

HAMPSHIRE COUNTY COUNCIL

Report

Committee	River Hamble Harbour Board
Date:	16 July 2010
Title:	Marine Director's Current Issues
Reference:	1825
Report From:	Director of Culture, Communities and Rural Affairs

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1. Summary

1.1. The purpose of this report is to update members on a number of issues pertaining to the management of the harbour, including progress on implementation of recommendations on Harbour Dues (including weekly dues), Harbour Board and Management Committee training, an update on new Patrol Boats, some Harbour Office staff changes, and a new complaints procedure.

2. Harbour Dues

2.1. Harbour Board decisions on changes to the Harbour Dues regime are now being implemented as far as practicable.

2.2. A weekly rate, identical to the former three day rate, has already been agreed by the Harbour Board, as follows:

Vessels under 6 metres LOA (unless zero-rated) - £10 per week (incl VAT)

Vessels over 6 metres LOA - £15 per week (incl VAT)

2.3. Patrol staff have experienced difficulties in identifying whether a given vessel under 6 metres has a keel or a centreboard when it is afloat so, for practical reasons, an interim solution has been adopted. Thus, any dry-sailed vessel under 6 metres, provided it has no engine or an engine of less than 10hp, is being interpreted as zero-rated, regardless of whether or not it has a keel. Vessels under 6 metres LOA and with an engine of 10hp or more (excluding other zero-rated categories) are being charged the full rate of Harbour Dues (£16.45 per metre or part thereof).

- 2.4. It is proposed that a review of the current arrangements and their application in practice will be carried out at the end of the year.

3. Training

- 3.1. In order to comply with the Harbour Board's decision that suitable training should be undertaken on an ongoing basis for members of the Management Committee and Harbour Board, a training syllabus has been drawn up (see Appendix 1). An initial training session has already been successfully conducted for one member of the Management Committee and one member of the Harbour Board, using the new syllabus.

4. Patrol Boats

- 4.1. The first of the new Patrol Boats is nearing completion and delivery is expected soon. This is later than originally anticipated because of availability of engines and other key components

5. Harbour Office staff changes

- 5.1. We have appointed one seasonal Patrol Officer (Mike Wakefield) and three Seasonal Coxswains (Bryn Perry, John Dyke and Karstein Hagerupsen). They are on a short contract from early May until late September.
- 5.2. The Harbour Office Administrative Assistant (Elaine Brownlie) has resigned and we have filled the vacancy on a 50-50 job share basis (Donna Taylor and Lynne Cox).

6. Foxer 'near-miss' incident

- 6.1. At its last meeting, the Harbour Board asked Captain Mark Capon (Designated Person) to report directly to the Board on the application of the COLREGS [the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996] in respect to an incident that occurred on the River Hamble on 21st February 2010.
- 6.2. His report is at Appendix 2.

7. Complaints procedure

- 7.1. At its last meeting, The Harbour Board approved a Select Committee recommendation that the Harbour Authority should establish and publicise a formal complaints procedure. A draft is at Appendix 3 and it is recommended that the Harbour Board be advised to adopt it. Once adopted, it will be published on the Harbour Authority website.

8. River Bed Leases

- 8.1. At the Management Committee meeting in March, during the members discussion and debate which arose from the update on environmental matters presented by the Assistant Harbour Master(Environment), the

Management Committee asked for a briefing note to clarify for them the background to the environmental leases with the Crown Estate. The note as prepared for the Management Committee at its June meeting is attached at Appendix 4.

9. Recommendation

It is recommended that the River Hamble Harbour Board:

- 1. Adopts the draft complaints procedure, and;**
- 2. Notes the remainder of this report.**

CORPORATE OR LEGAL INFORMATION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	no
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	no
Corporate Improvement plan link number (if appropriate):	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

River Hamble Harbour Management Committee and Harbour Board

Training syllabus for new members:

Governance arrangements

Terms of Reference

Statutory roles and responsibilities

Geography of harbour and extent of jurisdiction

Strategic planning

Business planning

Port Marine Safety Code and Safety Management (including role of Designated Person)

Role of The Crown Estate

Funding arrangements and Harbour Dues

Visiting yachts

Other sources of income

Expenditure

Budget planning

Reserves, Asset Replacement and Asset Enhancement

Mooring types and numbers, licences, temporary licences and waiting lists

Environmental responsibilities

Oil Spill response

Harbour Office manpower and working regimes/rosters

Harbour Authority boats

Commercial operators and yacht clubs

Stakeholder groups

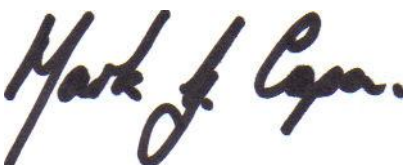
Works Consent process and Dredging

Aids to Navigation

MARINE ENFORCEMENT	
Job Number:	263
Date:	9/04/10
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Type: Expert's report

Port: River Hamble Harbour Authority
Purpose: Application of COLREGS

Author:	Date	Signature
Capt Mark G. Capon Managing Director	9 th April 2010	

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1 BACKGROUND

I have been asked as the Designated Person required by the Port Marine Safety Code for the River Hamble Harbour Authority to report directly to the Board on the application of the COLREGS [the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996] in respect to an incident that occurred on the River Hamble on 21st February 2010.

In brief, there was a near collision between an inbound sailing yacht that was under power (and not under sail) and a Foxer sailing dinghy. This near miss occurred in the vicinity of the ferry hard at Warsash in the fairway of the River. The Foxer dinghy was taking part in a race. With a number of other Foxers it crossed the fairway in close proximity to the inbound yacht. The inbound yacht was 40 feet in length, displaces about 12 tonnes and had a draft of about 2 meters. The dinghies crossed the fairway from right to left; that is they were crossing from starboard to port in respect of the inbound yacht. To avoid collision the yacht had to go astern and the Foxer that passed closest to the yacht passed 2 or 3 feet under the bow of it. It would appear that the sailor in the Foxer who was sitting such that his back was to the yacht did not see it or if he did, he assumed that the yacht would keep out of the way.

The issue that has been raised by a third party (that I understand was not a witness to this near- miss and was not involved) is whether under these circumstances “power” should give way to “sail”. To determine which vessel should “give way” an examination of the law (local, national and international) that applies under these circumstances is required. I have considered what the third party has forwarded to me and I have considered the information given to me by the skipper of the yacht (the Marine Director and acting Harbour Master). I have not received any information from the dinghies involved or from the race officer.

2 LOCAL LAW

To avoid any confusion following the legal discussions over the past few years as to what is a ship as opposed to a vessel and whether it is used in navigation and the impact of all of that on the application of the COLREGS, the River Hamble Harbour Authority wisely issued Harbour Master’s Direction No 2 in March 2006. This legally enforceable Direction makes it clear that the COLREGS apply to all persons having command of any vessel at any time within harbour limits. Vessel includes anything (howsoever propelled or moved) constructed or used to carry persons or goods by water and therefore would include both the yacht and the dinghy. Therefore, the COLREGS apply to the case in point.

River Hamble byelaw No. 5 requires (among other things) the master of a vessel to navigate with care and caution and in such a manner and at such speed so as not to cause danger or damage to another vessel. As the dinghy passed so close to the yacht and, but for the avoiding manoeuvre of the yacht damage may have been sustained by it, it is arguable that the skipper of the dinghy was in breach of byelaw 5.

3 NATIONAL AND INTERNATIONAL LAW

Merchant Shipping Notice 1781 (M+F) as amended is an integral part of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996 which implement the Convention on the International Regulations for Preventing Collisions at Sea 1972 , as amended. In short, these instruments enact into national legislation the

internationally applied COLREGS. The COLREGS apply in the River Hamble, this has been confirmed to include yachts, and dinghies by virtue of Harbour Master's Direction No 2 (see above).

4 APPLICATION OF THE COLREGS

Extracts are used relevant to the case in point.

Rule 1 Application

“(b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for ...harbours”

This provides that Byelaw 5 (see above) which requires vessels to be navigated with care and caution shall prevail.

Rule 2 Responsibility

“(a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.”

In short this Rule requires all mariners to take sensible precautions and to act accordingly; it relies on sailors having some common sense.

Rule 5 Look-out

“Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.”

This Rule requires sailors to look where they are going and to keep a proper lookout. It is my view that this is the most important Rule.

Rule 9 Narrow channels

“(b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.”

This Rule makes it clear that sailing vessels shall not impede vessels that can safely navigate only within a narrow channel or fairway. Note the fairway does not have to be narrow. The Dictionary defines fairway as “the navigable portion of a river, harbour or other partly enclosed body of water and the channel customarily navigated by vessels in such a body of water.” It is my view that the customarily navigated channels within the

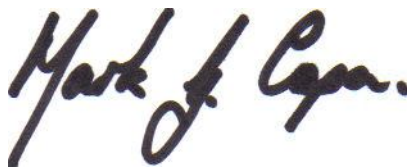
The yacht had a responsibility to navigate with care and caution, act sensibly, look where it was going, keep to the starboard side of the fairway, proceed at a safe speed, sound a sound signal and take such action as appropriate to avoid a collision. It would appear it did all of those things other than sound the prescribed sound signal if it was in doubt.

It is my opinion that by virtue of the application of Rule 9 (d) the dinghy should not have crossed the fairway because such crossing impeded the passage of the yacht that could safely navigate only within the fairway. The usual Rule, which requires “power to give way to sail”, did not apply.

6 RECOMMENDATION

To avoid any confusion or misunderstanding in the future the River Hamble Harbour Authority should issue a Harbour Master’s Direction that clearly states that dinghies and other small craft must comply with Rule 9(d) and that the dinghy races should be planned and executed so as not to conflict with this Rule.

Respectfully submitted

A handwritten signature in black ink that reads "Mark G. Capon". The signature is written in a cursive, flowing style.

Capt. Mark G. Capon LLB. Master Mariner
Ex. MCA Examiner of Master and Mates
Managing Director
Marine Enforcement (a trading name of regs4ships Ltd)

The following forms part of this report.

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River Hamble Harbour Authority

Complaints Procedure

The River Hamble Harbour Authority is part of Hampshire County Council and is managed by the Department of Culture, Communities and Rural Affairs. The River Bed and associated mid-stream moorings are owned by The Crown Estate but managed on its behalf by the Harbour Authority.

If you have a complaint or concern it should be addressed (in writing) to:

David Evans
Marine Director and acting Harbour Master
Harbour Office
Shore Road
Warsash
Southampton SO31 9FR

Email: david.evans@hants.gov.uk

An acknowledgement will be sent within three working days and a full response to your complaint or concern will be provided within 20 working days or, where appropriate, it will be passed to The Crown Estate for necessary action. A register of complaints received is kept at the Harbour Office.

If your complaint or concern is in regard to navigational safety, you may also wish to contact the Designated Person:

Captain Mark Capon
Marine Enforcement Limited
Unit 6a
Kemp's Quay
Quayside Road
Southampton SO18 1BZ

Email: mel@marineenforcement.co.uk

The Designated Person is independent of the Harbour Authority and is required to report any safety concerns to the Harbour Board.

If you believe that your complaint or concern has not been answered to your satisfaction, you should write to:

Councillor Keith Evans
Chairman, River Hamble Harbour Board
c/o Harbour Office

Shore Road
Warsash
Southampton SO31 9FR

Email: keith.evans@hants.gov.uk

With a copy to:

John Tickle
Assistant Director, Culture, Community and Rural Affairs
Room 101
Mottisfont Court
The Castle
Winchester
SO23 8UJ

Email: john.tickle@hants.gov.uk

And to:

Councillor S. T. D. Woodward
Chairman, River Hamble Harbour Management Committee
c/o Harbour Office
Shore Road
Warsash
Southampton SO31 9FR

Email: swoodward@fareham.gov.uk

Briefing Note requested by River Hamble Management Committee on River Hamble Riverbed Leases

Background

The County Council entered into Leases with The Crown Estate Commissioners on 28th June 2002 in respect of the foreshore and bed of the River Hamble. There are two Leases, one for the lower and middle sections and one of the upper section. The lease of the upper section is the so called “Environmental Lease”. Both Leases are for a term of 50 years and will expire on 31st December 2051 and are at the nominal yearly rent of a peppercorn.

The Leases were entered into following a Cabinet decision of the County Council to satisfy County Council objectives in 2002 to support the County Council’s role as the River Hamble Harbour Authority and the County Council’s strategic role in the planning and management of coastal conservation.

Use Clause

The use Clause for the Lower and Middle Lease is “as a river or harbour bed in accordance with the tenants statutory powers and duties” and for the Upper Lease is “for purposes of conservation”.

Terms and Liabilities

Both Leases state that the County Council’s liability in respect of relevant future legal obligations (as specifically defined in the Leases) extends as is “just and equitable in the circumstances”. Circumstances to be taken into account include if appropriate the respective interests in the River Hamble of the Landlord, The Crown and the Tenant, the County Council.

Environmental Legislation

The Harbour Authority has a number of obligations which fall to it irrespective of the lease of the river bed e.g.

- Duty under Harbours Act 1964 to exercise functions in a way having regard to nature conservation and other related environmental considerations
- Duty under Wildlife and Countryside Act 1981 to further the conservation and enhancement of the flora, fauna or geological or physiographical features
- Duty under Natural Environment and Rural Communities Act 2006 to have regard to conservation of biodiversity
- Duties under the EU Habitats Directive as it is a competent and relevant authority under that legislation.

(the last 3 duties also apply to the County Council)

Break Clause

There are break clauses in each Lease which can be operated to effect termination between 2010 and 2032 on two years written notice. However, any decision to exercise the break clauses would need to be taken by the County Council Cabinet taking into account all of its objectives and functions and not purely those of the Harbour Board. Terminating the Leases would not have any significant impact on the Harbour Board's Environmental responsibility as it would remain a relevant authority for the purposes of the EU Directives and other environmental legislation, whether or not a lease was in place.