

Item: 6

Harbour Authority Sub-committee: 25 October 2022.

Port Marine Safety Code – Annual Compliance Audit.

Action Plan Update.

Report by Corporate Director for Enterprise and Sustainable Regeneration.

1. Purpose of Report

To consider progress with the action plan emanating from the Port Marine Safety Code Audit of 7 and 8 December 2020.

2. Recommendations

The Sub-committee is invited to note:

2.1.

The principals of safe port operation as set out in section 3 of the report.

2.2.

That, on 7 and 8 December 2020, Marico Marine Limited, as the Designated Person, undertook the annual audit of compliance with the Port Marine Safety Code.

The Sub-committee is invited to scrutinise:

2.3.

The action plan arising from the Port Marine Safety Code annual audit of compliance, attached as Appendix 1 to this report, in order to obtain assurance that action had been taken or agreed where necessary.

3. Port Marine Safety Code

3.1.

The Port Marine Safety Code (the Code) sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector and, while the Code is not mandatory, these bodies have a strong expectation that all harbour authorities will comply. The Code is intended to be flexible enough that any size or type of harbour or marine facility will be able to apply its principles in a way that is appropriate and proportionate to local requirements.

3.2.

The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope. Further information on these aspects is provided below.

3.3. Accountability for Marine Safety

3.3.1.

Accountability for the management of marine safety is based on these general principles:

- The duty holder is accountable for safe and efficient operations. The duty holder should make a clear published commitment to comply with the standards laid down in the Port Marine Safety Code.
- Executive and operational responsibilities for marine safety must be clearly assigned and those entrusted with these responsibilities must be appropriately trained, qualified and experienced and answerable for their performance.
- A 'designated person' must be appointed to provide independent assurance about the operation of its Marine Safety Management System (MSMS). The designated person must have direct access to the duty holder.

3.3.2.

An MSMS should be in place to ensure that all risks are identified and controlled – the more severe ones must either be eliminated or reduced to the lowest possible level, so far as is reasonably practicable (that is, such risks must be kept as low as reasonably practicable or "ALARP"). Organisations should consult, as appropriate, those likely to be involved in, or affected by, the MSMS they adopt. The opportunity should be taken to develop a consensus about safe navigation. The MSMS should refer to the use of formal risk assessment which should be reviewed periodically as well as part of post incident/accident investigation activity.

3.4. Designated Person

On 26 October 2017, the Council appointed Marine and Risk Consultants Limited (Marico Marine) to provide Designated Person Services to the Orkney Islands Council Marine Services. On 16 October 2020 the contract was extended by a further year. The service was retendered in 2021 and was again awarded to Marico Marine for an initial term of three years with an option for two 12-month extensions.

3.5. Conservancy

3.5.1.

A harbour authority has a duty to conserve the harbour so that it is fit for use as a port. The harbour authority also has a duty of reasonable care to see that the harbour is in a fit condition for a vessel to be able to use it safely.

3.5.2.

Harbour authorities should provide users of the harbour with enough information about conditions in the harbour such as depths of water, local Notices to Mariners, etc.

3.5.3.

Harbour authorities have duties and powers as local lighthouse authorities (or providers of local aids to navigation) and specific powers in relation to wrecks. These duties impose the following requirements:

- To survey as regularly as necessary and find the best navigable channels.
- To place and maintain navigation marks where they will be of greatest assistance to navigation.
- To keep a 'vigilant watch' for any changes in the sea or river bed affecting the channel or channels and move or renew navigation marks as appropriate.
- To keep proper hydrographic and hydrological records.
- To ensure that hydrographic information is published in a timely manner.
- To provide regular returns and other information about the authorities' local aids to navigation as the General Lighthouse Authority may require.

3.6. Navigation

3.6.1.

Management of a harbour begins in determining which activity is safe and where it can take place, having regard to the physical constraints and the variety of activities being undertaken.

3.6.2.

Every harbour is different, and the requirement to manage navigation varies from one to another. A formal assessment of navigational risk, as required by the Port Marine Safety Code, will determine what management of navigation is required, and to what degree; monitoring, controlling or managing traffic needs to be taken in mitigating risk.

3.7. Pilotage

3.7.1.

The Port Marine Safety Code refers, amongst other things, to the main powers and duties which harbour authorities (as a Competent Harbour Authority (CHA) under the provisions of the Pilotage Act 1987) has a duty to assess what, if any, pilotage services are required to secure the safety of ships, and to provide such services as it has been deemed necessary. The use of these powers should follow these general principles:

- Harbour authorities are accountable for the duty to provide a pilotage service; and for keeping the need for pilotage and the service provided under constant and formal review.
- Harbour authorities should therefore exercise control over the provision of the service, including the use of pilotage directions, and the recruitment, authorisation, examination, employment status, and training of pilots.
- Pilotage should be fully integrated with other port safety services under harbour authority control.
- Authorised pilots are accountable to their authorising authority for the use they make of their authorisations: harbour authorities should have contracts with authorised pilots, regulating the conditions under which they work - including procedures for resolving disputes.

3.7.2.

A CHA must issue pilotage directions if it decides, based on its assessment of the risks, that pilotage should be made compulsory. The directions must specify how and to which vessels they apply. Ship owners and any other interested parties who use the port on a regular basis, must be consulted before the directions are implemented.

3.8. Ship Towing Operations

3.8.1.

While any contract for the use of tugs is formally for the master of a vessel, the use of harbour tugs is one of the principals, and most direct means open to a harbour authority to control risk.

3.8.2.

Harbour authorities should determine, through risk assessment, appropriate guidance on the use of tugs in harbour areas. Recommendations should include the type of tugs and method of tow (where applicable) in addition to the number of tugs also where appropriate. Interested parties, including towage providers, users and pilots should be consulted in the preparation of such guidance. The guidance should be reflected in towage directions.

3.8.3.

There should be procedures for special directions to be used, if necessary, where a master or pilot proposes that the guidelines should not be applied in some respect.

3.8.4.

Directions should be reviewed regularly in the light of experience, changes in legislation, tug technology and the operating environment.

3.9. Marine Services

3.9.1.

“Marine Services” means the support activities carried out by the organisation to maintain safety of navigation and the hydrographic regime. Marine services may be provided by the harbour authority itself or by commercial organisations operating on-site. There are a number of general principles when operating marine services:

- An authority’s safety management system should cover the use of harbour craft and the provision of moorings.
- The formal safety assessment should be used to identify the need for, and potential benefits for safety management of harbour craft.
- The authority should ensure that harbour 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.
- Byelaws and the power to give directions are available for these purposes.

3.9.2.

Harbour authorities have powers in byelaws and directions to regulate the mooring of vessels in the harbour. The SMS should govern the use of these powers.

3.10. Professional Qualifications

3.10.1

Harbour authorities must assess the fitness and competence of all persons appointed to positions with responsibility for safe navigation.

3.10.2.

Authorities must ensure their staff meet the nationally agreed standards of competence, or alternatively be able to show that their local competency standards are fully equivalent.

3.10.3.

Achieving marine port safety is a team operation and people in these roles must be competent and adequately trained.

3.11. Accident Reporting

3.11.1.

The duties of a harbour authority include an obligation to conserve and facilitate the safe use of the harbour and a duty of care against loss caused by the authority's negligence. Such losses may involve death, serious injury, pollution and other undesirable outcomes and they may involve breaches of national or local laws.

3.11.2.

Investigations by the harbour master of marine incidents have two essential purposes:

- To determine the cause of the incident, with a view to preventing a recurrence of that incident (or similar).
- 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.

3.11.3.

It is, therefore, essential that the marine Safety Management System addresses the potential for incidents to occur and to provide instruction and guidance on any investigations and enforcement action that may be required as a result. By ensuring that a robust, rigorous, independent investigation has been carried out, the board and the duty holder can be assured that their obligations for compliance have been addressed.

4. Port Marine Safety Code – Annual Audit

4.1.

Marico Marine Limited, as the Designated Person, has conducted independent audits of Marine Services for the past three years, with these audits showing continued compliance with the Port Marine Safety Code and a continuing trend of improvement.

4.2.

The Designated Person undertook the latest annual audit of compliance remotely on 7 and 8 December 2020 and the audit was presented to the Harbour Authority Sub-committee on 16 March 2021.

4.3.

Appendix 1 to this report contains an update in relation to items raised during Port Marine Safety Code Annual Audit.

4.4.

The latest updates (October 2022) show that there are 18 items on the list, with three completed and the remainder all in hand with completion dates in the first half of 2023 (calendar year).

4.5.

The next annual Port Marine Safety Code Audit is planned to commence during the week beginning 7 November 2022. The results of this audit will be considered and a revised / updated list and associated action plan submitted to the Sub-committee in early 2023.

5. Corporate Governance

This report relates to the Council complying with governance and scrutiny and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

6. Financial Implications

There are no immediate financial implications arising from this report.

7. Legal Aspects

7.1.

The Council, as Harbour Authority, has certain legal duties with regard to port safety, some of which are referred to in the Port Marine Safety Code. The Code does not itself create any new legal duties but a failure to adhere to the good practice set out in it may be indicative of a Harbour Authority being in breach of the legal duties relating to port safety. The Code has introduced a national standard for every aspect of marine safety and establishes a measure by which Harbour Authorities can be accountable for discharging their legal powers and duties to run a harbour or facility safely and effectively. Ensuring compliance with the Port Marine Safety Code will assist the Council in discharging its duties as harbour authority.

7.2.

The Harbour Authority Sub-committee, as duty holder, is responsible for ensuring that the Council complies with the Port Marine Safety Code. This includes:

- Being aware of the organisation's powers and duties related to marine safety.
- Ensuring that a suitable Marine Safety Management System (MSMS), which employs formal safety assessment techniques, is in place.
- Appointing a suitable designated person to monitor and report the effectiveness of the MSMS and provide independent advice on matters of marine safety.
- Appointing competent people to manage marine safety.

- Ensuring that the management of marine safety continuously improves by publishing a marine safety plan and reporting performance against the objectives and targets set.
- Reporting compliance with the Code to the MCA every 3 years.
- Reviewing existing powers on a periodic basis to avoid a failure in discharging its duties or risk of exceeding its powers.

8. Contact Officers

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9. Appendix

Appendix 1: PMSC Audit Action Plan October 2022 Update.

ORKNEY ISLANDS COUNCIL – PORT MARINE SAFETY CODE – OCTOBER 2022 REPORT ON PROGRESS				
Number	Recommendation	Progress at September 2021	Progress at October 2022	Target Completion Date
1	Agree a Memorandum of Understanding (MOU) between the St Margaret's Hope Pier Trust and the Orkney Islands Council Harbour Authority (OICHA) to formalise the current working arrangements. (There is a known anomaly in St Margaret's Hope Bay where the Statutory Harbour Authority (SHA) area of the St Margaret's Hope Pier Trust (900 yds from the pier) appears to lie inside the Orkney Islands Council Harbour Authority (OICHA) SHA area described in the Orkney Islands County Council Act 1974.)	Not yet taken forward.	To make a request to OIC Legal to work on MoU with SMH, without changing details in OCC 1974 Act	April 2023
2	Introduce General Directions.	General Directions have been drafted and are currently being reviewed by the OICHA Management Team.	Internal document 90% completed.	Internal completion December 2022 with report to HA Sub early in 2023. Requires external consultation

				with specific bodies before implementation. Therefore full implementation may not be until summer 2023
3	Arrangements are put in place to ensure that there remains a nominated Duty Holder throughout the whole local election process.	Arrangements have been drafted to presented to the current Duty Holder Q4/21.	This action was completed and there was a nominated Duty Holder throughout the election period. New Duty Holder has now been appointed.	Action Complete.
4	Update the OICHA Website.	In final stages of being upgraded and expected to be functioning during Q3/21.	Carried out during 2022, will be under constant review	Action completed
5	The Navigation Risk Assessment is reviewed when relevant outside incident investigation reports (e.g. MAIB Reports) come to the Harbour Authority's attention.	Not yet been taken forward. New Port Safety Manager.	Will be introduced late 2022	By end of 2022
6	Marine Policies are reviewed when the new Harbour Authority Sub Committee is appointed after the 2022 Local Elections.	Not required until Q3/22.	Completed May 2022 – Marine Safety Plan and Environment Policy documents signed by Chair HA Sub-committee 22 May 2022	Action completed
7	A review is underway of personal safety issues, particularly regarding the safety	Action underway. This is a long-term project requiring continual management	Pier inspections being carried out, but needs to be expanded. Safety campaigns via web site	On-going

	of the general public in the vicinity of the harbours and piers.	focus including the current regular jetty inspections. The challenge is to encourage a local culture change.	and social media initial start and need to be expanded.	
8	Take full advantage of the Hazman incident recording and investigation tracking system.	Not yet been taken forward. New Safety Manager. Hazman training has been arranged.	See item 17 for detail	
9	Develop an overall emergency training and exercise plan involving all parts of Marine Services (e.g. OICHA, Tugs, Ferry Piers etc).	Not yet taken forward other than OPRC. A COMAH exercise is being planned for Q4/21.	COMAH and MOL exercises are responsibility of OIC & operator to organise. Emergency Training to be organised. OPRC exercises and training up to date within OICHA, but needs updating for other OIC staff. Co-ordination between all Marine Services, in hand.	OICHA took part in latest COMAH exercise OICHA staff up to date OPRC. Emergency training summer 2023
10	Review the procedures for handling dangerous or polluting cargoes/ substances to ensure they remain fit for purpose.	Not yet been taken forward.	To be undertaken by Port Safety Manager.	Spring 2023
11	Develop a replacement ten-year hydrographic survey programme.	Not yet taken forward.	5yr hydrographic survey plan and associated tender has been issued. 10 year plan to follow.	Award contract by end of 2022

		The current survey cycle is being continued however the next ten-year hydrographic survey programme has not been drafted.		
12	Review and introduce updated Pilotage Directions.	Drafted and are currently being reviewed internally by the pilots and the OICHA Management Team.	Further internal review completed, awaiting feedback from Pilots. Before going to Committee and consultation with others.	Early 2023
13	Formalise the pilot's consideration of ships' towing arrangements' safe working loads and amend the Master Pilot Exchange Form to provide both a prompt and a record.	Not yet been taken forward.	Not yet completed – to be worked through with Pilots.	Spring 2023
14	Introduce the planned Pilot Continuing Professional Development (CPD) programme.	Part of the draft Pilotage Directions. (See 12 above).	After consideration – not part of Pilotage Directions but will be part of a training manual for Pilots linked to the SMS.	Spring 2023
15	Introduce a robust and transparent pilot reauthorisation procedure.	Part of the draft Pilotage Directions. (See 12 above).	In hand.	Spring 2023
16	Following a number of incidents around the United Kingdom, the MAIB and MCA have drawn Harbour Authorities' attention to the hazards surrounding the	No yet taken forward as a project (See 7 above). OICHA have reported the MCA Scottish emergency towing	Initial review carried out, but not yet completed. Completion and results to be considered internally ASAP. PSM to lead.	Early 2023

	mooring of vessels and, in particular, the practice of self-mooring. Review the mooring procedures throughout all the OICHA SHA harbours.	vessel (ETV) for self-mooring on Hatston Pier.		
17	Establish a definitive list of all the risk assessments that are currently being employed within Marine Services. Rationalise the overall Marine Services risk assessments and adopt a common methodology and approach to review and saving.	Towage Superintendent has been doing some overall work on risk assessments as part of the introduction of MARAD for the Towage Department.	Full RA scoping exercise to commence week beginning 7 Nov 2022.	Depending on scoping and work required – Spring 2023
18	The vehicle traffic and pedestrian management on Kirkwall Pier is not safe and requires review.	This was a new observation in Sept 2021.	In hand – PSM to lead.	Spring 2023