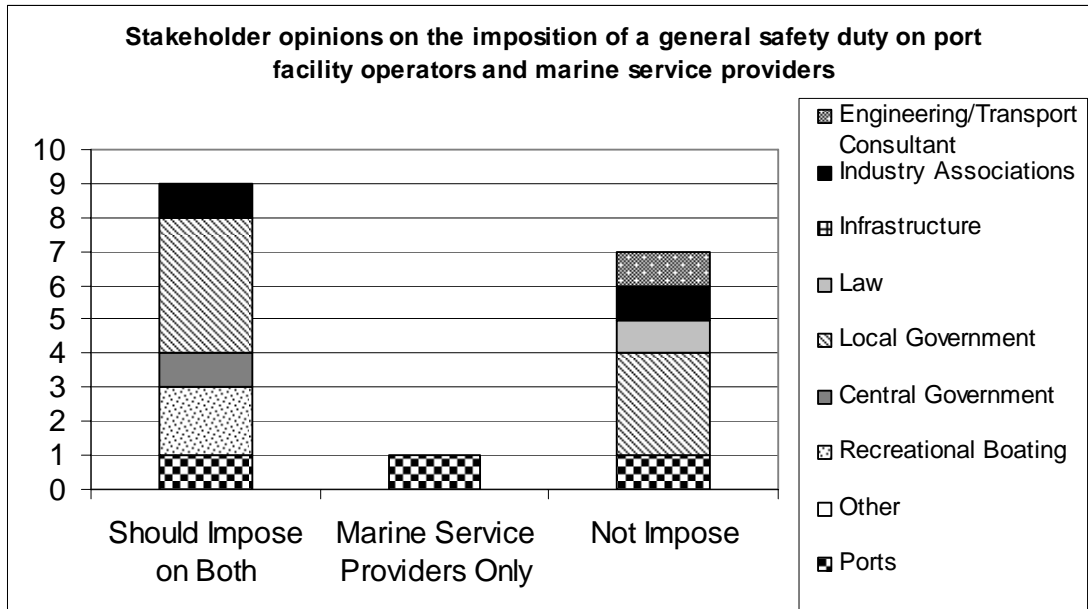
53. Nine submitters (1, 11, 12, 14, 17, 22, 23, 24, 26) favour a general safety duty on port facility operators and on marine service providers. Submission 1 sees section 7 of the Railways Act 2005 as an appropriate model. Submissions 12 and 14 suggest that a general duty is partly in place via the Resource Management Act 1991 and the Health and Safety in Employment Act 1992.

Partial support

54. Submission 9 supported the imposition of a general safety duty on marine service providers but not on port facility operators.

Oppose

55. Seven submissions (3, 7, 9, 10, 15, 20, 25) disagree with imposing safety duties, arguing that it is already part of the Code and it is difficult to claim or prosecute under “general safety duties”.



Providing explicit powers for the Director of Maritime New Zealand in relation to port and harbour safety

Support

56. Five submissions (11, 13, 15, 22, 24) broadly favour providing explicit powers to the Director of Maritime NZ. Eleven (1, 6, 7, 11, 12, 15, 18, 22, 23, 24, 29) agree that express audit and inspections powers over port marine operations would be useful, subject if necessary to reasonable constraints (12, 23).
57. Submission 1 argues for imposing conditions in response to an audit under Section 55 of the MTA.

Oppose

58. Four submissions (3, 9, 20, 25) oppose any more explicit Director’s power, arguing that powers are adequate under the status quo and any change would necessitate a funding mechanism and may increase costs. Submission 17 argues against imposing conditions in response to an audit under section 55 of the MTA, noting that section 55 “has only been used in the past because of a lack of statutory guidelines to do it any other way due to current maritime legislation wording. The Code (and its audit requirements) should provide this ability.” (Greater Wellington Regional Council).

Extending rule-making powers to port and harbour marine safety

59. Four submissions (1, 15, 23, 24) agree with extending maritime rule-making powers to port and harbour marine safety. Submission 1 suggests the scope of such powers could cover:
- “Mooring and unmooring;

- Use of tugs;
- Hazardous goods handling;
- Hotwork;
- Use of divers alongside boats;
- Health and safety generally;
- The use of cranes;
- Qualifications of persons performing specified roles.” (Environment Canterbury)

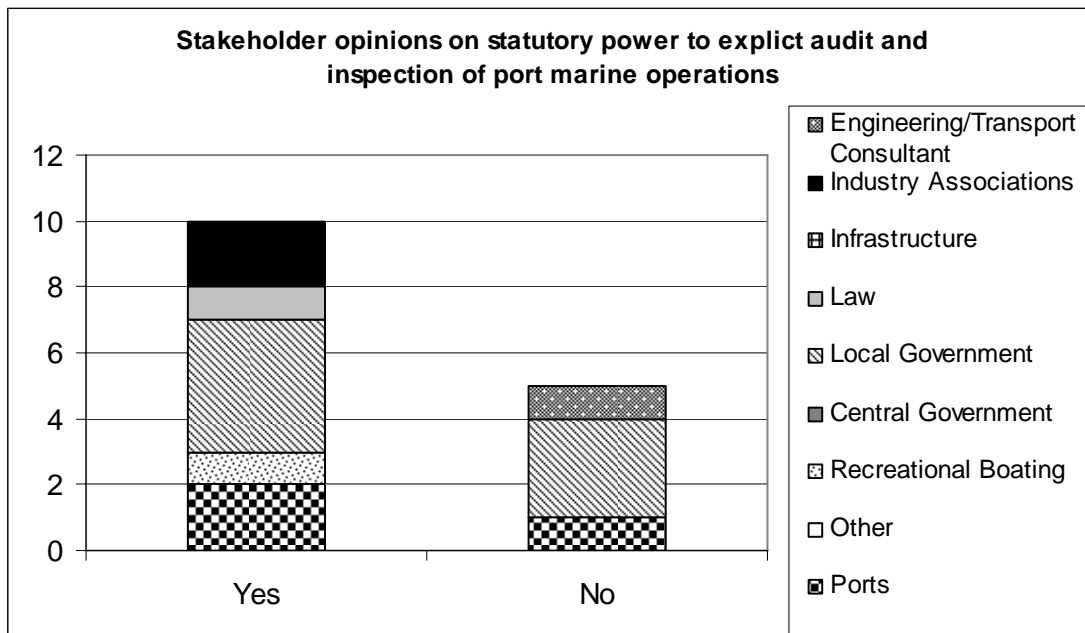
60. Submission 24 advocates bringing all port and harbour management into the rules framework to “provide consistency with the rest of the maritime sector”. (Maritime NZ)

Partial support

61. Two submissions (12, 14) suggest that extending rule-making powers may be beneficial but would not solve the issue of a harbour authority not appointing a suitable harbourmaster.

Oppose

62. Six submissions (3, 7, 9, 17, 20, 22, 25) disagree with extending maritime rule-making powers to port and harbour marine safety. Submission 17 notes that “pilotage is already covered by Maritime Rules. Pilot vessels and tugs are already covered by Safe Ship Management rules.” (Greater Wellington Regional Council)



Publication of audit findings

63. The discussion document raises the idea of publishing audit results and, if recommendations are disregarded, imposing conditions on the relevant operator.

64. Six submissions (1, 3, 17, 22, 23, 25) agree with the publication of findings.

65. Four submissions oppose publication (9, 10, 15, 20) because, as submission 20 argues, a confidential audit would be more frank and less political.

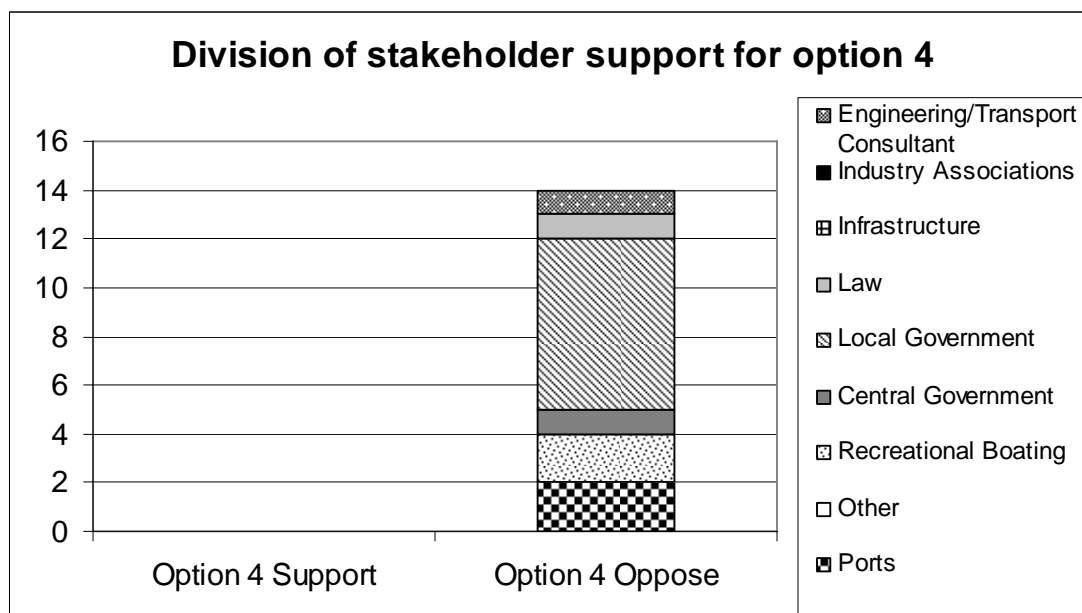
66. Four submissions (12, 15, 20, 22) support the ability to impose conditions based on an audit and two do not (23, 25). Submission 20 advocates consultation with the harbourmaster. Submission 23 argues that conditions “should not be required” (Port Marlborough NZ Ltd).

Requiring port marine service providers to hold a maritime document

67. Five (1, 11, 20, 22, 24) submissions respond to this issue, three believing port marine service providers should be required to hold a maritime document and two (20, 22) discouraging any such requirement.

Submitters’ comments on option 4: make the Code mandatory

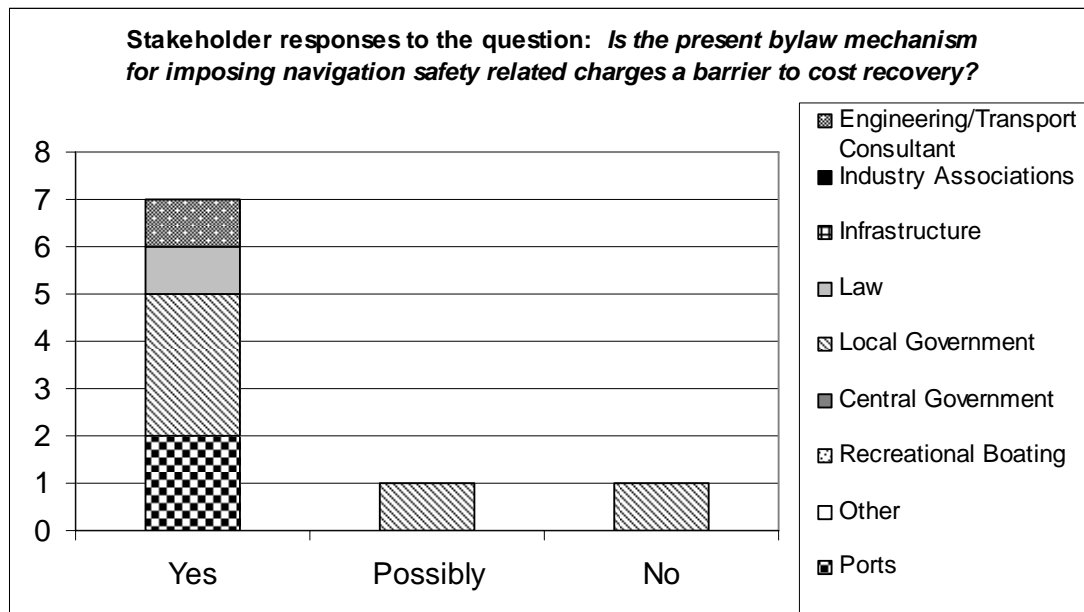
68. All fourteen submitters (1, 3, 9, 11, 12, 14, 15, 17, 20, 21, 22, 23, 24, 25) on this issue disagreed with the option. Comments included that the alternatives were adequate, it would create a slow process to make amendments and it may be a retrograde step as it “may stifle the impetus and stakeholder partnerships that have developed to this date.” (Northland Regional Council)



Submitters’ comments on the funding of regional council harbour safety management costs

69. Seven submissions (3, 9, 11, 15, 20, 22, 23) responded affirmatively to the question: Is the Present Bylaw Mechanism for Imposing Navigation Safety Related Charges a Barrier to Cost Recovery?
70. Submission 25 notes the present system creates a partial barrier to cost recovery, as bylaws can be challenged by the payer at any time. The main complaint is that bylaws are a semi-political process and challengeable. Also “every change requires a reprint of bylaws” (Buller Port Services Ltd).
71. One submission (25) suggests that making harbour safety management a statutory duty for councils under local government legislation would reduce the risk of bylaw challenges from the public.

72. Submission 24 notes that “there appears to have been an expectation from some RCs and harbourmasters that MNZ will carry out the enforcement and prosecution of any breaches of maritime rules within their regions and contribute to the costs of that action”. The submission advocates greater clarity “regarding who is responsible for the enforcement of navigation safety legislation at a local level” and emphasizes that funding needs to be addressed to sustain the Code in the long term. (Maritime NZ)
73. One submission answered in the negative (1).



Suggested cost recovery/funding mechanisms

Rating

74. Five submissions (11, 12, 14, 21, 22) considered that the continued use of rating is appropriate, as harbour safety benefits the community at large.
75. Several submissions (4, 11, 23) note that some large harbours only have a small rating base.

Central Government

76. A number of submissions contended that central government has a part to play in the funding of harbour safety. Three approaches were suggested:
- supplementing regional funding with the allocation of a portion of petrol tax to regional councils (1, 12, 14, 17, 23);
 - a Crown contribution from general taxation (3, 12, 14, 15, 19, 22);
 - boat registration (1) or a tax on boat-related products (12, 14, 23).

Regulations

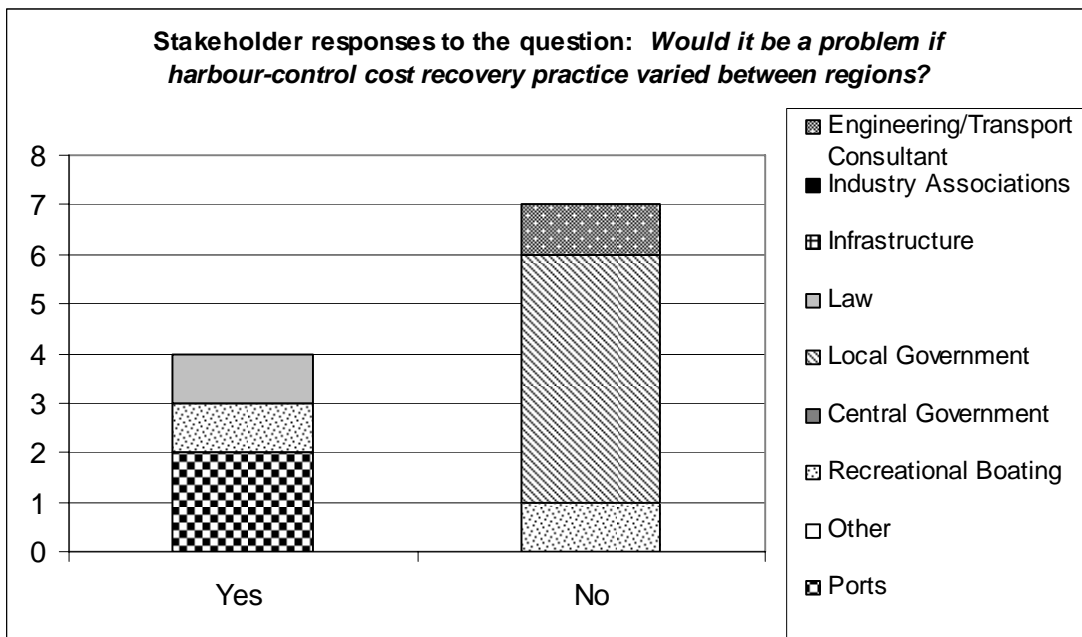
77. Three submissions (3, 20, 22) think regulations would be a more effective cost recovery mechanism than bylaws, with three submissions (12, 15, 17) disputing this.

Other suggestions

- 78. A contractual relationship using a memorandum of understanding between regional council and port facility operator, clarifying roles and costs (4).
- 79. A maritime rule and schedule of fees (15).
- 80. A flexible system allowing each council to choose the best funding mix for it, but with some ‘bottom line’ certainty to ensure that adequate funding is available to achieve implementation of the Code (17).
- 81. Add provisions in the MTA (18) or in common bylaws (20).

Responses to the question: Would it be a problem if harbour-control cost recovery practice varied between regions?

- 82. Seven respondents (1, 3, 12, 17, 20, 22, 25) do not see this as an issue.
- 83. Four feel it would be a problem (9, 14, 15, 23), as it could “cause competition between ports and blur safety requirements.” (Dawson and Associates Maritime and Commercial Lawyers)
- 84. Two (14, 23) note that it is nevertheless still necessary to have different cost recovery practices because each region is different.



Submitters’ comments on centralised harbour control

Support

- 85. Model 1 has support from three submissions (1, 15, 23). Submission 15 prefers this model, as Maritime NZ already has the expertise. Submission 23 partly supports this model but stipulates Maritime NZ should work on a limited basis and with guidance.
- 86. Model 2 is supported by submissions 11 and 23 and partially by submission 20, which argues that it may be an option if “harbour master competence is thin on the ground and population is low.” (Marico Marine Group)

87. Model 3 receives full support from submission 23 and qualified support from submission 20, as it would quickly attract additional overheads.
88. Five submissions (1, 3, 15, 20, 22) do not support the idea of being able to delegate centralised functions and power back to a regional council, arguing that there is "little point in reassigning responsibilities, then delegating them back." (Environment Canterbury)
89. Four submissions support delegations to some extent. Submission 11 adds that funding must be passed on too and submission 12 considers that standard-setting, oversight and audit should not be delegated.

Partial support

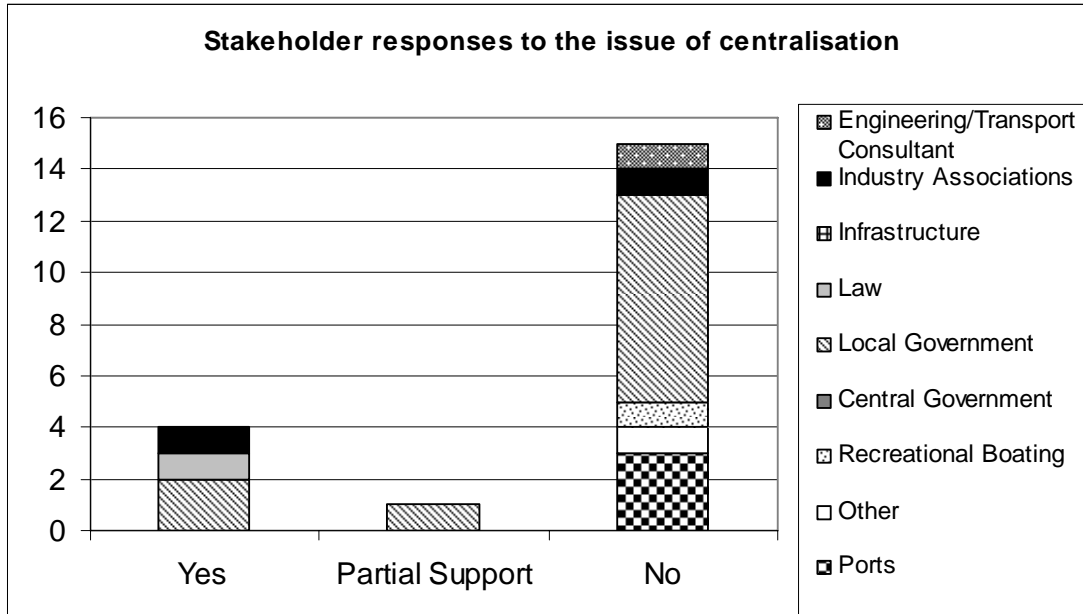
90. Submission 23 replies with a "maybe" as the concept of a "Central Information Service provides consistently centralised rule making and information monitoring." (Port Marlborough NZ Ltd)

Oppose

91. The majority of submissions oppose (1, 2, 4, 5, 7, 8, 9, 10, 17, 19, 20, 21, 22, 25, 28) centralisation. They argue that a one-size-fits-all scenario would not work for the different levels of compliance needed for the different size ports. There is also concern that it would cause too much separation between commercial and recreational policy. Submission 17 notes that "MNZ has difficulty now in dealing with navigation safety responsibilities not picked up by regional councils, with staff resources very thin on the ground." (Greater Wellington Regional Council)
92. Five submissions (1, 8, 12, 17, 21) discuss the implications of centralisation for regional (tier 2) marine oil spill response capability. There is general consensus that centralisation would increase costs yet decrease efficiency by distancing harbourmasters from local expertise and knowledge.
93. Submission 24 notes the current consultation on Maritime Rule Part 90 (Pilotage), highlighting that, if greater local control of pilotage is considered appropriate, this should to be considered alongside any changes to the Code. (Maritime NZ)
94. Some submissions felt that factors affecting the quality of local safety management could be addressed by means other than centralisation. These factors currently affecting local management are seen to be:
 - lack of respect, independence and competence of regional harbourmaster (1, 17);
 - lack of maritime experience and knowledge in RCs (12, 14).

Those factors could be overcome by:

- making some of the duties of the present Code compulsory;
- mandating the appointment of only adequately qualified persons as harbourmasters;
- auditing harbourmasters' performance (12, 14);
- more money for training (17).



Submitters' comments on navigation safety

Statutory regional council navigation safety function

95. Statutory confirmation of RC responsibility for navigation safety is supported by eight submissions (1, 3, 12, 14, 17, 20, 22, 25) and is not supported by two (15, 23). Submission 25 notes "this would provide consistency across all regional councils." (Environment Bay of Plenty)

Scope and jurisdiction

96. Submission 24 argues that "it may also be useful to clarify the navigation safety matters that may (and may not) be regulated within local navigation bylaws." (Maritime NZ)
97. Submission 10 believes that MNZ resourcing should be addressed rather than the whole regime.
98. Three submissions (1, 23, 24) believe that confining these responsibilities to inland waters would be realistic and seven do not (12, 14, 15, 17, 20, 22, 25).
99. Four submissions (1, 3, 9, 17) support using maritime rules to regulate navigation beyond a council's area of direct responsibility but 17 questions its cost effectiveness. Eight submissions do not support this idea (12, 14, 15, 20, 22, 23, 25, 27).

Infringement notices

100. Support is mixed for enabling RC personnel to issue infringement notices for breaches of maritime rules. Four (1, 15, 17, 25) support the idea outright. Six (3, 9, 12, 14, 20, 22) offer comments such as: "[this] should only occur in those localities where they already have multiple experienced and motivated staff." (Otago Yachting Association Inc, Port Chalmers Yacht Club) Submissions 23 and 27 do not agree with the concept, as it would not encourage an open relationship between the public and harbourmaster.
101. Submission 27 asks for the exemption of nationally recognised clubs' patrol boats from rules, such as speed restrictions, when patrol boats are used by

trained volunteers in rescue situations. It also notes the lack of sentencing options, unlike for road users, for serious/persistent boating offences. (Paremata Boating Club Inc)

Approval of bylaws by the Director of MNZ

102. Eight submissions (9, 11, 12, 14, 15, 17, 23, 24, 27) believe the Director of Maritime NZ should approve navigation safety bylaws to “ensure national consistency and consistency with Maritime Rules” (Environment Southland). Submission 24 argues for “regional council navigation safety bylaws be[ing] limited to addressing local navigation matters unique to their particular regions”, with the Director approving these. (Maritime NZ)
103. Four submissions (1, 3, 20, 22) oppose the Director approving bylaws. Submission 3 believes the person/organisation performing this action should be independent and suggests the Ministry of Transport. Submission 25 notes that “the present system requires councils to consult with the Director of MNZ [already] pursuant to LGA 684F.” (Environment Bay of Plenty)
104. Other methods suggested are:
 - “Where such questions arise, an independent party should have the ability to arbitrate and resolve clarification of responsibilities of various organisations. The Ministry [of Transport] is probably best placed to assume this role.” (Marico Marine Group; supported by Hawke’s Bay Regional Council);
 - Submission 23 suggests that clarity questions should be resolved by audit.

Submitters’ comments on funding arrangements for recreational boating controls

Implications of statutory regional council navigation safety function

105. Four submissions (1, 20, 21, 23) are of the opinion that the establishment of a statutory navigation safety function will expose RCs to costs they do not face at present. Four other submissions (12, 14, 17, 22) note that this will only be the case if the RC in question has “so far evaded taking on a statutory navigation safety function.” (Greater Wellington Regional Council). Two submissions (3, 8) do not believe it will expose RCs to greater costs.

Submitters’ comments on the practical difficulties of recovering costs from Recreational Boating users and alternative options

106. Two submissions (8, 20) believe that practical difficulties hamper the cost recovery process by RCs and three (1, 3, 22) believe that councils would use a more accessible funding system.

Licensing and registration

107. Five submissions (1, 4, 9, 11, 23) argue for licensing and registration as a cost recovery mechanism. Submission 13 advocates a user pays method of some kind. Four submissions (5, 17, 22, 27) do not support licensing and registration, as they would be costly and likely to be resisted by the recreational boating community.

Rating

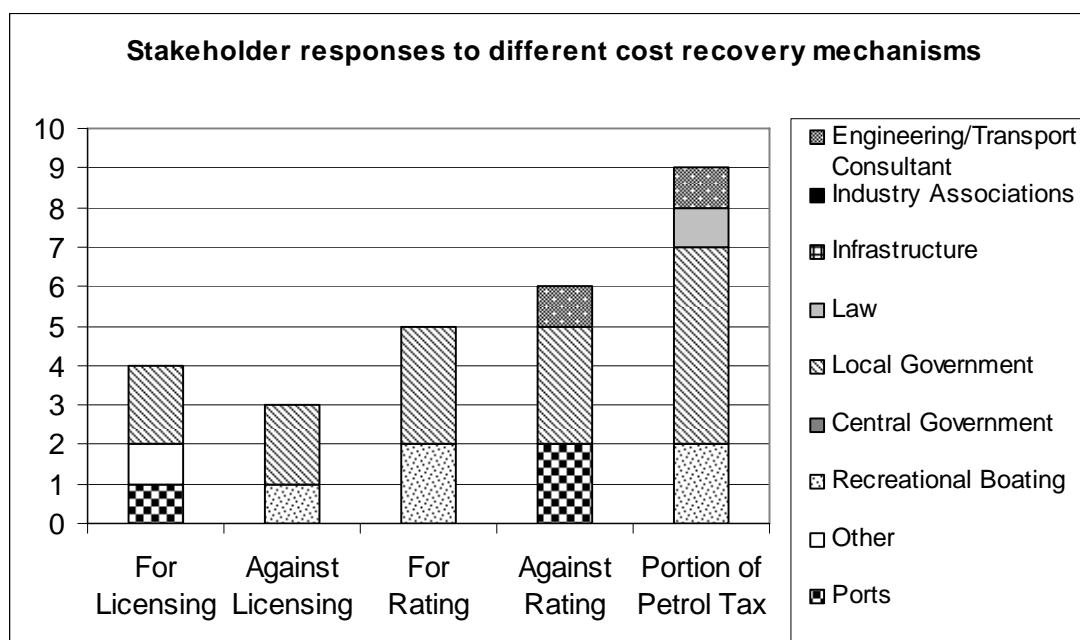
108. Five submissions (1, 12, 14, 17, 22) argued that local navigation safety was of benefit to the wider community and should therefore be funded by rates. Six submissions (3, 9, 13, 20, 23, 25) disagree.

Central Government assistance

109. Nine submissions (1, 3, 5, 8, 15, 17, 20, 21, 22) advocated that RCs that undertake navigation safety functions should be allocated a portion of the roading petrol tax, representing fuel used off road in boats (as proposed in the Land Transport Management Amendment Bill).
110. Submission 25 suggests that central government pays for some recreational sector costs.
111. Submission 27 suggests that “if regional authorities are being burdened with responsibilities that were previously the concern of central government...then the associated costs should be provided by central government.” (Paremata Boating Club Inc.)

Other suggestions

112. Submission 15 suggests “slip fees at boat launching”, as occurs in South Africa, as an alternative cost recovery mechanism.



Submitters' comments on consolidating all navigation safety controls in one statute

Support

113. Eight submissions (1, 11, 12, 14, 15, 18, 23, 24) agree in principle with the idea of consolidating all navigation safety controls in one statute. Submission 11 advocates inclusion of the harbourmaster role but not the power to make bylaws (which should remain in local government legislation). The submission

also proposes that the MTA must be “slimmed down” before consolidation could occur. (Environment Southland)

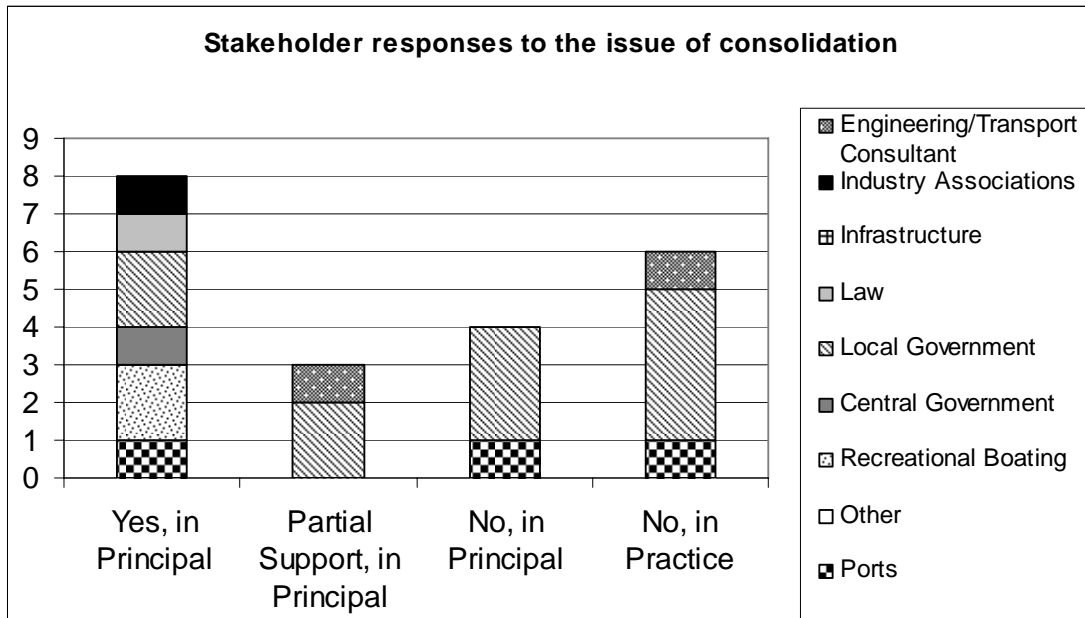
114. Despite the in principle support, only one submission (23) believed the benefits would outweigh the potential disadvantages in practice. Five submissions (1, 3, 20, 22, 25) argue that the benefits would not outweigh the disadvantages. Submission 1 considers that “modifications are appropriate whether or not legislation is consolidated.” (Environment Canterbury)

Partial support

115. Three submissions (10, 20, 21) are wary of the suggestion of consolidation. Submission 21 calls for a review of the MTA anyway but not to consolidate within it. Submission 10 offers support contingent on who exercises the controls. Submission 17 takes a neutral view, arguing that the value of better legislation should be weighed against the cost of change.
116. Submission 24 considers that the “regulation of maritime matters best sits under the umbrella of the maritime legislation (the MTA and maritime rules). However it is recognised that this may not be the only solution.” (Maritime NZ)

Oppose

117. Four submissions (17, 19, 22, 25) did not agree with consolidation, with submission 22 arguing that local government should remain subject to the LGA.
118. Overall, five submissions (3, 20, 22, 23, 25) are in favour of retaining separate legislation, subject to modifications to improve the coordination and clarity of the legislation.



Simplification

119. Feedback was divided on the question of simplifying existing measures to their essential elements to ease consolidation. Three submissions (15, 18, 23) agree with simplification, one (25) ventures that it would possibly help and three disagree (3, 17, 22). Submission 17 argues that simplifying prescriptions would “make enforcement more difficult and legally more contestable”. (Greater Wellington Regional Council)