Submission to the Regulation Review Committee

Shipping (Charges) Amendment Regulations 2013

Marine Safety Charges Amendment Regulations 2013

BY	Paul Wilson
ADDRESS	Apt 11E/1 Emily Place
	Auckland Central
	Auckland 1010
EMAIL	pauljwilson@zoho.com
ATTENTION	Regulation Review Committee.
DATE:	7 February 2014

TABLE OF CONTENTS

BASIS OF COMPLAINT

Principal Regulations in Question:

Shipping (Charges) Regulations 2000
Marine Safety Charges Regulations 2000

Challenge to

Shipping (Charges) Amendment Regulations 2013
Marine Safety Charges Amendment Regulations 2013

Request

1) Review the changes to fees made by the Shipping (Charges) Amendment Regulations 2013 and the Marine Safety Charges Amendment Regulations 2013 in light of the provisions of the Standing Orders and, should the Committee see fit,
2) Refer to the Minister for a review based on the findings of the Committee based on this complaint and/or
3) Recommend a return to the previous state as under the former Shipping (Charges) Regulations 2000 and Marine Safety Charges Regulations 2000 and/or –
4) Prevent further changes as proposed by Maritime New Zealand to the regulations as proposed by Maritime New Zealand's *Proposed Fees for MOSS – ITC 14 October 2013*
5) For the Committee, should it see fit, recommend to the House to consider a motion to revoke the Shipping (Charges) Amendment Regulations and the Marine Safety Charges Amendment Regulations 201 as provided for in the 2013 Regulations (Disallowance) Act 1989 or by way of executive action.

EXECUTIVE SUMMARY

It is my submission that Maritime New Zealand's proposed fees under the Shipping (Charges) Amendment Regulations 2013 and Marine Safety Charges Amendment Regulations 2013 are –

1. Contra to the reasonable cost expectations of the public service and 'less regulation, better regulation'
2. Contrary to the intent of the Legislature and the Standing Orders.
3. Taxes, and therefore *ultra vires* and invalid
4. Inefficient, inappropriate and unfair
5. Contra to the greater good on the NZ taxpayer
6. Based on unreliable assumptions
7. Must be struck out and those fees already paid, *refunded.*

INTRODUCTION

> *We will review existing regulation in order to identify and remove requirements that are unnecessary, ineffective or excessively costly [and] require there to be a particularly strong case made for any regulatory proposals that are likely to:*
>
> *- impose additional costs on business during the current economic recession;*
> *- impair private property rights, market competition, or the incentives on businesses to innovate and invest; or*
> *- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee guidelines);*
>
> *… Require greater accountability from government agencies for the quality of the regulatory analysis they undertake, and for the consequences of poor implementation; and..*
>
> *Encourage New Zealanders to hold us to account where they believe we have regulated in a way that is inconsistent with the commitments in this statement.."*

- Government Statement, Better Regulation, Less Regulation. August 2009.

This submission builds on the reasonable expectations that flow from this statement while accepting the invitation to hold the regulator to account.

The course of events has been such that it is my firm belief that there is a need for a formal and independent regulatory review. It should therefore be noted then that this submission is written for the benefit of NZ's domestic operators who bear the ultimate cost of MNZ's proposals by way of the Shipping and Marine Charges Regulations.

THE NEED FOR INDEPENDENT REGULATORY REVIEW

Standing Order 315(2)

(a) is not in accordance with the general objects and intentions of the statute under which it is made:

(b) trespasses unduly on personal rights and liberties:

(c) appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made:

(d) unduly makes the rights and liberties of persons dependent upon administration decisions which are not subject to review on their merits by a judicial or other independent tribunal:

(e) excludes the jurisdiction of the courts without explicit authorisation in the enabling statute:

(f) contains matter more appropriate for parliamentary enactment:

(g) is retrospective where this is not expressly authorised by the empowering statute:

(h) was not made in compliance with particular notice and consultation procedures prescribed by statute:

(i) for any other reason concerning its form or purport, calls for elucidation.[1]

Grounds for objection under Standing Order 315(2)

1) General Objects and Intentions of the Act

The fundamental constitutional principle which applies to the imposition of taxes and government charges is that Parliament, and Parliament alone, can levy money for the Crown. This principle is reaffirmed in section 22 of the Constitution Act 1986, which provides that it is not lawful for the Crown to levy a tax except by or under an Act of Parliament.

The principles that apply to setting fees by regulation have been considered by the Regulations Review Committee, the Audit Office (and more recently) the Treasury. These principles recognise the constitutional position where consumers have no choice but to purchase goods and services from the Crown.

The Regulations Review Committee approach is based on 2 broad principles. The first is the constitutional principle that the Crown cannot levy taxes without the explicit authority of Parliament. A fee that recovers more than the cost of a service provided under an Act or regulation may be a tax in disguise. Secondly, a regulation which fixes a fee or charge may offend 1 or more of the grounds in

[1] http://www.parliament.nz/en-nz/features/00NZPHomeNews100820101/making-a-complaint-to-the-regulations-review-committee

the Standing Orders under which the committee considers regulations. For example, a fee may trespass unduly on personal rights and liberties if it is imposed in unfair circumstances[2]

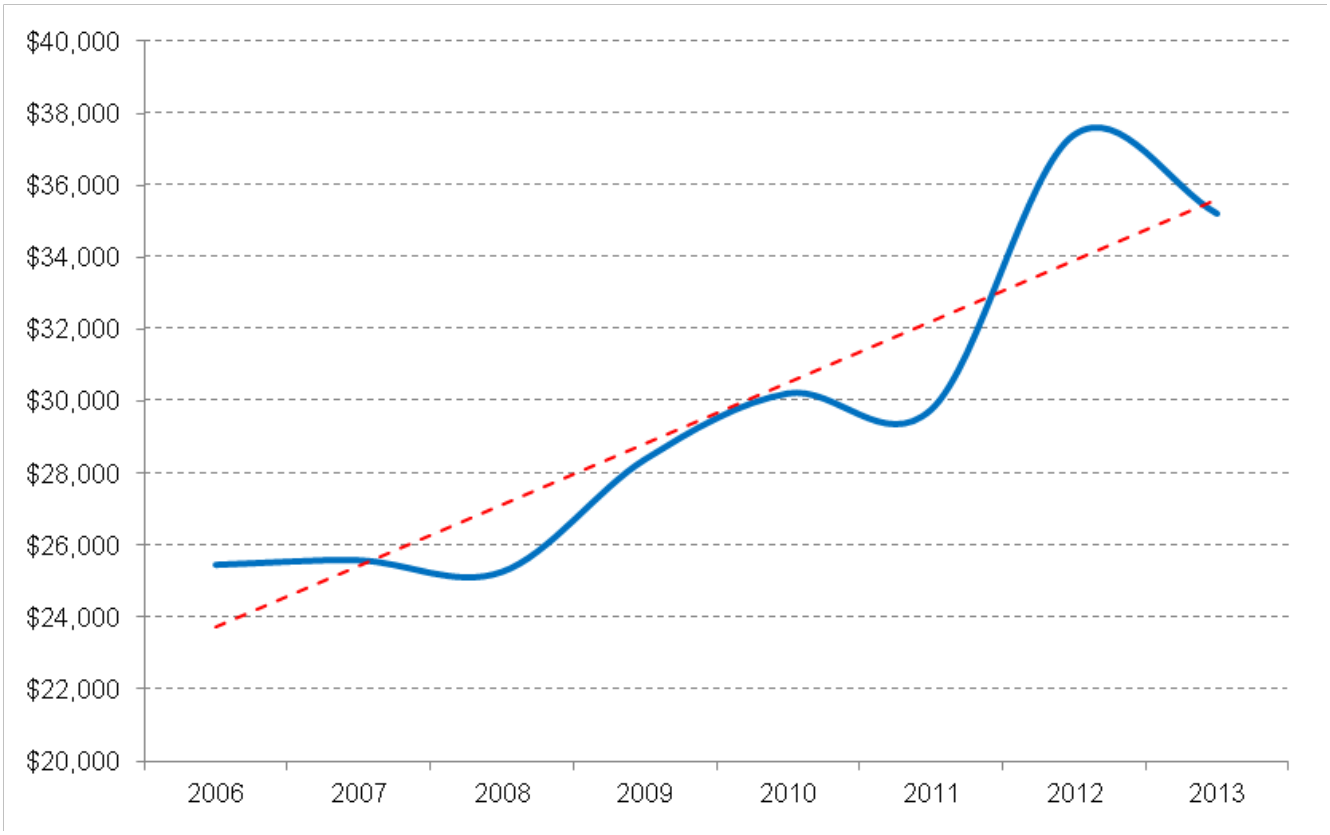
2. Standing Order 315(2)(c) Unusual or Unexpected Use of Regulation Making Powers

There exists a reasonable and legitimate expectation that Maritime New Zealand will seek to work within a set remit and budget. Over the last ten years not been the case with the latest round of ideas warning us the immediate future is about to get worse for the domestic operator. The following data is from my previous submission regarding the Fees Review which provides a graphical representation of MNZ's fiscal behaviour.

Revenues

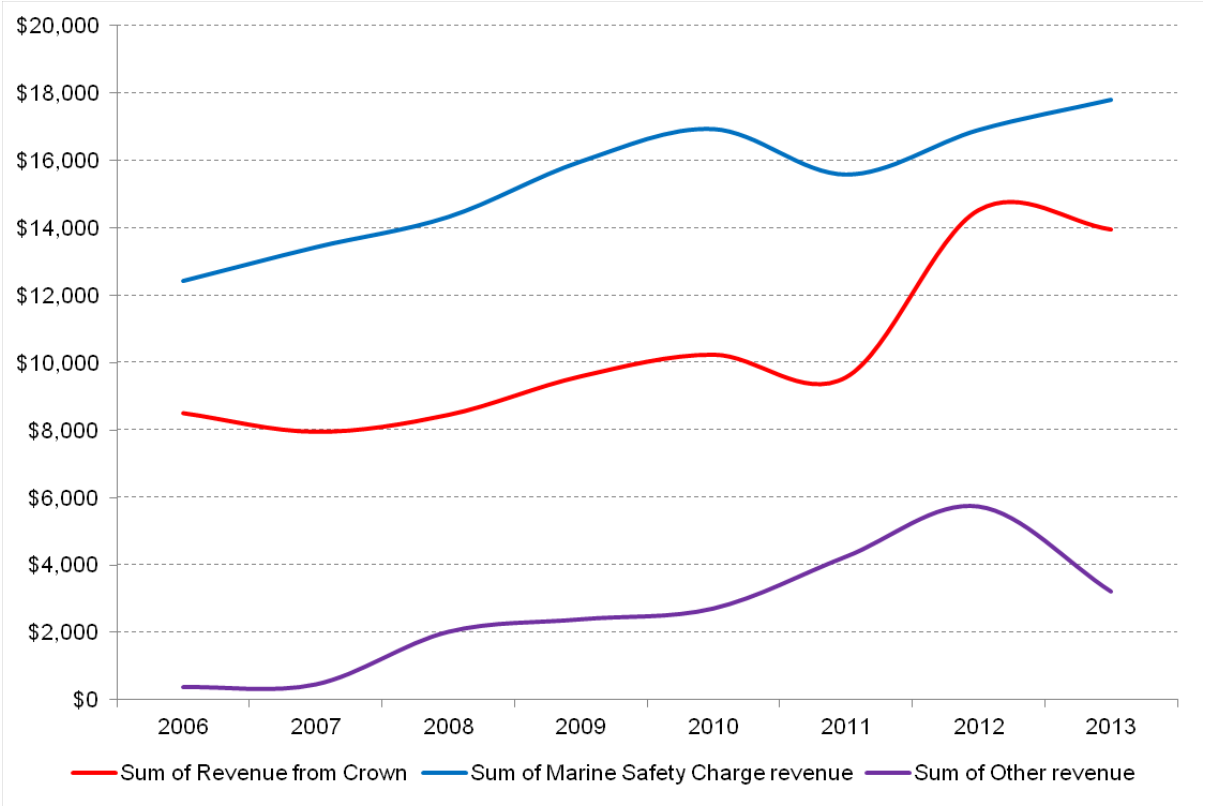
The following section looks at year on year revenue*

1) MNZ Total Operating Revenue 2006-13 (NZ$000)

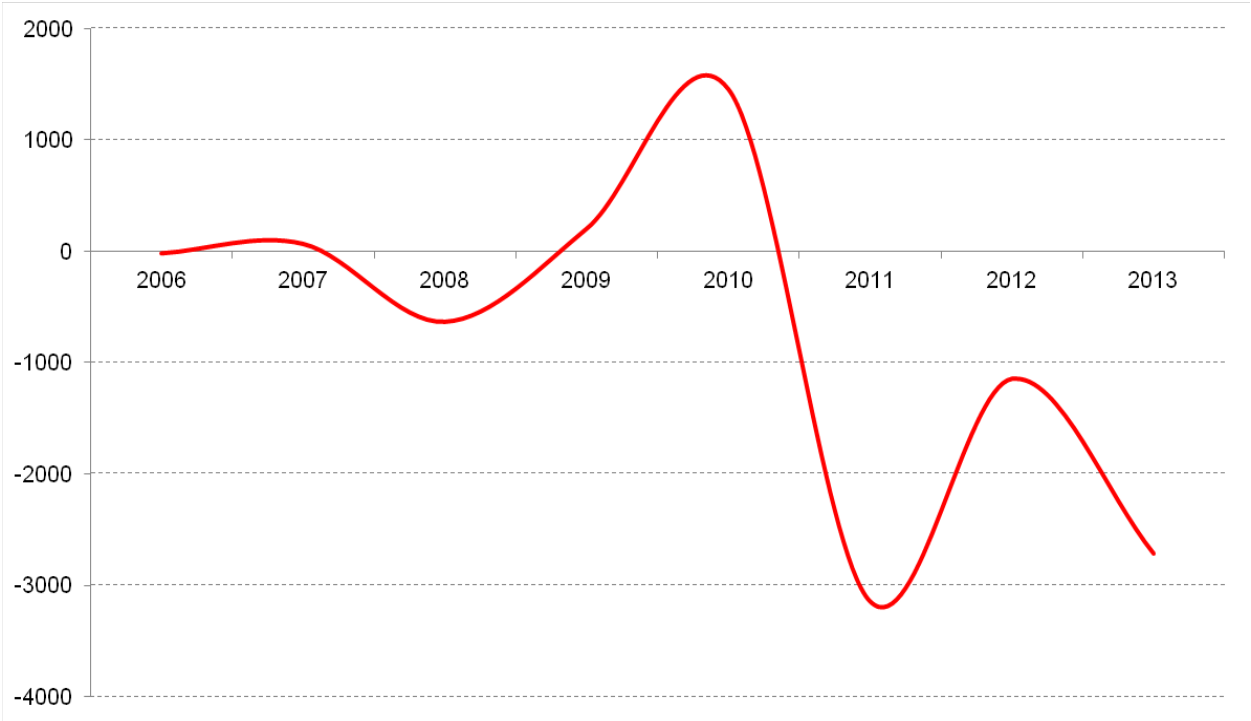


[2] http://www.pco.parliament.govt.nz/lac-chapter-3#PART-4

2) MNZ Operating Revenue Components 2006-13 (NZ$000)*



3) MNZ Operating Revenue Surplus/Deficit Trend 2006-13 (NZ$000)*



*MNZ Annual Reports 2006-2013

From 2006, there are many references throughout MNZ's annual reports that funding arrangements for MNZ are 'unsustainable'. However, when the spending behaviour is plotted as above, it is a reasonable conclusion that MNZ is not serious about fiscal sustainability as a key driver of policy.

Instead, MNZ has actively pushed their boundaries to grow in size and scope rather than concentrate on a core mandate of services with limited funding. To use a common economic metaphor, if MNZ were a household, it appears that the fees are being raised to consolidate non direct levy and crown funding to 'maintain a lifestyle' rather than actively seek to reduce costs and move towards a more sustainable strategy.

As MNZ have achieved higher levels of funding, they've (to quote the classic line from Rob Muldoon after defeat in 1984) 'spent the lot', and when it is spent cries out that the 'the funding is unsustainable' are posted in the annual report with calls for reviews and fee increases to keep the party going. The fact is, MNZ's spending continues to outpace revenue growth even when revenue has increased 38% overall since 2006.

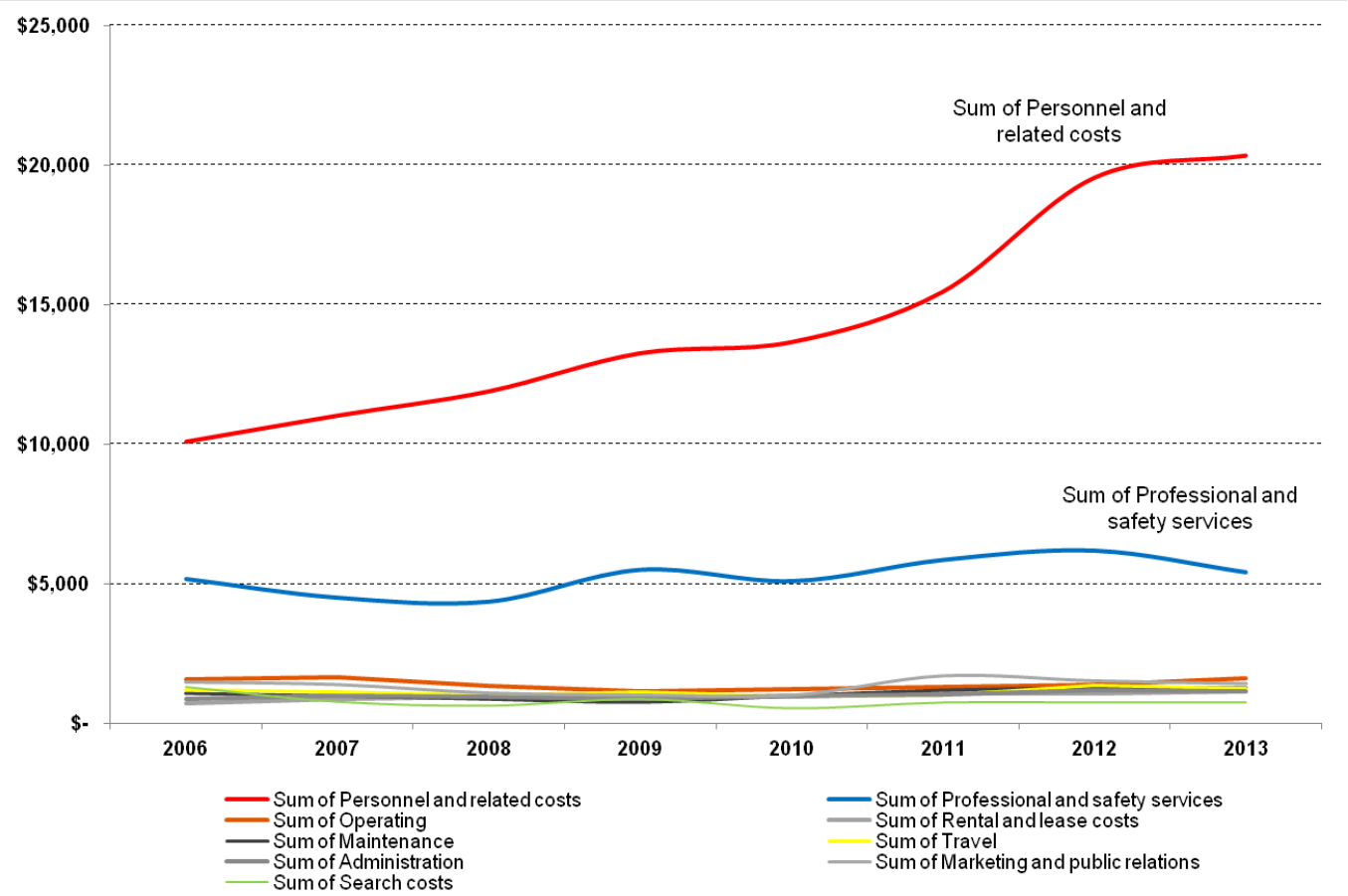
MNZ is not underfunded, MNZ is overspending.

Despite a $4.7m boost to total revenue between 2006 and 2010, the MSC levy and crown funding softened over 2010/11 with other revenue rising to consolidate total revenue from fees, interest, MFAT revenue etc and continues to rise. Not only does this raise questions about the nature of spend, it has direct consequences for cost forecasts and revenue requirements when contrasted with those in MNZ's expressed view in consultation documents.

But let's be fair. If we raise questions about the nature of spend when considering revenue has risen by approximately $5-7m over the last few years and yet MNZ believe there is still an apparent issue of funding fairness, allocation, sustainability and security, then we have to understand what the costs are and why there might be a problem in the first place.

The next section looks at increasing cost of services.

MNZ Costs of Services (NZ$000)*



*MNZ Annual Reports 2006-13. For ease of reading, administrator fees, depreciation, donations, capital charge, website development, bad debts are excluded, but the data is available if required.

The graph above makes it apparent that while most costs have been held consistently under the $2 million mark since 2006 with one (professional and safety services) threatens the $6 million mark but is otherwise unremarkable as a % change in spend over time.

The outstanding feature is that personnel and related costs *continue to rise inexorably* and has doubled over the last 7 years.

We should also notice that travel costs since 2006 have remained largely static. We could consider the appropriateness of $1m of travel for an agency of less than 160 people as a separate issue, but for now let's continue and note that administration costs appear also to be consistent. We can also give MNZ the benefit of the doubt and assume this is because of better systems and processes over time allowed it to be so. However, under normal circumstances operational staff increasing admin throughput would normally have the effect of 'reaching down 'and pulling the administration cost curve upwards concurrently.

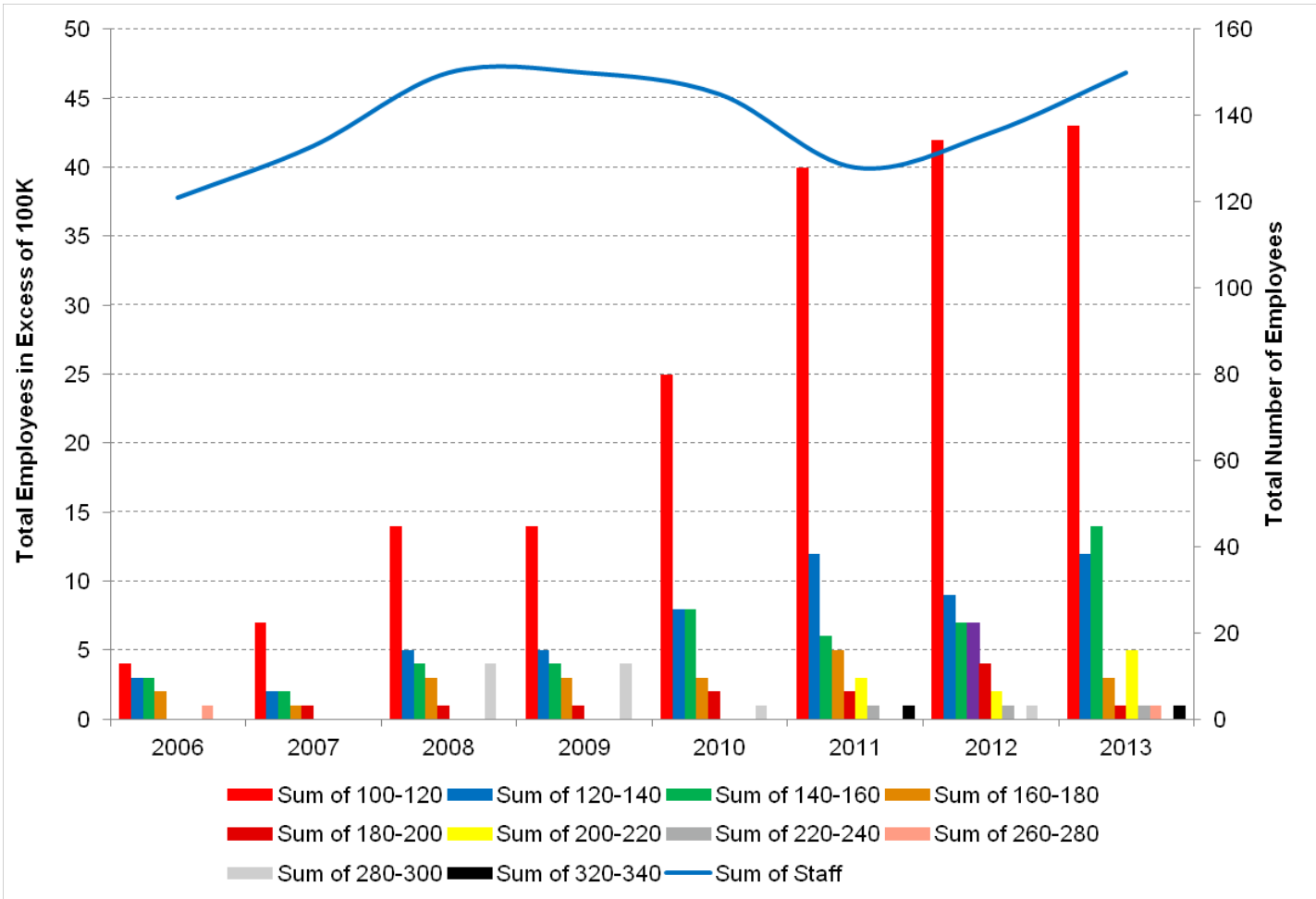
So, if travel spend is static and admin throughput is either non rising (or being better managed) then –

- Would it be reasonable to assume that the increased staff numbers aren't moving around much and therefore might be in management and admin roles rather than operational roles discharging services at the coalface?
- Has the increased spend been due to hiring more management type overhead roles and and/or pushing incumbents up the pay scale into more senior roles that increase costs that now need to be recovered?

Both assumptions would appear to be reasonable, but what data is there?

In 2005/06 MNZ reviewed personnel policies and practices to ensure compliance with the 'good employer' principles of the Crown Entities Act 2004 that introduced a new remuneration structure. So let's deal with our assumptions from the period from 2005/6.

MNZ Staff with Remuneration in Excess of $100k PA*

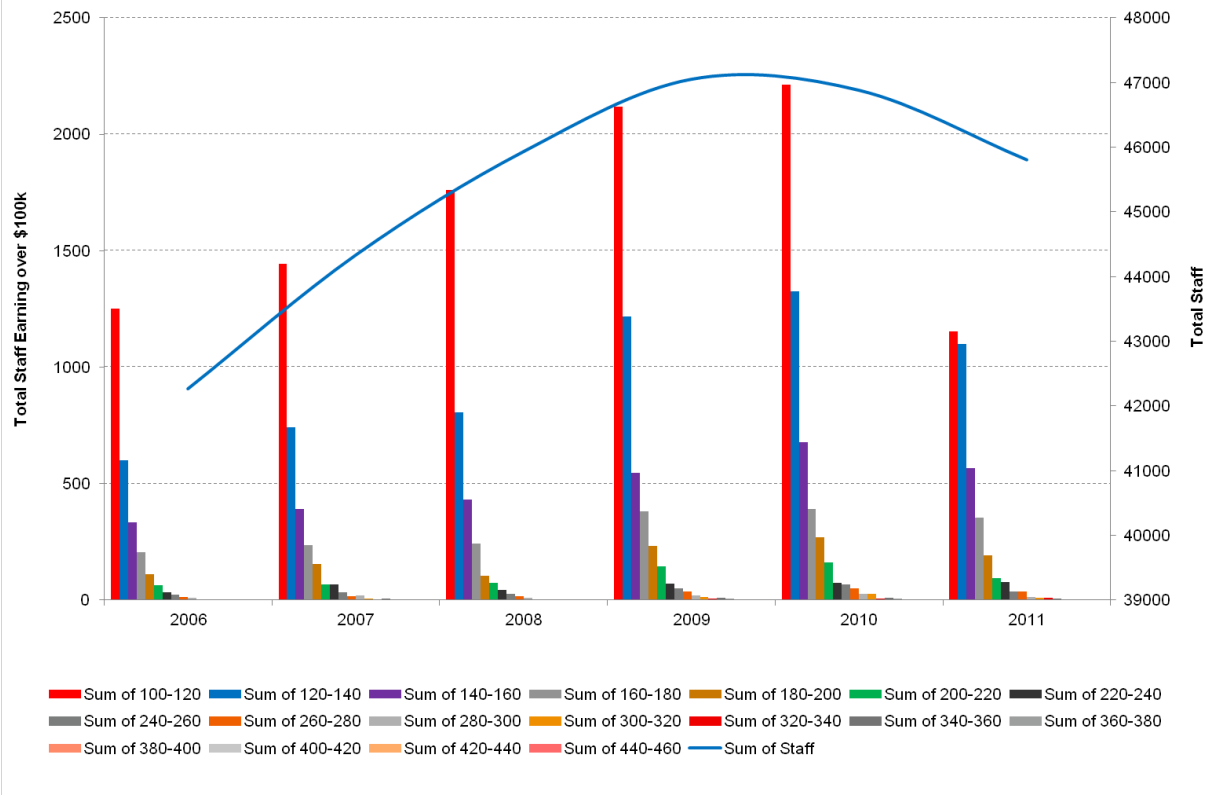


*MNZ Annual reports 2006 – 2013 – Actual FTE

While this graph poses a few questions, the clear fact is that as recently as 2006 only **8.3%** of staff was receiving a salary in excess of 100k, but in 2013 it was **54%.**

During the same time over the entire public service, in 2006 **6.2%** of staff was receiving a salary in excess of $100k; (in from data available up to 2011) it was **7.9%.** More remarkable is the transition from 2010 to 2011 and unlike MNZ, the public service reacted to the global financial crisis by reining in personnel costs. See graph below.

Number of staff in the Public Service and organisations whose chief executives are under Remuneration Authority jurisdiction who received total remuneration in excess of $100,000



Source: State Services Commission Data – Crown Publications

Between 2006 and 2011, changes in labour cost over the entire economy (private and public sector) have also increased only steadily and within a maximum range of 17.5% while over the same period at MNZ it was **59%**

A legitimate expectation is that Maritime New Zealand follow the rest of the public service and seek savings rather than imposing costs back on to the general public in contravention of the government's statement "better regulation, less regulation" and the current direction of the State Services Commission.

The State Services Commission (SSC) is explicit in their view that -

New Zealand's State sector faces increasing expectations for better public services in the context of prolonged financial constraints compounded by the global financial crisis. There is demand for improvements in addressing complex, long-term issues that affect New Zealanders. The key to doing more with less lies in productivity, innovation, and increased agility to provide services. Agencies need to change, develop new business models, work more closely with others and harness new technologies in order to meet emerging challenges. [3]

Other public service organisations have faced up to these obligations and expectations by making some tough and unpopular decisions. Some examples –

- More than 3,000 public sector jobs have been lost since 2009.
- The "civilianisation" process at Defence, which transferred 1,400 military personnel into lower-paid civilian jobs, was aimed to save $20 million[4]
- 79 jobs lost at MFAT[5]
- The Department of Conservation will cut 140 jobs to save $8.7 million[6]

Strikingly, the organisation that we all depend upon for our day to day safety, the Police, cut 125 jobs in what was called a "fine-tune" of staffing. Commissioner Peter Marshall announced that the job cuts were necessary if the police organisation wanted to live within its means.[7]

The Police, the Department of Conservation, the Defence Force and MFAT have cut their staffing costs, yet Maritime New Zealand continues to accelerate its own spending without making any reduction in costs. How this has been able to happen, and continues to happen, goes to the heart of this submission.

The key is that Maritime New Zealand are neutralising their budgets and holding direct government funding at par by simply imposing, and re-imposing increased costs back in society in the form of fees. This sort of funding stream manipulation avoids having to request direct government funding from general taxation, which then results in government believing the funding level (on governmental books) appearing to be the same. So the political question is resolved without having to follow Parliament's statements of intent.

For these reasons, it is my submission that MNZ is out of step with other government departments and outside the boundaries of expectation of responsible fiscal behaviour set by Parliament and the SSC. Standing order 315(2)(c) clearly holds against this sort of egregious and capricious use of regulatory authority.

[3] http://www.ssc.govt.nz/better-public-services
[4] http://psa.org.nz/Libraries/PSA_Document_2/Working_Life_March_2013.sflb.ashx
[5] http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10806552
[6] http://www.stuff.co.nz/national/politics/8644586/Conservation-Department-job-loss-count-unveiled
[7] http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10806831

3. Standing Order 315(2)(f) - Contains matter more appropriate for parliamentary enactment

312(2)(f) speaks to the matter of fees masquerading as taxes and, if fees are considered to be taxes, then they are a matter for Parliament.

The distinction between a tax and a fee was considered in the Regulations Review Committee's inquiry into the constitutional principles to apply when Parliament empowers the Crown to charge fees by regulations. The court discussed the character of a tax and considered that if a levy was compulsory, was for public purposes, and was enforceable by law, then it had the basic characteristics of a tax. The Committee has also emphasised that if the amount of a 'fee' fixed by regulation under statutory authority exceeds the value of that which is acquired, that fee is properly to be seen as a tax.[8] The mere fact that an amount is described as a fee does not preclude it from it being considered to be a tax by another name. If it is considered to be a tax then the fee is *ultra vires* and invalid.

The Auditor-General assists us further in definitions and sets out in the good practice guide for charging fees for public goods and services.

Charging fees for public goods and services: *Setting a fee that recovers more than the costs of providing the goods or services could be viewed as a tax. Unless expressly authorised by statute, this would breach the constitutional principle that Parliament's explicit approval is needed to impose a tax. Accordingly, any authority given to a public entity to charge a fee is implicitly* ***capped*** *at the level of cost recovery.*[9]

So how is Maritime New Zealand *capping* the level of fees to *cost recovery* to comply?

They're not. They're not even attempting to.

As previously discussed, MNZ is simply swapping out direct funding for fees and concurrently raising the figure for 'cost recovery' simply by increasing total cost of services by expanding payroll. The neutral reader would accept that the intention behind 'cost recovery' as a principal stated by the Auditor General is not to stimulate ever increasing demand and increasing budgets, rather it is a reasonable expectation of cost control.

There is no control on MNZs spending behaviour. MNZ have found a way to increase costs without restrictions, either implied or real. In their own defence in earlier submissions, MNZ stated that 'Maritime New Zealand's budgets – both revenue and expenditure -- are subject to the approval of the

[8] http://www.pco.parliament.govt.nz/lac-chapter-3#PART-4
[9] http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/22.htm

Minister and the scrutiny of Parliament.[10] So despite the lack of cost control (which is strongly suggestive of a tax), MNZ is putting Parliament on the record as having approved and continue to support MNZ's stance despite the fact that MNZ is constitutionally prevented from imposing taxes under delegated regulation.

It is my submission that the assumptions MNZ is basing their authority on and information they are providing to Parliament requires elucidation and clarification. Not only that, what other contextual aspects might help us clearly determine between a fee and a tax?

We are assisted by government's publication of *Managing Money: The receipt, management and disbursement of public and trust money.*[11] In the article, we are told there are three principals for setting out fees if they are not to be considered taxes. They are the principals of Authority, Efficiency and Accountability.

So what is efficiency in the context of the management of money in the public sector? The Finance Minister, on documents available on the budget website, sets down his expectations clearly.

Efficiency: *Public entities have a responsibility to understand, monitor and manage their costs to ensure they are operating efficiently. An 'efficient' operation is one that produces as many goods or services as possible at the desired level of quality from a given quantity of resources, thereby minimising costs to the Crown* ***and*** *users.*[12]

We have already demonstrated so far in the discussion that –

- MNZ is not managing their costs, particularly payroll costs
- MNZ is minimising Crown costs simply by swapping out direct funding for costs on users

So the statement is already and largely not being complied with, but still leaves the third part and closing condition of the statement being, "desired level of quality from a given quantity of resources" without determination.

Increased funding must result in an equal level of or more services and a) that demand comes from the marine sector and b) that MNZ is responding to this demand to enhance a social good. To find out what the increased demand/desire might be (and requisite and appropriate level of funding), requires a discussion of demand and cost of services.

[10] MNZ Funding Review Analysis of Submissions

[11] http://www.budget.govt.nz/budget/pdfs/pit/pit-ch6.pdf
[12] http://www.budget.govt.nz/budget/pdfs/pit/pit-ch6.pdf

To start, let's remind ourselves about MNZ's fundamental rationale for the Funding Review and MOSS fees implementation to amend the Marine Charges and Shipping Charges Regulations. In MNZ's words (consultation paper) that there is a '*misalignment between the current sources of revenue for MNZ and the activities that those various sources fund'*

So what are those activities?

- developing and monitoring maritime safety rules and marine protection rules
- licensing seafarers and registering ships
- conducting safety inspections of all New Zealand ships and foreign-flagged ships calling at New Zealand ports
- investigating and analysing maritime accidents and accident trends
- educating the maritime community about best practice in safety and environmental standards
- ensuring that relevant port facilities and New Zealand ships meet the requirements of the Maritime Security Act 2004
- providing and operating lighthouses and other aids to navigation for ships on the New Zealand coast
- providing a coastal maritime safety and distress radio service
- managing the Rescue Coordination Centre New Zealand
- maintaining the New Zealand Marine Oil Spill Response Strategy and National Contingency Plan
- administering the New Zealand Oil Pollution Fund
- overseeing services provided by organisations under contract, mainly in the areas of marine radio services and the Safe Ship Management system.

There are, therefore, generally two streams of services, one being operational (inspections, audits, SAR, liaison) and other, policy (rules development, policy advice etc).

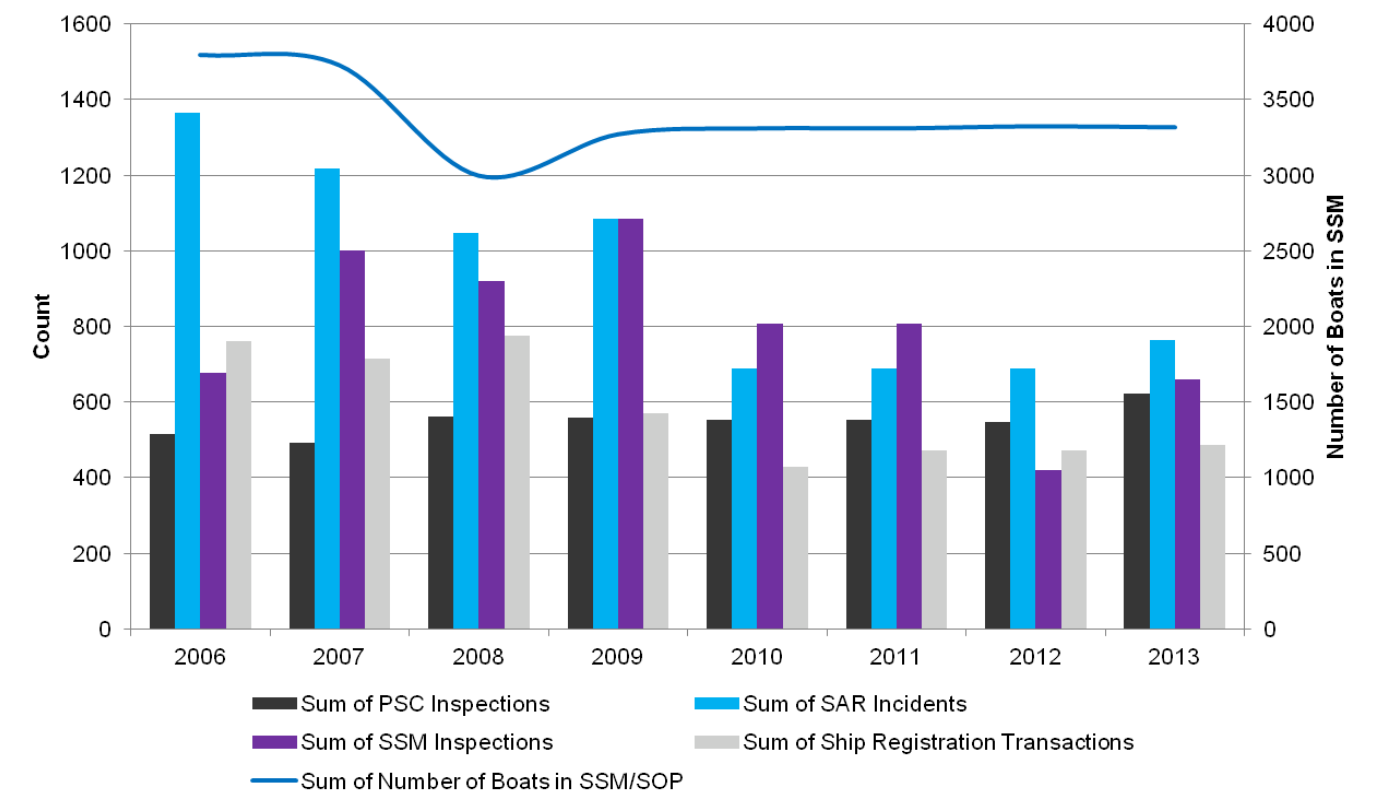
What's of interest to this discussion and to extend on the point made above, is where the extra costs are actually being generated. That's to say, into the operational (audits etc delivered to industry) or policy sphere (administration, policy and general bureaucracy) and by who?

When you look at the core operational functions of MNZ, being Port State Control, SAR, SSM/SOP inspection etc, it seems clear that the demand or requirements from a 'volume equals demand' point of view for these services is largely stable.

That means that over time, there hasn't been more boats to be audited, more SAR operations to be completed, ship transactions to be registered etc.

The following graph illustrates the fact

MNZ Core Operations 2006-13



From 2006 to 2013, MNZ's total operating revenue/funding increased by 38% while vessel numbers stayed in stasis.

MNZ unilaterally translate the statutory meaning of their role, and from that decide which areas require attention and direct funding towards it. Over the last few years, extrapolating from the data above, there hasn't been any extra spike in numbers and resultant requirement for more auditing and inspections etc, so we can conclude that funding (and increased personnel costs) since 2006 have been largely directed into policy and administrative areas. There has not been any significant growth of operational (MSI) staff around the country discharging important 'boots on the ground' operational roles, but there has been a significant growth of paper based admin and management type roles in Wellington.

The point is that only MNZ can be the judge of what the important issues requiring attention are and keep increasing scope which results in more and more implications for funding. For example, no one would question spending more on SAR operations as required, when required, however, there could be some question surrounding the need to spend $800,000 in 2010 on 'heath and safety liaison visits to operators' amongst other things, or the need to have more paper based processes in place, to

administrate a fit and proper person system for people who already have recognised MNZ qualifications etc.
Put even more simply, it is MNZ generating demand based on what MNZ decide they want to do as part of their scope of services and nothing else. So there we are, the 'desired level of goods and services' is set by MNZ themselves with no oversight or accountability. There is simply no other source of real demand.

So we have completed the 3 point triangle of how MNZ is breaching the definition of efficiency.

- MNZ is not managing their costs, particularly payroll costs
- MNZ is minimising Crown costs simply by swapping out direct funding for costs **on** users, when Parliament's intent is the Crown **and** users interests must both be accounted for.
- There is no mutual desired level of quality with industry, MNZ is simply imposing desire and demand.

Moreover and as discussed, rather than use a *given* quantity of resources, MNZ is in a gathering mode of *acquiring* resources rather than budget for them which is absolutely contrary to reasonable expectations around efficient behaviour.

Therefore, if we agree that MNZ are in breach of the efficiency principal, then they have a) no authority to collect fees over that of a cost recovery level which, if MNZ *were* efficient, would be a lot lower than current levels and b) the cost of delivering those services is greater than the legitimate expectation of sustainability and control as implied by Parliament, then it must follow then that the fees are in fact taxes in disguise and a breach of Standing Order 315(2)(f).

But let's assume that the reader remains unconvinced. To further remove doubt, it may surprise the reader to know that MNZ are already charging taxes disguised as fees. To understand how, let's give MNZ the final word as to when they think a tax should be applied rather than a fee.

From table 1, page 7 of the document *Maritime New Zealand Funding Review Consultation, Background Document 8 October 2012*

Included under **General taxation** -

General exemptions (where the legislation is out-of-date or inadequate – thus making an exemption a necessity – and it is therefore inappropriate for the operator to pay to apply for an exemption)

When an operator applies for a general exemption, he or she must use MNZ form MAR MSS 112A. You will note that there is no reference to whether the exemption might be considered a 'general exemption' as opposed to any other sort of exemption and *all* exemptions are charged $504 to the

operator regardless of what they could be considered as. Not only that, every application for an exemption is subject to the following clause (emphasis mine).

A further fee may be charged if an exemption request is approved but requires more technical and management input. These additional costs will be invoiced upon the certificate being issued.

Not only that, also bear in mind that to be granted an exemption, the operator must satisfy and document on MAR MSS 112A, inter alia, the following clause:

- *Why, in this particular case, are the requirements prescribed in the rules clearly unreasonable or inappropriate?*

So it is clear that by MNZ's *own definition* that the charges for exemptions should be met by taxes, yet they are charging fees. The contradiction is irreconcilable as there is simply no other type of exemption.

As one example, I am personally aware of an operator who paid this fee because he was caught between the two regulators, AMSA and MNZ, through no fault of his own and where the rules were outdated who duly paid his $504. MNZ refused to refund the exemption fee citing that because technical advice was needed for the specific application, then charging was reasonable as it wasn't a 'general exemption' as other operators wouldn't benefit from the granting of that particular exemption.[13] So, the Director of MNZ has decided that the 'unreasonable' test falls on the benefits of the granting of the exemption to *other* users which, ergo, makes it more 'general' rather than the pros and cons of the adequacy of the rule itself. So, the point is, if it needs 'technical advice' then it will be charged. This begs the question, then, how many exemption requests are considered without technical input which would make them both general and refundable? MNZ might want to answer, but I would suggest no refunds have been made under the provisions to make them as determined by MNZ's own process. This is because MNZ have procedurally negated the intent of the clause to allow for relief by simply closing the loop of possibilities.

But it doesn't end there. Even when you might expect MNZ would want to reduce the profile of this dubious form of revenue collection to avoid query and scrutiny, they're actually pushing the barrow further by reserving the right to charge for *additional fees for technical and management input.*

The first thing that comes to mind is what does 'technical and management input' cost over and above the application fee? The FAQ sent to industry by MNZ outlines the possibilities as follows - *the average total effort for processing exemptions in 2011 was 8-9 hours which would mean another $375-$475 on top of the application fee, if your application is approved.* Interestingly enough (and

[13] Letter dated 3 Dec 2013. Forsyth – Maritime New Zealand

bear this in mind for later) this would imply they value their effort and cost between $47 and $52 an hour.

I've thrown a few things at the reader who may benefit from a quick point review of this section -

1. MNZ consider some costs such as 'general exemptions' to be appropriately paid by taxes.
2. MNZ are not permitted to charge taxes under delegated regulation.
3. There is only one class, form or type of exemption.
4. A 'general exemption' is considered to be when *the legislation is out-of-date or inadequate*
5. To be granted an exemption, the operator must prove that rules are *unreasonable or inappropriate* and not how it might benefit others.
6. Therefore all granted exemptions must be general exemptions.
7. MNZ currently charge $504 for every exemption application as a fee.
8. MNZ apply a rate of $47 and $52 an hour for management and technical 'extra work' on exemptions
9. MNZ want to put fees up to $235 an hour by 2018.
10. Finally, exemptions not considered general exemptions, by virtue of their potential benefit to other users, may need still specific technical input and therefore charging is reasonable and not refundable[14]

MNZ must cease to charge these taxes and associated costs immediately. Moreover, they should be required to refund all those taxes that have been collected from the date of the imposition of the tax, 1 Feb 2012. The operator reader paying these fees could be entitled to feel a growing sense of outrage at this commercial exploitation of those who are caught between outdated rules and the requirement to comply or face regulatory sanction.

4) Standing order 315(2)(b) trespasses unduly on personal rights and liberties:.

It is now appropriate to bring the operator into our discussion.

The common argument is that fees (other than exemptions, dealt with in the last section as taxes) are "not taxes because revenue is collected by the Authority from individuals within a specific group only when they wish to participate in the system, is only used to fund the specific services related to the payer's decision".[15]

In some circumstances, we might accept this. Those circumstances would be if you were 18 and considering a career in the maritime sector and were fully aware of the costs involved to make a reasonably informed decision about the financial consequences in choosing your livelihood.

[14] Letter dated 3 Dec 2013. Forsyth – Maritime New Zealand
[15] MOT Response to RRC - Civil Aviation Charges Regulations (No 2) 1991 Amendment Regulations 2012 (SR 2012/305)

However, where you stand depends on where you sit. All current operators have capital investments in their operations that were all made previous to all knowledge of these new fees and taxes. In some cases, operators have been working pre 1998 during the MOT days and since the early days of Safe Ship Management. What this means is that regardless of when they entered commercial survey their decisions and cost benefit analysis were made based on the circumstances at the time of entry. The general attitude of the Authority and basis for fees (as a club good, not a public good) is that because you 'wish' to participate in the club, you're making a free and voluntary decision, ergo, you are therefore then expected to pay *any* burden that comes your way as a result of your decision made at a time when those charges didn't actually exist.[16] That attitude is wrong and it is unfair. Operators are only a club in that they are captive and without any recourse of action against the regulator.

It is also means that a facile argument supports an attitude. But unlike most facile arguments that require pointing out various complexities and realities to refute, this one has a very easy response. The response is that operators, while accepting the need for smart, efficient and relevant regulation, just wish to exercise their undeniable right to deriving an adequate standard of living from their profession.

They wish to pay their bills and support their families as is their most basic right to do so. MNZ's fees/taxes directly impose on individuals rights by imposing barriers to a right to earn a living. MNZ's taxes/fees are not borne by most other members of society who have that right secured either free of charge or by general taxation. This disregards the Legal Common Principal that 'the interests of the individual are of paramount concern to the law'. The most basic right of an individual is to exercise his or her profession without interference or hindrance from a demonstrably inefficient regulatory body unilaterally imposing ever increasing fees and taxes at whim. MNZ's approach is even more pernicious in that most operators have no other real options and can be quite easily compelled to pay. They either pay or they can't earn. The alternative is to not pay and try to earn and risk becoming a criminal under the Marine Transport Act.

All New Zealanders deserve protection from this sort of behaviour under regulation rather than Acts of Parliament. Therefore, I believe that the MOSS proposal and the funding review together with the associated fees and increases are in breach of Standing order 315(b), with one proviso. That proviso is that even if somehow they are considered legitimate fees and not taxes, they should be levied only on operators who are joining the system for the first time in future and willingly doing so. That's their choice and fair, but doing it to those without a choice, is the very definition of unfair.

[16] See: MOT Response to RRC - Civil Aviation Charges Regulations (No 2) 1991 Amendment Regulations 2012 (SR 2012/305)

So now we're getting there. We've demonstrated thus far that MNZ have violated –

1. Government's statement on 'better regulation, less regulation'
2. Principals of efficiency and fairness and in the process and–
3. Standing orders 315(2) sections -

    A) not in accordance with the general objects and intentions of the statute under which it is made:

    B) trespasses unduly on personal rights and liberties:

    C) appears to make some unusual or unexpected use of the powers

    F) contains matter more appropriate for parliamentary enactment:

The reader may be thinking - but how is it possible to do so in New Zealand, a country we all want to believe has sufficient checks and balances that any government department are able to push through such measures? The answer is lack of accountability, which the reader will remember breaches Standing Order 315(2)(c) - Contains matter more appropriate for parliamentary enactment.

In an earlier section I stated that *there is absolutely no brake or control on MNZs spending behaviour as they've found a way to do this through official channels with a very low level of scrutiny and accountability*. I'd like to now develop that point further as while accountability touches other sections, it is most relevant in the next.

5) Standing Order 315(2)(h) Was not made in compliance with particular notice and consultation procedures prescribed by statute

The common law definition of consultation established in the High Court decision of *Air New Zealand Ltd v The Wellington International Airport Ltd*[17] The Committee has summarised the relevant considerations to be as follows:

- The essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice.
- The effort made by those consulting should be genuine, not a formality; it should be a reality, not a charade;
- Sufficient time should be allowed to enable the tendering of helpful advice and for that advice to be considered. The time need not be ample, but must be at least enough to enable the relevant purpose to be fulfilled.
- It is implicit that the party consulted will be (or will be made) adequately informed to enable it to make an intelligent and useful response. The party obliged to consult, while quite entitled to

[17] http://www.victoria.ac.nz/law/centres/nzcpl/publications/regulations-review-committee-digest/chapter-12

have a working plan in mind, should listen, keep an open mind, and be willing to change and if necessary start the decision-making process afresh.

- The parties may have quite different expectations about the extent of consultation

I acknowledge that MNZ's period of notice of consultation for both the Fees Review and the MOSS Fees Review was adequate and well advertised to prepare submissions. I also acknowledge the individual efforts by MNZ staff members to answer questions and queries in the public sessions. However, the points I wish to associate the principle of accountability with are as follows -

- The essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice.
- The effort made by those consulting should be genuine, not a formality; it should be a reality, not a charade;
- The party obliged to consult, while quite entitled to have a working plan in mind, should listen, keep an open mind, and be willing to change and if necessary start the decision-making process afresh.

The issue of predetermination has arisen on several occasions before the Regulatory Review Committee. If the outcome of consultation is predetermined then the consultation process may indeed become a 'charade'. In the Committee's investigation into the *Biosecurity (Rabbit Calicivirus) Regulations 1997*, possible evidence of predetermination came from a Cabinet Legislation Committee paper. Prior to the closing date for submission on draft regulations, the paper detailed a proposal to introduce a Bill into Parliament that would have had the effect of validating the proposed regulations. In response the Committee stated that "it was clear to us that not only were the regulations going to be promulgated, but were going to be subsequently validated." The Committee's finding of predetermination was a major factor in its decision that the consultation process had been inadequate.[18]

The MOSS Fee proposal paper and request for submissions document makes many statements to the reader that are fait accompli and suggests that the outcome has been predetermined. In the MOSS proposal paper, pg 2-3 the following statement is noted (emphasis mine)

*While the MOSS fees were not consulted in the Funding Review, it is **accepted** that the hourly rates agreed are relevant to the setting of MOSS fees, given that they reflect the cost of MNZ performing feeable activities*

[18] http://www.victoria.ac.nz/law/centres/nzcpl/publications/regulations-review-committee-digest/chapter-12#ftn169

Now compare this statement to the Cabinet Economic Growth and Infrastructure Committee paper delivered by the Minister in May 2013

[T]he proposals do not include costs and charges for Maritime New Zealand's proposed new Maritime Operator Safety System and seafarer certification and operational limits framework. However, maritime rules to give effect to these initiatives are still to be made. Maritime New Zealand is therefore addressing cost-recovery for these two initiatives separately, drawing on the underlying cost analysis from the funding review. [19]

So even before the start of the consultation for MOSS and that according to MNZ, that the hourly rate is *accepted*, and the Minister supports this. A predetermination has therefore been made and the hourly rate is only to be validated. The fact in itself gives the consultation for this review and the funding review before it, the basic characteristics of a charade. This is even before we consider the process itself and the principal of accountability.

The proposed future funding system does not increase direct Crown baseline funding or total Maritime New Zealand funding.[20]

As discussed in a previous section, the reader will recall that I stated MNZ 'have found a vehicle and mechanism where they can avoid direct regulatory scrutiny of their spending by swapping out direct funding for fees'. Here we can see that tactic reflected in the above statement and it also represents the opening gambit in the avoidance of accountability.

However, how is that a violation of Standing Order 315(2)(h)? Has MNZ for all intents and purposes, ignored submissions and industry in the past and do we expect they will continue to ignore submissions and industry in the future?

Yes it has and we expect it will continue to.

Notwithstanding MNZ's predetermination, we can look at how the information is managed through the process to the approval stage by layering out and eliminating dissent to create the impression the consultation process has been complied with in a procedurally correct manner.

The Minister in presenting the approval request to Cabinet makes the statement:-

Stakeholder representatives from the maritime sector have been involved throughout the funding review and have provided information to the review. A rigorous consultation process has ensured all

[19] Chair Cabinet Economic Growth and Infrastructure Committee May 2013.
[20] Ibid

stakeholders were given an opportunity to express their view before any decisions were made on the proposals[21]

(Before we continue, I'd like to add a note here. We have to be careful not to place any blame for the situation on the Minister. He is entitled to depend on the advice of his very well remunerated public servants and trust that they hold the best interests of the public good over and above any departmental or sectarian interests that might be present within the service.)

That said, being given the opportunity to express a view and being consulted with are two different things and more often than not results in surface bargaining.

"Surface bargaining" is an industrial relations term used to describe one party meeting their obligation to consult and meet, but making no effort to actually engage other parties in the process. Often, when there are zero concessions, movement or changes to the original proposal or points of the party in a dominant position then a claim of surface bargaining arises. The term is certainly appropriate here (even though I accept that consultation is not a negotiation) as it describes MNZ's demonstrated attitude to bringing an open mind and willingness to the consultative process.

At this point, MNZ might refer to that fact that they set up a Sector Reference Group (SRG) from industry to consult with. I acknowledge this to be true and I also extend my respects to the SRG. I also concede and acknowledge their combined maritime expertise as being far greater than my own. That said, and while I applaud their efforts, I would also offer for consideration sec 58 of the Cabinet paper presented by the Minister, again in relation to the standing orders.

The proposed levy reductions and fee increases have not been altered in response to submissions[22]

Despite the strength of expertise in the SRG and submissions from the New Zealand's largest fishing company, the tourism industry, individuals and others, absolutely nothing changed from the original proposal in regards to funding. That there was zero compromise or change either way (together with a very light acknowledgment of dissent) is strongly indicative of *both* surface bargaining and predetermination.

I submit that the MOSS proposals, together with the Fund Review before it and amended and proposed Shipping Act and Marine Safety Charges are in violation of Standing Order 315(2)(h)

We have now covered the specific issues under the Standing Orders bar one. That is,

[21] Ibid
[22] Chair Cabinet Economic Growth and Infrastructure Committee May 2013.

6. Standing Order 315(2)(i) for any other reason concerning its form or purport, calls for elucidation.[23]

The reader may have thought that I had not noticed in the statement I quoted above (or had ignored) the second part of it that I have underlined

The proposed future funding system does not increase direct Crown baseline funding or total Maritime New Zealand funding.[24]

We have seen why this statement is important from a political point of view to avoid accountability - even though it is false.

How and why MNZ funding is forecasted to stay the same is covered in my previous submission for the Fees Review and worthwhile considering again to understand why the levy reduced for International Shipping interests and why MNZ think it is 'fair' to impose fees for the reader's consideration before continuing the discussion.

From my submission from the Funding Review -

According to MNZ:

1. MNZ are not forecasting a higher revenue take – if anything it is lower.
2. The fees review/MOSS review only changes the mix to a more user pays model and
3. It does not seek to question the nature of spend or for what it is derived – it only seeks to allocate and recover costs appropriately.

What this discussion has so far attempted to do is place a context around MNZ spending behaviour over time to consider how that behaviour might affect spending in the future. The reference reports touch on past behaviour, but only to the extent of last year/next year model. It is almost remarkable then, especially considering the spike in revenue/costs since 2008 in particular that the current fees review forecasts a revenue from total funding in 2012/13 to be $27.52 million and in 2018 - $27.01 million.

So it is the fee reviews forecast that in six years in 2018/19 the revenues (and therefore the cost required to recover them) will be **1.8% less** than in 2011/12 despite

- the fact revenues and associated costs since 2006 have increased by **38%**
- no corresponding growth in vessel numbers over the last six years,

[23] http://www.parliament.nz/en-nz/features/00NZPHomeNews100820101/making-a-complaint-to-the-regulations-review-committee
[24] Chair Cabinet Economic Growth and Infrastructure Committee May 2013.

- Increased costs of collection and administration associated with new systems
- MNZ's ability to find new projects, processes and reviews that require more staff
- No mechanism for direct cost recovery from the recreational sector

That aside, we have been assured that this will be the case because MNZ will find 'efficiencies' that will keep these forecasts realistic, and another review (of the results of the current review) will be undertaken in three years. If I were a domestic commercial operator or the Director of MNZ and the Minister who will ultimately be asked to put their name to and approve the proposal, then I'd want to know specifically what these efficiencies are and especially so if they don't involve a reduction in personnel costs. To date and despite the public consultations, there's nothing specific other than the assurance they're coming, or will come – or will be planned in the next review…. sometime.

That brings me to point 2 and 3. The move to a more appropriate user pays model and appropriate allocation model to recover those costs.

Again, it is important to set the question in its proper context and consider the implications of risk.

According to Treasury's *Guidelines for Setting Charges in the Public Sector* and consistent with the government's statement on regulation is the absolute importance of accurate quantification and assessment of risk for any policy making decisions that increase cost.

So almost immediately, we find out that -

The funding review ignores and *avoids accounting for risk exacerbators*. Such an approach is contrary to best practice for setting charges in the public sector and the spirit of any serious, rigorous and credible interpretation of the market. Moreover, and it is especially disturbing considering the recent industrial events that MNZ appears to concede in the funding review they don't know enough about risk to price it and manage it correctly, that's they say they're "currently working on it" (pg 11 pt 44 of the consultation paper) and will have an answer in three years.

But why would this be the case and what might be the possible reasons for not accounting for risk exacerbators now?

Reference *pg 31:212 MNZ Funding Review Consultation – Background Document*

"The Regulation Review committee noted that matters to do with both risk and ability to pay had not been fully documented in the 2008 review. Given retention of the 2008 methodology for this portion of the levy methodology, these matters will now be addressed in the next review in three years. At that time Maritime New Zealand will have better information relation to risk and performance at sector and operational level"

The reason given for not providing risk analysis is surprising considering the funding review note in part 3 of the Executive Summary in the *Maritime New Zealand Funding Review Consultation Paper October 2012* that the catalyst for the funding review was the Ernst and Young Report *Building a Sustainable Organisation - Value for Money Review at Maritime New Zealand.*

Ersnt and Young in the cited section on page 57 state that -

…it is important that the Regulator is clear about the behavioural change it wants to achieve, understands the industry, businesses and individuals being regulated and seeks, when regulation is necessary, to maximise benefits and minimise costs.

MNZ have so far managed to minimise forecasted costs by simply predicting 'efficiencies' contrary to all behaviour of the last few years. However, considering the important and foundational nature of the Ernst and Young report to this process, was it the funding review's intention to ignore and/or disregard section 7 of the Ernst & Young report titled *Benefits and Risks* (as set out in pgs 51-57)*?* Is it really that data is not available (or not understood and requires three more years to put together) but the data that is available is being disregarded by the funding review because of pressure from industry segments? Ernst and Young might give some substance to this view -

One member of the SRG expressed significant concern regarding the use of benefits and risks in relation to them underpinning the charging arrangements. The setting of charges is outside the scope of the Value for Money review and therefore is not considered in this report. Any funding review will need to consider the range of options for setting the charging arrangements (in consultation with the maritime sectors), so that robust advice on the options can be provided to the Minister and Cabinet for their consideration.

Duly noted, but as part of the range of options considered in the funding review the issue of risk is simply not considered and rather oddly explained away with an excuse that the information isn't available and the methodology adopted from 2008 doesn't allow for it. This is despite Ernst and Young pointing out very clearly in section 7.4, page 56 that

The sectors with the ***highest overall risk profile*** *were: international cargo, maritime outdoor and adventure tourism operators and recreational boating. Adventure tourism operators and recreational boating are areas where MNZ undertakes less activity (because of financial constraints) and based on the preliminary risk profiles could warrant additional investment.*

Strange then, that the area of most identified risk (international cargo) appears to be the greatest benefactor from the proposals of the funding review in terms of reducing their cost burden, despite all observations and appearances that that particular area may warrant *additional* investment.

The question must be then - what would be the government's attitude be, in light of recent disasters and hindsight, to those that have stated their opposition on the record to increased charges based on risk or worse, actually reduced charges for potentially risky operators when it could be established that particular risk had already been identified?

So the clear point is that MNZ not only ignored the Regulation Review Committee's concerns about methodology to price risk in the funding review they, clearly buckled to international shipping interests over and above those of the domestic operator. That in itself shouldn't be subject to claims of incompetence or ridicule and is an accepted fact of life in an open pluralist democracy, where he who is better funded and better organised normally wins the day. But why would MNZ both ignore the RRC, the interests of domestic operators and then also ignore risk?

MNZ (in the funding review) took the view that questions of risk (remember, which they didn't know enough about despite being told independently by E&Y where it lay) should be set aside for unilaterally defined (by MNZ) funding equity principals that because international shipping used less 'resources', therefore, funding needed to be realigned in their favour.

Let me restate this. MNZ ignored risk, domestic operators and the RRC (by adopting the same methodology in the 2010 funding review criticised by the RRC in 2008 as not pricing risk) because they decided that International Shipping used fewer resources and therefore should pay less than they do now.

I'll leave the reader to fashion his or her own judgement about that.

In any case, the consequences of the stance means that MNZ have now found themselves in a very difficult position between some powerful forces

1) Government focussed on reducing public service spend with "better regulation, less regulation' and 'better public services' initiatives and spending cuts and caps.
2) The promise to deliver cuts in costs to international shipping.
3) The need for new revenue or face cuts to existing costs along with the rest of the public service.

How do we know MNZ found themselves in this position? They tell us.

Ministers have been clear that there will be no additional Crown funding for public sector outputs in the medium term. Additional Crown funding of $3 million per year for Maritime New Zealand is not an acceptable option[25]

[25] http://www.maritimenz.govt.nz/Consultation/Funding-Review/Funding-Review-Background-paper.pdf pg 56.

That, and of course, the execution of the promise to international shipping duly delivered by recent reductions in levy fees as reflected in the recently approved *Shipping Charges Act.*

We've now developed the discussion enough to understand the context about how and why the domestic operator must make up the resulting shortfall. MNZ found themselves in a position between two irreconcilable forces and needed to find a way out or cut costs. They found the answer by working backwards from the problem to find the one remaining source of revenue that is able to easily collect from those that it regulates – the domestic operator.

*All that was missing was **inventing** the justification to do so.*

1) It's got nothing to do with equity.

It has everything to do with the fact that government and international shipping interests present major and difficult political obstacles to extracting revenue from without real and direct retaliation. It is hardly equitable to raise fees on domestic operators who are an easy target by virtue of their lack of both size and political organisation whose protests can be duly ignored.

2) It's nothing to do with the move to a more 'user pays model'.

Swapping out direct costs for indirect costs without due rationalisation of service delivery is contrary to the intended application of any user pays model. Fundamentally and the point of user pays is applied charging to leverage efficiency from all parties in the relationship. User pays, especially in a public sphere, requires those charging those fees to find optimum operational levels *before* passing on costs. MNZ's interpretation of user pays is merely a case of double jeopardy for the domestic operator who also form part of the bulk collective known as the NZ taxpayer.

3) It may not even about safety.

There is fundamentally only one way to eliminate harm in the marine environment. Regulate the industry out of existence and ban boats. For as long as the industry exists and is regulated, there will be incidents. This is a fact of life of working on the sea as it is driving on the road and reflected by the road toll. All attempts, tools, policies, procedures, audit to reduce harm are in sum total *endeavours* to improve safety, no one tool will eliminate it completely without preventing the action. That's a simple cause-effect and we all understand that. This is not to argue for any regulation at all, it is to argue for effective and practical regulation that improves outcomes.

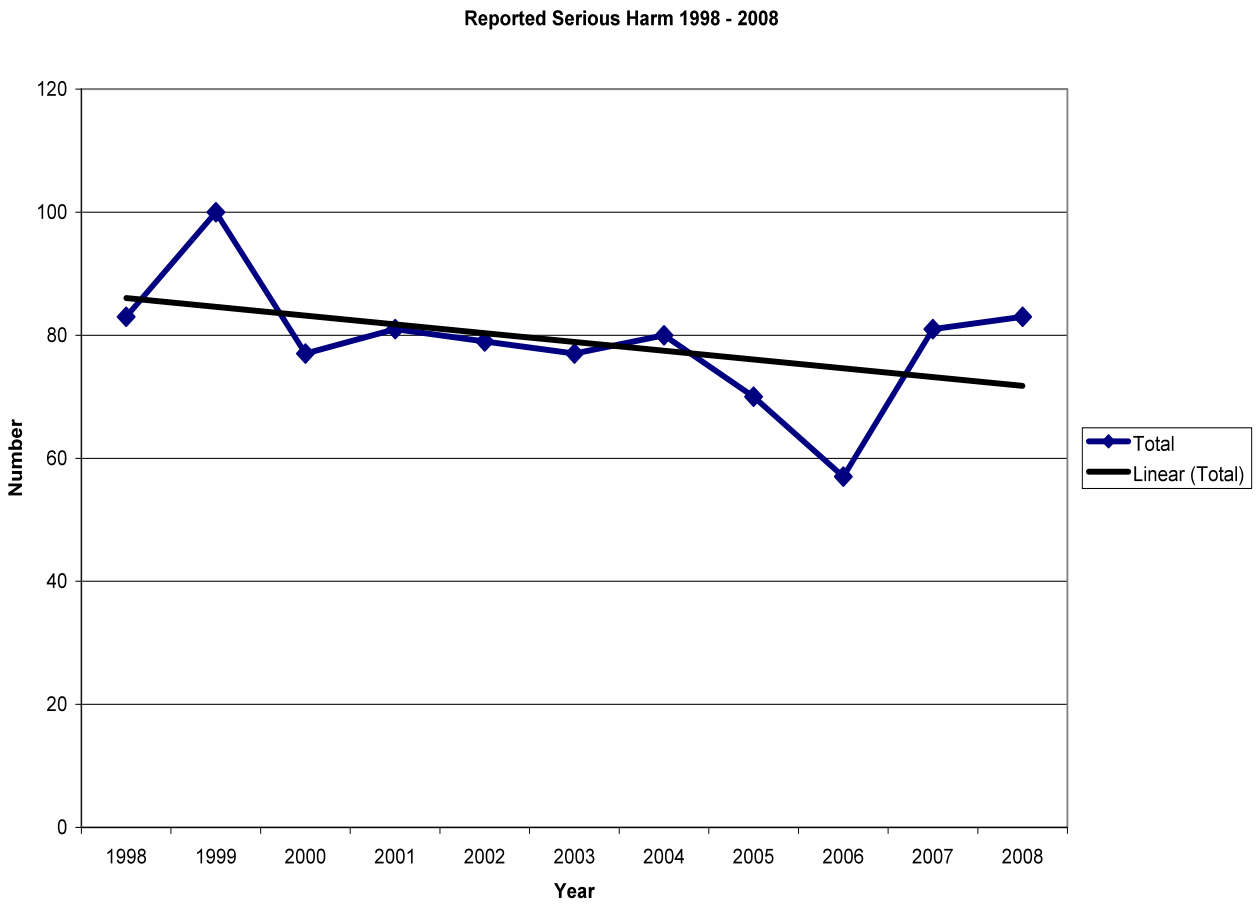
SSM was such an endeavour, MOSS is another such endeavour. So why is 'so far' funded SSM being replaced by fees and MOSS?

Fundamentally, and ignoring conjecture and rumour, the reasons MOSS came about were as MNZ stated back in 2010 was that SSM was 'associated with a mediocre safety record.'[26]

It is an interesting statement and versions of the same are peppered throughout MNZ consulting documents as to the benefits of MOSS over SSM. It is also incredibly inconsistent.

From the ***Maritime New Zealand Statement of Intent 2009–2012*** *pg. 7 (emphasis added)*

"MNZ is currently reviewing the way in which it administers its health and safety obligations, and is developing an action plan to guide the work of the organisation in this area over the next 3 years. The review comes amid concern over an increase in the number of serious harm injuries on board commercial vessels in the last ***2*** *years,* ***<u>despite a decline in injury statistics between 1998 and 2008</u>"***



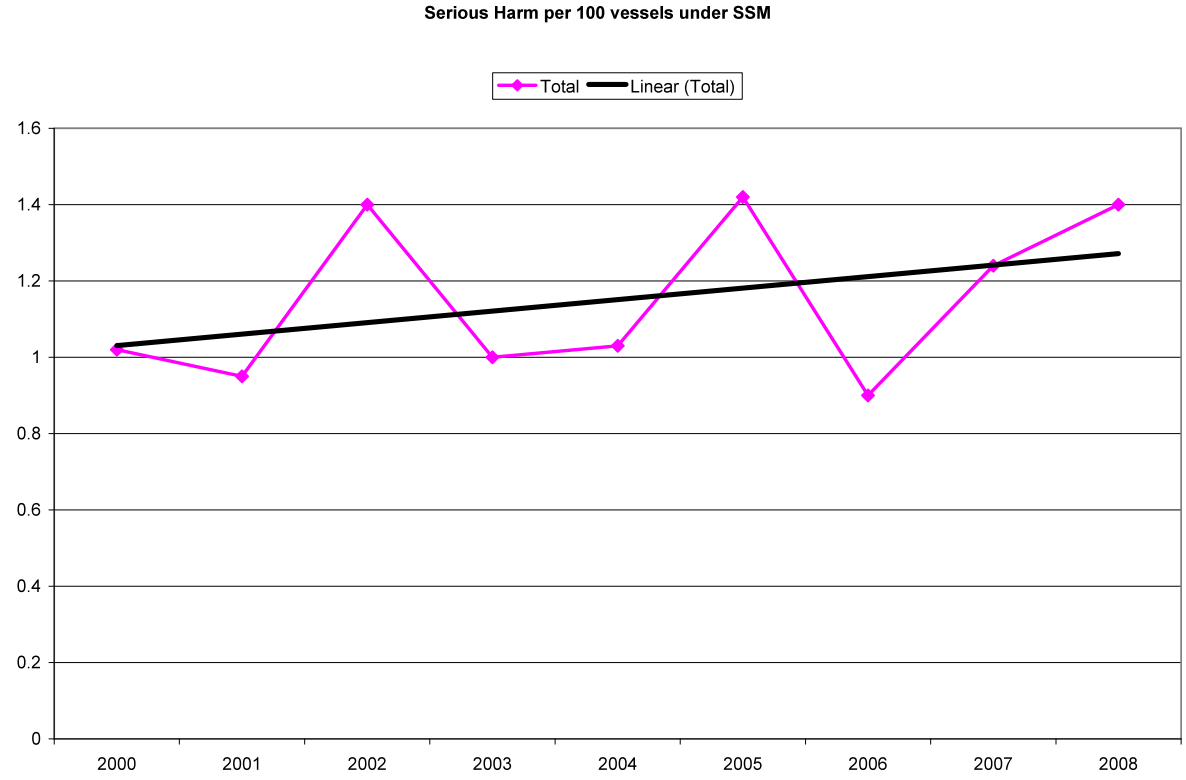
Source: http://www.maritimenz.govt.nz/Publications-and-forms/Maritime-NZ-corporate-publications/MNZ-statement-of-intent-2009-2012.pdf

Now consider the conflicting view in the RIS documentation from 2010.

[26] DRAFT Regulatory Impact Statement (RIS) in support of a proposal for a Maritime Operator Safety System pg. 2

From the *Regulatory Impact Statement (RIS) in support of a proposal for a Maritime Operator Safety System (MOSS) pg 7*

Fatality rates have been static for the nine-year period starting in 2000 (SSM was introduced in 1998 while serious harm occurrences have actually been ***increasing***



Source: http://www.maritimenz.govt.nz/Consultation/MOSS-consultation/MOSS-resources/Regulatory-impact-statement.pdf

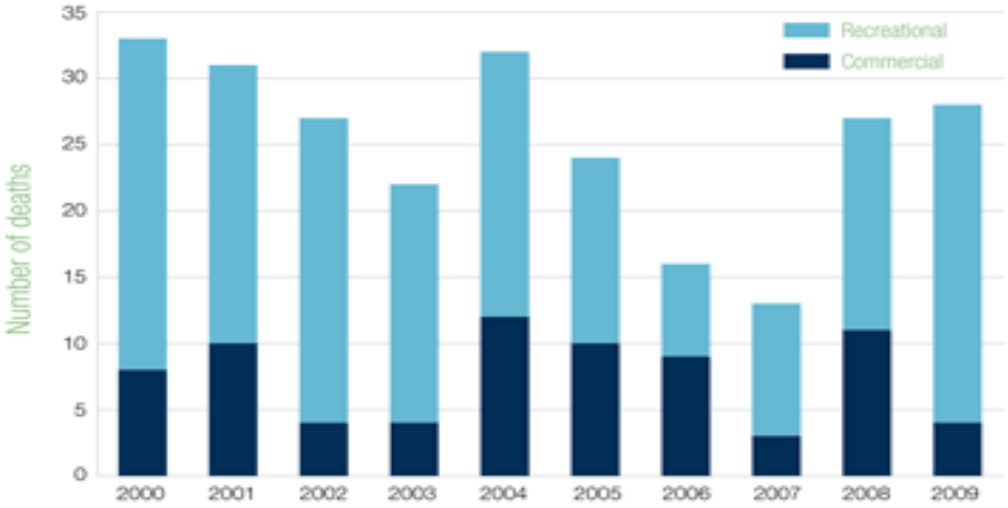
So is it increasing or not? Is SSM delivering positive outcomes or not?

The answer is it depends what you want the outcomes to be and how to best present the statistics to support that view. It is demonstrable (as above) easy to manipulate statistics to support your argument even when your view (as MNZ's view has) diametrically changes.

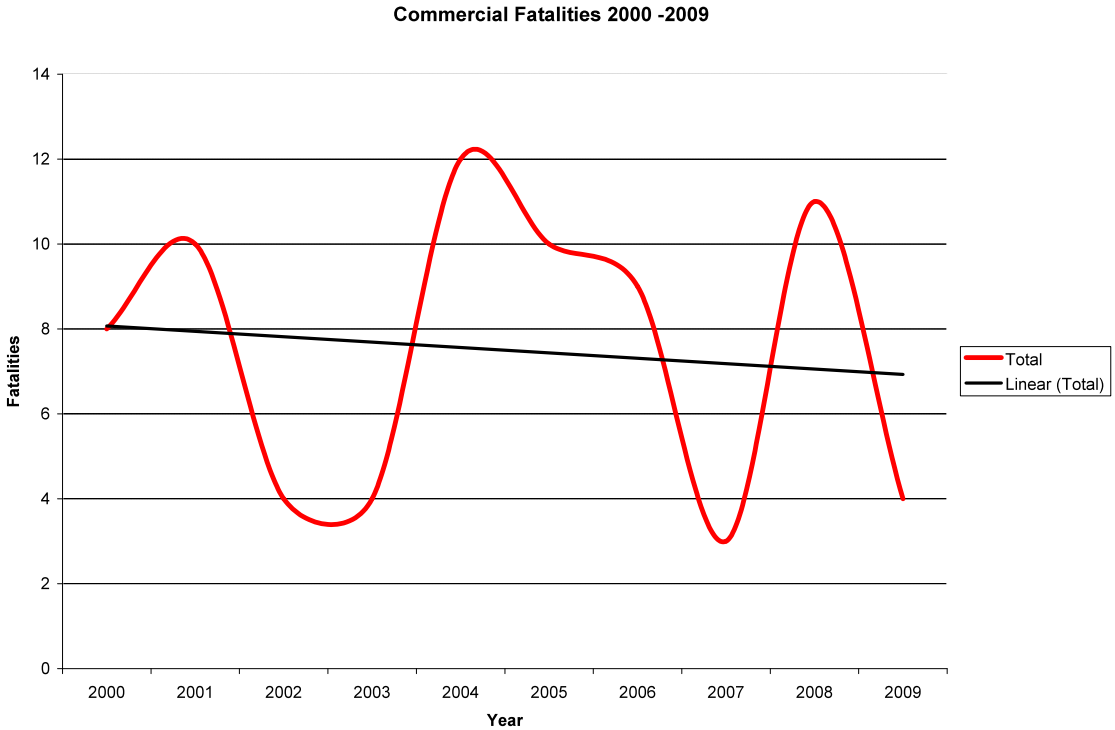
All throughout MNZ *Statement of Intent* documents and Annual Reports right up to 2009/10, MNZ expresses support for SSM until the story changed in 2010 and then, consequently so did the 'analysis' to support MNZ's view.

Let me give the reader some further examples.

The following table has been sourced from Maritime New Zealand.[27]



However, when you plot MNZ's own data for commercial fatalities independently, it reveals that the overall number of fatalities trend is not 'static in the 9 years since 2000' as MNZ describe, it is actually trending *downwards.*



[27] http://www.maritimenz.govt.nz/Publications-and-forms/Lookout/Issue-16-11.asp

So as an endeavour, SSM can be argued to, as MNZ themselves argued until 2010, that SSM, for its faults, could hardly be associated with a 'mediocre safety record' when it appears that harm has decreased over time. All that stands to be gained under MOSS are further incremental gains that have been achieved under SSM, it is undisputable that under SSM, commercial serious harm incidents are less than half of the recreational sector. Although arguably, this has more to do with the high level of experience and training of the operators themselves rather than any oversight by the regulator.

So the 'mediocre safety outcomes argument doesn't hold a lot of substance when you check the facts and find the facts used are based on subjective opinions with the statistics manipulated accordingly.

Those outside the political workings of MNZ can only guess what the the real impetus for MOSS and the associated changes was, however, while that speculation is beyond the scope of this submission, it may by relevant in submissions to the RRC.

Finally, being sensitive to reader fatigue, I'd like to provide a bit of comic relief about statistics before we conclude.

MNZ have labelled the results of SSM as being associated with 'mediocre outcomes'. So it would logically follow we should look to MNZ themselves to set an example about best outcomes.

MNZ reported as above that in 2008 there about 1.25 'serious harm incidents' per 100 vessels, (remembering that that's including *all* people on the vessels) and in 2012, operators reported 7.5 injuries per 100 people[28]

Now compare those 'mediocre outcomes' to MNZ's own internal performance as outlined in their Statement of Intent 2013 – 2016.

Performance measures	2011/12 Actual	2012/13 Estimate	2013/14 Target	2014/15 Target	2015/16 Target
Staff turnover	9.6%	8–10%	8–10%	7–9%	7–9%
Average sick day absences per employee	5.7 days	6.5 days	6 days	5.5 days	5.5 days
Proportion of injuries/accidents per 100 employees	17.9	16.6	<16	<15	<13
Percentage of total reported accidents and incidents that are near misses[4]	33%	>50%	>50%	>50%	>50%

MNZ are reporting **17.9** injuries and accidents per 100 and, by 2015 at least, 'only' hope to hurt or injure 13 *of their own employees.* If SSM has delivered mediocre outcomes, I'm interested in what

[28] Maritime NZ Annual Report 2011/12 Pg.21

MNZ might consider the appropriate adjective for their own performance that is more than twice as mediocre.

If that doesn't make you laugh, then you have no (fatalistic, at least) sense of humour.

Financial Forecasting

A keen reader who has been following me up to now would have been unsatisfied that the data available and presented in earlier sections hasn't included any forecasting. We now have the benefit of some additional data and forecasts. Let's compare

From the Fees Review Background Document – page 14

Maritime New Zealand output classes		2012/13	2013/14	2014/15
		$M	$M	$M
1. Influencing the policy environment for the maritime sector				
1.1	*Policy advice*	3.14	2.53	2.53
1.2	*Regular reviews of the maritime transport system*	2.82	1.00	1.00
1.3	*Maritime security and intelligence advice*	0.97	1.00	1.00
1.4	*Ministerial servicing*	0.08	0.08	0.08
Total output class 1		**7.01**	**4.61**	**4.61**
2. Maritime safety and marine protection services				
2.1	*Information and education*			
	Recreational boating safety and awareness services	2.00	2.00	2.00
	Information and education to commercial sector	4.30	4.46	4.47
2.2	*Entry controls*	4.18	4.22	4.14
2.3	*Monitoring and investigation of compliance*	6.28	6.19	6.15
2.4	*Enforcement of compliance, exit controls*	0.84	0.85	0.83
2.5	*Distress and safety communication services*	3.82	3.86	4.40
2.6	*Aids to navigation*	1.14	1.17	1.17
Total output class 2		**22.56**	**22.75**	**23.16**
	TOTAL EXPENDITURE – $M	**29.57**	**27.36**	**27.77**

These were the cost forecasts presented to the public and used to justify that the overall level of MNZ's funding (remember, which the Minister stated in the Cabinet Paper) would not change 'the overall level of MNZ funding'. The following is noted in the same document under the table -

Some key features of the 2012/13 budget, and the forecasts for 2013/14 and 2014/15, are:

- full charging of fees in accordance with current regulations
- **no increase in staff establishment**, although some allowance for salary adjustments to ensure recruitment and retention of suitably skilled people
- increased contract costs for distress and safety communications (radio) services anticipated from 2014/15
- where the value for money review suggested efficiencies could immediately improve costs, these have been reflected.

Now let's compare that to MNZ's Statement of Intent 2013-16

Statement of prospective comprehensive income for Maritime New Zealand

For the years ending 30 June 2013 to 30 June 2016

	Budget 2012/13	Forecast 2012/13	Budget 2013/14	Forecast 2014/15	Forecast 2015/16
	$000	$000	$000	$000	$000
Revenue					
Crown	13,158	10,646	10,589	8,872	8,872
Funding from Crown agencies	1,942	2,265	2,113	2,113	2,113
Fuel Excise Duty	140	1,070	2,488	2,700	2,684
Health and Safety in Employment	426	928	928	928	928
Marine Safety Charge	17,144	17,130	15,633	15,418	15,250
Fees	1,475	1,175	2,998	4,890	5,235
Other third party	973	1,316	1,030	1,030	1,030
Interest revenue	202	223	202	202	202
Total revenue	**35,460**	**34,753**	**35,981**	**36,153**	**36,314**
Expenditure					
Personnel costs	20,379	19,747	18,487	19,279	19,273
Operating	14,881	14,373	14,621	13,021	13,180
Depreciation	1,853	1,715	1,694	2,675	2,632
Capital charge	1,293	1,323	1,293	1,293	1,293
Intergroup charges	-	-	-	-	-
Total expenditure	**38,406**	**37,158**	**36,095**	**36,268**	**36,378**
Surplus/(deficit)	**(2,946)**	**(2,405)**	**(114)**	**(115)**	**(64)**
Other comprehensive income					
Gains on sale of assets	-	-	-	-	-
Total other comprehensive income	**-**	**-**	**-**	**-**	**-**
Total comprehensive income	**(2,946)**	**(2,405)**	**(114)**	**(115)**	**(64)**

Apart from the $8.54 million blowout predicted in the Statement of Intent up to 2016, but not predicted in the Cost Forecasts for the Funding Review, we're also told in the same document that

- Additional cost pressures will arise from 2013/14, due to the implementation of the Maritime Operator Safety System and Seafarer Certification projects and the technology required to support them. Operating expenditure budgets for strategic projects decrease from 2012/13 due to the completion of the Funding Review in 2012/13, but the remaining projects will require expenditure of $1.4 million in the 2013/14 year. Upon implementation, project costs are projected to fall to zero.

- A small reduction in personnel costs from 2012/13 represents a reduction in fixed-term and contract staffing. The reduction in cost is the beneficial result from moving to lower-cost permanent staff. **Recruitment of additional personnel** to support the operational deployment of the Maritime Operator Safety System project will commence towards the end of the 2013/14 financial year.

So more staff, more costs, and obviously, more fees. It would be reasonable to say that once the Minister has signed off on the increases having been told that funding is staying the same, the story quickly changed and the traditional demands for cash start.

Making it easier for the reader to appreciate the comparison in cost forecasts -

NZ$000	**2012/13**	**2013/14**	**2014/15**
Funding Review	29.57	27.36	27.77
Statement of Intent	38.406	34.753	36.628
Difference	**+$8.836**	**+$7.393**	**+$8.858**

That's *millions* of dollars. It is also approx 30% higher in the Statement of Intent than the cost forecasts represented to the Minister in the Funding Review and clearly contradict the Minister in his Cabinet paper approving the changes into law.

Clearly, if total revenue demanded in 2015 is going to be $36.134 million in the Statement of Intent, it can hardly be said that the 'total revenue for MNZ is not changing' when you consider revenue in the 2011 Annual Report was $29.782 million. It is an **increase** over five years of **21.3%**!

The Minister and the general public of NZ deserve a full and wholesome explanation from those within Maritime New Zealand responsible for the way these charges were developed and implemented. What is even more egregious is that the cost forecasts in the Statement of Intent were published in June 2013 and only 1 month after the signing of the amendments to the Marine Safety Charges, Shipping Fees and Shipping Charges Regulations Acts in May 2013 which implemented the conclusions of the Funding Review. That means the same figures and data used in the Statement of Intent must have been known over the same period of the Funding Review but withheld both from the Minister and the public until the amendments were made until law. This completely fails reasonable expectations of behaviour of a public organisation, notwithstanding the fact that MNZ are again citing the conclusions of the Funding Review to justify the charges under MOSS.

Conclusions

Therefore, it is my submission that, MNZ MOSS Fees are –

1. Contra to the reasonable cost expectations of the public service and 'less regulation, better regulation'
2. Contrary to the intent of the Legislature and the Standing Orders.
3. Taxes, and therefore *ultra vires* and invalid
4. Inefficient, inappropriate and unfair
5. Contra to the greater good on the NZ taxpayer
6. Based on unreliable assumptions which are result orientated around increased funding, rather than based on valid and consistent data.

The charges should be struck out, all fees already paid refunded and the conclusions of the Funding Review set aside for a new process objectively based on risk and not based on only the ability to extract from those largely unable to defend themselves.

Finally, I would like to refer to MNZ's Statement made to the incoming Minister made in 2011 under which they made under the heading 'key focus'[29]

The previous government's overall transport sector objectives, as set out in its transport strategy, was to seek an effective, efficient, safe, secure, accessible and resilient transport system that supports the growth of our economy in order to deliver greater prosperity, security and opportunities for all New Zealanders. Key Maritime New Zealand activities that support this key focus include:

- *Driving greater performance and value for money*
- *Establishing a sustainable funding base*
- *Improving maritime safety, by introducing a new seafarer qualifications and operational limits framework, and a new maritime operator safety system.*

Ultimately the Minister will determine whether MNZ have delivered any of these things, but I submit to both the RRC and the Minister that they have not, and will not. Furthermore, the Standing Orders must stand in the way of MNZ's continuing journey focussed on employment benefits. It is time for MNZ to be held accountable for the difference in what they say and what they do and show some moral courage and resile from their attitude and behaviour towards those that regulate it and to those that it regulates.

Disclaimer: I am a full time employee of SGS New Zealand; however this submission is not approved by or necessarily reflects the views of SGS New Zealand. I also wish to acknowledge the assistance and information made available to me by Des Lines of the CAA Group of NZ.

This submission has been prepared in good faith is my honest opinion on a matter of public interest.

[29] http://www.maritimenz.govt.nz/Publications-and-forms/Maritime-NZ-corporate-publications/Incoming-Ministerial-briefing-2012.pdf

Signature: Paul Wilson

Date: 7/2/2014