

Department for **Transport**

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Dear Mr Gibson,

Thank you for your letter of 13 October to Admiral S. Meyer at the Marine Accident Investigation Branch (MAIB), requesting advice on the measures that your harbour authority may take to reduce the risk of incidents. I have been asked to reply as I deal with policy on port marine safety. I apologise for the delay in replying.

In your letter, you mentioned a near miss in the summer just beyond your Port limits in Starehole Bay involving a high-powered speedboat towing a doughnut through a group swimming from a boat at anchor. The Maritime Coastguard Agency's website contains advice on the regulations which specifically applies to all vessels, including guidance and training aimed at protecting other water users. It is available at:

<http://www.ukshipregister.co.uk/mcga07-home/leisureandtheseaside/mcga-sport/mcga-personalwatercraft/mcga-pwc-guidance.htm>

In addition, the Department for Environment for Food and Rural Affairs (Defra) "Managing coastal activities a guide for local authorities", 2004, recognised that the coast is facing increasing demands to cater for a wide range of recreational activities – ranging from power boating to swimming and sailing, and from fossil collecting to fishing. The guide focuses on local authorities' responsibilities to promote good practice among all users of the coast, to develop voluntary schemes for managing recreational activity and how to use byelaws to regulate activity where that is needed. The guide explains the powers that can be used to control jetskis and other recreational activities, it gives examples of successful mixes of voluntary and legislative action by local authorities. The guide is available on Defra's website at:

<http://www.defra.gov.uk/wildlife-countryside/pdf/access/coastal-guidance.pdf>

If the water-based activities in Starehole Bay, which you describe in your letter, originate from within your harbour limits, then you can use byelaws¹ to regulate their movements within your port.

¹ **Byelaws** – Harbour authorities have wide powers under their own special legislation, (derived from Section 83 of the Harbours, Docks and Piers Clauses Act 1847), which allow them to make byelaws for all aspects of the movement and regulation of vessels within a port. Byelaws can cover a wide range of subjects, for example: alcohol and drugs; recreational craft including navigational rules; waterskiing, jet-biking; bathing; and speed limits.

As Harbour Master, you have powers to issue Special Directions² to regulate the movements of specific vessels in specific cases in the harbour.

The Port Marine Safety Code 2000³, and its associated Guide to Good Practice recommends that harbour authorities need to keep their legislation under review to ensure that it remains fit for purpose. The Code proposes as good practice that local legislative requirements for marine safety will be determined by risk assessment. Where it becomes clear to a harbour authority that certain legal responsibilities cannot be discharged effectively using available powers and other measures, and that authority does not have the powers to rectify the situation, it is good practice for that authority to seek necessary additional powers.

Harbour authorities should base their policies, and procedures relating to marine operations on a formal risk assessment of hazards and risks; that they will maintain a formal safety management system developed from the risk assessment.

A risk assessment should aim to identify the hazards that may occur, the events that may cause them and the barriers used to mitigate them. In order to further refine the assessment it may be appropriate to identify key locations within the port area and key vessel types thereby allowing more detailed assessment of the risk associated with the hazard.

Clearly, the powers to regulate navigation are bounded by the port limits. Whether these are in the right place is a question the risk assessment should review. If the risk is identified in an area outside the statutory limits of a port, then the code (para 1.4.5) points to provision for port limits to be formally extended by harbour revision order, so that the risk may be managed. The need to regulate depends upon the vessels using the port, or likely to do so; and the hazards in the harbour from which they need to be protected. The hazards include the physical features of the harbour which determine where the navigation channels have to be. The weather and other traffic may require other restrictions to be imposed. Management is achieved by various means: observing, advising, educating as well as enforcing formal rules. The resources required to manage navigation effectively depend on the measures which need to be taken. These may be simple and inexpensive, or involve sophisticated equipment and specially trained operators.

Paragraphs 2.4.4 to 2.4.6 of the Code make clear that byelaws and directions adopted in order to manage navigation risk should be backed by an appropriate policy on enforcement. The code also says that each authority should have a clear policy on prosecution, which is consistent with the safety assessment on which its directions are based.

² **Special Directions** – Most harbour authorities (or their representatives), also have the power to give Special Directions to specified vessels in specific cases. As a general rule byelaws are the most potent power available to the harbour master. General Directions, however, whilst still carrying the force of law, are often easier to achieve and amend, and thus act as a useful mechanism for managing navigation and furthering safety.

³ **Port Marine Safety Code 2000** - introduced a national standard for every aspect of port marine safety, including byelaws and Special Directions; whilst it's associated Guide to Good Practice illustrates industry good practice for the benefit of those with responsibility for port marine safety. They are available on the Department's website at: <http://www.dft.gov.uk/pgr/shippingports/ports/pmsc/>.

It follows, therefore, that before making byelaws or Special Directions, consideration needs to be given to the methods and resources available for enforcing them. Un-enforced regulations may give a false sense of comfort about the management of risks which they address.

Harbour Authority craft, or similarly identifiable port craft, can be very effective when patrolling the harbour in the locations, where recreational craft frequent. Their presence acts as a visible encouragement to the recreational user to navigate with care, whilst providing the means of enforcement should such action be necessary. Their presence also enables them to go to the assistance of any recreational users in difficulty or distress. Where Harbour Service personnel are used to enforce local rules, it is important that they are suitably trained to deal with the public, and also in the procedures to be followed should formal action become necessary.

It may be helpful to the harbour authority to take opportunities to brief local Magistrates on the potential seriousness of byelaw infringements which create danger to navigation. It is recommended that attempts are made to do this through the local Clerk of the Court, and to arrange briefings and liaison visits as appropriate. It may also be appropriate to brief local police on port byelaws and the actions expected of them, in particular custody staff if for instance a vessels master has to be arrested, detained or bailed. A port legal representative or local solicitor briefed and familiar with a ports byelaws and regulatory framework can be invaluable in such situations, where time is of the essence.

I hope that this is helpful.

Yours sincerely,

Tony McMillan
PORTS C – Ports, Lights and Navigational Safety