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Port & Harbour Safety System Project Team
Maritime Safety Authority
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WELLINGTON

For: Michael Fraser

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Greater Wellington is the promotional
name of the Wellington Regional Council

Dear Mr Fraser

Pro forma submission on the proposed New Zealand Port & Harbour Marine Safety Code made on behalf of Greater Wellington Regional Council (“the Council”)

Please find enclosed a copy of a pro forma submission made on behalf of the Council.

As the closing date for submissions falls between scheduled meetings, the Environment Committee of the Council has not yet had an opportunity to consider the submission, nor has the Council had an opportunity to formally ratify the submission following a recommendation of the Committee.

For this reason, we ask that you consider the submission subject to ratification by the Council at its next meeting on 20 April. We will advise you in writing of the Council’s decision to ratify the submission and of any necessary amendments required as a consequence of the Council’s decision. In the event that the Council decides not to ratify the submission, we will withdraw the submission.

If you have any questions please feel free to contact me by phone or email.

Yours sincerely

David Harmer
Policy Analyst

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greater WELLINGTON
THE REGIONAL COUNCIL

Submission of Greater Wellington Regional Council (“Greater Wellington”) to Port & Harbour Safety System Project Team

on the

New Zealand Port & Harbour Safety Code, and associated guidelines

1. Introduction

Thank you for the opportunity to make this submission on the New Zealand Port & Harbour Safety Code (“the Code”), and associated guidelines.

2. Submission

Given recent accidents, the lack of a common interpretation of roles and responsibilities, and the need for consistent national standards, Greater Wellington welcomes the proposed Code and associated guidelines. It is our expectation that the development of a Port & Harbour Safety Management System will result in the systematic identification and management of risks within our region’s ports and harbours.

However, Greater Wellington is concerned to ensure that it is allowed sufficient time to complete all of the components that will make up our Harbour Safety Management System. When talking about “carving up the elephant” that is the harbour risk assessment process (see page 12 of guidelines), it needs to be recognised that it is a very big elephant. The preparation of a harbour risk assessment, safety plan and standard operating procedures, and all that these documents entail will necessarily require a significant commitment from Greater Wellington in terms of resources and time.

For this reason, we ask that particular consideration be given to the identification of appropriate time frames in which to deliver a completed Harbour Safety Management System. Our own expectation is that Greater Wellington will require approximately 18 months to complete the harbour risk assessment and safety plan in order that our system be finalised in the 2006/07 year. Should the risk assessment demonstrate a need for significant new expenditure, additional time may be required as any new costs will ultimately have to be borne by ratepayers.

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It is worth noting here that Greater Wellington has received, and accepts, the Crown Law Office opinion dated 27 January 2004. While Greater Wellington considers that it has properly considered whether (and where) to exercise the navigation safety function, it will review relevant decisions in light of the advice provided by the Crown Law Office to the Maritime Safety Authority.

Please find our submission attached at **appendix 1**. This has been set out using the recommended submission format.

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New Zealand Port & Harbour Safety Code & Associated Guidelines

Date:	29 February 2004
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Are your comments to remain confidential:	No
Greater Wellington endorses the proposed Code	
<p>Except where otherwise noted below, Greater Wellington agrees with the expression of roles, duties and responsibilities in the Public Consultation Draft and endorses the proposed New Zealand Port & Harbour Marine Safety Code (“the Code”) and related guidelines.</p> <p>While Greater Wellington endorses the Code and related guidelines, it believes that it is important to recognise that it will take considerable time and commitment from staff to produce safety plans and standard operating procedures. It is essential that this fact is recognised and that sufficient time is allowed to prepare the plans and systems contemplated by the Code.</p> <p>We commend the staff of MSA for the work they have done to prepare the Public Consultation draft and are grateful for the opportunity to make this submission. Thank you.</p> <p><i>Note: Wherever it appears in this submission, “Agree” is intended to denote Greater Wellington’s express agreement with a section or statement contained in the Code, including the particular wording used.</i></p>	

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Which document are you commenting on: NZ Port & Harbour Marine Safety Code.		
Section Title	Page No.	Comment
1.1 Duties & Powers	7	<p>Greater Wellington agrees with the objectives described in the overview to the discussion document. However, objective 2(b) should make it clear that the cost of guarding against any given risk should be proportionate to the nature of the risk itself.</p> <p>This sentiment is a key component of the ALARP principle (as discussed at 2.1.16) and should be reflected in the statement of objectives.</p> <p>In this context, objective 2(b) should be amended to read:</p> <p style="padding-left: 40px;">(b) identify all risks and establish <i>appropriate</i> safeguards against all identified risks <i>applying the “ALARP” principle.</i></p>
1.2 General Duties & Powers	8	Greater Wellington agrees with all of the definitions contained in this section.
1.3.1 Specific Duties & Powers	10	Agree.
1.3.2 Appointment of harbourmaster	10	<p>At present a harbourmaster may be appointed directly under the Local Government Act 1974 or bylaws validly made under that Act (as is the case in the Wellington region).</p> <p>As 1.3.2 is presently worded there is an implication that to appoint a harbourmaster under bylaws – rather than under the Act directly– will not comply with the Code.</p> <p>This matter is raised principally as a point for clarification. If it is intended that all harbour masters be appointed under the Act (and not bylaws), it may be necessary for Greater Wellington to review its appointment process.</p>

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1.3.3 Appointment of harbourmaster	11	Greater Wellington agrees that the harbourmaster must be suitably qualified. It is our intention to make a further submission regarding the qualifications required during the rulemaking process.
1.3.4 Dangerous goods	11	<p>The requirement to give 48 hours’ notice before bringing dangerous goods (DGs) into a harbour area only applies to vessels arriving from an “unlimited area” – Rule 24A.4(9).</p> <p>The requirement does not apply to DGs coming from inland into a port nor vessels carrying DGs on a coastal voyage. In these cases, the master of a ship is only required to give notice:</p> <p>(a) as soon as practicable; and</p> <p>(b) before entering harbour limits.</p> <p>See rule 24A.4(10).</p> <p>It is appropriate to review whether rule 24A.4(10) affords harbourmasters sufficient notice for the purposes of their safety management plan and the operation of a safe harbour. In practice, it is our perception that our harbourmaster is warned “at the last minute” on too many occasions.</p> <p>It is also worth noting that there seems to be a lack of understanding amongst some masters about the nature of DGs and which items must be notified. This can on occasion mean the harbourmaster having to review a (potentially lengthy) manifest which does not disclose the carriage of DGs (notwithstanding the mistaken belief of the master to the contrary).</p>
1.3.5 to 1.3.8 Prevention of Pollution.	11	Agree.
1.3.9 Emergency Powers	12	Agree.
1.3.10	12	Agree.

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1.3.11 Incidents threatening pollution.	12	Agree.
1.3.12 Pilotage	12	Agree. Maritime Rule 90 is to be reviewed further.
1.13.13 Pilotage directions	13	Agree.
1.13.14 Pilotage maritime documents	13	Agree.
1.3.15 Information to be provided to pilot	13	Both the port and harbourmaster may require information regarding defects or matters particular to a ship which are likely to affect its navigation prior to the ship's arrival. For this reason, it is suggested that this paragraph be extended to make it clear that, where practicable, the master of a ship must bring matters they would draw to a pilot's attention to the attention of the port and harbour master before arrival.
1.3.16 Pilot and the Port State	13	<p>While it is appropriate that the Director of the MSA be informed of deficiencies which may prejudice the safe navigation of a vessel; the safety of any person, or which may pose a threat to the environment, Greater Wellington believes that this information should first be conveyed to the harbourmaster and relevant port – in particular, where the deficiencies pose an immediate threat to safety.</p> <p>For this reason, Greater Wellington believes this paragraph should be amended to read:</p> <p style="padding-left: 40px;">1.3.16 A pilot engaged in the berthing and unberthing of a vessel should immediately inform the harbourmaster, and as soon as possible thereafter, the port and Director of Maritime Safety...</p>
1.3.18 Tugs	13	Greater Wellington agrees that port companies and regional councils should lay down appropriate guidance for the use of tugs in port areas. In fact, the use of "tug norms" is already a common practice.

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1.3.19	13	Procedures for special directions to be used where a master or pilot proposes that “tug norms” should not apply, should be included in the guidelines described above.
1.3.20 Aids to Navigation	14	Agree.
1.3.21	14	Agree.
1.3.22	14	We accept that port operators must erect and maintain aids to navigation and consider this to be appropriate. However, the Code should clarify the extent of this obligation. Specifically, port operators should only erect aids to navigation in the immediate vicinity of port berths, and not in main shipping channels (The placement of aids to navigation in shipping channels should be the responsibility of regional councils).
1.3.23	14	Agree.
1.3.24	14	Agree.
1.3.25	14	Agree.
1.3.26	15	Agree.
1.3.27	15	Agree.
1.3.28	15	Agree.
1.3.29	15	Agree.
1.4.1 Organisational Responsibility & Accountability	15	<p>With respect to the processes of monitoring and auditing compliance with the Code, Greater Wellington believes a dispute resolution process needs to be developed and incorporated into the Code.</p> <p>The purpose of this process would be to facilitate the resolution of disputes between the MSA (as auditor) and regional councils (and other participants) regarding the extent of compliance – <i>should such disputes arise</i>.</p> <p>It is also our view that a compliance certificate</p>

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		should be issued following a satisfactory audit.
1.4.2	16	<p>Greater Wellington agrees that it is necessary for the MSA to impose conditions on the use of a harbour where there is significant non-compliance.</p> <p>The code is loosely based on the International Ship Management (ISM) principle. If – under that principle - there is significant non-compliance then a ship would not be permitted to operate. The same should hold true for a port/harbour operation (provided that the response is always proportionate to the degree of non-compliance).</p> <p>As we have indicated above, the Code should include a disputes resolution process. This could be used where there is disagreement about non-compliance. However, as significant non-compliance could result in damage to property or worse, we accept that MSA must be able to impose conditions first and resolve disputes later.</p>
1.4.3	16	<p>Greater Wellington appreciates this clear statement of regional council responsibilities.</p> <p>As we read 1.4.3(a), a regional council is able to determine which harbours and port operations will be covered by the Code.</p> <p>What is the situation where, after making a code application assessment, a regional council determines that the provisions of the Code do not apply to a small harbour? Does MSA (or any other organisation) have a right to appeal this determination?</p> <p>If so, any right of appeal or mechanism for resolving dispute with regard to the determinations made following code application assessments should be clarified in the Code.</p>
1.4.4	16	Agree.

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1.4.5	16	Agree.
1.4.6	16	Agree.
1.5.1 Individual Responsibility & Accountability	17	Agree.
1.5.2	17	As the harbourmaster is the designated person responsible within a regional council for insuring harbour safety <i>in every case</i> , it seems unnecessary to introduce the concept of the “regional council designated person” (RCDP). It is appropriate to refer to the harbourmaster throughout, or, if an acronym is essential, to the HM.
1.5.3	17	See above, this paragraph should be amended by deleting references to the RCDP (and referring instead to the harbourmaster). In our view, it is essential that discussions between the harbourmaster and the highest tier of management are well documented. It is appropriate that the Code provide advice to this effect.
1.5.4	17	Agree.
1.5.5	17	Agree.
1.5.6	17	In practice, councils often fail to retain strategic oversight where they delegate functions to other agencies. In this context, the express reminder in the Code regarding responsibility for the performance of functions is appropriate (and possibly even essential).
1.5.7	18	Due to the possibility of a conflict of interest, Greater Wellington is strongly of the opinion that regional councils should avoid delegating the power to appoint a harbour master to a port company wherever possible.
1.5.8	18	Agree.

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1.5.9	18	Agree.
1.5.10	18	Agree.
1.5.11	18	Agree.
1.5.12	18	It has been suggested by some that the harbourmaster should only be accountable for safety of operation “within the harbour and port”. Greater Wellington is strongly of the opinion that the Harbourmaster should also have sufficient knowledge of operational activities at the berth before a vessel sails. These may not be under the direct control or supervision of the Harbourmaster, but such activities should be included in the Port Safety Management Plan.
1.5.13	19	Agree.
1.5.14	19	Agree.
1.5.15	19	Agree.
1.5.16	19	Agree.
2.1.1(A) Setting a Standard	20	Agree.
2.1.1 (B)	20	As indicated above, and in view of the significant commitment in terms of time and resources required to implement a safety management system, Greater Wellington believes some form of compliance certificate should be issued by the Director of MSA once a safety management system has been approved. To provide certainty, the Code should oblige the Director to approve (or not) a safety system as soon as reasonably practicable after it is submitted.
2.1.1(C)	20	Agree.
2.1.1(D)	20	Agree.
2.1.1(E)	20	Agree.

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2.1.1(F)	20	Agree.
2.1.2 Policies and plans	20	Agree.
2.1.3	20	Agree.
2.1.4	21	Agree.
2.1.5	21	Agree.
2.1.6 Taking Stock	21	Agree.
2.1.7 Legal Duties & Powers	21	Agree.
2.1.8 Risk Assessment & Safety Management	21	Agree.
2.1.9	22	Agree.
2.1.10	22	Agree.
2.1.11	22	Agree.
2.1.12	22	Agree
2.1.13 Continuous assessment and review	22	The requirement for continuous review will add considerably to existing workloads. It is important that this is recognised by both MSA and regional councils.
2.1.14	22	Agree.
2.1.15	22	Agree.
2.1.16	23	Agree.
2.1.17	23	The measures taken to eliminate intolerable risks as far as possible will, in practice, be constrained by considerations of cost. While it is appropriate that the initial consideration of options be made without reference to cost, time or difficulty it needs to be recognised that cost will inevitably be a factor when choosing between options.

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2.1.18 Competence standards	23	<p>Greater Wellington agrees that persons assigned a role in the system must be competent. However, we are concerned that competency standards do not exist for many specialist tasks at present.</p> <p>This gives rise to two related questions:</p> <p>(1) how will standards be determined?</p> <p>(2) Is it possible to introduce competency standards in time to implement this requirement of the Code?</p>
2.1.21	23	<p>We believe that it is appropriate that the Guidelines of Good Practice are reviewed regularly so that they continue to reflect best practice. However, it is important that change occurs at an evolutionary – rather than revolutionary – pace.</p> <p>It is extremely difficult to understand, and learn to work with such guidelines in practice, where they are the subject of constant review and significant change. We acknowledge that it is sometimes difficult to strike the right balance in this regard, but believe it is important that MSA are aware of the impact constant change can have on officers trying to implement guidelines.</p>
2.1.1(A) Risk Assessment & Safety Management	24	Agree.
2.1.1 (B) to 2.1.1(I)	24	Agree.
2.2.2 Safety Policy	27	Agree.
2.2.3	27	Agree.
2.2.4 Safety Management Systems to 2.2.6	28	Agree.
2.2.7 Measuring performance	28	Agree.
2.2.8	28	By the time the Code is implemented, it is

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		likely incidents and complaints will need to be reported to the Transport Accident and Investigation Commission (not MSA).
2.2.9 to 2.2.14	28	Agree.
2.2.15 to 2.2.17	29-30	Agree.
2.2.18 Hazard Management	30	Agree.
2.3.2 to 2.3.3 Hydrography	30-31	Agree.
2.3.4 Reviewing changes	31	Agree.
2.3.5 Nautical charts	31	We believe the provision of hydrographic information is essential to the safe operation of our ports and harbours. However, we are also of the opinion that some further discussions will need to take place with regard to cost-sharing or recovery of the cost of providing hydrographic information to the publications of LINZ and the UK Hydrographic Office.
2.3.6 Prevailing conditions	31	In Greater Wellington's view, arrangements for the provision of information about prevailing conditions should be documented in the Harbour Safety Management Plan. It is also worth noting that requirement may impose significant new costs on councils, particularly where it is necessary to purchase electronic sensory equipment.
2.3.7 Aids to Navigation	31	Agree.
2.3.8 Anchorages	32	Agree.
2.3.9 Wrecks	32	Agree.
2.3.10 Regulation of navigation	32	Agree.
2.4.1 Regulation of navigation	32	Agree.
2.4.2 Available powers	32	Agree.
2.4.3 Rules & bylaws	33	Agree.

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2.4.4 Enforcement	34	Agree.
2.4.5 to 2.4.6 Link to HSMS	34	Agree.
2.4.7 Vessel traffic services	34	Agree.
2.4.8 Directions & passage plans	34	Agree.
2.4.9 to 2.4.16 2Port passage guidance	34-35	Agree.
2.5.1 to 2.5.3	35	Agree.
2.5.4	36	In the interests of timeliness (which will be an extremely important consideration when preparing the various components of a safety plan and operating procedures) this paragraph should be amended so that the Director is obligated to consider a formal risk assessment as soon as practicable after it is submitted.
2.5.5 to 2.5.6	36-37	Agree.
2.5.7 Boarding and landing procedures	37	We are unsure how Part 51 – which relates to crew accommodation - is relevant here. Is this a typographical error? If not, some further clarification of the relationship between part 51 and the Code is required here.
2.5.8	37	Agree.
2.5.9 Allocating pilots	37	Agree.
2.6.1 Pilotage exemption	37	We note that Part 90 of the Maritime Rules is to be reviewed again. The outcome of any review will need to be taken into account.
2.6.2	37	Agree.
2.7.1	38	Agree.
2.7.2 to 2.7.3 Tugs	38	Agree.
2.7.4 Tugs	38	In Greater Wellington’s view, the tug provider should provide standard operating tug procedures in the first instance. These could

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		then be incorporated into the harbour risk assessment.
2.7.5 to 2.7.7	38	Agree.
2.7.8 Pilot launches and workboats	39	Agree.
2.7.9	39	Agree. However, it is worth noting that such craft are already required to be covered by the Safe Ship Management System and be “fit for purpose”.
2.7.10 Mooring	39	Greater Wellington believes that there should be an express obligation on port companies to develop standard mooring plans and submit these to the harbourmaster.
2.7.11	39	Agree.

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Which document are you commenting on: Guidelines for P & H Risk Assessment and Safety Management Systems		
Section Title	Page No.	Comment
Risk Assessment		<p>The Risk Assessment Workshop presented by Marico Marine and organised by MSA during February 2004 was well received, and appreciated by attendees. We wish to thank MSA for its efforts in organising this workshop. Our officers have an improved understanding of the proposed Risk Assessment processes as a result of their attendance.</p> <p>Nevertheless, risk assessment; data gathering, hazard identification, development of risk management strategies, and the preparation of a Port & Harbour Safety Management System will require considerable time. It will also require an appreciation of risk assessment and management methodologies officers will not necessarily have been exposed to previously.</p> <p>Even if outside consultants are employed, we expect, our harbourmaster (and others) will face new and considerable demands on their time. This fact needs to be recognised and appropriately managed (both by regional councils and MSA).</p>

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Which document are you commenting on: Guideline for providing Aids to Navigation		
General Comments: This section appears to focus almost exclusively on lights. It is worth noting that there are other aids to navigation (AtoN) which are not lights. As technology continues to advance these AtoN will become increasingly available. It may be necessary to review these guidelines at some point with this in mind.		
Section Title	Page No.	Comment
1.1 Category of AtoN	5	In practice, it is our expectation that the risk assessments completed under the proposed new regime are unlikely to reveal a need for a significant number of additional AtoN as most will already be in place. In fact, the reverse may be true, risk assessments are likely to reveal that some existing AtoN can be dispensed with or simplified in view of the modern navigational equipment on ships. Category Table “Repair/Response Time” should read just “Response Time”. The weather will often dictate when a remote light or one that is only accessible by boat can be repaired. In our view all faulty AtoN should be repaired “as soon as practicably possible”.
2.2 MSA as National Authority	6	Agree.
2.3 The Regional Council as the Local Authority	6	In Greater Wellington’s view, this paragraph should be amended to clarify that the responsibility to supply and manage AtoNs does not apply to MSA coastal AtoNs. Such AtoNs should remain MSA’s responsibility.
2.4 Authorised person	7	Agree
2.5 Powers to intervene	7	This paragraph should be amended so that the Director is required to justify any requirement to add or remove AtoN in writing.
2.6 The Operator	7	Agree.
2.7 Audits and Inspections	7	Agree.
3.1 Service providers	7	Agree.

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3.2	8	Agree.
3.3 Installation	8	We would appreciate some further guidance regarding the meaning of “qualified” in this context. For example, are there particular standards a person must have completed before installing AtoN or does this require an entirely subjective assessment of a person’s “qualifications” by the operator?
3.4 Maintenance	8	Agree.
3.5 Outages	9	Agree.
4.1 to 4.3 Administering AtoN	9	Agree.

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Which document are you commenting on: Guidelines of Good Practice for Hydrographic Surveys

General Comment: There needs to be a clear definition of areas of survey responsibilities. Currently, LINZ surveys along the coastline while ports look after surveys that affect their own commercial viability.

Greater Wellington is uncertain as to who is responsible for surveying areas in a harbour that do not need to be dredged for commercial reasons (i.e. there is no commercial interest). We assume LINZ is responsible, but would observe that this appears to be an area of low priority for them.

Regional councils (such as Greater Wellington) do not have adequate in-house expertise to complete such surveys. If responsibility were to fall on to regional councils, they would almost invariably be forced to contract surveyors - which is very expensive -- and then be obliged to pass information to LINZ (possibly without cost) so that it can update harbour charts. (It is our understanding that, before LINZ took over the chart-producing role from the NZ Navy, the navy used to undertake harbour surveying.)

The guidelines relating to hydrographic surveys incorporate a level of technical detail, which, in some case ought not be included in the guidelines – see for example. 4.2.1.1 and 4.2.1.2 -. We would also observe that there is some inconsistency of style in this regard between these guidelines and those for AtoN. This guideline has far greater technical content than the Guideline for Providing Aids to Navigation.