



## **HARBOUR MASTER'S REPORT TO HHAC 12th January 2011.**

### **1 Operational review by DHM**

Activity from harbour users Since October has decreased as many boats have been removed to dry berthing for the winter period enabling owners to progress essential maintenance prior to the 2011 season.

There have been a number of engine and equipment thefts from vessels left on their moorings; they are being investigated by the police. The police called a meeting of the harbour watch coordinators at the harbour office to brief those present on the correct procedure for reporting thefts. They stressed the need to report them immediately, rather than two or three days after the event.

HHAL will also adopt a procedure that is in use at Padstow and send out a "Keep Your Boat Secure" leaflet (produced by the Devon and Cornwall Police) with the 2011 Harbour due invoices. The leaflet offers various suggestions on how engines and equipment can be marked with a code that is held on a database accessible by the Police.

On the 7<sup>th</sup> of October an out of working hours call was received from Falmouth Coast Guard regarding the catamaran "O flo" which was reported as having parted its mooring line. The vessel was on the visitors berth waiting to be moved to dry berthing on South Quay for the winter. On investigation, the vessel was found to be moored but laying off the Quay due to the severe SE wind conditions. The owner, who HHAL had been trying to contact during the day to check his vessel for this very reason, eventually responded to the calls, attended the vessel and put out additional ropes. He then remained onboard overnight.

A fishing vessel "White Heather" is currently moored on East quay undergoing a mini refit by Mr Baumbach.

The port hand buoy light was reported as defective by a harbour user during October and a Local Notice to Mariners was issued. The replacement light arrived the following day but due to adverse sea conditions it was a further week before the weather was suitable to enable the light to be fitted in safety.

In preparation for the North Quay works, it has been necessary to relocate a number of containers. Those belonging to fishermen and Mojo Maritime have been moved to chieftain yard, the canoe club has been relocated a short distance and is now situated on ground to the right of the beach slipway. The RNLI container has been relocated on spare ground near the old SWEB canteen.

Hayle Surf Life Saving Club recently requested space for a container which HHAL has been able to accommodate opposite the RLNI container at no cost to the club.

The waste reception facilities that HHAL are required to provide have been moved to Chieftain Yard. Mr Lello is also in the process of vacating his site.

Harbour users have been requested to remove all equipment (mainly of crab pots) left on North Quay by the 10<sup>th</sup> January. Those who have been slow to respond have had notices placed on their property informing them that equipment left on site after this date will be removed by the contractors.

Users are advised that the fencing along North Quay, except for the fishermen's compound, is in the process of being removed to storage prior to the commencement of works.

Two vessels new to Hayle are expected to arrive in the harbour within the next few weeks; they are relocating from Penzance. One is a sailing vessel the other a work / dive vessel. Both are in excess of 12 metres in length and will be berthed, at and operate from, Lelant Quay.

The dredger "Tay Sand" has been working at Padstow since September 2010 and is expected to return to Hayle in the near future.

Western Power required to carry out essential maintenance work to their HV cables on the middle weir. One of the cables was damaged and this work has now been completed.

Prior to Christmas, Jenny Christie CC Maritime Environment Officer viewed the dune replenishment site and is expected to make her recommendations to HHAL regarding the future management of the area.

During December, it became necessary to advise South West Water that their water main opposite the fishermen's compound had fractured as water had been running away for several days onto the quay and freezing creating a hazard to fishermen and other harbour users.

The Harbour staff assist ING with estate management with issues not related to the Harbour Authority. Those issues include fly tipping at Riviere farm has in recent months become a major problem, therefore it has become necessary to fit locked gates at the

entrance to the affected field in an effort to prevent the practice. Repairs to the water supply and sprung leaks at the Octel were necessary on three separate occasions when the supply pipe recently froze. The pipe has since been renewed.

## 2 Dredging Review

I have completed the first draft of the Harbour Master's Dredging Review. I intended to release it to this meeting and thence to commence a formal period of consultation before it is published. However, as the issues I raise in my draft Review are immensely important to the future of Hayle Harbour I believe they should be considered in isolation. I think it would be unhelpful for the consultation to run alongside the food store discussions, which will continue throughout this month, as both matters are important and need adequate time for meaningful discussion and debate. It is with this in mind and with the agreement of the Chairman that an extraordinary meeting of the HHAC will be convened in the second week in March 2011 (about 9<sup>th</sup> March) at this venue.

At that meeting, I will present my draft Review and explain the rationale behind its findings. I will release hard copies of the draft Review to the members of the HHAC and will invite them to submit their written input to me within 14 days of the meeting in March. I will consider all of the input from members of HHAC and thence within a further 14 days release my second draft Review. This version will be for formal public consultation which will run for a further 28 days. I will consider all of the input from the public and release my final report within a further 21 days. My final report will include a summary of all of the input received during both periods of consultation. The input will be attributed.

Accordingly, the proposed timetable is:

9 March	Extra-ordinary meeting of HHAC H.M. draft (1) Dredging Review released to HHAC members for consultation
23 March	Deadline for input from Members of the HHAC to HM
6 April	HM draft (2) Dredging Review released to public for consultation
4 May	Deadline for input from members of the public to HM
25 May	Final of HM Dredging Review published

### **3. Status of Entrance Channel**

As there has been no dredging the channel remains poorly defined and meanders to the east of the remains of the training wall. Timeline photography indicates that the channel moves, sometimes taking on sweeping curves and sometimes becoming straighter. It is not anticipated that the status of the entrance channel will change until after decisions have been made as a consequence of my Dredging Review.

### **4. Funding for Fishermen's facilities**

I have chased Seafish regarding European Fisheries Fund assistance and have tried to organise a meeting between the local co-ordinator and the Hayle Fishermen's Association but to no avail. It is for the fishermen to work with Seafish to explore all funding options yet the Harbour Authority remain keen to assist.

### **5. "Mackerel Boats" laid up during the winter on Lelant Salting.**

5.1 At the last HHAC it was resolved that the vessels moored at Lelant would be charged harbour dues as leisure vessels as they are not engaged in trade during lay-up. It was also resolved that harbour dues would be charged from 1<sup>st</sup> October 2010.

5.2 The charging regime was reflected in Local Notice to Marine 08 of 2010 and an amended Schedule of Harbour Dues 2010/11

5.3 Shortly after the last HHAC and after the 6 mackerel boats laid up at Lelant had been measured, 6 invoices were issued totalling £1814.13. None of these invoices have been paid.

5.4 On 7<sup>th</sup> December I met Adam Barker and William Thomas of the Mackerel Boat Association (MBA). The meeting was without prejudice. Private and confidential minutes of that meeting were taken. It was agreed that a representative of the MBA would seek to make a representation before the HHAC.

5.5 Subject to the representation that is to be made by the MBA it appears there are divergent views.

The MBA's position is that the Harbour Authority have no right to charge 'harbour

dues' for land they no longer own and that the members of MBA can prove Common Law rights from real and hard evidence of local custom.

The Harbour Authority's position is that its ability to charge harbour dues is not dependant on land ownership and that all users of the harbour should contribute to the management, maintenance and improvement of it. Both National and Local law are clear in that the Harbour Authority has the power to demand and recover harbour dues and that it has the ability to licence and regulate the use of moorings.

5.6 The issue is now the degree and mechanics to be taken by the Harbour Authority to recover the outstanding harbour dues and **I seek advice and input from the HHAC.**

The following options are available

- (i) Arrest and distrain one or all of the mackerel boats. If the harbour dues remain unpaid for seven days thereafter sell the boats to satisfy the unpaid dues and to recover the associated costs. (sec 44 Harbour, Docks and Piers Clauses Act 1847 – Civil action).
- (ii) Prosecute the skippers of the mackerel boats for failing to report their arrival within harbour limits to the Harbour Master. (sec 35 Harbour, Docks and Piers Clauses Act 1847). – Criminal Prosecution.
- (iii) Commence debt recovery proceedings in the civil courts for an amount of 3 times the outstanding harbour dues (sec 43 Hayle Harbour Act 1989)
- (iv) Prosecute the owners of the mackerel boats for
  - a) Causing a vessel to be moored on an unlicensed mooring
  - b) Laying down an unlicensed mooring;together with recovering the costs of removing the mooring (sec 32 Hayle Harbour Act 1989)
- (v) The Harbour Authority may require the removal of the moorings and if they are not, the owners of the mackerel boats can be prosecuted (sec 33 Hayle Harbour Act 1989)
- (vi) The Harbour Authority may, after giving 7 days' notice, remove the moorings and may prosecute any person that has laid a mooring without a licence. (Hayle Harbour Byelaws 1990)
- (vii) Accept that the mackerel boats should not pay harbour dues because either they are outside the jurisdiction of the Harbour Authority or because they should not pay harbour dues on the basis that some of them (not all) have not paid harbour dues for many years. If the mackerel boats do not pay harbour dues, boat owners that do (including those that moor at Lelant Saltings) may consider it unfair and unjust. If harbour dues are not collected from all boats

within the jurisdiction, it will create an uncomfortable precedent.

5.7 It would assist the Harbour Authority if we could better understand the MBA's legal position regarding why they consider the ownership of land to be of relevance and why they consider that because some of their members may not have paid harbour dues in the past that somehow makes them exempt from paying dues now.

5.8 The sums of money are not great; about £300 inclusive of VAT per mackerel boat. The legal costs involved in commencing proceedings in either the Criminal or Civil Courts or both, together with the costs of defending the actions will almost certainly be disproportionate.

5.9 In cases such as these, provided neither part is entrenched, mediation may be useful. **I ask the members of the HHAC, either collectively or perhaps as a working group, if they would be prepared to act as mediators** provided that all members of the MBA accept their findings as final and undertake to comply with them.

5.10 Sec 31 of the Harbours Act 1964 provides a right of objection to harbour dues. The MBA could use this mechanism to make a written objection to paying harbour dues to the Secretary of State who then appoints a person to consider the objection by way of an enquiry. My experience of this process is that it is slow, cumbersome, time consuming and expensive. For these reasons I recommend mediation as an alternative.

## **6 Harbour Master's Surgeries.**

Each month I hold a surgery and everybody is welcome to book a slot by telephoning the Harbour Office. Numbers have dropped off recently but that may be because I organise meetings with stakeholders outside of the surgery to discuss specific issues. The next surgery will be in February.

## **7 Kite Surfing**

The kite surfing regime was reviewed with representatives of Kernow Kitesurfing Club on 8<sup>th</sup> December. No incident reports had been logged and no adverse comments had been received. The 6 month trial was considered a success and is indicative that at the present level of use, harbour entrance users and kite surfers can co-exist without creating risks that are incapable of being managed to As Low as Reasonably Practicable. I am content that the present regimes continues on a permanent basis (subject to ongoing risk assessments) and have issued a Local

Notice to Mariners to that effect.

Representatives of the kitesurfers requested that I submit to the HHAC the following written representation:-

**Representation to Hayle Harbour Advisory Committee  
Kite Surfing**

Kernow Kitesurfing Club(KKC) and the British Kite Surf Association( BKSA) would like to thank the advisory committee to agreeing to the 6 month trial at Hayle Harbour. It has given the opportunity to test the robustness of the risk assessments and the compliance of kite surfers with the Code of Conduct.

Following a review on the 8 December 2010 the HM has declared the trial a success. He said that there had been no incident reports and no formal complaints.

KKC wish to see the sport of kite surfing making it's contribution to the HHAC objectives in developing a centre of excellence for water sports, encouraging tourism, opportunities for young people and related commercial enterprises. KKC has a vision on how kite surfing would develop within the harbour in a manner compatible with these objectives which includes increased access, teaching of the sport, national and international events.

Paramount to this development is the compliance to the Code of Conduct and KKC welcomes HM assurance that those few people failing to comply will be prosecuted after due warning.

KKC wishes to emphasize its concern to maintain all risks to As Low As Reasonably Practicable (ALARP), and are therefore seeking a step by step approach to the development of the sport within the harbour.

The key factor in the success of the trial has been the compliance with 100 meter rule and the HM has received positive comments from boat users where kite surfers have been observed to turn away when boats are seen approaching the channel. Compliance with this requirement has ensured that kite surfing has not been a hazard to navigation, and we therefore believe that a time limit on kite surfing is not needed.

We seek the removal of the time limit with a formal review of this change in 6 months. It is understood that should risks become apparent in this period the HM is obliged to act accordingly.

With the above in mind, **I seek advice from the HHAC.**

The present regime does not permit kitesurfing within 3 hours of High Water (as given by the UKHO for St Ives). KKC wish for this limit to be removed which would permit kitesurfing at any state of the tide. This would increase the possibility of kitesurfers and vessels transiting the channel being in conflict but the KKC Code also requires that “**all kitesurfers MUST keep at least 100m away from AND turn away from all vessels using the channel.**” There are no indications thus far to suggest that this precaution has not been effective in managing the risk. Subject to the advice of the HHAC I would be comfortable with working with the kitesurfers to initiate a further trial commencing 1<sup>st</sup> February 2011 for 6 months with the KKC Code amended so that the time limits presently prescribed are removed. As before, I would reserve the right to revoke permission to exceed the speed limit of 5 knots without notice at any time. This would prohibit all kitesurfing. I have discussed this possibility with the Designated Person required by the Port Marine Safety Code and he raises no objection provided the risks are regularly re-assessed and incident reports immediately considered.

## **8 Port Marine Safety Code Audit**

The Designated Person carried out a PMSC compliance audit on 2 November 2011. His report detailed recommendations that are being actioned by the harbour staff and identified two issues that deserved immediate attention. The audit report has been submitted to the Board of Hayle Harbour Authority Ltd. I am due to attend before the Board later this month to fully explain the requirements of the Port Marine Safety Code. During December I held an in-house PMSC training session for the DHM and AHM.

The two major issues raised by the report were:-

1 Duty holders to be clearly defined. HHAL has a Board of Directors and as such, they are considered the “duty holders” under the PMSC unless the duty holder is not the Board whereby the harbour authority must publish and confirm who the duty holder is.

The Board responded with;

“With regard to the Duty Holder, now that Marcel Kooij has left ING. The Duty Holder will be the Board of Hayle Harbour Authority Limited. This is comprised of the following people:

Sven Matheson  
Guy Parker



David Alker  
Russell Coetzee”

2 Whilst the risk register is now complete the procedures and work instructions that implement the management of those risks needs to be revisited and reworked.

This is a “work in progress” and is being actioned by the DHM. The next audit will be in May 2011. This will ensure the procedures and work instructions are brought to the required standard.

## **9 Directors Remarks.**

We have had another challenging year financially but we are seeing some encouraging signs in terms of new customers for winter boat storage and enquires from commercial boat owners considering Hayle Harbour as a potential home port.

However, the most significant development is the imminent start of infrastructure works on North Quay about to be undertaken by Cornwall Council as part of their plans to develop a “renewables business park ,“ at the North end of the quay. This will result in a new area for the Hayle Fishermen’s Association who have been offered a new 10 year lease of a refurbished area of the quay by ING Real Estate (Hayle Harbour) Ltd.

It is also hoped that businesses attracted to the renewables business park will have requirements for harbour facilities and see an increase in commercial vessels in the Harbour, which will significantly help increase harbour dues.

Mark Capon  
Harbour Master  
Hayle Harbour Authority Limited.