

**THE CONTROL OF MARINE OIL POLLUTION**  
**IN NEW ZEALAND**  
**A REVIEW OF THE SYSTEM**

*Office of the*  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
**Te Kaitiaki Taiao a Te Whare Pāremata**

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## PREFACE

The principal finding of this review is that New Zealand is currently not well prepared for a major oil spill.

To date, New Zealand has been lucky - it has not had to deal with a major oil spill in the marine environment. However there is a very real risk of such a spill occurring. The risk is associated, in the main but not exclusively, with the movement of oil tankers within New Zealand coastal waters. The potential for an accident to occur is illustrated by reference to the groundings of the Wahine in 1968, the Pacific Charger in 1981 and the Mikhail Lermantov in 1988.

There are two important components of risk management - *preventive measures* (e.g. safety standards, navigation procedures) and *preparation* for an event (e.g. oil pollution contingency planning, clarification of responsibilities, equipment purchase, training). This report focuses on preparation for the event.

A national oil pollution contingency plan is potentially the principal means of co-ordinating international, central and local government, industry and public response to a major oil spill event in New Zealand waters.

Progress with the preparation of the New Zealand Oil Pollution Contingency Plan has been less than satisfactory. There have been problems with the legislation and with Maritime Transport's policy development process. This report identifies a number of policy issues which need to be addressed by Maritime Transport as a matter of urgency.

I am pleased to record that Maritime Transport has already taken steps to address several of the recommendations in my report. On 7 May 1991, Maritime Transport convened an Oil Pollution Seminar attended by representatives of government and non-government agencies, the oil industry and environmental groups. At the seminar, Maritime Transport stressed its commitment to completing the New Zealand Oil Pollution Contingency Plan and the Minister of Transport advised participants that he was seeking parliamentary priority for a Marine Pollution Act Amendment Bill to be introduced to the House next year. An outcome of the seminar was the establishment of an Oil Pollution Planning Committee to further the preparation of the New Zealand Oil Pollution Contingency Plan.

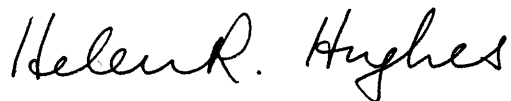
I have two main concerns in relation to future progress.

The first of these relates to the relationship between the activities of the Oil Pollution Planning Committee and the proposed review of the Marine Pollution Act 1974. The Committee will have to work within the constraints of existing legislation. However, I believe that current legislation is sufficiently flexible to enable most of the problems identified in this report to be resolved. I think it is important that the Oil Pollution Planning Committee address these problems and seek their resolution by way of recommendations to the Minister of Transport and Maritime Transport. I suggest that Maritime Transport should waste no time in setting up a working group to review marine pollution, with one of its first tasks being to assess and advise the Oil Pollution Planning Committee on the implications (for contingency planning) of the Government's

ratification of the SPREP Convention, its proposed ratification of the MARPOL Convention and its possible ratification of the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990. Some cross-membership of the Committee and any legislation review working group would clearly be desirable. I am disappointed that amending legislation is not on the 1991 timetable. A Marine Pollution Amendment Bill should be given priority in the 1992 legislative programme.

My second concern relates to the need to take into account, and build on, work that has already been undertaken. For example, I believe that the task of risk assessment and the related task of deciding the most cost-effective positioning of equipment, would be greatly assisted by reference to the New Zealand Coastal Atlas (prepared with oil spills in mind) and the recently completed Coastal Resources Inventory. Similarly, the report of a working party in 1980 to review the Marine Pollution Act 1974 contains recommendations aimed at enabling MARPOL to be ratified. The report is a logical starting point for the current review of legislation proposed by the Minister of Transport.

I have included comments on my *draft* report, from relevant agencies, in Appendix IV. I have taken this step because I believe the comments include many useful points which should be noted by Maritime Transport, the Oil Pollution Planning Committee and by those assigned responsibility for reviewing the marine pollution legislation.

A handwritten signature in cursive script that reads "Helen R. Hughes".

**Helen R Hughes**  
**Parliamentary Commissioner for the Environment**

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## **EXECUTIVE SUMMARY**

This report presents the results of an independent review, by the Parliamentary Commissioner for the Environment, of the system established by Government to control marine oil pollution in New Zealand.

The report has, in the main, been written as if legal responsibility for the control of oil pollution in New Zealand will remain with the Crown and with regional councils. However, another option involving the transfer of responsibilities to the oil industry, which if pursued would render many of the recommendations in this report redundant, is identified at the end of the report (section 3.10).

Preparation for the possibility of a major oil spill is, in many respects, a classic risk management problem. Risk can be minimized and kept within acceptable limits through the development of appropriate strategies.

## **LEGAL AND INSTITUTIONAL ARRANGEMENTS**

Current legal and institutional arrangements for the administration of oil pollution control in New Zealand are far from satisfactory. The responsibilities of the Minister of Transport, the Ministry of Transport, regional councils and port companies need to be clarified.

### **Recommendation:**

1. That the Minister of Transport give high priority to a comprehensive review of the Marine Pollution Act 1974 with the aims, inter alia, of clarifying responsibilities for oil pollution control in New Zealand and incorporating the requirements of MARPOL (section 2.3).

## **THE NEW ZEALAND OIL POLLUTION CONTINGENCY PLAN - FUNCTION AND STATUS**

There is currently no statutory basis for a national oil spill contingency plan. Preparation of such a plan is potentially the principal means of co-ordinating international, central government, local government, industry and public response to a major oil spill event in New Zealand waters.

### **Recommendation:**

2. That the Minister of Transport consider providing a statutory basis for the preparation of a national oil pollution contingency plan, in a revised Marine Pollution Act (section 3.2).

Progress with the preparation of a comprehensive New Zealand Oil Pollution Contingency Plan has, for a number of reasons, been less than satisfactory.

**Recommendation:**

3. That Maritime Transport assign a high priority to the completion of the New Zealand Oil Pollution Contingency Plan and that it allocate resources and exercise management control accordingly (section 3.2).

**THE ADEQUACY OF EQUIPMENT**

Notwithstanding recent expenditure aimed at improving the quality and quantity of equipment for oil pollution control, it is clear that New Zealand (still) has a very limited response capacity in terms of the size of potential spills.

New Zealand's "target" response capacity is a 1500 tonne oil spill. Tankers travelling around the North Cape and into the Marsden Point Oil Refinery carry up to 120,000 tonnes of crude oil. Coastal tankers carry about 20,000 tonnes of oil or oil derivatives.

There is a political dimension to decisions about response capacity relating to the degree of risk considered acceptable, given resource constraints.

**Recommendation:**

4. That the Minister of Transport advise Cabinet of the risks associated with a 1500 tonne response capability, and with other levels of capability, and seek confirmation of the response capability considered desirable for New Zealand's ports and coastal waters (section 3.3).

In the event of a major oil spill, New Zealand would be reliant on assistance from overseas. Current arrangements for such assistance are informal. It is essential that *reliable* arrangements be developed between New Zealand and other countries to supply equipment to each other in the event of a major spill.

**Recommendation:**

5. That the Minister of Transport take steps to *formalize* arrangements for assistance in the event of a major oil spill, with the relevant authorities in Australia and/or in other countries (section 3.3).

The national stockpile contains little or no equipment for assisting with the clean-up of oil that has reached the shore.

**Recommendation:**

6. That Maritime Transport review its current capacity to deal with the clean-up of oil that has reached the shore and purchase equipment as appropriate (section 3.3).



There is a need for agreement between Maritime Transport, regional councils and the oil industry on the extent to which equipment needs to be standardized to ensure compatibility.

**Recommendation:**

7. That Maritime Transport review the need for standardization of equipment, in consultation with regional councils and the oil industry (section 3.3).

**THE DISTRIBUTION OF EQUIPMENT**

The location of oil pollution control equipment within New Zealand is important because the essence of dealing with an oil spill is speed of response. Spills need to be *contained* to facilitate clean-up and to prevent oil reaching the coastline.

The present distribution of equipment does not appear to reflect the rapid response imperative or the real distribution of risk.

**Recommendation:**

8. That Maritime Transport seek specialist advice on the probability of an oil spill in different parts of New Zealand, the likely movement of a spill and the relative sensitivity of different stretches of coastline, with a view to deciding priorities for the positioning of equipment (section 3.4).

If a decision is taken to relocate part of the national stockpile to places like Marsden Point, Port Taranaki and Lyttelton, there may be some merit in locating the "back-up" equipment in Wellington rather than Auckland.

**Recommendation:**

9. That Maritime Transport review the appropriateness of Auckland as a repository for any residual stockpile of equipment (section 3.4).

**THE ADEQUACY OF HUMAN RESOURCES**

There is currently a serious shortage of adequately trained personnel at all levels of the response organisation.

**Recommendation:**

10. That Maritime Transport give high priority to the training of in-house staff and (then) to the implementation of appropriate training programmes for regional council, port company and industry personnel (section 3.5).

## **ROLE OF REGIONAL COUNCILS WITHIN THE NATIONAL OIL SPILL RESPONSE STRATEGY**

The Marine Pollution Act 1974 does not adequately specify the role of regional councils in oil pollution control. The respective roles of Maritime Transport and regional councils need to be reviewed and clarified in the context of related policy issues such as the distribution of equipment and the source of funding for equipment and regional contingency plans.

### **Recommendation:**

11. That the Minister of Transport, in consultation with regional councils, the Minister of Local Government and the Minister for the Environment, review and clarify the responsibilities of regional councils in relation to oil pollution control and ensure that the Marine Pollution Act 1974 is amended accordingly (section 3.6).

Given the "high risk" nature of port areas and the advantages of rapid response and local knowledge, there would appear to be merit in confirming regional councils in the role of operations managers.

### **Recommendation:**

12. That the Minister of Transport, in consultation with regional councils, consider the option of assigning responsibility for implementation of Section II (operations) of the New Zealand Oil Spill Contingency Plan to regional councils (section 3.6).

### **Recommendation:**

13. That the Minister of Transport consider providing a statutory basis for the preparation of regional oil pollution contingency plans (section 3.6).

### **Recommendation:**

14. That the Minister of Transport, in consultation with regional councils, consider extending the coverage of proposed regional oil spill contingency plans to include waters outside harbour limits (section 3.6).

There may be some merit in regional councils preparing regional oil pollution contingency plans as sections of coastal management or regional civil defence plans.

## **EQUITY OF LEVY APPLICATION**

Oil pollution levies are currently imposed only on shipping companies.

**Recommendation:**

15. That, on equity grounds, the Minister of Transport consider whether an oil pollution levy should be payable by companies or individuals owning or operating exploration equipment, drilling equipment, production platforms, pipelines, land-based storage tanks (section 3.7).

**ADMINISTRATION OF CROWN BANK ACCOUNT (OIL POLLUTION LEVIES)**

There is an agreement between the Treasury and Maritime Transport that the Crown Bank Account which contains oil pollution levy monies is to be maintained at a *minimum* level of \$8 million to provide for the annual cost of Maritime Transport's oil pollution activities and the *costs associated with a major oil spill*. However, there is a case for making more of the fund available now to establish basic capabilities. In the event of a major oil spill, it would be more important to have adequate equipment, training and contingency plans in place than to have money in the Account.

**Recommendation:**

16. That the Ministry of Transport and the Treasury review the appropriateness of maintaining the Crown Bank Account at a level of \$8 million or more (section 3.8.2).

There has been a debate between regional councils, the oil industry and Maritime Transport about whether or not the Marine Pollution Act enables oil pollution levy monies to be used for reimbursing regional councils for expenditure on equipment. However, there appears to be nothing in law preventing Maritime Transport from purchasing equipment and allocating it to regional councils for their use, subject to adequate maintenance. Ownership of the equipment would remain with the Crown.

**Recommendation:**

17. Either that Maritime Transport seek an amendment to the Marine Pollution Act 1974 to empower the Minister to reimburse regional councils, from the Crown Bank Account, for the cost of equipment purchased for oil pollution control purposes.

or

That Maritime Transport purchase and allocate equipment to regional councils in accordance with the distributional needs (for equipment), identified in the revised New Zealand Oil Pollution Contingency Plan (section 3.8.3).

One of the consequences of the impasse over funding of regional equipment is that some regional councils have passed bylaws imposing dues on vessels using harbours, for the purposes of raising money for equipment. The New Zealand Shipping Federation is

concerned at the potential for its members to be taxed three times for oil pollution - that is, through the Marine Pollution Act levy, port company dues and regional council dues.

**Recommendation:**

18. That Maritime Transport take steps, in consultation with regional councils, port companies and oil companies, to rationalize current arrangements for oil pollution taxes (section 3.8.3).

Maritime Transport has concerns about its ability to access the oil pollution levies fund, as and when required, under current arrangements for management of the Crown Bank Account. There may be a case for providing Maritime Transport with more management flexibility with respect to the operation of the Account.

**Recommendation:**

19. That the Minister of Finance and the Minister of Transport review the appropriateness of current arrangements for operation of the Oil Pollution Crown Bank Account taking into account the fact that the money in the Account is derived from a special purpose levy, not from taxation revenues (section 3.8.4).

**MEMBERSHIP OF THE OIL POLLUTION ADVISORY COMMITTEE**

Given the scope of the work currently being undertaken by the Oil Pollution Advisory Committee, there would appear to be considerable merit in widening its membership.

**Recommendation:**

20. That the Minister of Transport widen the membership of the Oil Pollution Advisory Committee to include representation from the oil exploration industry, regional councils, Ministry for the Environment, and the Department of Conservation (section 3.9).

**OPTION OF TRANSFERRING OIL POLLUTION RESPONSIBILITIES TO OIL INDUSTRY**

The option of putting responsibility for oil pollution control firmly into the hands of the oil industry, subject to the establishment of standards by Government, needs to be considered.

**Recommendation:**

21. That the Treasury and the Ministry for the Environment, in consultation with the Ministry of Transport, regional councils, and the oil industry, consider the implications of transferring responsibility for the containment and clean-up of oil spills from the Crown and regional councils to the oil industry and report their findings to Government (section 3.10).

## **1.0 INTRODUCTION**

### **1.1 Purpose of report**

The purpose of this report is to:

- inform Parliament as to New Zealand's current state of preparedness for a major oil spill;
- identify actual or potential constraints on the operation of the system that has been established for the control of oil pollution;
- deliver advice on remedial action as appropriate.

### **1.2 Authority for investigation**

The investigation was undertaken in terms of section 16(1)(a) of the Environment Act 1986 which empowers the Parliamentary Commissioner for the Environment to review the system of agencies and processes established by Government to manage the allocation, use and preservation of natural and physical resources and to report the results of any such review to the House of Representatives and to any other bodies or persons considered appropriate.

### **1.3 Background**

The effect of large-scale oil spillages on the environment was first seen in 1967 when the tanker *Torrey Canyon* was wrecked off the Cornish coast releasing 117,000 tonnes of crude oil to the sea.<sup>1</sup>

Oil spill contingency planning in New Zealand was initiated in the aftermath of the *Torrey Canyon* disaster.<sup>2</sup>

The Marine Pollution Act 1974 established a legislative base for the prevention and control of oil pollution in New Zealand waters. Under an amendment to the Act in 1977, oil pollution levies were imposed on certain classes of commercial shipping with levy moneys being paid into an Oil Pollution Trust Account. The Trust Account was to be used for the purchase of equipment for oil pollution control, training, and for meeting the cost of clean-up where the cost could not be recovered from the polluter.

In March 1989, the grounding of the supertanker *Exxon Valdez* in Prince William Sound, Alaska, and the subsequent release of 35,000 tonnes (232,000 barrels) of crude oil into the fragile ecosystem of the Sound again focused world attention on the dangers associated with bulk transport of oil by sea. The spill had a devastating effect on marine life. Clean-up costs have been put at \$1.28 billion.<sup>3</sup> The United States now plans to establish five coastal oil spillage response centres over the next five years at a cost of \$US800 million.<sup>4</sup>

In New Zealand, following the *Exxon Valdez* disaster, the four wholesale oil companies - BP, Shell, Mobil and Caltex - established an ad hoc committee called the Oil Industry Emergency Committee (later renamed the Marine Spills Task Force) with the aim of examining New Zealand's ability to deal with a major oil spill.

In late 1989, the Committee commissioned an American consultant, Gordon P Lindblom, to audit New Zealand's oil spill response capability. Lindblom found that the response capability was inadequate for spills other than small harbour incidents and that substantial increases in equipment and manpower were needed. He recommended that the oil industry take the lead in proposing that a joint industry and government group be formed to address the total response situation.<sup>5</sup>

In early 1990, in response to requests from the oil industry, the Oil Pollution Advisory Committee established a Working Group to undertake a comprehensive review of the nation's marine oil spill response needs and to develop a national contingency plan capable of meeting response objectives.

In December 1989, in her review of the Maui Stage II Development Environmental Impact Report Addendum, the Parliamentary Commissioner for the Environment recommended that:

"The Taranaki Regional Council ... prepare a regional oil spills response plan ..."

and that:

"The Minister of Transport and the Minister for the Environment examine the need for a review of administration and resources for response to oil spills in New Zealand, bearing in mind the recent changes to regional and central government responsibilities and the Resource Management Bill proposals."

During 1990 the Auckland Regional Council,<sup>6</sup> Northland Regional Council,<sup>7</sup> Taranaki Regional Council<sup>9</sup> and Bay of Plenty Regional Council<sup>9</sup> expressed concern about apparent shortcomings in the equipment available to deal with spills within harbour limits and the availability of funds for purchasing equipment.

This investigation was initiated in response to various expressions of concern from both the oil industry and regional councils. The nature of these concerns is elaborated over the following pages.

#### 1.4 Scope

This report deals only with the *control* (i.e. containment and clean-up) of oil spills within New Zealand's marine environment, and related issues. It is not concerned with the *prevention* of marine oil spills or with oil spills on land.

The full scope of the investigation can be determined by reference to the contents page.

### **1.5 Approach**

The investigation was conducted through a combination of: attendance at Working Party meetings as an observer, receipt of written and verbal advice from the Maritime Transport Division of the Ministry of Transport, discussions with government agencies and other interested parties (industry, and regional council representatives), and examination of relevant documents.

On 18 April 1991 a draft report was sent to the following agencies and individuals, for comment:-

- Maritime Transport Division of the Ministry of Transport
- Ministry for the Environment
- The Treasury
- Department of Conservation
- Taranaki Regional Council
- Mr P Dell, Bay of Plenty Regional Council  
(Regional Council spokesperson on oil pollution)
- Mr C A Robertson, Leader, Marine Spills Task Force  
(Oil industry)
- Mr M Ward, Environmental Affairs Manager, Fletcher Challenge, Energy and Resources Group (Oil industry)

The responses are included in Appendix IV of this report.

## **2.0 LEGAL AND INSTITUTIONAL ARRANGEMENTS FOR OIL POLLUTION CONTROL IN NEW ZEALAND**

### **2.1 Current law**

#### **2.1.1 International conventions**

The main international convention with respect to oil pollution, to which New Zealand is a signatory, is the International Convention for the Prevention of Pollution of the Sea by Oil 1954/1969 which covers the requirement to keep records and to make them available for inspection. New Zealand is also a party to the International Convention on Civil Liability for Oil Pollution Damage 1969 which permits the government to recover costs and damages arising from oil spills.

In May 1990, New Zealand ratified the SPREP (South Pacific Regional Environment Programme) Convention which envisages the development of a contingency plan for the South Pacific Region.

#### **2.1.2 Crown/Minister of Transport**

The Marine Pollution Act 1974 is the principal legislation dealing with the prevention and control of oil spills in New Zealand waters, and the means by which New Zealand gives effect to the international conventions referred to above. The Act is administered by the Maritime Transport Division of the Ministry of Transport. Under the Act, it is an offence to discharge oil to New Zealand waters from any source.

Part III of the Marine Pollution Act 1974 provides for the payment of oil pollution levies (by "contributing ships") into a Crown Bank Account. The purpose of the fund is to provide a source of money for the prevention, control and elimination of oil pollution. Section 29F of the Act sets out in detail the items and activities on which money from the fund may be expended (Appendix III).

Section 29G of the Act establishes an Oil Pollution Advisory Committee (OPAC) to advise the Minister on the rate or rates of oil pollution levies and related matters (section 3.9).

The Act does not clearly define the role of either the Minister or the Ministry of Transport with respect to the clean-up of oil spills. It does not specifically require the Minister or the Ministry to prepare a contingency plan, acquire clean-up equipment or undertake clean-up operations.

The Ministry of Transport has *assumed* responsibility for oil spills outside of harbour limits. It has prepared a National Oil Pollution Contingency Plan and it has purchased a certain amount of equipment. The Plan provides for a standing committee, the Oil Spills Action Committee (OSAC), to manage the Ministry's response to a spill.



### 2.1.3 Regional councils

Section 13 of the Marine Pollution Act 1974 provides that, where a harbour board (now regional council) or port company has inadequate equipment to deal with an oil spill, the Minister may *direct* it to provide adequate equipment. Where there has been an oil spill in a harbour, the Minister *may* direct the harbour board or port company to "deal with, clean up, remove or dispose of" the oil.

Section 29F(1)(b) of the Act provides for any harbour board (regional council) to recover the cost of clean up from the Crown Bank Account where it has not been able to recover the cost from the person responsible for the spill.

These two sections have been widely interpreted to mean that regional councils are responsible for, and should be prepared for, oil pollution control within harbour limits.

### 2.1.4 Oil industry

In this report, the term "oil industry" includes oil companies (explorers, producers, marketers) and shipping companies.

The oil industry has no statutory responsibility for the clean-up of oil spills.

However, under Part IV of the Marine Pollution Act 1974, oil companies or shipping companies are potentially liable for the cost of clean-up and for the cost of repairing or compensating for any damage arising from oil pollution. As a result of its exposure (to the risk of a major spill and ensuing adverse publicity), the oil industry has an interest in seeing that the relevant public authorities develop an adequate response capability.

## 2.2 Future law

The International Convention for the Prevention of Pollution of the Sea 1954/1969, which forms the basis for the oil pollution provisions of the Marine Pollution Act 1974, has been superseded by the Marine Pollution Convention 73/78 (MARPOL) which covers all aspects of marine pollution.

It is understood that the New Zealand Government intends to ratify this convention pending changes to domestic legislation. It was intended, initially, that the requirements of MARPOL be incorporated into the proposed Resource Management Act. However it is understood that MARPOL requirements will now be dealt with by way of amendments to the Marine Pollution Act 1974 and/or regulations to the Resource Management Act.

The SPREP Convention (above) may be overtaken by a more recent initiative - the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990 - promoted by the USA in response to the Exxon Valdez disaster.

The OPRC Convention would provide the basis for international co-operation in the event of a major oil spill. It also provides for the sharing of research and development information.

### **2.3 Discussion**

It is apparent, from the above, that current legal and institutional arrangements for the administration of oil pollution control in New Zealand are far from satisfactory. The responsibilities of the Minister of Transport, the Ministry of Transport, regional councils and port companies need to be clarified.

There is, in my view, a need for an urgent review of the Marine Pollution Act 1974. One of the objectives of any revision of the Act should be to incorporate the requirements of MARPOL which deals with many aspects of marine pollution, including oil pollution.

At the same time there will be an opportunity for the New Zealand Government to examine the implications of becoming a signatory to the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990.

#### Recommendation:

1. That the Minister of Transport give high priority to a comprehensive review of the Marine Pollution Act 1974 with the aims, inter alia, of clarifying responsibilities for oil pollution control in New Zealand waters and incorporating the requirements of MARPOL.

### 3.0 THE ISSUES

#### 3.1 Preamble

This chapter identifies a number of issues relevant to the ability of New Zealand to respond effectively to a major oil spill in marine waters.

Preparation for the possibility of a major oil spill is, in many respects, a classic risk management problem. In this regard, it is important to distinguish between two components of risk: the probability of occurrence; and the likely magnitude of loss or damage.

The risk of a serious oil spill occurring in New Zealand waters derives, in the main, from two related activities: the movement of tankers (import and export of crude oil, export of refined products, transport of refined products between ports); and the handling of crude oil and various products at the ports. A lower, albeit significant, level of risk is associated with the potential for blowout from an offshore exploration well or rupture of an under-sea pipeline.

Tanker accidents can arise from collision, grounding, structural failure, breakdown, fire and explosion. Overseas studies have shown that collision is the most common cause of accidents and that the number of tanker accidents is related to shipping traffic density.<sup>10</sup> This suggests that New Zealand is exposed to a relatively low risk from oil pollution. However, there is clearly no room for complacency. Overseas, grounding is also a common cause of tanker accidents.<sup>11</sup> Grounding is more related to weather conditions than shipping density and, in New Zealand, grounding is one of the main causes of shipping casualties.<sup>12</sup> Witness the groundings of the *Wahine* in 1968, the *Pacific Charger* in 1981 and the *Mikhail Lermantov* in 1988.

The likely magnitude of loss or damage from a grounded tanker is high for two reasons. First, unlike the situation with a collision, it is not uncommon to lose the entire load of a fully laden tanker as a result of grounding or structural failure.<sup>13</sup> Second, groundings invariably occur close to the shoreline, leaving little time for the protection of beaches and/or intertidal areas. The entrance to harbours is generally considered a high risk area.

The potential for loss or damage can be minimized through the purchase of adequate containment/clean-up equipment, the astute positioning of this equipment, the training of personnel and the preparation of contingency plans. In short, risk can be managed.

### 3.2 The New Zealand Oil Pollution Contingency Plan - function and status

#### Findings

There is currently no statutory basis for the preparation of a national oil spill contingency plan.

The Ministry of Transport initiated the preparation of the New Zealand Oil Pollution Contingency Plan in 1968. The Plan has been periodically revised since that date.

The current Plan, published in 1987, is acknowledged by Maritime Transport to be unsatisfactory in a number of respects.

The Lindblom report, referred to in section 1.3, was critical of the New Zealand Oil Pollution Contingency Plan on the grounds that it failed to establish clear goals for spill response, provided few details as to *how* things were to be done in the event of a spill and lacked critical information. Lindblom recommended that the Plan be extensively revised, updated and expanded.

The 1987 Plan is now being reviewed by a Working Group, under the direction of the Oil Pollution Advisory Committee. The Working Group was established in February 1990; its terms of reference are included in Appendix I.

The Working Group was to have presented its final report to the Oil Pollution Advisory Committee by 31 July 1990. This deadline was not met.

Maritime Transport has devised a process for the preparation of the national plan (Appendix II). However, there has been no formal timetable for the various stages of plan production. Maritime Transport agrees that this has been a deficiency and intends the Plan to be a specific output, with date of completion, in the Ministry of Transport's Corporate Plan for the 1991/92 year.<sup>14</sup>

The Working Group has met on four occasions since it was established. Much of the drafting work has fallen to the Auckland-based leader of the Group who has been only able to undertake the work on a part-time basis. Maritime Transport has also experienced problems obtaining the services of a suitable consultant as and when required.

The current position with the Plan is that a draft of Section I (policy) has been prepared and Working Group members have commented on it. Responsibility for furthering the draft has been transferred to Head Office, Ministry of Transport. Maritime Transport intends to retain the services of a crisis management consultant to assist with the preparation of the Plan. Section II of the Plan will contain operational and procedural elements.<sup>15</sup>

## Discussion

A national oil pollution contingency plan is potentially the principal means of co-ordinating international, central and local government, industry and public response to a major oil spill event in New Zealand waters. There may therefore be considerable merit in placing the preparation of such a plan on a statutory footing, with opportunity for public comment.

### Recommendation:

2. That the Minister of Transport consider providing a statutory basis for the preparation of a national oil pollution contingency plan, in a revised Marine Pollution Act.

Progress with the preparation of a comprehensive New Zealand Oil Pollution Contingency Plan has been less than satisfactory. There appears to be a number of reasons for this including inadequate allocation of resources to the task and inadequate management control.

### Recommendation:

3. That the Ministry of Transport assign a high priority to the completion of the New Zealand Oil Pollution Contingency Plan and that it allocate resources and exercise management control accordingly.

The preparation of a national oil spill contingency plan involves consideration of fundamental policy issues such as the respective roles of central and regional government in oil pollution control and the distribution of equipment throughout New Zealand. Some of these issues have yet to be adequately addressed (see following sections of this report). In this regard, the method employed by Maritime Transport to prepare the Plan appears to have been flawed. The satisfactory resolution of complex policy issues, including recognition of the possible need for changes to legislation, requires a considerable amount of skill and experience in policy analysis. For this reason, I believe that responsibility for the development of the Plan, particularly Section I, should have been with Head Office policy analysts from the outset.

There is a need to clarify the relationship between the national contingency plan, regional contingency plans (section 3.6) and contingency plans for individual installations. The Taranaki Regional Council has informed me that there is confusion over the roles of authorities who can require and approve contingency plans for individual operations such as oil rigs and pipelines (Appendix IV). Regional councils (water rights), the Ministry of Commerce (exploration licences) and the Department of Conservation (seabed consents) are able to request contingency plans and there is potential for a plan to be approved by one authority but not by another. This is a matter which needs to be addressed during the review of the New Zealand Oil Pollution Contingency Plan and/or the review of marine pollution legislation (section 2.3).

### 3.3 The adequacy of equipment

#### Findings

The Ministry of Transport maintains a "national stockpile" of equipment in Auckland. This equipment has been built up over the years using monies from the Oil Pollution Trust Account (now the Crown Bank Account). The stated purpose of the equipment is to combat a marine oil spill *outside* of harbour limits, but Ministry of Transport policy is to make it available to regional councils to assist in the containment and clean-up of harbour spills.

Regional councils and port companies maintain limited stocks of equipment in the main oil ports - Marsden Point, Taranaki, Auckland and Wellington. The other ports - Tauranga, Gisborne, Napier, Nelson, Lyttelton, Timaru, Dunedin and Bluff - have little or no equipment.

Oil companies possess limited supplies of equipment. The New Zealand Refining Company at Marsden Point has very little equipment. Petrocorp and Shell-Todd have equipment at Port Taranaki. Shell maintains a small stock of equipment at the Port of Auckland.

The Lindblom report was critical of the type, amount and location of equipment in New Zealand. Notwithstanding the purpose of the national stockpile, Lindblom found that most of the equipment had in fact been designed for work *inside* harbours and New Zealand, consequently, had very little capacity for dealing with spills outside harbours. He found no capability within the Ministry of Transport stocks for helping to clean-up shoreline spills. Lindblom concluded that New Zealand could not satisfactorily control a spill of more than about 250 tonnes. He recommended that the capacity of the stockpile be upgraded, through the purchase of booms and dispersants, to enable spills of a minimum of about 1500 tonnes to be handled.<sup>16</sup>

The Oil Pollution Advisory Committee subsequently adopted a "target" capability of 1500 tonnes *under favourable conditions*.

In July 1990, Government authorised capital expenditure of \$2.974 million for the 1990/91 financial year for the purpose of upgrading the national stockpile [A further \$1.226 million was authorized in December 1990, for operational expenses].

More equipment has been purchased. Maritime Transport advises that it is now at or close to the 1500 tonne target capability and that the acquisition of deeper booms has increased its capacity to handle spills in rougher weather.

Some oil companies have expressed reservations about the adequacy of a 1500 tonne response capacity. They point out that this is small compared with many countries and that tankers travelling around the North Cape and into the Marsden Point Oil Refinery carry up to 160,000 tonnes of crude oil with individual tanks holding up to 30,000 tonnes

of oil. Other vessels travelling around the New Zealand coastline, on a daily basis, carry about 20,000 tonnes of oil or oil derivatives.

In the event of a major oil spill, New Zealand would be reliant on assistance from overseas. The Ministry of Transport has an informal bilateral agreement with its counterpart in Australia relating to the supply of equipment in the event of a major spill.

There appears to be a difference of opinion between the Ministry of Transport and the oil industry as to the need and/or ability to standardize equipment. The Secretary for Transport has stated that "any opportunity for standardized equipment has long since gone, as there is already a wide variety in place."<sup>17</sup> This view is not shared by some of the major oil companies and by regional councils.

### **Discussion**

It appears that, although significant steps have recently been taken to improve the quantity and quality of equipment available for controlling oil spills, New Zealand still has a very limited response capacity in terms of its ability to deal with a major spill from a fully laden tanker.

It is difficult, if not impossible, to define the "right" capability for New Zealand. The 1500 tonne *minimum* capacity recommended by Lindblom equates to the amount of oil contained in one side tank of a coastal tanker. It seems to me that Lindblom could equally well have recommended a response capacity equivalent to two or more side tanks of a tanker, given the types of disasters that have occurred overseas.

In the United States the recently formed Marine Spill Response Corporation (ref section 3.10) plans to establish five regional centres, each with a capacity to contain and clean-up, to the maximum extent practicable, an oil spill of approximately 35,000 tonnes.<sup>18</sup>

There is a political dimension to decisions about response capacity relating to the degree of risk considered acceptable, given resource constraints. In this regard, I think it is important that politicians be fully acquainted with the risks associated with various response capabilities and that the final decision be a political one.

### **Recommendation:**

4. That the Minister of Transport advise Cabinet of the risks associated with a 1500 tonne response capability, and with other levels of capability, and seek confirmation of the response capability considered desirable for New Zealand's ports and coastal waters.

There is clearly a limit to the amount of equipment that can, or should, be put in place in a country the size of New Zealand with relatively low densities of tanker traffic. There are three important consequences of this. First, it is important that an appropriate portion of the money that *is* available for oil pollution control, be spent on equipment

(section 3.8.2). Second, it is important that the equipment that is purchased is deployed in the most cost-effective manner (section 3.4). Third, it is essential that *reliable* arrangements be developed between New Zealand and other countries to supply equipment to each other in the event of a major spill. Such arrangements would need to include transportation and customs clearance protocols.

Recommendation:

5. That the Minister of Transport take steps to *formalize* arrangements for assistance in the event of a major oil spill, with the relevant authorities in Australia and/or in other countries.

Maritime Transport has advised that ratification of the international conventions referred to in section 2.2 would enable New Zealand to take full advantage of the assistance that is potentially available. Under the SPREP Convention, a regional response plan is contemplated.

Depending on the outcome of negotiations with other countries, it may be necessary for the Ministry of Transport to review New Zealand's "target" response capability.

It is a matter of concern that the national stockpile contains no equipment for assisting with the clean-up of oil that has reached the shore. The thrust of Maritime Transport's policy is to prevent oil reaching the shore through containment and clean-up *at sea*. This would appear reasonable given that the major damages and costs associated with an oil spill are due to shoreline impact and that handling the oil at sea can be at least 15-20 times less costly than allowing it to come ashore.<sup>19</sup> However, given the potential for nearshore groundings in New Zealand waters (section 3.1) it would, in my view, be prudent for the national stockpile to contain at least some equipment for the clean-up of oil that has reached the shore. The New Zealand Oil Pollution Contingency Plan should set out strategies for dealing with the clean-up of oil from shorelines.

Recommendation:

6. That Maritime Transport review its current capacity to deal with the clean-up of oil that has reached the shore and purchase equipment as appropriate.

There is a need for agreement between Maritime Transport, regional councils and the oil industry on the extent to which equipment needs to be standardized to ensure compatibility.

Recommendation:

7. That Maritime Transport review the need for standardization of equipment, in consultation with regional councils and the oil industry.



### 3.4 The distribution of equipment

#### Findings

The location of oil pollution control equipment within New Zealand is important because the essence of dealing with an oil spill is speed of response. Spills need to be *contained* to facilitate clean-up and to prevent oil reaching the coastline. Dispersant, if it is to be used, needs to be applied within the first few hours to be effective.

Equipment should ideally be located so that it is available at the site of a spill within an hour or two of the spill occurring. Further, given the limited supply of equipment, its positioning should reflect the distribution of risk within New Zealand. To date no risk assessment - quantitative or qualitative - has been undertaken.

If a distinction is to be continued to be drawn between "national" and "regional" equipment (see below), there are two separate issues to be resolved - the distribution of the national stockpile of equipment and the extent to which each port needs to have its own equipment.

To date Maritime Transport policy has been to locate the bulk of the national stockpile in a warehouse in Auckland [some dispersant is kept in Whangarei, Wellington and Lyttelton]. The rationale for this policy has been based on a number of considerations including:- the proximity of Marsden Point [where all imported oil is discharged from tankers] and the Port of Auckland [the largest general cargo port], the availability of staff to maintain the equipment, the proximity of Hercules aircraft at Whenuapai and the difficulty [if the equipment had been dispersed] of bringing equipment together from a variety of locations in the event of a major spill.<sup>20</sup> Equipment is kept on nine fully loaded road trailers ready to be transported anywhere in New Zealand.

Industry and regional council representatives have been critical of Maritime Transport's policy, emphasising the importance of speed [it can take several hours to transport equipment from Auckland by road or aircraft to parts of New Zealand] and pointing out that New Zealand's harbours are the "high risk" areas. They favour a more regionalized approach to the distribution of equipment but acknowledge the need for some kind of "stockpile" for back-up purposes.

Lindblom recommended that the Auckland stockpile be partially decentralized with some *new* equipment being placed at Whangarei, New Plymouth, and Lyttelton - being the locations at the greatest risk from oil spills, in his assessment.<sup>21</sup>

In practice, the Auckland stockpile is seldom deployed\* whereas regional councils are frequently called upon to respond to spills, albeit minor ones (to date), within harbour limits.

\* on average about once every 2 years

Maritime Transport has advised that no formal decision has been taken on the option of decentralizing a portion of the national stockpile (via establishment of regional depots) and that this will be considered during the current review of the New Zealand Oil Spill Contingency Plan.

### **Discussion**

The desirable distribution of oil spill containment and clean-up equipment within New Zealand is a critical policy issue which, in my view, has yet to be adequately addressed.

It is a matter of concern that the present distribution of equipment does not appear to reflect the rapid response imperative or the distribution of risk.

### Recommendation:

8. That Maritime Transport seek specialist advice on the probability of an oil spill in different parts of New Zealand, the likely movement of a spill and the relative sensitivity of different stretches of coastline, with a view to deciding priorities for the positioning of equipment.

If a decision is taken to relocate part of the national stockpile to places like Marsden Point, Port Taranaki and Lyttelton there may be some merit in locating the back-up equipment in Wellington rather than Auckland.

### Recommendation:

9. That Maritime Transport review the appropriateness of Auckland as a repository for any residual stockpile of equipment.

In my view, final decisions concerning the future location of equipment should only be taken within the context of decisions about the relative roles of Maritime Transport and regional councils within the overall response strategy (section 3.6).

### **3.5 The adequacy of human resources**

#### **Findings**

Until recently, Maritime Transport has had only two staff members - one in Auckland and one in Wellington - assigned to oil pollution prevention/control. Both staff members have had additional duties to perform. Maritime Transport has advised that this does not reflect a low priority for oil pollution prevention and control within the Ministry and that, in the event of a spill, additional resources are available from its nationwide network of district offices.<sup>22</sup>

In the regions (regional councils/port companies) some 36 people are involved in oil pollution control on a part-time basis.<sup>23</sup>

In relation to the national stockpile of equipment, Maritime Transport has an agreement with the NZ Fire Service Commission whereby manpower would be made available to operate pumping systems. Most trained staff are based in Auckland but, in the past, exercises have been held with brigades in the main ports. Maritime Transport has arrangements with the armed forces whereby the Army will provide transport, tents, toilets, food and communication and the Air Force will provide Hercules aircraft to transport road trailers, prepacked with equipment, from Auckland.

The Lindblom Report identified the lack of permanent trained staff or a "strike team" to maintain, repair, and upgrade the equipment in the national stockpile and to travel with it to other parts of the country for training or response, as a "critical deficiency" in the New Zealand system. Lindblom recommended that there should be a full time response team of 3-5 persons, resident with the stockpile.<sup>24</sup>

Only one Ministry of Transport officer has had formal practical oil spill training and that training was undertaken in the United Kingdom, largely at the expense of the oil industry. Only one Ministry of Transport officer [the same one] has had "hands on" experience of an oil spill and that experience is limited.

None of the 36 people in the regions with oil control responsibilities have received adequate training (This situation is being rectified in Taranaki where the Taranaki Regional Council has recently employed an overseas expert to conduct a training course).

Maritime Transport has stated that policy on training of both Maritime Transport and other organisation's personnel has been constrained by lack of finance. It has conducted one day training seminars but exercises with equipment have had to be curtailed as a result of "user pays" policy requiring the Air Force to charge for the transport of equipment.<sup>25</sup>

Maritime Transport agrees the need for a small specialized unit to maintain equipment and to undertake training. To this end, it has recently employed an additional oil pollution officer and plans to employ another. It is intended that these officers be based in Auckland, conduct training programmes in Auckland and periodically undertake spill exercises in the regions.<sup>26</sup>

## **Discussion**

Questions about the desirable number and expertise of staff stationed at various locations can only be answered after resolution of key policy issues such as the distribution of equipment and the respective roles of central and local government and industry within the system.

It is apparent that within Maritime Transport, regional councils and port companies there is currently a serious shortage of people adequately-trained to deal with a major oil spill.

The recent employment by Maritime Transport of two additional staff members, whose responsibilities would include training, is a move in the right direction. These officers will, themselves, need to be trained at overseas training centres.

Recommendation:

10. That Maritime Transport give high priority to the training of in-house staff and (then) to the implementation of appropriate training programmes for regional council, port company and industry personnel.

### **3.6 Role of regional councils within the national oil spill response strategy**

#### **Findings**

The Marine Pollution Act 1974 does not make clear the role of regional councils in oil pollution control. As stated in section 2.1.3 of this report, the Act has been interpreted to mean that regional councils are responsible for, and should have adequate equipment to deal with, oil spills within harbour limits.

Notwithstanding the fact that the Minister may direct a regional council to provide "adequate" equipment to deal with such a spill, there is no formal agreement between the Minister and the regions as to the amount or type of equipment considered adequate.

The draft New Zealand Oil Pollution Contingency Plan 1990 states that it is the "responsibility" of regional councils to develop a Regional Oil Pollution Contingency Plan. However, there is no statutory basis for such a plan.

There are contingency plans for only three harbours in New Zealand - Wellington, Marsden Point and Taranaki. The Taranaki Regional Council has recently prepared a comprehensive plan for Port Taranaki.

The intended scope of regional contingency plans is not clear. The draft Plan, referred to above, states that the "role" of regional councils is to contain and clean up an oil spill *within their region*. However, Maritime Transport has advised that there are no proposals to give regional councils any additional responsibilities in respect of oil pollution outside the harbour limits of a port.<sup>27</sup>

#### **Discussion**

The current review of the New Zealand Oil Spill Contingency Plan provides an opportunity to review and clarify the respective roles of Maritime Transport and regional councils, in the context of resolving related policy issues such as the distribution of equipment (section 3.4) and the source of funding for equipment (section 3.8.3).

Recommendation:

11. That the Minister of Transport, in consultation with regional councils, the Minister of Local Government and the Minister for the Environment, review and clarify the responsibilities of regional councils in relation to oil pollution control and ensure that the Marine Pollution Act 1974 is amended accordingly.

In my view, regional councils should be considered an *integral* part of the national response strategy, not an adjunct to it. Maritime Transport is responsible for policy, international liaison and training. It has assumed responsibility for oil spills outside of harbour limits but, in practice, its operational role has been restricted to occasionally providing "back up" for regional councils. Given the "high risk" nature of port areas and the advantages of rapid response and local knowledge, there would appear to be merit in confirming regional councils in the role of operations manager. That is, making them responsible for implementation of section II (operations) of the New Zealand Oil Spill Contingency Plan, in addition to their day-to-day responsibility for minor spills. The On Scene Commander generally would be the Harbourmaster who is an employee of the regional council. Pursuit of this option would involve extending regional councils' current responsibility for oil pollution control to coastal waters outside harbour limits.

Recommendation:

12. That the Minister of Transport, in consultation with regional councils, consider the option of assigning responsibility for implementation of Section II (operations) of the New Zealand Oil Spill Contingency Plan to regional councils.

Each Regional Oil Spill Contingency Plan could contain strategies for dealing with spills of a range of sizes including a 1500 tonne spill or larger. If regional oil spill contingency plans are to be the principal means of implementing national policies and strategies, then they should probably be provided for in law.

Recommendation:

13. That the Minister of Transport consider providing a statutory basis for the preparation of regional oil pollution contingency plans.

Recommendation:

14. That the Minister of Transport, in consultation with regional councils, consider extending the coverage of proposed regional oil spill contingency plans to include waters outside harbour limits.

There may be some merit in regional councils preparing regional oil pollution contingency plans as sections of coastal management plans or regional civil defence plans.

### 3.7 Equity of oil pollution levy application

#### Findings

Under section 29B of the Marine Pollution Act 1974, oil pollution levies are imposed on all ships in excess of 100 gross tonnes whose principal means of propulsion is mechanical. Shipping companies pass on the charges to the owners of the cargoes being carried. The levies are applied in a differential way to collect more money from tanker operations than from other vessels.

The levies were introduced by section 3 of the Marine Pollution Amendment Act (No.2) 1977. At the time, the principle underlying the legislation was stated to be that "*potential polluters* should pay for the provision of a national stockpile of equipment ... as well as for the cost of cleaning up spills from unidentified sources."<sup>28</sup>

#### Discussion

It is apparent that a list of potential polluters would be more extensive than (just) the owners or operators of ships and would include exploration companies, drilling companies, platform operators, pipeline operators and the owners of land-based storage tanks.

#### Recommendation:

15. That, on equity grounds, the Minister of Transport consider whether an oil pollution levy should be payable by companies or individuals owning or operating exploration equipment, drilling equipment, production platforms, pipelines, landbased storage tanks.

### 3.8 Administration of the Crown Bank Account

#### 3.8.1 Background

Until recently, levies monies were paid into the Oil Pollution Trust Account. The fund so established was to cover the cost of Maritime Transport's oil pollution activities including the purchase of equipment, the storage and transport of equipment, travel, surveillance and meeting the cost of cleaning up spills when the costs were not recoverable [ref Appendix III for details].

The Public Finance Act 1989 converted the Trust Account into a Crown Bank Account with the same purpose. The Account contained \$12.79 million as at 30 December 1990.

There are three contentious areas with respect to administration of the Crown Bank Account viz the extent to which:-

- the Account can or should be depleted
- Maritime Transport is able or willing to use money in the Account to purchase equipment for the use of regional councils
- Maritime Transport's access to the Account is constrained by Government's financial arrangements

These issues are discussed under the following headings.

### 3.8.2 Drawdown of Crown Bank Account

#### Findings

There is a difference of opinion, between oil companies on the one hand and Maritime Transport and Treasury on the other, concerning the extent to which money in the Crown Bank Account should be spent on preparation for an oil spill.

Maritime Transport sees the Account as, inter alia, fulfilling the function of an insurance policy. The Minister of Transport has stated that one of the purposes of the Account is to bear the initial costs in cleaning up a major oil spill and that having this money available, immediately, would significantly increase the efficiency of clean-up.<sup>29</sup>

Treasury subscribes to the "insurance policy" thesis and in December 1990, acting on the instructions of Cabinet, it negotiated an agreement with Maritime Transport whereby the Crown Bank Account is to be maintained in real terms at a level of \$8 million or more to provide for the annual cost of the Ministry's oil pollution activities and the *costs associated with a major oil spill*.

Oil companies consider that the emphasis should be on *preparation* for a spill and that, if necessary, the Account should be drawn down to buy adequate equipment and/or to undertake preparatory activities such as contingency planning and training. They argue that the important thing is to have the capacity to *contain* a spill, thereby preventing environmental damage and achieving savings on clean-up costs.

#### Discussion

I have sympathy for the oil industry's position. In the event of a major oil spill it would, in my view, be more important to have adequate equipment training and contingency plans in place than to have money in the Account.

It appears to me that Treasury and Maritime Transport may have lost sight of the purpose of the fund. Nowhere in the Marine Pollution Act 1974 does it say that the purpose of the Account is to bear the initial costs of cleaning up a major oil spill. It was not intended that the fund be used to pay for the clean-up of oil spills, other than those

from unidentified sources. The source of substantial spills will invariably be apparent and the polluter has full liability for the cost of clean-up.

The proposition that the Account needs to be maintained at a minimum level of \$8 million in order to fund the costs associated with a major oil spill is dubious. It is estimated that over the five month period following the Exxon Valdez disaster, the cost of clean-up exceeded \$40 million per week.<sup>30</sup>

Money should undoubtedly be retained in the Account for contingencies but this should not be at the expense of making adequate preparation for a spill. If there is need for a "one off" set of expenditures to establish a certain level of capability, the expenditure can be recovered in subsequent years through temporary adjustments to the rate of levy.

Recommendation:

16. That the Ministry of Transport and the Treasury review the appropriateness of maintaining the Crown Bank Account at a level of \$8 million or more.

### **3.8.3 Ability to purchase equipment for regional councils**

#### **Findings**

To date all capital expenditure from the Oil Pollution Trust Account has been in relation to the purchase of equipment for the national stockpile.

There is a difference of opinion between regional councils and oil companies on the one hand and Maritime Transport on the other concerning the latter's ability to use money in the Crown Bank Account to purchase equipment for regional councils.

Maritime Transport, acting on the advice of its solicitor, had adopted the position that under current law the levies paid in the Crown Bank Account cannot be used to assist local authorities to provide equipment for the control of oil pollution.<sup>31</sup>

Regional councils and oil companies consider that a more generous reading of the Act would lead Maritime Transport to the conclusion that it does in fact have the discretionary ability to assist regional councils with the purchase of equipment.

One of the consequences of position adopted by Maritime Transport is that, pursuant to their powers under the Harbours Act 1950, some regional councils have passed or are in the process of passing bylaws imposing dues on vessels using harbours for the purpose of raising funds for the purchase of equipment.

The New Zealand Shipping Federation has objected to this on the grounds that its members are being taxed three times for oil pollution. That is, through the Marine Pollution Act levy, port company dues (commercial trade) and regional council dues.



The Federation has obtained a legal opinion supporting this objection.<sup>32</sup>

Some port companies do not concede that their dues contain an oil pollution component. However with the transfer of the commercial role of harbour boards to port companies, under the Port Companies Act 1988, harbour dues did not change and prior to that harbour boards had to have a means of raising revenue for the purchase of equipment for controlling oil pollution.

The legal opinion referred to above suggests that, in taking the action they have, the regional councils may not have acted reasonably or in accordance with the principles of natural justice. That is, in imposing the due, regional councils are not acknowledging that the companies are already paying oil pollution levies.

To date, companies have not paid the due imposed by regional councils - leaving open the question of how regional councils will be able to acquire equipment for oil pollution control.

The Minister of Transport has suggested that the dividends paid to regional councils by port companies are a potential source of funding.<sup>33</sup>

### **Discussion**

To date the legal advice given to Maritime Transport - and the advice passed on to regional councils by the Minister and Secretary for Transport - has focused on the alleged inability, under current law, of the Ministry to use money from the Crown Bank Account to reimburse regional councils for expenses incurred in purchasing oil pollution equipment.<sup>34</sup>

Notwithstanding the above, Maritime Transport has indicated a willingness to "assist" regional councils. If there is a problem with the law, there are two options - change the law or find a way of achieving the objective within the constraints of the law.

There appears to be nothing preventing Maritime Transport from purchasing equipment and allocating it to regional councils for their use, subject to appropriate maintenance. Ownership of the equipment would remain with the Crown. The (unhelpful) distinction between national and regional equipment would be eliminated. Such an approach would be consistent with the suggestion that regional councils should be an integral part of the national response strategy and that operational aspects are best handled at the regional level (section 3.6).

### **Recommendation:**

17. Either that Maritime Transport seek an amendment to the Marine Pollution Act 1974 to empower the Minister of Transport to reimburse regional councils, from the Crown Bank Account, for the cost of equipment purchased for oil pollution control purposes;

or

That Maritime Transport purchase and allocate equipment to regional councils in accordance with the distributional needs (for equipment), identified in the revised New Zealand Oil Pollution Contingency Plan.

Multiple oil pollution taxes on shipping companies are undesirable. Clearly, the current system needs to be rationalized.

Recommendation:

18. That Maritime Transport take steps, in consultation with regional councils, port companies and oil companies, to rationalize current arrangements for oil pollution taxes.

### 3.8.4 Maritime Transport access to Crown Bank Account

#### Findings

The Oil Pollution Trust Account was managed by Maritime Transport, subject to Treasury control over expenditure.

With the conversion of the Trust Account into a Crown Bank Account by the Public Finance Act 1989, management of the fund was transferred to the Treasury. The fund continues to be available in the event of an emergency and interest continues to be earned.

The Marine Pollution Act 1974, as amended by the Public Finance Act 1989, requires that the Crown Bank Account be *separately accounted for*.<sup>35</sup> Maritime Transport now maintains a ledger account [so that at any given time it, or any other interested party, can see what is in the fund] but day-to-day cash management is in the hands of Treasury. The fund is managed as if it were "public money" [more or less equivalent to the old Consolidated Account] under the meaning assigned to that term in section 2 of the Public Finance Act 1989.

Maritime Transport has advised that it is unhappy with the overall approach to the fund in legislation (under both the pre and post Public Finance Act 1989 regimes), which results in access to the money for capital and ongoing operational expenses being controlled by the annual departmental appropriation system. In effect, expenditure is regarded as part of the Ministry of Transport's overall budget and has, in the past, *suffered proportionally from budget reductions*.<sup>36</sup>

If the Ministry wishes to gain access to the fund during the year it has to make a special request to Cabinet.

Maritime Transport considers the fund provided by the industry should be viewed as being *dedicated* to oil spill prevention and response and should be accessible as reasonably required *independent of the appropriation system* but with reasonable checks and balances.<sup>37</sup>

Maritime Transport advises that the fundamental difference between its view and Treasury's view is that the latter considers the oil pollution levy to be part of general taxation while Maritime Transport considers it a special purpose levy with specific goals and uses.<sup>38</sup>

Maritime Transport has made representations to Treasury with a view to easing access to the fund.

### **Discussion**

In terms of Maritime Transport's *access* to the oil pollution control fund, there would appear to be little difference between the pre- Public Finance Act and post- Public Finance Act situations. Under both regimes, expenditure was controlled through annual appropriation.

There may be a case for providing Maritime Transport with more management flexibility with respect to the operation of the Account. In this regard, it is noted that the Public Finance Act 1989 (Part VII) does make provision for "trust money"; trust money is deemed to include *all* money that is paid to the Crown in trust for any purposes and the Treasury may appoint a department to manage some or all trust money on such terms and conditions as the Treasury determines.

### **Recommendation**

19. That the Minister of Finance and the Minister of Transport review the appropriateness of current arrangements for operation of the Oil Pollution Crown Bank Account taking into account the fact that the money in the Account is derived from a special purpose levy, not from taxation revenues.

It seems difficult to escape the conclusion that, as long as Government is responsible for the management of the fund, outgoings will be subject to appropriation.

### **3.9 Membership of the Oil Pollution Advisory Committee**

#### **Findings**

The *statutory* role of the Oil Pollution Advisory Committee is restricted, under section 29G of the Marine Pollution Act 1974, to advising the Minister of Transport on oil pollution levies.

The Chairman of the Committee is the Director of Maritime Transport. The rest of the Committee is appointed by the Minister of Transport. Current membership includes the Marine Spills Task Force Chairman, the Petroleum Industry Emergency Action Committee Chairman, the Harbourmaster of the Wellington Regional Council, New Zealand Line, New Zealand Eastern Shipping Committee and the New Zealand Fishing Industry Board.

The scope of the Committee's activities has gradually widened. It is currently overseeing the redrafting of the New Zealand Oil Pollution Contingency Plan (section 3.2).

Maritime Transport intends recommending to the Minister that membership of the Committee be widened to reflect the broad consultative function that it now performs.

### **Discussion**

An appropriately reconstituted Oil Pollution Advisory Committee could become a forum for addressing, and advising Maritime Transport on, some of the policy issues that have been identified in this report.

In my view, it would be important that any expanded Committee include representation from the oil exploration industry, regional councils, Ministry for the Environment and Department of Conservation.

### **Recommendation:**

20. That the Minister of Transport widen the membership of the Oil Pollution Advisory Committee to include representation from the oil exploration industry, regional councils, Ministry for the Environment and the Department of Conservation.

### **3.10 Option of transferring oil pollution responsibilities to oil industry**

#### **Findings**

The oil industry has, on occasions, expressed dissatisfaction with the way the oil pollution levies fund is administered.

In the United States, the Oil Pollution Act 1990 requires those who operate tank vessels, refineries, pipelines, tank farms and offshore platforms to have approved contingency plans and the necessary people and equipment to carry out those plans. The Act requires shippers and others responsible for oil transportation or storage to show that they have in place contracts to contain and clean-up, to the *maximum extent practicable*, a *worst-case* oil spill which they might cause. The industry has formed a trade association [the Marine Preservation Association] whose members - oil companies, shippers, receivers of oil and others - pay dues based on the amount of oil they handle in the

marine environment. The dues will finance an *independent* non-profit making Marine Spill Response Corporation, dedicated to providing a "best effort" response to large spills.<sup>39</sup>

### **Discussion**

It may be that the time has come for Government to consider putting oil pollution control firmly in the hands of the oil industry. Under this option, Government would be responsible for setting and enforcing standards and industry would be responsible for establishing and managing its own pollution control fund, undertaking contingency planning, purchasing and distributing equipment, recruitment and training of personnel, and clean-up of spills.

In their response to my draft report, both Maritime Transport and the oil industry have stated, that, for a number of reasons, they do not support this approach (Appendix IV). However, I believe that this option, or variations of it, warrant further consideration in the context of any Government review of marine pollution legislation.

### Recommendation:

21. That the Treasury and the Ministry for the Environment, in consultation with the Ministry of Transport and the oil industry, consider the implications of transferring responsibility for the containment and clean-up of oil spills from the Crown and regional councils to the oil industry and report their findings to Government.

#### 4.0 CONCLUSION

New Zealand is currently ill-prepared for a major marine oil spill.

Progress has been less than satisfactory with respect to preparation of the New Zealand Oil Pollution Contingency Plan. A number of important policy issues have yet to be adequately addressed and resolved, before detailed operational plans can be formulated.

In terms of equipment, New Zealand is approaching its targeted 1500 tonne response capability, based on the rupture of a single side tank of a coastal tanker. In the event of a major oil spill involving the loss of all or a substantial portion of the contents of a fully laden oil tanker, New Zealand would be reliant on assistance from overseas. New Zealand's 1500 tonne target response capacity can be compared with the United States' 35,000 tonne target capacity.

Within Maritime Transport, regional councils and port companies there is currently a serious shortage of people adequately trained to deal with a major oil spill.

Differences of opinion exist between the oil industry, regional councils, Ministry of Transport and the Treasury with respect to the administration and application of oil pollution levy monies collected by Government under the provisions of the Marine Pollution Act 1974.

An option that needs to be considered is the transfer of most Crown and regional council responsibilities for oil pollution control to the oil industry.

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14. K Ward, General Manager of Maritime Transport Division, Ministry of Transport, personal communication.
15. Idem.
16. Above, n.5.

17. Letter from M Bazley, Secretary for Transport, to P M Dell, Director Statutory Processes and Monitoring, Bay of Plenty Regional Council, 20 September 1990.
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19. Above, n.5.
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27. Above, n.22.
28. Hon C C A McLachlan (Minister of Transport) when introducing the Marine Pollution Amendment Bill (No.2), Hansard, Wednesday 30 November 1977, p.4878.
29. Letter from Hon W R Storey, Minister of Transport, to B G Chamberlain, General Manager, Taranaki Regional Council, 19 November 1990.
30. Above, n.3.
31. Advice of P J Gunn, Office Solicitor (MOT) to K Ward, General Manager, Maritime Transport, 6 March 1991.
32. Sighted during the course of this investigation
33. Above, n.29.
34. Above n. 31, 29, 17.
35. Section 29F of Marine Pollution Act 1974.
36. Above, n.22.



37. Above, n.22.
38. Above, n.22.
39. Above, n.4.



## APPENDICES

- I Terms of Reference for Working Group set up in February 1990 to review the New Zealand Oil Pollution Contingency Plan.
- II Methodology for formulation of the National Oil Pollution Contingency Plan.
- III Section 29F of Marine Pollution Act 1974  
[Application of levies]
- IV Comments received on draft report

## **APPENDIX I**

Terms of Reference for Working Group set up in February 1990 to review  
the New Zealand Oil Pollution Contingency Plan

OIL POLLUTION ADVISORY COMMITTEE  
TERMS OF REFERENCE FOR WORKING GROUP.

**General**

To provide a national response capability to deal with a 1,500 tonne marine oil spill, together with equipment at the various Port Companies, to meet the level of risk agreed at each location.

The national response capability is to be suitable to augment local resource equipment provided.

**Timing**

The working group should provide its final report to the Oil Pollution Advisory Committee by 31 July 1990, and should provide recommendations which could be implemented within the balance of 1990.

**Specific**

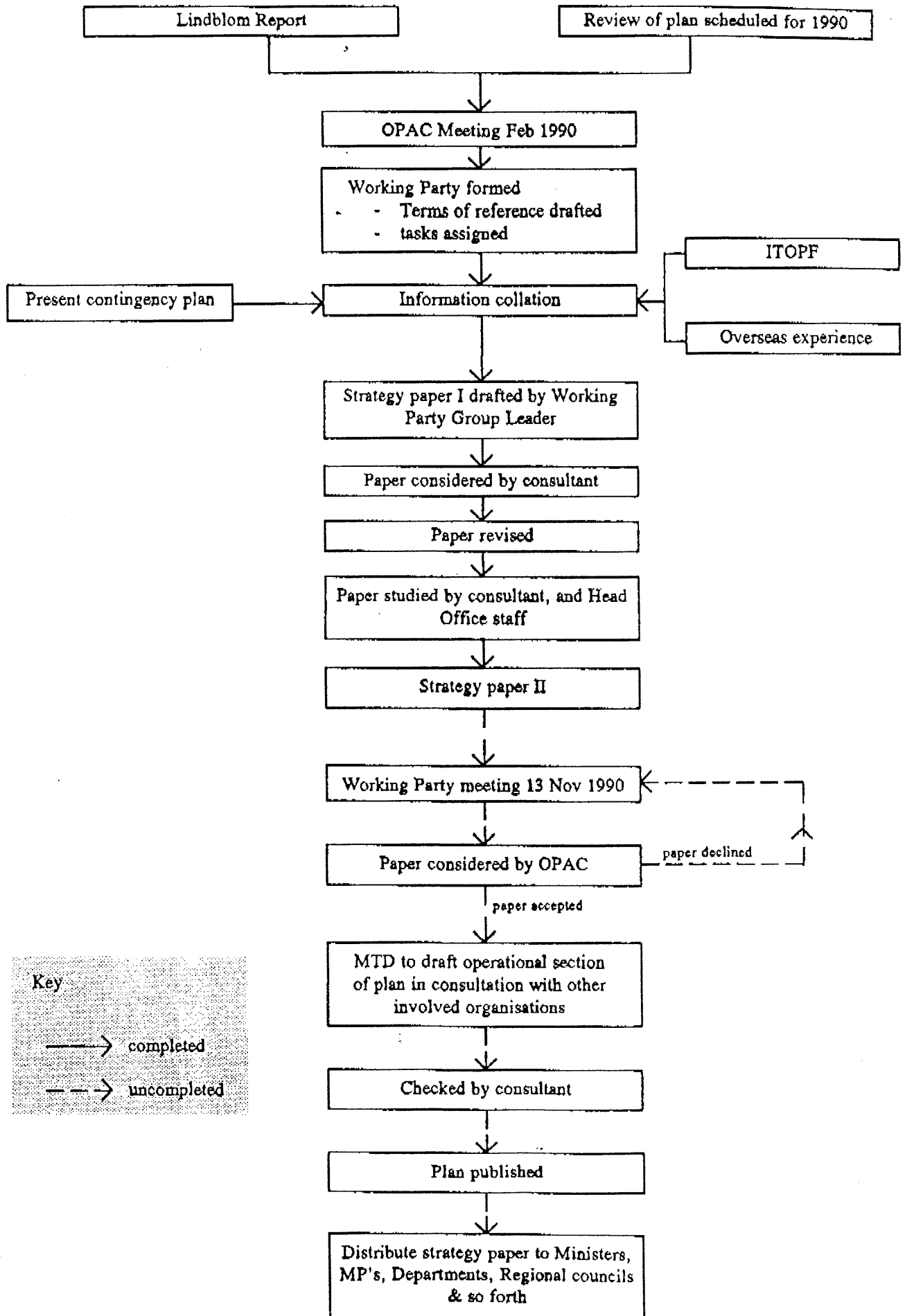
1. To agree and use a consistent methodology to:
  - (a) establish the resource requirement and an acceptable response capability for a 1,500 tonne oil spill in coastal waters.
  - (b) determine target level spills for harbour waters and the resource requirement, and an acceptable response capability for the targeted spill sizes.
2. To determine the training requirements at national and local level to meet the above spills response objectives.
3. To develop a contingency plan to meet the spills response objectives, which would be a national document and used as a strategic and action plan. Such a plan to embody amongst others:
  - (a) detailed response organisation
  - (b) acceptable clean-up and control techniques
  - (c) location and nature of sensitive areas
  - (d) transportation and deployment of resources
  - (e) notification and alerting procedures
  - (f) clean-up operations

4. To establish a source and mechanism, within the contingency plan, for the provision and assistance from outside New Zealand, to deal with any persistent oil spill of more than 1,500 tonnes.
5. To advise the level of funding required to meet the target spillages and establish the level of ongoing resources necessary to meet the spill objectives.
6. To make regular reports of its activities and progress to the Oil Pollution Advisory Committee (monthly).

## **APPENDIX II**

Methodology for formulation of the  
National Oil Pollution Contingency Plan

# THE METHODOLOGY FOR THE FORMULATION OF THE NATIONAL OIL POLLUTION CONTINGENCY PLAN





## **APPENDIX III**

Section 29F of Marine Pollution Act 1974  
Application of levies

Section 29F of Marine Pollution Act 1974

**[[29F. Application of levies—**(1) The money that is required by this Part of this Act to be paid into the Crown Bank Account and separately accounted for shall be applied in meeting:

(a) All expenditure incurred by the Crown, in order to prevent, control or eliminate oil pollution, in respect of the costs of—

(i) Acquiring, storing, transporting, and maintaining supplies, equipment, and material for dealing with, cleaning up, removing, and dispersing oil; and

(ii) Dealing with, cleaning up, removing, and dispersing oil (including surveillance and all other incidental measures that are necessary or reasonably expedient for such purposes); and

(iii) Training personnel (whether employed by the Crown or not), and engaging personnel, in the use and handling of equipment, supplies, and material for dealing with, cleaning up, removing, and dispersing oil; and

(iv) Any other general purposes in relation to oil pollution control; and

(v) Travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, for members of the Oil Pollution Advisory Committee in the service of the committee; and

(b) Without further appropriation than this section, the reasonable costs incurred by any Harbour Board in dealing with, cleaning up, removing, or dispersing any oil, in order to prevent, control or eliminate oil pollution, where those costs have not been recovered by the Harbour Board from any person responsible, after reasonable efforts have been made by it to recover those costs.

(2) Nothing in this section shall limit the liability of any person to pay to the Crown or to any Harbour Board any costs referred to in subsection (1) of this section; and where the Government or any Harbour Board recovers any such costs from that person after they have been paid from the Crown Bank Account from the sum separately accounted for under section 29D (3) of this Act, the costs recovered shall forthwith be refunded to the Crown Bank Account and be so accounted for. ]]

This section was substituted for the former s. 29f by s. 86 of the Public Finance Act 1989.

## **APPENDIX IV**

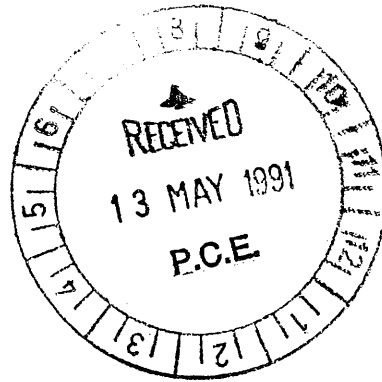
Comments received on draft report

**MARITIME**  
**Transport**  
*Waka Moana*

10 May 1991

44/0/18

W J Armstrong  
Senior Investigating Officer  
Office of the Parliamentary Commissioner  
For The Environment  
P O Box 10-241  
Wellington



Dear Bill

Thank you for the copies of the Commissioner's draft report on the Control of Marine Pollution in New Zealand.

The report is factual, and I am in full agreement with most of the recommendations. From your attendance at the meeting to organise the Oil Pollution Planning Committee, you will have noted the difficulties we are working under, so the report is very welcome.

Please find attached comments on the draft report.

Yours faithfully

A handwritten signature in black ink, appearing to read "K. W. Ward".

K. W. Ward  
General Manager, Maritime Transport Division

**COMMENTS ON PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT  
DRAFT REPORT ON:**

**THE CONTROL OF MARINE OIL POLLUTION IN NEW ZEALAND  
A REVIEW OF THE SYSTEM**

**LEGAL AND INSTITUTIONAL ARRANGEMENTS**

1. Maritime Transport Division is in full agreement with this recommendation.

**THE NEW ZEALAND OIL POLLUTION CONTINGENCY PLAN - FUNCTION AND STATUS**

2. Maritime Transport Division is in full agreement with this recommendation.
3. Maritime Transport Division has already assigned top priority to the completion of the Plan. This is proving difficult without the backing of legislation.

**THE ADEQUACY OF THE EQUIPMENT**

4. Maritime Transport Division is in full agreement with this recommendation.

A figure of 1 500 tonnes for a response capability was chosen after the Lindblom Report was completed. 1 500 tonnes is the capacity of one tank on a coastal tanker. It must be noted that this is a very arbitrary way of demonstrating response capability as other factors such as oil type, weather, tides, location, etc can greatly affect the distribution of spilled oil and the effort required to clean it up.

Tankers of 160 000 tonnes are now visiting Marsden Point, and each tank often holds 30 000 tonnes of crude oil.

It is difficult to carry out risk analysis with the limited data available; there have been few shipwrecks and no records of oil spilled in the last thirty years. However, it cannot be denied that the risk is present.

5. Maritime Transport Division is in full agreement with this recommendation.

Steps have been taken to formalise arrangements for assistance with Australia and other Pacific countries, by the ratification of the SPREP Convention. Ratification of the International Conventions in (1) would allow New Zealand to take full advantage of this potential assistance. A regional response plan is contemplated.

6. Maritime Transport Division has qualified agreement with this recommendation.

Maritime Transport Division has concentrated on acquisition of dedicated equipment for pollution clean-up, and has only a small amount of equipment specifically designed for shore-line clean-up. The equipment which is generally necessary, hand tools such as buckets and shovels, bulldozers, backhoes, trucks, etc, is generally available from Regional, District, and City Councils, Workscorp, and private contractors.

7. Maritime Transport Division has qualified agreement with this recommendation.

Whilst several Regional Councils inherited very little equipment from former Harbour Boards, others have a great deal, and have appreciated the risk of pollution and added to their capacity. It is unlikely that standardisation of equipment would be viable now, although for future purchases it should be encouraged.

The need for standardisation falls into two categories:

a) The ability to couple equipment together. This applies to oil boom, and discharge, hydraulic, and air hoses in various types of machinery. Future equipment purchases should take account of the advantages of standardisation, and Maritime Transport Division's equipment is presently fully interchangeable.

b) The ability to train personnel on equipment. Maritime Transport Division is presently setting up training courses for personnel from different organisations who would be involved in running its equipment. There should be no problems with personnel finding equipment which they cannot operate once these courses have been held, and training must be on-going to take new personnel in these organisations into account, as well as the need for periodic refresher courses.

## **THE DISTRIBUTION OF EQUIPMENT**

8. Maritime Transport Division will review the present risks in individual ports as part of the review of the contingency plan.

The ability to forecast the effects of an actual spill would be greatly enhanced by new computer programmes, which Maritime Transport Division is currently assessing.

9. Maritime Transport Division has qualified agreement with this recommendation, and the matter will be subject to review as part of the plan.

Export of oil product from New Plymouth has greatly increased since this policy was established, and the Cook Strait area has emerged as one of the areas most likely to have shipping casualties.

## **THE ADEQUACY OF HUMAN RESOURCES**

10. Maritime Transport Division is in full agreement with this recommendation.

Maritime Transport Division has been temporarily delayed by a shortage of funds for the first half of the 1990/91 financial year, but is now training recently employed staff, and will shortly begin appropriate training programmes for regional council and port company personnel, as well as those from other organisations likely to be involved in a major clean-up operation.

## **ROLE OF REGIONAL COUNCILS WITHIN THE NATIONAL OIL SPILL RESPONSE STRATEGY**

11. Maritime Transport Division is in full agreement with this recommendation.

12. Maritime Transport Division sees some merit in this recommendation.

The previous written arrangements with Harbour Boards are a sensible solution to the problem of making maximum use of available resources, with improved parameters and legislation. Harbour Boards had responsibility for cleaning up minor spills within their harbour limits, but could call on Maritime Transport Division where the spill was beyond their capabilities. In a quid pro quo, Maritime Transport Division could call on assistance in spills affecting the coast, where such assets as tugs and trained personnel would be vital to complement its equipment.

The drawbacks with these arrangements were that definite amounts of equipment were not specified for dealing with the likely size of spills in the various ports, and therefore Maritime Transport Division could not monitor the arrangements, and there was difficulty under the Act in forcing Harbour Boards to rectify perceived shortcomings.

13. Maritime Transport Division is in full agreement with this recommendation.

Under the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (OPRC), this will be a requirement.

14. Maritime Transport Division does not agree with this recommendation.

Maritime Transport Division does see merit in tying regional contingency plans to civil defence plans, as this provides ready-made On Scene Coordinator headquarters with trained staff, which must be provided under the Civil Defence Act.

#### **EQUITY OF LEVY APPLICATION**

15. Maritime Transport Division is in full agreement with this recommendation.

Although the risk of a major spill from exploration or production platforms is slight, it does exist, and in instances where the operations are taking place in sensitive areas, Maritime Transport Division equipment has been hired to the organisations so that it is immediately available.

Maritime Transport Division equipment would have to be used as a second tier response to a spill from a platform, and it would be equitable for drilling and production companies to pay levies. Maritime Transport Division is currently working on a proposal to the Minister to widen the membership and scope of the Oil Pollution Advisory Committee to cover this area.

#### **ADMINISTRATION OF CROWN BANK ACCOUNT ( OIL POLLUTION LEVIES)**

16. Maritime Transport Division has qualified agreement with this recommendation.

Whilst there is obviously a need for basic capabilities to respond to a major spill, there are also large associated expenses for auxiliary equipment and the large amount of personnel needed.

Unlike the Civil Defence Act, there is no compulsion on organisations to assist Maritime Transport in the 1974 Marine Pollution Act. The only power the Oil Spills Advisory Committee and the On Scene Coordinator have is that of the "cheque-book". Maritime Transport Division sees the Crown Oil Pollution Bank Account as an initial 'insurance policy', where equipment such as Port Company tugs or City Council trucks can be hired as quickly as possible, bearing in mind that 'oil spills always occur on Friday afternoons' or other inconvenient times. As well as this aspect, if small local companies are contracted, they can be quickly paid without damaging their cashflow.

It is not suggested that the amount of money in the Oil Pollution Crown Bank Account would be sufficient for any large spill. The cost mentioned later in the report for the "Exxon Valdez" has since doubled. One of the first tasks of the Oil Spills Action Committee would be to approach the Government for further funds. A paper exercise conducted some years ago spent \$6 million in two days, and a large number of services available free at that time would now have to be paid for.

It must be borne in mind that some large pollution incidents have spent more than ten years in courts overseas, and the ability to reimburse quickly is a potent weapon in gaining cooperation. Whilst the compensation available by signing the previously mentioned International Conventions would be forthcoming, even this would take some time to arrange.

17. This recommendation is a matter of Government policy.

There are questions of equity involved, where some Regional Councils have taken a responsible attitude and purchased equipment, whilst others have lobbied vigorously for the latter part of the recommendation. The recommendations on changes to the 1974 Marine Pollution Act previously mentioned should also be taken into account.

18. Maritime Transport Division is presently organising consultation with Regional Councils and the oil industry on rationalising oil pollution levies.

Maritime Transport Division is satisfied that money will be made available.

#### **MEMBERSHIP OF THE OIL POLLUTION ADVISORY COMMITTEE**

19. Changes in membership are being considered.

#### **OPTION OF TRANSFERRING OIL POLLUTION RESPONSIBILITIES TO OIL INDUSTRY**

20. Maritime Transport Division sees no merit in considering this recommendation.

It is not seen as feasible to divorce clean-up operations from legislative responsibilities, and both should be held by one Government Department, as already decided by Cabinet.

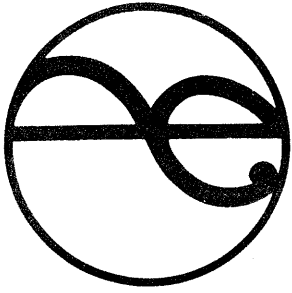
It is not seen as feasible for the oil industry, consisting of organisations in the private sector, to provide proper contingency planning involving Government Departments, especially Defence.

It would be difficult to provide standards for the oil industry where its component companies could be liable to criminal charges in the event of any oil spill, and this would be an insurmountable conflict of interest.

Where the oil industry was paying for a clean-up operation (there is provision for civil liability as well as criminal), there could be difficulties in applying advice from the environmental members of the Oil Spills Action Committee, and it is doubtful if the public would see this as a transparent arrangement.

The oil industry was invited to set up an oil spills organisation in the early 1970s, but they declined to do so.





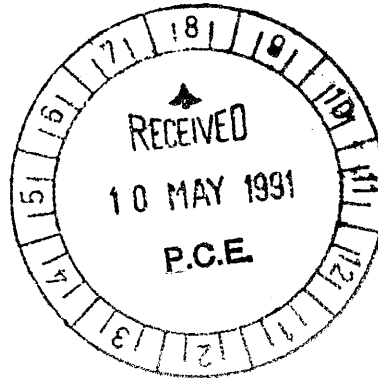
**MINISTRY FOR THE ENVIRONMENT**  
**MANATŪ MŌTE TAIAO**

84 Boulcott Street, P.O. Box 10362, Wellington, New Zealand.  
Telephone (04) 734-090, Fax (04) 710-195.

our ref:

PMN 6/10

10 May 1991



Mrs Helen R Hughes  
Parliamentary Commissioner  
for the Environment  
P O Box 10-241  
WELLINGTON

Dear Helen

**REVIEW OF NEW ZEALAND'S SYSTEM FOR CONTROLLING MARINE OIL SPILLS**

I refer to your letter of 18 April 1991 to the Secretary for the Environment seeking comments on the above draft review. Please find attached some comments as requested.

I note the comment in your letter suggesting that the Ministry for the Environment be responsible for the review of the Marine Pollution Act 1974. The Act was reviewed, in consultation with the Ministry of Transport and the Department of Conservation, as part of the resource management law reform policy advice to Government. This led to the decisions outlined in the attached comments, but no legislative reforms yet.

I would be happy to discuss the issues raised in your letter and the draft report, particularly with regard to issues which can be addressed by the recently formed Oil Pollution Planning Committee, and any amendments that may be necessary to the Resource Management and Marine Pollution Acts.

Yours sincerely

*Bruce Taylor*

Bruce Taylor  
for Secretary for the Environment

MINISTRY FOR THE ENVIRONMENT'S COMMENTS ON THE PARLIAMENTARY  
COMMISSIONER FOR THE ENVIRONMENT DRAFT REPORT ON THE REVIEW OF NEW  
ZEALAND'S SYSTEM FOR CONTROLLING MARINE OIL SPILLS

1. The draft report is a very useful summary of New Zealand's lack of adequate preparedness for dealing with a major oil spill, the deficiencies in the Marine Pollution Act 1974, the lack of integration between the Marine Pollution Act and the Resource Management Bill, and the scope for industry to take on the responsibilities for containment and clean up of oil spills.

Background

2. According to the Ministry of Transport, the main sources of marine oil pollution in New Zealand are:

- residues washed ashore and oil discharged into sewers and stormwater drains;
- medium spills in ports produced by tankers during cargo transfer operations or conventional ships during bunkering operations;
- major spills from shipping casualties, which may have to be dealt with at sea, in inshore waters, and on the foreshore.

3. It is fortunate that New Zealand is not on any major tanker routes, and vessel traffic around our coastline is relatively light. Nevertheless, coastal oil tankers which operate around New Zealand each have a total capacity of around 20,000 tonnes. The largest vessels visiting New Zealand carry in the region of 117,000 tonnes. In addition, on average, each ship operating around NZ's coast carries about 700 tonnes of its own fuel oil.

4. Of the various types of oils transported by ship around New Zealand, the most persistent ones include fuel oil, base grade lube oil and crude oils. Other petroleum products transported include petrol, kerosines/diesel fuels, condensates and bitumens.

5. The MoT's current policy is that clean up of an oil spill, outside harbour limits, will only be undertaken if it is a persistent oil which is likely to impact on the coastline. Clean up activities will attempt to minimise the harmful effect of oil on the environment and public amenities, and return the affected area to its original state.

Funding

6. The Marine Pollution Act 1974 provides for refunding to the Consolidated Account from the Oil Pollution Trust Account, all expenditure incurred by the Crown in preventing, controlling or eliminating oil pollution. Amongst other things, this applies to:

- i acquiring, storing, transporting, and maintaining supplies, equipment, and material;
- ii dealing with, cleaning up, removing, and dispersing oil;
- iii training personnel, and engaging personnel, in the use and handling of equipment, supplies, and material for dealing with, cleaning up, removing, and dispersing oil.

7. Regional councils can recover, from the Oil Pollution Trust Account, reasonable costs incurred in dealing with, cleaning up, removing or dispersing oil. Unfortunately, however, there is no provision for reimbursing regional councils for the cost of acquiring and maintaining clean up equipment or training staff.

#### Review of NZ's Response Capability

8. The Lindblom report commented on the current oil spill response capability (250-300 tonnes) being inadequate for spills other than small harbour incidents. Dr Lindblom's recommendations included increasing the national response capability to 1,500 tonnes. This represents only 0.015% of the oil transported around New Zealand per year, and is equivalent to one side tank of a coastal tanker, as noted in your report.

9. The consultant's report was also critical of the capability of harbour authorities to deal with oil spill clean up within harbour limits. The main problems identified were lack of equipment and lack of trained personnel. These problems are probably related to the restrictions on the use of funds in the oil pollution account, as outlined in paragraph 7 above.

10. Further work is required to identify adequate response capabilities at international, national and regional levels, and the feasibility of extending the clean up responsibilities of harbour authorities (regional or district councils) beyond harbour limits. The recent moves by the Ministry of Transport to set up the Oil Pollution Planning Committee should enable these, and other issues raised in your draft report, to be addressed.

#### Resource Management Bill

11. As part of the Resource Management Law Reform, the Marine Pollution Act was examined to see if all or parts of that Act, not just those dealing with oil pollution, should be incorporated into the Resource Management Bill. As a result of advice from the Ministry for the Environment, Department of Conservation and the Ministry of Transport to the previous Government, the following decisions were made:

- a that provisions in the Marine Pollution Act 1974 should be incorporated into the Resource Management Act, as part of the integrated pollution control and coastal management system;

- b that the marine pollution provisions should be amended to enable ratification of MARPOL;
- c that the Ministry of Transport retain the existing operational responsibilities it has under the Marine Pollution Act relating to marine transport and oil pollution incidents.

12. Effectively this meant that Part II and parts of Part I of the Marine Pollution Act would fall within the pollution control and consent granting functions of regional councils under the Resource Management Bill (eg dumping and discharge permits). Parts III, IIIA, IV and V, dealing with marine casualties, oil levies, civil liability and funding clean up of oil spills would remain with MoT.

13. The attached report of the Working Party, established in 1980, to Review the Marine Pollution Act contains recommendations on amendments to the Act which would enable MARPOL to be ratified.

14. Provisions relating to construction, inspection and certification of ships to ensure compliance with MARPOL requirements is clearly outside the scope of the Resource Management Bill. This is a case for retaining these provisions in the Marine Pollution Act or a replacement Act.

15. Under these proposals the division of responsibilities for the control of marine pollution would have been as follows:

- MfE
  - advising Minister for the Environment on the issuing of permits to dump or incinerate wastes outside the 12-mile limit;
  - developing national standards for the control of marine pollution;
  - dealing with international conventions on marine pollution in conjunction with MoT and MERT;
  - overseeing dumping and incineration permits issued by regional government to ensure compliance with international agreements;
- DoC
  - protection of the marine and coastal environment;
  - responsibility for marine mammals and wildlife;
  - overall responsibility (through the Minister of Conservation) for the coastal marine area under the RM Bill;

- MoT**
- clean up of oil spills;
  - administering the oil spill contingency fund;
  - developing oil spill contingency plans, in conjunction with MfE and DoC and others;
  - controlling discharges from ships;

**Regional Government**

- issuing dumping and discharge permits within territorial waters;
- implementing international, national and/or regional standards for the control of marine pollution;
- providing port facilities for the reception of pollutants and waste from ships or from spills;
- controlling land-based sources of marine pollution;
- clean up of oil spills within harbour limits.

16. Due to lack of resources and time it was not possible to carry out the work on incorporating parts of the Marine Pollution Act into the Resource Management Bill before it was introduced. Any amendments relating to marine pollution must now wait until after the Resource Management Bill is enacted.

**COMMENTS ON THE RECOMMENDATIONS IN THE PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT DRAFT REPORT**

Recommendation 1

A working party was established in 1980 to review the Marine Pollution Act 1974. A copy of the group's report and terms of reference are attached for your information. This report includes recommended changes which would enable MARPOL to be ratified and may be useful as a basis for any further review of the Act.

Recommendation 2

Agree.

Recommendation 3

Agree. The recent oil pollution seminar (7 May 1991) established the Oil Pollution Planning Committee which is the first step in complying with this recommendation.

Recommendation 4

Agree. The 1500 tonne response capability recommended in the Lindblom report represents only 0.015% of the oil transported around New Zealand per year and is equivalent to one side tank of a coastal tanker. This capability would be able to handle in the region of only 1% of the oil carried in the largest vessel visiting New Zealand. In addition, the assistance which New Zealand could offer neighbouring countries, particularly small Pacific nations, and Antarctica, would be negligible.

Recommendation 5

See comments under Recommendation 4. Before New Zealand could formalise arrangements, we would need to ensure that our response capability was sufficient to be able to reciprocate effectively.

Recommendation 6

Agree. This could be carried out when the contingency plan is reviewed.

Recommendation 7

As for Recommendation 6.

Recommendation 8

As for Recommendation 6.

Recommendation 9

As for Recommendation 6.

Recommendation 10

Agree.

Recommendation 11

Agree. This will largely depend on decisions on the future of regional councils.

Recommendation 12

As for Recommendation 11.

Recommendation 13

Agree.

Recommendation 14

Agree. It would be more appropriate for oil spill contingency plans to be integrated with regional coastal management plans which, under the Resource Management Bill, will be mandatory for regional councils to prepare.

Recommendation 15

Agree.

Recommendation 16

Agree.

Recommendation 17

Agree.

Recommendation 18

Agree.

Recommendation 19

The Ministry for the Environment has already responded to a recent invitation from the Ministry of Transport to nominate a representative, for consideration by the Minister of Transport, for appointment to the Oil Pollution Advisory Committee.

Recommendation 20

Consideration should be given to contracting out for containment and clean up services, but the responsibility for setting and enforcing standards and administering funds should remain with central and regional government. Industries other than the oil industry should also be given consideration.



# THE TREASURY

NATIONAL PROVIDENT FUND BUILDING,  
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WELLINGTON, NEW ZEALAND

29 April 1991

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WELLINGTON

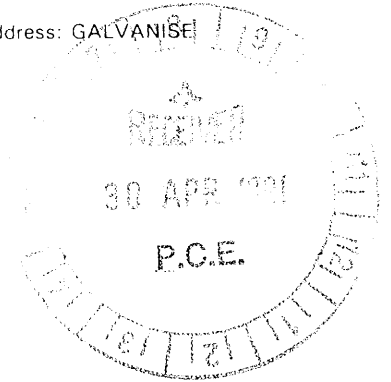
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Helen R Hughes  
Parliamentary Commissioner for the Environment  
Office of the Parliamentary Commissioner for the Environment  
P O Box 10-241  
WELLINGTON



Dear Helen

## DRAFT REPORT ON CONTROL OF MARINE OIL POLLUTION IN NEW ZEALAND

Thank you for your letter dated 18 April 1991 enclosing a copy of your draft report on New Zealand's system for controlling marine oil pollution.

I regret that owing to considerable pressures of work in relation to the latest budget round, we will not be able to comment on the draft report by Friday 3 May, as you have requested. We should, however, be clear to respond to your request before the end of the month.

I hope that this delay with our comments does not cause your office too much inconvenience.

Yours sincerely

Cathryn Ashley-Jones  
for Secretary to the Treasury



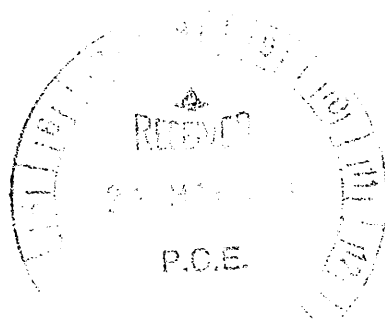


CONSERVATION  
TE PAPA ATAWHAI

COA 0009

14 May 1991

Parliamentary Commissioner for the Environment  
P O Box 10-241  
WELLINGTON



## REVIEW OF NEW ZEALAND'S SYSTEM FOR CONTROLLING MARINE OIL SPILLS

Thank you for the opportunity to comment on your draft report "The Control of Marine Oil Pollution in New Zealand: A Review of the System, April 1991". I apologise for the delay in sending you our comments.

### A. GENERAL COMMENTS

The Department was represented on the Oil Spill Working Group set up in 1990 by the Oil Pollution Advisory Committee. After taking part in that frustrating and unproductive exercise, your report has accurately identified major concerns over the control of marine oil pollution in New Zealand. Without exception, the Department considers that the concerns identified are important policy issues that have remained unresolved for far too long. It is only good luck (i.e. no major oil spill) that has prevented the very real consequences of New Zealand's poor preparedness becoming apparent - and also becoming a major embarrassment to government.

Also without exception, the Department considers that the findings and discussion are relevant and pertinent, and the recommendations must lead to action if the major barriers to an effective oil spill response are to be pushed aside.

The Department became aware of the majority of the unresolved policy issues through its representation on the Oil Spill Working Group, and thanks you for setting out the issues, and appropriate actions to address concerns, so completely and concisely.

No important errors of fact have been identified in the report, some specific comments on the report, largely in support, are set out below:

Helen/S:/Review.MJ

**B. Specific Comments**

(Note: The numbering is from your report).

**2.0 Legal and Institutional Arrangements**

"Harbours Act 1974" in section 2.1.3 should read "Marine Pollution Act 1974".

**Recommendation 1:** Supported.

**3.2 The Contingency Plan**

**Recommendation 2:** Supported.

**Recommendation 3:** Strongly supported.

It is noted that achievement of recommendation 3 requires the removal of "blockages" and uncertainty, by legislative change as stated and/or by a different approach by MOT. (A commitment to achieve a strategy that will result in integrated and effective oil spill response. This appears possible even within existing legislation).

**3.3 Adequacy of Equipment**

**Recommendation 4:** Supported.

**Recommendation 5:** Supported.

It is agreed that the level of capability could be affected by bilateral agreements (i.e. what capability is internationally "respectable": able to be deployed before assistance is requested; and able to be offered as assistance to other countries).

**Recommendation 6:** Strongly supported.

This highlights the need for expertise (contracted if necessary) to be applied when planning and response are addressed in Part II of the Contingency Plan.

**Recommendation 7:** Strongly supported.

Comment as in 6 above.

**3.4 Distribution of Equipment**

It is noted that some of the data required for risk assessment has already been produced by the oil industry for MOT. Little work would be required for an estimate of risks that was sufficient to consider the appropriate distribution of equipment.

It is also noted that even if the current distinction between "harbour" and "coastal waters" responsibilities disappear, there is likely to be a need for "national" stockpiles to be located at sites with access to air transportation to large spills in New Zealand or overseas (generally an air force base).

**Recommendation 8:** Supported.

**Recommendation 9:** Supported.

### 3.5 Adequacy of human resources

We would ask that "manpower" be replaced with a more suitable term such as "staff".

**Recommendation 10:** Strongly supported.

### 3.6 Role of Regional Councils

The concept of devolving operational responsibility to Regional Councils appears to the Department to be well worth careful consideration. It would be in line with the principles in other legislation such as the RM Bill.

**Recommendation 11, 12, 13, 14:** Strongly supported.

The suggestion that regional plans be part of, or allied to, regional civil defence plans could warrant inclusion in Recommendation 14.

### 3.7 Equity of Oil Pollution Levy

Given the frequency of spills from land-based storage tanks, some consideration should be given to including owners/operators of large storage tanks in or near the coastal environment to the list of those liable to pay levies (to the degree practicable).

**Recommendation 15:**

Supported with the suggested addition to the list of owners of large storage tanks.

### 3.8 Administration of the Crown Bank Account

### 3.8.2 Drawdown of Account

The Department is strongly of the view expressed in the report that it is more important to have adequate equipment, training and contingency plans than to have money in the Account as "insurance". Your report accurately identifies the fatal flaws in the "insurance" argument.

**Recommendation 16:** Strongly supported.

### 3.8.3 Ability to purchase equipment

The issue of funding preparedness in harbours is possibly the major hindrance to achieving a workable, effective and integrated strategy for oil spill planning and response. Resolution of this issue is vital and Recommendation 17 is strongly supported. Other mechanisms that could be suggested to resolve the legal uncertainty are:

- (i) seeking a legal opinion from the Crown Law Office on whether the approach suggested in Recommendation 17 is legitimate under the existing legislation. Despite the Department, Regional Councils, the oil industry, and possibly others, challenging the interpretation by MOT and offering alternative approaches, no serious consideration appears to have been given by MOT to alternative mechanisms for achieving an integrated response capability.
- (ii) seeking the view of the audit office on the acceptability of using the Account funds as proposed in your report.

**Recommendation 17:** Strongly supported.

**Recommendation 18:** Supported.

### 3.8.4 Maritime Transport Access to Account

Your report accurately identifies the access to the account as a major concern. The Department would emphasize that, as long as the Account funds are available only through appropriation, and are considered as Crown expenditure despite the fact that the fund is built up from industry levies not taxpayer funds, then it is likely to be managed for reasons other than optimal oil spills preparedness.

The cancellation of oil spill training courses this year is a recent example of the consequences of cuts to "Government expenditure", while the \$11m of industry money sits in the Crown Bank Account.

A **recommendation** that alternative arrangement be sought, along the lines

suggested by Maritime Transport, would appear to be warranted.

### 3.9 Membership of OPAC

The Department agrees that the membership should be widened immediately. The statutory function of the committee can be broadened later, when the Act is reviewed, to give a statutory rather than consultative role to the committee.

**Recommendation 19:** Strongly supported.

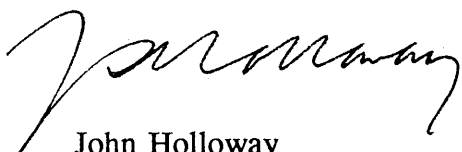
### 3.10 Transfer of responsibilities to the industry

The Department agrees that this option should be considered, while also having doubts as to its appropriateness. The principles of community of interest and appropriate function developed with the Resources Management Act, Local Government Act and in the initial outline of a Navigation and Safety Bill (to replace the residual Harbour Act) point more towards the regional council taking the operation role (the option suggested in your recommendation 12).

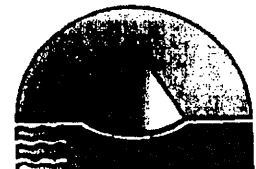
**Recommendation 20:** Supported.

*or Mike Jackson*

Please contact me if you wish to discuss any of these comments.



John Holloway  
Director, Estate Protection Policy Division  
for Director-General



**TARANAKI  
REGIONAL  
COUNCIL**

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File: P3/23/2

14 May 1991

Parliamentary Commissioner for  
the Environment  
PO Box 10-241  
WELLINGTON

**ATTENTION: Mr W J Armstrong**

Dear Bill

**CONTROL OF MARINE OIL POLLUTION IN NEW ZEALAND  
- A REVIEW OF THE SYSTEM**

Thank you for the opportunity to comment on your draft report. We would like to thank firstly your office for undertaking such a timely and much needed review, despite this being a draft document it would appear to have had a significant impact on all interested parties already. Secondly, our reading of your review indicates you have grasped the nature of the problems that have beset this matter and have produced a well structured and balanced review. In specific terms it could be noted that the Regional Council officers, including the Harbourmaster, in commenting the review did not disagree with a single recommendation.

Accordingly our comments fall into two broad types, firstly minor matters within the text and, secondly, two broader issues which you may choose to consider.

With respect to the minor points noted in the text we note the following:

Page 5: Section 13 of the Marine Pollution Act, not Harbours Act.

Page 9: We concur with your suggestion that responsibility for the development of Section 1 of the Plan should have been with Ministry of Transport policy analysts but the policy produced we presume would be the subject of both consultation and a full public participation process before any general document was produced. Our concern would be that MOT establish proper process for the review or development of any policy in the future.

Page 10: This Regional Council would certainly disagree with the MOT's statement. There is a unique ability right now to standardise equipment throughout New Zealand. This Regional Council's report on equipment required for Port Taranaki was forwarded to MOT for comment so as to ensure compatibility with the national pool of equipment base.

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Page 12: While prevention of spills must be the first priority and the containment and collection at sea a second priority this Regional Council shares your concerns with the nations ability to clean up a contaminated shoreline. Given our experiences in the relatively simple cleaning of a breakwater following the New Plymouth Power Station oil spill of 1986 we believe that methodologies must be known and agreed to prior to any event for effective action to take place.

Page 16: This Regional Council would simply like to express support for your concept of councils as an "integral part of the national response strategy, not an adjunct to it".

With respect to the On Scene Commander, we suggest that rather than "would be the Harbourmaster" you use the term "generally would be". Certainly from this Regional Council's perspective there may be occasions depending on the source of the spill eg. Port Company operation where we would use our Senior Investigating Officer as On Scene Commander.

Pages 17/18: One of the concerns of this Council has been the equity of the oil pollution levy application. While the Marine Pollution Act contains a reference to an additional charge for persistent oils, to our knowledge such a charge has never been developed or applied. This has resulted in the situation whereby vessels of the same tonnage pay the same levy irrespective of whether they are carrying McKee crude or timber out of Tauranga. We believe that there should be only one levy, that it should be equitable and based on risk associated with coast and cargo.

Pages 19/20: This Council has previously discussed this matter and concurs fully with your conclusions on administration of the Crown bank account.

With respect to matters you may wish to consider further, our review of your draft document raised two key points. One area of particular concern to us is that of contingency planning for individual operations such as oil rigs, pipelines and even power stations.

There is at present, to take the example of an oil rig, confusion over the authorities who can require and approve contingency plans of such operations. This Regional Council has for sometime under the water rights process been requiring the operator of coastal oil rigs to supply contingency plans for the approval of its General Manager. This has to some extent conflicted with the requirements of the Ministry of Commerce in requiring the applicants through their exploration licence to provide a contingency plan for Ministry of Transport approval. The potential is there particularly for example in the Sugar Loaf Islands Marine Park for

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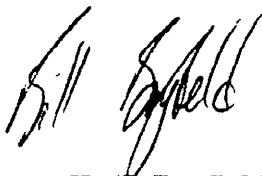
the contingency plan to be approved by one authority but not the other. Furthermore the Department of Conservation have clear mandate to enter into the debate and are even looking to add a condition requiring a contingency plan to be approved to their consent to enter the seabed.

This Regional Council has attempted to resolve the problem by forming an informal committee to consider any such contingency plans required in the region. Members of the committee currently include the Regional Council, Department of Conservation, Ministry of Commerce and Ministry of Transport. To date this arrangement has worked well and has avoided potential conflict. We believe it would be appropriate to consider the relevant roles of the organisations in approval of such a plan. It would be preferable that there was a key lead agency, such that a developer submitted a single contingency plan for all relevant approvals.

Secondly, your office has conducted a timely review. It is however our view that such a review needs to be ongoing. Certainly a regular independent review of New Zealand's preparedness for a marine oil spill needs to be conducted. We would welcome your thoughts on how this could be achieved.

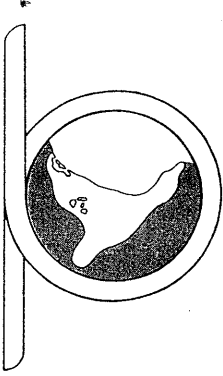
Thank you once again for the opportunity to comment. We apologise for the delay and trust our comments may be of some value. Should you have any queries with respect to the matters raised please do not hesitate to contact me at this office.

Yours faithfully  
B G Chamberlain  
GENERAL MANAGER



per: W E Bayfield  
OPERATIONS MANAGER





# BAY OF PLENTY REGIONAL COUNCIL

Quay Street, P.O. Box 364, Whakatane  
Telephone: (076) 87-289  
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YOUR REF.

PLEASE QUOTE REF. P M Dell  
4280-04

6 May 1991

The Parliamentary Commissioner for the Environment  
P O Box 10-241  
WELLINGTON

ATTENTION: Mr W J Armstrong

Dear Sir

## NEW ZEALAND'S MARINE OIL SPILLS RESPONSE

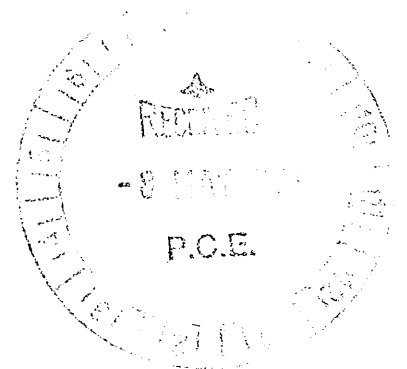
Thank you for the opportunity to comment on a very thorough and detailed document on the issue of oil pollution control within New Zealand. The following comments are in order as the relevant sections appear in your document and are identified by the appropriate number.

### Section 3.2 The New Zealand Oil Pollution Contingency Plan - Functions and Status

In this section, I am not sure whether it is clear that a national oil pollution contingency plan as has been developed to date is primarily looking at major spills viz a viz the 1500 tonne spill off the coast. I am uncertain as to whether the national oil pollution contingency plan clearly identifies its role with major spills that occur inside harbour areas that are currently under the responsibility of regional councils. I support the statutory basis for the preparation of the plan, and also consider that the Ministry needs to move rapidly with this plan as it seems to be dragging on. Quite clearly there has also been debate between the Ministry of Transport and the oil companies as to the input from overseas consultants, and I am sure you are aware of this.

### Section 3.3 The Adequacy of Equipment

I note that the Ministry indicates that the reason for the stockpile is to combat a marine spill outside of harbour limits. Although the equipment can be made available to regional councils to assist in a containment and clean-up of harbour spills, there are two important issues that need to be addressed. One is the likelihood of a spill and the second is the dynamics of the harbour involved. In the case of Tauranga Harbour, when an oil spill occurs it is imperative that



action is taken immediately and that clean-up commences as soon as possible. As the strong tidal influence in the harbour will very rapidly move oil up into the upper harbour where it will contaminate substantial mangrove and estuarine environments, or on the outgoing tide, it will impact beach areas and possibly move throughout the harbour. You comment that Auckland Regional Council maintains equipment, I would question whether their equipment is any more or less than the other ports such as Tauranga, Gisborne, Napier etc. I believe Auckland quite clearly relies on the main national stockpile to fight its oil spills.

I certainly disagree with the Ministry of Transport's comments regarding the standardisation of equipment. As I have often stated, Regional Councils are now beginning to move into purchasing equipment as they take their responsibility seriously and this is the stage at which standardisation must occur. I must say I am disappointed by Ministry of Transport's view, particularly as they can maintain an overview. Certainly however if a substantial spill occurred in Tauranga Harbour we would be required to call upon that national contingency to help clean up. The current plan we are preparing allows for clean up of a 10-15 tonne spill.

I also consider it has to be recognised that in reality a major spill of 1500 tonnes outside of a port or harbour area will most likely not be able to be properly contained anyway. If you look at the sort of overseas equipment and the difficulties they have, I believe that we should primarily be planning for dealing with spills on the inner harbour. I certainly support Recommendation 6 that the Maritime Transport needs to review its current capacity to deal with the clean up of oil that has reached the shore and should purchase equipment as appropriate and Recommendation 7 that Maritime Transport needs to review standardisation of equipment in consultation with regional councils and the oil industry.

#### Section 3.4 The Distribution of Equipment

Most ports will have somewhere between 2-4 minor spills per year that will require clean up. Certainly at the Port of Tauranga there is a move away from straight-out dispersment and towards containment and recovery. If the equipment is deployed to those areas where the major spills are expected, I would question how other ports such as the one we are responsible for would seek equipment. Certainly you accept the need to have a rapid response which I feel is missing and I in fact question whether with containerisation equipment can in fact not be spread throughout all regions so that staff are available recognising that in a substantial major spill it makes more sense to bring staff from Tauranga to Taranaki than from Darwin to Taranaki.

#### Section 3.5 The Adequacy of Human Resources

A point I have often raised with Ministry of Transport that continues to be neglected is that although the Ministry of Transport have established a training section in Auckland, I believe training needs to be undertaken at each port in the environment that a spill will

occur in using the appropriate equipment. Going to Auckland will give an overview but will certainly not reflect the reality of a Tauranga situation in terms of a spill. Also, although the document indicates that there are some 36 people involved in oil pollution control on a part-time basis, I can indicate that the Regional Council has a management plan in place for an oil spill and that under that a total of at least 16-20 people will receive training with oil spill equipment within the Bay of Plenty. These people will involve Regional Council staff, Port Company staff and oil company staff. Some District Council staff will also be involved, particularly as they hold the best resources for cleaning up spills that move onto the beach environment. I would also make the point that I believe any training must be undertaken under the auspices of a fully completed and approved oil control contingency plan. This is the document that ties the people together who will be responsible for cleaning up a spill. Again I consider the training of Port Company personnel would come under the auspices of the Regional Council through the plan.

### Section 3.6 The Role of Regional Councils

Although you comment that there is no formal agreement between the Minister and regions, historically I understand Harbour Boards would often have a figure of 5 tonnes as the spill they would have to be able to deal with. In our recent contingency plan we are looking at being able to deal with a spill of between 10 and 15 tonnes based on our own environment and experience. Quite clearly this would be far higher in areas such as Whangarei or Taranaki. I believe most regional councils would support the view that we do not wish to be given additional responsibilities in respect of oil pollution outside of the harbour limits of a port. It is considered that this is quite clearly where the national response should come into play and possibly where the oil companies should be involved. It would be fair to say however that regional councils would cooperate and make manpower and equipment available to deal with a major spill as there would be advantages to all parties. It would be expected that in such case the costs associated would be recovered from the appropriate party. Your Recommendation 11 that the Minister of Transport in consultation with the Minister of Local Government (who is currently trying to remove regional councils) and the Minister for the Environment should review and clarify responsibilities of regional councils, I do not consider appropriate. Surely the Minister of Transport in consultation with regional councils, the Minister of Local Government and the Minister for the Environment should clarify the responsibilities of regional councils. It is interesting that certainly in our area the Regional Council is taking a very pro-active role and is driving the thing while those bodies who in fact should be doing it seem to be sitting back and not getting on with the job. I support the view of the Harbourmaster being the on-scene coordinator, and in fact in our own draft management plan this is exactly his role. However, I consider again extending this responsibility outside to coastal waters as something that will not be well received by regional councils. This I believe again is a role that the Ministry of Transport and oil companies should have in consultation with regional council.

### Section 3.7 Equity of Oil Pollution Levy Application

Although I think this is an important area to be addressed, a more important area is the current problem of shipping companies refusing to pay regional council harbour dues for oil pollution control function on the basis that they already pay to the central government oil pollution control levy and that this should be payable to regional councils through the crown.

### Section 3.8 Administration of the Crown Bank Account

Recommendation 16 is supported. The concern I have with Recommendation 17 is whether or not regional councils will be able to have enough control on their own area as to the level of control equipment they wish to have. As you may be aware, the Bay of Plenty Regional Council is taking a very pro-active stance and considers that it should be able to fund its activities directly from oil companies. I also question whether the distributional needs will be met. Possibly the only way to do it fairly and in an equitable manner would be to base the allocation of funding and equipment on the oil control contingency plan developed by each regional council for their area. While I agree multiple oil pollution taxes on shipping is undesirable, it must not be forgotten that on a day to day basis regional councils are cleaning oil spills, central government is not. If central government were the sole collector of levies in relation to oil pollution control they would certainly have to have a streamlined method by which each regional council could rapidly recover costs, particularly on a day to day basis. It must be remembered that on a day to day basis costs are incurred by the regional council in maintaining equipment, training staff and cleaning up minor spills that would not involve a recovery from a specific ship.

### Section 3.9 Membership of the Oil Pollution Advisory Committee

I support Recommendation 19 and agree that it could have a wider coordinating role.

### Section 3.10 The Option of Transferring the Oil Pollution Responsibilities to the Oil Industry

I personally believe that there is an argument that the oil industry should be responsible for the major spill which occurs outside of harbour or port areas. It could be expected that such a major spill would require both national and international response and for that reason the oil industry is probably in an excellent position to do so. In terms of dealing with oil spills within port areas or harbour areas, the mechanics are such that the oil companies may not be the best organisations. At the Port of Tauranga we operate a 24-hour watch system and through the oil control management plan are able to deal with all spills immediately. I note that in the American experience it is only those specifically in the oil industry who have to have the approved contingency plans, however most of the spills that occur within port areas are from ships and quite often they are in fact not bunkering but transferring oil internally or pumping bilges.

There is also, I believe, the concern of who decides at which point a clean up is satisfactory and I believe in the regional councils regulatory role, we have in fact a contract arrangement with both the oil companies and the port company to supply personnel etc. to clean up spills. In Recommendation 20 I again comment that there is no consultation with regional councils who seem to be at this stage at the sharp end of the work. I consider this is an error.

In summary I would like to make the following points.

1. There is a clear need to sort out the problems of funding of oil pollution control within New Zealand.
2. There is a clear need to ensure that there is a single coordinating body in New Zealand who can coordinate the purchase of standardised equipment and in doing so get better value for money in terms of purchase power. Quite clearly the Ministry of Transport can fulfil this role.
3. In terms of a major spill, particularly outside of harbour or port limits, oil companies may be an appropriate body, however they would have to be under the control of the Ministry of Transport.
4. There is a need to look at how funding is made available to regional councils and/or equipment and to ensure that regional councils can fund the day to day activities of oil pollution control. Historically, under harbour boards the ratepayer never contributed to this function, however I am sure if you do a survey you will find that at the moment many of the regional councils who do not have a harbour due are subsidising oil pollution control instead of sheeting the costs home against the industry involved.
5. It is agreed that every regional council should have oil control contingency plans for oil spill containment and clean up and that there is urgency to complete the national overview to ensure consistency.

I thank you for the opportunity to comment on this paper which I have found to be an excellent overview of the situation in New Zealand and I consider it does highlight that there are many problems in this area and that better value for money can be achieved through certain restructuring.

Yours faithfully



P M Dell  
**DIRECTOR ENVIRONMENTAL MONITORING**



## **FLETCHER CHALLENGE**

ENERGY AND RESOURCES GROUP

**Please reply to:**  
Fletcher Challenge  
Energy and Resources Group  
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13 May 1991

Parliamentary Commissioner for the Environment,  
P.O. Box 10 241,  
The Terrace,  
WELLINGTON

Attention: Dr W. Armstrong

Dear Madam,

### **RE: THE CONTROL OF MARINE POLLUTION IN NEW ZEALAND: A REVIEW OF THE SYSTEM**

Thank you for providing me with a draft copy of this report for my comment. I have read it thoroughly and find it an excellent document both in scope and content. It clearly identifies the problems and makes very astute recommendations in respect of them. You have asked me for my comments and I am pleased to give them as follows.

#### **Executive Summary**

Some points here come up again as I comment the remainder of the report but I make them nonetheless to assist you in the sections as you meet them.

#### **Recommendation 2**

The statutory backing for the national oil pollution contingency plan is an important first need. I would recommend that you consider identifying that ports, coastal waters and the territorial waters be all covered by this national plan.

#### **Recommendation 3**

The priority for completion of the plan. It would be useful to identify at every stage the need for the national plan to address and integrate all activities viz the shipping and oil companies, the regional governments and/or port companies and the Ministry of Transport.

#### **Recommendation 10**

Include industry people in groups to receive training.

## **Recommendation 15**

In the preamble to this I think it would be helpful to note that the oil pollution levies imposed on shipping companies are passed on in the charges to the owners of the cargoes being carried and that it is higher on oil tankers compared to other vessels.

## **Recommendation 20**

Include production companies.

## **Section 1 of the Report—Introduction**

No comments.

## **Section 2 of the Report—Legal and Institutional Arrangements**

Reference the current membership of the Oil Pollution Advisory Committee (OPAC) I question the current membership as listed because it reflects only those who have attended recent meetings and is not a list of those appointed by the present or former minister in terms of the Act. In your discussion on oil industry (2.1.4) I think it would be helpful to elaborate on the different components of the 'oil industry'. In New Zealand the term is generally used (incorrectly) to describe the marketing companies viz Mobil, Caltex, Shell and BP. The oil industry comprises explorers, producers and finally the marketers. Only one of the marketers, for instance, is involved in production and none of them are involved in exploration. All have potential to create spills.

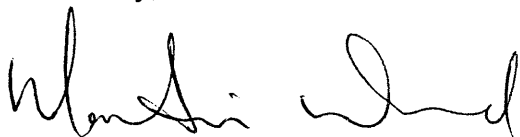
## **Section 3 of the Report—The Issues**

In your discussion of the current New Zealand Oil Pollution Contingency Plan I think it would worthwhile to comment that it does not reflect significant improvement in planning and operations made in overseas national plans and individual company plans in recent years. In its present draft form the plan does not provide for a mechanism for integrating regional government's planning and response with the national one. This is one of the greatest deficiencies and the area of change the MOT has most strongly resisted to date in my experience.

In your preamble to Recommendation 6, I think it would be useful to introduce and perhaps earlier, I'm not sure, the concept of actions and therefore training and equipment taken to protect certain sections of the shoreline, i.e. deflection or exclusion booming. At the present time the plan as I think you see yourself, is very strongly focused at clean up at sea and while the regional councils will be bringing in a viewpoint that concerns cleaning up of the shoreline this intermediate activity and responsibility for it may not get a strong enough push.

Finally, once again to thank you for your interest in this subject and commitment to preparing such a thorough report.

Yours sincerely,



Martin Ward,  
**ENVIRONMENTAL AFFAIRS MANAGER**

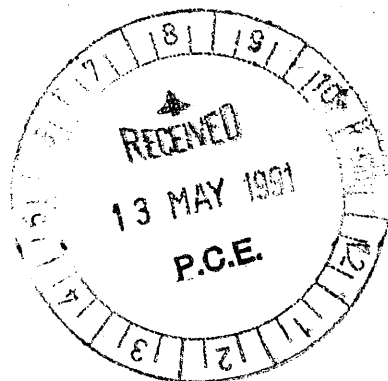


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**C. A. Robertson**

car98600

10 May 1991



**The Office of the  
Parliamentary Commissioner for the Environment  
PO Box 10-241  
WELLINGTON**

**Attention: Mr Armstrong**

**Dear Mr Armstrong**

**Thank you for your recent letter and the draft copy of your report on Marine Pollution.**

**I would comment as follows, on behalf of the Marine Spills Task Force.**

- 1. We welcome the thrust of your report, and applaud its wide-ranging findings and recommendations.**
- 2. Your recommendations broadly align with the messages we have been passing to government as requiring urgent attention.**
- 3. In recommendation 19 you suggest that the debate be opened up to a much larger audience. We are sure there are many people available inside and perhaps outside New Zealand who could make a contribution to the quality of Marine Spills response in New Zealand. We are, however, very concerned that the existing parties already have many pressing issues to deal with and the introduction of new interest groups may be a retrograde step at this time when urgency is required to sort out the basics of the response capability. Our suggestion would be to consider phasing in appropriate groups as the project progresses to develop an effective response unfolds.**
- 4. We do not believe it would be appropriate for the oil companies to lead response:**
  - there would be liability problems**
  - we would not respond to non-oil company related spills**
  - there would therefore be duplication**
  - we are not interested in taking on problems created by other groups beyond our direct control**