



Report 03.417
Date 17 July 2003
File J/1/2/3

Committee Environment
Author Mike Pryce Regional Harbourmaster

Future Involvement of Regional Councils in Harbour Management

1. Purpose

The purpose of this report is to advise the Committee of future developments that are likely to affect Councils involvement in harbour safety management.

2. Background

The following was published in the Maritime Safety Authority's (MSA) magazine "Safe Seas, Clean Seas", Issue 6, June 2003:

"Review of Port Risk

While changes to Maritime Rule 90 represents a major development in pilotage law in New Zealand, it stops short of setting out a durable, long-term regime. This is very much by design, as such a resolution requires a broader and deeper review than was possible in the time available for the development of these rules.

Over the next two years, the MSA plans to complete a review of the management of whole-of-port risks.

*In addition to pilotage, the review will cover the management of the performance of aids to navigation, the future of the office of harbourmaster and - more fundamentally - **the long-term role of local government in navigational safety and the arrangements governing the assessment and effective management of risk in our ports.***

It is anticipated that the next fifteen months will be spent developing policy proposals on these matters. This may need to be followed by legislative changes, with the aim of having the whole package tidied up by the end of June 2005."

Subsequent to the above, a letter and explanatory booklet were received from MSA on 14 July outlining the development of a strategy for a **National Port and Harbour Safety System for New Zealand**.

The strategy statement reads:

“The MSA intends to continue to provide independent oversight of port and harbour safety systems through inspections and audits and to promote actively the concept of self-audit by relevant parties such as port companies and those exercising the Harbourmaster function. These inspections and audits will use a Port and Harbour Marine Safety Code as the benchmark for the relevant port operations and maritime safety administrations to achieve. The Port and Harbour Marine Safety Code will be supported by Guidelines of Good Practice.

In recent months the MSA has undertaken a review of the relevant existing law in order to identify and address gaps, conflicts and deficiencies in legislation with respect to port and harbour safety policy. In their view, New Zealand’s ports and harbours have a clear need for a national standard that defines accountability, interprets relevant law and which explains the duties and powers of individuals along with the measures that they should adopt in order to discharge their responsibilities.

The development of the National Port and Harbour Marine Safety Code will formally commence at the end of August 2003. The final draft of such a Code will be completed by mid-2004. There will also be developed certain Guidelines to Good Practice during the same period.

In order to meet the requirements of the National Port and Harbour Maritime Safety Code, port operations and maritime safety administrations will be required to develop standard operating procedures and safety plans that describe their operations. It is envisaged that these measures will be in place within one calendar year of the official launch of the National Port and Harbour Safety Code.”

The introduction to the explanatory booklet states:

“In the last eighteen months a number of significant shipping casualties have taken place in New Zealand involving port access, each of which had the potential for an environmental catastrophe. Subsequent investigations and audits of port operations and maritime safety administrations have highlighted structural weaknesses and significant inconsistencies in the way that safety and risk is managed in some of New Zealand’s ports and harbours.

While there is no question that the professionalism and high calibre of many individuals who currently administer safety in New Zealand's ports and harbours continue to make a major contribution to safety. Nevertheless, all port and harbour safety management systems must be inherently safe and not over-rely on the quality of the individuals who reside within them.

The absence of these two tools introduces a degree of inherent risk into any safety management system and therefore dramatically reduces its potential effectiveness. In the maritime area, the absence of standard operating procedures exposes individual employees of port operations and maritime safety administrations to greater degrees of liability than should reasonably be expected by their employers."

MSA intends to work towards developing a policy that makes no assumptions about the longer-term continuation of existing organisational functions, (i.e. there may well be a change in existing arrangements).

3. Legislation

Over the last decade, legislative changes relating to harbour safety have been piecemeal and slow in coming. The Port Companies Act 1988 repealed vast commercial sections of the Harbours Act 1950.

The remaining rules, mainly relating to safety issues, were often derisively referred to as "residual safety responsibilities", and were slow to change. It was 1994 before the Maritime Transport Act was passed which enabled numerous Maritime Rules to be gradually introduced.

Whilst the passing of the Port Companies Act had been accorded some Parliamentary priority in order to modernise commercial working practices on the wharves, this same priority was not accorded to the "residual safety responsibilities". It was only on 31 March 2003 that remaining vestiges of legislation such as the General Harbour Regulations 1968 were finally repealed, some fourteen years after the reform process commenced.

Replacement Maritime Rules to cover all of the functions repealed were not all made in good time, which has resulted in some significant gaps in the new legislation.

There were some disadvantages that arose from the lengthy reform process. Deficient legislation was left in place for a prolonged period that many consider eventually contributed towards serious marine casualties in some ports.

Most ports managed to operate professionally to standards of "best practice" despite a lack of clarity or certainty in New Zealand maritime legislation.

Replacement legislation was itself frequently defective and flawed.

4. Future?

Given the likely direction that the MSA is heading (i.e. a take-over of Council's statutory and regulatory harbour management role), Council may, in future, have to give consideration as to whether they wish to continue to have any statutory and regulatory harbour management role. Council staff will be looking into the matter further and will develop an appropriate course of action.

The deficiencies identified in some ports are not necessarily present in Wellington. The division of roles and responsibilities since 1989 has provided Council with an effective harbour management system that provides for involvement in harbour operations and activities, while retaining a degree of independence from commercial operations.

Any decisions made by MSA may affect and impact on local government being able to regulate or control water activities in its own area.

Complicating any collective view on this issue is the fact that some Regional Council's would be quite willing to be relieved of their harbour statutory and regulatory responsibilities.

5. Communication

It may be appropriate for a press release to be prepared expressing concern over this issue.

6. Recommendation

It is recommended that the Committee:

1. *receive the report*
2. *note the contents; and*

Report prepared by:

Report approved by:

Mike Pryce
Manager Harbours/Regional
Harbourmaster

Jane Bradbury
Divisional Manager,
Environment