

A New HRO for Falmouth Harbour



FALMOUTH HARBOUR

UK's Atlantic gateway.

Introduction

The Falmouth Harbour Board (Commissioners) are seeking to update the legislation that enables Falmouth Harbour (FH) to do its job well, promoting and protecting our incredible Harbour, whilst keeping all Harbour users safe. The Board of commissioners feel a thorough overhaul of our legislation is now necessary, to fully reflect the challenges of managing an increasingly busy Harbour in the 21st Century.

In January 2022 the Harbour Board decided to progress with a modernised Harbour Revision Order (HRO) and in September 2022 approved the submission of a draft HRO to the Marine Management Organisation (MMO). The application was made in September 2022 (under section 14 of the Harbours Act 1964) for a new Order. The MMO have now confirmed that they now wish to commence consultation and formal notices were placed on the 29th August 2023.

The new HRO will consolidate and modernise existing local statutory harbour legislation in respect of Falmouth Harbour and confer further modernised powers on the Falmouth Harbour Commissioners considered conducive to the efficient and economical operation, maintenance, management and improvement of the harbour.

The new HRO would update the existing powers to give Harbour Directions, to new powers of General Direction, and modernise the existing powers of Special Direction exercisable by the Harbour Master/s appointed by the Commissioners to bring them in line with recommended modern Harbour Legislation.

What are the main aims of the new HRO?

The Harbour Board considers a new order desirable and the new HRO will amend the existing local harbour legislation. In preparing this Harbour Revision Order, we have centred our work around four principles:

1. Safety is the prime consideration;
2. Modernisation;
3. Repeal old powers and add new powers;
4. Ensure charges are fair;

More details about specific changes are in the HRO submission documents available in the Harbour office or online.

What is the benefit to the Port area of a new HRO?

The main benefits include:

1. It will allow us to manage the harbour more safely in accordance with the PMSC
2. Investing in a good modern legal framework will allow us to be efficient and save costs.
3. The ability to work flexibly with harbour users as new technologies emerge to keep users safe.
4. Provide a much simpler framework allowing Stakeholders an easier understanding of how the Harbour is governed.

What is an HRO?

Harbour Revision Orders are a form of delegated legislation which amends existing local legislation governing a harbour. They are made as a statutory instrument under the Harbours Act 1964 and confer powers on the Statutory Harbour Authority for the purpose of improving, maintaining or managing a harbour.

New HRO for Falmouth Harbour Q&A

Why does Falmouth Harbour Need a new HRO?

Falmouth Harbour was created by an Act of Parliament passed in 1870, over 150 years ago. Falmouth Harbour is currently governed through a number of Acts and HROs.

Falmouth Harbour's local legislation includes:

1. Falmouth Harbour Order 1870
2. Falmouth Harbour Order 1937
3. Falmouth Harbour Act 1958
4. Falmouth Harbour Revision Order 1976
5. Falmouth Harbour Revision Order 1985
6. Falmouth Harbour Revision Order 1991
7. Falmouth Harbour Revision (Constitution) Order 2004

Most or all of these Acts still have extant clauses, plans or provisions that have not been repealed. The local legislation includes the 1958 Act that still defines the extant Harbour area. The last HRO substantially updated our governance in 2004. We have now reached the point where a more thorough overhaul is needed to ensure our statutory powers and duties are appropriate to meet the requirements of the 21st Century, as Harbour use grows and evolves. For example, the use of autonomous vessels is set to become mainstream and having a legislation that can deal with their safe operation is key. The purpose of the new Harbour Revision Order is therefore to modernise the Acts to reflect the operations of the Harbour, the diverse users of the Harbour and technology in use, today.

This is in line with our broader evolution as an organisation, adopting open communications and greater transparency about our operations and decision making, including regular public meetings and online engagement.

What is Falmouth Harbour?

The Harbour is classed by the Department for Transport ("DfT") as a Trust Port with responsibility for the Inner Harbour at Falmouth (excluding Falmouth Docks), the Penryn River up as far as Coastlines Wharf, the southern part of the Carrick Roads and a large part of Falmouth Bay. As the third deepest natural Harbour in the world, Falmouth's unique geography and position as the UK's Atlantic Gateway, makes it a highly valuable port for a range of operators. Additionally, Falmouth Bay is the only bunker anchorage in the UK that is outside of the Northern European SECA area.

The Harbour area is equipped with a number of Commercial moorings capable of accommodating a range of vessels up to 190m LOA. The whole Port and Harbour area can cater for a truly diverse range of vessels and offers a complete range of services to the shipping industry including:

- Deep water bunkering.
- Cruise calls.
- Ship repair, refit and dry-docking facilities via A&P Falmouth.
- Long- and short-term layup.
- Cargo handling.
- Casualty reception.
- Anchorages for vessels seeking shelter.
- Personnel transfer, stores and other port services.
- In water surveys.
- Propellor polishing.
- Superyacht berthing, repair and refit.
- Deepwater moorings for vessels up to 180m and 10.5m draft.

New HRO for Falmouth Harbour Q&A

Why is Falmouth Harbour doing this and other Harbours don't seem to be?

A large number of small and large Harbours have or are looking to modernise their legal framework.

1. A number of Harbours have already recently modernised their legislation through HROs. These include:
 - i. Liverpool Harbour
 - ii. Newport (Isle of Wight) Harbour
 - iii. Weymouth Harbour
 - iv. Shoreham Port Authority
 - v. Fowey Harbour
 - vi. Dart Harbour
 - vii. St Mawes Pier and Harbour Company
2. Other Acts are still in process of being modernised, these include Cornwall Council who have consolidated and modernised all their Legislation into one under the new Cornwall Harbours HRO. [Cornwall Harbours Harbour Revision Order - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/cornwall-harbours-harbour-revision-order), others include:
 - a. Consultation just complete:
 - i. Blyth Harbour
 - ii. Teesport Harbour
3. Some Harbours have completed their consultation and are awaiting process or "laying" in parliament:
 - i. Cornwall Harbours
 - ii. The Lyme Regis and Bridport Harbour
 - iii. North Sunderland Harbour
 - iv. The Portsmouth International Port and Camber Dock harbour
4. A large number of Harbours are awaiting or currently in consultation. Those in consultation include:
 - i. Ilfracombe Harbour
 - ii. Lancaster Port Commission
 - iii. Lynmouth Harbour
 - iv. Poole Harbour
 - v. Falmouth Harbour
5. Many others are awaiting consultation process start dates from the MMO.

More here: [Harbour orders public register - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/harbour-orders-public-register)

What is a Statutory Harbour Authority?

A harbour is defined by the Harbours Act 1964 (HA 1964) as any natural or artificial harbour, any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships. It also includes docks and wharves. Statutory Harbour Authorities (SHAs) are Statutory Bodies responsible for the management and running of a harbour. The powers and duties in relation to a harbour are set out in local Acts of Parliament or a Harbour Order under the HA 1964.

The Commissioners are the Statutory Harbour Authority (SHA) for Falmouth Harbour, governed by local legislation, and classed by the Department for Transport ("DfT") as a Trust Port. The Commissioners are responsible for the administration, maintenance and improvement of the harbour. The Commissioners are also the Local Lighthouse Authority for the harbour.

In managing the harbour, the Commissioners strive to observe industry standards set out in Government guidelines. The Commissioners are committed to complying with the principles of the various relevant codes and reports applying to the ports and harbour industry. In particular compliance with the [Ports Good Governance Guidance \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/ports-good-governance-guidance) this guidance sets out principles of openness, accountability and fitness for purpose in managing harbours in the broad public interest.

New HRO for Falmouth Harbour Q&A

What is a Trust Port?

In general terms a trust port can be described as a being a body created under statute for the purposes of managing a harbour that does not have share capital.

Trust ports are independent statutory bodies, each governed by their own unique legislation (an act of parliament or HRO). Therefore no two trust ports are the same in that each trust port's operations and the extent of their statutory powers will be determined by the nature and scope of their own unique legislation applicable to them.

However there are common characteristics of trust ports such as:

1. Trust Ports are both strategically and financially independent of Government and operate largely in the private sector although trust ports are "publicly accountable" to their stakeholders and in particular the users of the ports for which they are statutory harbour authority;
2. There are no shareholders or owners of trust ports;
3. The income of trust ports is derived from their individual statutory functions and commercial operations;
4. Generally any surplus may be applied by a trust port as it sees fit, including re-investing any such surplus into the trust port for the benefit of the stakeholders of the trust port and repaying and/or prepaying its debt; and
5. A trust port owns itself and a cannot be owned or transferred to another body without further statutory authority.

So are Trust Ports a legal "Trust" and the Commissioners Trustees?

No, they are not. The use of the term "trust" should be clarified: Trust Ports are not trusts in the legal sense, nor are trust port boards trustees. The term is more about the Harbour Board being "entrusted" with the harbour's and its users care and protection.

How does a Trust Port derive its powers?

Within legislation applicable to an individual trust port it will set out the constitution and regulate the powers, responsibilities and activities, which include the operation, maintenance, management and improvement of the Harbour itself. Powers are also conferred on a trust port by public general legislation including, for example, the Harbours Act 1964.

Any additional powers may, from time to time, be conferred on trust ports by legislation including, in particular, Harbour Revision Orders.

What is the current legal framework for Falmouth Harbour?

Falmouth Harbour Commissioners ('the Commissioners') are the Statutory Harbour Authority ('the SHA') for Falmouth Harbour. As a SHA the Commissioners must act in accordance with the statutory provisions governing them and the purposes for which their statutory powers were granted.

The key statutes governing the Commissioners as the SHA are:

1. Commissioners Clauses Act 1847: National Legislation
2. Harbour Docks and Piers Clauses Act 1847: National Legislation
3. Harbours Act 1964: National Legislation
4. Falmouth Harbour Revision Order 1976 (article 10 only)
5. Harbour Directions (Designation of Harbour Authorities) Order 2015
6. Local Legislation as listed in question above.

There are various other National and Local Acts that apply in whole or in part. Other National Acts such as the; Merchant Shipping Act 1995, the Pilotage Act 1987, the Marine and Coastal Access Act, 2009 and the Marine Navigation Act 2013 also apply. Ports are covered by thousands of government regulations. The British Ports Association have mapped some of the most important pieces of legislation and regulation that affect ports and rated their suitability to the industry, HROs and the HA 1964 sit at the centre of this framework. [Mapping Port Regulation - British Ports Association](#)

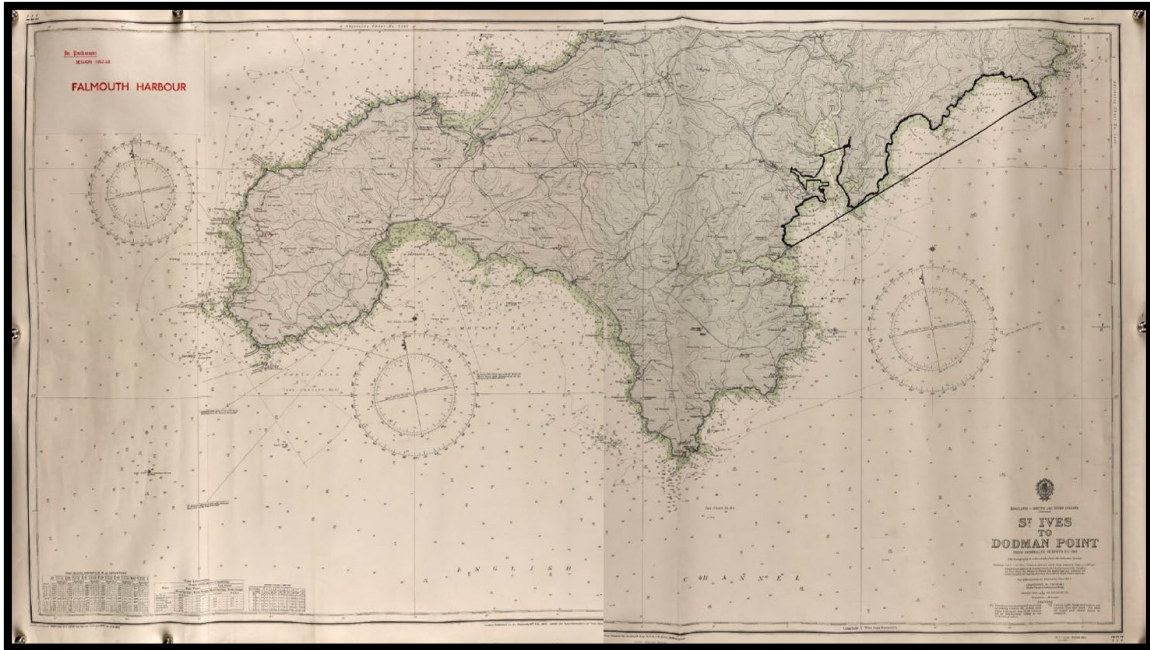
New HRO for Falmouth Harbour Q&A

How is the extent of Falmouth Harbour defined?

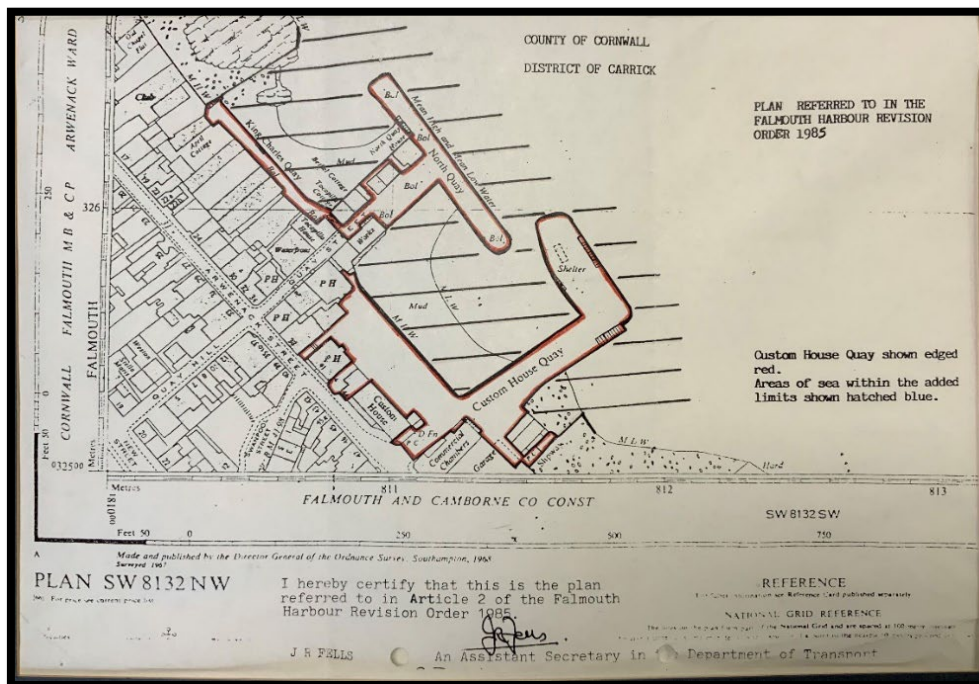
There are three plans that define Falmouth Harbour:

1. The main Harbour Area is defined in the 1958 Act plus the added limits of;
2. Falmouth Harbour Revision Order 1985
3. Falmouth Harbour Revision Order 1991

1. **1958 Act** - Section 4 of the 1958 Act defines the 'harbour' as: "The harbour" means Falmouth Harbour the limits whereof are shown within the thick black line delineated on the signed map.

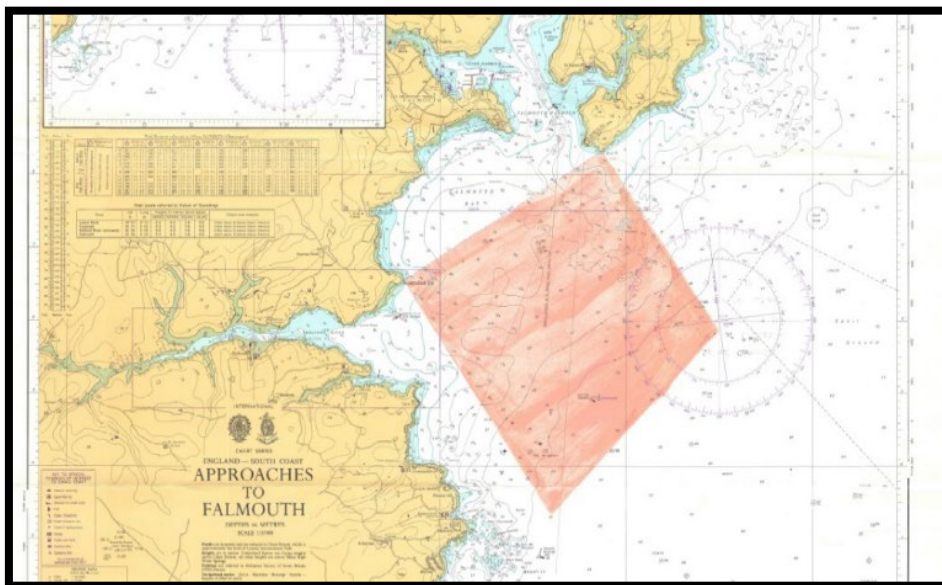


2. **The 1985 HRO** added limits are defined as: "The added limits' means the Custom House Quay and the areas of sea adjacent thereto shown hatched blue on the signed plan so far as those areas are not within the limits within which the Commissioners have authority on the date of the making of this Order". This amended the 1958 plan. "Custom House Quay" means the area comprising all those several quays (including, but not so as to limit, North Quay and King Charles Quay), piers, slips or landing places generally known as Custom House Quay with the several roads and approaches thereto together with the harbour office of the Commissioners which area is for the purpose of identification delineated on the signed plan and thereon edged red'.



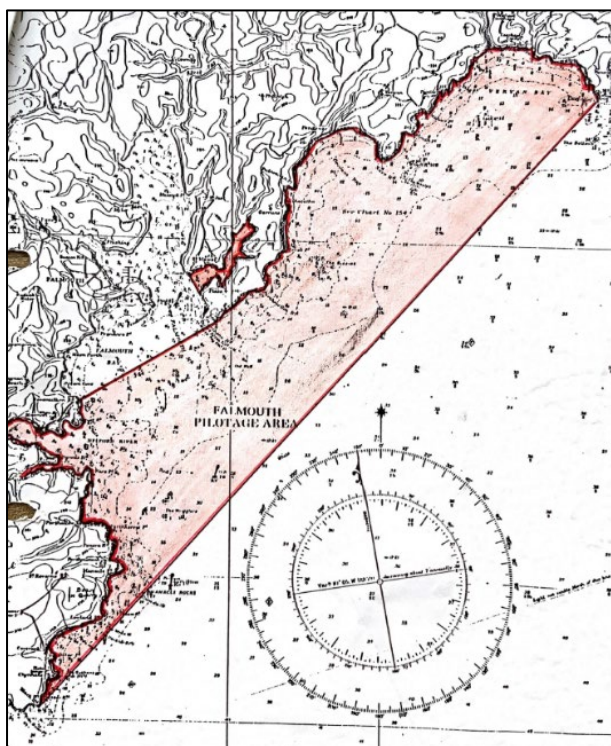
New HRO for Falmouth Harbour Q&A

- The 1991 HRO added limits** are defined as: "The added limits' means the area described in the Schedule to the Order. This amended the 1958 plan and amended article 4 of the 1985 HRO. The Schedule contains the following wording: 'An area bounded by an imaginary line drawn from Zone Point position 50 degrees 08.31 minutes North 05 degrees 00.56 minutes West in a 147 degrees (true) direction for 2.95 nautical miles to position 50 degrees 5.85 minutes North 04 degrees 58.01 minutes West thence in 222 degrees (true) direction for 3.38 nautical miles to position 50 degrees 3.35 minutes North 5 degrees 01.60 minutes West thence in a 327 degrees (true) direction for 3.80 nautical miles to Rosemullion Head in position 50 degrees 06.54 minutes North 05 degrees 4.82 minutes West.



It looks like the Harbour area has extended to include Veryan and Gerrans Bay?

As outlined above the historic plans that define the original Falmouth Harbour are contained within the Falmouth Harbour Act 1958. This original area within the thick black line delineated on the signed map that can be obtained from the National Archives includes the two bays; Veryan and Gerrans and all waters North of a line between the Dodman Point and Zone Point/St Anthony Head. So this is not a change and have therefore been a part of Falmouth Harbour since 1958.



1988 Falmouth Pilotage Area Plan

It should be noted that this area of sea has also historically been a part of the Pilotage Falmouth (Pilotage) Harbour Revision Order of 1988. In fact the Pilotage area includes an additional area as the Pilotage area sea that is delineated by a line from the Dodman Point to Black Head on the Lizard. In addition this includes the Harbour area added in 1991 and the original Inner Harbour defined in 1958. Interestingly the pilotage area still includes the Percuil River.

New HRO for Falmouth Harbour Q&A

Who are the Falmouth Harbour Commissioners?

Falmouth Harbour Commissioners were originally incorporated by article 1 of the 1870 Falmouth Harbour Order. This article incorporated the Commissioners with perpetual succession and a common seal. Following the repeal of article 1 of the 1870 Order, article 3 of the 2004 HRO confirms that the Commissioners, shall continue in existence as a body corporate with the power to exercise the functions conferred upon them by the Falmouth Harbour Acts and Orders 1870 to 2004.

The Board consists of seven commissioners and the chief executive. Each of the seven commissioners appointed will be a person to have special knowledge, experience or ability appropriate to the efficient, effective and economic discharge of their functions. Examples of areas of special knowledge, experience and ability are detailed in the 2004 HRO.

Currently Articles 4(2) and 5 of the 2004 HRO set out the procedure for the appointment of commissioners and their terms of office. The Chair is elected in accordance with article 10 of the 2004 HRO.

What is the Port Marine Safety Code?

As the statutory harbour authority for Falmouth Harbour, the Port Marine Safety Code (November 2016) published by the Department for Transport (“the Code”) is the relevant Code of Practice that applies to the Commissioners as well as to all statutory harbour authorities and other marine facilities, berths and terminals in the UK.

The Code identifies a number of tasks which harbour authorities should undertake in order to comply with the Code including reviewing and being aware of existing powers based on local and national legislation and advises that harbour authorities should seek additional powers if the existing powers are insufficient to meet their obligations to provide safe navigation.

[Port marine safety code - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The Executive Summary to the Code explains that:

“The Code has been developed to improve safety in the harbour marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbour or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the harbour marine environment and to clarify the responsibilities of organisations within its scope.”

The New HRO process

Where are HRO revisions submitted?

All applications for Harbour Orders were processed by the Department for Transport (DfT) until 2010 when the Marine Management Organisation (MMO) was established under the Marine and Coastal Access Act 2009 (MCAA). Section 42A of MCAA made provision for certain functions to be delegated by the relevant authority to the MMO.

The Harbours Act 1964 (Delegation of Functions) Order 2010 enabled the MMO to carry out the functions of the Secretary of State for Transport in relation to Harbour Orders (including harbours designated as fishery harbours under the Sea Fish Industry Act 1951).

Although the responsibility for processing applications has now been delegated to the MMO, DfT are still the ports policy lead, advising MMO on ports policy and arranging for Harbour Orders to be laid before Parliament. The MMO when making a determination of the HRO must be satisfied that the making of the Order is desirable in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships.

New HRO for Falmouth Harbour Q&A

Who has advised Falmouth Harbour

As Harbour Orders are a form of legislation, representatives of the Harbour Authority should obtain appropriate legal advice before applying to the MMO. Falmouth Harbour have received independent legal advice from Ashfords LLP, a leading UK legal firm with a significant track record of success with HROs.

Ashfords recently advised Cornwall Council with their work on the new Cornwall Harbours HRO.

The Harbour Orders team in the MMO are not able to provide legal advice as to whether a Harbour Order is required or not. Having a Harbour Order will not absolve FH of the requirement to comply with other legislation.

How much will this cost?

The HRO has been budgeted for in the 2022, 2023 and now 2024 accounts. The principal costs are:

1. MMO application fee (payable to the MMO) at £4,000. We submitted the HRO in September 2022 so avoided application fees due to increase over the next two years, first to £9,800 in October 2022 and then to £15,500 in October 2023. The fee is payable at the time the application is submitted.
2. In addition to the application fee, publication requirements at the start and end of the process require notices to be placed for two consecutive weeks in a local newspaper and one week in the London Gazette (both at the start and the end) c£2,000
3. Legal Costs estimated up to £30,000.

What is a Statement in Support that is a part of FH submission?

A statement in support is our opportunity to set out the reasons why Falmouth Harbour requires an application for a new HRO, and it must be submitted along with our other application documents. This document will then be used to accompany our application during the consultation. It should provide enough information to allow persons engaged in the consultation process to understand the proposals and give informed responses.

The statement in support shows the need for the HRO and justification for each provision of the Order, including how our application is in accordance with the relevant section of the Harbours Act 1964. In the statement in support, we have outlined how each of our proposed provisions satisfies the test for the respective Order so the MMO can be satisfied that an Order can be made.

What about wider policy and Marine Plans?

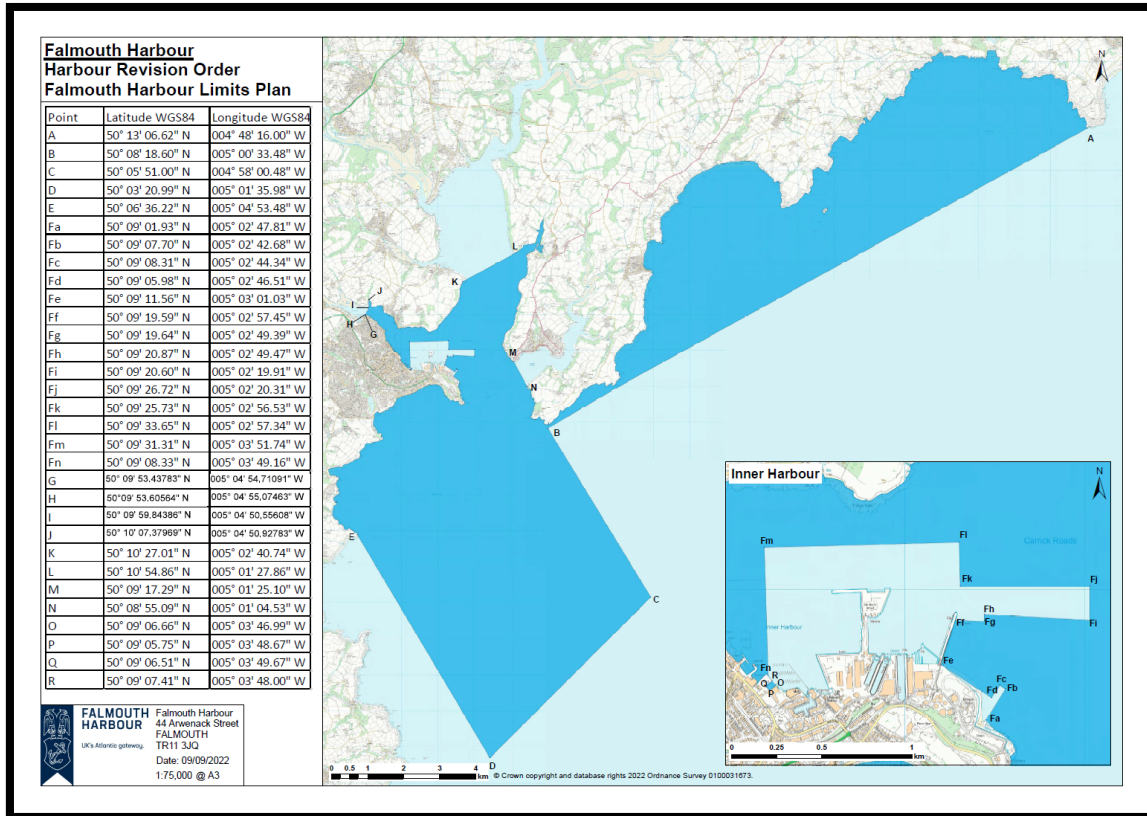
Relevant marine plans must be considered in our statement in support. This outlines the relevant marine plan policies in our application area. We have also demonstrated that our application is compliant with relevant national and local plans, relevant policy and relevant guidance, for example the National Policy Statement for Ports and the Port Marine Safety Code.

New HRO for Falmouth Harbour Q&A

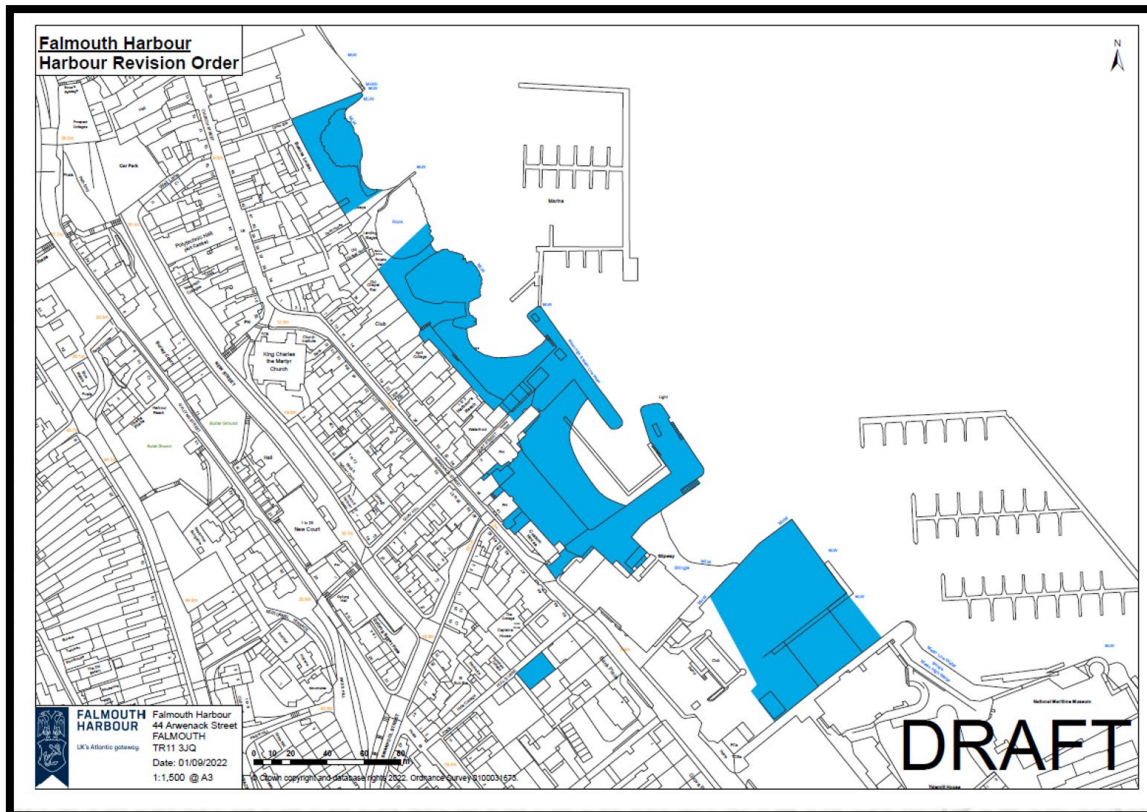
Will the Harbour Areas change under the new HRO?

No, we do not intend to materially change the Harbour area. We have redefined key coordinates to ensure there are no anomalies between the maps in the 1985, 1991 and 1958 HRO maps. The new HRO will have 2 plans:

1. Falmouth Harbour Limits Plan - "A Wet Limit Plan"



2. A Dry limits Plan that outlines the Falmouth Harbour Premises



New HRO for Falmouth Harbour Q&A

In addition, the new HRO will define the harbour limits by reference to co-ordinates and illustrative modern plans. The majority of the current harbour limits are set by reference to lines on historic plans and as such are not as clear as they will be when referenced by co-ordinates. There are a number of statutory harbour authorities in the vicinity of the Falmouth Harbour area, including the Falmouth Docks and Engineering Company and Cornwall Harbours who have some overlapping jurisdiction with Falmouth Harbour. As such clearly defined limits referenced by co-ordinates are important to the efficient and effective management of Falmouth Harbour.

Will the Harbour Governance change under new HRO?

No, the governance modernisation in the 2004 HRO remains largely as was set out. We are seeking to modernise some of the terms used.

What about Environmental Impacts?

Environmental impacts will continue to be managed as before the change to the HRO. Falmouth Harbour will continue to work with harbour users to minimise our environmental impact and sustainably develop the harbour in line with the South West Marine plan and our obligations as a Trust Port.

How will this affect the Harbour Byelaws?

The existing Byelaws will not be repealed, but we will introduce over time using the new HRO, powers to make General Directions. Over time they will replace existing Byelaws. Any new Directions will be required to go through a Consultation Process where harbour users will have the opportunity to input through a Harbour Users Group.

What is the HRO Process?

The best way to find out information on the process of the HRO is to access the GOV.UK website for the MMO. Here: [Harbour orders - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Useful pages include :

1. **Consultation process** for Harbour Orders Consultation - [GOV.UK \(www.gov.uk\)](http://www.gov.uk)
2. **Publication:** The draft order and accompanying documents are also available for inspection at the offices of the MMO in Newcastle Upon Tyne by appointment or may be viewed on the MMO's website at: <https://www.gov.uk/government/collections/harbour-orders-public-register>
3. **Representations on the HRO** For further details about submitting representations and how these are handled, please see [Submitting Representations to Harbour Orders page](#).

Falmouth Harbour as the applicant, will publish a notice that the Order has been made in the same publications where earlier notices appeared.

Does the HRO get Laid before Parliament?

Once the MMO considers that a positive determination for an Order is appropriate, the MMO will liaise with the DfT who manage the process for laying Orders before Parliament. Obtaining a laying date can take at least three months from requesting one, and the MMO is not able to provide timescales for the completion of this part of the Harbour Order process. Once the MMO are given clearance by DfT to start the parliamentary process for the formal laying of the Order, the Order will be assigned a date for laying and a date when the Order will come into force. This will be dependent on the parliamentary calendar. The Order can then be made. Harbour Orders are laid in Parliament under the negative procedure. The Order will automatically become law unless there is an objection from either house.

New HRO for Falmouth Harbour Q&A

How long will this take?

HROs timescales from submission to determination is usually in the region of 9 – 18 months. If an HRO receives protracted objections, or a Public Inquiry is held, then timescales in excess of 24 months are to be expected. There is a backlog of HROs waiting to commence public consultation and / or laying in parliament at the moment due to Covid-19 so the overall timetable is uncertain.

More recent HROs are taking longer to determine due to several new processes / requirements introduced by the MMO. However, these new processes are now more familiar to the MMO and as such it is expected that future applications will be quicker.

HRO Key Definitions:

Why have you added a new definition of “high water level”, defined as meaning mean high water springs?

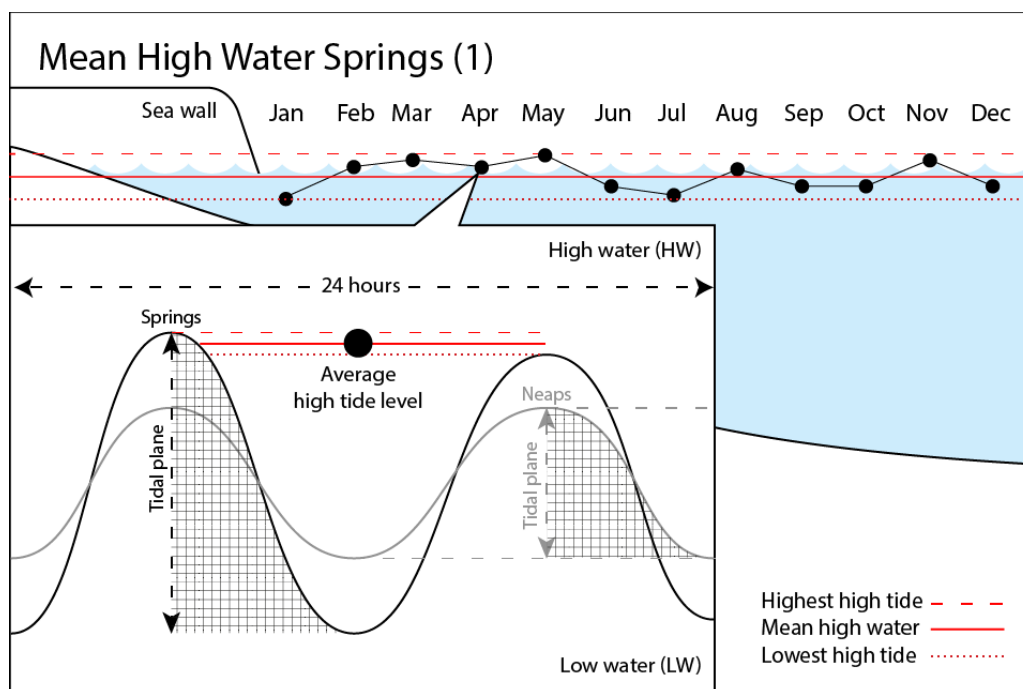
This new definition informs the definition of “port limits”, as revised and set out at Schedule 1. Schedule 1 is to be revised so as to clarify using modern terminology the extent of the FH’s legal jurisdiction. It is correct to say that using the new definition of “high water level” will extend the FH’s statutory jurisdiction in certain locations and in respect of certain powers and duties, in particular in relation to the licensing of works. The intention is to bring the FH’s jurisdiction into line with the Marine Management Organisation’s jurisdiction, which has the benefit of ensuring consistency and certainty for FH’s stakeholders. For the avoidance of doubt, the new definition does not increase the extent of the FH’s land holdings i.e. these will remain as previously.

In all the Falmouth Harbour Acts and HROs there is no mention of MHW/MLW as limiting jurisdiction. The 1958 act defines the area as a line on plan not linked to MLW, and that has not been redefined since in an Act or HRO.

FH currently has jurisdiction over all the wet area of the harbour (in effect the area below MHWS). So this just provides clarity and doesn’t change jurisdictions.

What are Mean High-Water Springs? (MMO definition)

Monthly tides are defined as ‘Springs’ or ‘Spring tides’ when the tidal range is at its highest and ‘Neaps’ or ‘Neap tides’ when the tidal range is at its lowest. The height of Mean High Water Springs (MHWS) is the average throughout the year, of two successive high waters, during a 24-hour period in each month when the range of the tide is at its greatest (Spring tides).



New HRO for Falmouth Harbour Q&A

Who are the Marine Management Organisation (MMO)?

The Marine Management Organisation (MMO) was enabled by the Marine and Coastal Access Act in 2009.

The organisation is responsible for:

- Developing Marine Plans with the aim of achieving sustainable development of the marine environment. The South West marine plan is the relevant plan to Falmouth and surrounding waters
- Marine licensing in English inshore and offshore waters and for Northern Ireland offshore waters. Marine licences are required for many activities including deposits or removals from a vessel into the marine environment. The MMO are responsible for ensuring that each marine licence is reviewed against the various policies in the relevant marine plan to ensure the activity is considered sustainable.
- Marine Conservation Zones and management of sea fisheries
- Harbour Revision Orders

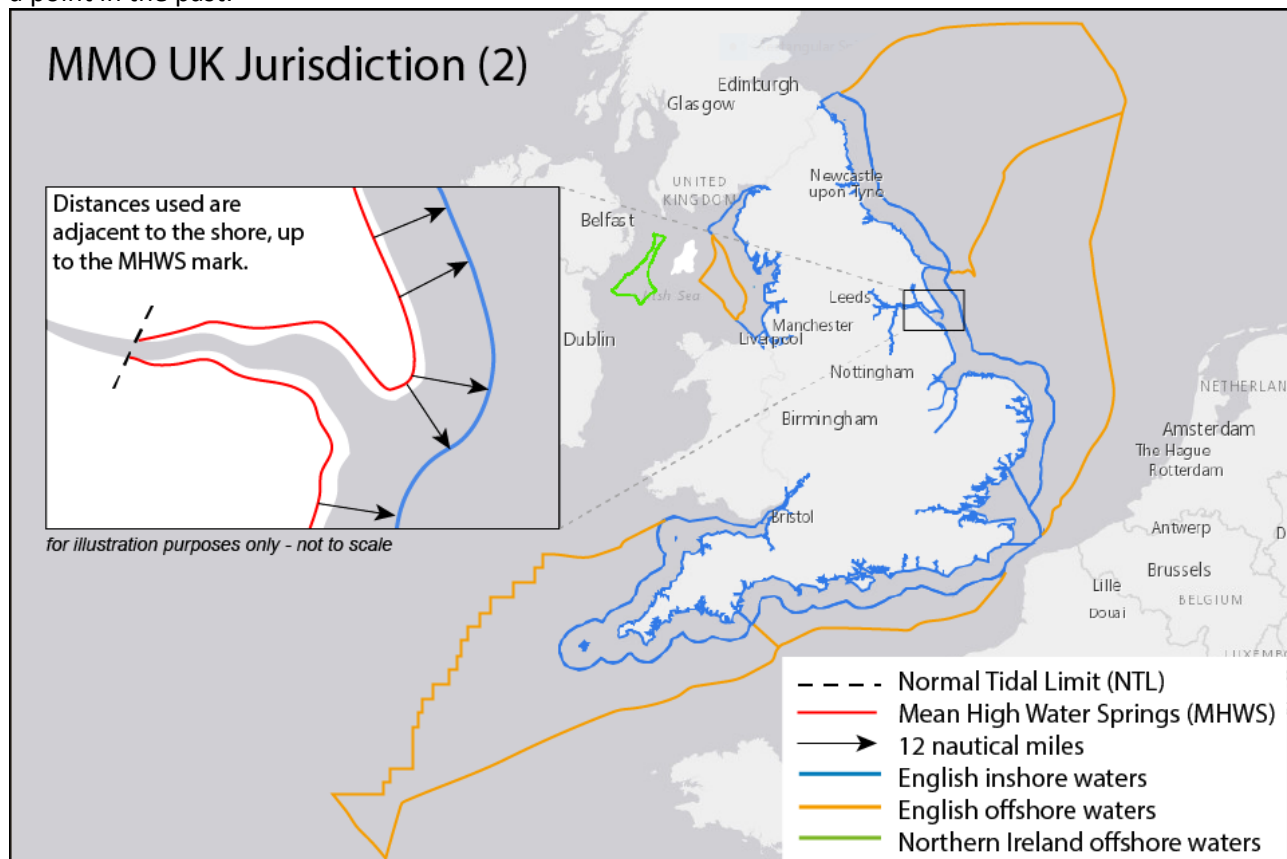
For further explanation please see the Marine and Coastal Access Act 2009.

MMO jurisdiction

In English waters the MMO has jurisdiction from Mean High Water Springs (MHWS) out to the limit of the exclusive economic zone. Therefore our harbour waters are included within this. There is an overlap with terrestrial planning legislation as this extends down to Mean Low Water Springs (MLWS).

‘English waters’ is the area of sea within the limits of territorial waters (12 nautical miles) adjacent to the English coastline (the ‘inshore’ area). This also includes any area of sea beyond the territorial limit (the ‘offshore’ area), that is within the exclusive economic zone (EEZ) and the UK sector of the continental shelf (up to 200 nautical miles). This excludes the waters of any devolved administration.

The MMO recommends that you treat an area as being below MHWS if it is made wet from the normal ebb and flow of the tide or if there is evidence such as marking or growth that would suggest the tide has reached a point in the past.



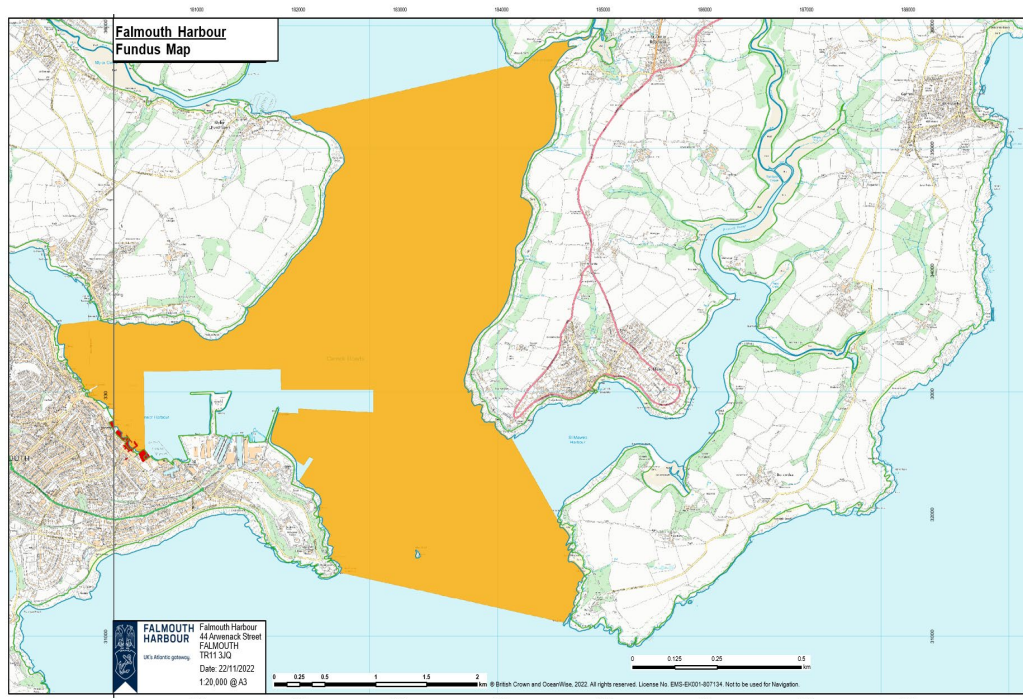
New HRO for Falmouth Harbour Q&A

Do Falmouth Harbour Commissioners own the seabed?

The Harbour Commissioners own all of the seabed known as fundus within the inner harbour, excluding the areas owned by A&P Falmouth Docks. The fundus North of a line between St Just Creek and south of Mylor is owned by Cornwall Council. The fundus North or Greenbank and flushing Quays are privately owned or owned by Cornwall Council. The fundus in Falmouth Bay is owned by the Crown Estate. Land or fundus ownership is a separate issue and is no legal link to the HRO.

Falmouth Harbour also own much of the foreshore in and around Custom House Quay Falmouth – See Dry Ownership Plan above.

Falmouth Harbour Fundus Ownership Plan



What is the Harbour fundus?

The seabed land is known as “The fundus”, which is the seabed in a tidal river below mean low water mark. This can be owned by the foreshore owner (area between high and low water mark) and may require permission and rent, if used for laying a mooring.

The HRO supporting documents talk about conferring further modernised powers, new powers and modernise the existing powers. How can we reference what are actually existing powers and new?

The Statement in Support document is helpful ([click here](#)), it goes through each provision, justifying the change linking it to current legislation and new guidance and or approaches taken and agreed with MMO as best practice at other harbours. This should help guide people through how we have consolidated and modernised.

We are attempting to bring together 8 different local acts and statutes, primary legislation and best practice from other harbours. In addition, our extensive byelaws are often forgotten and some of these have been considered in the drafting of the HRO, as they may be best within the primary statutory instrument. Other existing byelaws will be refined and replaced over time by powers of general direction.

New HRO for Falmouth Harbour Q&A

The principal new provision being consulted upon is the power to make General Directions (GD). Falmouth Harbour currently has the power to make Harbour Directions which are narrower in scope than General Directions.. We are now seeking the powers of General Direction. This is made clear and explained in the statement. The powers of GD have strong local consultation requirements, and such powers are strongly recommended for harbours to support them in safe harbour management within the requirements of the Port Marine Safety Code (PMSC). These powers are standard in new HROs. Port of Shoreham, Dart Harbour, Cornwall (Truro and Penryn) Harbours and Fowey Harbour all now have new powers of General Direction.

The mooring licence provisions seem new?

There is a new provision in the new proposed HRO in relation to licences required to lay moorings. However, this provision is not new as a requirement to have a licence to lay moorings is contained with Falmouth Harbour's Byelaws - please refer to Byelaw 50. Licensing of activity such as moorings is critical to maintain navigation channels and safety. [Click here to see the byelaws.](#)

It seems the new HRO will claim rights over foreshore and land?

The 'wet' limits of a statutory harbour authority up to Mean High Water (MHW) Springs does not relate to land ownership, they just delineate the area of navigational jurisdiction of the harbour authority that is and always has been to MHW. The proposed HRO for Falmouth Harbour does not alter the existing wet limits, i.e. the land that is not owned by Falmouth Harbour Commissioners below Mean High Water Springs is already within our area of navigational jurisdiction as Statutory Harbour Authority, and this does do not make any change to the existing position. This does not affect rights or ownership over foreshore or fundus but when covered by water these are in the harbour's navigational jurisdiction.