International treaty examination of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004

Report of the Primary Production Committee

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Recommendation

The Primary Production Committee has conducted an international treaty examination of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004, and recommends that the House take note of its report.

The Primary Production Committee has conducted an international treaty examination of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004, and has no matters to bring to the attention of the House.

The National Interest Analysis for the treaty is appended to this report.
Executive summary

1. It is proposed that New Zealand accede to the International Convention for the Control and Management of Ships’ Ballast Water and Sediments ("the Convention"). The Convention seeks to prevent, minimize and ultimately eliminate the biosecurity risks arising from the transfer of harmful aquatic organisms by controlling and managing ships’ ballast water and sediments.

2. Ballast water discharges are one of the main pathways by which marine organisms could be introduced to New Zealand waters. Once foreign marine organisms establish here, they are extremely difficult and costly to control and can have potentially severe impacts.

3. By taking this treaty action, Government’s policy objective is to prevent harm and reduce damage to New Zealanders, and the unique natural resources of our marine environment from damaging pests and diseases by having more effective biosecurity intervention at the border, and leading and seeking international support for the management of ballast water.

4. There is a clear net benefit to New Zealand from being Party to the Convention. The additional protection provided by stricter control measures on ballast water discharges would reduce the risk of introduction of harmful aquatic organisms. The benefit of this is considered to outweigh the costs of implementation and compliance with the Convention.

5. The alternative options for New Zealand of maintaining the status quo or implementing stricter controls on ballast water discharges without becoming party to the Convention would not achieve Government’s policy objective.

6. Integrating the roles required to implement the Convention with the existing functions of MAF Biosecurity New Zealand and Maritime New Zealand is considered to be the most practical and cost effective approach to implementing the Convention.

7. New measures for controlling and managing ships’ ballast water and sediment would be given effect through a combination of the Maritime Transport and Biosecurity Acts. Legislative amendments would be needed primarily to the Maritime Transport Act to enable the obligations on Parties to be given effect. It is proposed that a Maritime Transport Amendment Bill would be the vehicle for enacting these amendments.
The Convention is not expected to have a large impact on the economy. The operators of the small number of New Zealand flagged ships that trade internationally would be affected directly by new measures for ships’ ballast water and sediment imposed by the Convention.

The shipping industry faces capital, operational and compliance costs in responding to the Convention. These will be imposed on the shipping industry and shippers once the Convention comes into force internationally, regardless of New Zealand’s response to the Convention.

Twenty-one submissions were received from interested parties on the options for New Zealand in response to the Convention. The option of becoming party to the Convention was widely supported in submissions received in the public consultation.

**Nature and timing of proposed treaty action**

The International Convention for the Control and Management of Ships’ Ballast Water and Sediments (“the Convention”) was developed by the International Maritime Organization (IMO) and adopted by consensus at a diplomatic conference held in London on 13 February 2004. The objective of the Convention is “to prevent, minimize and ultimately eliminate the risks to the environment, human health, property and resources arising from the transfer of harmful aquatic organisms and pathogens through the control and management of ships’ ballast water and sediments”.

Article 18 provides that the Convention will enter into force 12 months after 30 States, representing 35 per cent of world merchant shipping tonnage, have become Parties. As at 30 April 2008, 14 States, representing 3.55 per cent of world merchant shipping tonnage, were Party to the Convention.

It is proposed that New Zealand accede to the Convention, following enactment of any necessary implementing legislation. It is anticipated that the process of enacting amendments to primary legislation and promulgating new subordinate legislation could be completed in 2011.

**Reasons for New Zealand to become a party to the Convention**

The introduction to New Zealand of foreign marine organisms can have potentially severe impacts. Out of their natural habitat these organisms can quickly establish, becoming pests that can affect marine biodiversity by altering marine habitats and displacing native plants and animals. Marine algae that are toxic to humans (as well as water borne diseases) can also be introduced via ballast water.

Once foreign marine organisms establish here, they are extremely difficult and costly to control, particularly given the scale of the New Zealand coastline and the number of vessel movements around it. The difficulty New Zealand has experienced in responding to introduced marine pests in the past illustrates the importance of enhancing our border measures to prevent the introduction of foreign marine organisms, and the need to be part of international efforts to prevent the global transportation of marine organisms.

Ballast water discharges are one of the main pathways by which marine organisms could be introduced to New Zealand waters. Each year almost three million metric tonnes
of ballast water sourced from outside our Exclusive Economic Zone is discharged into New Zealand ports.

17 Shipping is a crucial element in world trade, and ballasting of ships is a necessary requirement for their safe operation. Thus the only practicable way to stop the spread of invasive marine species via ballast water is to prevent them from being delivered alive with ballast water discharges.

18 In 1998, mandatory controls on ballast water discharges were unilaterally introduced by New Zealand, under the Biosecurity Act 1993. These require ballast water taken up in foreign ports to be discharged in mid-ocean and replaced with oceanic water (a process known as mid-ocean exchange). Existing controls provide some protection against introductions of marine organisms in ballast water discharges, but they have limitations.

19 Mid-ocean exchange of ballast water is not entirely effective at removing coastal organisms, which may become established if discharged in New Zealand ports. The process of exchanging ballast water in mid-ocean creates some risks to the safety of ships and their crew. Also, as existing controls do not have any international backing, enforcement action is limited once a ship has left New Zealand.

20 Once in force, the Convention will provide a binding set of international regulations to control discharges of ballast water by shipping. The critical elements of the Convention from a New Zealand perspective are:

- The phased introduction of a stringent performance standard for ballast water discharges, requiring the installation and use of on-board treatment systems; and

- A framework for Parties to the Convention to take enforcement action in response to violations of the regulations.

21 Ship-board treatment systems will disinfect ballast water taken up in foreign ports and will be more effective in reducing the risk of introductions of organisms in ballast water. The safety issue will be addressed by the phasing out of mid-ocean exchange with the introduction of on-board treatment systems. The framework for enforcing the Convention would allow violations that occur in our waters to be actioned in other jurisdictions, and facilitate cooperation between inspection agencies to target inspection efforts towards ships with a poor compliance history.

22 By taking this treaty action, Government’s policy objective is to prevent harm and reduce damage to New Zealanders, and the unique natural resources of our marine environment from damaging pests and diseases by having more effective biosecurity intervention at the border, and leading and seeking international support for the management of ballast water.

23 There would appear to be sufficient international support for the Convention to come into force, but it cannot be predicted when this will be. Of the 14 countries that have become party, only Norway is a major maritime state. Australia has decided to become party to the Convention, and is developing implementing legislation. Legislation to give effect to the Convention was recently passed by the U.S. House of Representatives.
Advantages and disadvantages to New Zealand of the Convention entering into force and not entering into force for New Zealand

24 The advantages are:

i. Standardised international controls are considered to be more effective in addressing shipping related issues than unilateral controls imposed by individual countries, such as those imposed by New Zealand on ballast water discharges. Better compliance will be achieved where the controls imposed in domestic legislation are consistent with standardised international controls, and the controls imposed by New Zealand will be more enforceable;

ii. The application of a performance-based standard for ballast water discharges, which is a key feature of the Convention’s control regime, is more likely to achieve genuine risk reduction than current measures. Indeed, the use of ballast water treatment technologies to achieve the standard will significantly reduce the risk of organism survival in ballast water discharges. A greater level of protection will be achieved for New Zealand’s marine environment, and the values that we associate with it;

iii. The risks to the safety of New Zealand ships and their crew associated with ballast water exchange will be mitigated when treatment systems are widely in use;

iv. Accession to the Convention will enable New Zealand to demonstrate leadership on this issue, and may contribute to the Convention coming into effect;

v. Accession to the Convention will enable New Zealand to better meet its international obligations to prevent, reduce and control pollution of the marine environment, and more effectively implement Government’s Biodiversity and Biosecurity Strategies.

25 The disadvantages are:

i. It could be some time before the Convention enters into force, and the advantages to New Zealand begin to be realised;

ii. Implementing the Convention would, however, impose some additional costs on government. While it is proposed that much of the ongoing cost would be recovered from the shipping industry, promulgating the Convention’s technical requirements and standards as marine protection rules is likely to be a substantive task;

iii. New Zealand ships trading offshore and foreign ships visiting New Zealand will face additional capital, operational and compliance costs in responding to the Convention, although the total impact is expected to be small [see Costs to shipping];

iv. The development and approval of ballast water treatment systems has not progressed as rapidly as envisaged, which could prevent some ships to be built in 2009 from meeting the requirements of the Convention. The IMO is monitoring the
situation and has acted to provide an appropriate leeway for these ships to install an approved treatment system.

26 There is a clear net benefit to New Zealand from being Party to the Convention. The cultural, ecological, economic and social costs of marine invasions cannot be overstated. The additional protection provided by stricter control measures on ballast water discharges will reduce the risk of introduction of harmful aquatic organisms, and the benefit of this is considered to outweigh the costs of implementation and compliance with the Convention.

27 The alternative options for New Zealand will not achieve Government’s policy objective. Maintaining the status quo does not provide sufficient protection against introductions of marine organisms in ballast water discharges, while the option of implementing stricter controls on ballast water discharges without becoming party to the Convention would be another form of unilateral action, which would not enable New Zealand to demonstrate leadership on this issue nor provide the compliance and enforcement benefits of being Party to the Convention.

Legal obligations that would be imposed on New Zealand by the treaty action

28 The body of the Convention establishes a set of primary obligations on Parties to the Convention, while the Annex to the Convention sets out technical standards and regulations for the control and management of ships’ ballast water and sediment. The primary obligations imposed on Parties to the Convention may be characterised as: general obligations; flag state obligations; and port and coastal state obligations.

General obligations (Article 2)

29 Parties to the Convention must give full and complete effect to the provisions of the Convention and its Annex. Parties reserve the right to take more stringent measures than those contained in the Convention to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens, provided these are consistent with international law.

30 Parties must ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States. Parties should seek to co-operate for the purpose of effective implementation, compliance and enforcement of the Convention.

Flag State obligations (Articles 4, 7 and 8)

31 Parties must require ships to which the Convention applies to comply with the requirements of the Convention. The Convention generally applies to ships designed or constructed to carry ballast water, but exceptions may apply to specific categories of ships, such as ships of a Party that only operate in its waters.

32 Compliance by ships with the requirements of the Convention should be achieved by, amongst other things, the certification and surveying of ships and by establishing sanctions under domestic law for any violation of the Convention.

33 Where a Party is informed of a violation by one of its ships, it must investigate the matter. If sufficient evidence is available to enable proceedings to be brought, the Party
must commence proceedings as soon as possible, in accordance with its law. Port State
Obligations (Articles 4, 5, 8, 9, 10, 11 and 12)

34 Parties must develop national policies, strategies and programmes for ballast water
management in waters under their jurisdiction that accord with and promote the objectives
of the Convention.

35 Coastal and port States should establish sanctions for any violation of the
Convention that occurs within their jurisdiction. Where a violation occurs within its
jurisdiction, a Party has the option to either: take proceedings in accordance with its law; or
provide information and evidence relating to the violation to the State under whose
authority the ship is operating.

36 Ships to which the Convention applies may be inspected by port State control
officers. If there are concerns, then a detailed inspection may be carried out. Where there is
a detailed inspection, the ship must not discharge ballast water until it can do so without
presenting a threat of harm to the environment, human health, property or resources.
Inspections may also be undertaken at the request of another Party with sufficient evidence
regarding the past or present operation of the ship in breach of the Convention.

37 Where a breach of the Convention is detected, the ship may be warned, detained, or
excluded from entering a port. A ship will be prohibited from discharging ballast water
where the results of sampling of the ships’ ballast water indicates that it poses a threat to
the environment, human health, property or resources. Enforcement measures should be
undertaken in a way that avoids a ship being unduly detained or delayed. Compensation
should be available where there is undue detention or delay.

Reservations
38 The agreement reached at the IMO relating to the requirement for ships constructed
in 2009 of a certain size to comply with the performance-based standard for ballast water
discharges, recommends that States acceding to the Convention should accompany their
instrument of accession with a declaration or other form of communication conveying
their intention to apply the Convention on the basis of the agreed understanding, i.e. that a
ship subject to regulation B-3.3 constructed in 2009 will not be required to comply with
regulation D-2 until its second annual survey, but no later than 31 December 2011. New
Zealand’s instrument of accession should be accompanied by such a declaration or
reservation.

Dispute settlement
39 Parties to the Convention are to settle any dispute between them concerning the
interpretation or application of the Convention by negotiation, enquiry, mediation,
conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or
other peaceful means of their own choice (Article 15).

Conclusion
40 New Zealand can readily meet the obligations set out in the Convention. Many of the
obligations are similar to those contained in international marine environment protection
arrangements to which New Zealand is already Party.
Measures which the Government could or should adopt to implement the treaty action

41 Officials have examined a number of legislative and administrative alternatives for implementing the Convention. New measures could be implemented entirely through the Biosecurity Act, with MAF having sole responsibility for implementation, and ongoing administration and enforcement of the new measures. Alternatively, measures could be implemented entirely through the Maritime Transport Act, with Maritime New Zealand (MNZ) having sole responsibility for implementation, and on-going administration and enforcement of the new measures.

42 The Convention could also be implemented through a combination of the Maritime Transport Act and the Biosecurity Act, with MNZ and MAF having shared responsibility for implementation, and on-going administration and enforcement of the new measures. Alternatively, new legislation could be specifically developed, with MAF and MNZ having shared responsibility for implementation, and on-going administration and enforcement of the new measures.

43 There is no compelling rationale for using either the Biosecurity Act or the Maritime Transport Act exclusively to implement the obligations imposed by the Convention. While the objective of the Convention is biosecurity related (i.e. preventing the global transfer of harmful marine organisms), in practice it uses a well established framework for regulating international shipping. The Convention is modeled on other instruments developed by the IMO for protecting the marine environment, which are implemented under Maritime Transport Act (where New Zealand is a party).

44 The approach to resolving which legislative alternative to use to implement the Convention has focused on identifying the most practical and cost effective means of implementation. The activities and roles that would be required to implement the Convention have been examined and it has been concluded that integrating these with the existing functions of MAF and MNZ in a cross-agency approach to implementing the Convention would deliver the most practical and cost effective outcome.

45 The proposed cross-agency approach for implementing the Convention's controls on ballast water is summarised below:

- MNZ would be accountable for the requirements relating to ships [ship inspections, investigations and prosecutions, and managing the survey and certification of NZ ships] under the Maritime Transport Act;
- MAF would be accountable for policies or strategies for ballast water management, controlling facilities in ports for sediment disposal (using powers under the Biosecurity Act), implementing research and providing technical assistance to other countries [but MNZ would be responsible for providing training assistance to other ship inspection agencies];
- MNZ would operate within the national biosecurity system for which MAF has overall leadership; and
- An accountability arrangement would clarify each agency’s roles and responsibilities.
MAF also intends to retain a biosecurity clearance role for ballast water discharges, as least in the interim period after the Convention comes into force. This additional measure is considered necessary while new technologies for treating ballast water are used in operational conditions for the first time, and as international shipping adapts to new rules.

The Convention would be implemented through a combination of the Maritime Transport Act and the Biosecurity Act. Legislative amendments would be needed primarily to the Maritime Transport Act, but the scope of these would not be extensive and would not warrant a stand-alone statute.

Amendments would be needed to the Maritime Transport Act to:

- create a regime for implementing the rights and obligations of the Convention;
- establish inspection, search and seizure powers such as checking documents and sampling of ballast water;
- set appropriate offences and penalties for violations of the Convention;
- ensure that liability and compensation provisions adequately protect Maritime New Zealand; and
- enable regulations to be made to set fees and/ or levies to recover costs.

Consequential amendments may be required to the Biosecurity Act, while regulations made under the Resource Management Act may also require amendment.

It is proposed that a Maritime Transport Amendment Bill would be the vehicle for enacting these legislative amendments. This Bill has a Category 5 priority on the 2008 legislative programme.

The amending legislation would enable the obligations on Parties to be given effect through sub-ordinate legislation that would come into effect when the Convention comes into force. The promulgation of this sub-ordinate legislation would be subject to regulatory impact requirements, including consultation with affected parties. The existing controls on ballast water discharges, made under the Biosecurity Act would be amended when the new measures come into effect.

Economic, social, cultural, and environmental costs and effects of the treaty action

New Zealand has the world’s fifth largest Exclusive Economic Zone (EEZ), covering approximately 430 million hectares of ocean, ranging over 30 degrees of latitude – from the subtropical Kermadec Islands to the sub-Antarctic Auckland and Campbell Islands.

New Zealand’s marine ecosystems and species are highly diverse. Marine scientists estimate that perhaps as much as 80% of New Zealand’s indigenous biodiversity is found in the sea. Many marine species are endemic to New Zealand, due to our isolation from other landmasses for over 120 million years. Such species are especially vulnerable to introduced organisms.
The commercial value of New Zealand’s wild and farmed fisheries is around $1.5 billion annually, while marine-related tourism also makes a significant contribution to New Zealand’s Gross Domestic Product.

New Zealanders have a strong connection with the marine environment. The majority of New Zealanders live within 50 kilometres of the coastline and many people swim, fish, and gather seafood from the coast. Maori have a close cultural relationship with the ocean. It is regarded as a tāonga that is integral to their culture and identity. The sea is important to tangata whenua as a source of food, and the mana of hapu and iwi is still closely linked to their ability to provide hospitality to visitors through plentiful kaimoana. The sea is also an important part of Maori spirituality and mythology.

The introduction of invasive foreign marine organisms into New Zealand’s marine environment would have significant impacts on these economic, social, cultural and environmental values. Full implementation of the requirements of the Convention could be expected to substantially mitigate the risk of harmful aquatic organisms and pathogens being transferred into New Zealand waters through ballast water discharges. Avoidance of the impacts of invasive marine organisms witnessed overseas would be a positive long-term benefit to the economic, social, cultural and environmental values associated with the marine environment.

The Convention is not expected to have a large impact on the economy. The operators of the very small number of New Zealand flagged ships that trade internationally will be affected directly by the standards and regulations for the management of ships’ ballast water and sediment imposed by the Convention.

The costs to New Zealand of compliance with the treaty

Costs to Government

The major operational cost to be met by Government will arise from exercising the control provisions of the Convention. As foreign ships provide most international services, this role will involve verification that these ships fully comply with the Convention. The costs for MNZ to undertake this role are expected to fall into relatively small set-up costs and larger ongoing costs (estimated at $49,000 and $422,200 respectively).

On-going costs will arise from incorporating the Convention’s technical requirements and standards into marine protection rules made under the Maritime Transport Act; and providing advice on New Zealand’s response to the Convention, and Any subsequent development of new legislation.

Developing marine protection rules that fully reflect the technical content of the Convention will be a substantive task. MNZ has estimated that rulemaking to comply with the Convention would require the equivalent of one year’s rules development capability. (The Ministry of Transport currently purchases this rule development service for $660,000 per annum). Any increase in MNZ’s annual rules development capability to ensure that other priority rules are not displaced would need to be the subject of a budget bid by the Minister of Transport for 2009/10.
Providing advice to Government on New Zealand’s response to the Convention, and any subsequent development of new legislation to implement the Convention will be undertaken using the existing resources of the agencies involved (the Ministry of Transport, Maritime New Zealand, Ministry of Agriculture and Forestry, and Parliamentary Counsel Office). The Ministry of Transport and MAF will input into developing marine protection rules on a similar basis.

Other new roles, such as managing survey and certification requirements, administering new rules, and controlling onshore disposal of sediments, are not expected to require a material amount of resources. These roles are expected to be undertaken with existing resources.

Options for funding control provisions of the Convention

It is proposed that the cost of exercising the control provisions of the Convention be recovered from ship-owners, primarily by way of a levy on ships (particularly international ships) that carry ballast water. All ships calling at New Zealand that are covered by the Convention would be eligible to pay this levy annually. The levy would be supplemented by direct user charges in the small number of cases where ships require additional control action. The levy has been estimated at approximately $470 to $530 per ship, while direct user charges could be approximately $3,500 per ship.

A combination of a ballast water levy and user charges is judged to be the preferred option for funding the cost of exercising the control provisions of the Convention, when evaluated against the following criteria:

a. Targeting, equity and transparency - the ships that generate the risk pay for the control and mitigation measures. Those ships that require additional control measures pay more.

b. Efficiency - levies can be collected using the same invoicing system used by MNZ to collect other charges and levies.

Other options include Crown funding, given the wide public benefits of biosecurity, or the addition of a ballast water component to the existing MNZ marine safety charge. A fourth option is a new environmental levy, combining recovery of ballast water costs with those associated with state funded arrangements for preparedness, planning and response to cargoes involving hazardous and noxious substances.

Crown funding for ballast water inspection activities is not recommended because it does not make the “polluter” pay – a principle widely observed in other environmental areas, such as oil spill clean-up costs. Covering the costs through the marine safety charge is less transparent and would be much less targeted – spreading the cost recovery over a large number of ships, many of which are not contributors to ballast water biosecurity risks. An environmental levy is not considered efficient at this time because there are no other new state-funded environmental costs to bundle up with it.

The shipping industry and other commercial stakeholders opposed the less targeted levy alternatives (i.e. a new environmental levy or the use of the marine safety charge). These options would diffuse the cost impact to those ships that create the biosecurity risk,
and unfairly spread the cost to New Zealand vessels that are not designed or constructed to carry ballast water. It was submitted that any form of cost recovery should be targeted narrowly at those ships that create the risk of introduction of unwanted organisms from ballast water or ballast sediments.

67 An annual levy of approximately $470 to $530 per ship would be less than the current cost of one tonne of heavy fuel oil used by these large vessels. Large commercial ships serving the New Zealand trade consume approximately 30-40 tonnes of heavy fuel oil each day at sea.

Costs to shipping

68 The shipping industry faces capital, operational and compliance costs in response to the Convention, but the impact is expected to be small, as measured by the potential increases in the freight rate per tonne/container of cargo carried, or annual operating costs.

69 The largest expense to ship owners will be equipment to treat ballast water prior to discharge. An international survey of ballast water treatment systems has reported the installed cost of such systems to range from US$250,000 to US$2,300,000 (with a mean value of US$867,000). Treatment systems are at an early stage of development and their cost can be expected to reduce over time.

70 While significant, the capital cost of ballast water treatment systems need to be kept in perspective. An average cost of US $867,000 for a ballast water treatment system lasting 20 years is a modest outlay for a ship owner spending up to US$7,000,000 on bunker fuel over a single year, and potentially earning up to US$100,000 a day in charter payments.

71 Operating costs for treatment systems would include the power required to run the system, and the cost of routine and periodic maintenance, as well as any consumables. A report commissioned by Australian Department of Agriculture, Fisheries and Forestry estimates the marginal costs of operating treatment systems as likely to cost approximately A$140 per voyage.

72 Ship owners will face costs of management and seafarer time in developing procedures and systems to meet the requirements of the Convention. Ships’ crews in particular, may incur compliance costs in adapting shipboard routines to meet the additional tasks. However, harmonised international measures may have lesser compliance costs than a patchwork of differing national controls that currently applies for those ships trading into a number of different jurisdictions.

73 Indeed, the international organisations that represent ship-owners (the International Chamber of Shipping and the International Shipping Federation) have highlighted the Convention as one of the international legal instruments the shipping industry believes should be ratified as a matter of urgent priority – to counter unilateral and regional regulations that compromise the efficiency of maritime trade.

74 The costs of compliance with the requirements of the Convention are costs that ships trading to and from New Zealand are likely to bear once the Convention enters into force, regardless of New Zealand’s decision to implement the Convention. New Zealand-flagged ships that carry ballast water will need to comply with the requirements of the
Consultation with the community and parties interested in the treaty action

Sector stakeholders

On 1 November 2007, MAF Biosecurity New Zealand called for submissions from interested parties on the options for New Zealand in response to the International Convention for the Control and Management of Ships’ Ballast Water and Sediments. The consultation process was targeted at the shipping industry specifically, and a range of marine stakeholder groups that benefit from biosecurity protection, including marine commercial and recreational groups; conservation and environmental groups; local government, and iwi.

Twenty-one submissions were received. The option of becoming party to the Convention was widely supported in submissions received in the public consultation. No submissions supported maintaining the status quo.

A small number of submissions favoured the option of implementing stricter controls without becoming party to the Convention. These submissions either sought strengthened measures for ballast water discharges in advance of the Convention coming into effect, or held reservations about the availability and operational effectiveness of newly developed ballast water treatment technologies.

Government departments

The following agencies were consulted in the preparation of this National Interest Analysis: the Ministry for the Environment, the Ministry of Economic Development, the Ministry of Fisheries, Treasury, the Ministry of Justice, the Ministry of Defence, the Department of Conservation, the Ministry of Foreign Affairs and Trade, Te Puni Kōkiri, the Ministry of Transport and Maritime New Zealand. The Department of Prime Minister and Cabinet was informed.

Subsequent protocols and/or amendments to the treaty and their likely effects

The Convention may be amended, once it has entered into force, after consideration within the International Maritime Organization or by a Conference of the Parties. Article 19 of the Convention provides a tacit acceptance procedure for amendments to the Annex, which contains the requirements for ballast water management. This means that amendments to the Annex are deemed to have been accepted by Parties twelve months after their adoption unless more than one-third of Parties to the Convention object. Such amendments will enter into force for all Parties except those that have notified the IMO of an objection inside the 12 month period.

Should there be any future protocols or amendments to the Convention itself, there would be no obligation for New Zealand to become a Party to them. An assessment of the costs and benefits to New Zealand of doing so can be made if and when such protocols are
Any amendment to the Convention would be subject to the usual domestic approval process.

An amendment to the Convention is one of the options being considered by the International Maritime Organization for implementing international measures to minimise the transfer of invasive aquatic species through biofouling of ships. The IMO’s consideration of the biofouling issue is at a very early stage, with potential measures still being investigated. It is too soon to speculate on the implications of any measures that might be implemented by way of an amendment to the Convention.

**Withdrawal or denunciation**

Article 20 provides that a Party may denounce the Convention at any time after the expiry of two years from the date on which it enters into force for that Party. Denunciation is to be effected by written notification to the International Maritime Organization, to take effect one year after receipt or such longer period as may be specified in that notification. Any decision to denounce the Convention would be subject to the usual domestic approval process.

**Adequacy statement**

The Ministry of Agriculture and Forestry has determined that this National Interest Analysis is adequate.