



## December 2011 – Shipping Update – New Zealand Oil Pollution Fund

The grounding of the container vessel *Rena* early in the morning of 5 October 2011 and the subsequent discharge of a portion of her bunkers into the sea has given rise to much rhetoric regarding New Zealand's oil pollution laws. One aspect which has been the subject of comment is the nature and scope of the New Zealand Oil Pollution Fund (NZOPF).

Just what is the NZOPF and how is it funded?

The NZOPF is constituted under part 24 of the Maritime Transport Act 1994 (MTA) and is administered by Maritime New Zealand (MNZ). Under s.331 of the MTA the NZOPF is to be applied for the following purposes:

- To meet the costs of the Oil Pollution Advisory Committee.<sup>1</sup>
- To purchase plant, equipment, or any other thing to make preparations for, or to implement, or assist in implementing, any responses to marine oil spills.
- To meet the reasonable costs of MNZ (including the costs incurred by the Director and the National On-Scene Commander) in controlling, dispersing, and cleaning up any marine oil spill.
- To meet the costs of services associated with planning and responses for marine oil spills that are services provided under a contract or arrangement with MNZ or the Director.
- To meet the costs of MNZ in the performance of the other functions and duties and the exercise of other powers of MNZ, the Director, and the National On-Scene Commander under Part 23 of the MTA and in taking measures to avoid marine oil spills.
- To meet the reasonable costs of a regional council (including the costs of its regional on-scene commander) in investigating a suspected marine oil spill and in controlling, dispersing, and cleaning up any marine oil spill.
- To meet the reasonable costs of any regional council in the performance of the other functions and duties and the exercise of the powers of the regional council and its regional on-scene commander under Part 23 of the MTA and in taking steps to avoid marine oil spills.
- To meet the reasonable costs incurred by any person, in assisting any animal or plant life affected by any marine oil spill, with the consent or in accordance with the requirements of an on-scene commander.
- To meet any other expenditure for which the MTA contemplates that reimbursement may be made from the NZOPF.

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<sup>1</sup> The Oil Pollution Advisory Committee (OPAC) is a consultative body mandated under the MTA. Its membership is comprised of the Director of MNZ together with representatives from the shipping, oil and gas exploration and production, oil refining and distribution and fishing industries; operators of port facilities; regional councils; MNZ and various other Government entities. OPAC provides advice to MNZ in relation to the New Zealand Marine Oil Spill Response Strategy, the fixing and levying of Oil Pollution Levies, the use of the NZOPF and any other matters related to marine oil spills as required from time to time by the Minister of Transport or the Director of MNZ.

- To meet such other expenditure, or classes of expenditure, related to marine oil spills, as may from time to time be approved by the Governor-General by Order in Council.

The recipient of funds paid from the NZOPF towards MNZ or Regional Council clean-up costs, or to meet the costs of dealing with oil affected wildlife where that is done at the request of or with the consent of an on scene commander, must make reasonable efforts to recover those costs from the person causing the spill.

The NZOPF is funded by levies on owners and masters of contributing ships, and the owners of contributing oil sites and oil. The levies are presently set out in the Oil Pollution Levies Order 1998. In the shipping context the rate is presently set by reference to a vessel's tonnage and the nature of its operations (i.e. New Zealand fishing boats, coastal trade ships and other contributing ships). Coastal trade ships and New Zealand fishing boats are levied annually on 1 July each year. Other contributing vessels must pay on a per entry into a New Zealand port basis, at a rate of 1.11 cents per gross tonne of the relevant vessel plus 9.78 cents per tonne of persistent oil carried as cargo or 4.44 cents per tonne of oil (other than persistent oil) carried as cargo.

In December 2010 MNZ issued a "Review of Oil Pollution Levy Industry consultation document" (Review Document). In its executive summary the Review Document expressed the view that the current tonnage based levy system is "inequitable and not very effective"<sup>2</sup> and was generating revenues insufficient to cover the costs of the NZOPF. Two options are proposed: retaining a gross tonnage based model and creating a threat based model to determine cost allocations between relevant sectors. The latter is favoured by the Review Document.

At the time the MTA was introduced (1994) the NZOPF had reserves of \$12 million. It appears that at that stage the level of reserves was deemed too high and that they should be reduced. As of 2009/2010 the level of reserves stood at approximately \$4.2 million. MNZ advised the Minister of Transport that the reserve should be set at \$2 million and the reserve has been set at that level by the Minister of Transport.<sup>3</sup>

According to the Review Document the following overriding factors must be taken into account in determining the required level of funding for the NZOPF<sup>4</sup>:

- "There should be sufficient funds to meet any reasonably predictable level of operating and capital expenditure for oil spill preparedness.
- Cash reserves should be maintained in the NZOPF to meet contingency spending."

Submissions on the Review Document have been received by MNZ, however given the public outcry following the Rena grounding it will be interesting to see what impact the casualty may have on the ultimate outcome of the review.

**For further information contact:**

Karl Stolberger or Barbara Versfelt  
[kfs@lojo.co.nz](mailto:kfs@lojo.co.nz) or [bcv@lojo.co.nz](mailto:bcv@lojo.co.nz)

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<sup>2</sup> Review Document p.1

<sup>3</sup> Review Document p.4-5

<sup>4</sup> Review Document p.5