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SOUTH HAMS SALCOMBE HARBOUR BOARD - MONDAY, 3RD FEBRUARY, 2014

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. Reports

Reports to Harbour Board:

- a) Item 8 - Victoria Quay Pontoons (Pages 1 - 4)
- b) Item 9 - Port Marine Safety Code (Pages 5 - 44)
- c) Item 10 - Review of Byelaws Enforcement Policy (Pages 45 - 96)
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AGENDA
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SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

8

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	VICTORIA QUAY PONTOONS
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of report:

To recommend the replacement of the Victoria Quay Pontoons.

Financial implications:

The replacement cost of the Pontoons will be under £50,000, which can be met from the Harbour General Reserve.

RECOMMENDATIONS:

That the Harbour Board **RESOLVES** to recommend to Council to bring forward the replacement of the Victoria Quay Pontoons from the Financial Year (FY) 2015/16 to FY 2013/14 and finance the project from the Harbour General Reserve.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 The Victoria Quay Pontoons are over 30 years old and in recent years have been deteriorating at an exponential rate. The concrete construction is fragile, the floats are losing their buoyancy, the connecting pieces are tired and present trip hazards and the joints are failing frequently.
- 1.2 The Victoria Quay Pontoons have been identified in the current Strategic Business Plan 2012-2017 for replacement in Financial Year 2015/16 and financial provision made for that year.

2. ISSUES FOR CONSIDERATION

- 2.1 The Victoria Quay Pontoons are removed each winter to protect them from the worst of the winter storms, before they are replaced each spring they are refurbished for the season ahead. The work currently required to bring the pontoons up to standard is major and will entail the replacement of all of the doubling boards, most of the rubber connectors, some of the floats and the concrete surface needs numerous repairs.
- 2.2 With the pontoons due for replacement in two years it is not good value for money to invest several thousands of pounds into new materials and at least 2 months manpower into refurbishing the current pontoons.
- 2.3 It is therefore proposed to bring forward the replacement of the Victoria Quay Pontoons to this financial year.
- 2.4 The RNLI are planning to refurbish the lifeboat berthing and access pontoons this winter. This will enable any modifications to be made to the RNLI Access Pontoon necessary to accommodate new Victoria Quay Pontoons whilst the Access Pontoon is undergoing refurbishment.
- 2.5 It is proposed that the replacement pontoons would be a like for like replacement.

3. LEGAL IMPLICATIONS

- 3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).
- 3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

- 4.1 The Pontoons have been budgeted for replacement in 2015/16 with an estimated cost of £70,000. With the current improvement works at Kingsbridge there is insufficient funds to finance this project early from the Pontoon Reserve. However, the Harbour Authority Revenue Budget is currently forecasting a surplus of £60,000 for FY 2013/14. These funds will be transferred to the Harbour's General Reserve at the end of the FY and will more than cover the current estimated replacement cost of £50,000. Bringing forward the replacement of the Victoria Quay Pontoons would make long term financial sense and prove a good use of the 2013/14 surplus to reduce long term maintenance costs.
- 4.2 Because of the short time line, the pontoons would need to be in place for 1 April 2014 when the seasonal licence for these berths start, an exemption from contract procedure rules will be required. This has been applied for.

5. RISK MANAGEMENT

- 5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
Without major refurbishment the Victoria Quay Pontoons are likely to fail during the 2014 season. This would be a major problem because the 60 boats accommodated on the pontoons could not be found alternative berths. The financial loss would be £17,000 and the loss of reputation disastrous.	3	3	9	Either extensive and expensive refurbishment of the current pontoons to keep them going until they are replaced as planned in 2015/16 or To bring forward the replacement of the pontoons.

6. OTHER CONSIDERATIONS

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers:	The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

Considerations of equality and human rights:	None
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background papers:	Strategic Business Plan 2012-17. Reserve Funding Request. Application for Exemption from Contract Procedure Rules.
Appendices attached:	None

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SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

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NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	PORT MARINE SAFETY CODE
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of Report

To appraise Members on Salcombe Harbour Authorities' compliance with the Port Marine Safety Code.

RECOMMENDATION

That the Harbour Board RESOLVES to:

- a. Accept the findings of the Audit at Appendix 1 and 2.
- b. Endorse and publish the 11th edition of the Safety Management System dated 2 December 2013 at Appendix 3.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 The Port Marine Safety Code (PMSC) was published in March 2000 and revised in 2012 by Department of Environment, Transport and Regions (DETR) Ports Division. Its aim is to establish an agreed national standard for port marine safety and a measure by which harbour authorities can be held accountable for the legal powers and duties which they have to run harbours safely.

- 1.2 To audit Salcombe's compliance and advise on any changes, developments and safety issues, the Harbour Authority has appointed an independent designated person who reported on 2 December 2013 that, in their opinion there is in place a safety management system which, if maintained actively, complies with the requirements of the PMSC, Appendix 1.

2. ISSUES FOR CONSIDERATION

- 2.1 During the Audit a number of issues were raised, these are detailed in the Independent Designated Person's letter at Appendix 2.
- 2.2 The Harbour's Safety management System has been updated to Issue 11 dated 2December 2013. The complete revised document is at Appendix 3.

3. LEGAL IMPLICATIONS

- 3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).
- 3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

- 4.1 None in the preparation of this report other than officer time although there will be financial implications for the delivery of harbour safety improvements.

5. RISK ASSESSMENT

- 5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
The Harbour Authority is working towards a safe and improving service to harbour users.	3	3	9	The Harbour Board, considers many routine issues annually, topical items are brought to the Board as they arise.
Failure to maintain a safe harbour could result in risk to life, limb and property.	3	3	9	The Harbour maintains a Safety Management System which is reviewed bi-annually by an independent Designated Person.

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers	The Pier & Harbour (Salcombe) Order Act 1954
Consideration of equality and human rights:	There are no equality or human rights issues with this report
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background Papers:	Port Marine Safety Code Dated December 2012.
Appendices attached:	1. Nicholson Risk Management's Report dated 2 December 2013. 2. Nicholson Risk Management's letter dated 2 December 2013. 3. Salcombe Harbour Board Safety Management System Issue 11 dated 2 December 2013.

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REPORT

To the Salcombe Harbour Board.

As the independent designated person appointed by the Salcombe Harbour Board, we report on the Safety Management System, Issue 10, dated 27th November 2012 and we have reviewed compliance during the past year.

A few revisions are necessary and we drawn up Issue 11, dated 2nd December 2013, recording compliance with the Port Marine Safety Code and listing the topics in hand for continuous improvement.

In our opinion there is in place a safety management system which - if maintained actively - complies with the requirements of the Port Marine Safety Code and enables the Salcombe Harbour Board to set out their safety policies, their organisation which can put them into practice and their procedures for a planned and systematic approach to policy implementation.

Nicholsons Management Ltd

2 December 2013

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The Harbour Master,
Salcombe Harbour Office,
Whitestrاند,
Salcombe,
Devon, TQ8 8BU

2 December 2013

Dear Ian,

Attached is my firm's formal report on the new safety management system, with just minor updates, and the annual certification that the Harbour Board are complying with the Port Marine Safety Code.

I would now add some detailed comments arising out of the review process.

Harbour Activities

After very poor weather at the start of the year the excellent summer compensated so there was a slight increase in activity over the previous year.

There has been an increase in the number of paddle boards using the Harbour, but generally there have not been any significant changes in the mix of boats using the harbour. There are two operators licenced to hire and instruct paddle boarding within the Harbour.

There was pressure on launching and landing capacity at the public slipway at Batson during the Fish Quay re-development works, which over ran into the summer leisure season, but this was more an inconvenience than a threat to navigation or health and safety because of the mitigating measures employed to manage the conflicting activity.

Legislative Powers

The Marine Navigation Act 2013 enables harbours to apply to the DFT for powers of Harbour Directions to amend the powers already held through the Harbour Act 1964. Salcombe is planning to make an application for these powers.

The powers should include those to prohibit windsurfing in the main fairway in July and August; prohibiting yachts of 7m or more from sailing between the Salcombe Harbour Hotel and the Saltstone in July and August; and prohibiting scrubbing foulings which might pollute the water.

The Enforcement Policy is reviewed annually by the Council's Legal team and Harbour Board.

Accidents and Incidents

Salcombe Harbour maintains clear accident and incident records. A simplified incident reporting form was introduced for the 2013 season to encourage the reporting of all incidents, no matter how minor. A summary of incidents is now published in the annual report.

This year there were no fatalities, no fires and no significant environmental accidents or incidents. Such pollution as there was came from storm overflow of sewage and an incident when the fuel tank of a RIB split in the hot weather.

There were a number of minor accidents and incidents and five of them resulted in injuries, ranging from cuts to shin and hand, a crushed chin, a broken nose and a badly damaged finger.

Risk control

All of the risk assessments have been reviewed this month. There were just a few changes and updates required.

Each of the three Assistant Harbour Masters is involved in the review of risk assessment that relate to their area of responsibility. Controls are implemented through the 17 Method Statements for Operations in Salcombe Harbour. The SHA training programme makes sure that staff have the necessary skills and awareness of the risk controls.

One new measure to improve safety with the use of lifejackets by those in tenders has been the provision of RNLI lifejacket lockers, adjacent to the Harbour Office.

Consultation

Salcombe Harbour Board communicates with its neighbours, customers and stakeholders through the Annual Report, the Harbour Guide and annual newsletters. There is feedback from all of these. There is an annual customer satisfaction survey.

The Harbour Community Forums are formal consultation mechanisms that ensure the Harbour Board has strong links with harbour users and the local community.

- The Salcombe and Kingsbridge Estuary Association
- The Salcombe Kingsbridge Estuary Conservation Forum;
- The Kingsbridge Estuary Boat Club
- South Devon and Channel Shell Fishermen
- Kingsbridge and Salcombe Marine Business Forum

Marine Infrastructure Reserve.

The District council is conducting an infrastructure condition survey. This survey will determine the reserve to be set up for both maintenance and replacement of the Council's marine infrastructure around the Salcombe and Kingsbridge Estuary.

This proactive measure should help safeguard the Council's assets which the boating public use regularly. This includes slipways, steps, quay walls and piers.

Adhering to the principle that the user pays, from next Financial Year, the Harbour Authority will make a regular contribution to this ring fenced reserve

Improvements Made

Where actions were identified last year, the following have now been completed,

1. It is now a standard procedure for customers with a mooring licence to be asked to confirm that the mooring tackle has been inspected and maintained where necessary.
2. The mooring policy allocating moorings to those who are resident within the South Hams has been simplified and clarified.
3. The safe performance of skippers of trip boats and ferry boats is monitored and the requirement for survey and stability tests enforced.
4. The RNLI now have on their fuel bund notices with warnings of its flammable contents.
5. The Fish Quay development has been completed. The new quay delivers an improved working environment and the road access through the public car park is now much safer.
6. Incident data is now published in the annual report so that stakeholders may discern any trends.
7. Fire practices in SHB were held in the premises and a desk top exercise held to examine action to be taken in various scenarios of fire afloat. Staff involvement has been recorded in the training records.

Initiated and ongoing

8. Continue to seek ways of informing and educating harbour users on safety issues, such as wearing lifejackets (automatic ones being the lifejacket of choice), life jacket maintenance, don't drink and drown and the dangers of venturing outside the harbour.
Continue to press the Yacht Club to require adequate personal buoyancy to be worn by all competitors in boats that might capsize, including those sailing yawls.
Publish Notices to Mariners via electronic distribution, on harbour notice boards and on social media.
Advice to call Coast Guard in an emergency, rather Police, Fire Brigade or Ambulance.
Promote safe practices in the Annual Report, in newsletters, in magazines and in the Harbour Guide.
Promote training and refresher courses for those on sailing boats as well as power. Training is now a 6th point added to the original 5 safety recommendations made by the RYA and RNLI.
9. Continue to press for the need for "Edge protection where 2m drop".
The risk at Whitestrand has been repeatedly raised with the H&S committee of SHDC, who own the quays.

Improvements Planned

The Safety Management System of the Salcombe Harbour Board includes a policy of continuous improvement to bring the risks to As Low as Reasonably Practicable [ALARP]. Currently this includes the following,

1. Complete the 5 Year Business Plan, with the aim of supplying 21st Century facilities without changing the character of the estuary.
Work is ready to start on the Kingsbridge Pontoon and berthing arrangements upgrade.
This will remove vertical ladders access requirement with all access being down a bridge.

2. Apply for powers of Harbour Directions which will, inter alia, help control windsurfing and large yachts in the main fairway during July and August and scrubbing foulings throughout the year.
3. The harbour approach will be made clearer by the removal of the Yacht Club Zero Mark, a white buoy, and the replacement of the Yacht Club's orange race Marks 1, 2 and 3 with Special Marks, which will not be similar in appearance to port hand marks.
4. The Designated Person is to be invited to attend the July meeting of the Harbour Board.
5. Regularly review how IT developments can improve communications with customers, whether on the web site, by email or by using social media.
6. Administration is to be improved with the introduction of the E Harbours software.

Many thanks for your help in completing this annual task.

Yours sincerely,

Peter Nicholson

SALCOMBE HARBOUR BOARD

SAFETY MANAGEMENT SYSTEM

In Compliance With

THE PORT MARINE SAFETY CODE

Prepared By:

The Harbour Master, with Nicholsons Risk Management

Harbour Board Members

Councillor J Carter - Chairman

Mr C Harling – Vice-Chairman

Councillor K Wingate

Councillor S Wright

Councillor M Hicks

Mr H Marriage

Mr M Mackley

Mr A Thompson

Mr M Taylor

Mr G Burrell

IN COMPLIANCE WITH THE PORT MARINE SAFETY CODE

SUMMARY AND INDEX

Page

Policy: To have a Safety Management system that is structured, cohesive and auditable.

A1. Introduction

Salcombe Harbour Board's constitution, powers and procedures comply with the Port Marine Safety Code 2012 [PMSC] 4

This document describes the Salcombe Harbour Board's [SHB] Safety Management System comprising the 6 essential elements of policy, organisation, planning, measure, review and record.

A2. Outline Chart of Safety Management System 5

1) Policy -adopting health and safety policies which contribute to business performance 7
while meeting responsibilities to people and the environment in a way which fulfils both the spirit and the letter of the law.

2) Organisation

2.1 - Establishing a positive organisation or culture which puts the policies into effective practice. 10

2.2 - Organisation Chart, "Family Tree" 11

2.3 - Training will also be an inherent part of Organisation 12

3) Planning

3.1 - Chart of Planning System, for planning, implementation, standards and procedures 13

3.2 - Consultation with Harbour Users 14

3.3 - Assessing risk and then adopting a planned and systematic approach to policy implementation. Risk assessments are the key for judging what safety plans are needed. 15

3.4 Risk Assessments Appendix

3.5 Remove Any Unacceptable Risks 16

3.6 Management & Control of Significant Risks 17

3.7.1 Emergency plans 21

3.7.2 Conservancy, including, with SHDC, licensing 22

3.7.3 Environment 23

3.7.4 Management of Navigation 24

3.7.5 Pilotage 25

3.7.6 Marine Services 26

4) Measuring -measuring health and safety performance against predetermined standards. 28

5) Reviewing - auditing, monitoring and reviewing the performance so that lessons 27
are learned from all the relevant experience and are effectively applied.
Training and education are implicit as part of good safety management.

6) Recording and publishing –maintaining a record of due diligence. 29

The Board is responsible for policy. The Harbour Master is responsible for the organisation and the facilities. The Staff implement the policy. Together these three categories form the system that puts policy into effective practice.

A1 - INTRODUCTION

Background.

The Port Marine Safety Code (PMSC) was first published in March 2000 and revised by the Department of Transport in 2009 and again in 2012. It aims to establish an agreed national standard for port marine safety and a measure by which harbour authorities can be held accountable for the legal powers and duties which they have to run their harbours safely.

Salcombe Harbour Authority

The overarching plans and policies of the Harbour are contained in the Salcombe Harbour Authority Strategic Business Plan (2012-2017). They aim to discharge the roles and statutory duties which are placed on the Harbour by the Pier and Harbour [Salcombe] Confirmation Act 1954, and which are empowered by the Act.

The Statutory Harbour Authority for the Salcombe/Kingsbridge Estuary is the South Hams District Council. The Council has set up the Salcombe Harbour Board, which is a committee of Full Council and makes recommendations for approval by the full Council.

The terms of reference of the Salcombe Harbour Board are to administer Salcombe Harbour in accordance with the 1954 Act, the recommendations of the Municipal Ports Review (2006) and the policy of the Council, and to advise the Council on riparian matters affecting the Harbour, subject to overall control of staffing and finance by the Council.

The 1954 Act is based on the 1847 Harbours, Docks and Piers Clauses Act that gives the Harbour Master certain statutory powers concerning the management of the Harbour. Additionally, the 1964 Harbours Act provides for the operation to be self-financing with the Authority able to fix its own rates in order to pay for the work to be done.

The Harbour Limits are published in Admiralty Chart 28 and copied in the Harbour Guide.

The Aim of This Document.

The aim of this document is to describe and direct how the Salcombe Harbour Board complies with the PMSC and how it will continue to do so.

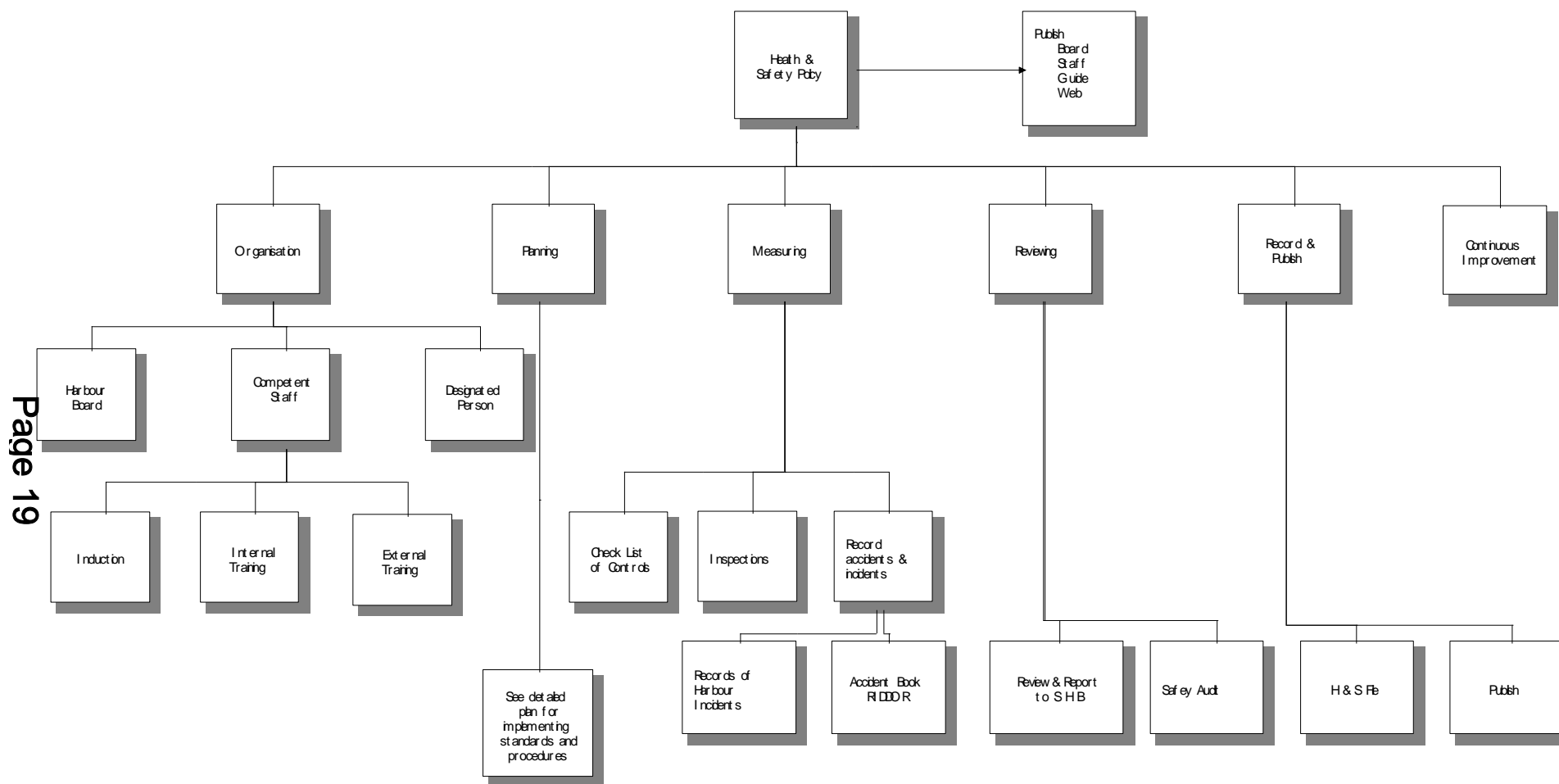
Managing Salcombe Harbour - The Safety Management System.

The Salcombe Harbour Board is a safety conscious and a publicly accountable board. It is committed to undertaking and regulating marine operations in a way that safeguards the harbour, its users, the public and the environment

It has an established Safety Management System, the components of which are shown diagrammatically on Page 5.

The safety procedures that form the plan to implement the safety system are set out on Page 4.

A2 - OUTLINE CHART OF SAFETY MANAGEMENT SYSTEM



Management of these safety controls and procedures are set out in existing public documents, which, together, form a cohesive web of management. As appropriate, relevant sections of these documents are cross-referenced to PMSC standards:

- Salcombe Harbour Authority Strategic Business Plan (2012-2017)
- Salcombe Harbour Authority Annual Report (2013)
- Salcombe Harbour Authority Moorings Policy 2013
- Salcombe/Kingsbridge Estuary Environmental Management Plan (2005-2010)
- The Pier and Harbour [Salcombe] Confirmation Act 1954
- Salcombe Harbour Board Byelaws (2009)
- Salcombe Harbour Health & Safety at Work - Policy, Orders and Risk Assessment (2001)
- Salcombe Harbour Safety Controls (2013),
- Local Notices to Mariners and Harbour Publications, such as the Salcombe Harbour Guide
- Salcombe Harbour Emergency Plan
- The Oil Spill Response Plan (OPRC) and the Estuary Pollution Plan (EA)
- Salcombe Harbour Waste Management Plan
- Admiralty Chart 28 and 5602.10

1. POLICY - SETTING A STANDARD

South Hams District Council and Salcombe Harbour Board are committed to running a safe, efficient and welcoming harbour that caters for the needs of the local communities, visitors and the environment. The six core principles that underpin all the activities of the Harbour Board are safety, stakeholder involvement, value for money, environmental stewardship, catalyst for substantial economic development and support for local employment. SHB will provide a safe port within the limits of their jurisdiction, which is open to the public for the transportation of passengers and goods. It will ensure the safety of their Harbour by exercising their statutory conservancy functions to a high standard. It will regulate the use of the harbour by maintaining appropriate byelaws and ensuring that these and other statutory regulations are enforced. The board will ensure such marine services as are required for the safe use of their Harbour are available and are maintained and operated to a high standard. The board will ensure that current plans are available to deal with emergency situations and that the resources required to implement these plans are maintained and exercised.

The Policy incorporates input from officers, from staff and from harbour users as high standards of safety can only be achieved through dialogue and co-operation.

SHB shall identify, quantify and manage the significant marine risks associated with Salcombe Harbour. This will ensure there is proper control of movements of all vessels by regulating the safe arrival, departure and movement within the harbour.

Existing powers shall be reviewed on a periodic basis, to avoid a failure in discharging duties or risk exceeding powers.

Plans and reports shall also be published as a means of improving the transparency and accountability of harbour authorities, as well as providing reassurance to the users of port facilities. SHB shall consider past events and incidents; to recognise potential dangers and the means of avoiding them.

Salcombe Harbour Board are committed, specifically;

- To ensure that the best channels for navigation are determined, marked and monitored.
- To monitor lights and marks used for navigation within their jurisdiction.
- To provide hydrographic surveys of the estuary when required for the maintenance of up-to-date charts (including charts of all moorings).
- To have an effective system for promulgating navigation warnings affecting the Harbour.
- To consider the effect of weather on harbour safety and promulgating warnings as required.
- To carry out all its functions with special regard to the possible environmental impact, protecting the character of Salcombe and Kingsbridge Estuary.
- To consider the effects on harbour safety of proposed changes in use or harbour works.
- To maintain an up to date set of byelaws in consultation with port users and enforce them so as to effectively regulate harbour use.
- To enforce all relevant statutory Harbour legislation, Health and Safety regulations, the Merchant Shipping Act and Harbour byelaws as necessary.

- To license and control of all moorings and to designate suitable anchorages within Harbour limits.
- To provide suitable resources to deliver effective marine services such as the provision of harbour patrol craft.
- To operate efficiently and safely the Harbour workshops, machinery, plant, equipment, Harbour vessels, mooring berths, pontoons, boat parks and the Fish Quay.
- To ensure that suitable plans for emergency situations are maintained and regularly updated and exercised.
- To keep the duties and powers under review.

SHB shall also:

- confirm the roles and responsibilities of key personnel at the harbour authority;
- outline present procedures for marine safety within the harbour and its approaches;
- measure performance against targets, after building a database recording incidents, including near misses;
- refer to emergency plans that would need to be exercised; and be audited on an annual basis

All employees have a duty to;

- Comply with all harbour safety procedures laid down by Salcombe Harbour Board.
- Ensure that marine operations are undertaken in a safe manner.
- To report hazard, risk, accident, incident or near miss to the Harbour Safety Officer.

Harbour users operating both commercially and for pleasure are responsible for;

- Their own health and safety and that of other harbour users who may be affected by their acts or omissions.
- Complying with byelaws, directions and other regulations aimed at ensuring the safe use of the Harbour.

Health and Safety Management System;

The Salcombe Harbour Board have adopted a health and safety management system in compliance with the principles set out in the Port Marine Safety Code.

The health and safety management system includes policies for emergency plans, conservancy, environment, management of navigation, pilotage and marine services.

Nominated Harbour Safety Officer

The Harbour Master is the Safety Officer. In his absence urgent harbour safety matters should be referred to an Assistant Harbour Master.

Emergencies in the Harbour

Emergencies where life is in danger must be notified at once to the Coastguard by dialing 999 or through VHF channel 16.

Other emergencies should be notified to the duty harbour master by the quickest available means.

The nearest hospital is South Hams Hospital, Plymouth Road, Kingsbridge, 01548 852349

Reporting of Accidents Incidents and Near Misses

The public are asked to bring matters of safety - all accidents, incidents and near misses – promptly to the attention of the Harbour Master at the Harbour Office, phone 01548 843791

The reports will be used to help in assessment of the effectiveness of the harbour safety management system.

Councillor J Carter - Chairman

Adopted by the Board

3 February 2014

2. ORGANISATION

Accountability and Responsibility - The Duty Holder and the Designated Person.

The Salcombe Harbour Board set the policy and the strategy. The Harbour Master and staff provide the means of implementing the Policy.

Any decisions taken or policy set must take into account any issues related to harbour safety. The consideration of such issues is to be minuted. The Board are responsible for deciding where risks are to be insured, disclaimers issued and notices displayed.

The delegation of responsibility is contained in the detailed job descriptions for all harbour staff. The organisation of the harbour staff is shown in the Organisation Plan on Page 11.

The Salcombe Harbour Board, as a Committee of the South Hams District Council, is the designated Duty Holder in accordance with the Port Marine Safety Code.

The Councillors are collectively and individually responsible and they cannot assign or delegate their accountability for compliance with the Code on the grounds they do not have particular skills.

The “Designated Person” as described in the PMSC is Nicholsons Risk Management Limited. The Designated Person has direct access to the Harbour Board.

Competence Standards.

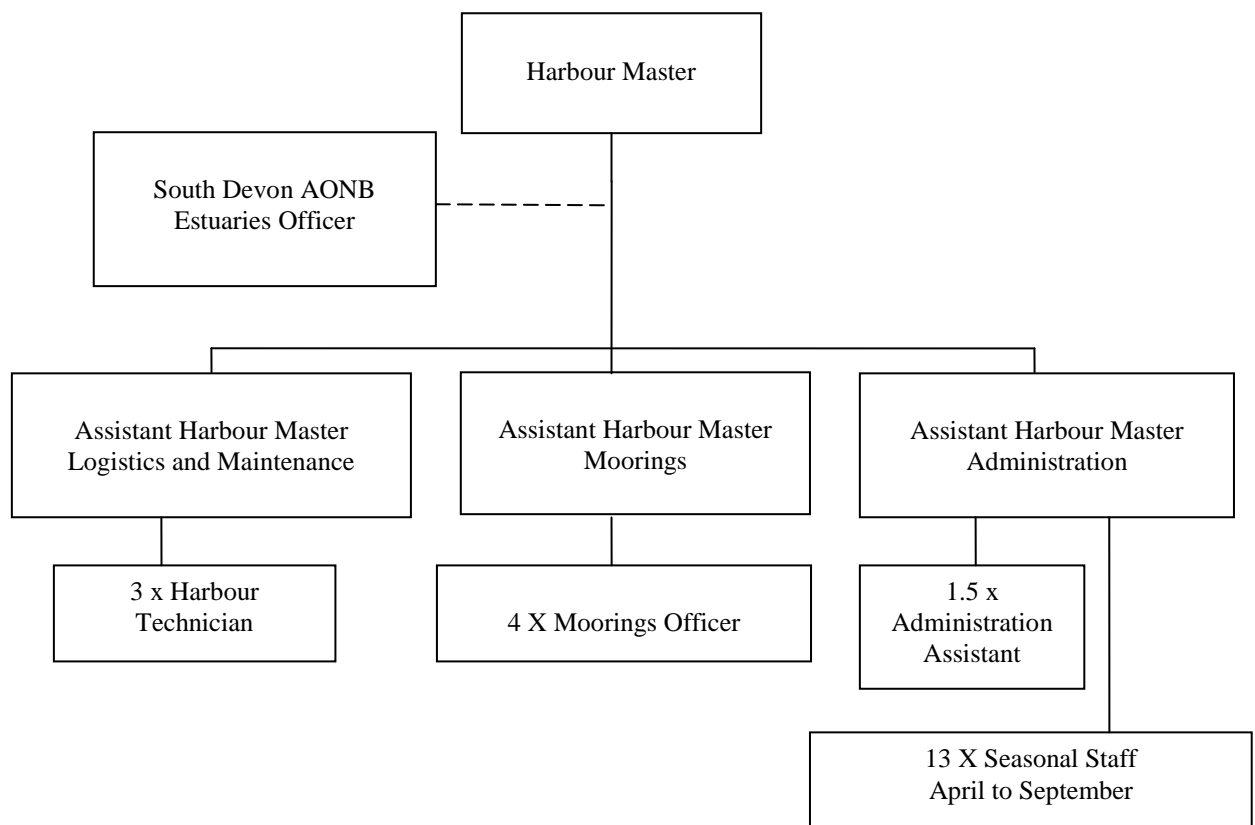
SHB shall assess the fitness and competence of all persons appointed to positions with responsibility for safe navigation.

Employees of the Harbour are recruited and selected on their suitability to fill their job descriptions. Employees are appraised annually and, at that time, their job description, performance and training requirements are reviewed. Reports on harbour office staff are held in confidential personnel files in the harbour office.

Recruitment

The Harbour Master recruits suitably qualified staff to fill the roles set out in the following Organisation Plan

2.2 SALCOMBE HARBOUR AUTHORITY – ORGANISATION PLAN



2.3 TRAINING POLICY

It is recognised that the successful implementation of the Harbour's Safety Management System can only be achieved through a policy of continuous training, with regular reviews of specific training requirements.

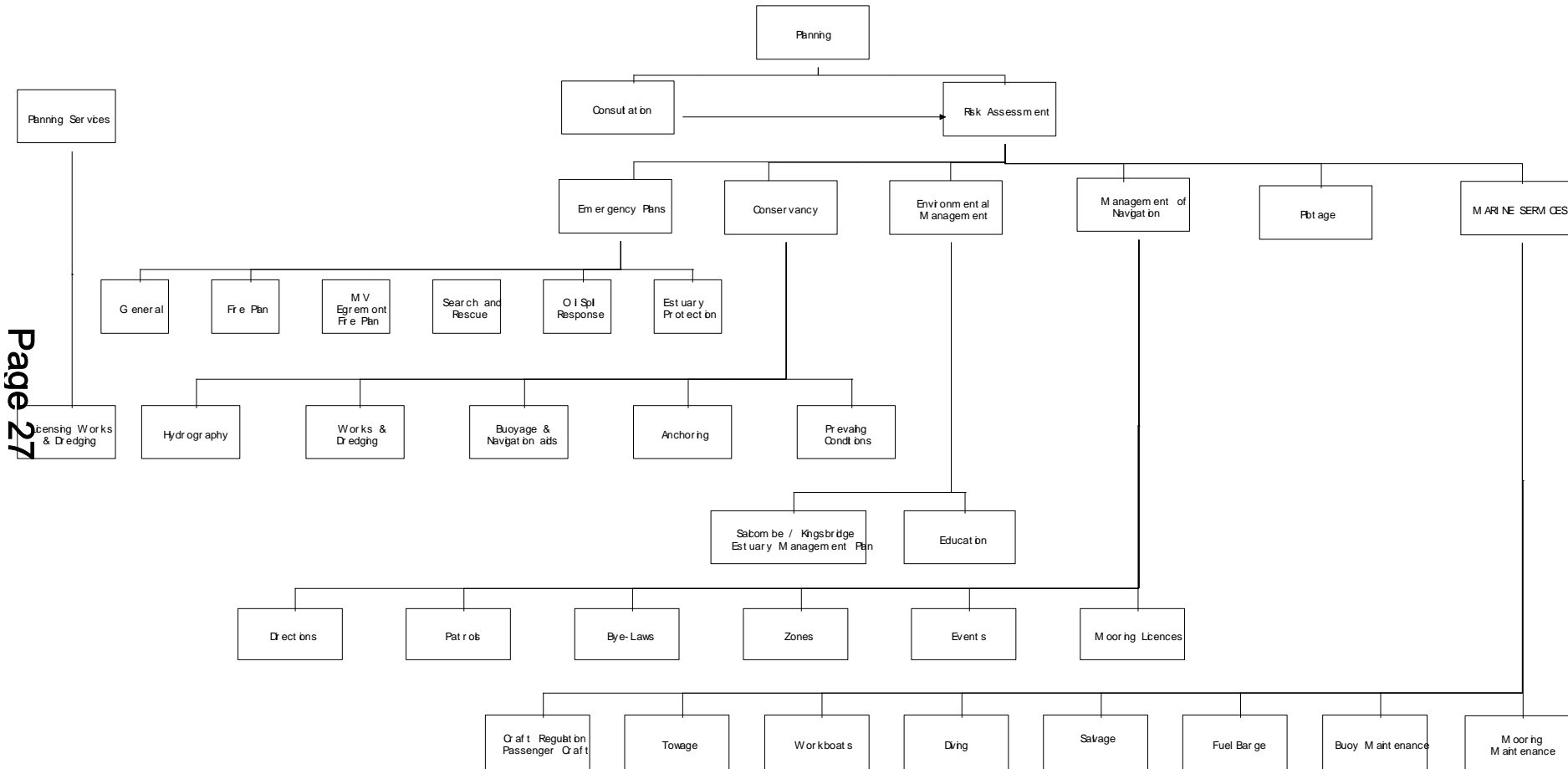
The training policy is to undertake training where appropriate for all members of staff in order to provide the services required by the Authority and expected by the stakeholders. Officers and staff are to be suitably trained to be competent and qualified up to a minimum national standard to fulfil their roles within the organisation.

- Safety training is regarded as an indispensable ingredient of an effective Port Marine Safety Management System and programme as it is with Health and Safety matters. It is essential that all involved in the safe management and operation of the port will be trained to perform their operations safely
- The main training profile for the Harbour Board is to ensure that all members of staff are qualified to operate all the SHB launches and the many items of equipment utilised in the daily operation of the harbour. This includes the re-validation of these qualifications. Training is seen as continuous to meet the ever-increasing demands made on SHB.
- It is vital that new members of staff are promptly qualified in those areas where deficiencies are recognised. Members of staff are trained both internally and externally to achieve the requisite level. Once achieved, the staff member will then be streamed according to the needs of the service centre and his proven skills
- Due to the seasonal nature of the work undertaken by the service centre, most of the harbour staff perform service delivery duties during the summer months and maintenance operations during the winter months. Both aspects require training.
- Records of training show clearly the type and the date of training received, planned dates and required but no date yet fixed.
- Newly recruited personnel whose duties require them to go afloat require a minimum qualification of RYA Powerboat 2. These personnel will be trained locally to drive the vessels operated by the SHA, this will include the requirement to be qualified as a licensed Boatman.
- There will be induction training for seasonal staff prior to commencing their duties, in line with the requirements of the Port Marine Safety Code.
- The importance of "on the job" training in the workplace should not be underestimated as it forms an invaluable part of the overall training requirement.

Team Briefing

Regular team briefs are held to ensure good communications and quality, both in service and in delivering health and safety.

3.1 PLANNING - RISK ASSESSMENTS AND SAFETY MANAGEMENT



3.2 - CONSULTATION

Consultation with harbour users continues through public meetings and through the harbour community forum to members of the Harbour Board who represent those groups as recommended in the Municipal Ports Review and the Guidelines for good governance.

Consultation Process

1. To ensure that the Harbour Board has strong and direct links with both harbour users, local communities and other external organisations with an interest in the Salcombe-Kingsbridge Estuary, a formal consultation mechanism has been set up. Four not-for-profit community groups have registered their interest to work with the Council in relation to its future Harbour activities:
 1. The Salcombe and Kingsbridge Estuary Association
 2. The Salcombe - Kingsbridge Estuary Conservation Forum
 3. The Kingsbridge Estuary Boat Club
 4. The South Devon and Channel Shell Fishermen
 5. Kingsbridge and Salcombe Business Forum
2. The five groups are recognised as ‘Harbour Community Fora’ and form part of a formal consultation mechanism for the Harbour Board.
3. The list of three groups is not exhaustive and it is anticipated that further community groups be recognised and added as time progresses.

Consultation is a continuous and wide-ranging process. It includes meetings with Salcombe Yacht Club, the Forums, notice boards, web page, public meetings, twitter and the Harbour Newsletter.

3.3 RISK ASSESSMENT

It is the policy of the Salcombe Harbour Board to have powers, policies, plans and procedures based on a formal assessment of hazards and risks, and to have a formal marine safety management system. The marine safety management system shall be in place to ensure that all risks are controlled – the more severe ones must either be eliminated or kept “as low as reasonably practicable” (ALARP).

Detailed Risk Assessments.

The activities and the responsibilities of Salcombe Harbour Authority are covered in specified areas, for each of which there were drawn up a detailed risk assessment following the principles laid down by the Health and Safety Executive.

These comprehensive risk assessments have been, revised where necessary and then endorsed by the Harbour Master and his assistants on 23rd November 2013.

The aim of this process is to eliminate the risk or, failing that, to reduce risks to as low as reasonably practicable. Formal risk assessments shall be used to:

- identify hazards and analyse risks;
- assess those risks against an appropriate standard of acceptability; and
- where appropriate, consider a cost-benefit assessment of risk reducing measures.

The level of risk was determined after considering the risk to Life, to the Environment, to Port Operations and, to Port Users

The process of compiling the risk assessments is shown in the flow chart.

Each hazard is given a likelihood rating between 1 and 3; 3 being the more likely.

Against each hazard the severity of harm has then been assessed, both in terms of direct injury to people and environmental damage, again using a scale of 1 to 3.

For personal injury a “score” of 3 represents a major injury or a fatality.

For environmental damage, 3 is given if regional assistance is required.

Significant Risks

Significant risks are identified by those activities that attract a score of 6 or more. These risks must be mitigated by the implementation of specific control measures.

If for any reason the safety management system identifies a control measure that is not effective the activity is to cease until suitable control measures are in place and the risk mitigated to as low as reasonably practical.

Risk Controls

The safety controls for the risks identified, listed on pages 17 to 20, are to be reviewed and amended where necessary.

3.5 - REMOVE UNACCEPTABLE RISKS

THE GREATEST RISKS IDENTIFIED IN THE RISK ASSESSMENTS

There is a preferred hierarchy of risk control principles

- eliminate risks -by avoiding a hazardous procedure, or substituting a less dangerous one;
- combat risks -by taking protective measures to prevent risk;
- minimise risk -by suitable systems of working.

No risk was assessed both as frequently occurring and the consequence being either a serious injury or a pollution incident requiring national assistance.

CONTINUOUS IMPROVEMENTS

Nevertheless, the Harbour seeks to make continuous improvements. The priorities identified by the Harbour Master for next year, in addition to various continuing actions already initiated, and now published are:-

1. Complete the 5 Year Business Plan, with the aim of supplying 21st Century facilities without changing the character of the estuary.
Work is ready to start on the Kingsbridge Pontoon and berthing arrangements upgrade.
This will remove vertical ladders access requirement with all access being down a bridge.
2. Apply for powers of Harbour Directions which will, inter alia, help control windsurfing and large yachts in the main fairway during July and August and scrubbing foulings throughout the year.
3. The harbour approach will be made clearer by the removal of the Yacht Club Zero Mark, a white buoy, and the replacement of the Yacht Club's orange race Marks 1, 2 and 3 with Special Marks, which will not be similar in appearance to port hand marks.
4. The Designated Person is to be invited to attend the July meeting of the Harbour Board.
5. Regularly review how IT developments can improve communications with customers, whether on the web site, by email or by using social media.
6. Administration is to be improved with the introduction of the E Harbours software.

3.6 - MANAGEMENT OF SAFETY CONTROLS – CHECK LIST

TYPE OF CONTROL	DETAIL OF CONTROL
Navigation Buoys Etc	“Conservancy Duties” as implemented through the Salcombe Harbour policies, in compliance with Trinity House guidelines and their software package, PANAR. The annual audits continue. Set and meet Salcombe Harbour Board performance indicators. Local Lighthouse Authority, managing and maintaining 66 marks and beacons to Trinity House standards, checked by annual Trinity House Inspection. Beacons at harbour entrance replaced with 6 lateral buoys. Beacons not removed but surplus to requirement.
Patrol Boats	Salcombe Harbour patrols, backed up by Water Taxi and Night Security Patrol, to give, almost a 20/24 hour coverage in the summer months and 8/24 during the winter. Periodic patrols by police afloat in SHB boat. Police and UK Borders Agency deal with drugs, crime, theft, immigration and customs -. South Devon and Severn IFCA and MMO fisheries patrols..
Notices	Notice Board at Harbour Office, including weather forecast. Signs, e.g. “Speed Limit 6 Knots” Byelaws displayed on Notice Boards, on web and at launching locations. Notices at Fish Quay and Whitestrand. Information and warning notices on some quays and pontoons–RNLI format for beach and slipway notices. Information, advice and warnings in RNLI format on launching slipways.
Publications	Annual Harbour Guide. Annual Report. Notices to Mariners published on HO notice board, on web, to e-mail subscribers and on YC notice board. Admiralty and other charts, Macmillan Reeds. Web sites www.salcombeharbour.co.uk and southams.gov.uk include papers and minutes of SHB meetings Annual Harbour Newsletter and contributions to those of Yacht Club, Yawls and Rial News. Twitter @Salcombeharbour
Personal, Protective Equipment	Life jackets – worn by harbour staff when afloat and when working on quays when local risk assessment consider it necessary – carried by racing boats as ISAF Rules of Racing – worn as Club rules for all but yawl racing – MCA advice on Safety at Sea, but no legal compulsion – One for each passenger on SHB licensed vessels – Waterproof suits for those working on foreshore moorings. Kill Chords attached to lifejackets for personal use in appropriate boats Workshop hard hats, masks, boots, gloves, goggles and ear defenders. Boots, gloves, wet weather gear and dry suits for environmental work. High visibility jackets.
Access and Guards	No requirement for guards of any sort on private pleasure craft. No requirement for inspection of fishing boat or equipment if under 12m Quays are not normally guarded, as this would negate their function as loading and unloading points. Quays are often unlit. Slipways are subject to a routine inspection and are cleaned of weed. . Fencing round boat parks for winter storage. Salcombe Harbour boats equipped for safe operation. Those carrying passengers are licensed by South Hams DC. The workshop machinery has the necessary guards. Fire alarms and fire extinguishers in harbour offices and workshops. Access to some pontoons managed during large events to prevent overcrowding. Access to Fish Quay controlled by barrier access. Fish quay covered by comprehensive CCTV.
Inspections of Harbour machinery	LOLA: Six month Inspection by qualified engineer. Twelve month inspection by insurance company PUWER: Power tool inspection – by Insurance Company’s engineers Electrics – Annual Council organised PAT inspection of electrical equipment. The Council’s electrician has inspected electrical installations of office and workshop in 2009. Regular Legionella inspection

Hydrographic Survey	<p>As Conservancy Duties and as agreement with the Hydrographic Office.</p> <p>The Bar and the leading line surveyed in 2011</p> <p>Batson Channel surveyed and dredged in 2011</p>
Qualification Or Permits	<p>No licence or permit required to sail in Salcombe Harbour; payment of harbour dues prior to launching.</p> <p>Powered craft are not subject to any official safety check. RYA PB2 taken as the minimum pre-requisite for power boat driving before training as a Local Authority Boatman.</p> <p>Fishermen need no requirement or qualification, training or assessment of ability.</p> <p>Fuel barge subject to licensing by Devon County Council.</p> <p>Any diving within the harbour requires permit granted by Harbour Master.</p> <p>HSE Commercial Diving standards and practices for professionals</p> <p>The general public has no right to shoot over the foreshore, but the Kingsbridge and District Pigeon Shooting Club are given a Council licence.</p> <p>Shotgun Licences. Shooting Club own their own Risk Assessment and method statement for shooting activities around the estuary</p> <p>License, conditional on carrying out maintenance, required to lay a mooring.</p> <p>Salcombe Harbour licence required, after MMO Licence, for any work below the MHW on foreshore, private jetties, hards and sea defences. Only granted if the work is within the Environmental Code of Practice. The conditions of the licence will require safe working.</p> <p>No dredging other than by contractors approved by the Harbour Master.</p> <p>MCA Certificate requirements for trip boats venturing outside the Harbour Limits and for boats carrying more than 12 passengers.</p> <p>Ferry boats, trip boats and hire boats (Under 12 people) as HM, acting for South Hams DC, Licence Requirements.</p> <p>Vessels and Skippers of chartered boats venturing outside the Harbour as MCA Codes of Practice.</p> <p>Ferries operating in the Harbour up to 12 passengers must have SHDC Boat and Boatman's licenses.</p> <p>Vessels wanting to dry out must book in advance with the office.</p> <p>Experienced workshop staff, with some formal qualifications.</p> <p>See Training spreadsheet for other courses and qualifications</p> <p>The Contractor will own their own method statement and risk assessment and comply with the conditions of the MMO license.</p> <p>The diving contractor will have a Method statement and risk assessment covering all of their diving activity.</p> <p>All contractors require to have adequate 3rd party insurance to the value of £5 Million public liability and to be registered with Harbour Authority.</p> <p>Crane operators require qualification endorsement card.</p> <p>All personnel involved in lifting and chocking to be trained.</p> <p>Tenders defined as under 3.2m and no more than 6HP engine. All vessels to be registered and pay Harbour dues (£3m third party liability Insurance.</p>

Supervision & Instruction	<p>Responsible Harbour Staff manage the harbour operations, with job descriptions and operating procedures.</p> <p>The public need no qualification, training or ability</p> <p>Responsible organisers such as the sailing clubs and the sailing schools, with responsible race officers, (who may be RYA qualified), as recorded in their risk assessments. Method statement and Risk assessment required for all activities which are not routine, such as regattas and events. Cooperation of SYC briefing regatta competitors</p> <p>Choice of suitable boats; no catamarans, cruisers or sports boats racing in the Fairway.</p> <p>Choice of suitable race areas, particularly for juniors.</p> <p>Safety boats.</p> <p>Kingsbridge and District Pigeon Shooting Club rules.</p> <p>The boatyards in Salcombe Harbour appear to be well and responsibly managed. They must comply with HSE law and regulations.</p> <p>Code of Practice is issued by The Yacht Harbours Association.</p> <p>The skippers of trip boats are responsible and competent.</p> <p>Most of the slipways are supervised in the Summer. Boat park attendant now works all year around to supervise slipway and winter storage operations during winter months.</p> <p>The workshop is managed by the experienced Assistant HM Logistics and Maintenance. Environmental activities and guided walks are managed by the AONB Estuaries Officer, who gives a formal Health and Safety briefing.</p>
Harbour Operating Procedures	<p>17 SHDC Operating Procedures, reviewed annually.</p> <p>Reporting of collisions: simplified report form</p> <p>Clothing and equipment.</p> <p>Alder & Allan Ltd retained as Oil Pollution Response Consultants, Oil spill response plan reviewed annually and endorsed by MCA..</p> <p>Use of SHB vessels - guidance to staff</p> <p>Vessel operating procedures, duty boatman, towing, barge, speed limit enforcement, boat park, lifting, lone working, Maintenance of deep water and of foreshore moorings and pressure washing.</p> <p>Harbour Patrols, Harbour Taxi and Collection of Dues</p> <p>Work experience. Guided Walks & Activities</p> <p>Maintained moorings - record of maintenance cycle. Litter pick up.</p> <p>Moorings fully serviced annually, photographic evidence of mooring eyes.</p> <p>6 monthly inspection of stops. Annual Insurance Inspection of hoist.</p> <p>Guided Walks: Inform Office of return time, which should be within working hours. Weather to be considered before starting walks</p>

Command, Control & Coms	<p>Harbour Office monitors channels 12 and 14 during the working day and the Harbour Master is on call by telephone to the MCA 24 hours a day.</p> <p>Tor24 provide out of hours call out procedure and monitoring of lone working. Fish Quay and Whitestrand covered by CCTV.</p> <p>Mobile phones issued to all staff who are not office based.</p> <p>Channel 16 available throughout the estuary, via MCA rebro.</p> <p>Wi-fi available for visitors.</p>
Environment	<p>Limits set on swinging moorings and on pontoons.</p> <p>Visitor pontoons piled – reducing seabed scouring.</p> <p>Port Waste Management Plan, MCA approved</p> <p>Sewage pump out facility for holding tanks.</p> <p>Local Planning authority, the Environmental Agency and Duchy of Cornwall are always consulted before a licence to work is granted.</p> <p>SHB environmental management systems implemented through the Environmental Officer. See emergency plans below.</p> <p>Operation of environmentally friendly scrubbing grid which removes pollutants from antifouling scrubblings. Power washing of boat hulls to be conducted by approved contractor Slipway cleaning inspections to be recorded. Defects to be reports to Assets at SHDC for rectification.</p> <p>Hydraulic oil – spill kit available if required</p>
COSHH	<p>Paints Strippers, Extractor fan for welding fumes</p> <p>Slipway cleaner (not bleach)</p> <p>Domestic quantities of fiberglass resin and hardener.</p>

Law	1847 Harbours, Docks and Piers Clauses Act The Pier and Harbour [Salcombe] Confirmation Act 1954, the 1964 Harbours Act and the Health and Safety law and regulation. HSE Regulations on Diving At Work. International Regulations for the Prevention of Collisions at Sea [IRPCS]
Bye Laws	Salcombe Harbour bye laws modified (2008), Including Care & Caution, the 6 and 8 knot speed limits, insurance requirements and permit display. Kite windsurfing and water skiing are never permitted. Windsurfing in July and August is not permitted between the Marine Hotel and the Fuel Barge Salcombe Harbour Nature Reserve bye laws IFCA Bye-Laws regarding Bass Fishing. Bait digging for personal use is allowed by the Nature Reserve Bye-Laws, commercial bait digging is prohibited. Public Health Act (Amended 1964) re SHDC boat and boatman licensing. Enforcement policy reviewed annually.
Direction	Special, not general, as authorised by the 1954 Act and by Council decisions. Rules of Racing, ISAF. Risk assessments for events agreed with Harbour Master. Numbers for events limited. Propellers to be covered by bucket to protect other boats and personnel. Discourage swimming in the anchorages or across the harbour or from harbour pontoons. Direct enquiries about open water swimming to use sheltered bays such as North Sands and have a safety boat in attendance.
Harbour Policy	SHB's PMSC compliance policy, Strategic Business Plan, Salcombe Harbour Authority Moorings Policy and S & K Environmental Management Plan. Harbour Authority contributing to SHDC Marine Infrastructure reserve for the maintenance of SHDC Marine infrastructure used by commercial and leisure users.
H & S Policy	Council H & S Policies for Harbour and for staff
H & S Management System	Management System Maintenance of premises.
Training Programme	Induction and training programme. Training records Continuous development
Emergency Plans	Salcombe Harbour Fire Plan, and specific plan for MV Egremont- reviewed in 2011 with Fire Services and SHB. Salcombe Harbour Emergency Plan – Reviewed 2013 The Oil Spill Response Plan (OPRC) and the Salcombe Kingsbridge Estuary Booming (Pollution) Plan (EA) – Reviewed 2013 Regulated VHF procedures and channel allocation H M Coastguard and RNLI emergency plans and resources, including all weather Lifeboat and inshore life boat from Union St boathouse, slipway and pontoon Harbour Offices: Fire drill and fire practices First aiders “Emergency First Aid” trained every 3 years and first aid boxes. Life saving apparatus, lifebuoys, fire extinguishers and boarding ladders, located at quays, slipways, boat parks and pontoons. All pontoons to have emergency cabinets with fire extinguisher, life belt with line and boarding ladders. If life and limb at risk, Call CG and request Lifeboat. If property at risk, await a full team, no heroics.

3.7.1 EMERGENCY PLANS

Emergency Policy of Salcombe Harbour Board:

**The safety management system will include preparations for emergencies
– and these should be identified as far as practicable from the formal risk assessment.
Emergency plans need to published and exercised.**

Emergency Organisation and Management Responsibility

The Salcombe Harbour emergency plans detail the immediate action to be taken by harbour staff and the emergency services in the event of most foreseeable emergencies.

They are held by all emergency services and local authorities.

The various emergency plans, in addition to the general Salcombe Harbour Emergency Plan, comprise:-

- Salcombe Harbour Fire Plan,
- Specific fire plan for MV Egremont
- The Oil Spill Response Plan (OPRC) and the Salcombe Kingsbridge Estuary (Pollution) Plan (EA)
- H M Coastguard and RNLI emergency plans and resources, now including both an all weather Lifeboat and an inshore lifeboat.
- Life saving apparatus located at quays, slipways, boat parks and pontoons
- Harbour Office and Harbour Workshop:
 - Fire drill and fire practices
 - First aiders and first aid boxes.
 - Procedure to call Emergency Services
- Mud Rescue Plan.

The emergency response relies on the regulated VHF procedures and channel allocation. It has been much improved now that channel 16 can be received in Salcombe Harbour.

Training for Emergencies include Oil Spill Response and Emergency Plan Exercises

The MAIB Safety Digest is used to see if lessons can be learnt for Salcombe from accidents investigated at other harbours, relevant lessons are displayed on the Harbour Office Notice Board and distributed to Fishermen and Sailing establishments and clubs.

3.7.2 - CONSERVANCY

Conservancy Policy of Salcombe Harbour Board:

A. SHB recognises its a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to use it.

B. SHB will aim to provide users with adequate information about conditions in the harbour.

C. SHB recognises the extent of its duty and powers as local lighthouse authority; and specific powers in relation to wrecks.

Conservancy Organisation and Management Responsibility

Hydrography.

SHB follows the UKHO Code of Practice on the Provision of Hydrographic Information.

Hydrographic records of dredged channels in the harbour are maintained by the harbour office.

The Hydrographic Office receives all hydrographic information and Local Notices to Mariners produced by the Harbour. A formal agreement with Hydrographic Office is in place.

Admiralty Chart 28 and 5602.10 Salcombe Harbour are kept up to date with Hydrographic Notes. A new edition is being prepared.

Works and Dredging Licences.

The Harbour has regulations and conditions for the issue and control of works licences.

No dredging, other than in exceptional circumstances, is undertaken other than by Salcombe Harbour Authority or by its contractors.

Buoyage and Navigation Aids.

The harbour has a comprehensive, well maintained and modern system of aids to navigation based on risk assessment and installed in consultation with Trinity House. The routine inspection and maintenance regime is laid down and records are kept.

Anchorage.

Anchorage are shown on Chart 28 & 5602.10 and their operation is subject to risk assessment and review. The anchorages and the areas where not to anchor are promulgated in annual publications.

Prevailing Conditions.

The Met Office's Shipping Forecast and their European Synoptic Chart are displayed at the harbour office and updated daily. Information is readily available in the media and on the web.

3.7.3 - ENVIRONMENT

Environment Policy of Salcombe Harbour Board:

SHB recognises its duty to exercise its functions with regard to nature conservation and other related environmental considerations.

Environmental Management Plan.

The policy and functional objectives for managing the Salcombe-Kingsbridge estuary as a marine Local Nature Reserve (LNR) and marine Site of Special Scientific Interest, within a designated Heritage Coast and Area of Outstanding Natural Beauty, in an environmentally responsible and sustainable way are contained in the Salcombe / Kingsbridge Estuary Environmental Management Plan.

Limits have been set on the total number of moorings and pontoons.

The Harbour Authority have adopted their Waste Management Plan. The Harbour has an Environmental Management System. There is now a sewage pump out facility for holding tanks.

The Harbour Authority's Marine Conservation Officer maintains good liaisons and working links with English Nature and the Environmental Agency, who are consulted on potentially damaging operations (PDO's) before a licence to work is granted.

There are several special emergency plans drawn up to deal with accidents that might potentially threaten the environment

Education.

The harbour has a Marine Conservation Officer with an ongoing programme of environmental education, both formal and informal. This includes a very wide range of awareness raising initiatives, including interpretation boards, information leaflets, illustrated talks and guided walks throughout the estuary.

The Marine Conservation Officer provides close formal links with schools and universities and more informal links with local community and special interest groups in the area.

All known educational activities in the harbour are subject to risk assessments and are led by qualified staff.

3.7.4 - MANAGEMENT OF NAVIGATION

Policy for Management of Navigation:

- A. Salcombe Harbour Board has rules in byelaws and directions, which every user must obey as a condition of his or her right to use the harbour.
- B. Salcombe Harbour Board recognises its duty to make proper use of powers to make byelaws, and to give directions and to regulate all vessel movements in its waters.
- C. These powers shall be exercised in support of the policies and procedures developed in the authority's safety management system, and should be used to manage the navigation of all vessels.
- D. Salcombe Harbour Board has clear policies on the enforcement of directions, and should monitor compliance.
- E. If they were appropriate in a particular case, the powers of direction should be used to require the use of a port passage plan.

Management of Navigation Organisation and Management Responsibility

Local Port Service

SHB regard it as most unlikely that large ships would be able to enter the harbour and assess the risks as not meriting a Vessel Traffic System.

To the extent that there is a Local Port Service this comprises published information in Reeds Almanac, on the Harbour Authority web site and in the annual Harbour Guide.

Plan: Directions and Port Passage Guidance.

There is no standing requirement for any vessel in Salcombe Harbour to file a port passage plan. Special directions are issued when the situation requires such as movement of sail training vessels and others constrained by their draft.

Patrols.

The Harbour maintains a comprehensive patrol presence on the Harbour to enforce byelaws and other directions. There is a 24 hour emergency call out system in operation.

Byelaws.

The Salcombe Harbour Board has byelaws, revised in 2008, that provide effective control measures to manage the hazards identified in the risk assessments. The byelaws have been reviewed and submitted to the DfT.

Events.

The Harbour Master works closely with all sailing clubs and organisations who use the estuary. Special arrangements are made to promote the safety of the events they run.

Moorings.

The Salcombe Harbour Authority maintains moorings to a high standard With all moorings being maintained annually.

Procedures are laid down for the safe operation of the mooring barge.

Conditions for mooring licences, issued by the Harbour, require that all moorings are fit for purpose and are inspected annually.

3.7.5 - PILOTAGE

Policy for Pilotage:

Salcombe Harbour Board has a duty to keep the need for pilotage and any service provided under constant and formal review.

Organisation and Management Responsibility

The Salcombe Harbour Authority is not a Competent Harbour Authority (CHA), but is a Statutory Harbour Authority (SHA). It does not, therefore, have any powers to conduct or require pilotage.

The comprehensive risk assessments now carried out have not revealed the need for Salcombe Harbour Board to seek any powers of pilotage.

3.7.6 MARINE SERVICES

Policy for Marine Services:

A. Salcombe Harbour Board's safety management system shall cover the use of harbour craft and the provision of moorings.

B. The formal safety assessment shall be used to identify the need for, and potential benefits for safety management, of harbour craft.

C. Salcombe Harbour Board shall ensure that Salcombe Harbour Authority vessels or craft which are used in the harbour are fit for purpose and that crew are appropriately trained and qualified for the tasks they are likely to perform.

D. Salcombe Harbour Board shall ensure that byelaws and the power to give directions are available for these purposes.

Marine Services Organisation and Management Responsibility

Craft Regulation

- MCA Certification is required for commercial vessels, including trip boats, venturing outside the Harbour Limits and or carrying more than 12 passengers..
- Passenger vessels, including ferryboats, (Under 12 people) require a South Hams DC Licence.
- Vessels and Skippers of chartered boats venturing outside the Harbour are regulated according to MCA Codes of Practice.
- Ferries carrying no more than 12 people must have SHDC Boat and Boatman's licences. Those carrying more than 12 must have MCA certification

Towage

Only those staff who have successfully completed a towage training course are permitted to take vessels in tow.

Workboats.

There are procedures for the safe operation of harbour launches based on the risk assessments.

Diving

Any diving within the estuary requires a permit to dive signed by the Harbour Master.

HSE Commercial Diving standards and practices for professionals.

Dredging

Dredging is only carried out by contractors approved by the Harbour Master.

Salvage

Only suitably experienced staff would be allowed to get involved in a salvage operation.

Fuel Barge Afloat

The fuel barge located in the estuary is subject to an annual Petroleum Licence issued by Devon County licence to sell petrol and DERV. The Harbour Master's approval is required before any licence is issued or renewed.

The Harbour Masters Permission is required before the Fuel Barge gets underway within the estuary.

All movements of the fuel Barge will be escorted by a Harbour work boat.

MEASURE COMPLIANCE

Recording Accidents and Incidents.

An incident log is maintained on the Harbour Office computer. Records are kept of all accidents, incidents and oral complaints that come to the attention of the Harbour Authority. Any follow up action that may be required is recorded. Written complaints and replies are held on file. Major incidents are subject to immediate review to establish cause and to validate control measures.

Safety Inspections and Checklist of Controls.

There is a calendar for the review of safety topics.

There is also a checklist of control measures.

5. REVIEW

SHB will monitor, review and audit the marine safety management system on a regular basis. Performance of the system shall be assessed against internal performance indicators and where appropriate, by benchmarking against other ports that have adopted good practice.

Procedure for Reviews

The Harbour Master will include both in his staff meetings and in the Board Meetings a review of any accidents, incidents or near misses.

Investigations by the Harbour Master of marine incidents have two essential purposes:

- a) to determine the cause of the incident, with a view to preventing a recurrence of that incident (or similar); and
- b) to determine if an offence has been committed: if so, there may be the need on the part of a harbour authority to initiate enforcement action that may lead to prosecution in their own right or through an agency of another authority such as the Police or the MCA.

By ensuring that a robust, rigorous, independent investigation has been carried out, the SHB as the duty holder can be assured that their obligations for compliance have been addressed.

Any conclusions from investigations or lessons learned will be included in the minutes together with measures being taken to prevent a recurrence. If appropriate a more detailed report will be submitted to the Harbour Board, the Council's Health and Safety Officer and/or the MAIB, to the chief inspector and any other appropriate authorities, by the quickest means available.

Where necessary the MCA may undertake a verification visit. These verification visits are usually arranged following an MAIB investigation into an incident, but could also be triggered by other indicators of noncompliance.

Annual Review and Report.

An audit of the Safety Management System will be conducted each year by Nicholsons Risk Management and an overview of accidents and failures during the year, with recommendations for addressing shortcomings, will be reported to the Board each year.

Notwithstanding this report, the system will be kept under continuous appraisal and immediate action taken where shown necessary.

Once every three years, the MCA will ask the duty holder to confirm in writing if SHB is complying with the Port marine Safety Code.

6. RECORD AND PUBLISH

Records

The Harbour is careful to maintain due diligence records. This Safety Management System is itself clear evidence of care and commitment. The risk assessments provide considerable further examples of how the safety policy has been put into practice.

Publication of Plans and Reports

To demonstrate SHB's commitment to maritime safety and ensure the involvement of harbour users, the safety plan for marine operations shall be published every year at an SHB meeting open to the press and the public.

The plan shall illustrate how the policies and procedures will be developed to satisfy the requirements under the Code. It shall commit the authority to undertake and regulate marine operations in a way that safeguards the harbour, its users, the public and the environment. It shall refer to commercial activities in the harbour; the efficient provision of specified services and the effective regulation of vessels. It shall also explain how commercial pressures would be managed without undermining the safe provision of services and the efficient discharge of its duties.

The SHB, as duty holder, will also publish an assessment of the harbour authority's performance against the plan. Information gathered from the monitoring and auditing of the marine safety management system, shall be used to support the analysis and conclusions.

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AGENDA
ITEM

10

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

10

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	REVIEW of BYELAWS ENFORCEMENT POLICY
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of report:

To review the enforcement policy for Harbour byelaws.

Financial implications:

There are no direct financial implications from this report. The DfT have indicated that there will be no charge for their conference of the powers of Harbour Directions as ports will be dealt with in batches.

RECOMMENDATIONS:

That the Harbour Board **RESOLVES** to:

1. Recommend the adoption of the Enforcement Policy at Appendix C to this report.
2. Recommend that Salcombe Harbour Authority apply to the DfT for the power to give harbour directions under sections 40A-0D of the Harbours Act 1964 as amended by the Marine navigation Act 2013.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 Salcombe Harbour Authority is a statutory harbour authority and has a duty to regulate navigation within its harbour. They also have a power to make byelaws to provide an enforceable legal framework that can be used to assist in regulation.
- 1.2 Byelaws provide general rules for navigation and the conduct of a vessel within the jurisdiction of a Harbour Authority. In addition to these powers, The Harbour Master is able to give special directions to vessels within his area of authority in respect of when and how they may enter the harbour and where and how they may moor.
- 1.3 The Harbour Authority published their latest edition of the Enforcement Policy in April 2013 (SH 62/12); this report instigates a review of that policy.
- 1.4 The Marine Navigation Act 2013, Appendix A, made provision in relation to marine navigation and harbours and provides Salcombe Harbour Authority with the opportunity to apply for the powers to make Harbour Directions.
- 1.5 The lead time to introduce a Harbour Direction would be months rather than years and within the control of the Harbour Authority and the Port User Group rather than the Department for Transport. This change has been supported by the British Ports Association (BPA) and the United Kingdom Harbour Masters Association (UKHMA); however it was not so well received by the Royal Yachting Association (RYA). Consequently there have been long discussions resulting in supplementary guidance, a Code of Conduct on Harbour Directions, Appendix B.
- 1.6 Harbour Directions may complement or to some extent replace harbour byelaws.
- 1.7 The DfT have requested expressions of interest from ports interested in being designated with the powers to make harbour directions by 30 April 2014.

2. ISSUES FOR CONSIDERATION

- 2.1 It is recommended that the Harbour Board review the Enforcement Policy and re-issue it, draft at Appendix C

- 2.2 As part of the annual review of the Enforcement Policy the Byelaws should be reviewed. As a byelaw change could take several years, it is proposed that this review is conducted over the next 12 months in tandem with an application to the DfT for the powers to make Harbour Directions.
- 2.3 In preparation for an application for the powers to make Harbour Directions, the Harbour Authority consults with the Harbour Community Forums with a view of establishing a Port User Group (PUG), with membership from each of the pre-established Harbour Community Forums.
- 2.4 Harbour Directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to movement, mooring and unmooring, equipment and manning of ships. They are therefore unlikely to completely replace byelaws.
- 2.5 Potential Harbour Directions could include the following issues identified in the annual review of the Harbour's Risk Assessments:
- The Racing Dinghy Free Fairway to vessel traffic movements during race starts.
 - Windsurfing in main fairway during July and August.
 - Cruising yachts of 7m and larger sailing between the Salcombe Harbour Hotel and the Saltstone in July and August.

3. LEGAL IMPLICATIONS

- 3.1 The Salcombe Harbour Authority is the statutory body, and is South Hams District Council. The Salcombe Harbour Board is the Board of 10, which is a committee of Council. The Board is the Duty Holder for the Harbour Authority.
- 3.2 The Harbour Board is responsible for making and enforcing policies for the regulation and safe conduct of Salcombe Harbour. It is right and proper to review the policies for conducting enforcement from time to time in the light of experience and prevailing circumstances.
- 3.3 The appended enforcement policy has been updated and accords with current legal requirements including the Human Rights Act.
- 3.4 A review of byelaws will be required to determine if any statutory provision of local application will be need to be amended or repealed.

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications from this report.

5. RISK MANAGEMENT

5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/ Severity	Likelihood/ Probability	Risk Score	
Without a clear and published enforcement policy, harbour users will not be clear of the implications of not complying with Harbour Byelaws	3	3	9	Regular review of and consistent Enforcement of the published policy.
Harbour Byelaws will not be enforced in a consistent way.	2	3	6	By having a clear enforcement policy both harbour staff and harbour users will be in no doubt regarding the policy for the enforcement of the Harbour Byelaws. The Enforcement Policy gives a framework and guidance to both offices and harbour users on the enforcement of byelaws and the consequences of non compliance.
Byelaws become out of date and do not address the current problems within the Harbour	3	2	6	Byelaws reviewed annually. The minor changes currently outstanding are manageable in the short term with the most expedient way of making any changes being the introduction of the Marine Navigation Bill 2012-13. Byelaw changes are extremely difficult to progress through the DfT and could take up to 2 years. The power of Harbour Directions offers a complementary power to aid port management.

6. OTHER CONSIDERATIONS

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers:	The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).
Considerations of equality and human rights:	A person accused of contravening civil or criminal law has the right to a fair hearing, to have their views considered before action is taken, and, if it comes to it, to a fair trial. They are also entitled to be treated without unlawful discrimination of any kind. The enforcement policy has been drafted with these requirements in mind.
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	The Enforcement Policy gives clear guidance on the enforcement of Harbour byelaws
Background papers:	Salcombe Harbour Byelaws Enforcement Policy dated April 2013 (SH 62/12) 2013 Port Marine Safety Code Audit Harbour Risk Assessments and safety management System, reviewed November 2013.
Appendices attached:	A. Marine Navigation act 2013. B. NDP Supplementary Guidance: Code of Conduct on Harbour Directions. C. Salcombe Harbour Enforcement Policy dated 3 February 2014.

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Marine Navigation Act 2013

2013 CHAPTER 23

An Act to make provision in relation to marine navigation and harbours. [25th April 2013]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Pilotage

1 Power to remove harbour authorities' pilotage functions

(1) In section 1 of the Pilotage Act 1987 (meaning of “competent harbour authority”) after subsection (4) insert—

“(4A) A harbour authority in England or Wales is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Secretary of State under this subsection.

(4B) A harbour authority in Scotland is not a competent harbour authority for the purposes of this Act while it is specified in an order of the Scottish Ministers under this subsection.”

(2) For subsection (5) of that section (power to revoke or amend where circumstances change) substitute—

“(5) An order under this section may be amended or revoked by further order.”

(3) In subsection (7) of that section (procedure for certain orders) for “this section” substitute “subsection (3) or (4)”.

(4) After subsection (8) of that section insert—

“(8AA) Before making an order under subsection (4A) or (4B) the person making the order must consult—

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- (a) any harbour authority to which the order would apply, and
- (b) anyone else who the person making the order thinks appropriate.

(8B) An order under this section may include transitional, consequential, incidental or supplemental provision.”

- (5) In section 1A(1) (procedure for certain orders: Scotland) after “other than subsection (4)” insert “or (4B)”.

2 Pilotage exemption certificates: grant

- (1) In section 8(1) of the Pilotage Act 1987 (grant)—
- (a) for “the master or first mate” substitute “a deck officer”, and
 - (b) in paragraph (a) for “master or first mate” substitute “a deck officer”.
- (2) In section 8(5)(a) (renewal) for “the master or first mate of a ship” substitute “a deck officer of a ship”.
- (3) In sections 10(3), 15(1)(b) and 20(1)(a) (pilotage charges, compulsory pilotage and boarding facilities for pilots) for “master or first mate” substitute “deck officer”.
- (4) In section 31(1) (interpretation) at the appropriate place insert—
““deck officer”, in relation to a ship, includes the master and first mate;”.

3 Pilotage exemption certificates: suspension and revocation

- (1) After section 8 of the Pilotage Act 1987 insert—

“8A Pilotage exemption certificates: suspension and revocation

- (1) A competent harbour authority may by written notice suspend or revoke a person’s pilotage exemption certificate in the following cases.
- (2) Case 1 is where an event has occurred as a result of which the authority is no longer satisfied of the matters specified in section 8(1)(a).
- (3) Case 2 is where the authority thinks that the person has provided false information to the authority as to any of those matters.
- (4) Case 3 is where the authority thinks that the person has been guilty of professional misconduct while piloting a ship.
- (5) Case 4 is where—
 - (a) pilotage notification was given under section 15(4)(b) in reliance on the person’s certificate, and
 - (b) in the event, the pilotage was carried out by a person who was neither an authorised pilot nor acting in accordance with a pilotage exemption certificate.

8B Section 8A: supplementary

- (1) The maximum period for which a pilotage exemption certificate may be suspended is 28 days.

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- (2) But if a harbour authority has suspended a person's certificate and is considering whether to revoke it, the authority may by written notice extend the suspension for a single period of up to 28 days.
 - (3) A suspended certificate may be revoked (on the same or different grounds).
 - (4) Before revoking a person's certificate a harbour authority must—
 - (a) give the person written warning, stating the reasons for the proposed revocation, and
 - (b) allow the person a reasonable opportunity to make representations.
 - (5) A competent harbour authority which has suspended or revoked a certificate may pay compensation to any person who has suffered, or is likely to suffer, loss as a result.”
- (2) In section 8—
- (a) omit subsection (6) (revocation and suspension of certificates), and
 - (b) in subsection (7) (notice) omit “or suspending or revoking a certificate held by any person”.

4 Pilotage notification

For section 15(3) of the Pilotage Act 1987 (notification by master navigating ship) substitute—

- “(3) The master of a ship commits an offence if—
- (a) the ship is navigated in an area in which a pilotage direction applies to it, and
 - (b) the competent harbour authority which gave the direction has not been given pilotage notification.
- (4) Pilotage notification is notification that the ship will be navigated in an area in which a pilotage direction will apply to it and—
- (a) that an authorised pilot is required to pilot the ship, or
 - (b) that an authorised pilot is not required because the ship will be piloted by a specified person acting in accordance with a pilotage exemption certificate.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”

Harbour authorities

5 Harbour directions

- (1) After section 40 of the Harbours Act 1964 insert—

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“Harbour directions

40A Directions

- (1) A designated harbour authority may give directions (“harbour directions”) in respect of ships—
 - (a) within their harbour, or
 - (b) entering or leaving their harbour.
- (2) A harbour direction may relate to—
 - (a) the movement of ships;
 - (b) mooring or unmooring;
 - (c) equipment (including nature and use);
 - (d) the manning of ships.
- (3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.
- (4) “Designated harbour authority” means—
 - (a) a harbour authority for a fishery harbour in Wales who are designated by order of the Welsh Ministers,
 - (b) a harbour authority for any other harbour in England or Wales who are designated by order of the Secretary of State, and
 - (c) a harbour authority for a harbour in Scotland who are designated by order of the Scottish Ministers.
- (5) A harbour direction is subject to any direction under section 52 of the Harbours, Docks and Piers Clauses Act 1847 (directions by harbour master).
- (6) A harbour authority may not give a harbour direction which conflicts with an enactment.
- (7) An order designating a harbour authority may amend or repeal any statutory provision of local application which the person making the order thinks is—
 - (a) inconsistent with the power to give harbour directions, or
 - (b) unnecessary as a result of the power.

40B Procedure

- (1) Harbour directions must be in writing.
- (2) Before giving harbour directions a harbour authority must consult such representatives of users of the harbour as the authority think appropriate.
- (3) A harbour authority must make such arrangements as they think appropriate for publicising a proposed harbour direction for at least 28 days before it is given.
- (4) A harbour authority must—
 - (a) make harbour directions available for inspection, and
 - (b) supply a copy to anyone who requests it.

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- (5) A harbour authority may charge for the supply of copies.
- (6) As soon as is reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news—
 - (a) stating that a harbour direction has been given, and
 - (b) giving details of the arrangements for the inspection and supply of copies of harbour directions.

40C Enforcement

- (1) The master of a ship must ensure that harbour directions are complied with.
- (2) Breach of subsection (1) without reasonable excuse is an offence.
- (3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40D Supplemental

- (1) Harbour directions—
 - (a) may make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and
 - (b) may make different provision for different circumstances, areas, periods or descriptions of ship.
- (2) Harbour directions may be varied or revoked by subsequent harbour directions.
- (3) In section 40A—
 - “mooring” includes casting anchor, and
 - “unmooring” includes weighing anchor.”
- (2) In section 54 (orders and regulations) at the end insert—
 - “(5) A power of the Secretary of State or Welsh Ministers to make an order under section 40A is exercisable by statutory instrument.
 - (6) A statutory instrument containing an order under section 40A—
 - (a) if made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) In section 57(1) (interpretation) insert at the appropriate place—
 - ““master”, in relation to a ship, means the person who has command or charge of the ship for the time being;”.

6 Harbour closure orders

- (1) After section 17 of the Harbours Act 1964 insert—

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“Harbour closure orders

17A Power to make closure order

- (1) The Secretary of State may make an order under this section in respect of a harbour (a “closure order”)—
 - (a) on the application of the harbour authority,
 - (b) with the consent of the harbour authority, or
 - (c) if the Secretary of State has consulted the harbour authority and is satisfied that they are unlikely to object.
- (2) The Secretary of State must publish guidance about the circumstances in which a closure order will be made. The guidance—
 - (a) must require the Secretary of State to have regard to the underlying purpose, and
 - (b) must be reviewed and (if appropriate) revised from time to time.
- (3) In this section—
 - (a) “the underlying purpose” means the purpose of permitting or requiring harbour authorities to cease to maintain harbours which are no longer commercially viable or necessary;
 - (b) “the harbour authority” in relation to a harbour means any harbour authority which has statutory duties to manage, maintain or improve the harbour.

17B Content of closure order

- (1) A closure order must relieve the harbour authority of—
 - (a) all statutory functions in respect of the harbour, or
 - (b) specified statutory functions in respect of the harbour.
- (2) A closure order may transfer specified functions of the harbour authority to a specified body (with the body’s consent).
- (3) A closure order must include transitional provision about the cessation of the harbour authority’s functions (including provision about rights and liabilities in relation to the performance of functions before the closure order takes effect).
- (4) A closure order may—
 - (a) permit or require the harbour authority to carry out works in respect of the harbour;
 - (b) permit the Secretary of State to carry out works in respect of the harbour;
 - (c) require a harbour authority to pay for works carried out under paragraph (b);
 - (d) confer on the harbour authority or the Secretary of State power to acquire (whether by agreement or compulsorily) land described in the order as the site of works to be carried out under paragraph (a) or (b).

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17C Harbour closure orders: property etc

- (1) A closure order may include provision for the transfer of property, rights and liabilities of the harbour authority.
- (2) In particular, a closure order may include provision—
 - (a) transferring things that would otherwise not be capable of being transferred;
 - (b) creating interests, rights or liabilities in relation to things transferred or in connection with a transfer;
 - (c) for enforcement of rights or liabilities (whether transferred or created by the order);
 - (d) about the transfer of rights and liabilities in relation to employment (including provision for deemed continuity);
 - (e) about pension schemes (including provision for amending schemes, winding them up, transferring their administration, and saving rights existing before a transfer takes effect);
 - (f) terminating appointments;
 - (g) for compensation for loss of employment (or office).
- (3) A closure order may include provision—
 - (a) extinguishing liabilities to the Secretary of State;
 - (b) about the winding up of the harbour authority's affairs;
 - (c) about the winding up of any company wholly owned by the harbour authority;
 - (d) about the dissolution of the harbour authority.
- (4) A provision of a closure order transferring property, rights or liabilities may—
 - (a) make the transfer subject to a condition (such as the grant of an interest in favour of a third party), and
 - (b) include provision about the effect of failure to comply with the condition.
- (5) Provision under this section may confer a function on the Secretary of State.

17D Harbour closure orders: procedure

- (1) Part 1 of Schedule 3 has effect in relation to closure orders as in relation to harbour revision orders.
- (2) In relation to closure orders made otherwise than on the application of the harbour authority Part 1 of Schedule 3 has effect with any necessary modifications, in particular—
 - (a) ignore paragraphs 3, 5, 6, 7, 9, 13 and 14,
 - (b) treat a reference to the applicant as a reference to the Secretary of State,
 - (c) treat a reference to the application for an order as a reference to the proposal to make an order,
 - (d) treat a reference to being notified of a proposed application as a reference to proposing to make an order, and

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- (e) paragraph 8 applies if the Secretary of State decides that the order would relate to a project which falls within Annex I or II to the Directive and is a relevant project, in which case—
 - (i) the Secretary of State must prepare the environmental statement, having consulted bodies with environmental responsibilities, and
 - (ii) the statement must include the information specified in subparagraph (2) (and may include other information).
- (3) Section 44 applies in relation to closure orders as in relation to harbour revision orders.

17E Harbour closure orders: devolution

- (1) In relation to fishery harbours in Wales—
 - (a) the power to make closure orders vests in the Welsh Ministers, and
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Welsh Ministers.
- (2) In relation to harbours in Scotland—
 - (a) the power to make closure orders vests in the Scottish Ministers,
 - (b) a reference in this group of sections to the Secretary of State is to be treated as a reference to the Scottish Ministers, and
 - (c) the reference in section 17D(1) to Schedule 3 is a reference to that Schedule as it has effect in relation to Scotland.

17F Supplemental

- (1) A closure order may include incidental, consequential, transitional or saving provisions.
- (2) In particular, a closure order—
 - (a) may amend, repeal or revoke an enactment of local application, and
 - (b) may disapply or modify the application of any other enactment.
- (3) A closure order—
 - (a) may make provision generally or only for specified purposes, and
 - (b) may make different provision for different purposes.”
- (2) At the end of section 44 (limitation of right to challenge orders) insert—

“(9) Section 17D(3) applies this section to closure orders.”
- (3) In section 57(1) (interpretation) insert at the appropriate place—

““closure order” has the meaning given by section 17A;”.

Port constables

7 Port constables: extension of jurisdiction in England and Wales

- (1) A port constable may, for policing purposes connected with the port constable’s police area, act outside that area.

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- (2) A port constable may act under subsection (1) only with the consent of the chief officer of police for the police area in which the port constable is acting.
- (3) Consent—
 - (a) may be given in relation to a particular port constable or any description of port constables;
 - (b) may be given generally for all policing purposes connected with the port constable's police area or may be limited (whether as to particular purposes, particular occasions or in any other way);
 - (c) may be given subject to conditions.
- (4) When acting under subsection (1) a port constable has all the powers and privileges of a constable.
- (5) "Port constable" means—
 - (a) a person appointed by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847,
 - (b) a person appointed under provision made by virtue of paragraph 8 of Schedule 2 to the Harbours Act 1964, or
 - (c) a person appointed under section 154 of the [Port of London Act 1968](#) (c. xxxii).
- (6) A port constable's police area is the area in which the port constable has jurisdiction to act, ignoring—
 - (a) subsection (1), and
 - (b) any provision, made by or under an enactment, under which the port constable has jurisdiction to act in an area for limited purposes only.
- (7) "Policing purposes connected with the port constable's police area" means any of the following—
 - (a) the prevention of the commission of offences in the port constable's police area;
 - (b) the detection or investigation of offences committed in the port constable's police area;
 - (c) the apprehension or prosecution of offenders in respect of offences committed in the port constable's police area;
 - (d) the preservation of the peace in the port constable's police area;
 - (e) the apprehension of offenders within the port constable's police area in respect of offences committed outside that area and the transport of them to police stations outside that area;
 - (f) the regulation of traffic in the port constable's police area.
- (8) Nothing in this section limits the circumstances in which a port constable may act apart from this section.

General lighthouse authorities

8 General lighthouse authority areas

- (1) In section 193 of the Merchant Shipping Act 1995 (general lighthouse authorities etc) at the end insert—

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“(6) In subsection (1) references to the seas include seas in an area specified by virtue of section 129(2)(b).”

(2) In section 255C (locating and marking wrecks)—

- (a) at the end of subsection (4) insert “(and for this purpose a general lighthouse authority has the powers conferred by section 253 throughout their area)”;
- (b) omit subsection (5).

(3) In section 255F (removal in default) omit subsection (4).

9 General lighthouse authorities: commercial activities

(1) After section 197 of the Merchant Shipping Act 1995 insert—

“197A General lighthouse authorities: commercial activities

(1) A general lighthouse authority may enter into agreements—

- (a) for the use by others of assets of the authority (“hire agreements”);
- (b) for the provision of consultancy or other services by the authority (“service agreements”).

(2) But an authority may enter into a hire or service agreement only if—

- (a) they are satisfied that it is not likely to prejudice the discharge of their functions under section 195, and
- (b) the Secretary of State consents.

(3) Where an authority enter or seek to enter into hire or service agreements—

- (a) expenditure of the authority incurred in connection with the agreements, and with the Secretary of State’s consent, must be paid out of the General Lighthouse Fund, and
- (b) sums received by the authority under the agreements must be paid into the General Lighthouse Fund.

(4) The Secretary of State may consent to expenditure in acquiring an asset for the purpose of entering into hire agreements only if the Secretary of State thinks that the expenditure is merely preparatory or subsidiary to hire agreements in respect of other assets (such as in the case of acquiring one asset to be used with another or to be used in fitting, maintaining or converting another).

(5) An authority must send a copy of any hire or service agreement to the Secretary of State.

(6) Consent under this section—

- (a) may be subject to conditions,
- (b) may be general or specific, and
- (c) may be prospective or retrospective.”

(2) In section 197 omit subsections (8) to (11) (power to exploit spare capacity).

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Manning requirements and marking wrecks

10 Manning requirements for ships

In section 47 of the Merchant Shipping Act 1995 (manning requirements) after subsection (4) insert—

“(4A) Standards of competence or other conditions prescribed or specified by the Secretary of State under subsection (1)(b) may be expressed by reference to other documents.

(4B) A reference to a document in reliance on subsection (4A) may include a reference to amendments of the document which are—

- (a) made after the conditions are prescribed or specified, and
- (b) approved for the purposes of the regulations by the Secretary of State.”

11 Marking wrecks

(1) In section 252 of the [Merchant Shipping Act 1995 \(c. 21\)](#) (powers of harbour and conservancy authorities in relation to wrecks) in subsection (2)(b) for “light or buoy” substitute “mark the location of”.

(2) After subsection (3) of that section insert—

“(3A) For the purposes of subsection (2)(b) a location may be marked by—

- (a) buoys, lights or other physical devices;
- (b) the transmission of information about the location.”

General

12 Extent

(1) An amendment or repeal made by this Act has the same extent as the enactment to which it relates.

(2) Section 7 extends to England and Wales only.

13 Commencement

(1) Sections 1 to 11 come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).

(2) Sections 5 and 6 come into force in relation to fishery harbours in Wales on such day or days as the Welsh Ministers may by order made by statutory instrument appoint.

(3) Sections 1 to 6 come into force in Scotland on such day or days as the Scottish Ministers may by order appoint.

(4) An order under this section—

- (a) may make provision generally or only for specified purposes,
- (b) may make different provision for different purposes, and
- (c) may include incidental or transitional provision (including savings).

***Status:** This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

14 Short title

This Act may be cited as the Marine Navigation Act 2013.

NATIONAL DIRECTIONS PANEL

SUPPLEMENTARY GUIDANCE: CODE OF CONDUCT ON HARBOUR DIRECTIONS



NATIONAL DIRECTIONS PANEL

SUPPLEMENTARY GUIDANCE: CODE OF CONDUCT ON HARBOUR DIRECTIONS

CONTENTS:

1. Introduction
2. Obtaining the powers – designation and compliance with the Code of Conduct
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4. Model harbour directions
5. Procedure for giving harbour directions
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7. Enforcement
8. Contacts

Appendices:

- A. The Code of Conduct on Harbour Directions
- B. DfT Advice Note on Designation of Harbour Authorities
- C. Harbours Act 1964, sections 40A-D
- D. Model harbour directions and modern drafting tips
- E. Statements by Mr Stephen Hammond MP and the Earl Attlee

1. Introduction

- 1.1 Sections 40A-40D of the Harbours Act 1964 were inserted by section 5 of the Marine Navigation Act 2013¹.
- 1.2 In response to questions raised by members of both Houses of Parliament in relation to appropriate safeguards for the exercise of the powers to be conferred by the 2013 Act, the Government made clear in Parliament during the passage of the Bill that it would expect any harbour authority seeking to take advantage of the powers to agree to abide by a code of conduct as agreed by industry representatives. Extracts from the debates in both Houses of Parliament are set out in Appendix E.
- 1.3 The Code of Conduct on Harbour Directions (the Code)² was agreed by industry and user representative organisations and “sets out procedures in connection with the granting of the power to make Harbour Directions to individual harbour authorities and the way in which those Directions might be formulated and handled.”
- 1.4 The Code is not legally binding but its use is strongly recommended as a way of ensuring that the powers conferred by the 2013 Act are exercised appropriately after wide and effective consultation.

¹ See Appendix C

² Appendix A

1.5 The Code states that:

“Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).”³

1.6 The Code also created a new National Directions Panel (NDP), comprising industry and user representative organisations. The NDP comprises the British Ports Association, the UK Major Ports Group, the UK Chamber of Shipping, the Royal Yachting Association, the British Tugowners Association and the National Federation of Fishermen’s Organisations and includes observers from the DfT/Devolved Administrations

1.7 The Code provides that:

“The NDP will act as a focal point for issues arising from the granting and use of Harbour Direction powers. Although it will not have the power to intervene in harbour operations or in individual dispute resolution procedures, it will oversee and make recommendations on the conduct expected of harbour authorities using the powers. These recommendations will be highly persuasive, providing guidance both to harbour authorities and Port User Groups (PUGs).

The NDP will be responsible for the preparation of Model Harbour Directions and any relevant accompanying guidance. These will be promulgated to all ports using powers under the Act and all those ports will be expected to factor them into their decision making. The NDP should keep under review what other guidance it might offer.”⁴

1.8 This non-statutory guidance has therefore been prepared by the NDP in accordance with the above provisions of the Code and sets out the NDP’s guidance on the application of the Code.

2. Obtaining the powers – designation and compliance with the Code of Conduct

2.1 A harbour authority may only exercise the power to give harbour directions under sections 40A-40D of the Harbours Act 1964 once it has been designated in an Order made by the relevant ministers, who are:

- (a) Welsh Ministers in the case of a fishery harbour in Wales;
- (b) the Secretary of State for Transport in the case of other harbours in England or Wales; and
- (c) Scottish Ministers in the case of a harbour in Scotland.

2.2 A harbour authority must apply to the relevant minister to be designated. The Department for Transport has published an Advice Note on how to make an application to be designated, which is available at www.gov.uk/government/publications/harbour-directions and a copy of which is attached as Appendix B. The Scottish Government has produced its own Advice Note along similar lines for ports in Scotland.

³ Appendix A, paragraph 4

⁴ Appendix A, paragraphs 6 & 7

2.3 The Code provides that:

“Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).”⁵

3. The use of harbour directions

3.1 Harbour directions can be given by a designated harbour authority to ships:

- (a) within their harbour,
- (b) entering or leaving their harbour,

3.2 Harbour directions may relate to:

- (a) the movement of ships;
- (b) mooring or unmooring (including casting and weighing anchor);
- (c) equipment (including nature and use);
- (d) the manning of ships.

3.3 To all intents and purposes, the power to give harbour directions under the Act, where it is applicable, constitutes an alternative to making byelaws (though byelaw-making powers in any given case may have a wider ambit in that they might, for example, extend to on-shore activities). In particular, the master of a ship:

- (a) must ensure that such directions applicable to the ship are complied with; and
- (b) commits a criminal offence for failing to do so without reasonable excuse.

3.4 Harbour directions made under sections 40A-40D of the Harbours Act 1964 are in the nature of general directions. General directions are, as their name implies, of general application and, as such, are to be contrasted with special directions given from time to time by an authorised harbour master to individual vessels as occasion requires (most harbour masters have such powers by virtue of their harbour authority’s local legislation).

3.5 Unlike special directions, harbour directions may be given in relation to specified circumstances, areas, periods or descriptions of ship.

3.6 Harbour directions may be limited to a particular period or periods of time and therefore may be seasonal (i.e. they apply for the same period of time each year) or purely temporary (i.e. short term, with an in-built expiry date) e.g. to cater for a particular event in the harbour. Where purely temporary directions are considered, the harbour authority will need to bear in mind that the requisite prior consultation arrangements still apply and sufficient time must be allowed in advance for this. Imposing an expiry date on a direction may also be appropriate if the “cooling off” option is to be pursued as part of a dispute resolution process in the case of a proposed harbour direction which has been the subject of objections This possibility is dealt

⁵ Appendix A, paragraph 4

with in more detail below under the 'Port Users Group and Dispute Resolution Process' heading of this guidance.

- 3.7 As indicated above, harbour directions must relate to "ships" and so cannot be made in relation to other subject matter. In this context, "ship" includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968 (see section 57 of the Harbours Act 1964). The meaning of the expression "vessel used in navigation" has been considered in a number of legal cases over many years. In the 2006 case of *R v. Goodwin*, the Court of Appeal expressed the view that "vessel used in navigation" means a vessel that is used to make ordered progression over the water from one place to another.
- 3.8 Examples of vessels that have been found not to be used in navigation in particular circumstances include personal watercraft, mobile platforms and static hulks. The Railways and Transport Safety Act 2003 contains a power enabling the Secretary of State to modify or extend the definition of "ship" for the purposes of the Harbours Act 1964 but to date this power has not been exercised.

4. Model harbour directions

- 4.1 As required by the Code⁶, the NDP has produced a number of model harbour directions that, as the Code makes clear, harbour authorities will be expected to factor into their decision-making. The NDP encourages harbour authorities to utilise the text of these model directions as appropriate when drafting their harbour directions.
- 4.2 These model harbour directions are attached as Appendix D.
- 4.3 Designated harbour authorities should keep in mind that harbour directions create criminal offences, and that they need to be prepared to prosecute breaches at the Magistrates' Court. Therefore harbour authorities must ensure that harbour directions are clear and unambiguous, that they are appropriately framed and targeted to be effective and achieve their objectives without unnecessary or inappropriate adverse impacts and that it is clear who is responsible for complying with the harbour direction. Harbour users should be able to easily understand what is permitted and what is not permitted within the harbour so harbour directions should use simple language, with definitions of the terms used in the harbour directions. The model harbour directions set out in Appendix D are not exhaustive. Where a harbour authority is contemplating making harbour directions that go beyond the NDP's published model directions, it is recommended that those harbour directions follow a similar style and format to the model directions.
- 4.4 It should also be borne in mind when making harbour directions that these may duplicate the harbour authority's existing byelaws. Unless the designation Order has provided for their revocation, the harbour authority must make a new set of byelaws that revokes earlier byelaws either fully or partially. ***It is recommended that existing byelaws and general directions should be reviewed by harbour authorities at the same time as making harbour directions.***

⁶ Appendix A, paragraph 7

5. Procedure for giving harbour directions

- 5.1 Harbour directions are given by the harbour authority rather than by its officers (i.e. it is a main board function). Once given, they are for the harbour master to enforce as directed by the harbour authority.
- 5.2 As with the introduction of any new regulation, the harbour authority should establish to its satisfaction that the proposed harbour direction is necessary, the most appropriate means of addressing the issue in question and is proportionate in its effect.
- 5.3 The contravention of a harbour direction constitutes a criminal offence with all the implications which that entails. These include, for the harbour authority, the formal process of cautioning, preparation of case and prosecution where the direction needs to be enforced through the courts and, for the master of the vessel, potential criminal liability, possible exposure to civil liability in consequence (by virtue of acting illegally) and the fine and consequential reputational loss which will follow if convicted. The introduction of harbour directions should therefore normally only follow consideration of alternatives (including, for example, the use of information and guidance) and an assessment of the direct and indirect effects of the direction on harbour users. Depending on the circumstances, that may require a detailed formal impact assessment.
- 5.4 In some cases, temporary harbour directions rather than permanent ones may be appropriate. In such cases, the direction should be expressed to have effect for no longer than is appropriate.
- 5.5 It is important to consult harbour users, when considering the introduction of harbour directions, on the form that these may take. This should ensure that directions are appropriately framed and targeted to be effective and achieve their objectives without unnecessary or inappropriate adverse impacts.
- 5.6 To be effective, consultation needs to provide sufficient details of the background to the proposals, what the directions are intended to address, what if any alternatives have been considered and the form of the directions and their anticipated impact on harbour users to allow consultees to make an informed response. Consultation may need to include more than one stage.
- 5.7 If it is decided following advance consultation with harbour users that only harbour directions will deliver the outcome sought, then the statutory process for making harbour directions (section 40B of the 1964 Act) requires the harbour authority to consult representatives of port users on the proposed harbour directions and to publish the proposed directions for public consultation for at least 28 days.
- 5.8 It is recommended that consultation with port users should begin as early as possible, allow an appropriate period for response, and culminate in the harbour authority giving due consideration to the responses received. Involvement of the local PUG in this will be a key element and is dealt with later in this Guidance.
- 5.9 Harbour authorities are encouraged to have regard to government guidance on best practice in relation to consultation. Current government guidance on consultation can be found here:

- 5.10 Once the statutory consultation is complete, a harbour authority will need to consider the responses received and then in light of them decide whether to make the proposed harbour directions, with or without modification, and the reasons for its decision. If it is concluded that the proposed harbour directions should be significantly modified, then port users should again be formally consulted. Whether modifications are significant is a matter for objective judgment and involves weighing up whether or not they materially alter the nature or effect of the direction in a manner that is likely to materially affect a harbour user.
- 5.11 If a harbour authority decides to give harbour directions which have been consulted on, it must then:
- (a) make the harbour directions available for inspection;
 - (b) supply a copy to anyone who requests one (which it may make a reasonable charge for, if it chooses to do so, to reflect the cost of providing that copy);
 - (c) publish a notice in a newspaper specialising in shipping news stating that the direction has been given and giving details of the arrangements for the inspection and supply of copies of the direction.
- 5.12 As failure to comply with harbour directions may constitute a criminal offence, it is strongly recommended that in addition to the above harbour authorities publish harbour directions on their websites for ease of access.

6. Port User Groups and the Dispute Resolution Process

- 6.1 The Code includes the following provisions in relation to PUGs:

“Any Harbour Authority using Harbour Direction powers under the Act should set up a PUG; this must include representatives of harbour users as extensively as possible, including NDP members as appropriate, but in a way which keeps the PUG to a manageable size. In many cases such a user group already exists, in which case, it would be appropriate for that group to take on the duties of a PUG bearing in mind its role as set out in this Code.

A PUG should be able to (1) appoint its Chairman and secretariat from amongst its members; (2) adopt its own rules of procedure; (3) agree its own agenda for meetings; and (4) determine the frequency of its meetings. The Harbour Authority should provide a venue for meetings of the PUG and be represented at its meetings but the Harbour Authority should not be a member of the PUG.

Although the representatives on the PUG would have a remit from those they represent and a responsibility to protect their interests, members of the PUG also have a responsibility to understand and protect the overall interests of the harbour.

PUGs will have an opportunity to consider proposed Harbour Directions at least 14 days before the formal 28 day consultation period. PUGs will play a particularly

important role in the event of unresolved objections. They will have a responsibility to seek to achieve resolution at a local level whenever possible.”

- 6.2 If a harbour authority already has a user group which can fulfil the role of the PUG but it does not meet the full requirements of the Code, it is recommended that the group is adapted to do so.
- 6.3 The Code also includes a process for resolving disputes in relation to proposed harbour directions. The Code provides that the dispute resolution procedure is:
- a) Proposed Harbour Direction (HD) published for public consultation and at least 28 days given for responses.***
 - b) If objection(s), these to be subject to discussion between the Harbour Authority (HA) and objector(s) to share views and explore whether, for example, the intended objective of the HD can be met in other ways.***
 - c) If objection(s) unresolved, referral to the local Port Users Group (PUG).***
 - d) PUG to use its best endeavours to resolve objection(s) on a local basis.***
 - e) If there is no resolution within a reasonable time, the PUG might consider the use of a “cooling off” period, its length to be decided by the PUG, during which time the Harbour Direction is implemented and then reviewed.***
 - f) If this is not an acceptable approach to the PUG or to an objector and no other means of reaching a resolution is identified, the objection(s) will be resolved by referral to an independent person to be agreed between the Harbour Authority and the PUG/objector (as appropriate) or, failing agreement, appointed by the NDP on request. The independent person will invite the views of the parties and produce a report of his conclusions, which will be made available to all parties. This should be considered a last resort, and every effort should be made to find a local resolution.***
 - g) The Harbour Authority will, in the light of the PUG’s discussions and the views of the independent person, decide whether to exercise the power to give or amend the disputed Harbour Direction. Once it has so decided, the Harbour Authority must give notice in writing to the PUG and the objector of its decision and of the reasons for that decision. If the Harbour Authority decides to make a significant amendment to a Harbour Direction then it should be treated as being a new direction and consulted on accordingly.***
 - h) The process is then concluded.”***
- 6.4 Harbour authorities are likely to find that their PUG can usefully act as a consultative forum for harbour issues generally but it also has a specific role in relation to harbour directions under the Act:-
- (a) to consider proposed harbour directions;
 - (b) to consider and use its best endeavours to resolve any unresolved objections (ie objections made to the proposals which after discussion between the harbour authority and the objector, are not withdrawn by the objector);
 - (c) to recommend the adoption in appropriate cases (ie where it and the objector or objectors consider this an acceptable way forward) of a “cooling off” period which

should be specified during which time the general harbour direction is implemented and then reviewed;

- (d) where neither a “cooling off” period nor other means of reaching a resolution is identified by the PUG, to agree with the harbour authority who is to be the independent person to whom the objection or objections are referred; and
- (e) to receive and take account of the decision of a harbour authority to make a harbour direction.

6.5 It will be for each PUG in relation to an objection to judge how best to seek to resolve it but is recommended that PUGs consider the following:

- (a) it should bear in mind that what it is seeking to achieve or facilitate is agreement between the parties or, if that is not practicable, at least a narrowing and refinement of the issues in dispute;
- (b) it can provide a useful forum to enable the harbour authority and objectors better to understand their respective positions, the evidential basis for these and any weaknesses in them;
- (c) it may choose to invite written communications but equally may proceed simply by meeting with the parties jointly or separately;
- (d) it should not be influenced by any imbalance in the respective resources of the parties and their ability to argue their case but rather should seek to ensure that arguments on each side are sufficiently explored and receive the consideration they deserve;
- (e) members of the PUG may and should participate in proceedings notwithstanding that they or a body whom they represent has an interest in the matter but they should make it clear when they have such an interest;
- (f) it will not be responsible for making any determination itself but rather is in a similar position to that of a mediator and must leave any final determination to the harbour authority;
- (g) whilst not making a determination itself, it should provide a clear recommendation to the parties at the conclusion of its consideration and in a manner that enables the parties to agree the way forward or, if the dispute cannot be resolved, to refer it to an independent person;
- (h) it should bear in mind that the “cooling off” option (which needs to be consensual) is only likely to be acceptable to the objectors if the length of the implementation period prior to review is no longer than is necessary to provide a practical test of the implications of the direction and if the review process is carefully defined so that the process is clear and time limited;
- (i) the “cooling off” option review process is therefore likely to need to include the opportunity for each party to make its views known to the other on the implementation by a specified date, for that to be followed by a specified period for the PUG to seek to resolve any outstanding objection and, should the direction remain objected to, for

the direction to be time limited or suspended by a specified date unless otherwise agreed pending completion of referral, if needed, to an independent person and final determination by the harbour authority as to whether to retain, drop or amend the direction;

- (j) such a suspension or time limit could be achieved by the harbour authority implementing the direction subject to the qualification “except for such periods as the harbour authority may specify” or “Until [specified date]” and then giving an undertaking to suspend if necessary. Since harbour directions, once made, can only be varied or revoked by subsequent harbour directions, the alternative of reaching agreement as to potential revocation would mean implementing the whole direction-making procedure again just to achieve that.

6.6 The appointment of the independent person in accordance with the Code will need to cover the terms of the referral, including the procedure for making representations, the programme for this and payment of the independent person’s fees and expenses. The independent person might, but not necessarily, be a member of the London Maritime Arbitrators Association or another professionally qualified arbitrator. Whilst different arrangements may be appropriate for different cases, it is recommended for general purposes that the arrangements should provide for a fixed programme for making written representations, that either party or the independent person should be able to call for an oral hearing for the parties to respond to the independent person’s questions, that the whole process should ordinarily be configured to be completed within 3-6 months inclusive of the submission by the independent person’s report to the parties. The arrangement should also provide for the apportionment of the costs of the independent person and for the payment of the parties’ own costs, which might be that the parties each bear their own costs and share equally the costs of the independent person.

6.7 Once the harbour authority receives the independent person’s report, it will be for the harbour authority to reach a final determination on whether or not to make the harbour direction in issue, with or without modifications. In doing so, it will need to have proper regard to the independent person’s report and any other material circumstances and then reach a reasoned decision which it should publish. As with any decision by a public authority, a harbour authority’s decision will be open to legal challenge by any party on grounds of irrationality, if the proper processes have not been followed or if the directions are otherwise unlawful. However, as long as the decision reached is a reasonable one for the harbour authority to reach in all the circumstances and the dispute resolution process has been followed effectively, the risk of such a challenge should be low.

7 Enforcement

7.1 Contravention of a harbour direction is a criminal offence that, on summary conviction before the Magistrates’ Court, may result in a fine not exceeding level 4 (currently set at £2,500).

7.2 As with other possible offences, investigation of possible offences including interviewing of persons involved must be undertaken in accordance with the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice:

<https://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice>

- 7.3 In deciding whether to prosecute, the Harbour Authority will need to satisfy itself beyond reasonable doubt that an offence has been committed and that there is sufficient evidence to convict. It will also need to consider whether prosecution is proportionate and in the public interest. Relevant public interest considerations include whether the offending has been intentional, reckless or grossly negligent, the degree of harm caused, any previous history of offending, whether there has been repeated or protracted contravention of the harbour direction and whether the offender has been uncooperative or obstructive.
- 7.4 Detailed guidance on the principles to be taken into account will be found in the Code for Crown Prosecutors issued by the Crown Prosecution Service:

http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

8. Contacts

- 8.1 Any queries or comments on this guidance can be addressed to:

Chairman, National Directions Panel
C/o UK Chamber of Shipping
30 Park Street
London
SE1 9EQ

ndp@ukchamberofshipping.com

November 2013

APPENDIX A

CODE OF CONDUCT ON HARBOUR DIRECTIONS

1. This Code arises out of the Marine Navigation Act 2013 ('the Act') and sets out procedures in connection with the granting of the power to make Harbour Directions to individual harbour authorities and the way in which those Directions might be formulated and handled.
2. The Code also covers the setting up of a National Directions Panel (NDP) which will oversee the use of Harbour Directions.
3. The Code is only applicable to those Harbour Directions made under powers granted under the Act, although harbour authorities with existing Powers of General Direction may wish to make use of it in exercising these powers.
4. Before making an Order designating a Harbour Authority as having Harbour Direction powers, the Harbour Authority will provide an assurance that it will abide by the Code to the Secretary of State (or Welsh or Scottish Ministers).

Section A – National Directions Panel (NDP)

5. The NDP will, as a minimum, consist of representatives from the British Ports Association, the UK Major Ports Group, the UK Chamber of Shipping, the Royal Yachting Association and the relevant fisheries organisations. The NDP will keep its membership under continual review to ensure that it is fit for purpose and properly reflective of those likely to be affected by Harbour Directions. It is important that the NDP is of a manageable size. A Chair of and the secretariat for the NDP will be drawn from the members. It will be expected to meet once a year, or more if the circumstances arise.
6. The NDP will act as a focal point for issues arising from the granting and use of Harbour Direction powers. Although it will not have the power to intervene in harbour operations or in individual dispute resolution procedures, it will oversee and make recommendations on the conduct expected of harbour authorities using the powers. These recommendations will be highly persuasive, providing guidance both to harbour authorities and Port User Groups (PUGs).
7. The NDP will be responsible for the preparation of Model Harbour Directions and any relevant accompanying guidance. These will be promulgated to all ports using powers under the Act and all those ports will be expected to factor them into their decision making. The NDP should keep under review what other guidance it might offer.
8. The NDP will keep the procedure for dispute resolution under review. (See Section C)

Section B – Port User Group (PUG)

9. Any Harbour Authority using Harbour Direction powers under the Act should set up a PUG; this must include representatives of harbour users as extensively as possible, including NDP members as appropriate, but in a way which keeps the PUG to a manageable size. In many cases such a user group already exists, in which case, it would be appropriate for that group to take on the duties of a PUG bearing in mind its role as set out in this Code.

10. A PUG should be able to (1) appoint its Chairman and secretariat from amongst its members; (2) adopt its own rules of procedure; (3) agree its own agenda for meetings; and (4) determine the frequency of its meetings. The Harbour Authority should provide a venue for meetings of the PUG and be represented at its meetings but the Harbour Authority should not be a member of the PUG.

11. Although the representatives on the PUG would have a remit from those they represent and a responsibility to protect their interests, members of the PUG also have a responsibility to understand and protect the overall interests of the harbour.

12. PUGs will have an opportunity to consider proposed Harbour Directions at least 14 days before the formal 28 day consultation period. PUGs will play a particularly important role in the event of unresolved objections. They will have a responsibility to seek to achieve resolution at a local level whenever possible.

13. Issues arising out of an individual PUG which may be of national interest should be communicated to the NDP for the benefit of the NDP and other PUGs.

Section C - Dispute Resolution Procedure

14. The procedure is:-

a) Proposed Harbour Direction (HD) published for public consultation and at least 28 days given for responses.

b) If objection(s), these to be subject to discussion between the Harbour Authority (HA) and objector(s) to share views and explore whether, for example, the intended objective of the HD can be met in other ways.

c) If objection(s) unresolved, referral to the local Port Users Group (PUG).

d) PUG to use its best endeavours to resolve objection(s) on a local basis.

e) If there is no resolution within a reasonable time, the PUG might consider the use of a "cooling off" period, its length to be decided by the PUG, during which time the Harbour Direction is implemented and then reviewed.

f) If this is not an acceptable approach to the PUG or to an objector and no other means of reaching a resolution is identified, the objection(s) will be resolved by referral to an independent person to be agreed between the Harbour Authority and the PUG/objector (as appropriate) or, failing agreement, appointed by the NDP on request. The independent person will invite the views of the parties and produce a report of his conclusions, which will be made available to all parties. This should be considered a last resort, and every effort should be made to find a local resolution.

g) The Harbour Authority will, in the light of the PUG's discussions and the views of the independent person, decide whether to exercise the power to give or amend the disputed Harbour Direction. Once it has so decided, the Harbour Authority must give notice in writing to the PUG and the objector of its decision and of the reasons for that decision. If the Harbour Authority decides to make a significant amendment to a Harbour Direction then it should be treated as being a new direction and consulted on accordingly.

h) The process is then concluded.

APPENDIX B

DfT ADVICE NOTE ON DESIGNATION

Executive Summary

1. Harbour authorities are responsible for managing and running safe and efficient harbours. They have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the port environment.
2. The Port Marine Safety Code (PMSC)⁷ recommends harbour authorities to review and be aware of their existing powers to ensure they are still relevant to the safe operation of a harbour. It recommends that additional powers should be sought by a harbour authority, if a risk assessment concludes that this would be advisable. This may include securing powers of general directions to support the effective management of vessels within the harbour, if a harbour authority does not already have them.
3. As a result of the Marine Navigation Act 2013, harbour authorities may now, on application, be designated with the power to make harbour directions. This power may be sought as a response to the review of powers recommended by the PMSC.
4. The process to designate harbour authorities requires a statutory instrument (the 'designation Order') to be made by the Secretary of State. The Department is seeking applications for a first round of harbour authorities to be issued with these powers in a designation Order, which is expected to be made in late 2014. This advice note provides guidance on how to apply.
5. To promote the effective use of harbour direction powers, the national representatives of harbour authorities and harbour users have formed a National Directions Panel (NDP). Interested harbour authorities are advised to refer to the guidance produced by the NDP, in particular the non-statutory Code of Conduct on harbour directions⁸. The Government expects any harbour authority seeking the power to make harbour directions to commit to complying with this Code of Conduct.

How to apply to the Department

6. Expressions of interest to be designated with the powers to make harbour directions should be submitted to the Department by e-mail to Ports@dft.gsi.gov.uk, which is the relevant authority for harbour authorities in England and non-fishery ports in Wales.
7. Fishery ports in Wales should apply to the Welsh Assembly Government at fisheriesmailbox@wales.gsi.gov.uk.

⁷ www.gov.uk/government/uploads/system/uploads/attachment_data/file/38728/port-marine-safety-code.pdf

⁸ www.britishports.org.uk/navigational-safety;
www.rya.org.uk/go/currentaffairs;
www.ukchamberofshipping.com/information/publications-and-briefings;
www.ukmajorports.org.uk/pages/latest-news

8. To take part in the first round of harbour authorities to be issued with these powers, please submit your expression of interest no later than 30 April 2014.
9. A draft form that can be used to give assurance that the harbour authority has signed up to the code is attached at Annex A. A covering letter including contact details and the information requested at paragraph xx of this note should also be provided.
10. If a harbour authority is unable to sign up to the Code of Conduct, the reasons for this should be explained fully in the covering letter. All applications to be designated with the powers to make harbour directions will be assessed on a case by case basis.
11. This advice note applies to England and all ports in Wales as agreed by the Welsh Government. Transport Scotland will be publishing their own guidance and ports in Scotland should refer to this.

1 Harbour Directions

What are they?

- 1.1 The Harbours Act 1964, as amended by the Marine Navigation Act 2013, provides a mechanism by which the Secretary of State may by Order designate harbour authorities with a power to make harbour directions to better regulate shipping and improve safety within their harbour area. Such harbour authorities are called “designated harbour authorities”. (new sections 40A to 40D of the Harbours Act 1964, inserted by section 5 of the marine Navigation Act 2013).

What are they used for?

- 1.2 Harbour directions may be used by a designated harbour authority to regulate ships within their harbour, or entering or leaving their harbour. They may relate to the movement, mooring and unmooring, equipment and manning of ships. For example directions could be used:
 - a. to regulate the use of any main navigation channel or fairway;
 - b. to prescribe where and how vessels are to moor and move within the harbour;
 - c. to ensure ships above a certain size have working radios to allow communication between harbour master and ship;
 - d. to specify requirements for no deficiency in machinery; and,
 - e. to ensure sufficient people with relevant experience crew specific types of ship.

Who will they apply to?

- 1.3 Harbour directions will only apply to ships as defined in the Harbours Act 1964. This Act defines a ship as including every description of vessel used in navigation, seaplanes and hovercraft. The Court of Appeal has held that to be used in navigation, a vessel must be used to make ordered progression from one place to another.

Why apply for Harbour Directions?

- 1.4 Harbour authorities are responsible for managing and running safe and efficient harbours. They have particular responsibilities in relation to the safety of vessels and people within the harbour, efficient navigation and the protection of the port environment.
- 1.5 To meet these responsibilities effectively, harbour authorities have currently up to four powers available under their local legislation which they may use in regulating their harbour areas:
- Byelaws – power to issue byelaws which, subject to confirmation by the Secretary of State for Transport. Byelaws may apply to harbour land as well as the water;
 - Special directions – power to issue directions in relation to individual ships in the harbour area for a specified purpose;
 - General directions – power to issue directions in relation to all ships in the harbour area either in response to a particular occurrence or as a standing instruction to all ships or specified classes of ship;
 - Pilotage directions – (applies to ‘competent harbour authorities’ only) power to direct that it is compulsory for a ship to be subject to pilotage – i.e. under the charge of either an authorised pilot or a master or first mate holding a pilotage exemption certificate
- If designated, a harbour authority will have an additional power:
- Harbour directions - power to issue directions in relation to ships in the harbour area, or entering or leaving the harbour.
- 1.6 Since its first publication in 2000, the Port Marine Safety Code (PMSC) has recommended that additional powers should be sought by a harbour authority, if a risk assessment concluded that it would be well advised to secure additional powers to support effective management of vessels in their harbour waters. Obtaining the powers to give harbour directions may meet such a recommendation

National Directions Panel

- 1.7 An industry-led National Directions Panel (NDP) has been set up to provide guidance on the operational use of harbour directions, to issue draft model directions and to act as a focal point on any issues arising from the granting of harbour directions. The NDP will also keep under review the non-statutory Code of Conduct on the use of harbour directions that was previously agreed by organisations.
- 1.8 The NDP is chaired by the UK Chamber of Shipping and includes representatives of the British Ports Association, the UK Major Ports Group, the Royal Yachting Association, the British TugOwners Association and the National Federation of Fishermen’s Organisation. The Department for Transport and devolved administrations attend meetings as observers.
- 1.9 The Government expects any harbour authority applying for designation to have agreed to sign up to this Code before it is designated with the power of harbour directions.

- 1.10 The NDP has produced non-statutory supplementary guidance on how to use these powers, both the Code of Conduct and the non-statutory supplementary guidance can be found on the following websites:

www.britishports.org.uk/navigational-safety;

www.rya.org.uk/go/currentaffairs;

www.ukchamberofshipping.com/information/publications-and-briefings;

www.ukmajorports.org.uk/pages/latest-news.

- 1.11 This guidance includes a set of model directions, intended to assist designated harbour authorities to draft their harbour directions. This is not exhaustive and has been produced in agreement with the various trade associations and provides examples that are likely to be accepted to most harbour users.

- 1.12 Enquiries about the NDP, the Code of Conduct, model directions and other advice published by the NDP should be directed to the NDP Chairman, c/o UK Chamber of Shipping: ndp@ukchamberofshipping.com.

2 Application for designation

How to apply

- 2.1 Harbour authorities in England and non-fishery ports in Wales seeking to be designated with powers of harbour direction should apply to the Department for Transport at ports@dft.gsi.gov.uk.

- 2.2 Fishery ports in Wales should apply to the Welsh Assembly Government at fisheriesmailbox@wales.gsi.gov.uk.

- 2.3 The Department intends to make Orders that designate a number of harbour authorities with the powers at the same time. It is not feasible for the Department to make an Order on an *ad hoc* basis for individual harbour authorities. Therefore we intend to:

- a) invite applications to be part of a first round by June 2014;
- b) invite applications/expressions of interest for a second round;
- c) thereafter review and, if necessary, make a designation Order on a three-yearly cycle.

- 2.4 Applications will be assessed on a case by case basis. The designation Order will be drafted and consulted on. All views expressed by those with an interest on the suitability of the harbour authority to be designated with the powers to make harbour directions will be considered.

- 2.5 The application (no more than 6 pages) should provide:

- a. A rationale covering why the power to make harbour directions is needed (paragraph 2.6);
- b. Details of any proposal for amending or repealing any statutory provision of local application which would be inconsistent with the power to give harbour directions or unnecessary, if that power is conferred; and/or (as appropriate) a statement of intention for amending

and/or revoking any existing byelaws or directions that might otherwise conflict with harbour directions (paragraph 2.8);

- c. The views of harbour users with respect to the suitability of that particular harbour authority applying to the Department to be designated in the Order, if they have been sought already or, if not, a statement of when and how they will be consulted (paragraph 2.10); and
- d. Code of Conduct statement – either an assurance that the harbour authority has signed up to the Code of Conduct or a full explanation of why it is unable to do so (paragraph 2.13).

Rationale

2.6 Explain why the power to make harbour directions is needed so that the Department understands why they are needed. For example, reasons might include:

- a risk analysis has identified a need for an authority to seek harbour directions;
- to assist the harbour in meeting recommendations of the Port Marine Safety Code and Guide to Good Practice.
- to deal with specific incidents and/or accidents;
- an increase in traffic;
- recommendations in a Marine Accident Investigation Branch report; or
- harbour users have requested the powers to protect various activities in the port.

2.7 This is not an exhaustive list of possible reasons why harbour directions are required.

Amendments/repeal to statutory provisions

2.8 Explain if any statutory provision of local application will need to be amended or repealed and how and when this will be done.

2.9 A designation Order may amend or repeal any statutory provision of local application, which the person making the order thinks is inconsistent with the power to give harbour directions or is unnecessary as a result of such power. Statutory provisions enabling byelaws or general directions to be made, and any byelaws or general directions made under them, may be inconsistent or unnecessary once the power to make harbour directions is available to the harbour authority. However, if it is thought that the existing powers may still be needed but that particular byelaw or general directions made under them need to be amended or repealed, the harbour authority may prefer simply to provide a statement of its intent to amend or revoke them. Amending or revoking byelaws requires confirmation by the Secretary of State, but is expected to be simpler than applying for new byelaws. However, it is unlikely that it would be appropriate to amend or revoke existing byelaws through the designation Order itself. The designation Order would need to specify the date when the byelaws were revoked and it is possible that the process to make harbour directions would not be completed before the byelaws were revoked or amended.

Consultation

- 2.10 Explain whether the views of harbour users and other interested parties have been sought on:
- a) suitability of harbour authority to be designated with the power to make harbour directions.
 - b) an indication of what the harbour directions will cover.
- 2.11 A short summary of views expressed should also be submitted so that the Department is aware if there are any local problems that may be raised when it consults on the order.
- 2.12 If at the time of applying to the Department harbour users have not yet been consulted, a short explanation of the reason should be provided along with the harbour authority's plan on when and how it will consult.

Code of Conduct Statement

- 2.13 An assurance that the harbour authority has signed up to the Code of Conduct or a full explanation of why it is unable to do so. Annex A provides a form of words that could be used in an application to give assurance that the harbour authority has signed up to the Code.

Timescale

- 2.14 Before a designation Order is made the Department will consult on it. The consultation will give the opportunity for those with an interest to express their views (including whether a harbour authority should be included or removed from the designation Order). The ultimate decision on whether or not a harbour authority should have the status of a 'designated harbour authority' rests with the Department for Transport, which will consider responses to the consultation.
- 2.15 Annex B sets out approximate timescales; this is for illustrative purposes only and is dependent on resources and volume of applications submitted. In consultation with the National Directions Panel a deadline of six months for initial applications was considered suitable.

Review

- 2.16 We will keep each designation Order under review to ensure it is fit for purpose and relevant. If there is a need, any amendments would usually be made on the three-yearly cycle. Harbour authorities are encouraged to liaise with the Department for Transport about their designation.

3 Making Harbour Directions

- 3.1 Section 40B of the Harbours Act 1964 sets out the procedure that designated harbour authorities must follow before making harbour directions. The Act specifies that:
- all directions must be set out in writing;
 - a harbour authority must consult such representatives of the users of the harbour;
 - a harbour authority must publicise a proposed harbour direction for at least 28 days before it is given; and,

- a harbour authority must make harbour directions available for inspection, and supply a copy to anyone who requests it; as soon as reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news, stating that a direction has been given, and giving details of the arrangements for the inspection and supply of copies of harbour directions.
- 3.2 In order to publicise harbour directions the Department recommends harbour authorities publish harbour directions on their websites. While this is not a statutory requirement, it is good practice to do so.
- 3.3 The Department recognises that each harbour authorities is unique and considers that each harbour authority, in consultation with port users, is best placed to make decisions on which harbour directions would be appropriate for its harbour, based on local circumstances.
- 3.4 Harbour directions create criminal offences, and designated harbour authorities need to be prepared to prosecute breaches at the Magistrates' Court. Therefore harbour authorities must ensure that harbour directions are clear and unambiguous and that it is clear who is responsible for complying with the harbour direction. Harbour users should be able to easily understand what is permitted and what is not permitted within the harbour. Therefore harbour directions should use simple language, with definitions of the terms used in the harbour directions. Further Guidance is available from the NDP.

4 Devolution

- 4.1 Ports legislation is a devolved matter. The Secretary of State in England will assess applications for ports in England and non-fishery ports in Wales.
- 4.2 In the case of a fishery harbour in Wales the harbour authority should liaise with the Welsh Government.
- 4.3 In the case of a harbour in Scotland they should contact the Scottish Government.

5 Contacts

- 5.1 Enquiries about this guidance or making an application should be sent to ports@dft.gsi.gov.uk.
- 5.2 Enquiries about the NDP, the Code of Conduct, model directions and other advice published by the NDP should be directed to The NDP Chairman, c/o UK Chamber of Shipping: ndp@chamberofshipping.com.
- 5.3 Enquiries about fishery ports in Wales and applications should be sent to fisheriesmailbox@wales.gsi.gov.uk.
- 5.4 Enquiries about the guidance produced by Transport Scotland should be addressed to Val Ferguson and any applications from ports in Scotland sent to Harbourorders@scotland.gsi.gov.uk.

Annex A – Assurance template

I confirm that the following resolutions of the [specify name of Harbour Authority] were duly passed at a meeting of the [specify harbour authority] on xxxx.

The harbour authority has had regard to the content of and agrees to comply with the code of conduct on harbour directions, in particular:

- a) to maintain a Port User Group and to apply a dispute resolution procedure such as is set out in the code of conduct when required; and,
- b) to have regard to supplementary guidance issued from time to time by the National Directions Panel on the subject of harbour directions.

The [Chief Executive] is authorised to apply to [Welsh Minister/ the Secretary of State for Transport/ Scottish Ministers] for [specify harbour authority] to be designated as a designated harbour authority for the purposes of section 40A of the Harbour Act 1964.

Name

Xxxxxxxx

Signed

Xxxxxxx

Date

xxxxxxx

Annex B - Proposed timetable for Year 1

DfT Guidance published – Nov 2013

Deadline for e-applications – 30 April 2014

Review of applications by the Department – May/June 2014 (largely dependent on volume of applications.)

Public consultation on the Designation Order – (allowing time for the Order to be drafted) – September 2014

Make the Order – winter 2014

APPENDIX C

HARBOURS ACT 1964, SECTIONS 40A-D

Harbour directions

40A Directions

(1) A designated harbour authority may give directions ("harbour directions") in respect of ships—

- (a) within their harbour, or
- (b) entering or leaving their harbour.

(2) A harbour direction may relate to—

- (a) the movement of ships;
- (b) mooring or unmooring;
- (c) equipment (including nature and use);
- (d) the manning of ships.

(3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.

(4) "Designated harbour authority" means—

- (a) a harbour authority for a fishery harbour in Wales who are designated by order of the Welsh Ministers,
- (b) a harbour authority for any other harbour in England or Wales who are designated by order of the Secretary of State, and
- (c) a harbour authority for a harbour in Scotland who are designated by order of the Scottish Ministers.

(5) A harbour direction is subject to any direction under section 52 of the Harbours, Docks and Piers Clauses Act 1847 (directions by harbour master).

(6) A harbour authority may not give a harbour direction which conflicts with an enactment.

(7) An order designating a harbour authority may amend or repeal any statutory provision of local application which the person making the order thinks is—

- (a) inconsistent with the power to give harbour directions, or
- (b) unnecessary as a result of the power.

40B Procedure

(1) Harbour directions must be in writing.

(2) Before giving harbour directions a harbour authority must consult such representatives of users of the harbour as the authority think appropriate.

(3) A harbour authority must make such arrangements as they think appropriate for publicising a proposed harbour direction for at least 28 days before it is given.

(4) A harbour authority must—

- (a) make harbour directions available for inspection, and

- (b) supply a copy to anyone who requests it.

(5) A harbour authority may charge for the supply of copies.

(6) As soon as is reasonably practicable after giving a harbour direction the harbour authority must publish a notice in a newspaper specialising in shipping news—

- (a) stating that a harbour direction has been given, and
- (b) giving details of the arrangements for the inspection and supply of copies of harbour directions.

40C Enforcement

(1) The master of a ship must ensure that harbour directions are complied with.

(2) Breach of subsection (1) without reasonable excuse is an offence.

(3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

40D Supplemental

(1) Harbour directions—

- (a) may make provision that applies generally or only in relation to specified circumstances, areas, periods or descriptions of ship, and
- (b) may make different provision for different circumstances, areas, periods or descriptions of ship.

(2) Harbour directions may be varied or revoked by subsequent harbour directions.

(3) In section 40A—

- “mooring” includes casting anchor, and
- “unmooring” includes weighing anchor.”

Consequential Amendments to the Harbours Act 1964:

In section 54 (orders and regulations) at the end insert—

“(5) A power of the Secretary of State or Welsh Ministers to make an order under section 40A is exercisable by statutory instrument.

(6) A statutory instrument containing an order under section 40A—

- (a) if made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament,
- (b) if made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”

In section 57(1) (interpretation) insert at the appropriate place—

- ““master”, in relation to a ship, means the person who has command or charge of the ship for the time being;”.

APPENDIX D

MODEL HARBOUR DIRECTIONS

Note

Section 40C of the Harbours Act 1964 provides that:

- (1) The master of a ship must ensure that Harbour Directions are complied with;
- (2) Breach of subsection (1) without reasonable excuse is an offence;
- (3) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Model Definitions:

In these Directions the following words and expressions have the following meanings:

- i. **“Collision Regulations”** – means the International Regulations for Preventing Collisions at Sea 1972, as amended from time to time;
- ii. **“Commercial Ship”** – means any Ship which is not a Recreational Craft;
- iii. **“Fairway”** – means the navigable channel which is the regular course or track of Ships as shown on the relevant Admiralty chart and by the navigation marks and buoys;
- iv. **“Grounded”** – means, in relation to a Ship, having made involuntary contact with the ground, except for touching briefly so that no damage is caused;
- v. **“Harbour”** – The limits of the harbour within which the Harbour Authority has jurisdiction;
- vi. **“Harbour Authority”** – means [insert port name], in which are invested under an Act of Parliament, or an order or other instrument made under such an Act, powers or duties of improving, maintaining or managing a harbour;
- vii. **“Harbour Master”** – means any person appointed as such by the Harbour Authority, and his/her deputies and assistants, and any other person or employee of the Harbour for the time being authorised to act, either generally or for a specific purpose, in the capacity of Harbour Master;
- viii. **“MARPOL”** – means the International Convention for the Prevention of Pollution from Ships;
- ix. **“Master”** – when used in connection with a Ship means any individual having command or charge of the Ship;
- x. **“Mean High Water Mark”** – means the level of mean high water spring tides;
- xi. **“Mooring”** – includes any quay, buoy, pile, post, chain, pillar, pontoon or like apparatus or convenience provided by the Harbour Authority for the mooring of Ships;
- xii. **“Powerboat”** – means a Recreational Craft which is powered by an engine with a rated power output of in excess of [15kW];
- xiii. **“Recreational Craft”** – means a Ship [of less than 24m in length] which, regardless of its means of propulsion, is intended for sports or leisure purposes;
- xiv. **“Ship”** – includes every description of vessel used in navigation, seaplanes on the surface of the water and hovercraft within the meaning of the Hovercraft Act 1968.
- xv. **“SOLAS”** – means the International Convention for the Safety of Life at Sea;
- xvi. **“Underway”** – when used in relation to a Ship means not at anchor, or made fast to the shore, or aground.

Model Harbour Directions

1. Collision Regulations

The Collision Regulations must be complied with at all times by any Ship within the Harbour.

2. Speed Limit

- a) Every Ship navigating within the [specify area] of the Harbour [or within [insert figure] metres of Mean High Water Mark] must, unless otherwise authorised by the Harbour

Master in writing, be navigated at a speed not exceeding [*insert figure*] knots through the water.

- b) Direction 2a) does not apply to a Ship on any occasion when it is being used by the Police, Fire Service or RNLI or to any other safety, rescue or patrol craft in an emergency situation, or for the purposes of enforcing any applicable direction or byelaw.
- c) Direction 2a) does not apply to a Ship that is only able to maintain adequate steerage way and control by navigating at a speed in excess of the limit specified in Direction 2a).
- d) A Ship must be navigated at all times with due care and attention and in such a manner so as not to endanger the safety of, or cause nuisance to, any other vessel, person or property.
- e) A Ship must not be navigated or manoeuvred in any part of the [*insert specific description/area (optional)*] Harbour or within [*insert figure*] metres of the shore in a manner or at a speed so as to cause wash to be generated that may endanger the safety of, or cause damage to, any other vessel, person or property.

3. Navigating under influence of alcohol or drugs

A person must not navigate or attempt to navigate a Ship while their ability to do so is impaired because of drink or drugs.

4. Reporting Collisions and Sunk or Grounded Ships

- a) The Master of any Commercial Ship involved in any collision and the Master of any Recreational Craft involved in a collision in which significant damage or personal injury is suffered must as soon as possible and in any event within 24 hours report the collision to the Harbour Master.
- b) The Master of a Commercial Ship which has sunk or grounded in the Harbour must immediately advise the Harbour Master of its position and any other particulars that may be required for the safety of navigation. If a Commercial Ship under tow has sunk or grounded the Master of the towing Ship is subject to the same duty to advise the Harbour Master.
- c) The Master of a Recreational Craft which has sunk in the Harbour, and the Master of a Recreational Craft that has grounded in the Harbour such that the grounding has resulted in significant damage or a threat to its watertight integrity, must as soon as possible advise the Harbour Master of its position and any other particulars that may be required for the safety of navigation.

5. Unseaworthy Ship

A person must not navigate a Ship in an unsafe or unseaworthy condition within the Harbour except as necessary for that Ship's safety and that of its crew. If a Ship has a defect that threatens the safety of its crew or other Harbour users or inhibits its ability to navigate safely the Master must notify the Harbour Master immediately.

6. Manning by competent persons

- a) Any Ship underway in the Harbour must be under the control or direct supervision of a competent person.
- b) When conditions require or in any event when reasonably required by the Harbour Master, a Ship must have at least one competent person on board at all times whilst the Ship is anchored or moored in the Harbour.
- c) A person under the age of [16] years must not be the Master of a Powerboat within the Harbour unless they hold an appropriate RYA qualification (or equivalent) or have permission from the Harbour Master.

7. Lights impeding safe navigation

Except in the interests of safe and proper navigation, lights, including lasers or other beams, must not be used on a Ship in a manner which causes nuisance to other vessels or impedes safe navigation.

8. Mooring and anchoring

- a) A Ship must not use any Mooring in the Harbour without permission from the Harbour Master. The use of any such Mooring must be in compliance with the conditions attached to the permission issued by the Harbour Master or displayed in the Harbour Master's office.
- b) A Commercial Ship on entering the Harbour must, if directed by the Harbour Master, proceed to the Mooring directed by the Harbour Master. A Commercial Ship so directed must not be moved to a different Mooring without the express permission of the Harbour Master.
- c) A Ship moored or anchored within the Harbour must be properly and effectively moored or anchored, so that it is not only secure but also not liable to cause any damage to any other vessel or property.
- d) Except in the case of an emergency, a Ship must not be anchored in the Fairway, within any areas used for small craft moorings or where it is likely to obstruct navigation.

9. Obstruction of Aids to Navigation

A Ship must not obstruct, be made fast to or otherwise interfere with any aid to navigation, including a light, beacon, sea mark, navigation buoy or mark, racing buoy or tide pole within the Harbour.

10. Obstruction of public landings

A person must not use a Ship or its equipment or permit a Ship or its equipment to be used in a manner that obstructs any public landing place, hard, pier, jetty or slipway within the Harbour.

11. Fishing within harbour areas

A Ship must not be used to drift, trawl, pot or undertake any other fishing activity in any part of the Harbour so as to be or to be likely to become an obstruction or danger to navigation in the Harbour. Bottom gear must not be used in any fairway or channel or any areas used for small craft moorings.

12. Open fires on board a Ship

A person must not light an open fire on any Ship within the Harbour, except for cookers or barbecues designed for use on board a Ship. Such cookers or barbecues must only be used on board the Ship and must not be transferred to a pontoon or quay.

13. Discharge of Oil, Sewage and Waste

- a) In addition to any of the requirements under MARPOL a person on any Ship must not use the Ship's equipment or cause or permit the Ship's equipment to be used to discharge into the Harbour any:
 - i) oil or oily residues; or
 - ii) sewage, when moored to any Mooring having direct pedestrian access to shore facilities; or
 - iii) commercial or domestic waste, plastics, or foodstuffs.

- b) The Master of a Ship must immediately report to the Harbour Master any discharge of oil or oily residues from the Ship, however caused. In such circumstances, the Master must comply with any directions issued to the Master by the Harbour Master.

14. Notification of Arrival and Departure

Before any Commercial Ship:

- i) enters the Harbour; or
- ii) moves within the Harbour; or
- iii) leaves the Harbour,

reasonable notice must be given to the Harbour Master in advance of the intended entering, moving or leaving.

15. Navigation in Restricted Visibility

When visibility within the Harbour is less than [one half of a nautical mile]:

- i) a Commercial Ship carrying dangerous substances (as defined in the Dangerous Substances in Harbour Areas Regulations 1987) in bulk; and
- ii) a Commercial Ship in ballast but not gas-free;

must not enter, leave or move within the Harbour without the permission of the Harbour Master.

16. Automatic and Back-up Steering Gear

- a) When use is being made of an automatic steering device on a Commercial Ship, a qualified helmsman must be present on the bridge at all times to steer the Ship manually should circumstances demand.
- b) Any duplicate, secondary or backup steering gear and associated power systems fitted to a Commercial Ship must be fully operational and ready for immediate use while that Commercial Ship is navigating within the Harbour.
- c) When use is being made of an automatic steering device on a Recreational Craft, a competent person must be within reach of the steering position at all times to steer the Ship manually should circumstances demand.

17. Passage Plans

Before a Ship enters, leaves or moves within the Harbour a voyage plan for the intended passage must be prepared in accordance with Regulation 34 of Chapter V of SOLAS.

Note: Information for the preparation, updating and execution of voyage plans may be found in:

- SOLAS Chapter V, Safety of Navigation, Annex 25 – Guidelines for Voyage Planning (IMO resolution A.893 (2))
- Current [insert port name] Notices to Mariners

[insert Harbour Authority name] HARBOUR DIRECTIONS, [insert date].

MODERN DRAFTING TIPS

Reduce the length and complexity of sentences;

Do not use outmoded language such as 'hereby', 'forthwith' (use 'as soon as practical'), 'thereof', 'therewith', 'hereinafter', 'thereto', (replace with 'to it'). Also avoid the use of archaic terms for example phonogram etc;

Do not use initial capital letters for words that are not proper nouns or defined terms in harbour directions;

Replace 'shall' with 'must' or 'shall not' with 'must not' where it is intended to impose an obligation;

Adopt a gender neutral drafting style, for example instead of using 'he', 'his' etc to 'he or she' or 'his and her' and ensure harbour directions comply with equality legislation;

Avoid the passive form, use active verbs;

Ensure consistent terminology is used throughout the harbour directions to avoid ambiguity or creating uncertainty in those complying with the harbour directions or enforcing them. Synonyms should be avoided unless intended to mean something different;

Locations referred to in the harbour directions should be ones that those unfamiliar with the locality can easily locate (for example marked on charts covering the area);

All relevant enabling powers should be specified.

APPENDIX E

STATEMENT BY STEPHEN HAMMOND MP

House of Commons, Hansard, 30 November 2012 (columns 542 & 551), on report stage of the Marine Navigation (No.2) Bill

Column 542:

Peter Bottomley: ...The next question is what the Minister will say about designating harbour authorities—I do not anticipate that he will be able to speak for the other national authorities other than those for England, but he could indicate whether others may do the same—and whether he will bear in mind the commitment to adhere to an agreed code of practice, and that that commitment, which will not be onerous, and no one is trying to suggest something that would cause more bureaucracy, will be a factor when considering designation. That is one of the crucial issues on which the Minister can address the House. [*Interruption.*] Is he addressing the House now?

Stephen Hammond: I tried, on Second Reading and in Committee, to be as helpful as possible as early as possible so that there was no cause for confusion. It is my expectation and the expectation of the Department for Transport that, when applying for a designation, a harbour authority would sign up to the code of practice.

Column 551:

Stephen Hammond: This has been a passionate debate and I recognise the concerns raised by my hon. Friends the Members for Worthing West (Sir Peter Bottomley) and for Croydon South (Richard Ottaway), both of whom spoke passionately and with knowledge. I hope that they accept, as I do, that the concerns have been raised a number of times and I hope we are moving towards a solution. The concerns were raised at a meeting with me before the Committee stage of the Bill. I hope that I will be able to allay some of them by explaining why the Government have chosen the non-statutory safeguards that complement the statutory provisions in the Bill. I understand that they have been agreed in principle by industry in its widest sense, by the Department and in principle although not in detail by the RYA. In total, there are 12 safeguards, some of which are detailed in the Bill. Others are non-statutory and I want to focus on them.

A set of harbour directions will be made available for harbours to adopt, as will guidance on how to use the power. A code of conduct covering good practice on consultation and a mechanism to resolve disputes about harbour directions before they are made will be developed by representatives of the port and the port users. An independently chaired panel will be established to develop and maintain the code of conduct and model harbour directions and I have given assurances on Second Reading and in Committee that the Department will actively engage in ensuring that there are guidelines for what should be covered in the code of conduct, how the harbour authority should make those directions and whom they should be consulting.

I expect the code of conduct to be agreed. I want it agreed by all sides—that is, not just by my Department but by the RYA.

See for the whole debate:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121130/debindx/121130-x.htm>

STATEMENT BY THE EARL ATTLEE

House of Lords, Hansard, 1 February 2013 (columns 1834-1836), on consideration stage of the Marine Navigation (No.2) Bill

Earl Attlee: My Lords, I am grateful to the noble and right reverend Lord, Lord Eames, for explaining the reason behind this amendment. I was terrified that he would not move his amendment because he observed that there was good news. When a similar amendment was debated in another place, the Shipping Minister was able to announce an initial agreement between port operators and users to develop a code of conduct on harbour directions. The intention was that this would provide a mechanism for resolving disputes. The Shipping Minister said:

"It is my expectation and the expectation of the Department for Transport that, when applying for a designation, a harbour authority would sign up to the code of practice".-[Official Report, Commons, 30/11/2012; col. 542.]

I am happy to say that since then, there have been very productive meetings between the Royal Yachting Association, the British Ports Association and the UK Major Ports Group, chaired by the UK Chamber of Shipping, to develop that code. At their meeting yesterday, agreement was reached on the terms of that code and I have personally laid a copy in the Library of the House. I was not prepared to fall into the trap of some noble Lord going into the Library and not finding the code of practice.

As expected, the code describes the establishment of a National Directions Panel to maintain the code, produce a set of model harbour directions that designated harbours can adopt as appropriate for their local circumstances, and consider how the power of the harbour directions is being used. The code also sets out how harbour directions should be consulted on with harbour users and how disputes can be resolved. The focus of the code is on resolution locally by the port and its users, but with the possibility of referral to an independent arbiter if agreement cannot be reached.

I believe that this is an excellent example of the benefits of non-statutory arrangements complementing legislation. I think that this is the right approach as we seek to reduce bureaucratic and inflexible central regulation and open up local decision-making. We do not want to gold-plate legislation, especially as there are already a number of safeguards in the Bill aimed at ensuring that the power of harbour directions is used responsibly.

In answer to the noble and right reverend Lord, Lord Eames, I repeat the Shipping Minister's assurance that the Government would expect any harbour authority applying for designation to have agreed to the code of conduct. I do not anticipate that the code of conduct would be ignored in future years; furthermore, the designation order would be kept under review and a harbour authority could be de-designated if that were warranted.

The noble Lord, Lord Berkeley, asked whether the harbour authority would have to be a fit and proper person. The noble Lord will know that Ministers always take into consideration whether a person is a fit and proper person. Having said that, I hope that the noble and right reverend Lord, Lord Eames, will feel able to withdraw his amendment.

See for the whole debate:

<http://www.publications.parliament.uk/pa/ld201213/ldhansrd/index/130201.html>

SALCOMBE HARBOUR AUTHORITY - ENFORCEMENT POLICY

1. General Powers

1.1 Salcombe Harbour Authority is a statutory Harbour Authority and has powers to make byelaws under the Pier and Harbour Order (Salcombe) Confirmation Act, 1954.

1.2 Contravention of byelaws may result in prosecution through the Magistrates' Court.

1.3 The Criminal Justice Act 1982 (as amended) provided for a standard scale of fines for summary offences. The range of fines applicable to contraventions of byelaws is: Level 2 or Level 3 (currently £500 and £1,000).

2. Principles of Enforcement

2.1 The Harbour Authority has statutory powers to regulate the conduct of vessels in the harbour's jurisdiction and to assist in managing the risks of marine operations. To these ends, enforcement action will sometimes be appropriate.

2.2 The Harbour Authority recognises that most harbour users want to comply with the law. Therefore, where it can, the Harbour Authority will help users to meet their legal obligations without unnecessary expense, while taking firm action – including prosecution where appropriate – against those who flout the law or act irresponsibly.

2.3 The Harbour Authority will provide information and advice in plain language on the rules that apply and will disseminate it as widely as possible. The Harbour Authority will provide encouragement and support to ensure that their legal powers are used appropriately to improve and safeguard public health, public safety and the environment.

2.4 The purpose of any enforcement action is to promote the safety of harbour users.

2.5 Where it appears that the Harbour byelaws may have been contravened, the Harbour Authority has the options of negotiation, education and persuasion and, where an offence has occurred, of warning or prosecuting an offender.

2.6 The Harbour Authority will minimise the costs of compliance for users by ensuring that any action it takes is proportionate to the risks. As far as the law allows, the Harbour Authority will take account of the circumstances of the case and the operator's attitude when considering action.

2.7 The Harbour Authority will carry out its duties in a fair, equitable and consistent manner. It will seek to be clear, open and helpful in its approach to enforcement.

2.8 The Harbour Authority will seek to target enforcement resources where they are most needed and will be informed by its other policies, aims and objectives. It will liaise with other authorities and enforcement bodies as appropriate.

ENFORCEMENT ACTION

3. Enforcement action can take the form of;

- A warning, which will be recorded, given by an authorised member of the harbour staff should they observe a contravention of the byelaws.
- A written warning explaining the way in which a byelaw has been contravened and the implications should the offender re-offend. This is not a caution for the purposes of criminal records.
- Suspension or revocation of a licence issued in accordance with the byelaws. Mooring licences and contracts are issued annually and require adherence to the byelaws.
- Prosecution – as an ultimate sanction.
- A combination of any of the above.

4. Consideration of action

4.1 Prosecution is a serious step and must be regarded as the ultimate sanction. A prosecution will be initiated only when the alleged conduct has been such that the Harbour Authority cannot impose an appropriate sanction itself and the matter therefore requires the attention of the court.

4.2 The Harbour Authority is committed to assisting other enforcement agencies, including the Police, to pursue their statutory duties. The Harbour Authority will liaise with any enforcement agency that may also have an interest in any matter being considered for prosecution.

4.3 When dealing with alleged offences,

- Officers will always identify themselves and explain the purpose of their visit or interview.
- Each case will be considered on its individual merits and a prosecution will only be initiated in accordance with this Policy.
- Having duly considered the Harbour Authority's internal policies due regard will be given to the Code for Crown Prosecutors.
- Any decision to initiate a prosecution will be recorded in writing and the reasons for initiating the prosecution will be given.
- Any investigation carried out by the Harbour Authority will be conducted pursuant to the Police and Criminal Evidence Act 1984 (and/ or any other relevant legislation) with due regard to the applicable Codes of Practice.
- In addition, where applicable, best practice will be observed as set out in national guidance issued by bodies such as the Department for Transport (Ports Policy) and/ or Maritime and Coastguard Agency.

4.4 The Harbour Authority recognises that once a prosecution has been commenced control of the matter is ceded to the courts.

ENFORCEMENT FACTORS

5. In considering the appropriate enforcement action, the Harbour Authority will take into account the following;
- The seriousness of the complaint.
 - The risk of harm to the public and others.
 - The public interest.
 - The explanation of the offender.
 - The attitude of the offender.
 - Whether the matter is a recurrence.
 - Whether there have been any other contraventions of byelaws or Legislation by the offender.
 - The willingness of the alleged offender to prevent a recurrence of the incident.
 - Any action taken by the offender to mitigate damage/ loss to others
 - The availability of witnesses.
 - The reliability of witnesses.
 - The sufficiency of evidence.

SUSPENSION OR WITHDRAWAL OF MOORING LICENCE

6. If following consideration of these factors the Harbour Master decides that the mooring licence should be suspended or revoked altogether, he will offer the licence holder the opportunity to make written representations about that before making any decision. If after further consideration the Harbour Master orders suspension or revocation of the licence, then the licence holder may make a written request for the Chairman of the Harbour Board to review that decision. The Chairman's decision will be final.

PROSECUTION

7. Prosecution, as an ultimate sanction will be considered in the following circumstances where;
- The alleged offence is a flagrant breach of byelaws or legislation such that public safety or well being is or has been put at risk.
 - The alleged offence involves failure to comply with a warning.
 - There is a history of similar offences.
 - The alleged offence involves risk of damage to the environment.
 - There are no other public interest factors indicating that prosecution is not appropriate.
8. In appropriate cases, the Harbour Authority will seek to recover the costs of taking enforcement action following a conviction. Any award of costs will be for the court to determine.

Cllr R J Carter
Chairman Salcombe Harbour Board

Date: 3 February 2013

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AGENDA
ITEM
11

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM
11

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	PERFORMANCE MANAGEMENT
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of Report

To report the Harbour's performance against agreed Performance Indicators (PIs).

RECOMMENDATION

That the Harbour Board RESOLVES to:

Note Harbour Performance against agreed Performance Indicators.

1. BACKGROUND

- 1.1 The Harbour Board endorsed the introduction of a set of PIs and to have them reported as a standing agenda item (SH 26/06).

2. ISSUES FOR CONSIDERATION

- 2.1 This report of Harbour Performance Indicators covers the period from 1 October to 31 December 2013. The detailed report against the agreed performance Indicators with comments for the period is at Appendix A. Detailed comments below are limited to where targets have not been met or have exceeded by a considerable margin:
 - 2.1.1 SH4(L) Major Plant – The Jones Crane developed an oil leak on the steering ram. The crane was unserviceable for two weeks whilst the ram seals were replaced. The opportunity was taken to give the crane a major service whilst it was in the workshop awaiting the refurbished ram.
 - 2.1.2 SH9(L) Mooring Failures – One Harbour foreshore mooring moved during the storm on 23/24 December. During the same storm four boats broke their mooring pick up lines, which had chafed through.

- 2.1.3 SH24(L) Minor Collisions – There were three minor collisions during this quarter, one reported dinghy incident, the other two were reports of damage, which could not be correlated to an particular incident.
- 2.1.4 SH32A(L) Staff Days lost to sickness – There has been a slight increase in days lost compared to the same quarter last year, however the overall days lost to sickness is down by 70% from last year.
- 2.1.5 SH33(L) Customer Complaints – There was one complaint from a customer who uses Whitestrand to berth his tender. He complained that the initiative to cover propellers to prevent damage was not rigidly enforced. This new initiative was introduced in 2013 and will be more vigorously encouraged in 2014, the information campaign will include a reminder on the Whitestrand Stickers.
- 2.1.6 SH 34(L) Income from Visiting yachts – It was a very good summer in 2013, the weather was kind with sunshine and fair breezes. However the shoulder months have been extremely disappointing. The income from visiting yachts during the third quarter was down by 67% from 2012. However the total income this year is up by 3%, but still well short of 2011 figures.
- 2.1.7 SH35(L) Visiting Yacht Numbers – Overall the number of visiting yachts is up over last year, but the third quarter was extremely disappointing with numbers down from 174 last year to 48 this year, a drop of 72%.
- 2.1.8 SH36(L) Visiting Yacht Length of Stay – Although there has been an increase in visiting yacht numbers overall, they did not linger in Salcombe. The average length of stay for the third quarter was down from 1.8 nights last year to 1.3 nights in 2013.
- 2.1.9 SH37(L) Taxi Passengers Carried – The taxi continues to perform very well, overall passenger numbers this year are up by 19% and up by a massive 240% for the third quarter.
- 2.1.10 SH40(L) Water Quality - Recorded Number of Pollution Incidents – There have been three incidents this quarter, which represents a threefold increase over the third quarter of last year, although the overall number of incidents for the first three quarters has reduced from 14 to 6. Harbour Board members have been involved in two events this quarter which had a focus on water quality. The first was a seminar arranged by the AONB Estuaries Officer involving the Environment Agency and Natural England, the second was a public meeting arranged by Salcombe Town Council with South West Water (SWW). The way ahead would seem now to be to ensure that SWW deliver on their promise to conduct an initial examination and that the Harbour Board and Salcombe Town Council coordinate their lobbying efforts.

To assist the Board in deciding how best to pursue the issue of water quality within the Estuary with SWW the correspondence between the Chairman of the Harbour Board and the Chairman of SWW is attached at Appendices 2 to 6. Salcombe Harbour Authority has achieved improvements in water quality in areas where it has more direct responsibility, e.g. controlling runoff from foreshore developments through advice and conditions; hull washing and scraping system; fishermen's quay waste management system.

2.1.11 SH42(L) Litter Pick Events – There have been no litter pick up events organised during this reporting period.

3. LEGAL IMPLICATIONS

3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications as a result of this report. This report highlights performance issues which may have financial implications at a later date. Should this be the case a separate report will be brought forward for the Harbour Board's consideration.

5. Risk Assessment

5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
The setting and monitoring of realistic Performance Targets will enable the Harbour Board to ensure that statutory obligations are met and that there is real improvement in the service offered to users of Salcombe harbour The Harbour Authority is not delivering a satisfactory service to harbour users. Trends and issues can be identified early and policies and strategies developed to address issues.	3	2	6	The Harbour Board, through its contact with harbour Community Forums and by setting and monitoring performance standards will be in a position to amend the Strategic Business Plan ensuring it remains relevant and that Harbour funds are invested wisely.

Corporate priorities engaged:

Consideration of equality and human rights:

Biodiversity considerations:

Sustainability considerations:

Crime and disorder implications:

Background Papers:

Appendices attached:

Community Life

Economy

Environment

Equality issues are dealt with in the report under the discussion of the Mooring Policy.

Harbour Board performance and policies have a bearing on biodiversity.

The Harbour performance needs to be considered regularly to ensure current policies are sustainable.

The Report considers reported marine crime within the Estuary.




Strategic Business Plan 2012 to 2017.




1. Salcombe Harbour Performance Management Grid.
2. HB Chairman's letter to SWW dated Jul 11.
3. SWW Chairman's response dated Aug 11.
4. HB Chairman's Letter to SWW dated Oct 11.
5. SWW Chairman's response dated Nov 11.
6. HB Chairman's letter to SWW dated Feb 12.




SALCOMBE HARBOUR BOARD – PERFORMANCE MANAGEMENT REPORT THIRD QUARTER 2013/14

Lead Officer – Ian Gibson

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS
SH1 (L)	A visual check of all harbour owned and maintained facilities, landings, pontoons, mooring berths, navigational marks and beacons.	2013/14	Monthly	3 inspections	3	3	3		☺	
		2012/13			3	3	3	3		
SH2 (L)	Defects rectification of major harbour infrastructure and facilities.	2013/14	Investigated within 24 hours, repaired within 7 days	All Defects not repaired within 7 days	1	1	0		☺	
		2012/13			0	0	0	1		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH3 (L)	Launch serviceability	2013/14	Apr to Sep 8 available Sep to Mar 4 available	4 Available	8	8	4			
		2012/13			7	8	4	3		
SH4 (L)	Major Plant un- serviceability (Crane, Barge, Fork lift truck & Van)	2013/14	Available except for planned maintenance, defects rectified within 5 working days.	0	1	1	1			Jones crane, leaking steering ram.
		2012/13			0	0	0	0		
SH5 (L)	Slipways and steps Inspected and cleaned	2013/14	Inspected weekly, cleaned Monthly	3	3	3	3			Kingsbridge slipway is deteriorating rapidly and is crumbling so in parts cannot be power washed.
		2012/13			3	3	3	3		





REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH6 (L)	Failure of navigation lights and marks will be rectified or Local Notice to Mariners issued	2013/14	Within 24 hours	0	1	0	0			
		2012/13		0	0	0	0	0		
SH7 (L)	Patrol of estuary and harbour to ensure no hazards to navigation exist	2013/14	Daily	89	91	92	89			
		2012/13	Daily		91	92	89	90		
SH8 (L)	Inspection and preventative maintenance of Deep water and Foreshore Moorings	2013/14	100% Annually	100%	Complete	Complete	100%			Deep water mooring maintenance completed in November/December
		2012/13			Complete	Complete	100%	Complete		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH9 (L)	Mooring failures	2013/14	Investigat ed within 24 hours repaired within 7 days alternative facility made available	0	0	0	1			1 x Harbour Mooring moved in a storm on 23/24 December. There were 4 boats broke their mooring pick up lines, chafed through during the pre Christmas storms.
		2012/13		0	2	3	5	0		
SH10 (L)	Re-allocation of permanent mooring berths surrendered to Harbour Authority	2013/14	Within 4 weeks	0	1	0	0			
		2012/13			0	0	0	0		
SH11 (L)	Weather forecast to be posted at Whitestrand	2013/14	Daily	Daily	Daily	Daily	Daily			
		2012/13			Daily	Daily	Daily	Daily		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH20 (L)	Compliance with Port Marine safety Code	2013/14	100% Annual audit	Compliance	Compliance	Compliance	Annual Inspection		☺	
		2012/13			Compliance	Compliance	Annual Inspection	Compliance		
SH21 (L)	Compliance with Merchant Shipping Act 1995 Section 198(1) Trinity House inspection of local aids to navigation.	2013/14	100% Annual Audit	Compliance	Annual Inspection	Compliance	Compliance		☺	
		2012/13			Annual Inspection	Compliance	Compliance	Compliance		
SH22 (L)	H&S Incidents and accidents (Staff)	2013/14	10% reduction year on year	≤1	1	1	0		☺	
		2012/13			1	1	0	1		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH22 A (L)	H&S Incidents and accidents (Public)	2013/14	10% reduction year on year	≤1	5	4	0		☺	
		2012/13			1	2	0	0		
SH23 (L)	Speeding Offences detected	2013/14	5% annual reduction	≥28	11	17	0		☺	
		2012/13			7	32	0	0		
SH24 (L)	Minor Collisions	2013/14	5% annual reduction	≥1	12	40	3		☹	
		2012/13			5	16	0	0		
SH30 (L)	Crime figures	2013/14	10% annual reduction	≤5	4	6	1		☺	
		2012/13			8	6	6	1		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH31 (L)	Night Security Patrols	2013/14	100% of contracte d patrols	100%	100%	100%	100%		☺	
		2012/13			100%	100%	100%	100%		
SH32 (L)	Permanent Staff Turnover	2013/14	< 10% annually	0	0	0	0		☺	
		2012/13			1	0	0	0		
SH32A (L)	Staff days Lost to Sickness Absence	2013/14	< 10% annually	≤2	3	0	7		☹	
		2012/13			23	7	3	0		
SH33 (L)	Customer Complaints	2013/14	10% annual reduction	≤3	2	7	1		☹	Customer who uses Whitestrand complained that the initiative to cover propellers to prevent damage was not rigidly enforced.
		2012/13			0	3	0	9		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH34 (L)	Income from visiting yachts	2013/14	5% increase	5,200	40,278	108,056	1,635			The income from visiting yachts during the third quarter was down by 67%. However the total income this year is up by 3%.
		2012/13			43,736	96,438	4,954	402		
SH35 (L)	Visiting Yachts	2013/14	5% Increase	184	1,423	4,299	48			Visiting Yacht numbers down by 72%
		2012/13			1,407	3,191	174	26		
SH36 (L)	Visiting Yacht length of Stay	2013/14	Increase length of stay to 2 nights	2	1.8	1.4	1.3			
		2012/13	Increase length of stay to 1.5 nights		2.1	1.69	1.8	1.18		
SH37 (L)	Yacht Taxi – Passengers carried	2013/14	5% increase		6,224	16,440	153			A massive 240% increase in the yacht taxi passengers carried in the third quarter. Overall this year 19% more passengers have been carried on the yacht taxi.
		2012/13			6,168	12,863	45	190		

REF	ACTIVITY	YEAR	ANNUAL TARGET 2013/14	TARGET FOR QTR	APR/ JUNE	JUL/ SEPT	OCT/ DEC	JAN/ MAR	CURRENT STATUS	COMMENTS for last reporting period
SH38 (L)	Visiting boats Harbour dues collected at Slipway	2013/14	Annual increase		6,512	12,488	52		☺	
		2012/13			7,142	9,983	0	186		
SH40 (L)	Water Quality Recorded number of pollution incidents	2013/14	Zero Pollution Incidents	0	1	2	3		☹	Three Incidents this quarter, which represents a threefold increase over last year, although overall number of incidents has reduced from 14 to 6.
		2012/13			6	7	1	1		
SH41 (L)	Guided Events	2013/14	3/Quarter	3	4	6	3+		☺	Plus 1 cancelled due to storm, 5 illustrated presentations & 2 estuary forum meetings
		2012/13			4	5	5	3		
SH42 (L)	Litter Pick Up Events	2013/14	Quarterly	1	3	1	0		☹	
		2012/13			2	2	2	2		
SH43 (L)	Recycling of yacht refuse	2013/14	Annual Increase	≥ 27%	0	0	?		☹	Awaiting figures from Trade Waste SHDC.
		2012/13	Annual Increase		0	26.93%	0	0		

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Please reply to: Cllr John Carter, Chairman Salcombe Harbour Board
Salcombe Harbour Office, Whitestrand, Salcombe, Devon, TQ8 8BU
Direct telephone: 01548 843791 Direct fax: 01548 842033
E-mail: salcombe.harbour@southhams.gov.uk

Mr K Harvey
Chairman South West Water
Peninsular House
Rydon Lane
Exeter
EX2 7HR

Our ref: IG
13 July 2011

Dear Mr Harvey

At our Board meeting on 12 July 2011 we reviewed, within our performance management scorecard, the number of pollution incidents within the Estuary during the first quarter of this financial year. It was reported that there have been a number of overflow events from the Malborough sewage treatment works and or the storm overflows close to South Sands Beach, three of which have been in the last week.

The pollution events in the lower estuary coupled with the 'Polluted Waters (eutrophic)' status of the water body in the upper estuary, which is currently strangled with an excess growth of thick green algae over the mudflats and a red algal bloom, are extremely worrying for the health of the Estuary

The Harbour Board is concerned by the fact that these pollution events would not have been made public had we not been part of the "Beach Live" trial programme. We understand that there are severe pressures on the sewer infrastructure in and around the Salcombe Estuary but would like some reassurance that South West Water has a realistic plan to tackle these problems in the short and long term.

Yours sincerely

Cllr John Carter
Chairman Salcombe Harbour Board

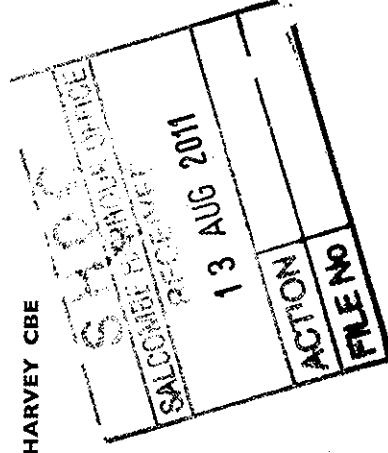
Information:

AONB Estuaries Officer
Environment Agency
Natural England

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FROM THE CHAIRMAN - KEN HARVEY CBE

Cllr J Carter
Chairman Salcombe Harbour Board
Salcombe Harbour Office
Whitestrand
Salcombe
Devon
TQ8 8BU



11 August 2011

Dear Cllr Carter

SALCOMBE SOUTH SANDS BATHING WATER, BEACH LIVE & ESTUARINE WATER QUALITY

Thank you for your letter of 13 July 2011 regarding the above issues. Please be assured that I recognise the concerns you have raised and believe that my comments below demonstrate that South West Water are progressing those aspects that are relevant to the Company.

Beach Live Trial

As you will be aware, "Beach Live" is part of a national trial under the sponsorship of the Defra Cleaner Seas Forum. The trial is assessing the wider public benefits of advising beach users, in as close to real time as possible, as to the potential risks to bathing water quality, of which storm overflows are only one. This is being undertaken in preparation for the wider implementation of the new Bathing Waters Directive, which requires such public advice from 2015 onwards.

The trial, initially pioneered in the South West, has been recognised nationally and South West Water and the other stakeholders involved have been praised by the Environment Minister for this innovative work. I would therefore also like to express my thanks to both the Salcombe Harbour Board and South Hams District Council for their support during the trial at South Sands beach.

Whilst appreciating the environmental quality concerns you raise in your letter, it is important to recognise that storm overflows are an essential part of the sewerage network. They are designed to protect houses and property from flooding during wet weather. Many have already been improved (by the provision of increased storm storage and better screening) through the Clean Sweep Programme, in order to protect bathing water quality and their operation is regulated by the Environment Agency, through environmental permits, which prescribe the volumes of storage and levels of screening required. To date over £2b has been invested

around the Devon and Cornwall coast to enable the region to boast some of the finest bathing waters in Europe. As you are aware, Salcombe already benefits from ultra violet disinfection and storm storage protection as part of this investment.

Given the above, the recording of overflow events at bathing waters is a recent requirement enabled by installing event and duration monitoring (EDM) equipment. This equipment was initially installed to facilitate audited end of season reporting to the Environment Agency of any significant spill events. This means that although the spill events were to be reported retrospectively, the information would still be available publicly. However, what South West Water is now doing, is extending the application of the EDM technology to provide automated 'real time' spill warnings. It is for this development of the reporting system, that we have been recognised.

Unfortunately using raw data derived straight from site is, in a number of locations, subject to some equipment limitations. This can result in some false spill events being reported and one of the Salcombe overflows is affected in this way. Clearly wherever possible we are analysing the data and advising relevant stakeholders as promptly as possible so that, if a spill event turns out not to be real, public warnings are not posted. Obviously the company does not wish for false spill events to be notified and we are working with the Environment Agency to understand the causes and wherever possible resolve them. Mobile telecommunications signals and individual asset locations however sometimes combine to make this a challenge at times.

Whilst your feed back and comments are welcome, I would like to re-emphasise that this is a trial and it is worth noting that Defra, as part of its assessment of the trial, is looking for feedback from all interested parties on its usefulness and limitations. In conjunction with other partners in the Cleaner Seas Forum, Defra are therefore developing an electronic feedback questionnaire for the public which will be supported on their web site and the link circulated to all relevant stakeholders once completed. I will endeavour to ensure that once established, the link is made available to your Board, so that they can seek views on the matters covered in the questionnaire.

Furthermore I fully expect the trial to be discussed at the regional Beach Liaison Group meeting planned for the autumn and would welcome your organisations input and attendance.

Estuarine Water Quality

I note your letter also touches on algal blooms in the estuary and I am happy to update you on the work undertaken in this area.

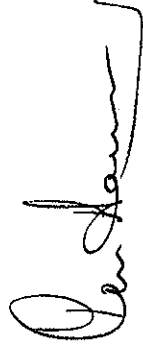
In 2007, the Company funded investigations, promoted by Natural England and the Environment Agency, into the sources of nutrients in the upper estuary and their impact on macro- algal mats and in turn their impact on the Salcombe and Kingsbridge Estuary Site of Special Scientific Interest (SSSI). Our investigation focused on the potential effects that discharges into the upper estuary and in particular the Kingsbridge sewerage system and

Gerston sewage treatment works (STW) were having. This survey work also placed the potential effects of these discharges in the wider context of other diffuse pollution sources prevailing in the catchment.

The outcome of these studies concluded that there was a need to provide for the seasonal removal of nitrogen at Gerston STW, whilst recognising that there remained significant diffuse sources in the catchment not related to our assets. This requirement will benefit water quality by reducing nutrient inputs and therefore reduce the potential for algal mats to develop. The agreed implementation date for the scheme is 31 March 2015 and the funding for these improvements is in place.

I hope the above information has helped clarify the position and highlighted the wider benefits of both our participation in the "Beach Live" trial and our future investment plans for improving the wider estuarine water quality.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Harvey', written in a cursive style.

Ken Harvey
Chairman

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Please reply to: Cllr J Carter

Salcombe Harbour Office, Whitestrand, Salcombe, Devon, TQ8 8BU

Direct telephone: 01548 843791 Direct fax: 01548 842033

E-mail: salcombe.harbour@southhams.gov.uk

Mr K Harvey CBE
Chairman, Pennon Group plc
Peninsula House
Rydon Lane
Exeter
Devon EX2 7HR

Our ref: IG
27 October 2011

Dear Mr Harvey

**SALCOMBE SOUTH SANDS BATHING WATER, BEACH LIVE AND ESTUARINE
WATER QUALITY**

Thank you for your letter of 13 August, which Salcombe Harbour Board discussed at its recent meeting.

It was encouraging to read of the improvements which you have in hand, in particular in relation to the removal of nitrogen from Gerston STW by 31 March 2015 and the development of Beach Live. We appreciate also your support for our phosphate-free initiative and our work together on Scrape The Plate.

However the Board has asked me to write to you again because of our concern about storm outflows from Malborough. Whilst we recognise that storm outflows are unavoidable from time to time, two points especially concern us:

- i. we were alarmed by the frequency of the outflows which Beach Live was revealing. You say that at least one of the alerts was false but nevertheless we would like to know what plans you have to reduce the frequency of these outflows and what you expect the yearly incidence of storm outflows to be;
- ii. whilst outflows may be unavoidable, the Board would like to know whether there is anything that can be done, or is planned, to reduce the impact of these spillages. You mention that, under the Clean Sweep programme, some sewage treatment plants have increased storm storage and better screening: has this been installed at Malborough, or are there plans to do so?

The reason why the Board attaches such high importance to these issues is that storm outflows from Malborough pollute the stream which runs right across the middle of South Sands beach, one of the premier and most popular bathing beaches in Salcombe, with a sailing school and two of Salcombe's larger hotels, and our only EU Blue Flag beach.

The Board and South Hams District Council has worked very hard over the last few years to safeguard the water quality at South Sands and to regain the Blue Flag which we lost in 2007. We achieved that this year and it would be truly devastating to lose the Blue Flag now because insufficient priority was being given to limit the impact of storm outflows from Malborough. I hardly need add that it would be a really serious matter if these outflows were to endanger the health of children playing on the beach.

I would therefore like to press you over whether your company can do anything more to reduce the frequency of storm outflows, or mitigate their effect.

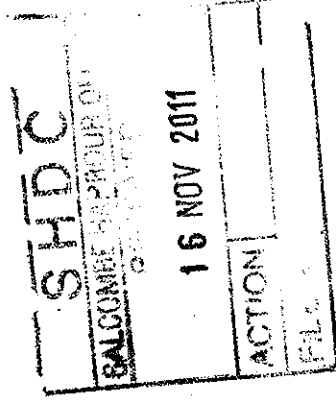
Yours sincerely

Cllr J Carter
Chairman
Salcombe Harbour Board

Peninsula House, Rydon Lane, Exeter, Devon, England EX2 7HR Telephone 01392 443004 Fax 01392 444175

FROM THE CHAIRMAN - KEN HARVEY CBE

Cllr J Carter
Chairman
Salcombe Harbour Board
Salcombe Harbour Office
Whitestrand
Salcombe
Devon
TQ8 8BU



14 November 2011

Dear Cllr Carter

SALCOMBE SOUTH SANDS BATHING WATER, BEACHLIVE & ESTUARINE WATER QUALITY

Further to your letter of the 27 October 2011, I am grateful that the harbour board is encouraged by both the improvements proposed at Gerston Sewage Treatment Works (STW) and our continued support for wider environmental schemes around the estuary. We hope these initiatives will continue to help deliver water quality benefits into the future.

I am sorry to hear about your further concerns and I note your comments in respect of the BeachLive notifications. I have outlined below the discussions we have had with both South Hams District Council (SHDC) and the Environment Agency (EA) on this issue.

Through the development of the EA bathing water profiles, required under the revised bathing waters directive, three combined storm overflows were identified as potentially impacting on the bathing water quality at South Sands. These were Quillets, South Sands pumping station and Malborough Village pumping station. All three overflows have had event and duration monitoring equipment installed as a requirement under the revised directive. This equipment records the start and stop times for overflow events.

As part of BeachLive we developed criteria with the EA by which we could assess how long a discharge would have to operate for before it potentially affected bathing water quality. We then used this criteria and the event and duration data and recorded signals from the sites to generate the BeachLive emails.

In order to ensure that risks to the public are minimised, potentially significant overflow events are reported directly from site with no audit check to make the information available as close to real time as possible. It is for this reason that the emails have disclaimers in respect of the final audited reporting of overflow events.

We have reviewed the Salcombe data, I am pleased to report that South Sands pumping station and Malborough Village pumping station did not spill during the bathing season. Furthermore a review of the 9 reported events up to the 18 August 2011 from Quillets overflow, has also confirmed that all of these events were due to spikes. These were caused by 'electronic noise' and the way in which the data was recorded on site. Consequently we do not believe that they were real overflow events. Given this we reviewed the configuration and reporting criteria at Quillets overflow and agreed improvements with the EA. Subsequently no further significant spill events occurred through the rest of the bathing season.

Clearly we fully appreciate and share the Harbour Boards' concern regarding the risks to bathing water quality and are grateful that you recognise that storm overflows are an essential component of the sewerage system (for the protection of homes and property from flooding). However it is also important to recognise that storm overflows are not the only risk to bathing and stream water quality with diffuse agricultural and urban drainage, private discharges and illegal connections to surface water drains also contributing to potential risks.

Given the above it is important to note that there are no bacteriological standards for stream water quality (only bathing waters) and that background conditions will mean that some risk will always be present. It is for this reason that streams in Cornwall are permanently signed to advise against playing in them. It might also be worth noting that the EA did not monitor Combe Stream in 2011 as they do not consider it a significant risk to bathing water quality.

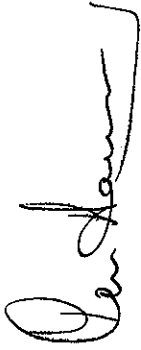
As to future improvements this would be driven by the EA through their assessment of the likely compliance of South Sands under the revised bathing waters directive. The new directive sets four standards 'poor', 'sufficient', 'good' and 'excellent'. Based on the 2008-11 data the EA indicated that South Sands is likely to be classified as 'good' under the new standards. The Governments target for 2015 for all bathing waters is the 'sufficient' standard. Consequently further improvements are unlikely unless there is a significant negative shift in the likely compliance of South Sands bathing water with the future standards.

In light of the above we are pleased to report that Defra have confirmed that South Sands bathing water has met the UK guideline (excellent) standards again this year 2011, with only one sample (out of 20) marginally exceeding the guideline standard. Consequently water quality should not be a limiting factor for any application for Blue Flag status for the 2012 season.

I hope that the information above fully qualifies any concerns you may have had in respect of the performance of our assets and bathing water quality at South Sands. Once again I would like to extend my thanks for your co-operation in the BeachLive trial. Your feedback on the processes involved have helped shape the future development of BeachLive which South West Water is committed to expanding in 2012.

I trust this reply has been helpful to you and in keeping with South West Water's correspondence guidelines, I have enclosed Our Customer Promise and Complaints and Compliments leaflets which explain the standards of service we aim to provide. If I can be of any further help in this matter please do not hesitate to contact me. For all general enquiries, please call our free Helpline on 0800 169 1144.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. H. ...', written in a cursive style.

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Please reply to: Cllr J Carter

Salcombe Harbour Office, Whitestrand, Salcombe, Devon, TQ8 8BU

Direct telephone: 01548 843791 Direct fax: 01548 842033

E-mail: salcombe.harbour@southhams.gov.uk

Mr K Harvey CBE
Chairman, Pennon Group plc
Peninsula House
Rydon Lane
Exeter
Devon EX2 7HR

Our ref: IG
20 February 2012

Dear Mr Harvey

**SALCOMBE SOUTH SANDS BATHING WATER, BEACHLIVE AND ESTUARINE
WATER QUALITY**

Thank you for your letter of 14 November which, as I think you know, I tabled for discussion at the last meeting of the Salcombe Harbour Board.

The Board very much welcomed the way in which you addressed our concerns about the discharges from the Malborough Village and South Sands pumping stations, and your assurance that nearly all the discharges which were reported through BeachLive turned out to be false alarms as the result of electronic noise.

The Board appreciates that the only standards which apply are to bathing water and that there are none for streams. We also recognise that, as you say, storm overflows are not the only pollution risk to streams. But it is just because South Hams District Council has worked with the local farmers to tackle the risk of bacteriological contamination from agricultural sources in South Sands, that we are so anxious to minimise any other source of pollution.

It is good news that DEFRA has confirmed that the South Sands bathing water quality again met the UK guidelines in 2011. That should enable us to renew the Blue Flag there, which is so important to the harbour. It is good to know that you share our concerns about this and that you appreciate how publicly sensitive this issue is for us.

Like you, I hope that this correspondence will have settled the matters between us, but I will certainly take up your kind invitation to write further if we again have cause for concern about the discharges from Malborough or South Sands.

Yours sincerely

Cllr John Carter
Chairman, Salcombe Harbour Board

AGENDA
ITEM
12

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM
12

NAME OF COMMITTEE	Salcombe Harbour Board
DATE	3 February 2014
REPORT TITLE	MATTERS FOR FUTURE CONSIDERATION
REPORT OF	Salcombe Harbour Master
WARDS AFFECTED	All South Hams

Summary of Report

To identify matters for future consideration by the Harbour Board.

RECOMMENDATION

That the Harbour Board RESOLVES to note the report.

Officer contact:

Ian Gibson – 01548 843791 (Internal 7104)

1. BACKGROUND

- 1.1 The Harbour Board Constitution states that Matters for Future Consideration should be reviewed by the Board at each meeting.

2. MATTERS FOR FUTURE CONSIDERATION

2.1 Harbour Board Dates

2.1.1 The following dates have been set for Harbour Board Meetings:

- 31 March 2014 (Quay House Kingsbridge at 1600)
- 2 June 2014
- 14 July 2014
- 29 September 2014

2.3 Performance Management

- 2.3.1 Reviewed quarterly with the report for the 4th quarter of financial year 2013/14 being presented on 2 June 2014.

2.4 Customer Satisfaction Survey

- 2.4.1 A customer satisfaction has been conducted annually since 2007. It is the intention to compliment the in office survey with an on line edition this year. The results of the 2014 survey will be reported to the Harbour Board in November 2014.

2.5 Opening of the Kingsbridge Pontoons

- 2.5.1 The works to complete the Kingsbridge Berthing Improvements project is planned to complete by 31 March 2013.
- 2.5.2 It is proposed that an opening ceremony takes place at the Pontoons, after the 31 March Harbour Board Meeting, at 1800.
- 2.5.3 The Rivermaid Ferry has agreed to participate in the ceremony, providing a platform from which to serve refreshments.

2.6 Year End Budget Report

- 2.6.1 To be presented to the Board in July Annually.

2.7 Revenue Budget and Review of Fees and Charges.

- 2.7.1 The annual revenue budget for the following financial year will normally be brought to the Harbour Board for consideration in September annually.
- 2.7.2 The Harbour fees and charges will be reviewed annually and brought to the Board for consideration directly after the Budget in September annually.

2.8 Harbour Board Annual Report

- 2.8.1 The Harbour Board Annual Report will normally be presented at the July Board meeting annually.

2.9 Harbour Annual Inspection

- 2.9.1 To take place in July Annually. Next year's inspection will take place on the morning of 14 July 2014 before the scheduled Board Meeting.

2.9.2 The Harbour's Designated Person will be invited to attend.

2.10 Compliance with the Port Marine Safety Code

2.10.1 The Harbour is audited bi-annually by the designated person. A report of the Audit forms part of the agenda of this meeting.

2.10.2 The next inspection will be in December with the results being reported to the Board in February 2015.

2.11 Long Term Security of Tenure

2.11.1 The Strategic Business Plan 2012-2017 set out within its key Strategic Objectives task 4.1 - To consider future boating trends and provide suitable and appropriate facilities and Services through an annual Harbour Board Workshop.

2.11.2 The third Harbour Board annual workshop will be held in October 2014, date to be confirmed.

3. LEGAL IMPLICATIONS

3.1 Statutory Powers: Local Government Act 1972, Section 151. The Pier and Harbour Order (Salcombe) Confirmation Act 1954 (Sections 22-36).

3.2 There are no other legal implications to this report.

4. FINANCIAL IMPLICATIONS

4.1 There are no new financial implications as a result of this report; however this is not necessarily the case for the work which will follow.

5. RISK ASSESSMENT

5.1 The risk management implications are:

Risk/Opportunity	Risk Status			Mitigating and Management Actions
	Impact/Severity	Likelihood/Probability	Risk Score	
The Harbour Authority is striving to deliver an improving service to harbour users.	3	2	6	The Harbour Board, considers many routine issues annually, topical items will be brought to the Board as they arise. The objective being a better service in a safe environment for estuary users.

Corporate priorities engaged:	Community Life Economy Environment
Statutory powers	The Pier & Harbour (Salcombe) Order Act 1954
Consideration of equality and human rights:	There are no equality or human rights issues with this report
Biodiversity considerations:	None
Sustainability considerations:	None
Crime and disorder implications:	None
Background Papers:	Strategic Business Plan 2nd Edition dated 26 March 2012. Constitution of the Salcombe Harbour Board (as adopted by Council on 25 June 2009). Harbour Board Constitution (as adopted by Council on 25 June 2009).
Appendices attached:	None

**MINUTES OF THE MEETING OF
THE SALCOMBE HARBOUR BOARD
HELD AT CLIFF HOUSE, SALCOMBE ON MONDAY 3 FEBRUARY 2014**

Members in attendance			
* Denotes attendance		ø Denotes apology for absence	
ø	Cllr R J Carter (Chairman)	*	Mr G Burrell
*	Cllr M J Hicks	*	Dr C C Harling (Vice Chairman)
*	Cllr K R H Wingate	*	Mr M Mackley
*	Cllr S A E Wright	*	Mr H Marriage
		*	Mr A Thomson
		*	Mr M Taylor
ø	Cllr H D Bastone (lead Executive Member)		

Item No	Minute Ref No below refers	Officers in attendance and participating
All agenda items		Salcombe Harbour Master and Member Services Manager

SH.37/13 MINUTES

The minutes of the meeting of the Salcombe Harbour Board held on 18 November 2013 were confirmed as a correct record and signed by the Chairman.

SH.38/13 DECLARATIONS OF INTEREST

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, and the following were made:

Cllr Wright, Mr Burrell, Dr Harling, Mr Marriage, Mr Taylor and Mr Thomson all declared a disclosable pecuniary interest in all related agenda items by virtue of having moorings or paying harbour dues to the Council, however as the Deputy Monitoring Officer had previously granted a dispensation under Paragraph 8.1 (c) of the Code of Conduct (minute SH.14/13 refers), all Members remained in the meeting and took part in the discussion and debate on all agenda items.

Dr Harling also declared a personal interest in Item 7 'Feedback from Harbour Community Forums' (Minute SH.40/13 refers), by virtue of being a member of the Board of the Salcombe Yacht Club. He remained in the meeting and took part in the debate and vote thereon.

SH.39/13 PUBLIC QUESTION TIME

Concerns were raised by one member of the public in respect of potential overcrowding at Whitestrand pontoon if the Rivermaid was to operate from there and he queried that if a proposal was to be made for the Rivermaid to run from Whitestrand then all users could be involved in the discussion. The Harbour Master did note that Whitestrand is now a commercial landing pontoon and therefore not as busy as it used to be and that there were currently no plans for the Kingsbridge Ferry to run from Whitestrand, although it may run hourly trips from Whitestrand at low water.

Another member of the public was concerned that the ladders at Kingsbridge had been removed and asked if the new pontoons would include ladders or other means of exiting the water. In response, the Harbour Master advised that there would be ways of exiting the water.

SH.40/13 FEEDBACK FROM HARBOUR COMMUNITY FORUMS

The Board received verbal update reports from the Board Members who attended the Harbour Community Forums. The Chairman began this item by reminding Members of the Board of the importance of the Community Forums as a vital part of the interface between the Board and the community. The updates were as follows:

Salcombe Kingsbridge Estuary Association (SKEA)

The representative for SKEA advised that the Association now operated almost as a virtual Association and used their website to exchange information.

Salcombe Kingsbridge Estuary Conservation Forum (SKECF)

The representative for SKECF was not in attendance, however, another Member had attended the latest meeting of the Forum and advised that no contentious issues had been raised. The Forum had a newly appointed Chairman and it was expected that he would be looking to boost numbers of attendees.

Kingsbridge Estuary Boat Club (KEBC)

Representatives of the KEBC were in attendance and raised their continuing concern with the state of the slipway at Kingsbridge. It was important that the slipway remained fully useable. The Harbour Master advised that discussions had been held with South Hams District Council who had responsibility for the slipway. A District Councillor in attendance advised the Board that the Council did have a Capital Programme but that decisions on how to spend capital monies were in the hands of the full Council. The Board Members asked that their wish for the proposals of the Harbour Master in relation to the Kingsbridge slipway to be taken forward be noted.

South Devon & Channel Shellfishermen

There were no issues to raise.

Kingsbridge and Salcombe Marine Business Forum

The representative advised that there were no issues to raise.

SH.41/13 VICTORIA QUAY PONTOONS

The Board was presented with a report that recommended the replacement of Victoria Quay Pontoons. The Harbour Master introduced the report and advised that an opportunity had arisen to replace the Pontoons and, in view of their condition, he had hoped that the Board could support the recommendation.

Following a brief discussion it was then:

RECOMMENDED

That Council be **RECOMMENDED** to bring forward the replacement of the Victoria Quay Pontoons from the Financial year 2015/16 to 2013/14 and finance the project from the Harbour General Reserve.

SH.42/13 PORT MARINE SAFETY CODE

The Board was presented with a report that appraised Members of the Salcombe Harbour Authorities compliance with the Port Marine Safety Code.

The Harbour Master introduced the report and answered questions of clarity. Members were concerned about a lack of guidance for stand up boarders who potentially did not appreciate that they could put themselves and others at risk by their actions. Following a discussion on this matter it was **PROPOSED, SECONDED** and on being put to the vote declared **CARRIED** that an additional recommendation be included to monitor activity for next year. Members also felt that links could be placed on the Harbour Authority website to guidance issued by other organisations.

Members also discussed the matter of flooding and it was agreed that there should be direct and regular communication between the Board and South West Water.

It was then:

RESOLVED that:

- a) The findings of the Audit at Appendices 1 and 2 be noted;
- b) The 11th edition of the Safety Management System dated 2 December 2013 as shown at Appendix 3 be endorsed and published; and
- c) The activity of stand up boarders be monitored for possible inclusion in the report for next year.

SH.43/13

REVIEW OF BYELAWS ENFORCEMENT POLICY

The Board Members were presented with a report to review the Harbour byelaws. In presenting the report, the Harbour Master outlined how the Marine Navigation Act 2013 made provision in relation to marine navigation and harbours and which provided the Salcombe Harbour Authority with the opportunity to apply for the powers to make Harbour Directions.

Members discussed the enforcement policy at Appendix C and recommended its adoption. Members then went on to discuss applying to the Department for Transport (DfT) for the power to give Harbour Directions. It was accepted that the Harbour Directions would not exactly replace byelaws, however, Members generally felt it was important that the Authority applied for the power to give Harbour Directions as they would enable the Harbour to respond to change more quickly. It was also noted that a Port User Group would need to be set up, and, again, this enforced the importance of the Harbour Community Forums.

It was then:

RECOMMENDED:

1. That the Enforcement Policy at Appendix C be adopted; and
2. That Salcombe Harbour Authority applies to the DfT for the power to give Harbour Directions under sections 40A-0D of the Harbours Act 1964 as amended by the Marine Navigation Act 2013.

SH.44/13

PERFORMANCE MANAGEMENT

Members were presented with a report that set out the Harbour's performance against agreed Performance indicators (PIs).

The Harbour Master introduced the report and took Members through the key elements and advised them of more detail where appropriate.

The report included previous correspondence with South West Water as water quality was one of the Performance Indicators that had to be reported. Board members were also keen to ensure that the water quality was acceptable for bathers, and also for the shellfish industry. Earlier points were reiterated that a channel of communication should be in place between the Board and South West Water.

It was then:

RESOLVED

That the report be noted.

SH.45/13 **MATTERS FOR FUTURE CONSIDERATION**

The Board considered a report that identified matters for future consideration by the Harbour Board.

The Board discussed arrangements for the next meeting on 31 March 2014 which would be in Kingsbridge and would take place prior to the official opening of the Kingsbridge Pontoons.

It was then:

RESOLVED

That the report be noted.

(Meeting commenced at 2.30 pm and concluded at 4.10 pm)

Chairman

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