

10<sup>th</sup> November 2013

Rules.co-ordinator@maritimenz.govt.nz  
Maritime New Zealand  
PO Box 27006  
Wellington

Dear Rules Coordinator,

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**SUBMISSION: Maritime New Zealand Proposed Fees for MOSS**

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Thank you for the opportunity to respond to the Maritime New Zealand (MNZ) proposal on MOSS fees. The Marine Transport Association (MTA) opposes MNZ's proposed fees and a summary is detailed below:

1. The MOSS fees appear to be underpinned by the outcomes of the funding review proposal.
2. The detailed regulatory costs of MOSS, compared to SSM costs appear inaccurate and in reality are likely to increase by at least 75%, without any indication of the safety benefits that will be achieved.
3. The MOSS fee mechanisms and fee levels will likely result in MNZ undermining its own revenue base.
4. The proposal brings business process efficiency into the forefront.
5. The excessive and unreasonable nature of the fees is likely to undermine willing compliance
6. The proposed hourly rate for audits, with uncapped hours, will drive on-site audits into a narrow, compliance-based activity, at the expense of informative and educative activities
7. The proposal does little to resolve outstanding issues associated with poor regulatory service delivery. Furthermore, there is no mention of arbitration processes to address disputes.

**About the Marine Transport Association**

The Marine Transport Association (MTA) was formed in 1970 to represent the owners of restricted limits shipping. As an Incorporated Society, the MTA represents many fleet operators throughout the country along with owners of charter, ferry, rescue, aquaculture and work boats.

The NZ Marine Transport Association is an authoritative voice within the marine transport industry. It believes that providing all customers with safe, pleasant journeys to industry approved standards is good business.

### ***Goals of the Association***

- To promote and advance the interests and welfare of all members;
- To enhance the image of the MTA and their members by promoting their standard of compliance within the tourism, work boat and maritime community.
- To provide input and affect the direction of central and local government policy and actions in accordance with the wishes of Members and the vision of the Association;
- To represent the interests of Members at all public forums and in public issues as they arise;
- To provide the information, services and products to assist Members with meeting their business goals with respect to maritime issues;
- To maintain regular and close contact and communication with Members to listen to and understand their views and aspirations;
- To improve the public's understanding of the importance of the marine transportation industry to the nation and promote the professionalism, hospitality and efficiency of Members in the eyes of the wider community.

The organisation is made up of members who represent the majority of fleet operators throughout the country including individual owner/operators ranging from work boats, ferries (passenger and vehicular), charter boats, bare boat charters, tug and barge operators, fishing boats rescue craft and aquaculture vessels.

### **1. MNZ appear to be applying the outcomes of the funding review to cost recovery for MOSS**

About this time last year the MTA provided feedback to MNZ on its funding review. Our submission made the following points:

1. The impact assessment and company examples of the impact of the new fees and charges are of no use as they apply to current vessel, operator and seafarer licensing frameworks which will be replaced by the new MOSS and QUOLs frameworks within the next 12 months.
2. The funding review focuses too much on extracting revenue from the maritime industry and not enough on providing consistently acceptable levels of service.
3. The new hourly charge-out rate appears to have no basis in financial reality and appears to be grossly inflated
4. The full costs of regulating recreational boaties appear to be unduly small, and need further investigation and more explanation

In respect to the first point made in our submission, addressing this issue comes too little and too late. To comment in an informed way on the MOSS proposal, the benefits and the costs should have been presented at the same time. The fact that MOSS has now been approved, with the costs finally revealed after the fact, suggests something of a *fait accompli*, and makes a mockery of the requirement for regulatory change to take account of informed public submissions.



MNZ has yet to provide any proper verification of its proposed hourly rate. For example, we are told that processing an MTOC application will take about 11.5 hours, with most of this time spent on administration, fit and proper person checks and desk top review to ensure that the MTOC meets basic requirements. This clearly is clerical work, and to charge at \$155 - \$215 an hour raises serious questions about value for money.

Furthermore, other MNZ's services (including audits under MOSS) are now open ended in the sense that operators are charged for as long as it takes to do the job. I don't know of any commercial operation that runs their financial systems with an open cheque book. We are also concerned about MNZ's office Hourly Rates - how can we be assured that what operators are being charged is accurate to the length of time spent on the activity? i.e. MTOC Assessment.

The MTA would recommend that costs be capped at a sustainable level so that operators are able to budget for and set their own pricing to end users accurately.

## 2. Underestimation of MOSS costs

According to MNZ, the cost of MOSS for the typical operator will be about \$13,996 over 10 years, or about 10% more than SSM. Questions have been raised as to whether the industry will be 10% safer as a result, and in that respect the safety objectives for MOSS are singularly lacking. In any case, the financial data as shown in this table is grossly underestimated.

An example of this can be highlighted in the table on page 16 of the invitation to comment: Why are the costs for initial entry into SSM even factored in when most submitters are existing operators. Furthermore, I am unaware of any operator having to pay initial entry fees to SSM companies at these amounts. This leads us to make the assumption that this table was developed from incorrect information, possibly for the purpose of making future MNZ costs look more favourable.

The base cost analysis shows that the cost of audit for a medium complexity/risk, single vessel operation is going to be closer to \$9,197 for 10 years, rather than MNZ's estimate of \$7,426. MNZ has also omitted actual and likely costs that will be incurred by the introduction of new MOSS-related fees. There is little information about the hidden costs such as actual travel time and expenses that may be charged.

It is reasonable to assume that that an operator will take about 8 hours (or a day) to convert their SSM documents to the new MTOC format. Further, it is entirely likely that most (if not all) operators will need to make a number of 'feeable' changes to their MOSS paperwork during the 10 year period in question. These are also listed in the table, and the combined result is a total of \$3,335, which makes a grand total of about \$16,000 for the 10 year period, compared to MNZ's estimate of about \$14,000 for the same period. For the purposes of the exercise, we have assumed that survey costs will remain the same. This is highly unlikely, as surveyors will need to increase their prices to continue to make a living with lower volumes of work and increased MNZ compliance costs.



Our **very conservative** analysis suggests that the true costs of MOSS are likely to be 75% greater than SSM, and again the question must be posed: Is the industry going to be 75% safer than it was under SSM? This is not a rhetorical question, and MNZ must show, in measureable terms, what the industry can expect to receive in safety outcomes for the large (and measureable) increase in revenue being extracted from it.

**Recommendation:**

MNZ needs to recalculate the costs of MOSS on a more realistic basis, and consider what it can do to reduce these to reasonable, realistic and affordable levels.

These costs need to be provided in a less complex manner so that the true costs can be established without the need to analyse what hourly rate applies to what service. Fixed fees would be more appropriate.

**Recommendation:**

MNZ needs to clearly and publicly articulate what measurable safety gains it expects to achieve from MOSS in return for the additional investment being made by the industry.

### 3. Efficient business processes

While the concept of business efficiency was given lip service in last year's funding review documentation, the MTA believe this to hold continued relevance for the MOSS fees proposal.

This is in line with Treasury and Audit Office guidelines on public sector fee setting.

There are many examples of how efficiencies could be achieved under MOSS. Here are a few of them:

- a. Existing operators are effectively being audited **three times** during the course of the first four years of their MTOC (the application assessment and site visit is also considered an audit). MNZ clearly needs to reconsider subjecting the many existing, safe operators to such a costly and unnecessarily intensive audit regime. Two audits within four years would be more than sufficient in most cases, and would reduce audit costs by one third.
- b. As MNZ indicates, most operators (85%) are owners and skippers of their vessels. Most will already have had a fit and proper person check for their skippers ticket, they will undergo it again with the transition to SeaCert and then again for MOSS. Surely, if a MOSS (or SeaCert) applicant has had a fit and proper person check within, say, the past 2 years, then yet another check will most likely be a complete waste of time and money.

- c. A substantial amount of MOSS documentation will already be held by MNZ, at MNZ's offices. This will include current vessel survey information, maintenance plans and seafarer qualifications. MNZ does not need to conduct a site inspection to assure itself of these requirements. These checks can be conducted within MNZ's own offices, by someone with basic clerical skills. This would reduce on-site work to the more technically challenging tasks of checking hazard identification and safe operating procedures, and crew familiarity with these provisions. This means that MNZ technical staff can conduct more offsite visits in any one day, thereby reducing travel time, accommodation etc

**Recommendation:**

The MTA requests that MNZ, as a matter of priority, provide a thorough, convincing and public account of what it can do to drive business process efficiencies and commit to rolling these savings (in dollar terms) into MOSS fees.

**4. Maritime New Zealand is likely to undermine its own revenue base**

It is in the industry's best interests to have a regulator that has a sustainable, fair and robust cost recovery system. This is required to provide quality, timely services. Regrettably, there is little evidence to suggest that the current MOSS fees proposal offers value for money in its current form.

The reasons for this are as follows:

- a. It is entirely likely that a substantial number of small operators will buckle under the combined impact of MOSS and SeaCert fees, and leave the industry. This will erode MNZ's revenue base, prompting it to recover increasing costs from an ever decreasing number of operators
- b. It is also likely that MNZ will have increasing difficulty recovering debt associated with audits, and other feeable activities; particularly if they are excessive, unreasonable and unaffordable. MNZ's annual report for 2011/12 already shows that debts overdue by more than 90 days increased from \$9000 in 2010/11 to \$134,000 in 2011/12. This will undoubtedly increase as operators experience the full impact of the fee changes. Debt and debt recovery costs will increase.

**Recommendation:**

MNZ needs to consider the risks of adopting the particular route it has chosen to recover MOSS costs. It is quite likely that sufficient costs can be recovered through other means (e.g. fixed fees or a return to a greater reliance on levies) that will have less of an adverse impact on operators and ultimately on MNZ's own finances.



## 5. Maritime New Zealand undermining voluntary compliance

A good regulator will take all reasonable steps to make compliance the 'easier option', and ensure that barriers to entering a regulated activity are minimized to the extent that this is practicable.

Responsible operators want to comply, but increased charges are making this increasingly difficult.

The increase of exemptions to more than \$500 per application is a case in point. Many of these are a result of an archaic set of vessel-related rules that MNZ seems unwilling or incapable of changing, despite the fact that most are many years out of date. This situation cannot help but breed contempt for the rules (and the regulator), and this undermines attempts to encourage voluntary compliance.

The unreasonable MOSS fees are yet another obstacle to encouraging willing compliance; some will find it increasingly easier to work outside the rules and the end result will inevitably be poorer safety outcomes.

### Recommendation:

Fee setting needs to be reviewed in light of regulatory best practice. Examples, such as the UK Hampton Principles abound, and should be considered by MNZ when establishing rules and fees regulations.

## 6. Uncapped hourly rate charging will turn audits into a narrow, compliance-based event, with minimal attention given to sharing information that can be used to improve safety standards above the minimum, or achieve standards more cost effectively

At their best, audits are tools to share best practice with operators about how they can improve their safety systems beyond the bare minimum. Auditors are in a prime position to do this, as they engage with a wide variety of operators (good and otherwise), under a variety of circumstances.

The more astute auditors will identify a range of ways of achieving the same safety outcomes, as they interact with the industry. Some ways will be more effective and less expensive than other methods, and these can be learned from some operators and imparted to others as part of an audit.

At \$300 an hour, however, **each minute that elapses removes \$5.00 from the pocket of the operator.** The operator is therefore very likely to actively avoid or shut down any conversation above the bare minimum. The auditor will receive perfunctory responses to his or her questions, and then be shown politely (but firmly) to the companionway once it is clear that the operator's paperwork and safety system meets minimum standards.

The educative and informative aspects of audits will largely be eclipsed by a focus on meeting minimum requirements, within a minimum timeframe.

The MOSS framework was intended to allow MNZ to have a closer, improved relationship with operators. MNZ, however, has introduced strong financial incentives for operators to minimize their interactions with MNZ officials. This does a disservice both to MNZ (as a regulator) and to operators. Safety will suffer as a consequence.

**Recommendation:**

The proposed audit fees effectively drive audits into narrow conversations about minimum requirements. The blank cheque that MNZ expects operators to write for these activities is also unacceptable to MTA members. MNZ should adopt a reasonable fixed fee approach to audits or, more preferably, return to a levy-based approach to fund audit activity. This is more likely to achieve positive safety outcomes and positive relations between MNZ and industry.

## **7. Questions about the quality of regulatory services and safety**

MNZ has provided no evidence that the industry will be any safer under MOSS than it was under SSM. MNZ will certainly be wealthier (although this may be short lived), but it has made no commitment to improving regulatory services to operators despite this.

As we indicated in our submission on MNZ's funding review, MNZ appears to be focussed on recovering its operating costs. If the goal is to improve safety standards, then more focus is needed on resourcing technically able persons, thus reducing the expense of consultants, legal experts and promoting internally those persons who have little experience in a particular field of expertise. This approach would also provide a modern, efficient regulatory service.

**Recommendation:**

- MNZ to reconsider the processes that support MOSS, with a view to streamlining them, and/or;
- delegate this work contestably to the private sector, where it can be undertaken on a cost-effective basis.

## **Concluding remarks**

In the recent MOSS session at the MTA conference (7 November 2013), there was a suggestion made by MNZ that an appeal body may be set up with input from AMSA, to provide a forum to resolve disputes on charges rendered by MNZ. Given that it is very likely that there will be questions raised by operators as to the nature and level of charges made, I would strongly endorse the establishment of an review group of some sort, to review consider and provide input on the



appropriateness and level of fees charged. This could comprise industry and MNZ representatives and would make recommendations to the Director.

I would also suggest that during the first year of MOSS that MTA and MNZ hold quarterly meetings to review the charges, and identify areas that are causing concern in the industry.

We ask that you consider our submission carefully and welcome the opportunity to further discuss the issues we raise.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Margaret Wind', is written over a light blue grid background.

Margaret Wind  
Executive Officer  
NZ Marine Transport Association