Chair
Cabinet Economic Development Committee

MID-POINT REVIEW OF THE OIL POLLUTION LEVY – RECOMMENDATIONS

Proposal

1. This paper seeks Cabinet's agreement to adjust the Oil Pollution Levy (OPL) rates, which funds oil spill readiness and response activities in New Zealand, for the period 2019 – 2022. (Part One of the paper)

2. This paper also seeks authorisation for submission to the Executive Council of the Maritime Transport (Oil Pollution Levies) Amendment Order 2019 (Amendment Regulations), which adjusts the OPL rates (Part Two of the paper).

Executive summary

3. New Zealand needs effective, ready capability to manage the likelihood and consequences of marine oil spills. Although the likelihood of a major marine oil spill is low, the environmental, financial and cultural impacts of such an incident could be significant.

4. Maritime New Zealand (MNZ) sets the overall strategy for New Zealand's marine oil spill readiness and response (the Strategy), supported by a capability plan (the Plan) detailing the capabilities needed to deliver the Strategy.

5. The Oil Pollution Levy (the OPL) funds activities under the Plan. Six maritime sectors[1] make contributions to the OPL, each paying a risk share generally based on an assessment of New Zealand's oil spill risk profile, activity levels, volume and type of oil carried, and environmental impact information.

6. A 2015 review of the Strategy signalled that a significant change was needed in the size, type, and distribution of oil spill response assets throughout New Zealand, in turn supported by appropriate levels of logistics, training, exercising, and personnel.

7. In response, the government at the time agreed to an updated Strategy and Plan, and to reset the OPL (the 2015/16 OPL) for six years to enable the implementation of the updated Plan. A mid-point review of the OPL (after three years) would assess whether sufficient revenue was being collected to deliver the Plan, and that the six sectors were funding an appropriate share of the risks.

8. Because the 2015/16 OPL came into force six months later than planned, and actual levied activity was less than forecast, there was a revenue shortfall of $1.3 million over years one to three (reduced to $0.78 million)[2].

9. MNZ commenced the scheduled OPL mid-point review in 2017, and undertook consultation between November 2018 and January 2019. In preparation for this, the sector share risk assessment, forecast activity levels and other relevant data were checked and updated. This

1 The sectors are: foreign tankers, domestic tankers, foreign cargo and passenger vessels, domestic cargo and passenger vessels, domestic fishing vessels, and offshore oil and gas.

2 MNZ covered approximately $0.52 million of the shortfall through the Oil Pollution Fund's operating reserves.

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work indicated that if OPL rates and sector risk shares are not adjusted appropriately, then the remaining shortfall from years one to three will not be recovered, and the OPL will continue to under-recover for years four to six. This will result in MNZ having to slow down delivery of the Plan which could significantly impact our ability to respond effectively to an oil spill in New Zealand waters.

10. MNZ consulted on three options as part of the OPL mid-point review:

- Option One – Retain the current OPL rates;
- Option Two – Adjust OPL rates to maintain target revenue for years four to six;
- Option Three - Adjust OPL rates to maintain target revenue for years four to six, and recover the remaining shortfall from years one to three.

11. A number of issues were raised by submitters during the consultation period, including the accuracy of the risk allocation methodology used, and the impacts of the proposed new OPL rates on some sectors. Noting this, the majority of submissions supported Option Two. The Oil Pollution Advisory Committee[3] (OPAC) also recommended Option Two to the MNZ Authority Board (the Authority).

12. The Authority recommends Option Two, which through careful planning and allocation of resources, will ensure most of the Plan can still be delivered by 2022 as intended. I support the Authority's recommendation to proceed with Option Two.

Submission to the Executive Council

13. The Maritime Transport (Oil Pollution Levies) Order 2016 will need to be amended to reflect Option Two. The Amendment Regulations give effect to the policy proposals by adjusting the OPL rates to collect the original expected revenue for years four to six, as agreed in the 2015/16 OPL review. It will also reflect changes in the sector risk shares and changes in expected activity levels.

14. This paper seeks Cabinet's authorisation to submit the Amendment Regulations to the Executive Council.

PART ONE: PROPOSED ADJUSTMENTS TO THE OPL

Background

15. Although the likelihood of a significant oil spill in New Zealand waters is low, the environmental, financial and cultural impacts of such an event would be very significant.

16. The Maritime Transport Act 1994 (the MTA) requires the Director of MNZ to have a marine oil spill strategy (the Strategy), setting out: the overall vision and objectives for New Zealand's oil spill readiness and response; and the actions to be taken when preparing for and responding to marine oil spills. A capability plan (the Plan) sets out the capabilities (including personnel, equipment and training) needed to deliver the Strategy.

17. In 2015, the Strategy was reviewed and extensively updated. The updated Strategy required a significant change in the size, type and distribution of oil spill response assets throughout New Zealand. For example, increasing demands for effective capability meant that MNZ needed to adopt new technology it had not previously owned, such as improved coastal and

3 OPAC is a Ministerial-appointed committee, made up of representatives from government departments and the commercial maritime industry. OPAC's purpose is to provide advice to MNZ on the Strategy, the fixing and levying of oil pollution levies under the MTA, the use of the Oil Pollution Fund, and any other matters related to marine oil spills specified by the Minister, or the Director of MNZ.

offshore spill containment and recovery systems. The roll-out of the new equipment also needed to be supported by appropriate levels of logistics, training, exercising, and personnel.

18. The Plan was also updated and independently peer reviewed by international experts. The focus was again on ensuring that New Zealand has modern, fit-for-purpose equipment, and better capability to respond to major oil spill events.

The Oil Pollution Levy (the OPL)

19. The OPL funds a range of activities and services under the Plan including:

- the Marine Pollution Response Service (the MPRS), which is managed by MNZ and is responsible for operationally delivering the Plan;
- the maintenance of, and investment in, equipment and capabilities to respond to oil spills;
- oversight and assurance for capabilities delivered by industry, operators and regional Councils.

20. The OPL is paid by all commercial vessels over 100 gross tons and 24 metres or more in length (except those operating in fresh water) that use oil as fuel and/or transport oil as cargo, including fishing boats, cargo and passenger ships and ferries. Six sectors each pay a share of the total target revenue, based on an assessment of New Zealand's overall statistical oil spill risk profile, the Marine Oil Spill Risk Assessment (the MOSRA).

21. The MOSRA is a long-established statistical risk assessment methodology, representing international best practice. The MOSRA seeks to ensure that within each sector the right amounts are being paid, such that the burden is appropriately shared (reflecting the type of activity, cargo and fuel), and that MNZ neither over, nor under, recovers against the target amount.

22. The MOSRA aims to ensure each sector is contributing to the OPL, proportionate to the level of statistical risk that sector potentially poses. Based on forecast activity levels, specific rates are set for oil carried as cargo (persistent and non-persistent[4]), and oil used as bunker fuel (based on a proxy of vessel gross tonnage). These rates generate the revenue for the OPL. Depending on the sectors, revenue may be raised by annual invoice adjusted for actual activity, the number of port visits or retrospectively once the activity has occurred.

23. The current OPL rates are not fully based on the 2015 MOSRA because of a decision by the government of the time to keep the oil and gas sector's share at around four percent, as discussed later in this paper.

2015/16 review of the OPL

24. The OPL was last reviewed in 2015/16. The 2015/16 OPL rates set sought to generate revenue of $8.049 million on average per annum for six years, with an average of: $7.775 million for the years one to three (2015 – 2018); and $8.354 million for years four to six (2019 – 2022).

25. The government of the time also committed to review the OPL rates after three years (the mid-point review).

26. Due to the 2015/16 OPL coming into force six months later than originally planned, and sector activity being slightly less than forecast, there was a shortfall of $1.3 million against the target

4 A distinction is drawn between these two fuel types as they have different characteristics and therefore different levels of impact on the environment.

revenue over years one to three. This shortfall has been reduced to $0.78 million, through the use of operating reserves from the Oil Pollution Fund, supported by prudent budget management and favourable foreign exchange rates in the capital equipment programme.

Progress on delivery of the Plan

27. MNZ has made significant progress to date in addressing obsolescence issues with equipment, and increasing New Zealand's further-from-shore-response capability. Capability enhancement and asset replacement targets for years one to three have largely been achieved to date, despite the cost under recovery.

28. Remaining work, due for completion by 2022, includes the on-going replacement of assets, such as physical equipment and chemical dispersants, and completion of projects to enhance and improve capability.

Consequences of an oil spill

29. One of the more significant oil spill events managed in New Zealand was the *Rena* spill. The *Rena* spilled an estimated 350 tonnes of heavy fuel oil. Salvors removed around another 1,100 tonnes of heavy fuel oil from the wreck, which could have otherwise spilled. The clean-up costs associated with this event were around $47 million.

30. Despite the *Rena* being one of the more significant spills to occur in New Zealand, it is by no means a credible worst-case scenario. The *Rena* was able to carry 3,500 teu (Twenty Foot Equivalent) containers[5]. When it ran aground it was actually carrying 1,368 on-board. I am advised that container ships with twice this capacity are now operating in New Zealand's coastal waters.

31. Floating Production Storage and Offloading vessels can hold a far greater amount of around 80,000 tonnes of oil, when full. Marsden Point has also been dredged to take tankers carrying 100,000+ tonnes of oil.

32. Though it is highly unlikely, a potential worst case spill could see tens of thousands of tonnes of oil dispersed into the marine environment. For such a scenario the response and recovery costs would likely far exceed the costs of the *Rena* incident.

The OPL mid-point review

33. The purpose of the OPL mid-point review is to assess revenue generation against the 2015/16 forecast targets, by reviewing risk share contributions (to ensure these are proportionate to the statistical risk from each sector), and activity levels (to ensure that the target revenue is neither under nor over recovered in the second three-year period).

34. A number of pieces of work were outside the scope of the mid-point review of the OPL but are scheduled to occur as part of the full OPL funding review in 2022, these include:

- an assessment of the overall cost allocation methodology;
- a full review of the Strategy; and
- development of a new Plan.

35. Several pieces of work contributed to the OPL mid-point review including:

5 TEU (Twenty Foot Equivalent Unit) is the unit of the capacity of a container ship

- a refresh of the Strategy, which confirmed its continued applicability;
- a review of the Plan, which confirmed it remains valid and appropriate;
- a re-forecast of expected sector activity levels for the period from July 2019 to June 2022; and
- an update of the MOSRA (MOSRA 18), including updated vessel activity levels and improved data on vessel accidents and incidents, routing, cargoes carried and activity levels.

36. This work indicated:

- the OPL's total target revenue for years four to six can remain at the same levels agreed in the 2015/16 OPL review to deliver an appropriate level of capability; and

- that if the OPL rates are not adjusted to reflect updates to the sector risk shares and forecast activity levels, then the remaining shortfall from years one to three will not be recovered, and the OPL will significantly under-recover for years four to six.

37. Following the above work MNZ consulted on three options for the OPL rates for the second three-year period, 2019 to 2022:

- Option One - Status Quo: This option would not change the current OPL rates, or reflect changes in risk shares or activity levels. Because of changes to activity level forecasts and the volumes and types of oil carried as cargo, this option would not be aligned to the updated risk assessment and would result also in a substantial revenue shortfall, in total, of around $2.6 million over the next three-year period (in addition to the net shortfall of $0.78 for the years one to three)[6]. This will result in MNZ having to slow down delivery of the Plan which could significantly impact our ability to respond effectively to an oil spill in New Zealand waters.

- Option Two – Adjust OPL rates to maintain target revenue and reflect revised risk shares and activity levels. This option would set the same OPL target revenue for years four to six as agreed in 2015/16; as well as adjusting the sector risk shares and OPL rates to reflect the updated risk assessment, and revised forecast activity levels. The residual balance of the shortfall from years one to three ($0.78 million) would not be recovered.

- Option Three - Adjust OPL rates to maintain target revenue plus recovery of the residual shortfall, and reflect revised risk shares and activity levels. This option is the same as Option Two, except that it would apply a moderate increase in the overall OPL target for years four to six, to make up the residual balance of the shortfall from years one to three.

Proposed changes to sector share contributions – Options Two and Three

38. Under Options Two and Three, changes are proposed to sector risk share contributions.

39. These changes, based on MOSRA 18, are designed to better reflect the relative statistical risk posed by each sector. Five of the six sectors are proposed to see relatively significant changes to their share contribution. Specifically,

- the foreign tankers, domestic tankers and the offshore oil and gas sectors will see a proportionally significant decrease; and

6 In the paper Cabinet considered in October 2018 [CAB-18-MIN-0541 refers], it was suggested the shortfall which would result over the six year OPL period through the implementation of Option One would be around $4.0 million. Through further analysis, it appears the actual shortfall will be around $3.3 million.

- the foreign cargo and passenger vessels, and domestic cargo and passenger sectors will see a proportionally significant increase.

Table One: Proposed change in sector share contributions

Sector	2015/16 OPL sector risk share contributions[7] (as implemented)	MOSRA 18 Sector Contribution (proposed)	Change in % share from 2015/16 OPL sector risk shares (recommended)
Foreign Tankers	58.34%	**45.51%**	Decrease of 12.83%
Domestic Tankers	18.87%	**11.91%**	Decrease of 6.96%
Foreign Cargo and Passenger Vessels	9.05%	**25.40%**	Increase of 16.35%
Domestic Cargo and Passenger Vessels	9.05%	**16.1%**	Increase of 7.05%
Domestic Fishing Vessels	0.84%	**1.05%**	Increase of 0.21%
Offshore Oil and Gas	3.85%[8]	**0.03%**	Decrease of 3.82%

40. Sector risk share analysis considers which sector has the greatest risk compared to others. Although the MOSRA considers statistical risk arising from marine activities, the sector risk share allocation is not concerned with whether there has been an increase or decrease in the total marine oil spill risk, but rather apportions a share of New Zealand's total marine oil spill risk to each sector, based on their contribution.

41. Significant updates of the MOSRA can result in changes to sector shares, reflecting the impact of improved modelling techniques, as well as updated data. This time, for example, one change is that tanker activity data indicates there have been significant changes to the routing taken by vessels around New Zealand, with routes moving further away from sensitive areas. This routing reduces the consequences of a major tanker spill, lowers this sector's overall risk, which in turn will affect the relative sector share for all other sectors. The overall result includes multiple changes across the sectors.

The OPL mid-point review - consultation

42. Eight[9] submissions were received during the public consultation period, which ran from 6 November 2018 to 18 January 2019. The consultation document was widely distributed to interested parties and published on MNZ's and the Ministry of Transport's websites. MNZ also advised sectors about the consultation process and promoted it on social media.

43. All submitters and the Oil Pollution Advisory Committee (OPAC) support continued investment to maintain an appropriate level of response capability for marine oil pollution events in New Zealand.

44. There were three other main issues raised by some submitters:

7 The 2015/16 OPL rates that were implemented are not fully based on the 2015 MOSRA because of a decision by the government of the time to keep the oil and gas sector's share at around 4%, rather than the share modelled by MOSRA 15.
8 The MOSRA 15 assessed the risk share of the oil and gas sector to be 0.03%.
9 Submitters on the OPL mid-point review were: the New Zealand Shipping Federation; KiwiRail; Coastal Oil Logistics; the New Zealand Association of Ship Owners and Agents; the Cruise Line International Association Australasia; the Petroleum, Exploration and Production Association of New Zealand; Z Energy; and Real Journeys.

i. perceived shortfalls with the MOSRA methodology;

ii. cumulative impacts of fees and levies on the maritime sector; and

iii. the longer-term implications of expected changes to bunker fuel composition that likely will arise from revisions to MARPOL Annex VI.

Issue (i) : Perceived shortfalls with the methodology

45. While one submitter considered MOSRA 18 and re-forecast sector activity levels to be a step forward, seven of the eight submitters raised varying concerns with the MOSRA methodology, including:

- the accuracy of the data used;
- the specific sector risk shares;
- how a change in the relative risk of an oil spill in one sector results in an alteration to the risk posed by another sector;
- reviewing and updating the methodology to take account of more accurate information about actual numbers of crossings for one particular sector; and
- whether the MOSRA factors in actual oil spill incidents in New Zealand.

Analysis and response

46. MNZ responded to these concerns during the consultation phase and prepared detailed responses to each submission, which were presented to the OPAC and the Authority. The analysis summary is attached at Appendix Two. The OPAC endorsed the methodology and process followed by MNZ.

47. MNZ advises that the MOSRA is a long-established statistical risk assessment methodology, representing international best practice. MNZ considers the MOSRA gives a fair, objective and balanced result as far as is possible. The MOSRA has evolved through multiple iterations since 1992, and has been used to inform the setting of OPL rates since that time. Each time the MOSRA is updated, it uses the latest statistical modelling techniques and available data for the relevant sectors.

48. Whilst, alternative methodologies have been explored and benchmarking undertaken of other jurisdictions, these assessments support the continued use of the MOSRA to set OPL rates.

49. Noting that the MOSRA and the data it uses continues to evolve and improve, I accept MNZ's advice that it is the most appropriate risk assessment methodology currently available.

Oil and gas sector

50. The Authority recommends the offshore oil and gas sector's OPL rates be adjusted to reflect a reduction in its sector risk share, which would shift from 3.85 percent to 0.03 percent. The total contribution per annum for this sector will decrease from $0.3 million to $3,000 under both Options Two and Three.

51. The 2015 and 2018 MOSRAs both assessed the offshore oil and gas sector's risk share at 0.03 percent, which is the result of the very small size of the sector overall, and the very low likelihood of an oil spill from operations in that sector.

52. Prior to 2015/16, this sector had been contributing approximately 4 percent of OPL revenue. During the 2015/16 OPL review, the government of the time directed that the share paid by

the offshore oil and gas sector would remain at around 4 percent, rather than being reduced in line with the 2015 MOSRA analysis.

53. Reducing this sector's share now, in-line with the risk it presents, is consistent with transport funding principles, and the principles of the MOSRA process.

54. There are other legislative instruments in place which require operators of offshore oil and gas installations to possess readiness and response capabilities for marine oil spills, as well as providing financial assurance to address clean-up and compensation costs associated with oil spills. My colleagues Hon Julie Anne Genter and Hon Dr Megan Woods are working on changes to this regime, which include increasing the maximum level of financial assurance required to be held by operators of offshore installations to NZ$1.2 billion.

<u>Sectors with a proposed increase in share contribution</u>

55. The two sectors which will see a proportionally significant increase in their sector contributions to the OPL are the foreign cargo and passenger vessels sector (e.g. cruise liners), and the domestic cargo and passenger sector (e.g. the Bluebridge and Interislander ferries).

56. The total contribution for each sector will be spread across all levy payers within that sector. As such, the impact on each individual payer will depend on the type and level of activity of that individual entity.

57. Table Two shows the changes in risk share for these sectors, the 2017/18 actual revenue (current activity levels), and the revised target revenue going forward (based on forecasts of future activity). Table Three, also overleaf, illustrates some examples of individual levy payer's contributions currently under Options Two and Three.

58. Whilst I acknowledge these increases, the changes to risk share for these sectors are driven by a combination of:

- the latest international accident and incident data, specifically the severe consequences of major incidents with these types of vessels;
- better data on vessel routing and vessel numbers; for example, more cruise vessels operating close-to-shore and in confined waters can result in potentially more severe consequences in the event of an incident; and
- a consequence of changes in other sectors, i.e. the relative risk across all sectors has changed.

Table Two: Increases in total contribution per annum for domestic and foreign cargo and passenger vessels

Sector	**Increase in risk share**	**Actual Revenue (2017/18) (per annum) ($m)**	**Option Two (per annum) ($m)**	**Option Three (per annum) ($m)**
Domestic cargo	9.05% to 16.1%	0.688	1.344	1.386

and passenger vessels*				
Foreign cargo and passenger vessels*	9.05% to 25.4%	0.880	2.122	2.188

Table Three: Increases in total contribution per annum and per port visit

Sector	**Example**	**Current contribution**	**Option Two**	**Option Three**
The domestic cargo and passenger sector pays the OPL cargo on an annual contribution				
Domestic cargo and passenger vessels	Vessel with gross tonnage of 12,735	$52,620 (per annum)	$82,213 (per annum)	$84,776 (per annum)
The foreign passenger and cargo sector pays the OPL on a per port visit basis				
Foreign cargo and passenger vessels	Vessel with gross tonnage of 121,878	$488.00 (per port visit)	$1024.00 (per port visit)	$1056.00 (per port visit)

<u>Issue (ii): the cumulative impacts of border fees and levies</u>

59. Two submitters raised concerns about the cumulative impacts of fees and levies imposed by government. One of these submitters, the Cruise Line Industry Association (CLIA), expressed concerns about the cumulative impact of levy and fee changes impacting on the cruise sector specifically over the last three years. The other submitter, Real Journeys[10], raised concerns generally about other compliance costs that maritime operators face including any proposed maritime levy increases.

60. The CLIA also noted that when coupling the impact of the main MNZ Funding Review which is also underway, with that of the OPL, its sector will see a significantly proportionate increase in its maritime levy contributions.

<u>Analysis and response</u>

61. This concern relates to fee and levy changes across government, including the Border Clearance Levy which recently increased by $2.90 per passenger, and the International Visitor Conservation and Tourism Levy which is charged at a rate of $35.00 per person.

62. The OPL is not a border levy; its purpose is to fund investment in capabilities to enable New Zealand to respond effectively to a maritime oil spill.

63. One of the transport system funding principles is that costs should be allocated primarily to those who create and exacerbate the risks in the system and receive benefit from

10 Real journeys is a New Zealand tourism company.

participating in the system; where particular groups create more significant risks, graduated approaches should be used.

64. The MOSRA aligns with this transport system funding principle by allocating risk shares based on the latest statistical modelling techniques and available data. The MOSRA seeks to ensure that within each sector the right amounts are being paid, such that the burden is appropriately shared (reflecting the type of activity, cargo and fuel), and that MNZ neither over-, nor under-, recovers against the target amount.

65. Using this approach, if any individual payer of the levy increases or decreases their activity, then they will pay correspondingly more or less in total; reflecting the change in the likelihood component of the potential risk.

66. For the foreign passenger and cargo sector, there are more vessels and more voyages occurring, and more accurate data on the routes taken by those vessels. For cruise vessels, the numbers of voyages and port visits have increased significantly since 2015 and the route data shows many voyages are close to shore. Coming close to shore and operating in confined waters are key risk factors for navigation safety and environmental impacts, should there be an incident. Both the likelihood and consequence of any potential incident from this sector will have risen within the MOSRA accordingly.

<u>Issue (iii): the implications of MARPOL Annex VI</u>

67. The Ministry of Transport has recently consulted on whether or not New Zealand should become a signatory to MARPOL Annex VI (Annex VI). MARPOL requires shipping services to or from countries that are party to Annex VI to use low sulphur fuel. This will likely drive a move from using Heavy Fuel Oil (persistent oil) as bunker fuel to low sulphur fuel (non-persistent oil).

68. These changes might impact the type of oil spill response capabilities needed in the future, as different fuels can have different environmental impacts. For example, persistent oil is generally heavier than non-persistent fuel, which makes it harder to clean up, with potentially more severe consequences for wildlife and the marine environment.

69. Most submitters requested that the MOSRA methodology should be reviewed to reflect the longer-term implications of the expected changes to bunker fuel composition.

<u>Response</u>

70. As a decision has not been made as to whether New Zealand will become a signatory to Annex VI, any potential implications of it remain outside the scope of the OPL mid-point review.

71. Noting this, the Authority agrees it will be appropriate to consider the implications of the potential change in bunker fuel as part of the OPL 2021/22 review.

72. Internationally, the revised requirements come into force from 1 January 2020 and the maritime industry is considering how to modify fuels, engines and systems in order to comply. MNZ will begin work on the next full review of the OPL in 12 to 18 months' time and the implications of Annex VI will be taken into account.

Submitters' feedback on specific OPL rate options

73. One submitter, KiwiRail (domestic cargo and passenger vessels sector) did not support any of the options consulted on. KiwiRail submitted that Option One does not provide sufficient funding to deliver the Strategy; and Options Two and Three will result in a substantial cost increase to its business.

74. This paper has already detailed the rationale for the changes in this sector's risk share and contribution to the OPL. Given the OPL for domestic operators is charged on vessels owned, KiwiRail will only pay the OPL based on the number of vessels they operate.

75. The CLIA suggested an additional option, to maintain the current OPL rates but to alter the target revenue to recover the $0.78 million shortfall from years one to three. This was not considered a viable option as it would lead to a substantial shortfall in the total revenue gathered over the next three-year period.

Option One: Status quo

76. This option proposes no change to the OPL levy rates, or the risk shares paid by each sector, despite the findings of MOSRA 18. One submitter, CLIA, supported this option.

77. As Option One leaves the OPL rates as they currently are, the amount of revenue raised will be a result of the activity that will occur. Based on the revised activity forecasts for the next three-year period, the revenue targets agreed for years four to six in the 2015/16 OPL review cannot be met. This option would result in a revenue shortfall of around $2.6 million over years four to six (in addition to the net revenue shortfall of $0.78 million in the first three years).

78. MNZ estimates Option One would result in the completion of the Plan being delayed by around two years, which could significantly impact our ability to respond effectively to an oil spill in New Zealand waters. It could also put New Zealand's obligations, as a party to the International Maritime Organisation's International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (to prepare for and response to oil spills in the marine environment) at risk.

79. A significant reduction in revenue puts at risk MNZ's ability to:

- maintain current equipment capabilities to respond to oil spills;
- protect in-shore and near-shore areas in the event of a spill, thereby reducing the consequences of the spill and reducing response costs;
- manage oil spills further out to sea close to the source, thereby better protecting the shoreline from spill impact and reducing response costs; and
- support more effective oil spill responses through improved technical and scientific knowledge.

Option Two: Adjust OPL rates to maintain target revenue and reflect revised risk shares and activity levels

80. Option Two would collect the revenue for years four to six, as agreed during the 2015/16 OPL review. Risk shares paid by the different sectors contributing to the OPL would also be adjusted to reflect the MOSRA, and specific OPL rates set to reflect forecast activity levels. The remaining shortfall from years one to three would not be recovered (around $0.78 million). As a result, there would be a slight slow-down in the delivery of the Plan.

81. Five of the eight submissions received supported Option Two.

82. MNZ considers that the impacts of Option Two on the delivery of the Plan would be minor and manageable. Asset replacement and capability enhancement would need to be scaled back slightly, but core operational activity (e.g. training, exercises, and assurance) would not be affected.

83. MNZ is confident that with careful planning and allocation of resources, most of the Plan could still be achieved through Option Two. There would be a slight delay to completing the replacement of dispersant stocks (approximately six months after the end of the three-year period) and MNZ would not purchase dispersant effectiveness capability (flurometry equipment). Dispersant could be shipped into New Zealand and flurometry equipment sourced from Australian authorities – albeit, both with some time delay. If more resources are required to deal with an unexpected marine oil spill, MNZ advises me it is able to access additional equipment offshore and that there are funding mechanisms to meet these costs.

Option Three: Adjust OPL rates to original target revenue plus recovery of the residual shortfall, and reflect revised risk shares and activity levels

84. This option would adjust the OPL rates to collect the original expected revenue for years four to six, plus a moderate increase in the overall OPL target for the remaining three years, to make up the remaining shortfall in OPL revenue raised in the first three years ($0.78 million). As in Option Two, the risk shares paid by the different sectors contributing to the OPL would be adjusted to reflect the updated risk assessment, and the specific rates would reflect forecast activity levels.

85. One submitter, the Petroleum Exploration and Production Association of New Zealand, supported this option, as it ensures each sector pays a share proportionate to the risk each sector poses, and the Plan will be delivered in the original six-year period.

86. Option Three ensures sufficient revenue to deliver the current levels of regulatory, compliance, readiness, and response services relating to marine oil spills and the full delivery of the Plan within the original timeframe (by 30 June 2022) and to the capability level approved by the government of the time.

Preferred option – OPAC

87. The OPAC is a Ministerial-appointed committee, made up of representatives from national and regional government and industry (OPL levy payers). Its role is to give advice to MNZ on a range of matters including the Strategy, annual budget, capability requirements and the setting of OPL rates.

88. The OPAC discussed the submissions made on the OPL and MNZ's responses. The OPAC recommended Option Two to the Authority, in line with the majority of the submissions. Option Two maintains the progress on implementing the Plan, while updating the OPL levy allocation between sectors and reflecting the latest activity forecasts.

89. The OPAC expressed support for the process that MNZ has followed for the OPL mid-point review, acknowledging the approach taken is understood and considered a sound way to go forward, even though for some sectors the cost impacts may be challenging.

The Authority's preferred option and final recommendations

90. The Authority does not recommend Option One because it does not provide sufficient funding to deliver the Plan, nor does it reflect updates to sector risk shares or forecast activity levels. It

would result in a significant shortfall in OPL revenue, which could significantly impact our ability to respond effectively to an oil spill in New Zealand waters.

91. Pre-consultation, the Authority's preferred option was Option Three as it would assure the full delivery of the Plan within the original six-year timeframe agreed by Cabinet at the time. In addition, Option Three reflects the updates to sector risk shares and forecast activity levels, to ensure risk is appropriately and proportionately allocated.

92. As a result of the feedback received from both the OPAC and submitters, and further assessment, the Authority now recommends Option Two.

93. The Authority advises me it is confident that with careful planning and allocation of resources, most of the Plan can still be delivered by 2022 as scheduled. I am advised that any capability impacts will be relatively minor and can be managed, with any outstanding items being addressed at the start of the next cycle.

94. Option Two also reflects the updates to sector risk shares and forecast activity levels, to ensure risk is appropriately and proportionately allocated.

95. I consider that MNZ needs to be able to complete delivery of the Plan, as close as possible to the original six-year timeframe. Noting this, I support the Authority's recommendation to proceed with Option Two as I think it strikes a reasonable balance between meeting our oil spill preparedness and response obligations and managing impacts on the sector. The recommended OPL rates, under Option Two, are set out in Appendix One.

[redacted]

Withheld to maintain legal professional privilege

96. [redacted]

97. [redacted]

98. [redacted]

Other funding reviews currently under way

MNZ Funding Review

99. MNZ also undertakes full (six-yearly) and mid-point (three-yearly) funding reviews to ensure the organisation has sufficient funding to effectively perform its regulatory, compliance, and response functions between reviews. A full funding review is currently underway, and proposals arising from it have implications for fees and the maritime levy.

100. While consultation submissions showed broad support for many of the proposals, objections and concerns were also raised. Levy payers, in particular, tended to the view that the levy should be proportionate to the use of MNZ services, despite the levy not being a user charge, or that the Crown should contribute toward or pay for some levy-funded regulatory activities.

Some submissions objected to the Government policy of a user-pays model or considered that others should contribute more towards recovery of the cost of MNZ services and activities to be funded through the review proposals. MNZ has considered all submissions thoroughly and recommended that all proposals relating to the maritime levy and fees should proceed as set out in the consultation document.

101. The MNZ Funding Review Cabinet paper was considered by the Cabinet Economic Development Committee on 3 April 2019 and approved by Cabinet on 8 April 2019 (CAB-19-MIN-0142 refers). A Cabinet paper outlining the legislative amendments was considered by the Cabinet Legislation Committee on 21 May and authorised the submission to the Executive Council of the associate amendment regulations. Executive Council considered the amendment regulations on 27 May 2019 and the amendment regulations are due to come into force on 1 July 2019.

Alignment with other government fees and levies

102. The Ministry of Transport is one of a number of government departments that make up the Border Sector[11], and works closely with these agencies to ensure any of its proposals are aligned with the border sector work programme. An important part of this is ensuring that the cumulative impacts of each agency's operations (including cumulative costs to travellers and traders from cost recovery charges) are clearly understood.

103. While the OPL is not a border levy, I am aware of a number of proposals for fees and levies, including those at the border, that will impact on some maritime sectors. Having said this, it is important to ensure carriers make reasonable contributions to costs, providing agencies with confidence that the services being charged for are being run efficiently. I understand a paper will be presented to Cabinet later this year on border cost recovery initiatives across government.

PART TWO: APPROVING SUBMISSION OF THE AMENDMENT REGULATIONS TO EXECUTIVE COUNCIL

Legislative Implications

104. The Maritime Transport (Oil Pollution Levies) Order 2016 will need to be amended to provide for the change to OPL rates described in this paper.

105. Section 333(1) of the Maritime Transport Act 1994 (the Act) empowers the Governor-General, on the recommendation of the Minister, to make regulations by Order in Council to impose oil pollution levies, for the purposes of providing money for the New Zealand Oil Pollution Fund, on:

- the owners and masters of contributing ships;
- the owners of contributing oil sites;
- the owners of contributing oil.

11 Border Sector agencies include the Ministry for Primary Industries, New Zealand Customs Service, the Ministry of Business, Innovation and Employment (MBIE), the Ministry of Transport and the Department of Internal Affairs.

106. The Amendment Regulations are consistent with the policy intent underlying the Oil Pollution Levy, which is to ensure New Zealand maintains the appropriate level of capability to respond to an oil spill, as agreed in the 2015/16 OPL review.

Timing and the 28-day rule

107. The Amendment Regulations have a proposed in-force date of 1 July 2019. A waiver of the 28-day rule is sought to achieve this.

108. From a regulatory administrative perspective, entities subject to the levy are generally invoiced from 1 July 2019, if the 28-day rule is not waived and the regulations are not in force by 1 July 2019, there is a risk of creating an administrative burden on MNZ and entities as multiple rates will apply across the billing period.

109. This waiver is sought on the basis that the Amendment Regulations have a fairly narrow application and confer a benefit on the public.

110. The proposed changes have been signalled to, and options were consulted on with, affected groups. Those subject to the levy will need to be invoiced and therefore would not have to make payments right on 1 July 2019.

111. MNZ advise that no one will be required to make a payment on 1 July 2019 and that the earliest possible payment date would be towards the end of July. Invoicing for those who pay 'in advance' would likely be sent in early to mid July 2019 - with the 20 day provisions in the regulations. Invoicing for others after the activity occurring in July for example, would mean payments would be due some time in August.

112. Additionally, the Amendment Regulations will confer a public benefit by ensuring that the OPL will collect sufficient revenue to allow the delivery of most of the Plan. This supports New Zealand's marine oil spill readiness and response Strategy.

113. This benefit to the public can be seen through the work of the Marine Pollution Response Service (MPRS), which is managed by MNZ. The MPRS is responsible for operationally delivering the Plan to help ensure New Zealand can:

- protect in-shore and near-shore areas in the event of a spill, thereby reducing the consequences of the spill and reducing response costs
- manage oil spills further out to sea, close to the source, thereby better protecting the shoreline from spill impact and reducing response costs
- maintain current equipment and capabilities to respond to oil spills
- support more effective oil spill responses through improved technical and scientific knowledge.

Timing

114. Should a waiver of the 28-day rule be granted, the Amendment Regulations would come into force on 1 July 2019, 10 days after being notified in the *New Zealand Gazette*.

Compliance

115. The Amendment Regulations comply with each of the following:

- the principles of the Treaty of Waitangi

- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- the principles and guidelines set out in the Privacy Act 1993
- relevant international standards and obligations
- the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

116. There are no grounds for the Regulations Review Committee (RRC) to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

117. The Parliamentary Counsel Office has certified the Amendment Regulations as being in order for submission to Cabinet.

Consultation

118. The Ministry of Transport consulted the following agencies in drafting this paper: MNZ, the Ministry for the Environment, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Department of Conservation, the New Zealand Customs Service, the Ministry of Business, Innovation and Employment, The Treasury, the Ministry for Primary Industries, the Department of Internal Affairs, the Environmental Protection Authority, and the Parliamentary Counsel Office. The Department of the Prime Minister and Cabinet has been informed.

119. As part of the consultation with MFAT a question was raised about the treatment of foreign and domestic vessels. The Ministry of Transport advises me that the MOSRA uses the likelihood and consequence of a potential oil spill to calculate risk per sector, and thereby apportion liability on a non-discriminatory basis (Levy contribution) for each sector based on this risk assessment.

Cost Recovery Impact Assessment

120. The Regulatory Impact Assessment Panel at the Ministry of Transport has reviewed the Regulatory Impact Statement "Stage 2 Cost Recovery Impact Statement, Mid-Point Review of the Oil Pollution Levy 2016/2022" by Maritime NZ and considers that it **meets** the Quality Assurance criteria. The RIS shows clearly that alternative options have been carefully considered, implementation risks identified and mitigated, and stakeholders fully involved in the process.

Financial implications

121. There are financial implications for sectors that will receive a change in sector share contribution.

Human Rights, Gender Implications, Disability Perspective

122. There are no such considerations relevant to the proposals in this paper.

Publicity

123. I will release this Cabinet paper once announcements have been made about the outcomes of this OPL mid point-review and the MNZ Funding Review.

124. The Amendment Regulations will be published in the *New Zealand Gazette*.

Proactive Release

125. I intend to pro-actively release this Cabinet paper (and the associated CRIS), the summary of submissions, and all eight submissions shortly after decisions are made on this paper. Release will be subject to appropriate redactions.

Recommendations

126. I recommend that Cabinet:

1. **note** that the Oil Pollution Levy funds New Zealand's oil spill preparedness and response functions

2. **note** that the Oil Pollution Levy was last reviewed in 2015/16, based on requirements in the New Zealand Marine Oil Spill Readiness and Response Strategy and the Capability Plan for Marine Oil Spill Readiness and Response 2016/17–2018/19

3. **note** that there is currently a shortfall in the revenue being generated through the 2015/16 Oil Pollution Levy because of delays in the 2015/16 Oil Pollution Levy being brought into effect

4. **note** that Maritime New Zealand conducted a mid-point review of the Oil Pollution Levy and response capabilities

5. **note** that three options were presented in the consultation document, two of which proposed to ensure sufficient revenue is collected to meet the obligations set out in the Capability Plan to address equipment obsolescence and to improve capability to respond to offshore marine oil spills

6. **agree** to progressing Option Two, adjusting the Oil Pollution Levy rates to maintain target revenue and reflect revised risk shares and activity levels

7. **note** Parliamentary Counsel Office has been instructed to amend the Maritime Transport (Oil Pollution Levies) Order 2016, in anticipation of Cabinet agreement, to give effect to recommendation six with effect from 1 July 2019, with any necessary consequential or savings provisions

8. **note** that the Maritime Transport (Oil Pollution Levies) Order 2016 will need to be amended to reflect the adjusted Oil Pollution Levy rates to collect the original expected revenue for years four to six, as agreed in the 2015/16 OPL review and to reflect changes in the sector risk shares and changes in expected activity level (Option Two)

9. **note** that the Maritime Transport (Oil Pollution Levies) Amendment Order 2019 will give effect to the decisions referred to in recommendations six and seven above

10. **authorise** the submission to the Executive Council of the Maritime Transport (Oil Pollution Levies) Amendment Order 2019

11. **agree** to waiving the 28-day rule, so that the Maritime Transport (Oil Pollution Levies) Amendment Order 2019 can come into force on 1 July 2019, 10 days after being notified in the *New Zealand Gazette*.

Authorised for lodgement

Hon Phil Twyford

Minister of Transport

Appendix One: Recommended OPL rates (Option Two)

Sector		**Oil Pollution and Capability Levy Rates under Option Two**	**2015 rates**
Foreign Tankers (**per MT of oil - per visit)**	**Persistent**	56.27 cents	49.09 cents
	Non-persistent	11.83 cents	20.72 cents
Domestic Tankers (**per MT of oil - per year)**	**Persistent**	46.64 cents	57.43 cents
	Non-persistent	41.65 cents	59.03 cents
Foreign Tanker, Cargo and Passenger Vessels **(per GT - per port visit)**	**Bunker fuel**	0.84 cents	0.40 cents
Domestic Tanker, Cargo and Passenger Vessels **(per GT - per year)**	**Bunker fuel**	645.57 cents	413.19 cents
Domestic Fishing Vessels (**per GT - per year)**	**Bunker fuel**	114.51 cents	97.74 cents
Platforms	**levy rate per site, per year**	16.71 dollars	9,169.89 dollars
FPSOs	**levy rate per site, per year**	1,336.73 dollars	105,000.00 dollars
Pipelines	**levy rate per site, per year**	0	9,114.89 dollars
Exploration wells	**levy rate per site, per year**	0	8,951.89 dollars