

FINAL
CODE

New Zealand Port and Harbour Marine Safety Code

KEEPING YOUR SEA SAFE FOR LIFE



Maritime Safety

MARITIME SAFETY AUTHORITY OF NEW ZEALAND
Kia Mānu Kia Ora

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Preface

The publication of this Code inaugurates a significant advance in securing the future safety of marine operations in New Zealand ports and harbours. Developed with input from participants in this component of our maritime system, the Code brings together, for the first time, a succinct digest of the formal duties and responsibilities of participants, and a corresponding statement of the specific measures appropriate to their fulfillment, including, critically, safety management systems based on risk assessment. These measures are supported by a series of guidelines elaborating good practice.

The Code and its guidelines are not statements and good practice intended to stand for all time. Rather, they are living documents to be revised in the light of the lessons drawn from experience, advances in technical knowledge and capability, and the ongoing imperative of continually improving safety management within our port and harbour system. The Code will also be adapted to reflect any relevant law reform consequent on a review of legislation scheduled for 2004/05. This review is aimed at identifying any gaps in primary legislation and identifying whether there is a need for any new delegated legislation to ensure that the future development of our national port and harbour safety system is firmly grounded in law.

As at August 2004, the Code is supported by –
Guidelines for Port & Harbour Risk Assessment and Safety Management Systems in New Zealand
Guidelines for Providing Aids to Navigation in New Zealand
Guidelines of Good Practice for Hydrographic Surveys in New Zealand Ports and Harbours

Support for participants when considering the relevance of various metrological and hydrographic occurrences will be available in a report on environmental factors affecting safe access and operations in ports and harbours, due to be published in September 2004.

During the next year, MSA will be working with participants to produce guidelines for vessel traffic services as well as standards for harbourmasters. It is further proposed to adopt an existing standard for the use of tugs in ports published by the Nautical Institute. This second phase of the port and harbour project also calls on MSA to carry out a review of maritime rules Part 90 – Pilotage.

Over the next twelve months, regional councils and port companies and other port facility operators will be focused on developing their risk assessments and looking forward to building their safety management systems based on these assessments. In this endeavour, the MSA is committed to commenting on and approving assessments and plans provided to show compliance with the Code.

Comments and queries relating to the New Zealand Port & Harbour Marine Safety Code, as well as any questions concerning the guidelines should be addressed to –

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Copies of the Code and the guidelines are available from MSA free of charge. Electronic versions are available from www.msa.govt.nz.



Russell Kilvington
Director of Maritime Safety

August 2004

Introduction

1. This Code aims to promote good practice in the conduct of safe marine operations in ports and harbours. It represents the national standard against which the policies, procedures and performance of regional councils, port companies, the Maritime Safety Authority and other relevant parties may be measured. The Code is supported by Guidelines on specific port and harbour safety topics. These guideline documents can be found at www.msa.govt.nz.
2. The Code serves as a framework for the preparation of safety management systems by regional councils. That safety management system will be informed by and based upon a formal risk assessment. The aim is to establish a system covering all marine operations in ports and harbours which ensures that risks are both tolerable and as low as reasonably practicable.
3. Since the advent of port reform in the late 1980s and due to an incomplete and fragmented statutory regime, different division of responsibility for harbour marine safety functions has developed in various ports and harbours around New Zealand. The applicable statutory framework is such that there is a degree of uncertainty as to the precise legal duties and powers of the various entities that have responsibility for marine operations.
4. This Code seeks to create certainty with regard to those respective responsibilities. The division of responsibilities anticipated by the Code may be adapted or varied in individual cases through the mechanisms of memoranda of understanding and/or delegation. Regional councils are free to enter into such arrangements provided certainty is achieved with regard to the division of responsibilities.
5. This Code is not law. It is an assessment of legal responsibilities under existing law applicable to the operation of New Zealand ports and harbours. It is also an assessment of where those responsibilities lie. The Code is a statement of good practice based on a practical interpretation of New Zealand law. It has been developed by the Maritime Safety Authority together with representatives of local government, and the port and maritime industries.
6. The Code aims to help those who have duties in respect of safe marine operations to understand and discharge them, and to be seen to achieve and maintain nationally agreed benchmarks for safe marine operations within their waters. The best practice guidelines set a standard to which in future they will hold themselves accountable publicly. While compliance is not mandatory, prudent participants in the system will be able to use compliance with the Code to demonstrate they have taken all reasonable steps to ensure safe marine operations in ports and harbours.
7. The Code focuses on the obligations of central and local government and port companies. It assumes compliance by shipowners and masters with New Zealand and international law related to safe navigation of vessels. The relevant New Zealand law is found in the Maritime Transport Act 1994 and maritime and marine protection rules made pursuant to that Act, and the Local Government Act 1974 and navigation bylaws made pursuant to that Act.

Definitions

In this Code, unless the context otherwise requires:

Accident means an occurrence that involves a vessel and in which–

- (a) A person is seriously harmed as a result of:
 - (i) Being on the vessel; or
 - (ii) Direct contact with any part of the vessel, including any part that has become detached from the vessel; or
 - (iii) Direct exposure to the wash of the vessel or interaction (other than direct contact) between 2 vessels; or
 - (iv) Being involved in the salvage of any vessel–except where the injuries are self-inflicted or inflicted by other persons, or when injuries are to stowaways hiding outside the areas normally available to passengers and crew; or
- (b) The vessel sustains damage or structural failure that–
 - (i) Adversely affects the structural strength, performance, or seaworthiness of the vessel; or
 - (ii) Would normally require major repair or replacement of the affected component; or
 - (iii) Poses a threat to the safety of people on board the vessel; or
- (c) There is a complete or partial failure of machinery or equipment that affects the seaworthiness of the vessel; or
- (d) There is a loss of, or damage to, or movement of, or change in the state of, the cargo of the vessel which poses a risk to the vessel or other vessels; or
- (e) There is a significant loss of, or significant damage to, property (not being the cargo carried by the vessel) or the property of any person (whether or not on board the vessel), whether or not the loss or damage arises from an interaction between 2 vessels; or
- (f) There is a loss or escape of any substance or thing that–
 - (i) May result, or has resulted, in serious harm to any person; or
 - (ii) May pose a risk, or has resulted in damage, to the vessel or other vessels; or
 - (iii) May pose a risk, or has resulted in damage, to any property (whether or not on board the vessel); or
- (g) A person is lost at sea (whether or not subsequently found) or is missing; or
- (h) The vessel is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board.

Aid to Navigation (AtoN) means a device or system external to vessels that is designed and operated to enhance the safe and efficient navigation of vessels, or vessel traffic.

Code means the New Zealand Port and Harbour Marine Safety Code.

Code application assessment means a high level risk assessment to determine where and to what operations the Code will apply.

Director means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994 and includes persons acting under delegation.

Harbour includes the waters and any port within any pilotage area defined in Part 90 of the maritime rules, and any other coastal or inland waters that a regional council determines are a harbour for the purpose of this Code in accordance with a Code application assessment.

Harbourmaster means a person appointed as harbourmaster under section 650B of the Local Government Act 1974.

Hazard

- (a) Means an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether arising or caused within or outside a place of work) that is an actual or potential cause or source of harm; and
- (b) Includes:
 - (i) a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person; and
 - (ii) without limitation, a situation described in subparagraph (i) resulting from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour.

Incident means any occurrence, other than an accident, that is associated with the operation of a vessel and affects or could affect the safety of operation.

Marine operations means those operations which facilitate the safe use of a harbour by vessels. They include, but are not limited to, directing shipping, the regulation of safety of navigation, pilotage, communication between vessels and the shore, the maintenance of aids to navigation and dredging within the harbour.

Port means a coastal marine area within a harbour occupied by a port company pursuant to a coastal permit issued under section 384A of the Resource Management Act 1991, or pursuant to any other lawful right of occupation, and includes any berth or channel that is agreed by the regional council and the port company to be the responsibility of the port company.

Port Company means a port company established under the Port Companies Act 1988 and any other operator of a port facility as determined by a regional council.

Regional council, for the purposes of this Code, means a regional council as defined under the Local Government Act 2002 and includes any territorial authority, port company, or other organisation, that is delegated or transferred a navigational safety function.

Territorial authority means a city council or a district council named in Part 2 of Schedule 2 of the Local Government Act 2002.

Vessel means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes –

- (a) A barge, lighter, or other light vessel;
- (b) A hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (c) A submarine or other submersible.

In this Code, unless the context otherwise requires, the words must, shall, should, and may are used with the following meaning:

- **Must** means a legal obligation.
- **Shall** means a requirement in order to comply with the Code.
- **Should** means best practice identified by the Code.
- **May** means empowerment to act, but no direct legal obligation.

Objectives

1. The objectives of the Code are to provide for the safe management of vessels in New Zealand ports and harbours, including prevention of human injury or loss of life, and avoidance of damage to the environment, in particular to the marine environment and to property.
2. The safety management objectives of the Code are to:
 - (a) Provide for safe practices in port operation and a safe operating environment in the harbour;
 - (b) Identify all risks and establish safeguards to ensure that all identified risks are kept as low as reasonably practicable; and
 - (c) Continuously improve safety management skills of all personnel, including preparation for emergencies related both to safety and environmental protection.
3. The safety management system will ensure:
 - (a) Compliance with mandatory rules and regulations; and
 - (b) That applicable codes, guidelines and standards recommended by the Maritime Safety Authority are taken into account.

Application

4. The New Zealand Harbour Safety Code applies to marine operations in –
 - (a) harbours within any pilotage area defined in Part 90 of the maritime rules; and
 - (b) other harbours in the region of a regional council, as determined by a regional council in accordance with a Code application assessment.
5. The first priority for regional councils will be to comply with the requirements of the Code in harbours within existing pilotage limits.
6. The Code does not apply to port operations covered by the *Code of Practice for Health and Safety in Port Operations* developed by the Occupational Safety and Health Service of the Department of Labour, in association with the Maritime Safety Authority. A copy of this document can be found at www.osh.dol.govt.nz.
7. The Code does not apply to matters relating directly to maritime security.

PART ONE

1. Responsibility for Port & Harbour Safety

1.1 Duties & Powers – An Overview

- 1.1.1 This Part of the Code describes the duties and powers of regional councils, territorial authorities, port companies, the Maritime Safety Authority, and the Minister of Transport in relation to the safety of navigation and the conduct of marine operations within ports and harbours. For a list of applicable legislation see Appendix.
- 1.1.2 **The Minister of Transport** is ultimately responsible for safety at reasonable cost within the New Zealand maritime system. The Minister's powers to fulfil this function rest mainly in the rule making power for the setting of standards, mostly on a national basis. The Minister is empowered to make maritime rules relating to, amongst other things, pilotage, safe navigational and maritime operational procedures, standards for the safe management of commercial shipping, and regulating the conduct of vessels within defined areas of New Zealand waters to secure the safe navigation of vessels.
- 1.1.3 **The Maritime Safety Authority** has the statutory function of promoting a safe maritime environment at reasonable cost. The Authority is empowered to review the maritime safety system and to promote safety by providing marine safety information and advice. The Director of Maritime Safety is the Chief Executive of the Maritime Safety Authority. In addition, the Director has an independent statutory function of enforcing the Maritime Transport Act 1994 and has various powers to enable the effective administration of the Maritime Transport Act. The Director also has powers to enforce the Hazardous Substances and New Organisms Act 1996 (HASNO) on vessels and administers the Health and Safety in Employment Act 1992 on vessels that are subject to that Act.
- 1.1.4 **Regional councils** have the statutory function to promote the social, economic, environmental and cultural well-being of their communities, in the present and the future. They have the power under the Local Government Act 1974 to regulate shipping movements for the purpose of navigational safety. They can do this by making bylaws and through powers exercised by appointed harbourmasters. In addition regional councils have a power and a corresponding duty to erect and maintain aids to navigation, remove obstructions and impediments to navigation and to execute and maintain works, which in the opinion of the regional council, tend to improve navigation.
- 1.1.5 **Territorial authorities** have an express power to erect and maintain infrastructure (wharves and jetties etc) for the improvement, protection, management and utilisation of waters within their districts. Such actions will in some cases, for example the erection of works or the placing of aids to navigation, be subject to consents or other authorisations, including the approval of the Director.¹

1.1.6

¹ s 200, Maritime Transport Act 1994

Port Companies have the statutory function under the Port Companies Act 1988 to operate as a successful business. Notwithstanding that function, there is an obligation on port companies to exercise reasonable care in the conduct of their business, that is the provision of port facilities and port related services. Under the Maritime Transport Act 1994, a port company has a statutory duty to provide port facilities and services in a manner that does not cause any unnecessary risk or danger to persons or property.² In addition there is a statutory duty on a port company as an employer and as the controller of workplaces to manage safety under health and safety legislation.

1.1.7 It is noted that under local government law the functions, duties and powers of regional councils may be performed by other specific organisations.

1.2 General Duties & Powers

1.2.1 Health & Safety Duties

Every employer must ensure that there are effective methods in place for systematically identifying and regularly assessing hazards to employees at work.³ Where significant hazards are identified these must be eliminated, or if elimination is not practicable, isolated, or if isolation is not practicable, minimised.⁴ Persons in control of a place of work must take all practicable steps to ensure that no actual or potential hazard harms persons at work in that place or people in the vicinity of that place.⁵

1.2.2 Harbour Management & Maintenance Duties

1.2.2.1

- (A) **Regional councils have statutory powers and corresponding duties to manage and maintain the harbour having regard to its intended use, and port companies have a duty of reasonable care to see that the port is in a fit condition for use by vessels that it serves.**
- (B) **Regional councils shall ensure provision of adequate information about the condition of the harbour as determined by the harbour risk assessment to enable users to identify whether it is fit for the intended use.**
- (C) **Port companies have a duty to provide port users and the harbourmaster with adequate information about conditions relating to port facilities and to ensure provision of port related aids to navigation.**
- (D) **Regional councils and the Director have specific powers in relation to wrecks.**

² s 65, Maritime Transport Act 1994

³ s 6, Health and Safety in Employment Act 1992

⁴ ss 7-10, Health and Safety in Employment Act 1992

⁵ s 16, Health and Safety in Employment Act 1992

- 1.2.2.2 A regional council has a duty to manage and maintain the harbour with regard to its use and the type and size of vessels that use it. The duty to manage and maintain the harbour covers several specific requirements:
- (a) to keep proper hydrographic and hydrological records;
 - (b) to ensure public notification or dissemination as conspicuously and widely as is appropriate of such further information as will supplement the guidance given by navigation marks;
 - (c) to communicate appropriate warnings to harbour users if hydrographic and hydrological information is not current.
- 1.2.2.3 Port companies have a duty to find, monitor and maintain the appropriate navigable channel or channels in the harbour where the port risk assessment demonstrates this is required. Regional councils are responsible for ensuring such channels are marked.
- 1.2.2.4 Regional councils have a duty to mark and monitor any other channel or area of harbour seabed where the harbour risk assessment demonstrates this is necessary to provide for the safe navigation of vessels. Regional councils may perform such work themselves, contract the work out, or apply to Land Information New Zealand for assistance with any required hydrographic survey.
- 1.2.2.5 Where arrangements are entered into for other parties to have functions and powers for harbour maintenance and management, these arrangements must be clearly documented in a memorandum of understanding between the regional council and the other parties.
- 1.2.2.6 Where a regional council or a port company states that there is a certain depth of water available for the use of a harbour, it must take reasonable care to ensure that the depth of water is available under normal conditions, or give warning that the advertised depth has not been maintained.

1.2.3 Environmental Duty

In addition to the regional council's regulatory function under the Resource Management Act 1991, regional councils also have resource use and environmental responsibilities under that Act. Port companies also have obligations to comply with discharge requirements and district and coastal plans under the Act.⁶

Functions and powers for the protection of the marine environment are also found in the Maritime Transport Act 1994 which are applicable to the Director,⁷ and regional councils.⁸ Marine environment protection rules may also apply to port companies, for example in respect of dumping and oil transfer site contingency planning.⁹

⁶ See ss 9, 12, 15A and 15C, of the Resource Management Act 1991

⁷ See functions and powers in Parts XIX to XXIII of the Maritime Transport Act 1994

⁸ See functions powers in Part XIX and Part XXIII of the Maritime Transport Act 1994

⁹ See ss 261 and 268 of the Maritime Transport Act 1994 and marine protection rules Parts 130A and 180

1.2.4 Bylaws

Regional councils are empowered to make navigation safety bylaws. Navigation safety bylaws are a means of reflecting the local needs and circumstances of individual regional councils and are intended to allow them to manage safety in waters within their jurisdiction. Navigation safety bylaws vary widely to suit local needs, but must be consistent with the national standards set in Part 91 of the maritime rules.¹⁰ Bylaws can be enforced through the issue of infringement notices pursuant to companion regulations or by summary prosecution.

1.3 Specific Duties & Powers

1.3.1 In addition to the above general duties, there are a number of specific duties, with powers to enable them to be discharged.

1.3.2 Appointment of Harbourmaster

A regional council has the power to appoint a harbourmaster.¹¹ The powers and duties of the harbourmaster are prescribed in sections 650B to 650E of the Local Government Act 1974. Every regional council shall exercise the power to appoint a harbourmaster in harbours to which this Code applies.

1.3.3 Dangerous Goods

The owner and the master of a vessel must give prior notice to the applicable harbourmaster before bringing dangerous goods into a harbour area. In the case of a ship on an international voyage, the period of notice is 48 hours.¹² In the case of a ship on a coastal voyage the notice requirement is as soon as practicable and in any case before entering the harbour. Emergency plans for dealing with dangerous substances are governed by memoranda of understanding between the Maritime Safety Authority and various regional councils, port companies and other organisations under the Hazardous Substances and New Organisms Act 1996.¹³ These plans shall be included in the harbour safety management system referred to in Part 2 of this Code.

1.3.4 Prevention of Pollution

1.3.4.1 The owner or the master of a ship must give notice of the arrival of a vessel carrying oil or any noxious liquid substance in bulk to the Director or the relevant regional council 12 hours before the estimated time of arrival.¹⁴ Notice must be given to the Director or the relevant regional council before oil is transferred to or from a vessel carrying oil in bulk in any the internal waters or territorial sea of New Zealand not less than 3 hours and not more than 96 hours before the transfer.¹⁵

1.3.4.2 All oil spills must be reported by the master of a vessel to the Director or the relevant regional council. The Director, harbourmasters and other regional council enforcement officers have powers to board vessels to investigate possible offences.¹⁶

¹⁰ s 451(7), Maritime Transport Act 1994

¹¹ s 650B Local Government Act 1974

¹² Part 24A of the maritime rules, rule 24A.4(9) and (10), and rule 24A.6(3) and (4)

¹³ Part 24A of the maritime rules and memoranda of understanding with regional council harbourmasters

¹⁴ s 229, Maritime Transport Act 1994, and marine protection rule Part 103

¹⁵ s 230, Maritime Transport Act 1994

¹⁶ ss 235, 235A and 453, Maritime Transport Act 1994

1.3.4.3 The Director may detain a vessel if the Director believes on clear grounds that it has committed an offence by discharging oil, or a mixture containing oil, in breach of the Resource Management Act 1991 or the Maritime Transport Act 1994.¹⁷

1.3.4.4 The respective roles of vessel and oil transfer site owners, regional councils and the Maritime Safety Authority in respect of oil spill response are described in the New Zealand marine oil spill response strategy and marine protection rules.¹⁸

1.3.5 Emergency Powers

1.3.5.1 The Director is responsible for exercising emergency powers under the Hazardous Substances and New Organisms Act 1996 (HASNO) in respect of vessels. Memoranda of understanding with various regional councils, harbourmasters, port companies, the fire service and police have been entered into to determine responsibilities for a HASNO emergency on a vessel within a harbour.

1.3.5.2 In a HASNO emergency¹⁹ the Director liaises with other parties in accordance with the memoranda of understanding. In respect of jurisdiction over a HASNO emergency on a vessel the Director's emergency powers override the powers of a harbourmaster under the Local Government Act 1974. Equally in a Civil Defence Emergency²⁰ various persons have powers that override all other exercise of powers.²¹

1.3.6 Incidents Threatening Pollution

1.3.6.1 The Director has the power²² to give directions to the master, owner, agent, or salvor of a hazardous ship, where an accident has occurred to or in a vessel and, in the Director's opinion, oil from the vessel will or may cause pollution on a large scale. The power may be used if in the Director's opinion this is urgently needed. The person directed may be required to take, or to refrain from taking, any action whatsoever. The Director may also instruct the master of a New Zealand vessel to render assistance to a hazardous ship.

Among other things, the direction may require that the vessel is moved, or not moved to or from a specified area, locality or place, that any oil or cargo should or should not be discharged, or that specified salvage measures should be taken.

On scene commanders appointed under the Maritime Transport Act 1994 have similar powers in respect of marine oil spills from New Zealand ships.²³

¹⁷ s 397, Maritime Transport Act 1994

¹⁸ See Part 23 of Maritime Transport Act 1994 and rules made under s 390

¹⁹ As defined in s 135 of the Hazardous Substances and New Organisms Act 1996

²⁰ See s 2 of the Civil Defence Act 1983

²¹ Refer Part 5 of the Civil Defence Act 1983. These include a Disaster Recovery Co-ordinator and the Minister of Civil Defence

²² s 248, Maritime Transport Act 1994

²³ ss 305 and 311, Maritime Transport Act 1994

1.3.7 Pilotage

Pilotage is regulated in New Zealand under the Maritime Transport Act 1994 and maritime rules Part 90. The Minister of Transport is empowered to make rules defining pilotage limits and requiring compulsory pilotage within all or parts of those limits. The standards for the issue of pilot licences and pilotage exemptions are also prescribed in rules. These standards include provision for the Director to approve general competency training courses and courses of local training and local knowledge.²⁴ Pilot licences and pilotage exemptions are maritime documents issued under the Maritime Transport Act 1994 and as such are subject to the document entry and exit systems prescribed in the Act. These include the power of the Director to suspend and revoke maritime documents for breach of rules, incompetence, or failing to maintain their fit and proper person status.²⁵

1.3.8 Pilotage Directions

The Director is empowered²⁶ to direct the master of a vessel to carry a pilot if the Director is satisfied that in the circumstance it is in the interests of navigation safety or marine environmental protection to do so. This power may be exercised irrespective of maritime rules on compulsory pilotage. This power has been delegated to all harbourmasters. This delegation shall be recorded in the documentation required under paragraph 2.2.2.2(h).

1.3.9 Information to be provided to a Pilot

A pilot may require the master of any vessel he or she is piloting to declare its draught, length and beam, and such other information relating to the vessel or its cargo as the pilot specifies and is necessary to enable him or her to carry out his or her pilot duty and the master must supply the information.²⁷ The master of a vessel must bring to a pilot's attention defects or matters particular to the vessel and its machinery and equipment which are known to him or her and are likely to affect the navigation of the vessel prior to its arrival at the pilotage area.

1.3.10 Pilot and the Port State

A pilot or pilot exempt master engaged in the berthing and unberthing of a vessel has a professional duty to inform the harbourmaster and the Director as soon as practicable after he or she learns in the course of their normal duties that there are deficiencies on the vessel which may prejudice the safe navigation of the vessel, the safety of any person, or which may pose a threat of harm to the environment.

1.3.11 Pilot Transfer Arrangements

The owner and the master of a vessel must ensure that pilot transfer arrangements to or from any vessel within New Zealand waters comply with maritime rules.²⁸

²⁴ Harbourmasters have been delegated examination powers for the purpose of assessing pilots and exempt masters by the Director

²⁵ ss 43-51, Maritime Transport Act 1994

²⁶ S 60A, Maritime Transport Act 1994

²⁷ See general obligations under ss 17(3) and 19(1) of Maritime Transport Act 1994

²⁸ Part 53 of the maritime rules

1.3.12 Tugs

- 1.3.12.1 Port companies shall, in the interests of safety, and based on the results of the port and harbour risk assessments, lay down appropriate standard operating procedures for the use of tugs in port areas, including recommendations on the number of and type of tugs required.
- 1.3.12.2 Standard operating procedures should contain procedures for special directions to be used, if necessary, where a master or pilot proposes that the standard operating procedures should not be applied in some respect. These may include a procedure(s) that requires vessels to go to a safe anchorage when their masters decline tugs that are recommended by the pilot. Disagreements such as this need to be accounted for in the development of standard operating procedures.
- 1.3.12.3 Standard operating procedures for tug use shall not limit the ability of a port company to require contractually the use of greater tug assistance than that prescribed in the standard operating procedures.

1.3.13 Aids to Navigation (AtoN)

- 1.3.13.1 No person may erect, alter or remove an aid to navigation without the approval of the Director.²⁹
- 1.3.13.2 The Maritime Safety Authority provides and maintains aids to navigation necessary for safe coastal passage. The Maritime Safety Authority is empowered to erect, alter, remove, and maintain, an aid to navigation. The Authority may also inspect aids to navigation provided by a third party and recover the costs of doing so from the provider.³⁰
- 1.3.13.3 Regional councils are empowered and have a corresponding duty to erect and maintain aids to navigation in their region, other than those required for a port, cargo terminal, marina jetty, marine farm or other maritime facility.³¹ A person who operates a port, cargo terminal, marina jetty, marine farm or other maritime facility must provide aids to navigation if so required after the port or harbour risk assessment, and is responsible for their status and the promulgation of details and the status of the aids.
- 1.3.13.4 Aids to navigation must be managed and maintained in accordance with the *Guidelines for Providing Aids to Navigation in New Zealand*. A copy of this document can be found at www.msa.govt.nz. Aids to navigation identifying power cables must be established and maintained in accordance with the *Guide to Safety Management of Power Line Waterway Crossings* developed by the Electricity Engineers Association together with the Maritime Safety Authority. A copy of this document can be found at www.eea.co.nz.

²⁹ s 200, Maritime Transport Act 1994. The approval power is delegated to harbourmasters

³⁰ s 200(3), Maritime Transport Act 1994

³¹ s 650A, Local Government Act 1974

1.3.14 Wrecks

Where there is a wreck in the waters of a regional council which is a hazard to navigation, the regional council may require the owner to remove the wreck within a specified period. If the owner fails to remove the wreck within the specified period the regional council may take possession of and remove or destroy the wreck. The regional council may sell the wreck and use the proceeds of sale to pay the whole expenses of removal.³² A harbourmaster may also buoy or mark the wreck rather than remove it. If a regional council does not remove a wreck within its region, the Director may request the regional council to remove the wreck.³³ The Director has the same powers as a regional council where regional councils have no jurisdiction for the wreck.

1.3.15 Limits of Jurisdiction

- 1.3.15.1 A regional council and harbourmasters appointed by regional councils may exercise statutory powers in respect of waters within the region of the regional council.
- 1.3.15.2 A regional council may make navigation safety bylaws in respect of waters in all or part of the region of the regional council. Navigation bylaws must be consistent with maritime rules. Navigation bylaws must not limit or affect the ability of a port company to manage its operations within areas owned or controlled by the company except to the extent that the regional council considers this is necessary in the interests of maritime safety.³⁴
- 1.3.15.3 Where a regional council chooses not to apply its navigation safety bylaws to all waters within its region, Part 91 of the maritime rules applies to those residual waters. The Maritime Safety Authority is responsible for administering Part 91. However it should be noted that the Maritime Safety Authority has no functions in its own right under the Local Government Act 1974. Hence the Maritime Safety Authority is not able to undertake harbourmaster or other regional council navigation safety functions authorized by the Local Government Act 1974 unless these are transferred under section 650J of the Local Government Act 1974.

1.4 Organisational Responsibility & Accountability

1.4.1 **The Maritime Safety Authority** is the lead agency in developing this Code in consultation with the Ministry of Transport. In addition it is the Maritime Safety Authority's role to consult, comment on, and approve the risk assessments and safety management systems provided to show compliance with the Code. While the Code is intended to be self regulating to a large degree, the Maritime Safety Authority will also monitor and audit compliance with the Code on an on going basis. Where the Maritime Safety Authority is required to undertake a risk assessment and develop safety management documentation, the Authority will seek independent peer review to confirm compliance.

1.4.2

³² s 650K, Local Government Act 1974

³³ s 110, Maritime Transport Act 1994 and s 650K2(f) Local Government Act 1974

³⁴ s 684C, Local Government Act 1974

The Maritime Safety Authority may conduct an audit under section 54 of the Maritime Transport Act 1994 of any port or harbour operation. It is likely to exercise this power in response to a specific safety concern or incident or accident. In doing so it will audit the operation against the standards set under this Code. In cases of significant non-compliance with the Code the Maritime Safety Authority may impose conditions on use of the port or harbour, where this is in the interests of maritime safety.

1.4.3 **Regional councils** have statutory responsibility for providing for and regulating navigation safety in harbours within the regional council's jurisdiction.

Under this Code the regional council is accountable and ultimately responsible for:

- (a) Making a code application assessment for the purpose of identifying harbours and port operations within them to which the provisions of the Code and its supporting Guidelines will apply;
- (b) Coordinating and conducting a harbour risk assessment for each harbour within its jurisdiction;
- (c) Coordinating and developing a harbour safety management system for each harbour within its jurisdiction and, where appropriate;
- (d) Coordinating and developing standard operating procedures in respect of each harbour within its jurisdiction;
- (e) Ensuring that the appointed harbourmaster is adequately resourced and funded to exercise his or her statutory powers and functions.

1.4.4 **The Maritime Safety Authority** has a navigation safety role in areas where a regional council does not exercise jurisdiction under navigation safety bylaws. In the absence of a power to appoint a harbourmaster or make navigation safety bylaws, this role is limited to exercising the statutory powers of the Director, and administering the maritime rules.³⁵

1.4.5 **Port Companies** are accountable for managing marine operations within the port safely and its Directors shall hold themselves responsible for ensuring that the port discharges its duties to the standards under this Code, including the requirement to conduct a port risk assessment.

1.4.6 It is accepted practice for performance of the functions of port companies and regional councils under this Code to be delegated or contracted out. In such cases clarity will only be achieved if each regional council enters into a memorandum of understanding between itself and each port company operating in its area and any other relevant organisation, clearly stating who is responsible for the various safety functions identified in this Code. The content of each memorandum of understanding shall be included in the documented harbour safety management system.

Examples of areas that should be covered by memoranda of understanding are:

- (a) arrangements for incorporation of port company safety management systems into the regional council harbour safety management system;
- (b) responsibilities for hydrographic surveying within the harbour;
- (c) responsibilities for the management and maintenance of aids to navigation within the harbour.

³⁵ See paragraph 1.3.15.3

1.5 Individual Responsibility & Accountability

This chapter is about who is accountable for what aspects of marine safety and the safety of navigation in harbours.

1.5.1 Chief Executives

- (a) The elected chair and councillors of the regional council are accountable for providing for and regulating navigation safety in ports and harbours within the regional council's region.
- (b) Where a regional council chooses not to, or fails to provide for or regulate navigation safety in areas within the region, the elected chair and councillors of the regional council are accountable for that choice or failure.
- (c) The Chief Executive of each port company is accountable for managing port marine operations safely.
- (d) The Chief Executive of a regional council and the Chief Executive of a port company, must clearly assign executive and operational responsibilities for marine safety. Those to whom responsibilities are entrusted must be made aware that they will be held accountable for their performance.

1.5.2 Designated persons

1.5.2.1 Regional Council

The harbourmaster shall be the designated person responsible within the regional council for ensuring the harbour safety management system is functioning effectively independent of commercial interests. The harbourmaster coordinates the integration of the port company safety management system into the harbour safety management system.

The regional council must provide direct access between the harbourmaster and the highest tier of management within the regional council. Such access is intended to be exercised where, in the opinion of the harbourmaster, exceptional marine safety concerns so require.

1.5.2.2 Port Company

Port companies must have a designated person responsible for conducting a port risk assessment and ensuring their part of the harbour marine safety management system is functioning effectively.

The person to whom this function is entrusted must have direct access to the Board of Directors of the port company to report on and promote compliance with the Code.

1.5.3 Appointments & Delegations

- 1.5.3.1 Regional councils have the power to delegate their navigation safety powers and duties to port companies. Specifically, a regional council may delegate the power to appoint a harbourmaster to a port company or transfer the power to another local authority or government agency under section 650J of the Local Government Act 1974. The delegation of this function does not delegate responsibility for the performance of the function. Regional councils continue to be responsible for the effective performance of the statutory functions of harbourmaster even when provided by an appointed port company.

- 1.5.3.2 The appointment of harbourmaster and enforcement officers is a matter for the regional council unless this power is delegated outside of the regional council. Decisions to appoint will depend both upon the needs and resources of the regional council. It is legally permissible to appoint a port company employee as a harbourmaster. If this course is taken the harbour risk assessment must identify potential conflicts of interest that would impact on safe marine operations. The safety management system described in Part Two must then formally identify the mechanisms to be used to prevent such conflicts of interest impacting on safe marine operations. For example, a pilot on duty shall not act as harbourmaster at the same time, unless effective mitigation strategies are in place to ensure the independence of the harbourmaster role.
- 1.5.3.3 It is important that executive and operational responsibilities are assigned appropriately by every regional council - and to properly trained and experienced people. In some circumstances, functions may need to be combined. It is important in all cases that personnel are trained for all aspects of their job and that they understand the relevant parts of the harbour safety management system appropriate to their role(s). Competence standards will be developed alongside this Code for harbourmasters.
- 1.5.3.4 Delegations must be documented and must not obscure the accountability of the council. The content of each instrument of delegation shall be included in the documented harbour safety management system.

1.5.4 Harbourmaster

- 1.5.4.1 The harbourmaster has principal operational responsibility for the safety of navigation in the harbour, and exercising operational powers with respect to the safety of marine activities in the harbour and its approaches.
- 1.5.4.2 The office holder must be suitably qualified, competent and medically fit for an operational harbourmaster role. National standards are being developed for the recruitment and appraisal of harbourmasters. The harbourmaster shall hold a certificate of competency at least equal to that required for command of any vessel that calls at the harbour.
- 1.5.4.3 The harbourmaster is accountable to the regional council for managing navigation safety in the harbour.
- 1.5.4.4 The powers of a harbourmaster are prescribed in Part 39A of the Local Government Act 1974. The harbourmaster, duly appointed by a regional council, has a power and a corresponding duty to regulate the time and manner of vessels' entry to, departure from and movement within the harbour waters, and related purposes where necessary in the interests of navigation safety.³⁶

³⁶ s 650C Local Government Act 1974

- 1.5.4.5 The harbourmaster is empowered to issue directions applicable to all classes of vessels or specific vessels entering the harbour. Such general directions are applicable to all vessels or a specified class of vessel.³⁷ In addition the harbourmaster has the power to move or remove ships in the harbour.³⁸
- 1.5.4.6 It is an offence not to comply with directions.³⁹ A defence of reasonable cause is available to permit the master - or pilot - of a vessel to disregard directions if he believes that compliance would endanger the vessel. It is the duty of a harbourmaster in exercising these powers to consider the interests of all shipping in the harbour. Directions may include the use of tugs and other forms of assistance. The powers of direction under section 650C are also exercisable by an enforcement officer appointed pursuant to section 650B of Local Government Act 1974.
- 1.5.4.7 An appropriately qualified harbourmaster must be on duty and contactable at all times. This is necessary to allow reporting of exceptional circumstances or emergency situations, and the taking of necessary action at the scene in response to such situations.

³⁷ s 650C Local Government Act 1974

³⁸ s 650D Local Government Act 1974

³⁹ s 650G Local Government Act 1974

PART TWO

2. Measures

2.1 Setting a Standard

2.1.1 The chapters in Part 2 of this Code are about the way in which regional councils and port companies carry out their respective duties and powers described in Part 1. The aim of the Code is to set a nationally agreed standard for this purpose. This Part summarises the measures that must be taken to meet that standard. The standards are based on the following general principles:

- (A) Regional councils and the Boards of port companies are accountable for their duties and powers, and shall measure themselves against this Code and supporting guidelines;**
- (B) Regional councils shall, in consultation with the harbourmaster and with the assistance of any port company in their region, make a formal assessment of all hazards and risks relating to marine operations for both the harbour as a whole and for all ports within the harbour;**
- (C) Regional councils shall, in consultation with the harbourmaster, establish appropriate safeguards to manage those hazards and risks through a safety management system. The safeguards shall ensure the risks are as low as reasonably practicable (ALARP);**
- (D) The safety management system shall make full use of guidelines of good practice supporting the Code;**
- (E) Regional councils shall, in consultation with the harbourmaster, submit to the Director their formal risk assessment and documented harbour safety management system showing compliance with the standards set by the Code and specifying who is directly responsible for compliance;**
- (F) The Director shall ensure that documentation submitted is processed as soon as reasonably practical;**
- (G) Safety management systems depend upon key personnel meeting applied competence standards;**
- (H) Regional councils shall, in consultation with the harbourmaster, monitor and ensure adoption of good practice.**

2.1.2 Implementation

Implementation of the Code is achieved in stages. There shall be a considered assessment of risks and the means of reducing them; proper control over vessel movements in harbour waters; and the use of appropriate standards of qualification and training for all those involved in the management and execution of services. Systems shall be put in place and operated effectively which manage the identified hazards and risks. Standards achieved shall be monitored, using appropriate measures. There shall also be a procedure for auditing, including self-auditing, performance against the policies and procedures that the regional council has adopted, or required another organisation to adopt, in order to comply with the Code. Reviews shall be undertaken at appropriate intervals.

2.1.3 Legal Duties & Powers

The Code uses the duties and powers of regional councils and the duties of port companies to establish a standard for safe marine operations. Every regional council's documented harbour safety management system shall therefore include a sufficient statement of these duties and powers. The safety management system shall also demonstrate how bylaws and directions will be enforced and that adequate resources are available for that purpose.

2.1.4 Continuous Assessment & Review

A periodic formal review shall be completed to assess the effectiveness of the harbour safety management system. The first review period shall be completed not more than three years after approval of the harbour safety management system. Thereafter a formal review shall be completed at intervals not exceeding five years.

In addition to a periodic review, a special review may be required where for example, harbour operations change beyond the range allowed for in the development of the harbour safety management system.

2.1.5 Competence Standards

2.1.5.1 Person performing key roles in the system must be trained to nationally agreed standards, where they exist, and be assessed as competent for that role. This Code will be supported by competence standards designed for a wide range of specialist tasks. The foundation of these standards is an understanding that securing port and harbour safety is a team operation demanding an appreciation of the work of other specialists.

2.1.5.2 Regional councils shall assess the medical fitness of all persons that they appoint to positions with responsibility for safety of navigation. If they do not use the competence standards associated with this Code, they should be able to show that the standards they have employed are fully equivalent.

2.1.5.3 Regional councils and port companies shall adopt a training strategy that develops a shared understanding of their harbour safety management systems.

2.1.6 Good Practice

The Code is supported by a suite of Guidelines of Good Practice – these can be found at www.msa.govt.nz. These will be kept under review by the Maritime Safety Authority in consultation with interested parties and developed as good practice is developed. The guidelines will be published by the Maritime Safety Authority. Regional council harbour safety management systems shall make full use of developed guidelines of good practice.

2.2 Risk Assessment & Safety Management

2.2.1 The Code applies the well-developed principles of formal risk assessment and safety management systems to the provision of harbours and port facilities, including marine services by port companies. This chapter outlines the approach which regional councils, in conjunction with port companies, should take, with regard to the following these general principles:

- (A) **Regional councils shall undertake a full harbour risk assessment of marine operations, and implement a harbour safety management system. Implementation of the harbour safety management system is the responsibility of the harbourmaster;**
- (B) **A port company shall develop a formal port safety management system for port related marine operations, developed after a formal port risk assessment. The port company shall communicate the assessment and the safety management system to the harbourmaster for incorporation into the harbour risk assessment and harbour safety management system;**
- (C) **The harbour safety management system shall be made available to the Maritime Safety Authority, setting out the regional council's and each port company's policies and procedures;**
- (D) **Every regional council's statutory powers, including those powers of regional council appointed harbourmasters, to regulate marine operations shall be exercised in accordance with the harbour safety management system;**
- (E) **Every safety management system shall include a systemic approach to formally monitor and review the effectiveness of the system;**
- (F) **Every safety management system shall deal with preparedness for emergencies.**

2.2.2 Harbour Safety Policy

- 2.2.2.1 For any harbour, a regional council's documented safety management system shall include a statement of harbour safety policy. The policy shall commit the regional council to undertake and regulate marine operations in a way that safeguards the harbour, its users, the public and the environment. The harbour safety policy shall make a commitment to:
 - (a) Use the Code and its supporting guidelines as a standard against which the regional council will measure itself and be measured by others;
 - (b) Ensure that the relevant assets of the harbour are managed safely;
 - (c) Enforce bylaws and harbourmaster directions appropriately;
 - (d) Ensure that staff are properly trained for emergencies and contingencies;
 - (e) Identify measures to address conflicts of interest;
 - (f) Adequately resource management of port and harbour navigation safety.
- 2.2.2.2 The policy shall be published, both to demonstrate the regional council's commitment to the policy and also to ensure the involvement of harbour and port users.
- 2.2.2.3 A regional council's safety policy should promote a positive safety culture, fostered by the visible and active leadership of senior management. Its aim should include the motivation and empowerment of staff to work safely, not just to avoid accidents. Policy and related procedures should be underpinned by effective staff involvement and participation, and sustained by effective communication and promotion of competence.

- 2.2.2.4 Regional councils are in many cases shareholders in port companies whose statutory function is to operate as a successful business. A regional council must ensure that commercial pressures do not interfere with the effective discharge of its public interest marine and navigation safety duties.

2.2.3 Safety Management Systems

- 2.2.3.1 Regional councils shall, in consultation with the harbourmaster and with the assistance of any port company in their region, develop a documented harbour safety management system in accordance with the standard in this Code, and submit documentation to the Director for consultation, comment and approval.

The key elements of successful safety management systems are:

- (a) involvement of key stakeholders in developing the system;
- (b) effective safety policies setting a clear direction for the organisation to follow;
- (c) an effective management structure and arrangements in place for delivering the policy;
- (d) a planned and systematic approach to implementing the policy through an effective safety management system;
- (e) performance is measured against agreed and documented standards to reveal when and where improvement is needed;
- (f) the organisation learns from all relevant experience and applies the necessary lessons.

Together these elements constitute a continuous cycle over time, aimed at ensuring continued achievement of safety goals, and relevance of the safety management system; and continuous improvement in safety performance.

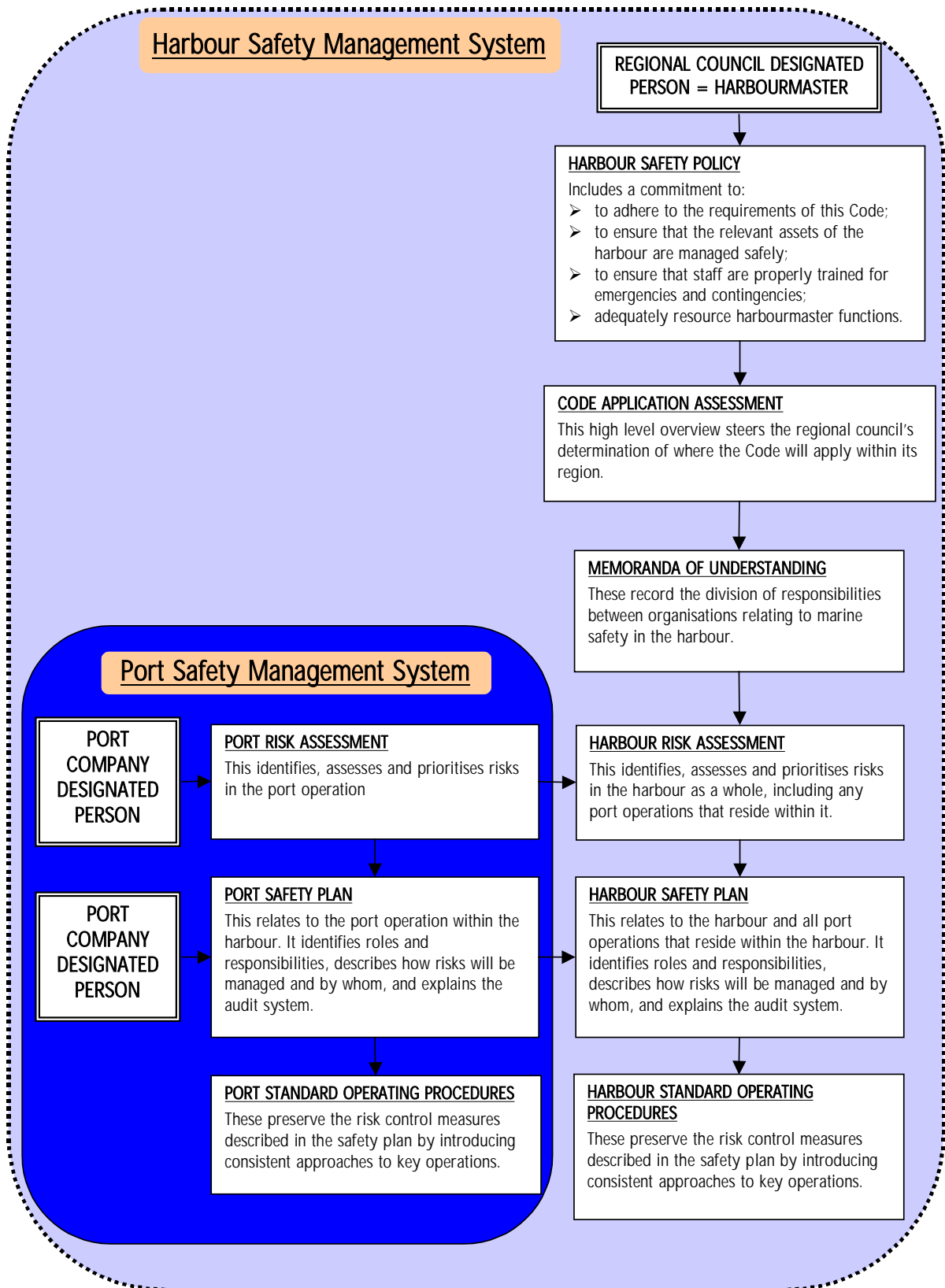
- 2.2.3.2 A harbour safety management system shall include the following:
- (a) a harbour safety policy (see para. 2.1.7);
 - (b) a code application assessment to determine the application of the Code;
 - (c) a harbour risk assessment, which identifies, assesses and prioritises risks;
 - (d) a harbour safety plan, (which shall include port safety plans where applicable) which identifies roles and responsibilities, describes how risks will be managed and by whom, and explains the audit system;
 - (e) standard operating procedures to:
 - i) ensure that tactical execution of risk control measures are preserved;
 - ii) regulate the safe arrival, berthage, departure and movement within the harbour of all vessels;
 - iii) protect the general public from dangers arising from marine activities within the harbour;
 - iv) carry out all its functions with special regard to their possible environmental impact;
 - v) prevent acts or omissions that may cause personal injury to employees or others, or damage the environment;

- (f) emergency response plans;
- (g) all memoranda of understanding with port operating companies, marine service providers, and other relevant organisations;
- (h) external and internal delegations.

2.2.4 Risk Assessment

- 2.2.4.1 It is recognised that much of the content, particularly in terms of risk assessment of marine operations relating to port undertakings and harbour management and maintenance obligations must be contributed by port companies. Port companies are obliged to undertake a port risk assessment as a subset of the harbour risk assessment. The harbourmaster shall coordinate the integration of the port risk assessments into the harbour risk assessment.
- 2.2.4.2 Risk assessments shall employ principles and methodology equivalent to the *Guidelines of Good Practice for Risk Assessments in Ports and Harbours*. A copy of this document can be found at www.msa.govt.nz
- 2.2.4.3 A positive, analytical approach is needed in the harbour risk assessment to not only consider past events and accidents, but to also examine potential dangers and the means of avoiding or managing them. A documented system of records of accidents and incidents should be created to support future cycles of risk assessment.
- 2.2.4.4 Every risk assessment shall be complemented by a harbour safety plan that describes how the risks that have been identified are going to be managed/controlled and by whom.

2.2.5 The Development of a Port & Harbour Safety Management System



2.2.6 Reporting

2.2.6.1 Regular reports shall be made to the regional council by the harbourmaster on the effectiveness of the harbour safety management system. Additional reports may also be made, as the harbourmaster considers appropriate.

2.2.6.2 The function of a 'designated person' is to provide independent assurance directly to the port company's Board of Directors in the case of port company or to the councillors of the regional council in the case of a regional council, that the safety management system is working effectively. A safety management system shall include procedures so that the Directors/Councillors and the designated person can be satisfied that the system is functioning properly. Marine related incidents and complaints about safety shall be promptly investigated and reported to the Maritime Safety Authority; and the incident, investigation and report properly recorded.

2.2.7 Auditing & Reviewing Performance

2.2.7.1 A safety management system shall include provision for systematic review of performance based on information from monitoring and from independent audits of the whole system. A strong commitment is needed to continuous improvement involving the constant development of policies, systems and techniques of risk control.

2.2.7.2 Performance is assessed by internal reference to performance indicators and by external comparison with the performance of other examples of good practice where appropriate. Performance shall also be recorded in reports that shall be made available to the Maritime Safety Authority.

2.2.7.3 The Maritime Safety Authority will continue to monitor the performance of harbour safety management systems through audits as empowered by section 54 of the Maritime Transport Act 1994. Copies of audit reports will be made available to the applicable regional councils and port companies, and may be requested by others, subject to the requirements of the Official Information Act 1981. The Maritime Safety Authority will use audit information in its efforts to promote national consistency of safety management in ports and harbours.

2.2.8 Emergency Planning

The harbour safety management system shall include preparations for emergencies - and these shall be identified as far as practicable from the formal harbour risk assessment. Emergency plans and procedures need to be exercised/drilled.

2.2.9 Hazard Management and Health & Safety

All final decisions about hazard management methods shall take into account relevant legislation, which establishes minimum standards. Human factors shall be considered. The Health and Safety in Employment Act 1992 requires employers to take all practicable steps to manage significant hazards. There is a preferred hierarchy of hazard management principles:

- (a) eliminate hazards - by avoiding a hazardous procedure, or substituting a less dangerous one;
- (b) isolate hazards - by taking protective measures to isolate employees from hazards;
- (c) minimise hazards - by suitable systems of working.

If a range of procedures is available, the relative costs need to be weighed against the degree of control provided, both in the short and long term.

The Health and Safety in Employment Act 1992 has limited application beyond the workplace. However the principles are applicable in situations where commercial ships interact with pleasure craft, and are equally sound for the purposes of a safety management system that addresses mostly, or solely, pleasure craft.

2.3 Harbour Management & Maintenance Measures

This chapter is about the general requirements to manage and maintain the harbour.

2.3.1 Hydrography

2.3.1.1 Identifying the extent and frequency to which hydrographic survey is required in a given port or harbour is an essential part of a formal harbour risk assessment and harbour safety management system. Consequently the harbourmaster shall have primary responsibility for ensuring this is undertaken. The harbourmaster shall include in the regional council's safety management system a statement of the measures adopted for this purpose.

2.3.1.2 The harbourmaster shall ensure that effective arrangements are in place to publish appropriate hydrographic information, including not only charts but also supplementary information, especially including warnings on recently identified navigational hazards such as reductions in the depth of water below chart datum.

2.3.2 Reviewing Changes

The need for a hydrographic survey shall be considered if harbour operations are changed - for example the use of berths, the reception of larger vessels, the presence of major dredging operations - and also significant increases in harbour traffic which may require additional passing places and anchorages.

2.3.3 Official Nautical Charts & Publications

The harbourmaster shall provide regular hydrographic information, including tidal information, required for official New Zealand charts and publications to Land Information New Zealand and to the UK Hydrographic Office for mention in the *New Zealand Pilot*. The information provided shall conform to the *Guidelines of Good Practice for Hydrographic Surveys in Ports and Harbours*. This document can be found at www.msa.govt.nz

2.3.4 Prevailing Conditions

In addition to information about general conditions, the harbourmaster shall also ensure that procedures are in place to make available to users timely information on prevailing and forecast meteorological conditions.

The extent of information provided shall be determined by the harbour risk assessment. The information should include wind, tide, wave height, and other factors liable to be affected by the weather and the way the harbour is used.

2.3.5 Aids to Navigation

Port companies, regional councils and other operators of maritime facilities shall provide aids to navigation in accordance with the harbour safety management system. The provision and level of aids to navigation provided shall be based on formal risk assessment. The characteristics and availability of all aids to navigation shall comply with internationally agreed guidelines⁴⁰ as reflected in the Guidelines for providing Aids to Navigation in New Zealand, applied in consultation with the Director. The Director must approve the erection, alteration or removal of any aid to navigation.

2.3.6 Anchorages

The harbourmaster shall identify and ensure publication or notification of the safe anchorages in the harbour and its approaches, taking into account the size and type of vessels likely to require them, the needs of other shipping - including passing shipping, and the local conditions. The harbourmaster shall ensure appropriate notification and publication of this information. Personnel who communicate with vessels and direct them to anchorages fall within the international definition of a Vessel Traffic Services Operator, as developed by the International Association of Lighthouse Authorities (IALA), of which New Zealand is a national member. They shall be trained according to the nature of their role and in line with international standards for Vessel Traffic Service Operators.

2.3.7 Wrecks

Regional councils shall require a risk assessment to be undertaken of any wreck in, or near the approaches to, a harbour. The regional council's powers to raise, remove, destroy and mark a wreck which is, or is likely to become, a hazard to navigation shall be exercised having regard to that assessment, with the aim of reducing the risk to as low as reasonably practicable.

2.3.8 Works in Harbours

Works in harbours are liable to interfere with navigation. The harbour safety management system shall have appropriate provision for this, should works be undertaken. There will be a need for a special assessment in each case where new hazards are likely to arise. The harbour safety management system should provide in particular for the regulation of dredgers and other craft associated with such works.

2.4 Regulation & Management of Navigation

2.4.1 This chapter is about the powers which regional councils have to make bylaws and the power of harbourmasters to give directions. These powers give statutory force to requirements of the harbour safety management systems developed under this Code. The use of these powers should follow these general principles:

- (A) **Harbours have rules in bylaws and directions, which users must obey;**
- (B) **Regional councils shall make appropriate use of powers to make bylaws, to give directions and to regulate all vessel movements in their waters;**
- (C) **These powers shall be exercised in support of the policies and procedures developed in the harbour safety management system applicable to the harbour, and shall be used to manage the navigation of all vessels;**

⁴⁰ See the IALA Guidelines

- (D) **Regional councils shall have clear policies on the enforcement of directions, and shall monitor compliance;**
- (E) **Powers of direction shall be used to require the use of port passage plans in appropriate cases - whether vessels are piloted or not.**

2.4.2 Available Powers

There are four main powers available to a regional council to regulate vessel movements:

- **bylaws:** provide a general framework for rules of navigation which apply to all vessels and which can be treated as unlikely to require frequent or short term amendment;
- **harbour directions:** may be given by the harbour master. Directions may be time and vessel specific, and are most apt for operational purposes and for emergencies. General directions may also be given by the harbourmaster. Such directions shall apply to all vessels, including where a vessel is conducted by a pilot or the holder of a pilotage exemption certificate;
- **pilotage directions:** may generally be given by the Director and harbourmasters under delegated authority. These apply in addition to compulsory pilotage areas prescribed by maritime rules and require the carriage of a pilot in individual cases;
- **navigation hazards:** Harbourmasters are empowered to direct removal of floating, submerged or stranded objects other than wrecks.⁴¹

The use of all these powers shall take into account the risk assessment made for the harbour and shall support the safety management system. Bylaws shall also be reviewed against the risk assessment and resulting safety management system.

2.4.3 Rules & Bylaws

The Collision Prevention Rules⁴² apply to all vessels in New Zealand waters. New Zealand waters include inland waters such as lakes and rivers. Further navigation safety requirements are prescribed in maritime rules Part 91 – Navigation Safety. These prescribe a national standard applicable to all vessels for speed limits in the vicinity of shore and other vessels and water users and other navigation safety matters. Bylaws are required to be consistent with maritime rules, however scope remains for navigation safety to be regulated on a regional basis under navigation safety bylaws.

2.4.4 Enforcement

Bylaws and directions adopted in order to manage navigation risk shall be backed by an appropriate statement on enforcement in the harbour safety policy. Each regional council shall have a clear policy on prosecution, which is consistent with the risk assessment on which its directions are based.

2.4.5 Link to Harbour Safety Management System

The harbour safety management system needs to make proper use of all the available powers. There shall be a demonstrable connection between exercise of powers by a harbourmaster and the formal harbour risk assessment.

⁴¹ s 650D(2), Local Government Act 1974

⁴² Part 22 of the maritime rules

Rules required in the interests of safety of navigation shall be given legal power by means of bylaws or directions.

2.4.6 Vessel Traffic Services

Various methods are used to monitor and communicate with vessels using the harbour. These shall allow appropriate information, advice and directions to be passed between the harbourmaster or port control and vessels in the harbour. Where the formal harbour risk assessment indicates a requirement, a functional radar or radio-based vessel traffic service shall be established and operated in accordance with internationally agreed guidelines.

2.4.7 Directions & Passage Plans

Harbourmasters' powers to regulate the time and manner of vessels entry to, departure from and movement within their waters serve to complement port passage planning. Passage plans are therefore to be operated and enforced as an adjunct to the powers of direction.

2.4.8 Port Passage Guidance

The next part of this chapter deals with the adoption of port passage guidance as an adjunct to the powers of direction already described. It is to be used in conjunction with master/pilot exchange forms, which ensure that both have information needed for an agreed pilotage passage plan.

The object of port passage guidance as required by this Code is to ensure that:

- (a) affected parties know relevant details of any particular port passage in advance;
- (b) there is a clear, shared understanding of potential hazards, margins of safety, and the vessel's characteristics;
- (c) intentions and required actions are agreed for the conduct of the port passage - including the use of tugs and their availability - and any significant deviation shall it become necessary.

2.4.9 Scope of Passage Planning Requirements

The use of passage planning is not confined to vessels conducted by a pilot, but shall also be required for vessels conducted by the user of a pilotage exemption certificate, and on vessels excepted from a regional council's pilotage directions.

Passage plans may be dispensed with for particular kinds of vessel if the formal harbour risk assessment has established that they are not necessary for the management of risk in such cases - for example, recreational vessels. There is, however, no objection to including such vessels if that is necessary and practicable.

2.4.10 Role of Harbourmaster on Port Passage Guidance

Harbourmasters shall take the lead in promoting the use of passage planning. They shall take an overall view of the scope and content of port passage guidance for use in their areas. They shall seek to establish general guidance - in simple cases for any entry to the port; in others, elaborated for particular berths, vessel sizes, cargoes, conditions, tidal constraints, tug allocation, and holding areas. Particular attention shall be paid to critical port movements, for example the movement of deep draught vessels to particular berths.

Passage plans may change. It is important not to constrain the pilot's need to react to unforeseen circumstances; but deviations from the agreed plan shall be discussed with the master and, when relevant, with port control, and recorded with reasons.

2.4.11 Publications of Port Passage Guidance

Regional councils shall ensure up to date guidance or general plans adopted by the port company or the local pilotage provider are published.

2.4.12 Passage Record Keeping

Plans adopted for particular passages shall be recorded - ideally on the chart or other plan record. The pilot and the master must retain records of passage plans in case they are needed for accident investigation purposes.

2.5 Pilotage

2.5.1 This chapter deals with responsibility for determining the requirement for compulsory pilotage and the corresponding need for a pilotage service to be provided. The following general principles apply:

- (A) **The Minister of Transport is accountable for the decision to establish pilotage districts and for requiring compulsory pilotage within such districts;**
- (B) **The decision to establish pilotage districts and compulsory pilotage within districts must take into account the harbour risk assessment undertaken by regional councils. The need for pilotage services to be provided must be kept under review based on risk assessment reviews undertaken by regional councils;**
- (C) **The Director regulates authorisation, examination, and qualifications and training of pilots and pilot exempt masters in consultation with regional councils, port companies and any provider of pilotage services;⁴³**
- (D) **The safety management systems of the pilotage service provider shall be fully integrated with those of other port safety services.**

2.5.2 Assessing the Need

2.5.2.1 The harbour risk assessment carried out for compliance with this Code must consider the need for pilotage services to be provided to secure the safety of vessels navigating in or in the approaches to its harbour. Particular on going regard should be given to the hazards involved in the carriage of dangerous goods or harmful substances by vessel in this respect.

2.5.2.2 The review shall be used to establish whether pilotage should be compulsory for vessels navigating in any part of that harbour or its approaches and, if so, for which vessels and in which circumstances and what pilotage services need to be provided for those vessels. This is to be determined on grounds of safety only. It shall be covered by the formal harbour risk assessment required by this Code, and the requirement kept under review in the harbour safety management system.

⁴³ Part 90 of the maritime rules

2.5.2.3 The results of any formal risk assessment and subsequent review must be forwarded to the Director who is delegated with the responsibility for consulting on and proposing the making and amendment of maritime rules prescribing requirements for pilotage.

2.5.3 Providing the Service

Pilotage services may be provided by any service provider. Pilots employed or contracted by a pilotage service provider must meet the requirements of applicable maritime rules. A pilotage service provider must liaise with the applicable regional council and port company to ensure pilotage services are fully integrated into the port and harbour safety management systems. A pilot service provider must ensure the service is properly managed and take all reasonable steps to ensure a safe service is provided.

This does not limit the ability of a port company to require, through contractual means, the carriage of a pilot in any circumstance it considers necessary to protect the assets of the port.

2.5.4 Training

Providers of pilotage services shall ensure that all their licensed pilots are trained in accordance with Part 90 of the maritime rules so as to be qualified to conduct the vessels to which they are likely to be allocated. They shall not allow any pilot to be allocated if not appropriately trained and qualified. Every authorised pilot's training needs to be kept under review, with additional training provided before allocating to different types of vessels or to the use of new types of tugs.

2.5.5 Boarding & Landing Procedures

A regional council's harbour safety management system shall be used to identify, where practicable, safe pilot boarding and disembarkation areas. Every regional council's harbour safety management system shall incorporate the requirements of Part 53 of the maritime rules and the accompanying Advisory Circular. Pilotage service providers shall take steps to ensure that pilots do not board or land from vessels in conditions contrary to these requirements.

A pilot is not to be taken out of his or her pilotage area without reasonable excuse. If a vessel is in a compulsory pilotage area or under pilotage directions, the pilot may only be disembarked with the agreement of the master.

2.5.6 Allocating Pilots

A provider of pilotage services shall ensure that pilots are allocated in adequate time to prepare passage plans. To comply with the Code, providers of pilotage services shall ensure that systems exist for the provision of relevant information for their pilots, and ensure that they operate properly.

2.6 Pilotage Exemption

2.6.1 Pilotage exemptions are issued to ship's officers in accordance with Part 90 of the maritime rules.

2.6.2 Pilotage exemption certificates are maritime documents issued under the Maritime Transport Act 1994. They are subject to conditions that govern the privileges that can be exercised under that document. Holders of the documents are responsible for their actions under the Act and the Director may take action in respect of maritime documents in the interests of maritime safety.

2.7 Marine Services

2.7.1 This chapter is about various marine services, including the use of tugs and workboats in a harbour, provision of safe mooring, and procedures for berthing. The following general principles apply:

- (A) **A regional council's harbour safety management system shall cover the use of harbour craft and berthing procedures;**
- (B) **The formal harbour risk assessment shall be used to identify the need for, and potential benefits for safety management, of harbour craft;**
- (C) **Marine service employers and employees (including pilotage services) must meet Health and Safety in Employment Act obligations, which include fatigue and stress management obligations.**

Harbour craft include tugs, pilot boats and workboats.

2.7.2 Tugs

2.7.2.1 The need to provide tugs shall be included in the harbour risk assessment, taking account not only of vessels which need assistance to navigate in the harbour (whether as an active or passive escort), but also of the scope for using tugs as a means of generally reducing risk. An assessment may identify that additional use of tugs is an appropriate means of adequately reducing a particular risk.

2.7.2.2 The harbour risk assessment shall have regard to the capacity of available tugs. The port company and regional council must ensure that all vessels allowed to berth at the port are within the safe operational capabilities of available tugs and the experience of their crews in the prevailing conditions.

2.7.2.3 Where a need for tugs is found, the port company shall develop tug standard operating procedures informed by the harbour risk assessment and provide them to the harbourmaster, for incorporation into the harbour safety management system. The procedures shall be developed in consultation with the harbourmaster, relevant users, and pilots. The procedures shall be based on an objective assessment of safety. They shall take account of the physical conditions of the harbour and the ports within it and the characteristics of vessels using it.

2.7.2.4 The use of tugs for berthing, unberthing and escorting is a matter for the master - and for agreement with a pilot, where embarked. If a master does not wish to follow the standard operating procedures, against the professional judgement of a pilot, the harbourmaster shall be referred to for special directions. The harbourmaster may direct a vessel to anchor, or to leave the area to wait for appropriate conditions in these circumstances. Disagreements such as this need to be accounted for in the development of towage standard operating procedures.

2.7.2.5 Where tugs are provided by a service provider outside of the port company, the service shall be fully integrated into the harbour safety management system.

2.7.3 Berthing

- 2.7.3.1 Harbourmasters have powers to regulate the berthing of vessels in the harbour. These powers shall be exercised having regard to the harbour safety management system and relevant Guidelines of Good Practice.
- 2.7.3.2 Port companies shall develop standard berthing plans containing minimum agreed requirements following consultation with affected parties. These shall be submitted to the harbourmaster to form part of the harbour safety management system. Port companies shall also ensure that berthing parties meet the industry's competence standards, and have access to appropriate training.
- 2.7.3.3 The port company, as owner of the wharf, is able to refuse a vessel the right to berth should such an operation be determined as unsafe due, for example, to an unwillingness on the part of the vessel's Master to take tugs as advised by the pilot. This right needs to be exercised prudently taking into account all prevailing circumstances. Mechanisms for the exercise of this right shall be embodied in standard operating procedures and in consultation with the harbourmaster.

APPENDIX

Maritime Transport Act 1994

Local Government Act 1974

Local Government Act 2002

Resource Management Act 1991

Health and Safety in Employment Act 1992

Hazardous Substances and New Organisms Act 1996

Civil Defence Act 1983

Maritime Rules Part 22, Part 24A, Part 53, Part 90, Part 91