Consultation Document
New Zealand’s accession to the Supplementary Fund Protocol
May 2014
Making a submission

1. Submissions can be made:

   I. via post to the Ministry of Transport:
      Consultation on New Zealand’s accession to the Supplementary Fund Protocol
      The Ministry of Transport
      PO Box 3175
      Wellington 6140

   II. via email to FundProtocol@transport.govt.nz

2. Submissions should be received by the Ministry of Transport no later than 5pm Friday 27 June 2014.

3. There is one suggested question at the end if this paper for you to address. You can also make further comments in your submission.

4. You should indicate in your submission whether it would be acceptable, if required, for officials from the Ministry of Transport (the Ministry) to contact you to discuss your submission.

5. If you need more information to assist you in preparing a submission go to http://www.transport.govt.nz/ourwork/sea/supplementary-fund-protocol-2003 or contact the Ministry of Transport on (04) 439 9000 or through the email address above.

6. Your submission may be the subject of a request under the Official Information Act 1982, which could result in its publication. The withholding of particular submissions for any reason will be determined in accordance with the Official Information Act. If you feel that any part, or all, of your submission should be withheld from any request made under the Official Information Act, you should indicate this clearly.

The purpose of this document

8. This document seeks feedback on a proposal that New Zealand accedes to the Supplementary Fund Protocol. It provides information as to why the Ministry proposes that New Zealand should accede to the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Supplementary Fund Protocol).

9. New Zealand’s accession to the Supplementary Fund Protocol would increase the level of compensation available in the event of a major oil spill from an oil tanker from $377 million to $1.392 billion.

10. Following the completion of consultation, the Ministry will consider the submissions received. Subject to the outcome of the consultation, the Ministry will recommend that the Minister of Transport seek Cabinet agreement that New Zealand progress to accession of the Supplementary Fund Protocol.

11. Should New Zealand accede to the Supplementary Fund Protocol, an amendment to Part 26 of the Maritime Transport Act 1994 to incorporate the Supplementary Fund Protocol would be required. Amendment to the Maritime Transport (Fund Convention) Levies Order 1996 would also be required. The timing of these amendments would be dependent on available time for Parliament to consider them.
Background — IOPC Funds

12. The Supplementary Fund is part of the International Oil Pollution Compensation (IOPC) funds. The IOPC funds are intergovernmental conventions that provide three levels of compensation\(^1\) for oil pollution damage from spills of oil from tankers carrying oil as cargo\(^2\), to countries that have acceded to the 1992 Fund Convention. Three levels of compensation are available through the following conventions and protocols.

- 1992 Civil Liability Convention (establishes that compensation is to be paid by the ship owner up to a limit of 89.7 million Special Drawing Rights, approximately $166 million)

- 1992 Fund Convention (establishes a fund that provides up to 203 million Special Drawing Rights, approximately $377 million of compensation including the 1992 Civil Liability Convention limit)

- Supplementary Fund Protocol (establishes a fund that provides up to a total of 750 million Special Drawing Rights, approximately equal to $1.392 billion of compensation, including the $377 million available from the 1992 Fund Convention and 1992 Civil Liability Convention)

13. New Zealand has acceded to the conventions for the first and the second level of the IOPC funds, which together provide compensation for oil pollution damage\(^3\) from oil tankers of up to $377 million in the event of an oil spill, regardless of fault. The first level sets compensation payable by the ship owner. The second and third levels provide an international fund for oil spill compensation that is financed by levies on oil imports.

\(^1\) International Oil Pollution Compensation Funds are set through Special Drawing Rights as defined by the International Monetary Fund. Amounts expressed in this document are in approximate NZ dollars. As at 10 January 2014, 1 Special Drawing Right = NZ$1.856. Because of this, all figures in this paper that are based on Special Drawing Right amounts are approximate.

\(^2\) “Oil” means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.

\(^3\) Pollution damage means a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment, other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; b) the costs of preventive measures and further loss or damage caused by preventive measures.
The Supplementary Fund Protocol

14. The Supplementary Fund Protocol establishes a third level of compensation to meet claims that exceed the total compensation available under the first two levels, without needing to prove fault. The Supplementary Fund Protocol provides funding for compensation over and above the $377 million limit of the 1992 Fund Convention and the 1992 Civil Liability Convention, up to an aggregate limit of $1.392 billion for any one incident.

15. The Supplementary Fund Protocol works on a pay-as-you-go basis applying to members that have received more than 150,000 tons of contributing oil in a calendar year. Levies on oil importers are only collected when the cost of an oil spill in a contracting state exceeds the compensation payable under the 1992 Fund Convention, rather than funds being built up from regular annual levies.

16. Contracting states to the 1992 Fund Convention may become contracting states to the Supplementary Fund Protocol. Accordingly, as a contracting state to the 1992 Fund Convention, New Zealand is entitled to accede to the Supplementary Fund Protocol.

Why accede to the Supplementary Fund Protocol?

17. Oil tankers in operation in New Zealand generally carry between 55,000 and 100,000 tonnes. It is likely that it would take an oil spill of at least 10,000–20,000 tonnes affecting particularly sensitive areas of New Zealand’s coast for the current $377 million compensation level to be exceeded. This is based on international examples, as well as oil spill cost estimation models used by the United States Environmental Protection Agency and the International Maritime Organization.

18. The likelihood of a major spill involving an oil tanker is low, but the consequences could be severe. In a severe event, depending on the weather and the type of operation, oil is likely to affect a large area of the New Zealand coastline.

19. While New Zealand has not experienced a significant oil spill from an oil tanker, and major tanker spills are infrequent globally, the potential costs could significantly exceed the limit of $377 million of compensation that presently applies in New Zealand.

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4 The Supplementary Fund Protocol refers to ‘tons’, whereas New Zealand uses metric tonnes. 1 ton = 0.907 tonnes. Both amounts are referred to in this paper, depending on whether the source is the Supplementary Fund Protocol or a New Zealand source.

5 Since 1996 New Zealand oil importers have contributed between $0.285 million and $0.377 million (2012 dollars) per year to the 1992 Fund Convention.
20. Maritime New Zealand has developed a New Zealand Marine Oil Spill Risk Assessment, which has modelled the probability of oil spills around the New Zealand coastline based on ship and oil tanker movements and the sensitivities of the shoreline and surrounding areas.

21. The area most likely to experience a heavy oil spill from an oil tanker is the Whangarei Harbour, where oil tankers carry imported heavy oil to the Marsden Point Oil Refinery. The Northland east coast approach to Marsden Point is also considered high risk, as is the Taranaki coast due to oil tanker movement to collect oil from offshore installations.

22. The table below identifies the sensitivity factors of these coastlines and oil spill probability, based on the New Zealand Marine Oil Spill Risk Assessment undertaken by Maritime New Zealand.

Marine Oil Spill Risk Assessment oil spill estimates

<table>
<thead>
<tr>
<th>Area</th>
<th>Sensitivity factors</th>
<th>Spill size (tonnes)</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whangarei Harbour</td>
<td>Mangrove swamps, salt marshes and wildlife.</td>
<td>10,000</td>
<td>1 in 20 year event</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20,000–50,000</td>
<td>1 in 100 year event</td>
</tr>
<tr>
<td>Northland east coast (Cape Reinga to Mangawhai)</td>
<td>Rocky coast, salt marshes, mangrove swamps. Wildlife and habitats.</td>
<td>10,000–20,000</td>
<td>1 in 100 year event</td>
</tr>
<tr>
<td>Taranaki Coast</td>
<td>Cobble or boulder beaches. Wildlife and habitats.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

23. A tanker oil spill in New Zealand waters may give rise to environmental and economic effects. These include potential damage to New Zealand’s aquaculture industry and fishing stocks and decreased demand for New Zealand seafood. A major oil spill could also potentially impact shipping vessels reaching or leaving ports, resulting in delays, and costs for exporters and importers. The environmental damage if oil reaches our coastline, or the occurrence of an oil spill itself, could damage New Zealand’s tourism industry.

24. Should a tanker oil spill in New Zealand result in pollution damage that exceeds the $377 million of compensation currently available under the 1992 Fund Convention,
the Crown could be exposed to costs, particularly for oil spill response and clean-up. Legal action would be necessary to recover unpaid costs which may result in a shortfall for the Crown.

25. On balance, New Zealand’s accession to the Supplementary Fund Protocol provides New Zealand access to an inexpensive global insurance scheme for oil tanker spills. Accession to the Supplementary Fund Protocol ensures there are funds available to provide compensation for an oil tanker spill in New Zealand, reducing the financial risk to the Crown and third parties. The costs associated with this insurance are minor, and are appropriate to the level of risk that New Zealand is exposed to from the transportation of oil.

Costs to New Zealand of compliance with the Supplementary Fund Protocol

26. The most significant factors that determine the high costs of oil spills are the characteristics of the spill and spill locations. Costs are most affected by the:

- contamination of highly concentrated fishing and tourism areas
- time taken for the oil to spill (e.g. slow or periodic leaks from a sunken or stricken tanker)
- difficulty and time taken to clean up the oil spill.

27. The costs associated with an oil tanker spill will be determined by the level of response and effort to clean up any spilled oil. Responding to a large sized oil spill is likely to be costly.

28. Acceding to the Supplementary Fund Protocol may result in increased costs to oil importers, depending on claims made to the Supplementary Fund. There are currently four companies (BP Oil, Chevron NZ, Mobil Oil NZ, and Z Energy) importing oil to New Zealand.

29. If a spill requiring compensation from the Supplementary Fund does occur, New Zealand oil importers’ contribution to compensation payments would be 0.53 percent of the compensation provided to the Supplementary Fund Protocol member country within which the spill occurred. This is the proportion of total Supplementary Fund Protocol member States’ oil imports that would be represented by New Zealand’s current imports.

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7 In 2012, New Zealand imported 5.608 million tons of oil. This represents 0.53 percent of the 1.045 billion tons of oil imported by Supplementary Fund Protocol member countries.
30. Should New Zealand accede to the Supplementary Fund Protocol, New Zealand oil importers would only be required to pay a supplementary levy on their share of imported oil, when there is a spill requiring compensation.

31. To ensure adequate responsibility by ship owners, an international group of protection and indemnity insurers representing 90 percent of the world’s ocean-going tonnage voluntarily agreed to pay half of the compensation paid by the Supplementary Fund Protocol, where the tanker ship is insured by one of its members (the Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA)).

32. Should a spill occur globally requiring the maximum compensation of $1.392 billion, New Zealand oil importers would be required to pay:

I. $2.709 million should the tanker be part of TOPIA

II. $5.418 million should the tanker not be part of TOPIA

Cost scenarios

33. To assess the potential cost impact on New Zealand oil imports from increased levies as a result of becoming a party to the Supplementary Fund Protocol, two cost scenarios over a 10-year period have been modelled. The costs are based on spills requiring the maximum $1.392 billion available from the Supplementary Fund Protocol and 75 percent of the maximum ($1.044 billion).

34. These are examples only and do not reflect estimated or statistically probable spill frequencies. The scenarios model spill occurrence to be significantly more frequent than what has occurred historically (there have been four spills that have exceeded the 1992 Fund Convention within the last 14 years, although all occurred either before the Supplementary Fund Protocol was established or in non-member states). The two scenarios are summarised in the following table with further information provided in the appendix.
Summary of modelled spill scenarios and expected costs

<table>
<thead>
<tr>
<th></th>
<th>Scenario A (3 spills over 10 years)</th>
<th>Scenario B (6 spills over 10 years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spills requiring maximum compensation available ($1.392 billion)</td>
<td>1 covered by TOPIA</td>
<td>1 covered by TOPIA 1 not covered by TOPIA</td>
</tr>
<tr>
<td>Spills requiring 75 percent of maximum compensation available ($1.044 billion)</td>
<td>2 covered by TOPIA</td>
<td>3 covered by TOPIA 1 not covered by TOPIA</td>
</tr>
<tr>
<td>Total cost to New Zealand per year</td>
<td>$0.626 million</td>
<td>$1.703 million</td>
</tr>
<tr>
<td>Percentage increase in pump price for fuel based on notional cost of $2.16 per litre of petrol</td>
<td>0.013 percent cost increase</td>
<td>0.036 percent cost increase</td>
</tr>
</tbody>
</table>

35. Based on these scenarios, New Zealand’s annual costs are estimated to be between $0.626 million and $1.703 million per year. This would represent an increase in the pump price of petrol of between 0.029 cents per litre and 0.078 cents per litre (i.e. 1/35th and 1/13th of a cent per litre respectively), assuming the costs are passed on to consumers.

36. The government could fund the cost to the Supplementary Fund, to avoid the oil import industry having to contribute to the Supplementary Fund. However, this option has not been considered as the potential fuel cost increase is marginal (modelled at between 1/35th and 1/13th of a cent per litre) and is not expected to have a significant impact on consumers. In addition, voluntary government contributions or subsidies are likely to be complicated administratively and in contravention of the principle of ‘user (or beneficiary/causer) pays’.

37. If New Zealand does not accede to the Supplementary Fund Protocol and a spill occurs that exceeds the $377 million of compensation currently available, the Crown may need to fund the cost shortfall.

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8 See appendix for details.
Advantages and disadvantages of acceding to the Supplementary Fund Protocol

**Advantages**

38. By becoming a party to the Supplementary Fund Protocol, New Zealand would be eligible to receive an increased amount of compensation for responding to an oil spill from an oil tanker. This would provide access to total compensation of up to the $1.392 billion (including the first two levels) for any one incident, without needing to prove fault.

39. The increased compensation could be used to prevent or minimise pollution damage, property damage, or direct economic loss from interruption of business or fishing operations. The compensation would also cover actions taken to restore the environment.

40. New Zealand’s accession to the Supplementary Fund Protocol would also be beneficial to the maintenance of New Zealand’s standing internationally. The Protocol is in force for 29 states. It would support the New Zealand “brand” as a responsible maritime regulator and constructive participant in the international maritime system. Excluding land-locked states, New Zealand is among six Organisation for Economic Co-operation and Development (OECD) countries that have not acceded to the Supplementary Fund Protocol (New Zealand, Chile, Iceland, Israel, Mexico and the United States, which has its own system).

**Disadvantages**

41. Becoming a party to the Supplementary Fund Protocol would require New Zealand oil importers to make a contribution to the Supplementary Fund when there is an oil tanker spill in a country that has signed up to the Supplementary Fund Protocol that exceeds the compensation available under the 1992 Fund Convention. This cost may be passed on to consumers, although the increase is very marginal and is not expected to have a significant impact on consumers.

42. Certain environmental impacts, such as losses of ecosystems or wildlife, are outside the scope of the compensation regimes under the 1992 Fund Convention and the Supplementary Fund Protocol.
43. Should New Zealand oil importers not fulfil their obligations to communicate information on oil receipts, and this results in a financial loss for the Supplementary Fund, the New Zealand Government would then be liable to compensate the Supplementary Fund for the loss. At present, New Zealand communicates information on oil receipts in accordance with the 1992 Fund Convention and any communication made under the 1992 Fund Convention is deemed to be made under the Supplementary Fund Protocol.

**Overall assessment of the advantages and disadvantages to New Zealand**

44. On balance, New Zealand’s accession to the Supplementary Fund Protocol would ensure that there are increased funds available to provide compensation for an oil tanker spill in New Zealand. The costs associated with the Supplementary Fund Protocol would be relatively minor, and are appropriate to the level of risk that New Zealand is exposed to from the transportation of oil.

Do you agree or disagree that New Zealand should accede to the Supplementary Fund Protocol? If you disagree, please explain why.
## Appendix – modelled spill scenarios and cost implications.

### Scenario A

Description: Three international oil spills requiring compensation from the Supplementary Fund Protocol

Spills costs: 1 spill at $NZ 1,392m (max) and 2 spills at $1,044m (75% of max)

All spills are covered by the International Group of P&I Clubs and the Tanker Oil Pollution Indemnification Agreement

<table>
<thead>
<tr>
<th>Impact of each spill ($NZ million)</th>
<th>Cost of spill</th>
<th>Covered by first two tiers</th>
<th>Covered by TOPIA</th>
<th>Covered by supp fund</th>
<th>NZ share (%)</th>
<th>NZ share ($m)</th>
<th>Instances</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered by TOPIA</td>
<td>1,392</td>
<td>377</td>
<td>507.616</td>
<td>507.616</td>
<td>0.53%</td>
<td>2.709</td>
<td>1</td>
<td>2.709</td>
</tr>
<tr>
<td>Covered by TOPIA</td>
<td>1,044</td>
<td>377</td>
<td>333.62</td>
<td>333.616</td>
<td>0.53%</td>
<td>1.780</td>
<td>2</td>
<td>3.561</td>
</tr>
</tbody>
</table>

**Total Cost Impact for New Zealand ($NZ million)**

<table>
<thead>
<tr>
<th>NZ share over 10 years</th>
<th>Annual share over 10 years</th>
<th>Million tonnes of oil imported each year</th>
<th>Annual cost of imported oil</th>
<th>Increase in cost of oil (%)</th>
<th>Increase in costs (c/l at the petrol pump)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$6.270</td>
<td>$0.627</td>
<td>5.608</td>
<td>$4,700</td>
<td>0.013%</td>
<td>0.029</td>
</tr>
</tbody>
</table>

### Scenario B

Description: Six international oil spills requiring compensation from the Supplementary Fund Protocol

Spill costs: 2 spills at $NZ 1,392m (max) and four spills at $1,044m (75% of max)

1 of the max sized spill and 3 of the 75% sized spills are covered by the International Group of P&I Clubs and the Tanker Oil Pollution Indemnification Agreement

<table>
<thead>
<tr>
<th>Impact of each spill ($NZ million)</th>
<th>Cost of spill</th>
<th>Covered by first two tiers</th>
<th>Covered by TOPIA</th>
<th>Covered by supp fund</th>
<th>NZ share (%)</th>
<th>NZ share ($m)</th>
<th>Instances</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered by TOPIA</td>
<td>1,392</td>
<td>377</td>
<td>507.616</td>
<td>507.616</td>
<td>0.53%</td>
<td>2.709</td>
<td>1</td>
<td>2.709</td>
</tr>
<tr>
<td>Not covered by TOPIA</td>
<td>1,392</td>
<td>377</td>
<td>0</td>
<td>1015.232</td>
<td>0.53%</td>
<td>5.418</td>
<td>1</td>
<td>5.418</td>
</tr>
<tr>
<td>Covered by TOPIA</td>
<td>1,044</td>
<td>377</td>
<td>333.616</td>
<td>333.616</td>
<td>0.53%</td>
<td>1.780</td>
<td>3</td>
<td>5.341</td>
</tr>
<tr>
<td>Not covered by TOPIA</td>
<td>1,044</td>
<td>377</td>
<td>0</td>
<td>667.232</td>
<td>0.53%</td>
<td>3.561</td>
<td>1</td>
<td>3.561</td>
</tr>
</tbody>
</table>

**Total Cost Impact for New Zealand ($NZ million)**

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<tr>
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<th>Annual cost of imported oil</th>
<th>Increase in cost of oil (%)</th>
<th>Increase in costs (c/l at the petrol pump)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$17.029</td>
<td>$1.703</td>
<td>5.608</td>
<td>$4,700</td>
<td>0.036%</td>
<td>0.078</td>
</tr>
</tbody>
</table>
Notes

1. The International Group of P&I Clubs represent approximately 90% of the world’s ocean-going tonnage (source: http://www.igpandi.org)


3. NZD/SDR (at 10/01/2014) is 1.856. 203 million SDR = NZ$377 million; 750 million SDR = NZ$1.392 billion

4. Tanker Oil Pollution Indemnification Agreement (TOPIA) which provides that ship owners will contribute 50% of the total costs of compensation in respect of payments made by the Supplementary Fund, where the tanker ship is insured by one of the members of the International Group of P&I Clubs. (source: A joint IPIECA/ITOPF Publication, February 2007, Oil spill compensation - a guide to the international conventions on liability and compensation for oil pollution damage, www.ipieca.org/system/files/publications/Compensation_1.pdf)

5. For 2010 (source: IOPC Contributing oil received in the calendar year 2012 (as reported by 25 November 2013))

6. Based on a barrel of oil weighing around 139kg (7.2 barrels per tonne), and average of oil price per barrel for West Texas and Brent of US$91 and US$106 on 13/01/2014 at NZD/USD 0.838

7. Based on $2.16 for regular 91 petrol