

Final Report



Review of Orange County Sheriff-Coroner Department Harbor Patrol



November 9, 2010

Office of the
Performance Audit Director

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Executive Summary

Preface

Over the past 35 years, the Orange County Sheriff-Coroner Department's (OCSD) Harbor Patrol operation has been the subject of repeated scrutiny; this review marks the 17th study of Harbor Patrol. This attention is generated by a number of factors: a dynamic history, multiple vocal constituencies, complicated legal mandates, the separation of operational and financial responsibilities (OCSD for operations and OC Parks and OC Dana Point Harbor (DPH) for financing), the unequal dispersal of harbors/beaches/parks facilities among County Supervisorial districts, and consistent increases to Harbor Patrol salary and benefits expenses. The cumulative effect of these and other factors is a highly complex environment that has been the source of perpetual consternation for a variety of stakeholders.

The latest review of Harbor Patrol issues occurred at the January 12, 2010 Board of Supervisors (Board) meeting. At that meeting, the Board received an "Analysis of Harbor Patrol Governance and Finance Issues," prepared by the Harbor Patrol Working Group.¹ Following extensive discussion on the subject, the Board directed that this issue be forwarded for further study to the Office of the Performance Audit Director (Office). This review is a non-audit advisory service conducted in close consultation with County Counsel on legal issues and with the assistance of Auditor-Controller and Assessor staff to obtain property value and tax data.

For this review, the Office thoroughly researched, analyzed and made recommendations concerning a number of legal, operational and financial aspects of the Harbor Patrol function. Such a comprehensive review is necessary in order to provide Orange County Harbor Patrol stakeholders with the complete set of facts needed to make informed decisions regarding the funding and operation of Harbor Patrol.

The following key considerations provide a helpful context when reading this review:

- Historical events have played a critical role in shaping the current issues that confront the County with regard to Harbor Patrol. Appendix B provides a detailed historical look at the Orange County harbor system.

¹ The Working Group's membership consisted of staff from the 2nd and 5th Supervisorial Districts, the County Executive Office, OC Parks, DPH, and OCSD.

- The legal analysis conducted by County Counsel establishes critical operational and financial boundaries when considering any changes to Harbor Patrol services provided by the County.
- OCSD Harbor Patrol, overall, is a strong operation that, in general, has the support of the boating public, harbor users, and harbor cities.
- Harbor Patrol is considered by OCSD to be a critical component of its Homeland Security operation. This view is shared by the U. S. Coast Guard, U.S. Customs and Border Protection, and Immigration and Customs Enforcement.
- The most critical question in the discussion of OCSD Harbor Patrol pertains to funding: should OCSD pay for a portion of Harbor Patrol costs currently borne entirely by OC Parks and OC Dana Point Harbor? Given that 90+% of all Harbor Patrol costs are salary and employee benefits expenses, and that the vast majority of the work performed by Harbor Patrol does not need to be performed by fully sworn Deputy Sheriffs, a more balanced approach suggests that OCSD should contribute toward the incremental costs of using Deputy Sheriff positions to staff Harbor Patrol. Determining how much should be paid and the specific method for implementing a shared funding model are recommended for resolution by a short-term task force of County of Orange stakeholders.

Background Information

Harbor Patrol is a bureau within OCSD's Homeland Security Division and provides 24 hour services, 365 days a year. Its primary responsibilities include general law enforcement (i.e., preserving the peace, making arrests, conducting investigations), boating law enforcement, water rescue, marine fire fighting, basic medical aid, and homeland security. Harbor Patrol often works with other government agencies (e.g., city police, city/state lifeguards, U. S. Coast Guard, U. S. Customs and Border Protection) to accomplish its mission. There are 48 sworn and 16 non-sworn staff, for a total of 64 Harbor Patrol personnel.

Harbor Patrol operates in all three Orange County Harbors (Sunset/Huntington Harbor, Newport Harbor, Dana Point Harbor) and along the County's 48 miles of coast, including the shoreline and three miles out to sea. Each harbor is unique, resulting in different operational and funding requirements.

Harbor Patrol Legal Issues

One of the primary objectives of this study is to analyze which Harbor Patrol functions are mandated and which are not. Specifically, the Board requested a determination regarding Harbor Patrol activities that are **not** mandated by State law. This analysis sets the boundaries for the discussion of how Harbor Patrol operations and funding may be modified. The following sections summarize the primary legal points.

State Codified Mandates

Regarding Harbor Patrol activities, OCSD, as the County Sheriff, is statutorily required to provide the following services to the extent OCSD has the resources to do so:

- General law enforcement duties (i.e., preserve the peace, make arrests, investigate public offenses) in those harbors and other inland waterways that are in unincorporated territory or that are owned or operated by the County (such as Dana Point Harbor). In addition, the Sheriff has general law enforcement duties along the few sections of the coast that are unincorporated territory (the shoreline to three nautical miles out to sea) (California Government Code Sections 26600, 26601, 26602). Conversely, city police have primary responsibility for general law enforcement within their cities' boundaries, including harbors and other inland waterways within city boundaries and in the Pacific Ocean three nautical miles off the cities' coasts (California Government Code Section 41601). The Sheriff acts as a backup to city police within city limits, since the Sheriff has Countywide jurisdiction. As will be noted elsewhere in this report, these statutory general law enforcement duties represent only a very small portion of the duties performed by Harbor Patrol. Moreover, in the harbors, these duties do not have to be performed by fully sworn Deputy Sheriffs (i.e., these duties can be performed by limited authority peace officers).
- Water rescue duties along the entire Orange County coast, including the extensive parts of that area that are within city limits. These responsibilities, however, do not extend into harbors (California Harbors & Navigation Code Section 510).
- Boating law enforcement duties. As the established Harbor Patrol provider, the County has primary jurisdiction for enforcing boating laws along the coast and in all harbors. If there were no established Harbor Patrol provider, the County would only be responsible for enforcing boating laws in unincorporated areas and County owned or operated waters, while city police would be responsible in

all other waters within city limits (California Harbors & Navigation Code Section 663.5).

Conditions of LAFCO/Board Resolutions

In 1988, the Orange County Auditor-Controller informed the Board of Supervisors that the County was in danger of exceeding its Gann Limit², and was therefore in danger of having to refund millions of dollars of tax revenue. In order to avoid this situation³, the County petitioned LAFCO to quickly dissolve the Harbors, Beaches & Parks (HBP) District, and subsequently, in 1989, to replace it by forming HBP County Service Area (CSA) 26. LAFCO, by resolutions, made its approval of these actions subject to a number of conditions, which the Board of Supervisors then adopted by its own resolutions. For example, the LAFCO conditions adopted by the Board of Supervisors impose on the County the statutory authority and duties of the former HBP District with respect to finances, liabilities, services, and facilities. In general terms, the duties pertaining to the Harbor Patrol are to “manage, maintain, and control” and “protect” the harbors that were developed by the former HBP District.⁴

However, there is no language in the resolutions that specifically defines the range and level of Harbor Patrol services that the County is required to continue to provide. Other supporting documents (not included in the resolutions themselves) suggest that the assumption underlying LAFCO’s approval of the dissolution of the former HBP District was that the then-current range and level of services would continue to be provided.⁵ In light of this documentation, there is a risk that the 1988 LAFCO resolutions and the conforming Board of Supervisors resolutions could be interpreted by a court to mean that the range and level of HBP District services provided in 1988

² The “Gann Limit” is a limitation on local governments’ appropriation of revenue based on the proceeds of taxes. Cal. Const. Art. XIII B, section 8.

³ By dissolving the HBP District (a separate legal entity from the County) and creating CSA 26 (a county entity), the County was able to assume the Gann Limit of the former HBP District, thereby giving it more tax allocation capacity and avoiding the need to refund tax revenues.

⁴ These statutory requirements are cited in California Harbors and Navigation Code sections 5900.6 and 5910.

⁵ At that time, there was considerable public opposition to dissolving the HBP District. The County Administrative Officer advised the Board of Supervisors by memo in March 1988 that in order to “clarify for interested parties that [the] recommendation to dissolve the [HBP District] will not affect the function of the District,” the County’s application to LAFCO for approval of the dissolution would include “terms and conditions...that will assure that the functions of the [HBPD] will be protected.” Also, in its May, 1988 report recommending approval for the dissolution of the HBP District, LAFCO staff stated, “The effect of the proposed dissolution will only impact the accounting procedures of the HBPD by combining the District’s appropriations limit with the County’s limit. There will be no changes in the boundaries of the District, or in the range or level of services provided.” Lastly, in its May 1988 Notice of Categorical Exemption from CEQA, LAFCO stated, “The proposal consists of the dissolution of the Orange County Harbors, Beaches, and Parks District in order to increase the County’s appropriation limit. The boundaries, range, and level of service will not be altered as a result of this proposal.”

would continue. It is important to note, however, that LAFCO's current staff and counsel have indicated a different interpretation (i.e. that the language of the resolutions does not bind the County to a particular level of service).⁶ This differing opinion notwithstanding, LAFCO has never been asked to provide a formal clarification of the definition of the "range and level of services" referenced in these resolutions. This clarification is critical because the County is required to comply with the LAFCO conditions that the Board adopted unless and until those conditions are changed or removed.

Legal Analysis Conclusion

In light of the mandates/requirements discussed above, it is clear that the continuation of Harbor Patrol in its current form is largely not required by State statutory mandates on the Sheriff. Rather, per the 1988 LAFCO resolutions, the County is required to fulfill the statutory duties of the former HBP District, and arguably provide the same range and level of services that were provided in 1988. After lengthy historical research, it is apparent that there are no records that clearly delineate what specific activities were being performed by Harbor Patrol at the time of the LAFCO resolutions. One rough measure of the "range and level of services," which might be used in the absence of any better data, is the number of patrol staff. By this imprecise measure, the County now appears to be providing Harbor Patrol services equivalent to those provided in 1988/89. Any change to the level of patrol staff, however, could risk violating the LAFCO resolutions.

As such, the review team recommends that the Board of Supervisors, with the assistance of the CEO and County Counsel, submit a request to LAFCO to clarify, and, if necessary, modify, the County's obligation to provide and pay for the "range and level of services" arguably required in the LAFCO resolutions.

Harbor Patrol Operations

As previously mentioned, a major finding of this review is that OCSD Harbor Patrol, overall, is a strong operation. Interviews with multiple stakeholders, as well as direct

⁶ LAFCO's general counsel's position is that LAFCO's role in the 1988 action was to assess the level of services provided before and after the change, and to find that those service levels would not be affected negatively by the change. Although terms and conditions in the LAFCO Resolutions could, and did, designate the County as the District's successor agency, and assigned the District's assets and revenues to the County in furtherance of that role, LAFCO's current general counsel advises that LAFCO could not, and did not bind the County to a particular level of service in its successor role.

observation and benchmarking by the review team, all support the conclusion that Harbor Patrol provides a high level of service, with uniquely-trained and experienced staff.

Notwithstanding the overall quality of the Harbor Patrol operation, the review team identified some important operational facts and improvement opportunities where savings/revenue enhancements can be realized:

- The most frequent activities of Harbor Patrol staff are “non-general law enforcement” in nature (e.g., general patrol (47%), boat stops (13.2%), and boater assistance (e.g., tows, boat pump-outs, jump starts, assisting capsized vessels) (10.6%)). Less than 5% of the recorded activities of Harbor Patrol staff relates to general law enforcement duties (i.e., making arrests, preserving the peace, investigating crimes).
- Currently, there are two administrative deputies; one serves as the Training Coordinator, and the other performs Newport Beach Mooring/Boating Accident Investigation tasks. Since a large portion of these duties does not require the use of fully sworn deputies, the review team recommends that these tasks be consolidated into one deputy position and one civilian position.
- OCSD has the opportunity to eliminate an office position at the Dana Point Harbor station without a significant impact to the operation.
- Current deputy activity time tracking and reporting is inconsistent and non-automated, making it difficult to verify the activity/productivity of Harbor Patrol staff. The review team estimated that no more than 28% of all time spent by Harbor Patrol staff was documented in calendar years 2007 and 2008.
- Weekends are the busiest days at the harbors; however, supervisory presence at the outer harbors (Sunset/Huntington and Dana Point) on these days is minimal.
- The non-emergency towing policy is not consistently followed by deputies, which contributes to the strained relationship that exists between private sector towing companies and OCSD.
- Several of the agreements between the County and harbor cities regarding harbor responsibilities are outdated and need revision.

- Benchmarking OCSD Harbor Patrol with other California municipal harbor patrol operations indicates a variety of approaches to standing-up, managing, and funding a harbor patrol operation. There is no particular model that is upheld as “best practice,” the key reason being that harbors/marinas themselves differ in their characteristics, needs and resources. The majority of harbor patrol operations included in this review is focused on non-general law enforcement activities.
- The useful life of OCSD Harbor Patrol boats can be extended from 15 to 20 years, consistent with other municipal harbor patrols and OCSD’s quality maintenance operation.

The estimated annual savings from implementing the review team’s operational recommendations is approximately \$190K. In addition, the review team identified several potential revenue enhancements.

Harbor Patrol Financial Issues

Much of the frustration surrounding Harbor Patrol centers around the fact that one department makes all the operational decisions (OCSD), while two other departments pay the bill (OC Parks and OC Dana Point Harbor). Many previous studies of Harbor Patrol have focused on other aspects (e.g., legal, operational) and included only summary-level financial information. Consequently, the Harbor Patrol debate has not been resolved, as policymakers have not been provided with a complete and thorough set of financial facts related to this core issue.

Recognizing this situation, the Board of Supervisors included a number of specific funding-related questions to be answered in the scope of work for this review. Much of the resulting information has never been assembled and analyzed. The most significant financial information/issues are presented in the following sections:

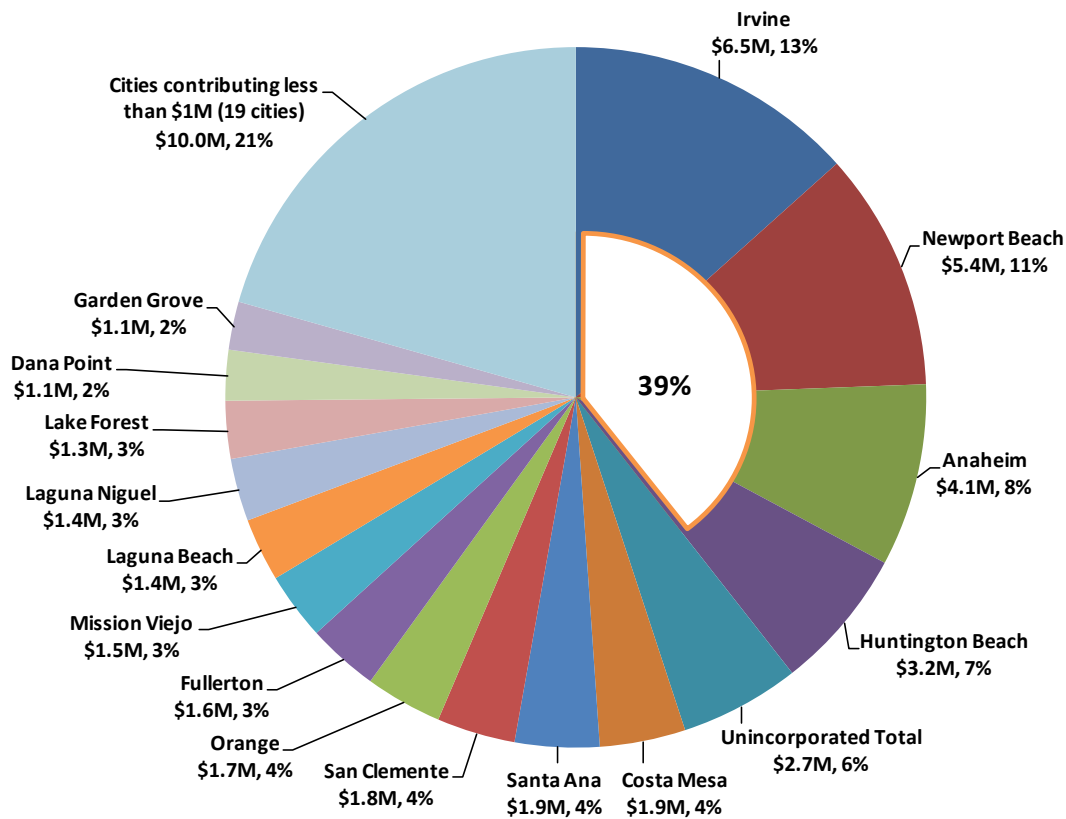
Revenues

The total cost of OCSD Harbor Patrol in FY 09/10 was approximately \$12 million. The three primary revenue sources for Harbor Patrol are: (1) OC Parks CSA 26 Fund 405 (\$6.6M, or 55%), (2) Newport Tidelands Fund 106 (\$1.8M, or 15%), and (3) Dana Point Tidelands Fund 108 (\$3.6M, or 30%).

OC Parks CSA 26 Fund 405

Fund 405 revenues (a total of \$65M) come from a variety of sources, the most significant of which are Property Taxes (\$49.2M or 75%). In response to considerable Board interest in this topic, the review team worked with Auditor-Controller staff to provide greater detail as to the geographical sources of Property Taxes that flow into Fund 405 from CSA 26, as shown in the chart below:

Total Property Tax Contribution to CSA 26, by City (FY 09/10)



Source: Auditor-Controller, Property Tax Calculations
 *For a complete list of contributions by city, please see Appendix D.

One other fact regarding OC Parks' revenues that bears mentioning is the sunset of County bankruptcy payments from CSA 26 property tax revenues. These payments will cease after FY 15/16 and will result in substantial, ongoing increased revenue (\$10+M) to CSA 26.

Tidelands Funds

Tidelands areas are land grants from the State of California to local jurisdictions, whereby the local jurisdiction may develop and utilize the tidelands, consistent with the terms of the grant, to generate revenue, which then must be used for the benefit of the public users of that area.

In the County owned/operated portion of Newport Tidelands (Fund 106), the primary revenue generating facility is the Newport Dunes RV Park and Marina (\$2.5M or 68% of the \$3.7M total revenues). The most significant sources of revenue (a total of \$24M) to the Dana Point Tidelands Fund (108) are leases, concessions, and slip/dry storage license agreements.

Harbor-Related Revenues Realized by Other County Funds

In addition to Fund 405, there are other County Funds that directly receive unsecured property tax revenue that is harbor/boating-related. The County General Fund (Fund 100), the OC Flood Control District (Fund 400), and the OC Public Library District (Fund 120) all receive revenue from unsecured property taxes on boats and possessory interests (some of which are boat slips). The review team estimated the amount of unsecured property tax on boats realized by these three County funds to be approximately \$500K and the unsecured property tax on all possessory interests to be approximately \$223K. These amounts are in addition to the \$93K (boats) and \$37K (possessory interests) received by CSA 26 (Fund 405).

Harbor-Related Revenues Realized by Harbor Cities

Included in the scope of work for this review is the identification of all harbor-related revenues, regardless of which jurisdiction receives the revenues. Other than the County, there are three city jurisdictions that generate revenue from activities in Orange County harbors: the City of Huntington Beach (Huntington Harbor), the City of Newport Beach (Newport Harbor), and the City of Dana Point (Dana Point Harbor).

In terms of unsecured property tax on boats and possessory interests (some of which are boat slips), the review team was able to develop a general estimate of revenue going to each city, based on unsecured property tax revenue data provided by the Auditor-Controller (See Appendix F). The results of this analysis and other harbor-related revenues realized by the three harbor cities are shown in the chart on the following page.

Harbor-Related Revenues Realized by Harbor Cities

Revenue Category	City of Huntington Beach	City of Newport Beach	City of Dana Point
<u>Estimated Property Tax Revenues on Boats</u>	\$218,167	\$723,365	\$129,208
<u>Estimated Possessory Interest Tax</u>	\$29,179	\$28,413	\$71,556
<u>Other Harbor-Related Revenues</u>	Lease with Huntington Harbour Yacht Club: \$22,680 Lease with Charter Boat Service: \$2,320 Oil Derrick Payment from State Lands Comm.: \$228K TOTAL OTHER: \$253K	Lease with the Balboa Bay Club: \$3.0M Leases at Beacon Bay: \$1.9M The Balboa Yacht Basin: \$1.3M Mooring Fees: \$697K Pier Permit Registration Fees: \$560K Newport Dunes Transient Occupancy Tax Revenues: \$422K The Basin Marine Shipyard: \$162K Lease with the American Legion: \$138K TOTAL OTHER: \$8.18M	Transient Occupancy Tax from Marina Inn: \$237K TOTAL OTHER: \$237K

*Due to lack of consistently/readily available data, as well as the subjective nature of such an analysis, secured property tax revenues from harbor-adjacent properties, as well as sales tax revenues from harbor-adjacent businesses, were not included.
 **All dollar amounts are either for FY 08/09 or FY 09/10, depending on the most current available information.

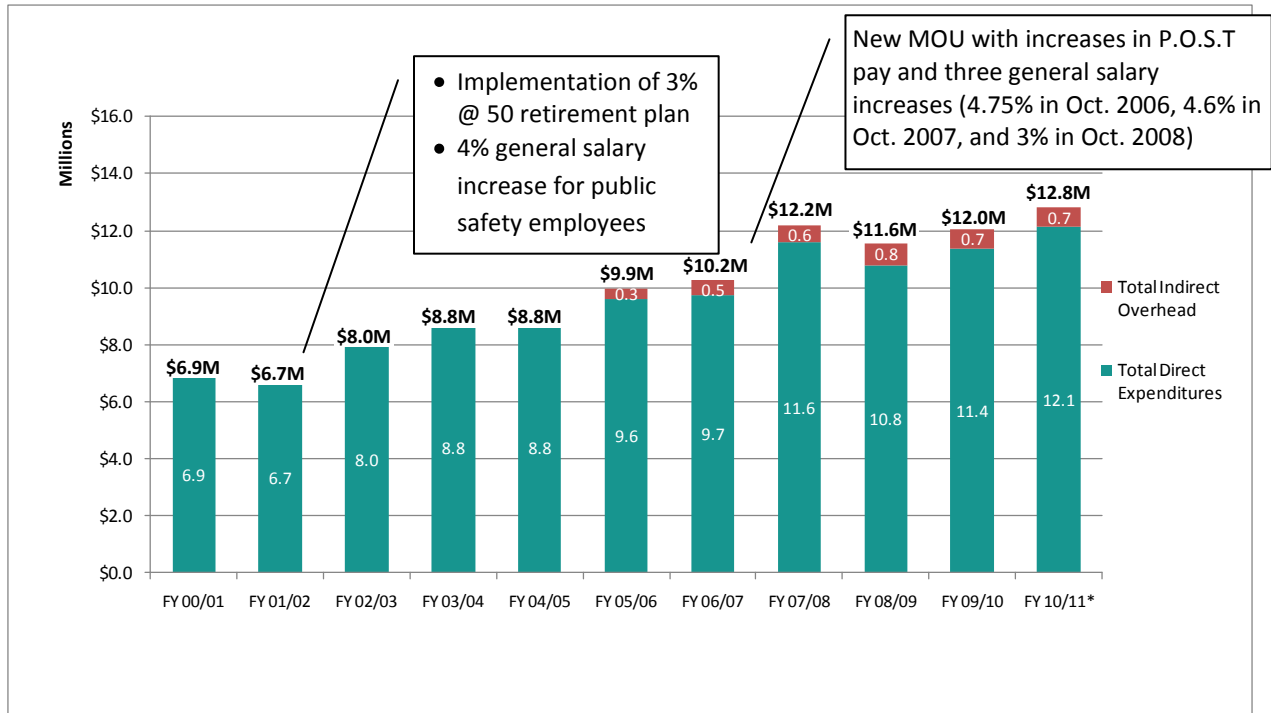
One important finding from the review team’s research is that the County is currently utilizing Harbor Patrol revenues to subsidize OCSD’s provision of mooring-related services with the City of Newport Beach. The estimated full cost of OCSD Harbor Patrol providing these services is \$290K in FY 10/11; however, through contract negotiations, the County is subsidizing this amount for the five-year term of the agreement with the City, while Newport Beach continues to collect mooring fees (\$697K in FY 08/09) in excess of the amounts it pays the County to administer them. The contract contains no restriction on the use of this subsidy by the City of Newport Beach. Accordingly, it may be appropriate to add a provision to the Newport Beach mooring contract requiring that Newport Beach use the revenue it generates, at least up to the amount of the costs the County is subsidizing, specifically to benefit the harbor.

Expenditures

Total Cost of Harbor Patrol

The total cost of Harbor Patrol operations has increased significantly over the past ten years, as demonstrated on the following page.

Total Cost for Harbor Patrol



*FY 10/11 represents budgeted amounts, rather than actual expenditures

**OCSD/Financial does not have records of indirect overhead charges prior to FY 05/06, so no amount was included.

Direct Operating costs have grown from approximately \$6.9M in FY 00/01 to \$12.1M in the FY 10/11 budget, an increase of approximately \$5.2M, or 75%. Salary and employee benefits expenses represent over 90+% of these costs. For example, of the \$5.2M increase, \$2.1M is attributable to increased retirement (i.e., pension) costs⁷, \$1.2M is attributable to increases in regular salaries for Harbor Patrol staff, and \$391K is attributable to increases in premium pays (e.g., harbor patrol pay).

In light of the significance that retirement costs have played in driving up the Total Cost of Harbor Patrol to date, it is critical to note that these costs will continue increasing going forward. In FY 09/10, the County contributed approximately \$0.56 to retirement costs for every \$1 of salary for Deputy Sheriffs; however, this rate will increase to almost \$0.71 per every \$1 of salary by FY 14/15. This reality will continue to generate frustration from the departments paying for Harbor Patrol.

⁷ Investment losses to the Orange County Employees Retirement System’s (OCERS) portfolio from 2001 through 2003 resulted in an increase to the County’s Unfunded Actuarial Accrued Liability (UAAL). Also, in 2002, the OCERS Board changed its actuarial assumptions for calculating the UAAL, which also increased retirement related costs for the County as a whole.

Allowable Uses of CSA 26 and Tidelands Money

There are restrictions on the revenues that currently fund Harbor Patrol, and as such, it was incumbent upon the review team to identify which funds may be used for the various Harbor Patrol activities.

OC Parks CSA 26 receives its dedicated share of property tax revenues for the management, development, operation, protection and maintenance of all Orange County harbors, beaches and parks facilities. As applied to Harbor Patrol, CSA 26 monies can only be used to fund those harbor activities which directly benefit the harbor or harbor users. The only general law enforcement activities (i.e., preserving the peace, making arrests) that can be funded using CSA 26 money are those that directly benefit the harbor or harbor users, as opposed to the public generally, or those that are incidental to Harbor Patrol's non-general law enforcement duties (i.e., result from the direct observation by Harbor Patrol while engaged in non-general law enforcement activities such as water rescue in the harbor, fire fighting, and boating law enforcement) and do not exceed the activities necessary to stabilize the situation and diffuse any immediate danger. The types of activities that may not be funded with CSA 26 money include: pre-planned immigration/drug smuggling enforcement operations; post-arrest activities such as investigations, forensics, court presentations; efforts to identify terrorist risks along the coast; and time devoted to other OCS D special units such as the SWAT team or Bomb Squad. These general law enforcement services are performed by the Sheriff, as part of the Sheriff's statutory duties, and the public already pays taxes for these services.

Similar restrictions exist for the use of Tidelands area revenues. By law, Tidelands areas⁸ are to be used only for the benefit of the public, and there are restrictions on both the uses of Tidelands property and any revenues generated on the Tidelands (e.g., boat slips fees, boat launch ramp fees, harbor restaurants, harbor hotels). There are also restrictions on the use of Tidelands revenues outside of the immediate Tidelands area from where the revenue was generated.

Additional legal analysis of this issue has been confidentially provided to the Board of Supervisors in a separate attorney-client privileged document. OCS D, the CEO, and County Counsel should work together to address this legal analysis.

⁸ The California legislature has given the California State Lands Commission authority over California's public trust lands (tidelands, submerged lands, and navigable waters). The legislature, by statute, also conveyed public trust lands, in trust, to more than 80 cities, counties, and other governmental agencies, including Orange County. Orange County administers two Tidelands areas and their respective funds: Newport Tidelands Fund 106 and Dana Point Tidelands Fund 108.

Policy Discussion and Decisions

The review team's analysis demonstrates that Harbor Patrol is a varied and complex issue with multiple policy options for the Board, the CEO, OC Parks, the Sheriff, and OC Dana Point Harbor to consider going forward. The review team has worked through the various combinations and ramifications of potential options to provide policy makers with a thorough assessment of each. As the Board and OCSD consider these various recommendations and policy options, it is important to reemphasize three points:

1. With regard to the portion of Harbor Patrol's functions that are not statutory duties of the Sheriff (i.e., most of Harbor Patrol's activities), the Board can exercise greater control, assigning these duties to non-OCSD personnel and using a different position classification. However, in doing so, the Board arguably cannot materially reduce the services for which the County assumed responsibility when the HBP District was dissolved and CSA 26 was formed, without LAFCO concurrence.
2. With regard to the portion of Harbor Patrol's functions that are statutory duties of the Sheriff as Sheriff, the Board of Supervisors has only budgetary control (i.e., it sets the Sheriff's budget and the total numbers and classifications of positions in OCSD). However, in exercising its budgetary authority, the Board may not control, direct, or obstruct the Sheriff's performance of her statutory duties that are now performed by the Harbor Patrol. Thus, the Board may not require the Sheriff to assign a certain number or classification of employees to Harbor Patrol.
3. Any operational/staffing changes would require compliance with applicable labor laws.

Funding Model Options

The most critical issue for the Board to address is the funding of Harbor Patrol. There are three primary funding options (below) for policymakers to consider:

- Option 1: OCSD maintains operational control over Harbor Patrol but contributes toward the incremental costs of staffing the operation with Deputy Sheriffs, as opposed to limited peace officers. (Shared Funding)

- Option 2: OC Parks/DPH reassumes operational control for all non-general law enforcement activities and staffs the Harbor Patrol with limited peace officers. Under this option, OC Parks/DPH pay only for the cost of their operation. Operations and funding for general law enforcement will be the responsibility of OCSD. (Segregated Funding)
- Option 3: Maintain the status quo, with OCSD retaining operational control over Harbor Patrol but OC Parks/DPH paying for the entire operational cost, while ensuring that the costs of any services for which OC Parks/DPH funding may not be used would be funded from other revenue sources. (Singular Funding)

The review team has discussed these three funding options with OCSD, OC Parks and OC Dana Point Harbor management. Our discussions indicate that there is a uniformly strong desire to reach a fair and practical solution that will allay the perpetual frustration with this funding issue. In order to arrive at a recommendation, the review team identified the following pros and cons of each option:

Option 1: Shared Funding

Pros

- Addresses the fundamental issue of the Harbor Patrol debate: the financial inequity of OCSD making all Harbor Patrol operational decisions and OC Parks and OC Dana Point Harbor paying for the operation in its entirety
- Retains all Harbor Patrol functions under one agency, which results in significant economies of scale, operational efficiencies, and a high level of service (e.g., better coordination, communication)
- Increases revenue available to OC Parks and OC Dana Point Harbor for other uses (e.g., County beaches and inland parks, harbor revitalization), by reducing the costs of Harbor Patrol to these departments
- Preserves OCSD's ability to pursue current and future operational plans for homeland security
- Satisfies harbor cities and user constituencies which generally prefer that Harbor Patrol be performed by fully sworn Deputy Sheriff personnel

Cons

- OCSD's financial situation restricts its current ability to pay for an equitable portion of Harbor Patrol costs. Similarly, the County's overall financial situation hampers its ability to use General Fund resources to backfill these costs

The review team estimates the incremental cost between the Deputy Sheriff II classification and a proposed "OC Parks Harbor Patrol Officer" classification (with limited peace officer authority) at \$48,268 per position, or \$2.3M for 48 Harbor Patrol positions, in addition to \$0.2M in "Extra Help" and "Overtime" savings. Thus, for FY 10/11, \$2.5M would be the incremental cost that OCSD should pay for Harbor Patrol activities. It should be noted that this incremental cost will fluctuate over time with changing salary and employee benefits agreements, and as such, this amount should be determined on an annual basis. Considering the current budgetary reality, OCSD's contribution would likely need to be phased in, with OC Parks and DPH continuing to subsidize a portion of this contribution in the short run. There are a variety of methods that can be utilized to reach the cost target. Several potential methods are presented in Appendix E.

Option 2: Segregated FundingPros

- A significant ongoing cost savings (19+%) to OC Parks/DPH after substantial initial transition costs
- Clear alignment between funding and operations. This option enables the same organization (potentially OC Parks) to both fund and operate Harbor Patrol

Cons

- Dissolution of an operationally efficient Harbor Patrol function that uses one agency (OCSD) and one highly-skilled classification (Deputy Sheriff II) to perform all harbor/coast activities
- Increased costs and significant implementation requirements of dismantling the majority of the OCSD Harbor Patrol operation and starting-up an OC Parks and OC Dana Point Harbor operation. For OCSD, this would entail either reassigning or laying off deputy staff and the capital investment of purchasing new boats or used boats from OC Parks/DPH to continue general law enforcement and homeland security duties. For OC Parks/DPH, this would require establishing a new position classification to perform harbor duties; hiring and training staff in marine

firefighting, boating law enforcement and medical aid; and hiring/training radio dispatchers and administrative staff. The estimated annual salary and employee benefits cost of employing 40 “OC Parks Harbor Patrol Officers” is \$4.4M, or \$365K per month (this is not including the cost of supervisory staff). Thus, for every month of transition, the County would incur at least \$365K in additional costs, due to the continuation of the OCSD operation while simultaneously standing up the OC Parks/DPH operation

- Significant negotiations with impacted employee labor associations
- Assumed significant reductions to OCSD Harbor Patrol staff would severely restrict OCSD’s ability to participate in and perform cooperative homeland security efforts with local/state/federal law enforcement agencies
- Dissatisfied harbor cities and user constituencies. Based on history and interviews conducted by the review team, harbor cities and user groups will likely lobby against this option, as they prefer the use of Deputy Sheriff personnel

Option 3: Singular Funding (Status Quo)

Maintaining a single funding approach for Harbor Patrol (i.e., OC Parks/DPH paying for the entire operation) is the status quo; however, the review team would still recommend the implementation of the operational/funding changes noted in the Recommended/Required Changes section of the report.

Pros

- No additional budgetary challenges created for OCSD
- Retains all Harbor Patrol functions under one agency, which results in significant economies of scale, operational efficiencies, and a high level of service (e.g., better coordination, communication)
- Satisfies harbor cities and user constituencies which generally prefer that Harbor Patrol be performed by fully sworn Deputy Sheriff personnel

Cons

- Fails to address the imbalance of the current funding model, which is the primary source of concern for most stakeholders, and thus, will likely result in the continuation of the current Harbor Patrol debate. Additionally, there are inescapable cost increases on the horizon for staffing Harbor Patrol with fully sworn Deputies (e.g., pension contributions), which will only exacerbate the existing situation

Funding Model Recommendation

Due to the fact that the County is not required to fulfill its non-general law enforcement (or general law enforcement) responsibilities in the harbors with fully sworn Deputy Sheriffs, there is a strong argument that OCSD's budget should bear the financial responsibility for the incremental costs associated with using such staff to perform these functions. In principle, there is little disagreement among stakeholders that OCSD has a significant stake in the current Harbor Patrol operation and thus should contribute towards its perpetuation. However, practically speaking, the current financial situation of OCSD is such that any additional financial burden placed on the department in the short run (i.e., the next one to two years), without the allocation of additional resources, will likely result in further cuts in other OCSD operations (patrol, jails, etc.). Due to this reality, the core dilemma of Harbor Patrol comes down to a policy decision between three entities (OC Parks, DPH and OCSD) competing for exceedingly scarce resources.

Accordingly, the review team recommends a shared approach (**Funding Option #1**) where the eventual goal is for OCSD to contribute the full, incremental cost of staffing Harbor Patrol with fully sworn Deputy Sheriffs (\$2.5M currently). However, the speed with which this target is achieved may need to be moderated in order to mitigate potential negative impacts to public safety. Thus, to determine how quickly this goal is achieved, as well as the specific mechanics for getting there (e.g., straight-line, back-loaded, revenue triggers), the review team recommends the formation of a short-term task force of stakeholders to address only these precise funding topics. Such a task force would ideally be composed of OCSD, OC Parks, DPH, CEO/Budget, and potentially, one or two Board members.

Acknowledgements

The review team would like to thank OCSD, OC Parks, OC Dana Point Harbor, and CEO staff for their cooperation throughout this process. We would also like to express our appreciation to County Counsel staff for their exhaustive legal research and analysis, and to Auditor-Controller and Assessor staff for their assistance in aggregating relevant property tax information. Lastly, we would like to acknowledge the participation and provision of helpful information by harbor cities and a variety of harbor stakeholders.

Review of Orange County Sheriff-Coroner Department Harbor Patrol

Introduction

Over the past 35 years, the Orange County Sheriff-Coroner Department's (OCSD) Harbor Patrol operation has been the subject of repeated scrutiny; this review marks the 17th study of Harbor Patrol. This attention is due to a number of factors: a dynamic history, multiple vocal constituencies, complicated legal mandates, the separation of operational and financial responsibilities (OCSD for operations and OC Parks and OC Dana Point Harbor (DPH) for financing), the unequal dispersal of harbors/beaches/parks facilities among County Supervisorial districts, and consistent increases to Harbor Patrol salary and benefits expenses. The cumulative effect of these and other factors is a highly complex environment that has been the source of perpetual consternation for a variety of stakeholders.

The latest review of Harbor Patrol issues occurred at the January 12, 2010 Board of Supervisors (Board) meeting. At that meeting, the Board received an "Analysis of Harbor Patrol Governance and Finance Issues" prepared by the Harbor Patrol Working Group. The Working Group's membership consisted of staff from the Second and Fifth Supervisorial Districts, the County Executive Office, OC Parks, OC Dana Point Harbor, and OCSD. Following extensive discussion on the subject, the Board directed that this issue be reviewed further by the Office of the Performance Audit Director (Office).

Review Scope and Objectives

The Board directed that the Office examine the following areas related to Harbor Patrol:

Legal Issues

1. Detail all optional Harbor Patrol activities that are not required by State law, in cooperation with County Counsel.

Operational Issues

2. Describe all Harbor Patrol services that OCSD is currently providing, mandated and non-mandated.

3. Determine if OCSD has the appropriate number and level of staff to adequately provide mandated services (i.e., is OCSD operating as efficiently as possible from a staffing perspective?)
 - a. Conduct workload assessment
 - b. Conduct an operational review of OCSD Harbor Patrol
 - c. Benchmark against other jurisdictions
4. Identify non-mandated services that could be performed by the private sector

Financial Issues

5. Detail all existing and potential harbor-related revenues
 - a. Identify which revenue sources are currently funding OCSD Harbor Patrol
 - b. Identify other jurisdictions that receive harbor-related revenues, how much, and which type of revenue
 - c. Determine if there are any revenue streams that are currently not being pursued or fully collected
 - d. Determine which existing revenue streams can be increased
6. Detail and analyze all OCSD Harbor Patrol expenses both current and historical (past 5 years)

Review Methodology

This assignment is a non-audit advisory service conducted by the Office, in close consultation with County Counsel on legal issues, at the direction of the Board of Supervisors. As such, the review team examined a variety of issues related to Harbor Patrol for the purpose of providing the Board with all information needed to make effective policy decisions.

During this review, the Office performed the following activities:

- Historical examination of the development and management of the Orange County harbor system

- Collaborative examination of the legal issues impacting Harbor Patrol operations with County Counsel and summarization/distillation of those issues by the Office
- Financial research and analysis of all Harbor Patrol revenue and expense information, including but not limited to:
 - All current and historical (budget and actual) Harbor Patrol spending trends
 - All revenue streams received by Harbor Patrol (property tax revenues, tidelands revenues, grants, parks and recreation fees, etc.)
 - Detailed property tax revenue analysis, by tax rate area, in collaboration with Auditor-Controller staff
 - Potential new grant opportunities
 - Projected future costs of Harbor Patrol
 - Harbor-related revenues realized by harbor cities
- Review of Harbor Patrol operations, including workload and activities, staff scheduling, policies and procedures, position classification and compensation, cooperative agreements, and interactions with the private sector
- Over 30 hours of “ride-alongs” on Harbor Patrol boats to observe and understand Harbor Patrol operations
- Interviews with OCSD Harbor Patrol staff, harbor city staff (Seal Beach, Huntington Beach, Newport Beach), commercial marine assistance and towing operators, various harbor stakeholders, and executive management of OCSD, OC Community Resources/OC Parks, and OC Dana Point Harbor
- Interviews with harbor masters and directors of eight other California municipalities’ harbor patrol operations to conduct a benchmark analysis (see Appendix A for a full list of interviews)

Background Information

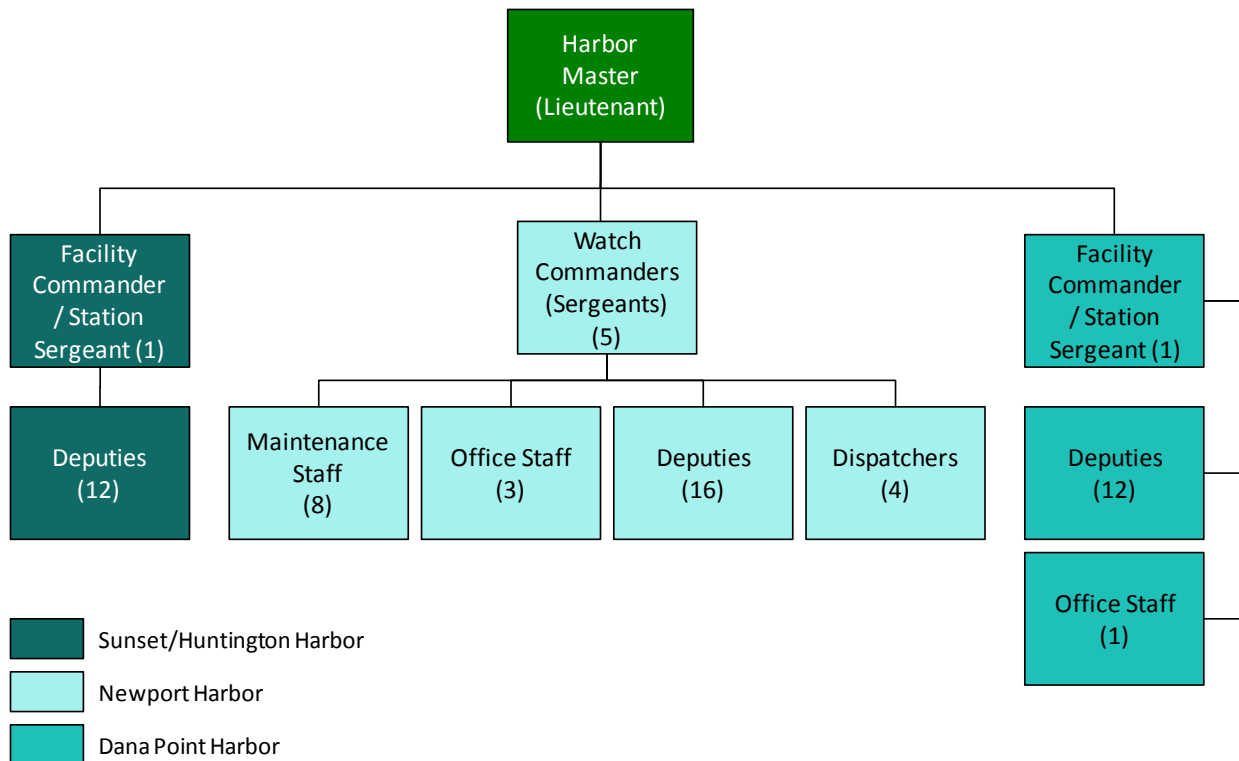
General Overview

Harbor Patrol, a bureau within OCSD’s Homeland Security Division, provides 24 hour services, 365 days a year. Its primary responsibilities include general law enforcement (i.e., preserving the peace, making arrests, conducting investigations), boating law

enforcement, water rescue, marine fire fighting, basic medical aid, and homeland security. In addition to these responsibilities, Harbor Patrol also provides other services, including, but not limited to, environmental protection and enforcement, boating safety inspections, boater assistance, management of moorings in Newport Harbor, dive team services, debris removal, weather reporting, and public speaking assignments. Harbor Patrol often works with other government agencies (e.g., city police, city/state lifeguards, U.S. Coast Guard, U.S. Customs and Border Control) to accomplish its mission.

The current Harbor Patrol operational model utilizes the Deputy Sheriff II classification to perform these diverse services. The deputies assigned to Harbor Patrol receive training over and above the normal Peace Officers Standards Training (P.O.S.T.) required of other OCSD deputies. New deputies assigned to Harbor Patrol receive an initial 480 hours (12 weeks) of mandatory training (e.g., marine law and ordinances, boat operation and handling, marine navigation, rescue training, fire fighting, first aid) and additional non-mandated training opportunities to further augment their marine skill sets (e.g., boat accident investigation, Boating Captain's licensing, and counter-terrorism).

There are 48 sworn staff and 16 non-sworn staff, for a total of 64 Harbor Patrol personnel. Due to the specialized training requirements for Harbor Patrol staff and as a cost saving measure, Harbor Patrol makes extensive use of Extra Help deputies to cover schedule gaps. A high-level organizational chart is presented on the following page:



Orange County Harbors

Harbor Patrol operates in all three Orange County harbors (Sunset/Huntington Harbor, Newport Harbor, and Dana Point Harbor) and along the County’s 48 miles of coast, including the shoreline and three miles out into the ocean.

Each of the three harbors is unique. Sunset/Huntington Harbor is primarily residential (with some public launching facilities) and covers 1,745 acres of water. There are approximately 3,000 permanent vessels and 30 live-aboard vessels. All vessels are stored in slips/docks that can be accessed by land vehicles/patrol. The harbor encompasses or is adjacent to several jurisdictions, including the cities of Seal Beach and Huntington Beach, unincorporated Sunset Beach⁹, County-owned Sunset Aquatic Park, and Federal land (Seal Beach National Wildlife Refuge and Seal Beach Naval Weapons Station). In addition to patrolling the harbor and the waters of the Naval Weapons Station, Harbor Patrol also performs homeland security checks of three off shore oil derricks that are outside the harbor¹⁰.

⁹ At the time of the writing of this report, the City of Huntington Beach was in the process of annexing Sunset Beach.

¹⁰ The three private oil derricks are approximately 1-3 miles off shore and are within the city boundaries of Huntington Beach.

Newport Harbor is one of California's largest "small craft" harbors and is composed of residential and commercial areas. The harbor covers 1,100 acres of water, and there are approximately 9,000 permanent vessels and 30 live-aboard vessels. Upper Newport Harbor is granted in trust to the County by the State, and thus is operated by the County, while lower Newport Harbor is granted in trust to the City of Newport Beach and is operated by the City. Of the three Orange County harbors, Newport Harbor is the only harbor that has off- and on-shore moorings, which cannot be reached by land vehicles/patrol. In addition, Bay Island, a private island made up of approximately 20 residences, cannot be reached easily by land fire fighters, and, therefore, depends on Harbor Patrol as the first responder for fire emergencies.

Dana Point Harbor is granted in trust to the County by the State, and thus is operated entirely by the County. It is a 277 acre regional recreational and commercial harbor, with commercially operated marinas, waterfront businesses, public anchorage and public launching facilities. There are approximately 2,900 wet and dry vessels and 65 live-aboard vessels. Approximately 2,400 vessels are stored in slips/docks and the remaining 500 vessels are in surface storage. Dana Point Harbor does not have any moorings, and all vessels can be reached by land vehicles/patrol.

Historical Context

The nuances and idiosyncratic issues of the Harbor Patrol function have evolved over time, making it important to first understand several key historical events pertaining to the Orange County harbor system. Appendix B provides a detailed historical timeline, with key events summarized below:

- In 1933, the County of Orange, with the approval of the State of California, forms the "Orange County Harbor District" to provide a mechanism for the County to improve and develop Newport Harbor, issue the bonds to partially finance construction, assess and levy Countywide property taxes to pay bond investors and cover the ordinary expenses of the Harbor District operations.
- In 1961, the County of Orange proposes and the California Legislature approves changes to the Harbors & Navigation Code which allow California harbor improvement districts to acquire, develop and fund public beaches using property tax revenues of the Harbor District.
- In 1963, the Board of Supervisors assigns the Harbor District administrative responsibility for managing the County's regional land parks (a General Fund

responsibility) and unincorporated area local parks (funded through County Service Areas). Harbor District funds continue to pay for harbor and beach activities while County General Funds and County Service Areas are utilized for inland park operations.

- In 1971, the County of Orange proposes and the California Legislature approves additional changes to the Harbors & Navigation Code which allow California harbor improvement districts to acquire, develop and operate inland parks and recreation areas using property tax revenue of the Harbor District. The Orange County Harbor District is renamed the “Harbors, Beaches & Parks (HBP) District.”
- In 1975, the HBP Harbor Patrol function is transferred by the Board of Supervisors from the HBP District to OCSD. HBP’s limited police officer staff (the former Penal Code 830.4, now Penal Code 830.33(b)) became fully-sworn Deputy Sheriffs (Penal Code 830.1). The Board directs HBP and OCSD to negotiate the provision of services annually, with HBP continuing to fund the operation. The salary ranges and retirement systems are very similar (at the time) between these two positions, mitigating any concern over additional costs of taking this action.
- In 1988/89, the Board of Supervisors requests, and the Local Agency Formation Commission (LAFCO) agrees, to dissolve the HBP District and subsequently form County Service Area (CSA) 26 to avoid exceeding the County’s Gann Limit. LAFCO imposes conditions on its approval of these actions, and the Board, by resolution, adopts these conditions, which arguably require the County operationally and financially to continue to provide and pay for HBP services, many of which are provided by Harbor Patrol.
- In December 1994, the County declares bankruptcy. In 1995, the County issues a 20-year bond to assist in paying off its bankruptcy debt. To repay bondholders, the County agrees to divert numerous sources of revenue, including property tax revenues from CSA 26. The estimated FY 10/11 bankruptcy payment for CSA 26 is \$9.3 million. These payments will cease after FY 15/16 at which time CSA 26 will again receive this revenue.
- In June 2002, the County implements the “3% @ 50” retirement plan for public safety employees, resulting in significant increases to Harbor Patrol expenditures. In addition, changes in actuarial assumptions, as well as losses to

the Orange County Employees Retirement System (OCERS) portfolio, increased retirement related costs for the entire County at this time.

Findings and Recommendations

I. Harbor Patrol Legal Issues

One of the primary objectives of this study is to analyze which Harbor Patrol functions are mandated and which are not. Specifically, the Board requested a determination regarding Harbor Patrol activities that are **not** mandated by State law. This analysis sets the boundaries for the discussion of how Harbor Patrol operations and funding may be modified.

The review team worked extensively with County Counsel on the legal issues that arose during the research for this report.

Analysis of Mandated/Non-Mandated Harbor Patrol Activities

The bullets below summarize the key conclusions about Harbor Patrol mandates/requirements:

- State Codified Mandates

Regarding Harbor Patrol activities, OCSD, as the County Sheriff, is statutorily required to provide the following services to the extent OCSD has the resources to do so:

- General law enforcement duties (i.e., preserve the peace, make arrests, investigate public offenses) in those harbors and other inland waterways that are in unincorporated territory or that are owned or operated by the County (such as Dana Point Harbor). In addition, the Sheriff has general law enforcement duties along the few sections of the coast that are unincorporated territory (the shoreline to three nautical miles out to sea) (California Government Code Sections 26600, 26601, 26602). Conversely, city police have primary responsibility for general law enforcement within their cities' boundaries, including harbors and other inland waterways within city boundaries and in the Pacific Ocean three nautical miles off the cities' coasts (California Government Code Section 41601). The Sheriff acts as a backup to city police within city limits,

since the Sheriff has Countywide jurisdiction. As will be noted elsewhere in this report, these statutory general law enforcement duties represent only a very small portion of the duties performed by Harbor Patrol. Moreover, in the harbors, these general law enforcement duties do not have to be performed by fully sworn Deputy Sheriffs (i.e., these duties can be performed by limited authority peace officers).

- The Sheriff is responsible for performing water rescue duties along the entire Orange County coast, including the extensive parts of that area that are within city limits. These responsibilities, however, do not extend into harbors (California Harbors & Navigation Code Section 510). As an aside, it should be noted that this role can be filled by any qualified personnel, sworn or non-sworn, under the supervision of OCSD.
- Because the County has a Harbor Patrol, it has primary jurisdiction for enforcing boating laws along the coast and in all harbors. If there were no Harbor Patrol, the County, via the Sheriff, would only be primarily responsible for enforcing boating laws in unincorporated areas and County owned or operated waters, while city police would be responsible in all other waters within city limits (California Harbors & Navigation Code Sections 663 and 663.5). As with general law enforcement, these boating law enforcement duties do not have to be performed by fully sworn Deputy Sheriffs (i.e., these duties can be performed by limited authority peace officers).
- Conditions of LAFCO/Board Resolutions

Finding 1: The County is arguably restricted from making any changes to the “range and level of services” provided by Harbor Patrol in 1988-89, per existing LAFCO and Board resolutions.

In 1988, the Orange County Auditor-Controller informed the Board of Supervisors that the County was in danger of exceeding its Gann Limit¹¹, and was therefore in danger of having to refund millions of dollars of tax revenue. In order to avoid this situation¹², the County petitioned LAFCO to quickly dissolve the Harbors, Beaches & Parks (HBP) District, and subsequently, in 1989, to replace it by forming HBP

¹¹ The “Gann Limit” is a limitation on local governments’ appropriation of revenue based on the proceeds of taxes. Cal. Const. Art. XIII B, section 8.

¹² By dissolving the HBP District (a separate legal entity from the County) and creating CSA 26 (a county entity), the County was able to assume the Gann Limit of the former HBP District, thereby giving it more tax allocation capacity and avoiding the need to refund tax revenues.

County Service Area (CSA) 26. LAFCO, by resolutions, made its approval of these actions subject to a number of conditions, which the Board of Supervisors then adopted by its own resolutions. For example, the LAFCO conditions adopted by the Board of Supervisors impose on the County the statutory authority and duties of the former HBP District with respect to finances, liabilities, services, and facilities. In general terms, the duties pertaining to the Harbor Patrol include to “manage, maintain, and control” and “protect” the harbors that were developed by the former HBP District.¹³

However, there is no language in the resolutions that specifically defines the range and level of Harbor Patrol services that the County is required to continue to provide. Other supporting documents (not included in the resolutions themselves) suggest that the assumption underlying LAFCO’s approval of the dissolution of the former HBP District was that the then-current range and level of services would continue to be provided.¹⁴ In light of this documentation, there is a risk that the 1988 LAFCO resolutions and the conforming Board of Supervisors resolutions could be interpreted by a court to mean that the range and level of HBP District services provided in 1988 would continue. It is important to note, however, that LAFCO’s current staff and counsel have indicated a different interpretation (i.e. that the language of the resolutions does not bind the County to a particular level of service).¹⁵ This differing opinion notwithstanding, LAFCO has never been asked to provide a formal clarification of the definition of “the range and level of services” referenced in these resolutions. This clarification is critical because the County is required to comply with the LAFCO conditions that the Board adopted unless and until those conditions are changed or removed.

¹³ These statutory requirements are cited in California Harbors and Navigation Code sections 5900.6 and 5910.

¹⁴ At that time, there was considerable public opposition to dissolving the HBP District. The County Administrative Officer advised the Board of Supervisors by memo in March 1988 that in order to “clarify for interested parties that [the] recommendation to dissolve the [HBP District] will not affect the function of the District,” the County’s application to LAFCO for approval of the dissolution would include “terms and conditions...that will assure that the functions of the [HBPD] will be protected.” Also, in its May, 1988 report recommending approval for the dissolution of the HBP District, LAFCO staff stated, “The effect of the proposed dissolution will only impact the accounting procedures of the HBPD by combining the District’s appropriations limit with the County’s limit. There will be no changes in the boundaries of the District, or in the range or level of services provided.” Lastly, in its May 1988 Notice of Categorical Exemption from CEQA, LAFCO stated, “The proposal consists of the dissolution of the Orange County Harbors, Beaches, and Parks District in order to increase the County’s appropriation limit. The boundaries, range, and level of service will not be altered as a result of this proposal.”

¹⁵ LAFCO’s general counsel’s position is that LAFCO’s role in the 1988 action was to assess the level of services provided before and after the change, and to find that those service levels would not be affected negatively by the change. Although terms and conditions in the LAFCO Resolutions could, and did, designate the County as the District’s successor agency, and assigned the District’s assets and revenues to the County in furtherance of that role, LAFCO’s current general counsel advises that LAFCO could not, and did not bind the County to a particular level of service in its successor role.

- Cooperative Agreements and Contractual Commitments

Potential LAFCO requirements notwithstanding, the County has entered into other agreements and contracts over the years that pertain to Harbor Patrol. Per these agreements and contracts, the County, and in some cases OCSD, has the following duties, all of which may be terminated with appropriate notice:

- Provide for the administration of boat moorings in Newport Harbor for which the City of Newport Beach compensates the County¹⁶ for a portion of the cost for providing this service (Contract with the City of Newport Beach).
- Provide cooperative law enforcement, fire protection and marine rescue services in Huntington/Sunset Harbor and Newport Harbor (Agreements with the City of Newport Beach, the City of Seal Beach, and the City of Huntington Beach).
- Provide enforcement of federal boating regulations in waters that are within and adjacent to the Seal Beach Naval Weapons Station (Agreement with the U.S. Department of the Navy).
- Provide cooperative law enforcement, public safety, and homeland security in conjunction with the United States Coast Guard (Agreement with U.S. Coast Guard).
- Act as the city police for Dana Point and San Clemente, including performing the general law enforcement duties in harbors and waterways and along the coast that otherwise would be the primary responsibility of a city police force.

Legal Analysis Conclusion

In light of the mandates/requirements discussed above, it is clear that the continuation of Harbor Patrol in its current form is largely not required by State statutory mandates on the Sheriff. Rather, per the 1988 LAFCO resolutions, the County is required to fulfill the statutory duties of the former HBP District, and arguably provide the same range and level of services that were provided in 1988. After lengthy historical research, it is apparent that there are no records that clearly delineate what specific activities were being performed by Harbor Patrol at the time of the LAFCO resolutions. One rough measure of the “range and level of services,” which might be used in the absence of any

¹⁶ Contract allows a 5-year ramp up to \$290,000, which is the current full cost of providing mooring management/administration services. In Year 1 of the contract, the City will compensate the County \$180,000.

better data, is the number of patrol staff. By this imprecise measure, the County now appears to be providing Harbor Patrol services equivalent to those provided in 1988/89. Any change to the level of patrol staff, however, could risk violating the LAFCO resolutions.

Since it is difficult (now 20+ years later) to ascertain precisely what the LAFCO resolutions require, and in light of the differing opinions regarding this issue, the review team recommends:

Recommendation 1: The Board of Supervisors, with the assistance of the CEO, OCSD, OC Parks, OC Dana Point Harbor and County Counsel, should submit a request to LAFCO to clarify, and, if necessary, modify the conditions imposed by LAFCO on the dissolution of the former HBP District and the formation of CSA 26.

II. Harbor Patrol Operations

Many previous studies of Harbor Patrol have focused primarily on its operations, exploring opportunities to decrease costs through increased efficiency and/or reducing services. While this study also assessed Harbor Patrol's operations and identified some operational improvements, a major finding from this review is that OCSD Harbor Patrol, overall, is a very strong operation. Having had its operations scrutinized repeatedly over the past 30+ years, Harbor Patrol has continually re-examined and improved its operations. In addition, the number of patrol staff has remained the same since 1975, when the Harbor Patrol function was transferred to the Sheriff's Department, and there are fewer Harbor Patrol management personnel. During this time, the number of boats in the harbors has increased from 12,000 to over 58,000 (with a peak of 70,000 in 2008)¹⁷. Moreover, in terms of Harbor Patrol's public relations, several stakeholders noted a marked improvement over the last 18 months with the efforts of the current Harbor Master. Overall, interviews with multiple stakeholders support the conclusion that Harbor Patrol provides a high level of service, with uniquely-trained and experienced staff.

The review team documented, in detail, the different operational elements of Harbor Patrol in order to thoroughly answer the requests of the Board in the scope of work for this review. Although the overall operational assessment of Harbor Patrol is positive, there are some options/opportunities for improvement, which are identified in the areas noted below.

¹⁷ Information provided by OCSD-Harbor Patrol

- Activities and Workload
- Policies and Procedures
- Position Classification and Compensation
- Cooperative Agreements and Contracts
- Interactions with the Private Sector
- Benchmarking of Other Municipalities' Harbor Patrol Operations

Activities and Workload

Sworn Staff

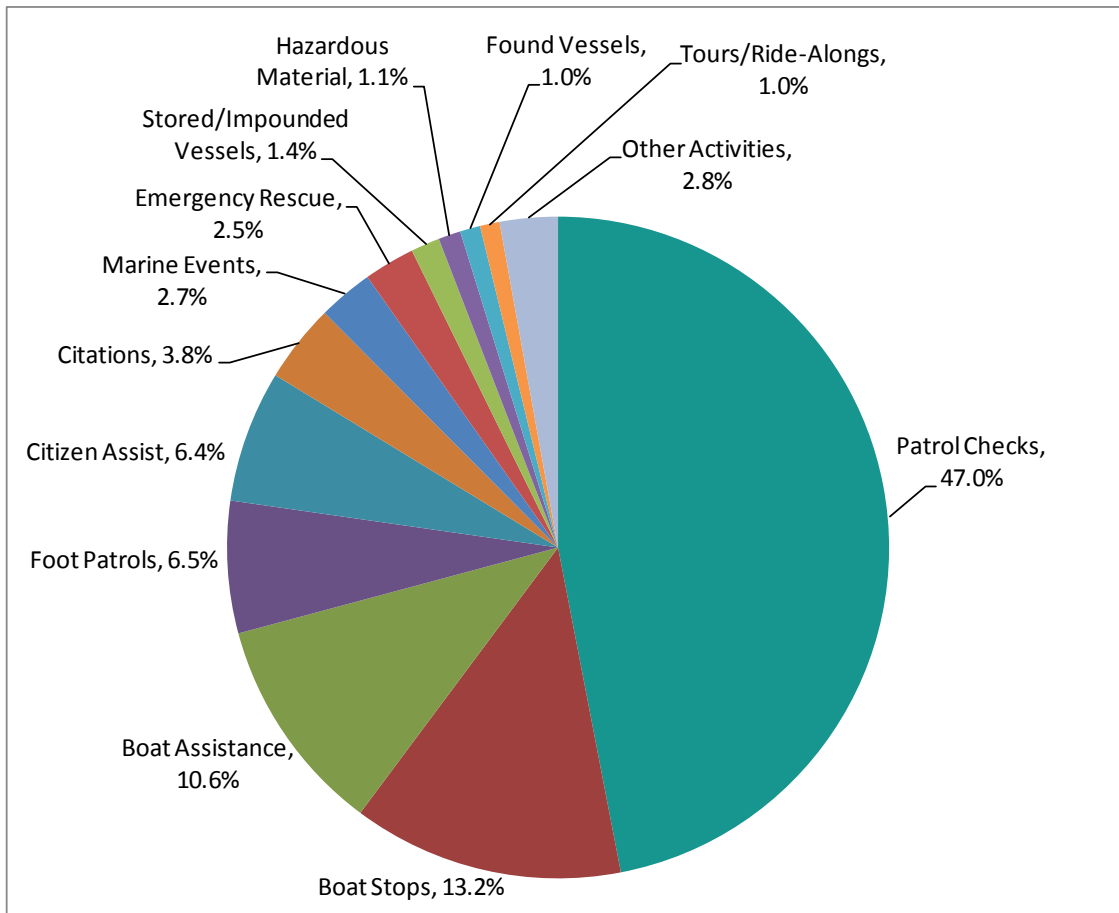
At its core, Harbor Patrol is much like any other public safety patrol function in that the majority of staff time is spent conducting routine patrols and providing a consistent law enforcement presence in a particular jurisdiction. As such, OCSD has established a schedule of shifts that provides a certain level of patrol coverage. The filling of these shifts is what drives the demand for Harbor Patrol personnel. Any reduction in or addition of staff would result in a reduction or addition of patrol coverage, respectively. Also, as noted in the Legal section of this report, a reduction in the number of patrol staff could be problematic with regard to meeting the aforementioned requirements discussed in the LAFCO and Board of Supervisors resolutions. In spite of these potential constraints, it is important to document and understand (1) what activities staff are engaged in, and (2) how much time staff spends on the varying activities.

Activity Counts

Harbor Patrol deputies document their daily activity on a hard copy worksheet (the Daily Activity Log) after every shift, in every harbor. Administrative staff aggregates these worksheets in binders, which are kept at the harbor offices to which the worksheets pertain. Administrative staff also keeps a running tally of a number of different activities that are logged on these worksheets. These manual tallies are also summarized on a monthly basis and included in a Quarterly Activity Report. These Quarterly Activity Reports are available back to calendar year 2007, and the review team assembled this data as the primary means of measuring workload for Harbor Patrol.

The most frequent activities of the Harbor Patrol are: patrol checks (i.e., general patrol) (47.0%), boat stops (13.2%), and boater assistance (including tows, boat pump-outs, jump starts, and assisting capsized vessels) (10.6%). These three activities and the other most frequent activities are shown in the chart on the following page.

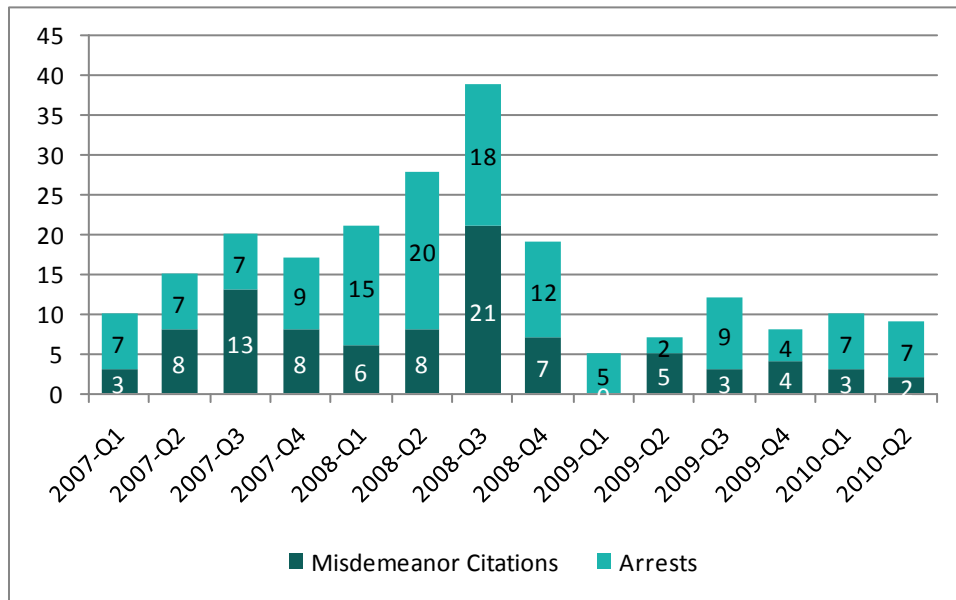
Harbor Patrol Activity Incidents, FY 06-07 through FY 09-10



Note: Other Activities include: speaking events, vessel accidents, response to crimes, arrests, and vessel/structural fires

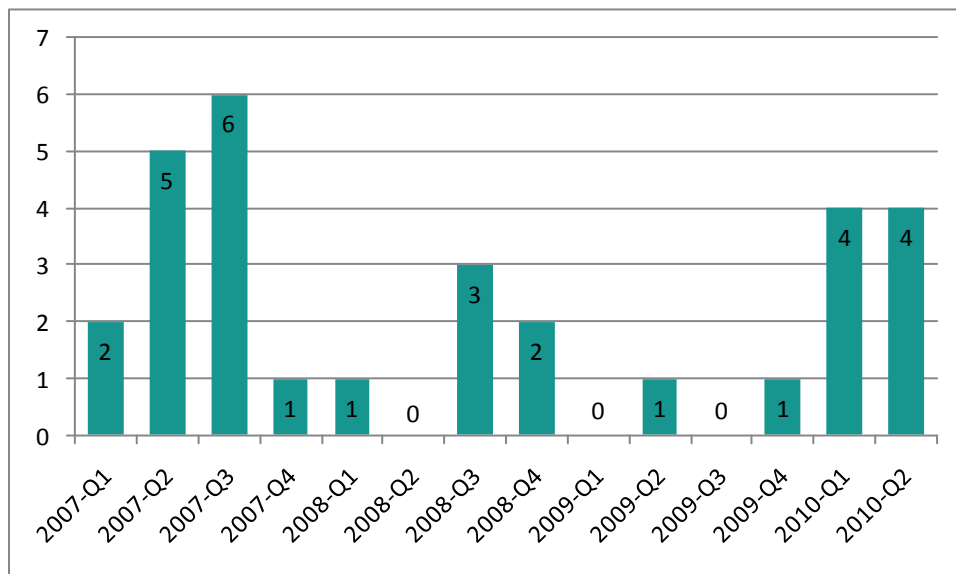
The review team also conducted a trend analysis of data from the Quarterly Activity Reports and confirmed that arrests and misdemeanor citations are rare occurrences in the harbors and along the County coast. The chart on the next page demonstrates the level of these activities across all harbors from the first quarter of calendar year (CY) 2007 to the present.

Arrests and Misdemeanor Citations



Quarterly Activity Reports data also show that harbor vessel and structural fires are even more rare occurrences across all three harbors from the first quarter of CY 2007 to the present.

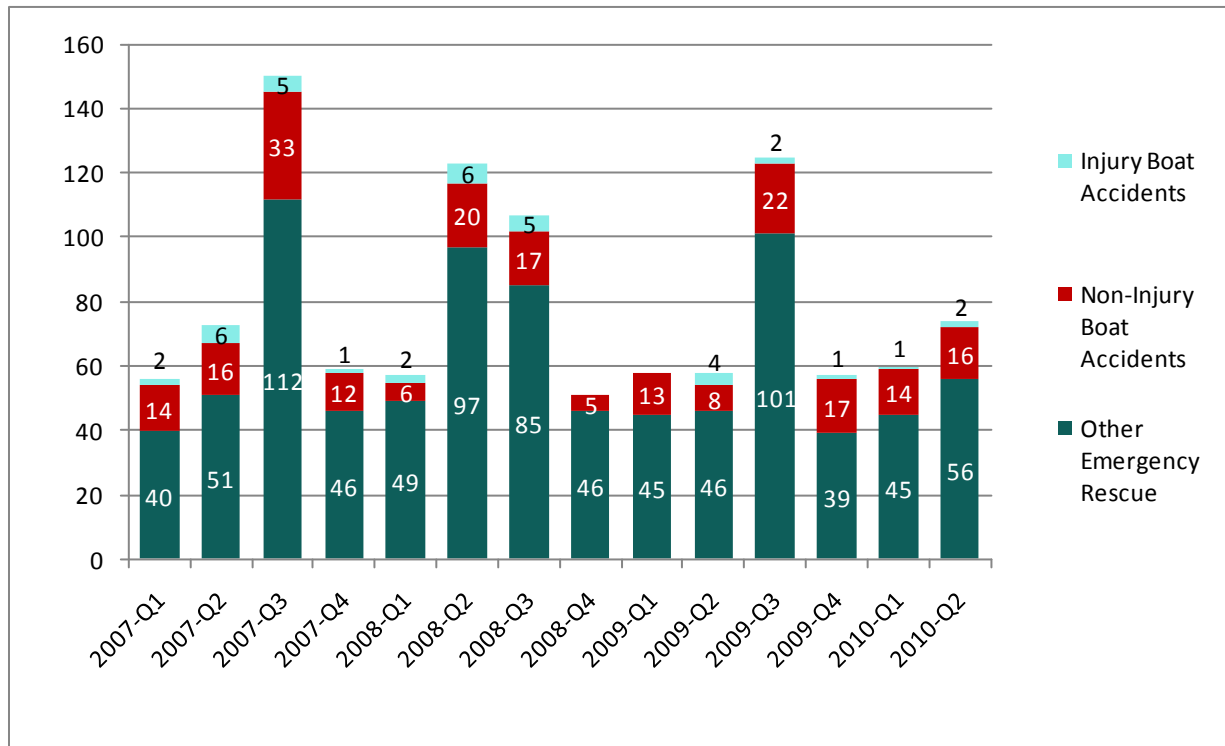
Vessel/Structural Fires



In addition to fires and law enforcement-related activities, another key public safety responsibility of Harbor Patrol is responding to boat accidents as well as other

emergencies on the water. These emergency responses are not the most frequent activities for Harbor Patrol staff, but they are more frequent than the activities discussed thus far (arrests, response to crimes, vessel/structure fires), as illustrated in the chart below.

Boat Accidents and Other Emergency Rescues



Note: Other Emergency Rescue includes medical aid assistance

It is important to emphasize that the above information does not incorporate time spent on these various activities, but rather is a count of the number of incidents in these activity categories. Due to the fact that these activities can vary significantly in terms of time spent (e.g., one boat fire may take one hour, while another may require 6 hours of work), the activity count data may not precisely represent the workload of Harbor Patrol staff. However, these counts are the only consistently available measure over time.

Time Spent

The challenges of the current data notwithstanding, the review team examined a significant amount of data aggregated by OCSD as part of the Marine Operations Statistical Analysis Project (MOSAP)¹⁸ in an effort to document the time spent on certain

¹⁸ In 2008, the Board of Supervisors requested a statistical review of harbor patrol activities and functions

activities. In order to compile this data for the MOSAP project, hundreds of hours were spent by Harbor Patrol staff combing through each of the individual, hard-copy activity sheets referenced above for the 2007 and 2008 calendar years and inputting them into an electronic spreadsheet. Two of the key data points recorded for every activity were “Start Time” and “End Time,” thereby allowing the review team to determine the time spent on each activity/incident. The quality of this data is not pristine, and there are several data entry errors/inconsistencies that led to some erroneous “time spent” amounts (e.g., a patrol that lasted 23 hours) in the data set. In addition, because the data only captures a two year period ending in December 2008, it does not include any recent trends/changes that may have occurred. However, with those caveats, this data does reinforce some general operational points:

- Much like land side patrol operations, the most time consuming activity performed by Harbor Patrol staff is general patrol inside the harbors. Some general patrol of the waters outside of the harbor does occur; however, the data indicate that of the approximately 7,221 recorded hours spent patrolling, only 700 of those hours were spent in outer waterways (less than 10%).
- Less than 5% of the recorded time spent by Harbor Patrol staff pertains to making arrests and/or issuing citations.
- In addition to general patrol, other activities that consume a greater proportion of staff time are:
 - Assisting outside agencies, such as the U.S. Coast Guard, the U.S. Navy, the City of Newport Beach, and the County Assessor for property assessments (6.1%, or 926 hours)
 - Emergency and non-emergency towing (5.9%, or 878 hours)
 - Boater stops without any follow-up (5.8%, or 864 hours)
 - Various forms of boater assistance, such as jumpstarts, rescuing vessels, or securing vessels (5.2%, or 780 hours)
 - Mooring-related duties (4.1%, or 617 hours).

Both the Activity Count and Time Spent data also confirm that much of what Harbor Patrol staff does is not required to be performed by a fully sworn Deputy Sheriff. The rationale for utilizing Deputy Sheriffs is to: (a) provide a higher level law enforcement presence on the water, which augments (to some degree) the level of criminal deterrence, and (b) position the most highly trained law enforcement professionals on the water as a safety net for worst case scenarios where such levels of skill are needed.

Other Sworn Staff

Of the 40 Harbor Patrol deputies, two primarily serve in administrative capacities. OCSD has assigned one of these deputies (the Training Coordinator) to administer the Harbor Patrol training program, given Harbor Patrol's unique and enhanced requirements. This position dedicates approximately 80% of his/her time to the following training duties:

- Research, develop, organize, and schedule all training for Harbor Patrol staff
- Teach the Marine Firefighting course
- Monitor and track each Harbor Patrol deputy's training
- Schedule and arrange for any necessary travel requirements
- Research and apply for training grants

The remaining 20% of the Training Coordinator's duties are spread among assignments/duties that include: serving as Financial Officer for the regional Maritime Unified Command (Coast Guard, Navy, US Customs and Border Protection, local port police), attending to intergovernmental affairs (e.g., city council meetings, Newport mooring administration, water quality meetings), researching Harbor Patrol equipment, serving in public/media relations capacities (e.g., education tours), and providing back-up for other Harbor Patrol deputies.

The second administrative deputy—the Mooring/Accident Investigations Deputy—is responsible for mooring administration for Newport Harbor (including duties performed as part of the County's contract with the City of Newport Beach for mooring management) and for boat accident investigations. This position has the following duties:

- Maintain a mooring list
- Check live-boards on moorings to ensure that all regulations are being followed
- Collect mooring reports from Harbor Patrol deputies and notify mooring permit holders of deficiencies (e.g., expired registration)
- Coordinate the lien sales/auctions of impounded or found/abandoned vessels
- Review all boat accident reports, conduct follow up investigations, and maintain all necessary paperwork
- Contact OCSD Investigations and the District Attorney, as needed

Other duties of this position include serving as the Police Explorer Advisor for OCSD, serving as the terrorist liaison officer, supervising inmates participating in the County

Inmate Work Program (CWP), serving in public/media relations capacities (e.g., education tours), and providing back-up for other Harbor Patrol deputies.

Finding 2: A large portion of the administrative duties of both the Training Coordinator and the Mooring/Accident Investigation Deputy does not require the use of fully sworn peace officers.

Among the Training Coordinator's duties, research, scheduling, tracking attendance, and organizing classes could be performed by non-sworn personnel, resulting in cost savings. Similarly, a portion of the Mooring Deputy's duties could be performed by non-sworn personnel (e.g., paperwork/maintaining logs/lists, contacting mooring permit holders). Consolidating duties that require sworn personnel into one position and replacing one of the deputy positions with a civilian position will result in approximately \$40K of annual savings.

Recommendation 2: Consolidate the elements of the Training Coordinator and Mooring /Accident Investigation Deputy positions that require a fully sworn peace officer into one deputy position; use a civilian position to support this deputy and perform the remaining administrative duties.

Non-Sworn Staff

In addition to Harbor Patrol's 48 sworn officers¹⁹, there are 16 non-sworn positions: four dispatchers, eight maintenance personnel (operating out of Newport Harbor), and four office personnel (three in Newport Harbor and one in Dana Point Harbor).

The level of dispatcher and maintenance staffing has remained largely unchanged for over 35 years, despite an expansion in the number of vessels in the Harbor Patrol fleet. The number of dispatchers was reduced from five in 1974/1975 to four, which is the minimum staffing required for 24-hour coverage. With regard to the workload of the maintenance staff, the review team did request all available data; however, this data is not tracked at a level of detail to allow analysis of the workload. This challenge is discussed in detail in the Data Collection section that follows.

Finding 3: OCSD has the opportunity to eliminate an office position at Dana Point Harbor without a significant impact to the operation.

¹⁹ Includes seven sergeants and one lieutenant

In terms of the office personnel, the review team has confirmed that the duties of the Office Technician position in Dana Point Harbor can be transitioned to the three office/support staff positions in Newport Harbor, without a significant impact to the operations of the Dana Point station. Harbor Patrol management has also identified the elimination of this position in all of the cost cutting scenarios it recently prepared. In addition, the absence of a similar Office Technician position in the other outer harbor – Sunset/Huntington Harbor – supports this potential change. Eliminating an Office Technician position in Dana Point Harbor will result in approximately \$50K of annual savings.

Recommendation 3: Delete the Office Technician position in Dana Point Harbor.

Data Collection

Finding 4: Current activity time tracking and reporting is both inconsistent and non-automated, making it difficult to verify the activity/productivity of Harbor Patrol staff.

In addition to demonstrating the activities of Harbor Patrol, the operational data analyzed in this section reinforced that there is inconsistent measurement of how Harbor Patrol staff spend their time. To illustrate this point, it is important to reemphasize that Harbor Patrol is a 24/7 operation, 365 days a year, and there are at least two deputies on duty at each of the three harbors at all times. As such, there are at least two deputies on duty for 8,736 hours per year at each harbor (or 26,208/year for the entire Harbor Patrol). However, for the two calendar years 2007 and 2008 examined as part of the Marine Operations Statistical Analysis Project (MOSAP), there is less than 15,000 hours of documented activity across the entire Harbor Patrol operation. This indicates that no more than 28% of all time spent during these two calendar years was being documented by Harbor Patrol staff, including general patrol activities.

Similarly problematic is the inconsistency of such documentation among the three harbors. For example, in the two calendar years 2007 and 2008, the Newport Harbor station documented 6,157 hours of activity out of the 17,472 hours possible (35%), while the Sunset/Huntington Harbor station documented 5,794 hours of activity (33%). One would expect such a discrepancy, due to the fact that Newport Harbor is a busier/larger harbor, which includes a number of moorings that Sunset/Huntington Harbor does not have. In addition, there are more staff stationed at the Newport Harbor station. However, Dana Point Harbor, which has the same number of staff as Sunset/Huntington, only documented 2,971 hours out of the 17,472 possible (17%).

Delving further into the data, other inconsistencies became apparent to the review team. For instance, the Newport Harbor station documented 1,679 hours of general patrol or “Patrol Check,” and the Dana Point Harbor station documented 1,266 hours of the same activity. These amounts contrast starkly with the 4,276 hours (more than Dana Point and Newport combined) of “Patrol Check” documented in Sunset/Huntington Harbor. This data points to one or possibly two conclusions: (a) Sunset/Huntington Harbor staff are patrolling far more than Newport Harbor and Dana Point Harbor staff, and/or (b) Sunset/Huntington Harbor staff do a much more complete job of documenting their patrols. Both of these conclusions point to the need for a more thorough and consistent practice for documenting how Harbor Patrol staff spends their time.

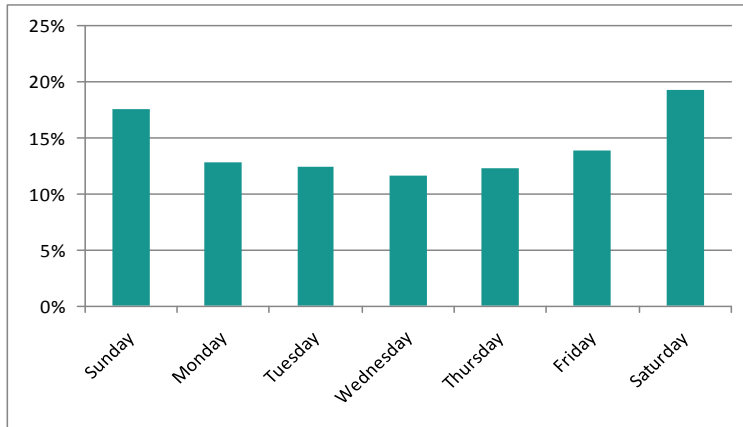
Upon a review of time tracking by maintenance staff (e.g., mechanics, painters, carpenters), a similar problem was identified. Some staff members were highly diligent in recording their time to the Sheriff’s labor tracking system for non-sworn staff (Remedy), while others did not account for significant amounts of time. OCSD acknowledged this deficiency during the review team’s fieldwork and has begun to research opportunities to address the problem, including consultation with other maintenance operations throughout the County.

Recommendation 4: (a) Refine the policy that details how both sworn and non-sworn staff are to record their time and roll out the policy consistently across all harbors, (b) Work with OCSD IT staff to develop a simple database for the recording of daily activity worksheets in electronic format and require that deputies enter their activity information at the conclusion of every shift, (c) Create management reports from the database that will be established for review by Harbor Patrol leadership, as well as by OC Parks/DPH leadership, on a routine basis (i.e., quarterly, semi-annually).

Staff Scheduling

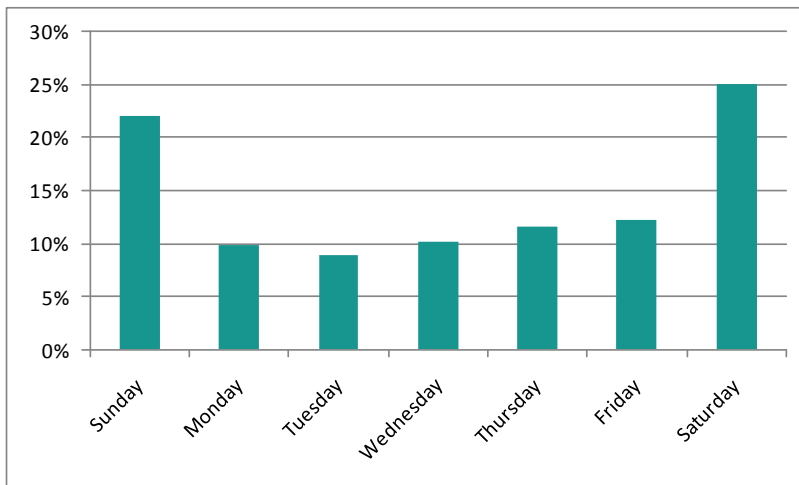
To further examine Harbor Patrol activities and workload, the review team looked at current staff scheduling vs. Harbor Patrol activities by day of the week. Currently, Harbor Patrol staffs the same number of patrol shifts, irrespective of the day of the week. In order to determine the efficacy of such a staff schedule, the review team grouped incidents by day of the week, using the Harbor Patrol’s activity data from CY 2007 and CY 2008. The review team has prepared two separate charts, one showing all incidents and one showing only the more severe public safety incidents, both of which are presented on the following page.

Harbor Patrol Activities, Percent of Total Incidents by Day, CY 07-08



As shown in the above chart, Harbor Patrol incidents occur more frequently on the weekends. Similarly, as shown in the chart below, law enforcement and fire activities are also most frequent on the weekends.

Arrests, Accidents, Citations, Fires, Crimes, Emergency Response, % Total by Day, CY 07-08



Although the data shows that the weekends are the busiest days of the week for Harbor Patrol, there is no need (aside from holiday weekends) to increase the number of patrol boats on the water on the weekends. All quantitative and qualitative information reviewed indicate, and Harbor Patrol management confirms, that the current patrol shifts are able to handle the increased number of incidents that occur in the harbors on the weekends.

However, Harbor Patrol should consider having an increased supervisory presence, which can double as back-up on the weekends as a precautionary measure. Although

the number of patrol shifts/boats does not vary based on the day of the week, currently, there is more supervisory/back-up staff on the weekdays—the slowest days for Harbor Patrol. On the weekdays, during the day, there is one Facility Commander/Station Sergeant at each of the outer harbors (Sunset/Huntington Harbor and Dana Point Harbor) and a Watch Commander and Administrative Sergeant at Newport Harbor. In addition, there are two administrative deputies at Newport Harbor who can also serve as back-up staff for patrol duties.

Finding 5: Facility Commanders/Station Sergeants in the outer harbors are not scheduled to work on the busiest days of the week.

One scheduling change that should be implemented to augment the back-up available on the weekends is to shift the schedule of the Facility Commanders/Station Sergeants in the outer harbors (Sunset Harbor and Dana Point Harbor) to cover the weekends. Currently, these sergeants work four 10-hour days per week, either Monday through Thursday or Tuesday through Friday. There is no compelling reason that these positions must be confined to weekday shifts, and although this change will not result in direct cost savings, it is a change that will enable Harbor Patrol to supplement its resources during the busiest days.

Recommendation 5: Schedule Facility Commanders/Station Sergeants in Sunset/Huntington Harbor and Dana Point Harbor to cover weekends and holidays.

Policies and Procedures

To further examine the duties of Harbor Patrol deputies, the review team assessed the Harbor Patrol's operational and administrative policies and procedures. These policies and procedures are maintained in an Operations and Procedures Manual (OPM), which was last revised by Harbor Patrol management in March 2007²⁰. The OPM includes both routine (e.g., daily shift responsibilities, scheduling, maintenance and services requests, and daily activity reports) and non-routine (e.g., mass rescues, earthquakes, tsunami alerts, downed aircraft, oil boom deployment) policies and procedures.

Finding 6a: The Harbor Patrol Operations and Procedures Manual (OPM) is fairly robust; however, it does not include some important areas, such as Homeland Security in the harbors and surrounding waters; Criminal

²⁰ The Harbor Patrol also maintains a Front Office Procedures Manual that covers clerical duties of the office staff (e.g., slip rentals, mail, conference room scheduling, filing of activity logs).

Activity and Arrests in the harbors; Non-Emergency Pump-Outs/De-Watering, Jump Starts, and Salvage; and Mooring Checks and Administration.

For the most part, the OPM is comprehensive and detailed (e.g., includes such operational areas as marine fire fighting, oil boom deployment, dock watch crime prevention). However, the following important areas are not covered in the OPM:

- *Homeland Security in the Harbors and Surrounding Waters*

The Harbor Patrol is part of the OCSD's Homeland Security division. One of Harbor Patrol's functions is to act as a "first responder" for water-side security threats. These threats include potential acts of terrorism, human smuggling/trafficking, and narcotics smuggling. Harbor Patrol does not currently have a documented policy related to homeland security, although several incidences of illegal immigrant and drug smuggling have occurred over the past few years.

- *Criminal Activity and Arrests in the Harbors*

Although crimes are infrequent in the harbors, the lack of documented policies and procedures related to criminal activity and arrests may lead to confusion, especially as it relates to Harbor Patrol interaction with harbor city police departments. Based on interviews with Harbor Patrol and city police departments, there appears to be two different understandings as to the proper response for post-arrest activities. One response is that the agency that makes the arrest will follow through on jail transfer and booking responsibilities. A second response is that if an individual is arrested for a criminal violation within city boundaries, Harbor Patrol deputies will turn that individual over to city police for jail transfer and booking. These procedural details are outlined in the decades old agreements with harbor cities and in a memo from the previous harbor master. However, given the differing views cited above, OCSD should 1) formally adopt a policy and procedure specifically addressing this situation, and 2) update city agreements.

- *Non-Emergency Pump-Outs/De-Watering, Jump Starts, and Salvage*

Harbor Patrol does not have a policy/procedure that addresses non-emergency pump-outs/de-watering, jump starts, and salvage, which are services that can also be provided by the private sector (i.e., the commercial marine assistance and towing operators). Although Harbor Patrol has a policy/procedure that addresses non-emergency towing and the private sector's role in non-emergency towing services, there are no policies and procedures related to these other services that commercial

assistance companies can provide. This has contributed to disagreement between commercial marine assistance operators and Harbor Patrol staff, particularly over what constitutes an emergency vs. a non-emergency situation. Harbor Patrol should develop additional policies and procedures that address these services, including a clarification of what Harbor Patrol considers an emergency vs. non-emergency situation, and a requirement to more fully document responses to all non-emergency requests. Implementing these changes should help alleviate some of this conflict.

- *Mooring Checks and Administration*

The OPM currently has a “Guest Slips and Mooring Rentals” section, which covers the rental of moorings; however, the OPM does not have policies and procedures that cover the mooring check duties of patrol deputies and the Mooring Deputy. Based on interviews, there is a widely understood process which involves deputies submitting a report to the Mooring Deputy when they observe something related to moorings. However, this report and the Mooring Deputy’s procedures are not contained in the OPM. While mooring checks and administrative duties are not currently an issue, documenting policies and procedures are important for knowledge transfer.

Finding 6b: The current procedure for completing Daily Activity Reports is cumbersome and inefficient.

According to the OPM, the Daily Activity Report is the method used by Harbor Patrol deputies to document daily activities and observations. Reports are kept for at least two years and are subject to subpoena. As previously discussed in the Data Collection section of the report, deputies currently have the option to complete a handwritten report or use portable laptop computers to type information into an electronic template, which can be printed. As part of their duties, deputies also complete a Daily Statistical Report, which tallies the number of incidents by type each day. In the review team’s examination of these activity reports/logs, it appears that the vast majority of reports are handwritten, which makes it difficult for accumulation and analysis. For example, in 2008, when OCSD Harbor Patrol was asked by the Board of Supervisors to analyze its activities, it resulted in a several month long effort to manually accumulate the statistics and conduct the workload activity analysis using several extra help deputy personnel. Had the Daily Activity Reports been automated, this detailed data would have been readily available and the costs for collecting this information would have been minimal. Despite these concerns and the high value of this information, OCSD has not automated this process. Such a process would not require an expensive technology system, but rather, the development of a simple template and database. This recommendation echoes the suggested changes in the Data Collection section of this report.

Finding 6c: The Disabled Vessels/Vessels Towed policy/procedure for non-emergency towing is not consistently followed by deputies.

In addition to its emergency response duties, Harbor Patrol also assists the boating public with non-emergency assistance, namely towing services. In reviewing OCSD Harbor Patrol's policies and procedures regarding non-emergency Disabled Vessels / Vessel Tows, it is evident that the current policy (since 2007) is not widely or consistently practiced by Harbor Patrol personnel. The following is an excerpt from the current operational procedure for non-emergency tows:

1. *If a boater calls for assistance, ask if they are a member of a commercial assistance organization such as Vessel Assist, Sea Tow, or Boat U. S. If they are, refer them to that organization. The dispatcher may assist in facilitating contact between the boater and commercial assistance as needed.*
 - a. *If a commercial assistance organization cannot provide a timely service to one of their members and requests our assistance with the tow, we will offer assistance and contact the boater to advise them of our response.*
2. **If the boater is not a member of a commercial assistance organization, and no exigent circumstances exist, they should be referred to contact commercial assistance "non-preference" over VHF 16, or telephone numbers can be provided for local commercial assistance firms.**
3. *It is not the intent of the Sheriff's Department to recommend a commercial assistance organization for non-emergency calls.*
4. *Boaters not able to make arrangements with commercial assistance will be advised a Harbor Patrol boat will be dispatched and provide an ETA. The dispatcher will dispatch a patrol boat from the harbor closest to the disabled vessel.*
 - a. *The primary boat for non-emergency responses outside the harbor is a single man patrol boat. Due to vessel size and/or other factors, the Watch Commander may authorize a fire boat response.*
 - b. *The disabled vessel will be towed to the harbor where the patrol boat was assigned. Sunset deputies may hand off the tow to an outside agency such as Long Beach Lifeguards if the vessel is in their jurisdiction. It is the boat owner's responsibility to arrange for safe passage for the vessel if it belongs in another harbor.*
 - c. *If time allows, deputies will make every effort to tow disabled vessels to the boaters desired location within the harbor (launch ramp, fuel dock, shipyard, berth).*

5. *Disabled vessels within the harbor requesting assistance will be asked the same questions regarding commercial assistance. The patrol boat nearest the disabled vessel will be assigned the tow.*

Based on interviews with Harbor Patrol staff, rather than having boaters who are not members of a commercial assistance organization contact such an organization over VHF 16, the more common current practice is to ask these boaters if they are willing to accept commercial assistance, and if they are not, a Harbor Patrol boat is dispatched²¹. Over time, boaters have increasingly become aware that if they do not accept commercial assistance, the Harbor Patrol will provide the service for no charge. If the current policy is more consistently followed and boaters are directed to call for non-emergency commercial assistance via VHF 16, commercial assistance companies will have increased opportunities to respond and Harbor Patrol will remain more available for emergency situations. Furthermore, to ensure that the policy is being followed, deputies should be required to document in detail the circumstances that prompted them to respond in a non-emergency situation.

It is also important to consider potential public safety issues for the County in performing these non-emergency services. For example, if Harbor Patrol responds to a boater's call for assistance in a non-emergency situation at one end of the harbor and an emergency situation arises at the other end of the harbor, Harbor Patrol may not be able to respond to the emergency as quickly. Although, historically, such a situation has not occurred, Harbor Patrol management should make sure that the policy for responding to non-emergency calls is not simply "on a low priority basis," as stated in the current policy, but rather includes more detailed instructions on triaging and responding to these calls, thereby mitigating the public safety risk. Potential details to include in the policy include:

- Only dispatching patrol boats rather than fire boats to non-emergency situations (to ensure that a fire boat is available in fire situations); if the vessel that needs to be towed requires a larger Harbor Patrol boat (a fire boat), the boater must call commercial assistance
- Only towing disabled vessels to the nearest safe dock, rather than to the boater's desired location. This frees up the patrol or fire boat from towing disabled vessels across the harbor, which, in the larger harbors, could tie up a Harbor Patrol boat for upwards of 30 minutes

²¹ The current practice, which does not follow currently documented policies and procedures, was the documented policy/procedure prior to 2007.

- Only responding to non-emergency calls for service if both the fireboat and the patrol boat are currently in the harbor. If one of the Harbor Patrol boats is outside the harbor doing a run of the coast, the boater must call commercial assistance

Including such specifics in the policy and ensuring that the policy is followed will help avoid any negative impacts to public safety.

Recommendations 6a, 6b, and 6c:

- Develop policies and procedures related to Homeland Security in the harbors and surrounding waters, Criminal Activity in the harbors, Non-Emergency Pump-Outs/Jump Starts/Salvage, and Mooring Checks. Require that non-emergency Pump-Outs/Jump Starts/Salvage are documented in detail to explain the circumstances that required Harbor Patrol involvement.**
- Develop an electronic Daily Activity Report whereby reporting and analysis can be automated (*this is also a recommendation in the Data Collection section of the report*).**
- Create a more detailed non-emergency Disabled Vessel/Vessels Towed policy/procedure and communicate policy/procedure to staff. Require that non-emergency tows are documented in detail to explain the circumstances that required Harbor Patrol involvement. Harbor Patrol management should review all documentation to ensure that policy is being followed.**

Position Classification and Compensation

One of the key issues driving the continuing debate about Harbor Patrol finances/efficiencies is the use of Deputy Sheriff positions to perform non-general law enforcement harbor duties and the escalating salary and employee benefits (S&EB) costs of doing so. Given that, on average over the past ten years, 90+% of the direct costs for the Harbor Patrol function are salary and employee benefits expenses, an examination of this issue is essential.

Background Information

As previously discussed, up until 1975, the Harbor Patrol function and its staff were organizationally located in the HBP District and its Harbor Patrol Officers had limited peace officer authority (former Penal Code 830.4, current Penal Code 830.33(b)). In 1975, the Board of Supervisors transferred the Harbor Patrol function to OCSD and

Harbor Patrol positions/personnel became Deputy Sheriffs with full Penal Code 830.1 peace officer authority.

It is important to note that Harbor Patrol position descriptions, with few exceptions (e.g., Homeland Security), have not changed over the past 46 years. Indeed, the formal class specifications established in 1964 for HBP District limited peace officer employees performing Harbor Patrol duties included the following summary level duties, most of which remain today:

- Harbor Patrol Officer – to act as a harbor police officer in the enforcement of security, traffic and safety rules and regulations and related harbor and boating laws and ordinances, including the warning, issuing of citations and arrest of violators; to perform marine fire-fighting and rescue operations in cooperation with police, fire and lifeguard units; to operate and maintain marine equipment and boats.
- Senior Harbor Patrol Officer – to supervise and assign the work of a group of Harbor Patrol Officers.
- Assistant Harbor Master – to assist in the administration of the Harbor Patrol Division; to direct and coordinate the training of all regular and reserve personnel; to make monthly assignments of personnel.
- Harbor Master – to be in charge of the Harbor Patrol Division of the Orange County Harbor District and direct its operational and financial activities.

Another important historical note is that in 1986 an unsuccessful effort was made to change the position classification of personnel performing Harbor Patrol duties. At the time, in an effort to address the increasing S&EB costs of Harbor Patrol operations, the Board of Supervisors directed that the County Administrative Office (CAO), OCSD, and HBP evaluate the feasibility of reducing Harbor Patrol service levels to reduce costs. At the conclusion of the review, one of the cost saving measures recommended and approved by the Board in August 1986 was the replacement of Harbor Patrol Deputy Sheriff positions with lower paid Sheriff Special Officer positions, which was estimated to save approximately \$678K annually. However, due to a variety of implementation challenges, which included objections by OCSD, employee union protests, and the Board's receipt of public letters of dissent from harbor constituencies, the Board, in November 1986, rescinded its decision.

Compensation Issues

S&EB expenditures have increased notably over the past ten years as shown in the chart below:

Actual Salary & Employee Benefit Expenses for Harbor Patrol

	FY 00/01	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11*
Total Salaries and Benefits (\$M)	\$6.46	\$6.23	\$7.38	\$8.10	\$8.24	\$8.96	\$9.18	\$10.47	\$10.19	\$10.52	\$10.93
Year over Year % Change		-3.6%	18.5%	9.6%	1.8%	8.7%	2.5%	14.1%	-2.7%	3.3%	3.9%

*FY 10/11 is a budgeted amount

Despite no increases in the number of staff, S&EB expenses increased \$4.1M, or 63%, from FY 00/01 to FY 09/10 (which is an average annual increase of 7.0%). S&EB expense increases were most substantial between FY 01/02 and 02/03 (18.5%), between FY 02/03 and 03/04 (9.6%), and between FY 06/07 and 07/08 (14.1%). In the first two instances, the large increases were due primarily to the implementation of the 3% @ 50 retirement package for safety personnel in June 2002, a general salary increase of 4% in 2001, as well as other factors.²² The 14.1% increase from FY 06/07 and 07/08 was due primarily to negotiated increases in Peace Officer Standards and Training (P.O.S.T.) Pay, and a series of three general salary increases in the Peace Officer Memorandum of Understanding (MOU): 4.75% in October 2006, 4.6% in October 2007, and 3.0% in October 2008.²³

In addition, over this same time period, the County instituted a premium pay for being a part of the Harbor Patrol, which increased the “Other Pay” of all harbor patrol sworn staff. To illustrate the impact of this negotiated pay enhancement, it is important to note that in FY 00/01, there was no such premium pay provided to Harbor Patrol staff. Then in the MOU covering 2003 and 2004, the County agreed to pay Harbor Patrol staff a stipend of \$175 per month. Because this stipend applies to deputies and sergeants (a total of 47 positions) the change added almost \$100K of ongoing, annual cost. This stipend provision was increased in the MOU covering 2004 through 2006, and deputies were granted \$230 per month for being on the Harbor Patrol. This change added an additional \$31K. Thus, the implementation of a Harbor Patrol premium pay has added over \$130K of annual salary and wage cost to this operation.

²² Investment losses to the Orange County Employees Retirement System’s (OCERS) portfolio from 2001 through 2003 resulted in an increase to the County’s Unfunded Actuarial Accrued Liability (UAAL). Also, in 2002, the OCERS Board changed its actuarial assumptions for calculating the UAAL, which also increased retirement related costs for the County as a whole.

²³ The 2006 general salary increase was retroactively implemented and not actually paid until FY 07/08, which added to the year-over-year percentage change between FY 06/07 and FY 07/08.

The aforementioned increases in S&EB were negotiated with little or no input from OC Parks/DPH, and yet the financial impacts have been borne exclusively by these agencies. The cumulative impact of these individual negotiated increases is a frustration for OC Parks/DPH and, consequently, OC Parks/DPH and other stakeholders have frequently asked whether or not Harbor Patrol services can be provided by a less expensive classification of employee.

Classification Alternatives

The County is not required to use fully sworn Deputy Sheriff personnel for the provision of most Harbor Patrol law enforcement activities (e.g., general law enforcement and boating law enforcement in the harbors). These duties could be performed in the harbors by peace officers with more limited authority.

Further, the County is not required to use a peace officer (of any level) for Harbor Patrol's non-law enforcement activities (e.g., boater assistance, firefighting, marine rescue inside the harbor, medical aid), which comprise the overwhelming majority of the Harbor Patrol workload. As noted in the Legal section of this report, the County, not the Sheriff, is required by LAFCO's conditions to provide for these non law enforcement services. Thus, the Board of Supervisors could assign to OC Parks/DPH (or any other County agency/department) the responsibility for those services currently performed by the Harbor Patrol that are not statutory duties of the Sheriff.

It is important to note that the changes described in the preceding two paragraphs could be made only after fulfilling labor law obligations, including meeting and conferring with affected unions. In addition, to the extent the personnel remained under the authority of the Sheriff, the Sheriff's consent would have to be obtained. Finally, the County would also have to obtain LAFCO concurrence if the change would result in a material reduction in the level of services provided.

In order to understand the fiscal impacts of such a change, the review team researched and estimated the potential cost differential of utilizing peace officers with limited authority instead of fully sworn Deputy Sheriffs to perform Harbor Patrol services. If the County were to use limited authority peace officers, it would likely have to establish a new classification to perform those duties (hereafter referred to as "OC Parks Harbor Patrol Officer").

Prior to the 1975 transfer to OCSD, all Harbor Patrol staff were known as HBP Harbor Patrol Officers, and they were limited authority peace officers. The compensation of comparative classifications at that time is detailed on the following page:

Classification	1975 Annual Salary (Top Step)
HBP Park Ranger	\$11,107
HBP Sr. Park Ranger	\$12,334
HBP Harbor Patrol Officer	\$14,414
OCSD Sheriff Deputy	\$17,534

Source: Human Resources Department

If in-harbor law enforcement duties and non-general law enforcement duties were transferred back to OC Parks/DPH (or were left with the Sheriff) and a new "OC Parks Harbor Patrol Officer" were created, it is reasonable to expect that this new position would be benchmarked against the Sr. Park Ranger classification. For illustration purposes, the review team maintained the same relative salary relationship between Sr. Park Ranger and "OC Parks Harbor Patrol Officer" as existed in 1975, and calculated an estimated annual salary in 2010 of \$78,270 (as displayed in the chart below). It is interesting to note that the review team's estimated salary for an "OC Parks Harbor Patrol Officer" is notably higher than a current OCSD Sheriff's Special Officer II and only \$9,422 less than an OCSD Deputy Sheriff II.

Classification	Current Annual Salary (Top Step)
OC Parks Park Ranger II	\$59,924
OCSD Special Officer II	\$63,500*
OC Parks Sr. Park Ranger	\$66,976
"OC Parks Harbor Patrol Officer"	\$78,270
OCSD Deputy Sheriff II	\$87,692

*Note: Sheriff Special Officer II added for comparison purposes

To demonstrate the potential estimated annual Total S&EB savings from changing from the Deputy Sheriff classification to OC Parks Harbor Patrol Officer the review team also calculated the employee benefits differential between a limited authority "OC Parks Harbor Patrol Officer" and a fully sworn Deputy Sheriff II. As shown in the chart below, these differences are much starker, and are driven largely by the differing retirement benefits and the Other Pay of Deputy Sheriffs (e.g., P.O.S.T pay).

Classification	Base Salary	Other Pay and Benefits*	Total S&EB
Deputy Sheriff II	\$87,692	\$70,154	\$157,846
"OC Parks Harbor Patrol Officer"	\$78,270	\$31,308	\$109,578
Difference	\$ 9,422	\$38,846	\$ 48,268

*Note: Benefits for Deputy Sheriff were estimated at 80% of salary; 40% for "OC Parks Harbor Patrol Officer." Other Pay includes P.O.S.T pay.

There are currently 48 sworn OCSD Harbor Patrol personnel. Multiplying 48 positions²⁴ by \$48,268 in annual savings equals a total estimated annual savings of \$2.3M to OC Parks/DPH. Additional savings in “Extra Help” and “Overtime” would increase the total savings in the current year to \$2.5M.

Cooperative Agreements and Contracts

As discussed in the Legal section of this report, OCSD has a number of existing contracts and cooperative agreements (Memoranda of Agreements, or MOAs) with harbor cities and federal agencies related to Harbor Patrol activities and services:

- City of Newport Beach Agreement
- City of Seal Beach Agreement
- City of Huntington Beach Agreement
- Seal Beach Naval Weapons Station Agreement
- United States Coast Guard Agreement
- City of Newport Beach Mooring Management Contract
- Dana Point and San Clemente Agreements for Law Enforcement Services

The agreements with the cities of Newport Beach, Seal Beach, and Huntington Beach generally delineate harbor responsibilities between the County and cities for services that include boating law enforcement, general law enforcement, investigations, marine firefighting, marine safety, maintenance of navigational aids, lifeguard services, maintenance of anchorages/moorings/piers/docks, water quality, debris removal, dredging, and vessel impounds within the harbors.

Finding 7: Several agreements between the County and cities are outdated (over 20 years old).

With the exception of the US Coast Guard agreement,²⁵ the mooring management contract with the City of Newport Beach,²⁶ and the Dana Point and San Clemente Agreements for Law Enforcement Services,²⁷ the existing agreements are over 20 years old (agreements with the City of Newport Beach, Seal Beach, and Huntington Beach were executed in 1973, 1978, and 1985, respectively). Although the services outlined in

²⁴ Applying the calculated cost differential for Deputy Sheriffs to all 48 Harbor Patrol sworn personnel is a conservative estimate, as 8 of these positions are either Sergeant or Lieutenant.

²⁵ Executed in May 2008

²⁶ Approved by the Board of Supervisors in June 2010

²⁷ Approved by the Board of Supervisors on June 29, 2010

the agreements with the cities of Newport Beach, Seal Beach, and Huntington Beach are, in large part, followed in practice, there are elements of the agreements that are outdated and do not reflect current processes and procedures. The following are specific examples of agreement language that should be updated:

- The agreements for the cities of Newport Beach, Seal Beach, and Huntington Beach state in their appendices that the County “will hold all found and unclaimed items encountered within [the] City’s incorporated limits for twenty (20) calendar days. At the end of this period, City Police Department will remove such property to City facilities, where it will be held for identification or auction...Upon disposal of unclaimed vessels, City will pay [County] the rate established by the County Auditor-Controller for vessel storage when [County] stores such vessels after notifying City of availability of vessel for pick up by City.” Currently, in the City of Huntington Beach and the City of Seal Beach, however, if Harbor Patrol comes across an abandoned/found vessel in City limits, it will call the City rather than towing and storing the vessel. For the City of Newport Beach, this has been supplanted by Mooring Management contracts with the City of Newport Beach, with the most recent contract approved in June 2010.²⁸
- The appendices to the Seal Beach and Huntington Beach agreements state that Harbor Patrol is responsible for providing “fully sworn and trained Harbor Patrol Deputies by boat to arrive at all water-originated (boat or land) law enforcement incidences in Huntington Harbor within five (5) minutes of notification in 80% of all cases and within ten (10) minutes of all others.” However, in practice, while the Harbor Patrol makes every effort to arrive as quickly as possible, the service levels in the existing agreements may not be realistic, nor are they tracked or reported.
- The 1985 Huntington Beach agreement states in its appendix that the “City shall provide firefighting training for all assigned fire boat personnel.” Currently, however, the city does not provide this training. Instead, the County provides this training, and there is no compensation from the City for the County taking on this responsibility.
- Related to felony criminal activity within the harbors, the appendix to the Seal Beach agreement states that the City is “to take all crime reports for felony

²⁸ The Cooperative Agreement between the County and City of Newport Beach for Mooring Management Services covers impounded or found vessels for the City of Newport Beach (all found vessels, not just vessels found on moorings).

incidents which occur within City's limit within Harbor." Similarly, the Huntington Beach agreement states that "where criminal activity is suspected to have occurred within City boundaries, the primary responsibility for investigative efforts shall be by the Police Department of City" and that the City is to "respond by land vehicle, one and preferably two, sworn police officers and arrive at the closest land boarding point to all water-oriented (boat and land) law enforcement incidents within five (5) minutes of 80% of all cases and ten (10) minutes of all others." This is contrary to what is referred to as "you catch it, you clean it" regardless of jurisdiction (County vs. City limits), whereby the County transports and processes the arrestee rather than handing him/her off to city police.

The cooperative agreements with the cities of Seal Beach, Huntington Beach and Newport Beach, which can be terminated by either the city or the County with 90 days written notice, should be updated to reflect current/proposed practices and to include additional aspects of Harbor Patrol operations and mutual aid. Besides revising the cooperative agreements to address the points above, additional potential revisions to cooperative agreements with cities include:

- **The addition of mutual aid procedures between the OCSD Harbor Patrol and the City of Newport Beach's Lifeguard services.** Currently, communication procedures between the Harbor Patrol (primarily via Harbor Patrol Dispatch) and City Lifeguards are not formalized and, as a result, are not consistent. Specifically, during the season when Newport Beach City Lifeguards are on duty, they are not always notified of incidents that occur near the city's beaches.
- **The addition of homeland security protocol in the harbors and surrounding waters.** Over the past 20 years, the conditions and environment of the harbors have changed. Notably, there is now an increased focus on homeland security, which includes illegal immigrant smuggling, narcotics smuggling, and terrorism. Missing from the existing agreements with the cities is City vs. County responsibility and protocol for homeland security (e.g., protocol related to Harbor Patrol's checks of the three oil derricks within the City of Huntington Beach's waters).

Finally, although it is widely recognized that there is an existing agreement of some kind with the Seal Beach Naval Weapons Station, neither the County nor the Naval Weapons Station has been able to locate this document. A new agreement should be drafted to enable the Harbor Patrol to point to its responsibilities and potentially seek reimbursement for services rendered in securing the waters around the Seal Beach Naval Weapons Station.

Recommendation 7: The County and Sheriff should revise the outdated agreements with the cities of Newport Beach, Seal Beach, and Huntington Beach and draft a new agreement with the Seal Beach Naval Weapons Station.

Interactions with the Private Sector

The commercial marine assistance and towing industry has a presence (to varying degrees) along the Orange County coast and in Orange County harbors. These private sector companies offer services such as non-emergency assistance towing, salvage and wreck removal, jump starts, pump-outs, and fuel/parts delivery to both members and non-members. The two primary marine assistance companies in Orange County are Vessel Assist and Sea Tow, with Vessel Assist operating in all three harbors and Sea Tow operating in Newport Harbor and Huntington Harbor. Vessel Assist was the first company to operate in Orange County, starting in the 1980s. These commercial operators are represented by C-PORT (Conference of Professional Operators for Response Towing), which establishes standards for professionalism and good business practices for the industry nationwide.

The services provided by these private sector companies are services that the OCSD Harbor Patrol also provides as necessary. At various points in OCSD Harbor Patrol's history, the topic of outsourcing these services to the private sector has arisen. The review team, however, does not consider outsourcing these services as a viable alternative at this time because California Government Code 31000²⁹ currently restricts the County from contracting with private parties to perform services that are not listed in that code section and that are currently being performed by County staff. Government Code section 31000, however, does not prevent the County from referring boaters to private services on an as needed basis.

In addition, over the years, there has been a degradation of the relationship between OCSD Harbor Patrol and the marine assistance/towing companies in Orange County harbors; this situation has recently worsened due to current economic conditions. The downturn in the economy, coupled with the increase in fuel prices, has resulted in fewer boats in the water, and, consequently, fewer calls for service. Also, the proliferation of cellular phones over the past decade has resulted in fewer calls for assistance broadcast over marine VHF radio. This means that boaters who are not members of a commercial assistance company will use their cellular phones to call

²⁹ California Government Code 31000 outlines what services can be contracted and it does not include these Harbor Patrol services.

Harbor Patrol or the Coast Guard directly (via 911). A consequence of this shift is that marine assistance companies may be more dependent on referrals from Harbor Patrol. Prior to this change, marine assistance operators would monitor calls for service on the VHF, which was the primary form of communication.

At the core of the conflict between Harbor Patrol and the commercial marine assistance companies is Harbor Patrol's mission to provide public safety and service vs. government competition with private enterprise—a long-standing issue, at all levels of government. Both the commercial operators and Harbor Patrol have legitimate arguments. In Orange County, the commercial operators assert that Harbor Patrol's role in certain activities (towing, salvage, jump starts) should be focused on emergency situations only. From their viewpoint, when Harbor Patrol undertakes a tow in a non-emergency situation, for example, it is entering the marine assistance and towing market and competing directly with private enterprise. Harbor Patrol, however, has public safety concerns and a public service orientation, and thus is reticent to turn away citizens seeking assistance, especially in non-emergency situations that have the potential to quickly become emergencies.

According to C-PORT, the marine assistance companies in Orange County are struggling to survive, while companies in other areas nationwide are not. Additionally, in the review team's discussion with the harbor masters and harbor patrols of other California municipalities³⁰, among the eight municipalities interviewed, it appears that the relationship between Harbor Patrol and the marine assistance companies is unique to Orange County. The harbor masters/harbor patrols of other municipalities indicated generally positive relationships with the commercial providers in their areas, with different harbors employing different strategies to mitigate competition with commercial assistance providers. The following are examples of other municipalities' approaches to non-emergency services:

- San Diego/Mission Bay conveys that it has had an amicable relationship with its local commercial providers for more than a decade. This is a result of an internal boat towing policy that limits its activity to towing vessels out of danger (e.g., to the nearest dock) within Mission Bay, then helping boaters contact commercial providers (via VHF radio if the boater is not a member of a particular company). To further enforce the policy, patrol personnel are also required to document reasons for towing non-emergencies outside the harbor/bay.

³⁰ Eight municipalities were interviewed: Santa Barbara, Oceanside, Channel Islands/Ventura, San Diego/Mission Bay, Santa Cruz, Long Beach, Monterey, and Los Angeles/Marina del Rey

- Channel Islands/Ventura harbor patrol's approach is to help mariners make contact, whether or not they are members of a commercial assistance company. If the mariner is not a member, the harbor patrol will tow the vessel to the nearest safe dock if the mariner does not accept commercial assistance. Channel Islands/Ventura's harbor patrol also charges \$125/hour for non-emergency tows, a policy that has been in place for at least 10 years. These policies prevent the harbor patrol from competing with commercial marine assistance companies.
- The City of Long Beach's harbor patrol charges for non-emergency tows (\$146/hr, which generates about \$20K in revenue per year), as well as pump-outs/de-watering in non-emergency, recurring incidents.
- The Sheriff's harbor patrol in Los Angeles County has a good relationship with its local marine assistance companies, limiting its involvement to only emergency situations outside the harbor and to stranded vessels inside the harbor, which can be hazards to navigation. For non-emergency tows, its policy is to refer mariners to commercial assistance.

There are several existing deficiencies/obstacles that inhibit OCSD Harbor Patrol's ability to attain a similarly positive relationship with commercial marine assistance and towing operators. These include:

- **The lack of agreement between Harbor Patrol and marine assistance companies as to what constitutes an emergency vs. non-emergency towing situation.** The first challenge is that the line between an "emergency" (or exigent circumstance) and "non-emergency" is not clear. Harbor Patrol, as public service providers, errs on the side of safety. For example, if a docked vessel with no boaters on board is taking on water or sinking, Harbor Patrol will spend 10 minutes pumping out that boat, as long as there are no other higher priority calls for service. Commercial assistance companies view this as a non-emergency, given that no lives are in imminent danger. However, Harbor Patrol views any sinking vessel to be a potential hazmat event since oil may leak into the water, even if there is no evidence of a leak. Also, Harbor Patrol views any stranded vessel within the harbor or at the harbor entrance to be a hazard to navigation, and, accordingly, an exigent circumstance. Interviews of other municipalities indicate that this is not a major problem in their harbors/marinas, since harbor patrols and the commercial assistance companies in their areas have a mutual understanding of the type of situations that are emergencies vs. non-emergencies. Municipalities such as San Diego and Santa Cruz (although commercial assistance companies have since exited the market in Santa Cruz) have developed policies with companies such as Vessel Assist to clarify some of these issues.

- **Harbor Patrol policies and procedures are not consistently followed.** As discussed in the Policies and Procedures section of this report, Harbor Patrol's policies and procedures regarding non-emergency Disabled Vessels/Vessel Tows is not widely or consistently practiced by Harbor Patrol personnel. Harbor Patrol leadership should emphasize the current policy regarding non-emergency towing with staff and take steps to ensure that the policy is being followed.
- **A lack of policies and procedures related to non-emergency pump-outs/de-watering, jump starts, and salvage.** As discussed in the Policies and Procedures section of this report, there are no policies and procedures related to other services that commercial assistance companies can provide, such as non-emergency pump-out/de-watering, jump starts, and salvage. Harbor Patrol should develop additional policies and procedures to address these services.
- **Perceived commercial assistance response time and rate standards that are not acceptable to Harbor Patrol.** OCSD Harbor Patrol staff cites two other issues regarding marine assistance/towing operators, when explaining the historical animosity: the perceived inability to consistently respond in a timely manner and the perceived unreasonableness of rates charged to boaters. The current industry response time standard for these companies is one hour. Although commercial assistance companies try to follow this standard, if Harbor Patrol judges that a vessel waiting one hour exposes the boats/passengers to risk, it is Harbor Patrol's prerogative to decide, based on safety reasons, to undertake a tow or other service. With regard to rates charged by commercial assistance providers, Harbor Patrol cites examples of what they perceive to be exorbitant charges (one example cited is of a boater being charged \$3,000-\$4,000 for a salvage job).³¹

Though there have been previous attempts to have cooperative discussions between Harbor Patrol leadership and commercial assistance companies (and C-PORT), these discussions did not result in positive change. Although the greatest challenge will be for leadership on both sides to agree that improving the relationship is mutually beneficial, there are opportunities for OCSD to alleviate some of these long-standing issues.

Recommendations (all of which are also recommendations in the Policies and Procedures section of the report):

- a) **Develop a more specific internal non-emergency services policy (one that includes specific examples of emergency vs. non-emergency situations) and**

³¹ The review team did confirm with one of the commercial assistance providers that they have a minimum \$2,500 charge for any salvage job.

- ensure that all deputies follow the policy consistently (especially with regard to directing non-member boaters to call for commercial assistance via VHF 16).
- b) Develop policies and procedures around non-emergency pump-outs/de-watering jump starts and salvage. Ensure that all deputies follow the policy.
 - c) Develop a process that requires deputies to thoroughly document incidents that may be considered a non-emergency situation (i.e., a situation that is not clearly an emergency but the deputy and/or supervisor made a judgment call to assist the vessel). This documentation will provide Harbor Patrol leadership with more assurance that deputies are following the policy.

Benchmarking of Other Municipalities' Harbor Patrol Operations

The review team interviewed harbor masters and directors from eight other recreational harbors/marinas in California to understand the operations and funding for their respective harbor patrols and to benchmark those operations against the OCSD Harbor Patrol model. The following harbor patrol operations were benchmarked (a comparative matrix is included in Appendix C of this report):

-
- | | |
|---------------------------|---------------|
| • Channel Islands/Ventura | • Santa Cruz |
| • Santa Barbara | • Long Beach |
| • Oceanside | • Monterey |
| • San Diego/Mission Bay | • Los Angeles |
-

From this benchmarking research, it appears that while there is commonality in some specific operational aspects of different harbor patrols, there is no particular model that is upheld as “best practice.” The key reason is that harbors/marinas themselves differ in their characteristics, needs, and resources. For example, crime is a greater concern in some harbors than in others. Harbors also vary in size (which can be defined by the number of vessels registered, miles of coastline, and/or total area), have different budgetary constraints, and have different levels of support from other agencies on the water (e.g., level of Coast Guard activity/presence).

Understanding the operational aspects of other harbor patrols provides OCSD with a point of comparison and potential ideas for improvement. The following are key findings from the benchmarking interviews and research:

- **Orange County’s funding of Harbor Patrol operations is unique.** There is no other instance of a harbor patrol that is operated by one department but funded

entirely by another department. The harbor patrols interviewed are funded either completely through an enterprise fund or general fund, or a combination of general, tidelands, and enterprise funds.

- **The role of the Sheriff varies greatly from harbor to harbor.** With the exception of Los Angeles, a Sheriff presence in recreational harbors is very limited. For example, in Channel Islands/Ventura and Santa Barbara harbors, County Sheriffs have a small number of boats, and they are not actively or routinely patrolling the harbors. Furthermore, most of the other harbor patrols are operated by a city, a County department other than the Sheriff, or by an independent special district (e.g., Santa Cruz).
- **General law enforcement is not a major activity for the majority of harbor patrols.** Of the eight harbor patrols interviewed, five do not have general law enforcement duties. These five jurisdictions use limited peace officers to perform non-general law enforcement, water rescues, and marine firefighting. One of the municipalities (City of Monterey) uses civilian boat operators only to observe and report any incidents requiring water rescue, fires, or law enforcement. Three harbor patrols (Oceanside, Santa Cruz, and Los Angeles) use fully sworn officers.
- **In the five harbors that do not have fully sworn peace officers, there is very limited or no other law enforcement presence in the harbor.** These harbor patrols do not see a need to use fully sworn peace officers because incidents of crime are rare and the harbor patrols are supported by land-side police, as necessary. In San Diego/Mission Bay, the city's police boating unit was recently eliminated due to budget constraints. In Ventura County, the County Sheriff has boats but does not patrol the harbor. Similarly, in Santa Barbara, the County Sheriff has one boat but does not have a consistent presence on the water.
- **The majority of harbor patrols are staffed with Emergency Medical Technician (EMT)-trained personnel.** Currently, the OCSD Harbor Patrol deputies are not EMT-trained. Of the eight harbor patrols benchmarked in this review, six are fully staffed with EMT-trained personnel and one (Santa Cruz) has a portion of staff that are EMT-trained. Other than Orange County, only the City of Monterey does not have EMT-trained personnel (the primary function of the harbor patrol in Monterey is to observe and report rather than conduct rescues).
- **OCSD Harbor Patrol has the strongest in-house maintenance crew.** OCSD Harbor Patrol has eight maintenance personnel. Most of the other harbors have smaller in-house maintenance crews and/or outsource a significant amount of maintenance work, as needed. Some, such as Channel Islands/Ventura and Santa

Cruz, have large maintenance crews (as large as 12), but these crews are also responsible for the entire harbor (i.e., maintenance of wharves, piers, docks and other infrastructure) versus just harbor patrol vessels, equipment, and navigational aids.

Though the review team's research indicates that there is no "best practice" harbor patrol model, certain elements of OCSD Harbor Patrol's operation are considered by some harbor masters/directors to be the ideal option if funding were readily available. For example, other harbor masters/directors point to Orange County's substantial in-house maintenance crew and the economies of scale achieved by one agency (OCSD) providing nearly all public safety services in the harbors and along the coast (law enforcement, water rescue, marine fire fighting) as highlights of OCSD Harbor Patrol. Though desirable, these other harbors confirm that they simply do not have the funding available to stand up a similar operation.

III. Harbor Patrol Financial Issues

Following extensive research, the review team confirmed that the most critical element in the discussion of OCSD Harbor Patrol is its funding, including the inbound sources of revenue that fund Harbor Patrol and the expenditures of those increasingly scarce resources. Much of the frustration surrounding Harbor Patrol centers around the standing 1975 Board policy that one department makes all operational decisions (OCSD), while two other departments pay the bill (OC Parks and OC Dana Point Harbor). Many previous studies of Harbor Patrol have focused on other aspects of this issue (e.g., legal, operations) and included only summary-level financial information. Consequently, the Harbor Patrol debate has not been resolved, as policymakers have not been provided with a complete and thorough set of financial facts that is pivotal to developing a sustainable solution.

Recognizing this situation, the Board of Supervisors included a number of specific funding-related questions in the scope of work for this review. This section of the report delves into those financial realities, with specific attention given to Harbor Patrol revenues and expenditures. The culmination of this fiscal analysis is in Section IV (Policy Discussion and Decisions), where specific funding model options, as well as a specific recommendation, are discussed. Much of this information has never before been assembled and analyzed.

As a backdrop, the total cost of Harbor Patrol in FY 09/10 was approximately \$12 million. This is less than 3% of the Total Expenditures for OCSD in FY 09/10, and

approximately 14% of the combined Total Expenditures of the three non-OCSD funds that pay for Harbor Patrol.³²

Revenues

The three Funds that pay for OCSD Harbor Patrol are: (1) OC Parks CSA 26 Fund 405, (2) Newport Tidelands Fund 106, and (3) Dana Point Harbor Tidelands Fund 108. Aside from these revenue streams, OCSD receives some limited grant money from the State of California Department of Boating and Waterways and from U.S. Customs and Border Patrol³³, which comprises less than 1% of Harbor Patrol's total revenue budget. Additional grant opportunities, as well as other revenue opportunities, will be addressed later in this section.

OC Parks CSA 26 Fund 405

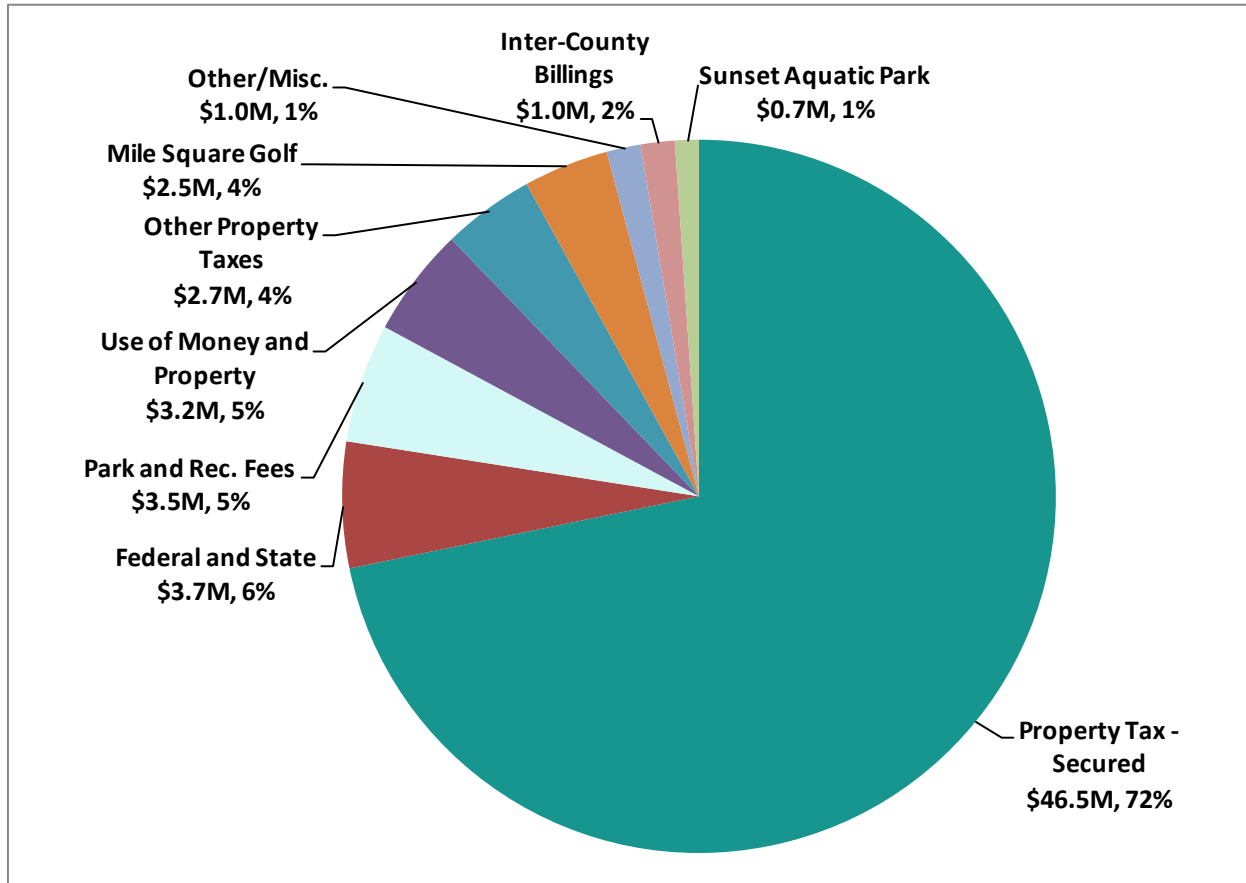
The largest source of revenue for Harbor Patrol is OC Parks CSA 26 Fund 405, the main operating fund for OC Parks. This Fund also pays for the activities of Orange County's beaches and inland parks. In FY 09/10, OCSD billed and received approximately \$6.6 million from OC Parks CSA 26 Fund 405, which represents 55% of the total cost of Harbor Patrol. As a contextual point, this \$6.6 million represented only approximately 10% of Fund 405's FY 09/10 \$65 million Operating Revenues (not including Fund Balance Available).

OC Parks CSA 26 Fund 405 revenues come from a variety of sources, the most significant of which are shown in the chart on the following page.

³² OCSD actual spending as of June 30, 2010 was \$455.7M, and the aggregate total expenditures for Funds 405, 106, and 108 was \$86.9M.

³³ Operation Stonegarden

**OC Parks CSA 26 Fund 405 Revenue Sources (\$65M)
(FY 09/10)**



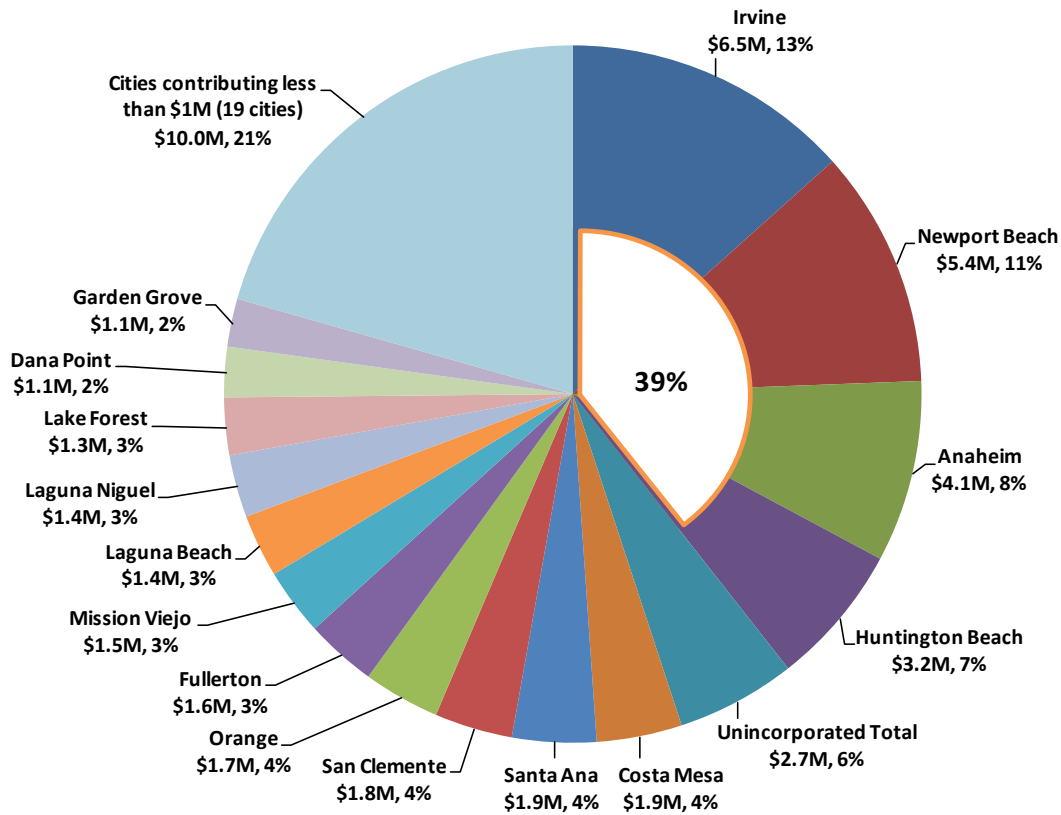
Source: OC Parks Financial

As highlighted in the chart above, the largest source of revenue to OC Parks CSA 26 Fund 405 is the secured property tax levied throughout the County, via CSA 26. CSA 26 is one of the taxing jurisdictions that receives a portion of the 1% base property tax; the portion differs slightly by tax-rate area (TRA), however, and Countywide the \$46.5M of secured property tax revenue going to CSA 26 represents approximately 1% of the “1% base levy” on secured property. Total property tax revenues (secured and unsecured) going to Fund 405 equals \$49.2M, or 75%, of all its revenues. Most of the other revenues that flow into Fund 405 come from either State/Federal sources to fund specific capital projects or facility specific charges (e.g., park and recreation fees, green fees from golf courses, or lease revenue at County owned property, such as at the Sunset Aquatic Park). Of these facility-specific charges, only the lease revenue from the County-owned land in Sunset/Huntington Harbor (i.e., Sunset Aquatic Park) is related to a harbor. As noted in the chart above, this lease generates approximately \$700K per year for OC Parks. It is important to emphasize that none of the revenue streams that

flow into Fund 405 are earmarked exclusively to fund Harbor Patrol costs, but rather are part of one big pool of fungible resources that is used to fund the various expenses of OC Parks. Therefore, for purposes of this discussion, roughly 10% of each of these revenues is allocated to pay for Harbor Patrol (i.e., \$4.6M of Secured Property Tax goes to pay for Harbor Patrol, \$70K of Sunset Aquatic Park revenues, etc.).

In light of the significance of Property Taxes in funding both OC Parks (\$49.2M of a \$65M budget) and, subsequently, Harbor Patrol (\$4.9M of a \$12M budget), and in response to considerable Board interest in this topic, the review team worked with Auditor-Controller staff to provide greater detail as to the geographical sources of Total Property Tax revenue that flows into Fund 405 via CSA 26. The chart on the next page illustrates the Total Property Tax dollars contributed by property owners and allocated to CSA 26 in several of the most populous cities in Orange County, as well as in the County unincorporated area. It should be noted that these percentages are driven entirely by the assessed value of property within these cities, and as such, all property taxes received by Countywide funds (e.g. OC General Fund, OC Flood Control) follow a similar distribution by city. The methods for calculating how much property tax is allocated by a particular Tax Rate Area (and in aggregate by TRAs that comprise an entire city jurisdiction) are established by State statute and are not subject to local discretion.

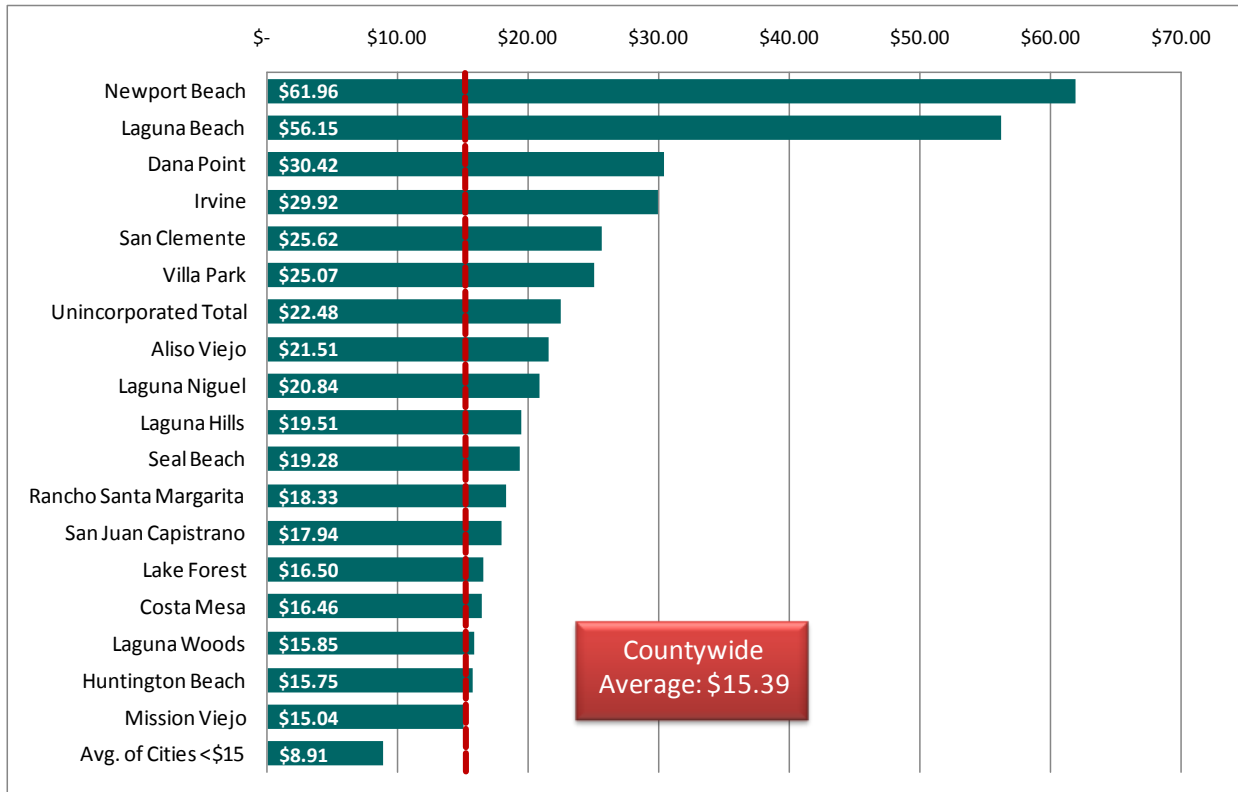
Total Property Tax Contribution to CSA 26, by City (FY 09/10)



Source: Auditor-Controller, Property Tax Calculations
 *For a complete list of contributions by city, please see Appendix D.

The primary drivers that lead to the differences in total contributions from property owners in cities throughout Orange County to CSA 26 are: (1) differing assessed property values and (2) differing populations/number of properties. In order to isolate the impact of differing assessed property values, the review team also controlled for differing populations by calculating the per capita contribution to CSA 26, by city. The results are presented in the chart on the next page.

Total Property Tax Contribution to CSA 26, Per Capita (FY 09/10)



Source: Auditor-Controller, Property Tax Calculations

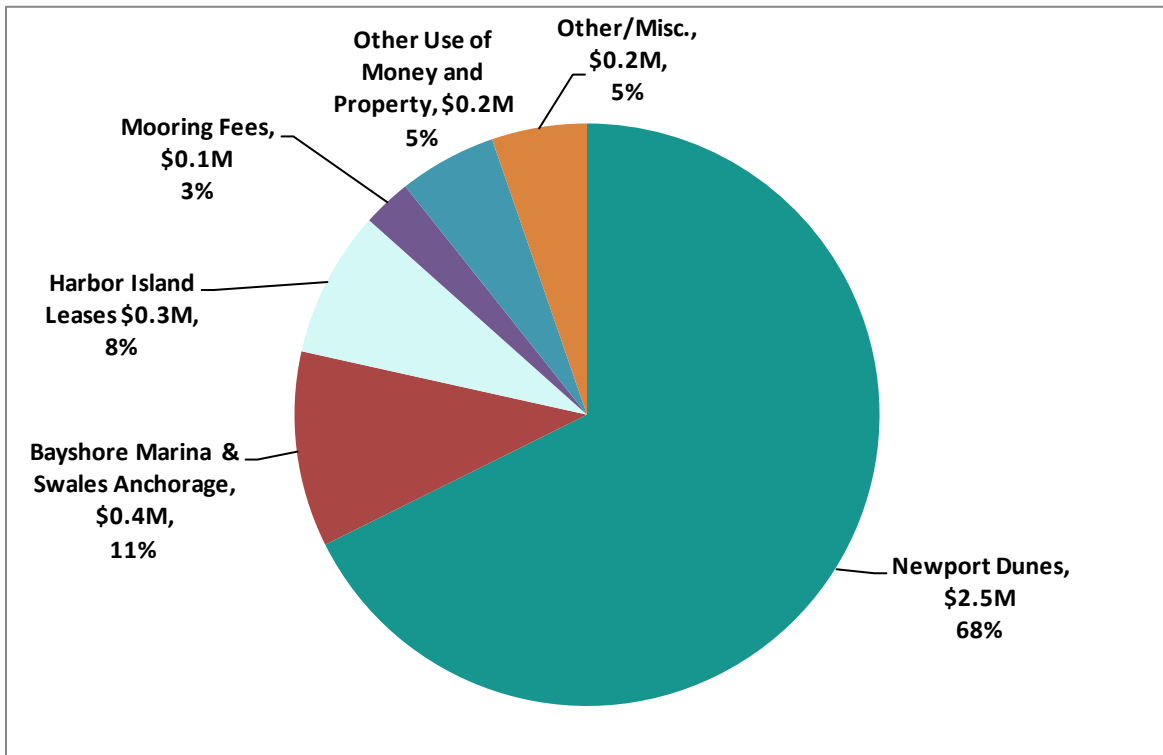
As the chart demonstrates, there are wide variations among cities in terms of per capita Total Property Tax contribution to CSA 26, with Newport Beach (\$61.96 per capita) and Laguna Beach (\$56.15 per capita) citizens at the top of the scale, paying more than 3.5 times the Countywide average.

One other fact regarding OC Parks revenue that bears mentioning is the sunset of County bankruptcy payments from CSA 26 property tax revenues. As mentioned previously, following the bankruptcy in 1994, the County committed to repay bankruptcy-related loans using a variety of revenue streams, one of which was property taxes collected and allocated to OC Parks CSA 26. Beginning in 1995, CSA 26 diverted \$4 million, and this amount has been adjusted upward each subsequent year. The FY 10/11 payment is estimated to be \$9.3 million. These payments will cease after FY 15/16 and will result in substantial, ongoing increased revenue (\$10M+) to CSA 26.

Tidelands Funds

Aside from the 55% of Harbor Patrol costs that are billed to OC Parks CSA 26 Fund 405, there are two Tidelands Funds which pick up the remaining 45%: Newport Tidelands Fund 106 (15%), and Dana Point Tidelands Fund 108 (30%). Tidelands areas are land grants from the State of California to local jurisdictions, whereby the local jurisdiction may develop and utilize the tidelands, consistent with the terms of the grant, to generate revenue, which then must be used for the benefit of the public users of that area. Newport Tidelands Fund 106 is administered by the OC Parks Department.

Newport Tidelands Fund 106 Revenue Sources (\$3.7M)
(FY 09/10)



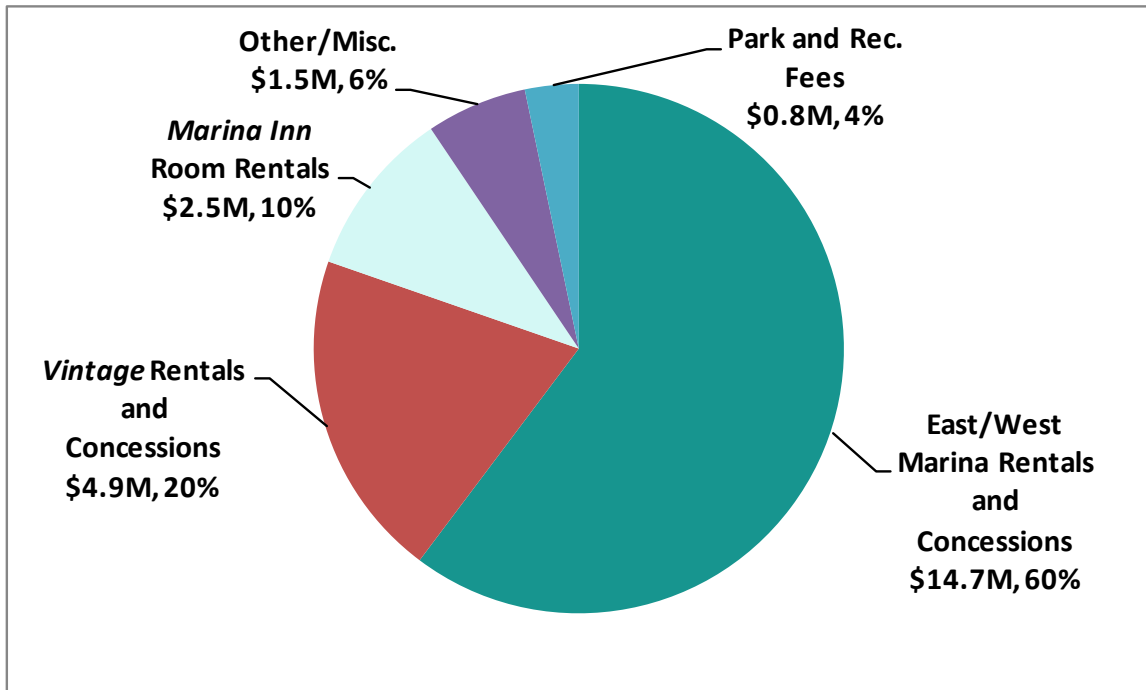
Source: OC Parks Financial

In the County operated portion of Newport Tidelands, the primary revenue generating facility is the Newport Dunes RV Park and Marina, which contributes \$2.5M of the \$3.7M total operating revenues that flow into Fund 106. As noted, of this \$3.7M total revenue, approximately \$1.8M goes to pay for Harbor Patrol expenses (i.e., 15% of the \$12M total cost of Harbor Patrol).

The other County Tidelands Fund (Dana Point Tidelands Fund 108) is administered by OC Dana Point Harbor, and it contributes approximately \$3.6M per year (or 30% of the

\$12M total cost of Harbor Patrol). OC Dana Point Harbor, similar to OC Parks CSA 26 Fund 405, derives its revenue from a number of sources, as demonstrated in the chart below.

**Dana Point Tideland Fund 108 Revenue Sources (\$24M)
(FY 09/10)**



Source: OC Dana Point Harbor, CEO/Budget

The most significant sources of revenue to the Dana Point Tideland Fund are leases, concessions, and slip/dry storage license agreements.

Finding 8: There is no formalized policy/procedure for the allocation of Harbor Patrol costs among the three contributing Funds.

The review team has confirmed with all County stakeholders that the existing allocation methodology for Harbor Patrol costs (30% to Dana Point Tideland Fund 108, 55% to OC Parks CS 26 Fund 405, and 15% to Newport Tideland Fund 106) is based largely on the restriction that Dana Point Harbor cannot pay for more than the Harbor Patrol services attributable to that harbor.³⁴ As such, the Dana Point Harbor Fund is allocated

³⁴ This restriction is part of the tidelands grant agreement between the County and the State Lands Commission. A simple assessment of staffing, by harbor, indicates that of the 38 non-administrative Deputy Sheriff staff, 12 (or 31.5%) are allocated to Dana Point Harbor. Nearly all other costs (aside from fuel and miscellaneous supplies) can be pooled and allocated according to staff distributions. Thus, the County appears to be in compliance based on this simple analysis.

30% of the Harbor Patrol costs because historically 12 (or 30%) of the 40 patrol deputies have been stationed in Dana Point. No rationale is documented for allocating the remaining costs between OC Parks Fund 405 and Newport Tidelands Fund 106.

Recommendation 8: OCSD Financial staff and CEO/Budget staff should develop a detailed cost allocation methodology that is refreshed annually to ensure: (1) compliance with State Lands Commission restrictions in Dana Point Harbor and Newport Harbor, and (2) that allocations reflect current strategic preferences (e.g., could the existing distribution between OC Parks CSA 26 Fund 405 and Newport Tidelands Fund 106 be modified if additional revenues accrue to Fund 106).

Harbor-Related Revenues Realized by Other County Funds

In addition to Fund 405, there are other County Funds that directly receive unsecured property tax revenue that is harbor/boating-related. The County General Fund (Fund 100), the OC Flood Control District (Fund 400), and the OC Public Library District (Fund 120) all receive revenue from unsecured property taxes on boats and possessory interests (some of which are boat slips). The review team estimated the amount of unsecured property tax on boats realized by these three County funds to be approximately \$500K, and the unsecured property tax on all possessory interests to be approximately \$223K.³⁵ These amounts are in addition to the \$93,061 (boats) and \$37,471 (possessory interests) received by CSA 26 (Fund 405).

Harbor-Related Revenues Realized by Harbor Cities

Included in the scope of work for this review is the identification of all harbor-related revenues, regardless of which jurisdiction receives the revenues. Other than the County, the three other jurisdictions that generate revenue from activities in Orange County harbors are the City of Huntington Beach (Huntington Harbor), the City of Newport Beach (Newport Harbor), and the City of Dana Point (Dana Point Harbor).³⁶

³⁵ The review team utilized property tax allocation data from the Auditor-Controller's office to estimate these amounts. This information was difficult to aggregate due to the fact that property tax collection is not tracked by the original assessment type (e.g. boat, commercial property, residential property) assigned by the Assessor's Office. Any modification to the new Property Tax Management System (PTMS) that would permit such tracking would enable the County to more readily obtain this information in the future.

³⁶ As noted earlier, however, all of Dana Point Harbor is operated by the County.

In terms of unsecured property tax on boats and possessory interests (some of which are boat slips), the review team was able to develop a general estimate of revenue going to each city, based on unsecured property tax revenue data provided by the Auditor-Controller and assessment data provided by the Assessor. The results of this analysis and other harbor-related revenues realized by the three harbor cities are shown in the chart below.

Harbor-Related Revenues Realized by Harbor Cities

Revenue Category	City of Huntington Beach	City of Newport Beach	City of Dana Point
Estimated Property Tax Revenues on Boats	\$218,167	\$723,365	\$129,208
Estimated Possessory Interest Tax	\$29,179	\$28,413	\$71,556
Other Harbor-Related Revenues	Lease with Huntington Harbour Yacht Club: \$22,680 Lease with Charter Boat Service: \$2,320 Oil Derrick Payment from State Lands Comm.: \$228K TOTAL OTHER: \$253K	Lease with the Balboa Bay Club: \$3.0M Leases at Beacon Bay: \$1.9M The Balboa Yacht Basin: \$1.3M Mooring Fees: \$697K Pier Permit Registration Fees: \$560K Newport Dunes Transient Occupancy Tax Revenues: \$422K The Basin Marine Shipyard: \$162K Lease with the American Legion: \$138K TOTAL OTHER: \$8.18M	Transient Occupancy Tax from Marina Inn: \$237K TOTAL OTHER: \$237K

*Due to lack of consistently/readily available data, as well as the subjective nature of such an analysis, secured property tax revenues from harbor-adjacent properties, as well as sales tax revenues from harbor-adjacent businesses, were not included.

**All dollar amounts are either for FY 08/09 or FY 09/10, depending on the most current available information.

Appendix F of this report shows all estimated unsecured property tax on boats and possessory interests received by all cities in Orange County.

Finding 9: The County is currently utilizing CSA 26 and Tidelands revenues to subsidize the provision of mooring-related services with the City of Newport Beach.

The one fee with which the County has direct involvement (as noted earlier in this report) is Mooring Fees in Newport Harbor. The City owns over 1,200 moorings throughout Newport Harbor and it contracts with OCSD Harbor Patrol for the administration and patrolling of these moorings. The full cost of providing these services was calculated by OCSD/Financial at \$290K for FY 10/11.³⁷ However, through contract negotiations, the County is subsidizing³⁸ this amount for the five-year term of

³⁷ During its analysis, the review team noted that fuel costs were excluded from this total cost, which the review team estimated at approximately \$5K.

³⁸ For the first year of the contract, the City of Newport Beach is paying \$180K for these services, and the charge increases steadily such that by Year 5 the City will be pay the County \$290K.

the agreement with the City, while Newport Beach continues to collect mooring fees (\$697K in FY 08/09) in excess of the amounts it pays the County to administer them. The contract contains no restriction on the use of this subsidy by the City of Newport Beach. Accordingly, it may be appropriate to add a provision to the mooring contract requiring that Newport Beach use the revenue it generates, at least up to the amount of the costs the County is subsidizing, specifically to benefit the harbor.

Recommendation 9: OCSD, the CEO, and County Counsel should review and, if appropriate, propose an amendment of the agreement with the City of Newport Beach for mooring-related services to insert use restrictions on revenues it generates for Newport Beach.

In summation, though ultimately all the County can do is ask these cities to contribute funds to support the Harbor Patrol, the data and information presented above sets a comprehensive, fact-based framework for beginning such a discussion, should the Board wish to do so.³⁹

Additional Revenue Opportunities for Consideration

Grants

Finding 10: There are additional grant opportunities that are available to offset the cost of Harbor Patrol.

In addition to the existing Department of Boating and Waterways (DBW) grant that the County already receives, there are two additional DBW grant programs that the review team has identified that, with some minimal actions, the County would be eligible to apply for: the Boating Safety and Enforcement Financial Aid Program and the Boating and Safety Enforcement Equipment Grant Program. Historically, OCSD and OC Parks/DPH have not explored these grant options in detail because of two key requirements: (1) the applicant government needs to demonstrate that it is committing all of its unsecured property tax revenue on boats to Harbor Patrol, and (2) this unsecured boat property tax revenue needs to fall short of the full cost of providing Harbor Patrol services that are eligible for the grant. DBW staff confirmed that in previous discussions with OCSD staff there was a perception that the total unsecured boat property tax revenue received by Orange County would far exceed the operational costs of Harbor Patrol. However, no verification of this perception was ever conducted.

³⁹ Previously, the County has informally approached the harbor cities about paying for some of the Harbor Patrol costs; however, to date, both Newport Beach and Huntington Beach have declined to do so.

Consequently, the review team worked with both Auditor-Controller and Assessor staff to determine that the total amount of unsecured property tax on boats received by the County in the most recent fiscal year. As noted earlier, this amount is estimated to be \$600K. As demonstrated in the Expenditures section of this report, this amount pales in comparison to the approximately \$12M that the County spends on Harbor Patrol. For this reason, the review team strongly urges both OCSD Financial staff and OC Parks/DPH Financial staff to work collaboratively to prepare grant applications for both of these programs. To provide a sense of potential opportunity, the amounts granted through the Boating Safety and Enforcement Financial Aid Program in fiscal year FY 09/10 ranged from \$43,753 (Suisun City Police Department) to \$2.1M (LA County Fire Department).

Recommendation 10: OCSD, with the support of OC Parks/DPH, should prepare an application for additional California DBW grant opportunities.

Charging for Services

Per the Board-approved scope of work, the review team also examined whether there are any opportunities to recover costs for services provided to the public. As a general rule, a county cannot charge a fee unless specifically authorized to do so by statute and/or the Board. A corollary to this rule is that a county is prohibited from charging fees for services that are mandated by statute if the statute does not provide the authority to charge a fee for said services. Fees can, however, be charged if specifically allowed by statute, or for services that are authorized by statute but not mandated. Any such fee must be approved by the Board of Supervisors and not be greater than the cost of providing that service.

Based on this analysis, the review team identified one potential charging opportunity for the Board to consider: charging for non-emergency towing of vessels⁴⁰. In benchmarking against other harbor patrol operations, the review team determined that there are other jurisdictions that charge for non-emergency towing of vessels. In order to do so, at least one of the deputies on board the Harbor Patrol vessel would need to have a U.S. Coast Guard Captain's license with a towing endorsement. Currently, 14 of the 48 sworn staff have Captain's licenses. The primary requirement for obtaining this license and the towing endorsement is a minimum of three years of experience operating a boat and the passage of two exams.

⁴⁰ A proposed 1987 Board resolution (87-515) would have allowed for the charging for non-emergency assistance at \$48/hour; however, this was not approved.

In addition, as noted earlier, the Board would have to approve the hourly rates, and these rates could not exceed the cost of providing the service. For illustration purposes, the County determined an hourly rate of \$104.90 per Deputy for personnel costs and between \$21.60 (patrol boat) and \$26.13 (fire boat) for equipment costs when conducting the cost recovery analysis for the Newport Beach Mooring contract. As such, the County could charge up to \$126.50/hour for non-emergency towing services provided by a patrol boat, and up to \$235.93/hour for towing services provided by a fire boat. To provide a sense of opportunity, during CY 2007 and CY 2008, Harbor Patrol provided approximately 877 hours of towing, equating to approximately 438.5 hours per year. If only half of these hours were for non-emergency towing, the implementation of a \$126.50-\$235.93/hour charge would generate between \$28K and \$52K of annual revenue.

In conjunction with the monetary benefits to the County, there may also be a qualitative benefit in dealing with the commercial towing industry. One of the key concerns cited by commercial assistance providers is that many boaters “know that Harbor Patrol will provide you with a free tow,” and consequently many boaters refuse commercial towing services. If OCSD begins to charge between \$126.50-\$235.93/hour, there is less of an incentive/opportunity for boaters to circumvent the commercial towing industry.⁴¹

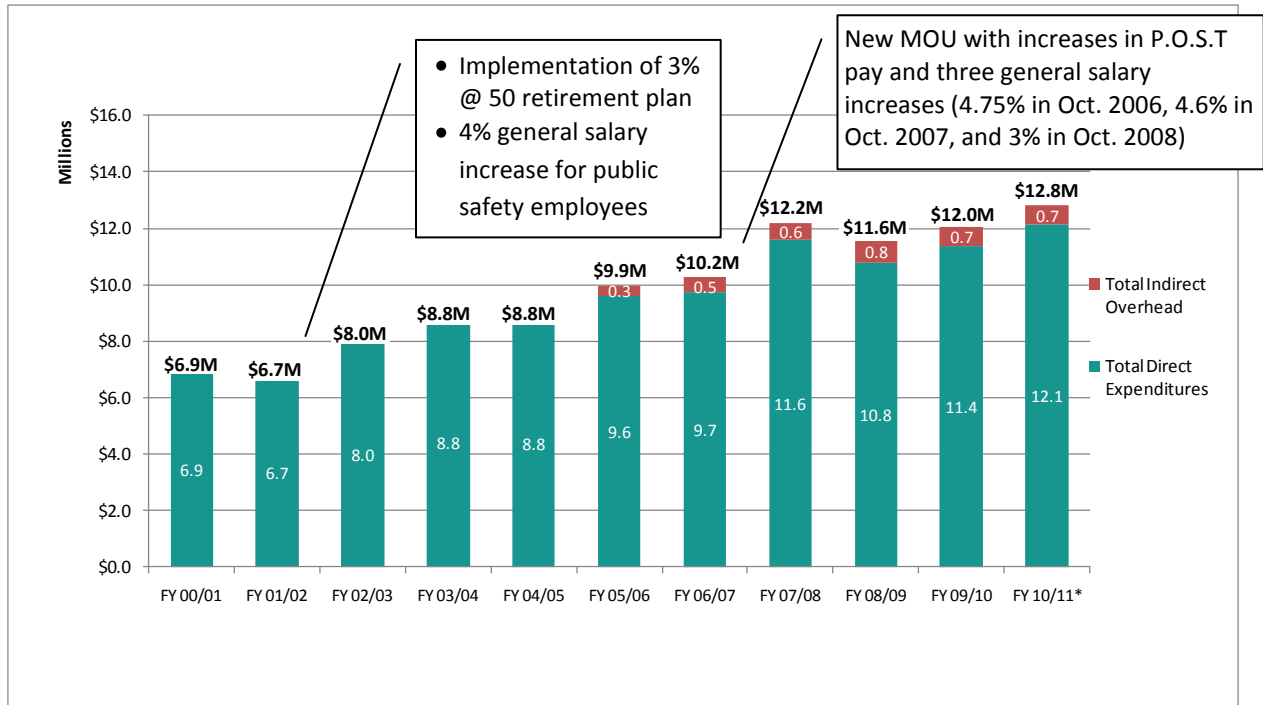
Expenditures

Historical and Current Total Harbor Patrol Costs

Each fiscal year, OCSD financial staff prepares a budget for the Harbor Patrol operation working directly with Harbor Patrol management. This projected budget is then communicated to OC Parks and OC Dana Point Harbor for the upcoming year. The total cost of the Harbor Patrol operations has increased significantly over the last ten years, as demonstrated in the chart on the following page.

⁴¹ As an example, in Newport Harbor, one of the commercial marine assistance providers charges between \$225-\$250/hour to non-members for towing services.

Total Cost for Harbor Patrol (FY 00/01 – 10/11)



*FY 10/11 represents budgeted amounts, rather than actual expenditures

**OCSD/Financial does not have records of indirect overhead charges prior to FY 05/06, so no amount was included.

	FY 00/01	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11*
Year over Year %		-3.7%	19.8%	10.3%	-0.5%	13.6%	3.2%	18.5%	-5.0%	4.1%	6.4%
Change in Total											

The trends shown in Total Cost for Harbor Patrol correlate directly with negotiated contract changes between the County and the Deputy Sheriffs’ bargaining unit (Association of Orange County Deputy Sheriffs, or “AOCDS”). As shown in the graph above, the Total Cost increased by almost 20% from FY 01/02 to FY 02/03, primarily driven by the implementation of the “3% at 50” retirement benefit, a 4% salary increase for all sworn officers of the Harbor Patrol, and other factors.⁴² Similarly, the Total Cost increased by almost 19% from FY 06/07 to FY 07/08 as there was a new MOU negotiated with AOCDS that included increases to P.O.S.T Pay and three general salary increases over the following years (4.75% in Oct. 2006, 4.6% in Oct. 2007, and 3% in Oct. 2008).⁴³

⁴² Investment losses to the Orange County Employees Retirement System’s (OCERS) portfolio from 2001 through 2003 resulted in an increase to the County’s Unfunded Actuarial Accrued Liability (UAAL). Also, in 2002, the OCERS Board changed its actuarial assumptions for calculating the UAAL, which also increased retirement related costs for the County as a whole.

⁴³The 2006 general salary increase was retroactively implemented and not actually paid until FY 07/08, which added to the year-over-year percentage change between FY 06/07 and FY 07/08.

The review team also confirmed that most of the cost for Harbor Patrol is salary and employee benefits. Such proportions have remained consistently high over the last ten years, as demonstrated in the table below.

	FY 00/01	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11*
<u>Salary and</u>											
<u>Benefits as a % of</u>	94%	94%	93%	92%	94%	93%	94%	90%	94%	93%	90%
<u>Total Direct Exp.</u>											

Upon further research, the review team was able to pinpoint the objects of expenditure that accounted for this significant growth. Direct Operating Costs (i.e., not including Indirect Overhead Charges) have grown from approximately \$6.9M in FY 00/01 to \$12.1M in the FY 10/11 budget, an increase of approximately \$5.2M, or 75%. Of this \$5.2M increase, \$2.1M is attributable to increased retirement (i.e., pension) costs, \$1.2M is attributable to increases in regular salaries for Harbor Patrol staff, and \$391K is attributable to increases in premium pays (e.g., harbor patrol pay). The remaining cost increases are attributable to a number of other expenditure objects, including health insurance costs, use of extra help staff, transportation/travel (fuel) costs, and equipment maintenance costs.

A similar analysis was not possible for Indirect Overhead Charges, as OCSD does not have billing records further back than FY 05/06. However, it is notable that these Indirect Charges have increased from \$337,030 in FY 05/06 to an estimated \$677,766 for FY 10/11, an increase of over 100% in five years. Much of this growth has been driven by the inclusion of various training costs (Sworn Annual Training, Patrol Training) as well as the inclusion of a portion of the Homeland Security Division Captain’s salary and benefits costs. In FY 08/09, OCSD moved the Harbor Patrol operation into the Homeland Security Division and removed the full-time Captain position that, prior to that time, was responsible exclusively for the management of the Harbor Patrol operation. Now only a portion of the salary and benefits costs for the Captain who oversees the entire Homeland Security Division (in which Harbor Patrol resides) is now billed as an Indirect Charge. The net result of this change has been a savings to OC Parks/OC Dana Point Harbor.

Vessel Costs

Finding 11: The useful life/replacement cycle of a patrol vessel can be extended.

During the review team’s benchmarking research, several other harbor patrols described their fleet of vessels as having useful lives of 20+ years. This is in contrast with OCSD Harbor Patrol that generally plans and budgets to replace a fire or patrol

boat every 15 years. Given that OCSD Harbor Patrol has a very robust maintenance operation, there is an opportunity for Harbor Patrol to extend the life of its boats beyond 15 years. Consequently, the current practice of budgeting for the purchase of a new boat every year (approx. \$400K) should be modified to reflect a longer useful life of the vessels. In practice, this will result in a \$400K savings every four years, or an annualized savings of \$100K, if the useful life of each vessel is extended to 20 years.

Recommendation 11: Eliminate the budgeted \$400K for vessel replacement every four years by extending the useful life of each vessel to 20 years, instead of the current 15 years.

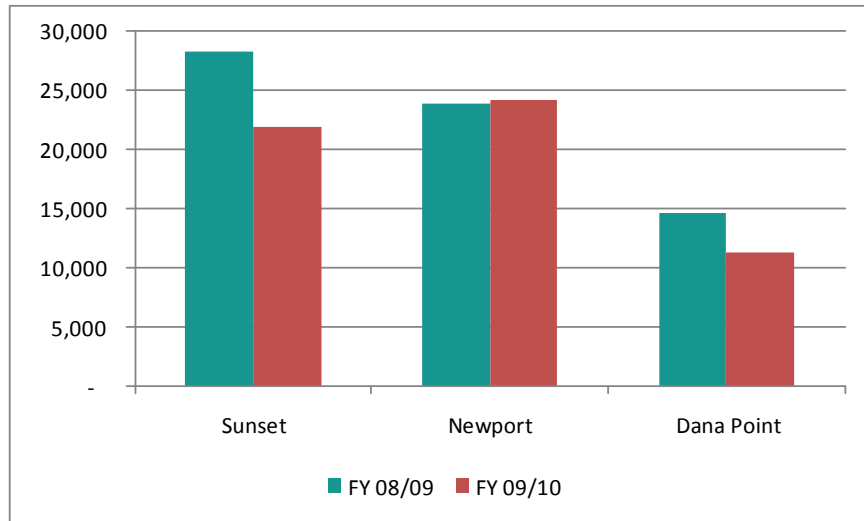
Fuel Costs

Aside from salaries and benefits and the purchase of new vessels, another key ongoing expense of Harbor Patrol is fuel. During FY 09/10, Harbor Patrol purchased 57,467 gallons of fuel, at a cost of over \$166K. This amount was down slightly from FY 08/09, where 66,808 gallons were purchased at a cost of \$183K. An examination of historical financial data indicates that spending for fuel has more than doubled since FY 00/01. Increases in this cost center are largely due to increases in fuel prices, but are also due to increased consumption over this time.⁴⁴

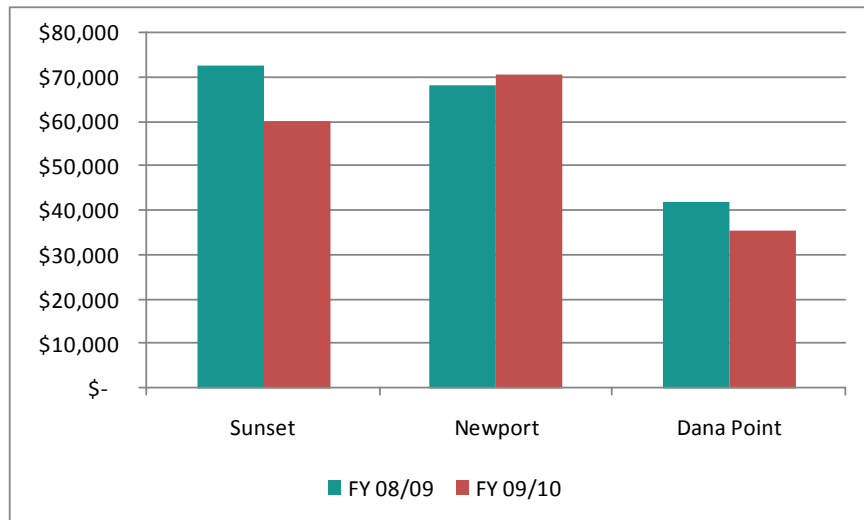
The review team also examined fuel consumption/spending by harbor to determine any operational differences. The chart on the following page illustrates that Sunset/Huntington Harbor and Newport Harbor consumed a similar amount of fuel over the past two years. Dana Point Harbor, however, consumes noticeably less fuel. This difference is driven in part by the fact that Dana Point Harbor is a significantly smaller harbor in terms of area. However, as was discussed in the Workload section of this report, Sunset/Huntington Harbor records a significantly greater amount of patrol time than the other two harbors, which is borne out in the fuel consumption data shown below as well. Lastly, the fuel data also demonstrates that there has been a noticeable drop-off (-29%) in the amount of fuel consumed in both of the outer harbors (Sunset/Huntington and Dana Point) during FY 09/10.

⁴⁴According to the U.S. Department of Energy average California gasoline prices increased from an average of \$1.75/gallon in FY 00/01 to \$3.01/gallon FY 09/10, an increase of 72%.

Fuel Gallons Purchased, By Harbor



Fuel Spending, By Harbor



Finding 12: The Dana Point Harbor Patrol station is currently paying significantly more per gallon for fuel, when compared to the other two harbors.

The three Harbor Patrol stations procure fuel in different fashions. The Sunset/Huntington Harbor station purchases its fuel from a commercial fuel dock on a daily basis, using a credit card. Newport Harbor station has its own fuel tank, which it refills approximately every few weeks via a contract with General Petroleum. The Dana Point Harbor station had been utilizing and filling its own fuel tank, similar to

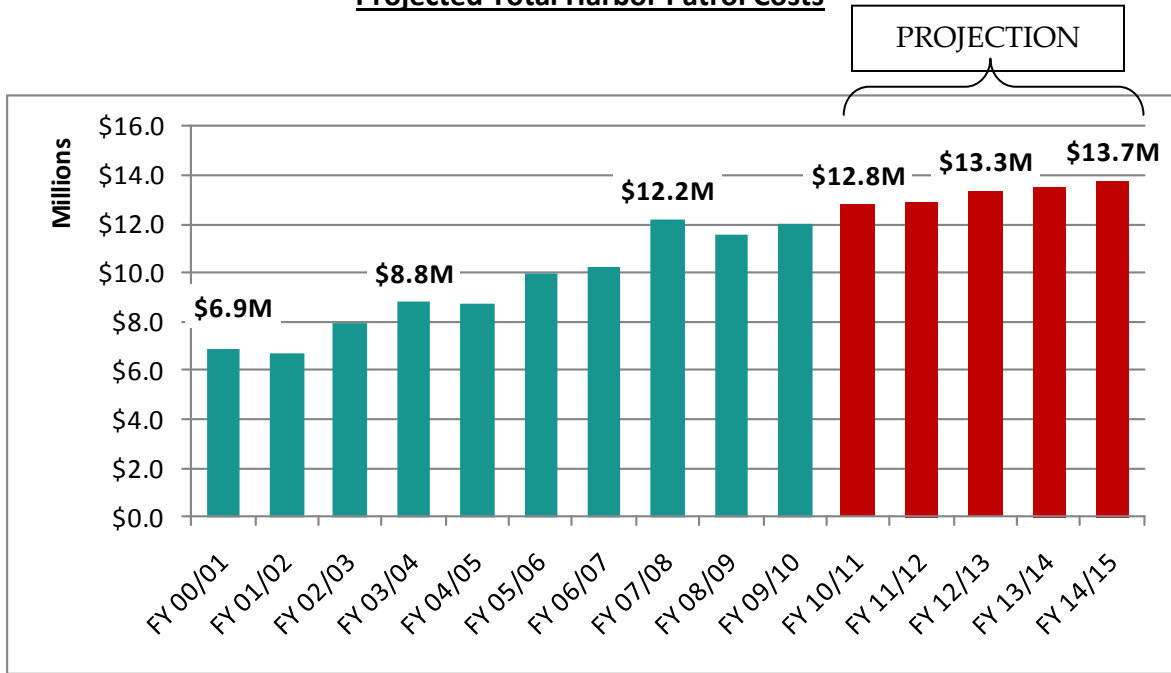
Newport, up until March of 2010, at which point a problem with the tank forced them to begin fueling at a commercial fuel dock on a daily basis, similar to Sunset/Huntington. This operational change for Dana Point has resulted in a noticeable increase in the cost per gallon. Prior to this change, when the Dana Point Harbor station was able to purchase and store fuel in bulk, OCSD was paying approximately \$2.90/gallon (for the first 8 months of FY 09/10). However, since switching to daily, commercial purchases, OCSD is paying \$3.83/gallon in Dana Point. This price is also significantly higher than the per gallon price average in the other two harbors for FY 09/10 (\$2.73 in Sunset/Huntington and \$2.92 in Newport). Given that the Dana Point station consumes over 11,000 gallons of fuel per year, this price difference of \$1/gallon will lead to over \$11,000 of increased costs for Harbor Patrol. As a result of discussions with the review team, Harbor Patrol and OC Dana Point Harbor management are examining this issue.

Recommendation 12: Explore pricing options for fixing the fuel tank at the Dana Point Harbor Patrol station, as well as pursue other pooled purchase options to reduce the cost of fuel.

Projected Total Harbor Patrol Costs

In light of the significance that retirement costs have played in driving up the Total Cost of Harbor Patrol, it is critical to note that these costs will continue increasing for several years. In FY 09/10, the County contributed approximately \$0.56 to retirement costs for every \$1 of salary for Deputy Sheriffs; however, this rate will increase to almost \$0.71 per every \$1 of salary by FY 14/15. In order to capture the effect on the cost of Harbor Patrol, the review team prepared estimated future costs for the current and next four fiscal years. In this projection, all non-retirement costs are held constant, except for one 3% regular salary increase in FY 12/13. As such, the chart on the following page represents a conservative projection of the future Total Costs of Harbor Patrol. Clearly, these future costs will continue their steady increase, even just to meet the required annual contributions to OCERS. Such increases will likely exacerbate the existing frustration of OC Parks/DPH.

Projected Total Harbor Patrol Costs



* Significant increases in retirement benefit costs (which drive most of the projected increases above) are expected across all classifications, sworn and non-sworn, and across all agencies/departments.

Allowable Uses of CSA 26 and Tidelands Money

There are restrictions on the revenues that currently fund Harbor Patrol, and as such, it was incumbent upon the review team to determine how such revenues are utilized. The first pool of money is OC Parks CSA 26 revenue and the second is Tidelands revenue, which is received by both Dana Point Tidelands Fund 108 and Newport Tidelands Fund 106.

Finding 13: OC Parks CSA 26 and Tidelands Funds may not be used to fund certain activities.

OC Parks CSA 26 receives its dedicated share of property tax revenues for the management, development, operation, protection and maintenance of all Orange County harbors, beaches and parks facilities. As applied to the Harbor Patrol, CSA 26 monies can only be used to fund those harbor activities which directly benefit the harbor or harbor users. These activities include:

- a) Those general law enforcement activities that directly benefit the harbor or harbor users, as opposed to the public generally, or

b) (i) Those general law enforcement activities that are incidental to Harbor Patrol's non-general law enforcement duties (i.e., result from the direct observation by Harbor Patrol while engaged in non-general law enforcement activities such as water rescue in the harbor, fire fighting, and boating law enforcement) and (ii) do not exceed the activities necessary to stabilize the situation and diffuse any immediate danger.

Conversely, CSA 26 revenues cannot be used for general law enforcement duties which benefit the general public, but not the harbor or harbor users in particular, and are not incidental to the provision of non-general law enforcement Harbor Patrol duties. The types of activities that may not be funded with CSA 26 money include: pre-planned immigration/drug smuggling enforcement operations; post-arrest activities such as investigations, forensics, court presentations; efforts to identify terrorist risks along the coast; and time devoted to other OCSD special units such as the SWAT team or Bomb Squad. These general law enforcement services are performed by the Sheriff, as part of the Sheriff's statutory duties, and the public already pays taxes for these services.

Similar restrictions exist for the usage of Tidelands area revenues. By law, Tidelands areas⁴⁵ are to be used only for the benefit of the public, and there are restrictions on both the uses of tidelands property and any revenues generated on the tidelands (e.g., boat slips fees, boat launch ramp fees, harbor restaurants, harbor hotels). For example:

- Tidelands revenues can only be utilized to benefit or improve the Tidelands areas or the public using the Tidelands. In 1981, the State of California successfully sued the County of Orange for its use of Dana Point Tidelands revenues on lifeguard services provided on beaches outside Dana Point Harbor and for advertising purposes. Tidelands Funds can be used in a manner similar to the permissible uses of CSA 26 funds, but only inside the harbors, or in nearby waters outside a Tidelands harbor, if it is benefiting boaters who most likely use that harbor.
- The revenues generated in a particular Tidelands area cannot be used for expenses of another Tidelands area. For example, revenues generated from Dana Point Harbor Tidelands Fund 108 cannot be used for activities in Newport Beach Tidelands Fund 106.

⁴⁵ The California legislature has given the California State Lands Commission authority over California's public trust lands (tidelands, submerged lands, and navigable waters). The legislature, by statute, also conveyed public trust lands, in trust, to more than 80 cities, counties, and other governmental agencies, including Orange County. Orange County administers two Tidelands areas and their respective funds: Newport Tidelands Fund 106 and Dana Point Tidelands Fund 108.

Additional legal analysis of this issue has been confidentially provided to the Board of Supervisors in a separate attorney-client privileged document.

Recommendation 13: OCSD, the CEO, and County Counsel should work together to address the legal analysis related to the allowable uses of CSA 26 and Tidelands Funds for Harbor Patrol activities.

IV. Policy Discussion and Decisions

As directed by the Board of Supervisors, this review has examined the various legal, financial and operational issues of the Harbor Patrol function. The report demonstrates that Harbor Patrol is a varied and complex issue with multiple policy options for the Board, the CEO, OCSD, OC Parks, and OC Dana Point Harbor to consider going forward. The review team has worked through the various combinations and ramifications of potential options in order to provide policy makers with those options that have the highest probability of achieving consensus between all parties. As the Board and OCSD consider these various recommendations and policy options, it is important to reemphasize three points:

1. With regard to the portion of Harbor Patrol's functions that are not statutory duties of the Sheriff (i.e., most of Harbor Patrol's activities), the Board can exercise greater control, assigning these duties to non-OCSD personnel and using a different position classification. However, in doing so, the Board arguably cannot reduce the services for which the County assumed responsibility when the HBP District was dissolved and CSA 26 was formed, without LAFCO concurrence.
2. With regard to the portion of Harbor Patrol's functions that are statutory duties of the Sheriff as Sheriff, the Board of Supervisors has only budgetary control (i.e., it sets the Sheriff's budget and the total numbers and classifications of positions in OCSD). However, in exercising its budgetary authority, the Board may not control, direct, or obstruct the Sheriff's performance of her statutory duties that are now performed by the Harbor Patrol. Thus, the Board may not require the Sheriff to assign a certain number or classification of employees to Harbor Patrol.
3. Any operational/staffing changes would require compliance with applicable labor laws.

Summary of Recommended/Required Changes

First, to establish a new operational baseline, the County and/or OCSD should implement the improvement opportunities identified in this report, detailed below:

1. The Board of Supervisors, with the assistance of the CEO, OCSD, OC Parks, DPH and County Counsel, should submit a request to LAFCO to clarify, and potentially modify, the conditions imposed by LAFCO on the dissolution of the former HBP District and the formation of CSA 26. (*Recommendation #1*)
2. Consolidate the elements of the Training Coordinator and Mooring /Accident Investigation Deputy positions that require a fully sworn peace officer into one deputy position; use a civilian position to support this deputy and perform the remaining administrative duties. (*Recommendation #2*)
3. Delete the Office Technician position in Dana Point Harbor. (*Recommendation #3*)
4. Refine the policy that details how both sworn and non-sworn staff are to record their time and roll out the policy consistently across all harbors. (*Recommendation #4a*)
5. Automate Daily Activity Reports by working with OCSD IT staff to develop a simple database for the recording of daily activity worksheets in electronic format, and require that deputies enter their activity information at the conclusion of every shift. (*Recommendations #4b and 6b*)
6. Create management reports from the established Daily Activity database that are prepared for and reviewed by Harbor Patrol leadership, as well as by OC Parks/DPH leadership, on a routine basis (i.e., quarterly, semi-annually). (*Recommendation #4c*)
7. Schedule Facility Commanders/Station Sergeants in Sunset/Huntington Harbor and Dana Point Harbor to cover weekends and holidays. (*Recommendation #5*)
8. Develop policies and procedures related to Homeland Security in the harbors and surrounding waters, Criminal Activity in the harbors, Non-Emergency Pump-Outs/Jump Starts/Salvage, and Mooring Checks. Require that non-emergency Pump-Outs/Jump Starts/Salvage are documented in detail to explain the circumstances that required Harbor Patrol involvement. (*Recommendation #6a*)
9. Create a more detailed non-emergency Disabled Vessel/Vessels Towed policy/procedure and communicate policy/procedure to staff. Require that non-emergency tows are documented in detail to explain the circumstances that

- required Harbor Patrol involvement. Harbor Patrol management should review all documentation to ensure that policy is being followed. (*Recommendation #6c*)
10. The County and Sheriff should revise the outdated agreements with the cities of Newport Beach, Seal Beach, and Huntington Beach and draft a new agreement with the Seal Beach Naval Weapons Station. (*Recommendation #7*)
 11. OCSD Financial staff and CEO/Budget staff should develop a detailed cost allocation methodology that is refreshed annually to ensure: (1) compliance with State Lands Commission restrictions in Dana Point Harbor and Newport Harbor, and (2) that allocations reflect current strategic preferences (e.g., could the existing distribution between OC Parks CSA 26 Fund 405 and Newport Tidelands Fund 106 be modified if additional revenues accrue to Fund 106). (*Recommendation #8*)
 12. OCSD, the CEO, and County Counsel should review and, if appropriate, propose an amendment of the agreement with the City of Newport Beach for mooring-related services to insert use restrictions on revenues it generates for Newport Beach. (*Recommendation #9*)
 13. OCSD and OC Parks/DPH staff should work together to prepare an application for additional California DBW grant opportunities. (*Recommendation #10*)
 14. Extend the useful life of each Harbor Patrol vessel to 20 years, instead of the current 15 years. (*Recommendation #11*)
 15. Explore pricing options for fixing the fuel tank at the Dana Point Harbor Patrol station, as well as pursue other pooled purchase options to reduce the cost of fuel. (*Recommendation #12*)
 16. OCSD, the CEO, and County Counsel should work together to address the legal analysis related to the allowable uses of CSA 26 and Tidelands funds for Harbor Patrol activities. (*Recommendation #13*)

It is estimated that these changes will result in a minimum of **\$190,000 of savings, in addition to several potential revenue enhancements** from opportunities such as California DBW grants.

Funding Model Options

Notwithstanding the importance of the cost savings and operational benefits noted above, the most critical issue for the Board to address is the funding of Harbor Patrol. Thus, concurrent with implementing the aforementioned operational and financial changes, there are three primary funding options (below) for policymakers to consider:

- Option 1: OCSD maintains operational control over Harbor Patrol but contributes toward the incremental costs of staffing the operation with Deputy Sheriffs, as opposed to limited peace officers. (Shared Funding)
- Option 2: OC Parks/DPH reassumes operational control for all non-general law enforcement activities and staffs the Harbor Patrol with limited peace officers. Under this option, OC Parks/DPH pay only for the cost of their operation. Operations and funding for general law enforcement will be the responsibility of OCSD. (Segregated Funding)
- Option 3: Maintain the status quo, with OCSD retaining operational control over Harbor Patrol but OC Parks/DPH paying for the entire operational cost, ensuring that the costs of any services for which OC Parks/DPH funding may not be used would be funded from other revenue sources. (Singular Funding)

The review team has discussed these three funding options with OCSD, OC Parks and OC Dana Point Harbor management. Our discussions indicate that there is a uniformly strong desire to reach a fair and practical solution that will allay the perpetual frustration with this funding issue. In order to arrive at a recommendation, the review team identified the following pros and cons of each option:

Option 1: Shared Funding

Pros

- Addresses the fundamental issue of the Harbor Patrol debate: the financial inequity of OCSD making all Harbor Patrol operational decisions and OC Parks and OC Dana Point Harbor paying for the operation in its entirety
- Retains all Harbor Patrol functions under one agency, which results in significant economies of scale, operational efficiencies, and a high level of service (e.g., better coordination, communication)
- Increases revenue available to OC Parks and OC Dana Point Harbor for other uses (e.g., County beaches and inland parks, harbor revitalization), by reducing the costs of Harbor Patrol to these departments

- Preserves OCSD's ability to pursue current and future operational plans for homeland security
- Satisfies harbor cities and user constituencies which generally prefer that Harbor Patrol be performed by fully sworn Deputy Sheriff personnel

Cons

- OCSD's financial situation restricts its current ability to pay for an equitable portion of Harbor Patrol costs. Similarly, the County's overall financial situation hampers its ability to use General Fund resources to backfill these costs

Earlier in the Position Classification and Compensation section of this report, the review team estimated the incremental cost between the Deputy Sheriff II classification and a proposed "OC Parks Harbor Patrol Officer" classification at \$48,268 per position or \$2.3M for 48 Harbor Patrol positions, in addition to \$0.2M in "Extra Help" and "Overtime" savings. Thus, for FY 10/11, \$2.5M would be the incremental cost that OCSD should pay for Harbor Patrol activities. It should be noted that this incremental cost will fluctuate over time with changing salary and employee benefits agreements, and as such, this amount should be determined on an annual basis. Considering the current budgetary reality, OCSD's contribution would likely need to be phased in, with OC Parks continuing to subsidize a portion of this contribution in the short run. There are a variety of methods that can be utilized to reach the cost target. Several potential methods are presented in Appendix E.

Option 2: Segregated Funding

Pros

- A significant ongoing cost savings (19+%) to OC Parks/DPH after substantial initial transition costs
- Clear alignment between funding and operations. This option enables the same organization (potentially OC Parks) to both fund and operate Harbor Patrol

Cons

- Dissolution of an operationally efficient Harbor Patrol function that uses one agency (OCSD) and one highly-skilled classification (Deputy Sheriff II) to perform all harbor/coast activities

- Increased costs and significant implementation requirements of dismantling the majority of the OCSD Harbor Patrol operation and starting-up an OC Parks and OC Dana Point Harbor operation. For OCSD, this would entail either reassigning or laying off deputy staff and the capital investment of purchasing new boats or used boats from OC Parks to continue general law enforcement and homeland security duties. For OC Parks, this would require establishing a new position classification to perform harbor duties; hiring and training staff in marine firefighting, boating law enforcement and medical aid; coordinating with OC Dana Point Harbor regarding harbor patrol activities; and hiring/training radio dispatchers and administrative staff. The estimated annual salary and employee benefits cost of employing 40 “OC Parks Harbor Patrol Officers” is \$4.4M, or \$365K per month (this is not including the cost of supervisory staff). Thus, for every month of transition, the County would incur at least \$365K in additional costs, due to the continuation of the OCSD operation while simultaneously standing up the OC Parks/DPH operation
- Significant negotiations with impacted employee labor associations
- Assumed significant reductions to OCSD Harbor Patrol staff would severely restrict OCSD’s ability to participate in and perform cooperative homeland security efforts with local/state/federal law enforcement agencies
- Dissatisfied harbor cities and user constituency. Based on history and interviews conducted by the review team, harbor cities and user groups will likely lobby against this option, as they prefer the use of Deputy Sheriff personnel

Option 3: Singular Funding (Status Quo)

Maintaining a single funding approach for Harbor Patrol (i.e., OC Parks/DPH paying for the entire operation) is the status quo; however, the review team would still recommend the implementation of the operational/funding changes noted in the Recommended/Required Changes section.

Pros

- No additional budgetary challenges created for OCSD
- Retains all Harbor Patrol functions under one agency, which results in significant economies of scale, operational efficiencies, and a high level of service (e.g., better coordination, communication)
- Satisfies harbor cities and user constituencies which generally prefer that Harbor Patrol be performed by fully sworn Deputy Sheriff personnel

Cons

- Fails to address the imbalance of the current funding model, which is the primary source of concern for most stakeholders, and thus, will likely result in the continuation of the current Harbor Patrol debate. Additionally, there are inescapable cost increases on the horizon for staffing Harbor Patrol with fully sworn Deputies (e.g., pension contributions), which will only exacerbate the existing situation

Funding Model Recommendation

Since OC Parks/DPH could provide the non-general law enforcement activities currently done by the Harbor Patrol with limited peace officers, there is a strong argument that OCSD's budget should bear the financial responsibility for costs associated with general law enforcement activities. Indeed, OC Parks/DPH are not required to fulfill any of their established Harbor Patrol responsibilities with fully sworn Deputy Sheriffs. In principle, there is little disagreement among stakeholders that OCSD has a significant stake in the current Harbor Patrol operation and thus should contribute towards its perpetuation. However, practically speaking the current financial situation of OCSD is such that any additional financial burden placed on the department in the short run (i.e., the next one to two years), without the allocation of additional resources, will likely result in further cuts in other OCSD operations (patrol, jails, etc.). Due to this reality, the core dilemma of Harbor Patrol comes down to a policy decision between three entities (OC Parks, DPH and OCSD) competing for exceedingly scarce resources.

Recommendation 14: Implement Option 1, with the specific contribution method developed by a short-term task force of key County of Orange Harbor Patrol stakeholders. Such a task force would ideally be composed of OCSD, OC Parks, DPH, CEO/Budget, and, potentially, one or two Board members. Example contribution methods for consideration by this group are presented in Appendix E.

The review team recommends a shared approach (Funding Option #1) where the eventual goal is for OCSD to contribute the full, incremental cost of staffing Harbor Patrol with fully sworn staff (\$2.5M currently). However, the speed with which this target is achieved may need to be moderated in order to mitigate any potential negative impacts to public safety. Thus, to determine how quickly this goal is achieved, as well as the specific mechanics for getting there (e.g., straight-line, back-loaded, revenue triggers), the review team recommends the formation of a short-term task force of stakeholders to address only these precise funding topics. The review team is of the

opinion that in order for such a task force to solve this issue, there must first be a consensus reached and memorialized (hopefully, but not necessarily, with OCSD) that the OCSD budget will move toward a cost-sharing approach with OC Parks/DPH for the future funding of Harbor Patrol. Committing to this option is a simple but critically important first step toward addressing this 35-year-old struggle.

Appendices

Appendix A: Interviews

Over the course of the study, the review team interviewed the following stakeholders:

- OCSD Harbor Patrol Management
- OCSD Harbor Patrol Station Sergeant/Facility Commander
- OCSD Harbor Patrol Deputy Sheriffs
- OCSD Harbor Patrol Dispatcher
- OCSD Harbor Patrol Training Coordinator
- OCSD Harbor Patrol Mooring Deputy
- OCSD Harbor Patrol Maintenance Supervisor
- OCSD Finance
- OC Parks Management
- OC Dana Point Harbor Management
- County Executive Office/Budget
- C-PORT Representatives
- Vessel Assist Operators
- Newport Mooring Association
- Boaters for Dana Point Harbor
- Harbor Masters, Directors, and Managers from San Diego, Oceanside, Long Beach, Los Angeles, Channel Islands/Ventura, Santa Barbara, Monterey, and Santa Cruz
- City of Huntington Beach Police and Lifeguards
- City of Seal Beach Police, Lifeguards, and City Manager
- City of Newport Beach Fire, Lifeguards, and Harbor Resources Department
- Department of Boating and Waterways

Appendix B: Pertinent Orange County Harbor Historical Information

1917-

- 1920 The County of Orange and City of Newport Beach construct Newport Harbor improvements: West Jetty, Bitter Point Dam, diversion of the Santa Ana River from Newport Bay to the ocean, and dredging of county and city bay channels. Cost to the County: \$500,000; to the City, \$290,000.
- 1924 Engineering survey done of Newport Harbor in anticipation of additional construction at an anticipated cost of \$1.2 million.
- 1926 County voters defeat bond issue to finance the \$1.2 million construction costs of Newport Harbor.
- 1927 City of Newport Beach appropriates \$500,000 to extend the West Jetty and to build a new East Jetty.
- 1929 The Great Depression begins. The City of Newport Beach appropriates \$200,000 for Newport Harbor entrance dredging.
- 1930 The federal government agrees to fund harbor improvement projects sponsored by local government agencies in an effort to relieve economic and social problems brought on by the Depression. The federal government devotes 10% of the Works Progress Administration (WPA) funds to recreational purposes.
- 1933 The federal government appropriates \$1.4 million to finance a major portion of Newport Harbor construction costs. On December 19, 1933, Orange County voters endorse (by a vote of 17,350 for and 6,375 against) a \$640,000 bond issue to finance their portion of construction costs. In response, the County of Orange, with the approval of the State of California, forms the "Orange County Harbor District," reporting to the County Board of Supervisors. The Harbor District is a harbor improvement district under the law that provides the mechanism for the County to improve and develop Newport Harbor, issue the bonds (\$640K) to finance construction, assess and levy property taxes to pay bond investors, and cover the ordinary expenses of Harbor District operations. The total estimated cost of Newport Harbor improvements is \$1.8 million.
- 1936 Newport Harbor construction completed and dedicated by President Franklin Roosevelt. Total cost borne by the federal government, County of Orange, City of Newport Beach, and private investors is \$3.9 million.
- 1949 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation Code sections 5910 to 5915 which allows for California harbor

- improvement district revenues to be used for any current or future harbors within their boundaries.
- 1955 The city of Newport Beach proposes to “annex” Newport Harbor. The County formally protests the proposed annexation and adopts a resolution taking over complete management, control and operation of the harbor. As justification, the County cites that the bond issue for Newport Harbor improvements was approved and paid for by all County residents.
- 1957 The County hires a Harbor District Manager to manage Newport Harbor operations as well as the future planning and development of Dana Point Harbor. The Harbor District Manager directs the activities and personnel of the Harbor District, including Harbor Patrol and District Engineering staff. Harbor Patrol staffing consists of Harbor District peace officers with limited peace officer authority (Penal Code Section 830.4) who are not Sheriff deputies (Penal Code 830.1).
- 1961 The State of California makes a tidelands grant of Dana Point Harbor to the County of Orange. The County of Orange also adds Sunset Harbor to its Harbor District by Board Resolution 61-1010.
- 1961 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation sections 5940 to 5945 which allows for California harbor improvement districts to purchase/lease/develop/obtain by gift public beaches. In essence, the Orange County Harbor District essentially becomes a “harbors” and “beaches” district.
- 1963 The Board of Supervisors assigns the Harbor District administrative responsibility for managing the County’s regional land parks (a General Fund responsibility) and County unincorporated area local parks (funded through County Service Areas). Harbor District funds continue to pay for Harbor activities while County General Funds and County Service Areas are utilized for inland park operations.
- 1971 The construction of Dana Point Harbor was begun in the late 1960’s with the official harbor dedication in July 1971. Total approximate County cost of the Harbor was \$12 million.
- 1971 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation Code sections 5950 to 5956 which:
- Allows California harbor improvement districts to acquire/develop/operate/maintain inland parks and recreation areas using property tax revenue of the Harbor District.
 - States that if harbor improvement districts choose to pursue the acquisition of inland parks and recreational areas, state law requires that the harbor improvement district

- must be renamed to reflect this change. Accordingly, the Board of Supervisors renames the Orange County Harbor District to the "Harbors, Beaches & Parks (HBP) District."
- Establishes minimum expenditure ratio requirements between harbors/beaches and parks. For example, the law requires that at least 50% of its revenues be expended on inland parks and recreational purposes.
- 1973 The County of Orange and the city of Newport Beach enter into a Cooperative Agreement in regard to the Harbor Patrol operation in Newport Harbor.
- 1974 The County of Orange enters into a Cooperative Agreement with the City of Huntington Beach for cost sharing and joint administration of the maintenance and operation of Huntington Harbor waterways.
- 1975 In an effort to consolidate its environmental functions into one organization, the County of Orange forms the Environment Management Agency which includes: Harbors, Beaches & Park District; Road Program; Flood Control; Planning; and others. Also, as part of this reorganization and in support of the Board approved concept that the Sheriff act as the one law enforcement agency for all agencies governed by the Board of Supervisors, the Board reassigns the Harbor Patrol function from the Harbors, Beaches & Parks District to the Sheriff-Coroner Department. The Board directs that future services and costs for Harbor Patrol be negotiated between the Sheriff and HBP, with HBP continuing to fund the operation. In documentation of this transfer, the County Administrative Office also noted the following:
- The law enforcement functions of the Harbor Patrol are becoming increasingly more complex and technical and, for this reason, should be managed by personnel that are law enforcement specialists. The present Harbor Patrolman's (under HPB) powers are limited under Penal Code Section 830.4. By reassignment of these personnel as Sheriff's employees, they will be given full police officer powers under authority of Penal Code Section 830.1.
 - Two-thirds of Harbor Patrol activities are non-law enforcement orientated.
 - Both the HBP Harbor Patrol staff and the Sheriff's sworn personnel have the same compensation plan, including safety retirement – the County Employees Retirement Law of 1937. As a result, there is no change in retirement status or cost as a result of this transfer in the short term.

It should be noted that since the transfer of the Harbor Patrol operations from the HBP District to the Sheriff-Coroner Department, with HBP continuing to pay for these services, there has been a perpetual discussion and concern between HBP and the Sheriff-Coroner Department over Harbor Patrol costs, resulting in several studies which are identified below.

- 1976 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation Code section 5950.1 in order to more specifically define “inland parks and recreational areas” to include the acquisition/development/maintenance of open space lands and recreational trails.
- 1978 Agreement signed between the County of Orange/Harbors, Beaches & Parks District and the City of Seal Beach in regard to Harbor Patrol operation in Sunset Harbor within the City of Seal Beach.
- 1981 The County’s Environmental Management Agency (EMA) studies the costs associated with Harbor Patrol operations and the Sheriff’s Department ability to remain within the annual budget. The study is only used for informational purposes with no conclusions or recommendations provided. The Sheriff’s response to the study illustrates the current and on-going tension between EMA and the Sheriff’s Department over Harbor Patrol costs.
- 1982 The state Court of Appeal rules against the County of Orange in the State’s lawsuit against the County for using Dana Point Tidelands funds for non-harbor related expenses, including lifeguards outside the harbor boundaries, membership in local greenbelt commissions and tourist and visitors’ bureaus.
- 1983 The County Administrative Office (CAO) performs a Management Audit of Harbor Patrol operations as directed by the Board of Supervisors. Pertinent audit conclusions:
- With the exception of certain citizen arrest responsibilities, all functions of the Harbor Patrol could be performed by persons other than peace officers.
 - Based on a preliminary analysis, the Harbor Patrol function is an unlikely candidate for contracting.
 - Develop a formal Memorandum of Understanding (MOU) between the Sheriff’s Department and EMA concerning Harbor Patrol functions and defining respective responsibilities.
 - Develop a formal agreement with the City of Newport Beach defining patrol, fire, marine rescue, and law enforcement responsibilities.
 - Advocate for the diversion of non-emergency vessel assists to commercial operators.
 - Pursue sources of additional revenue such as charges for non-emergency vessel assistance, cost sharing with cities, and charges for special events.
- 1985 The Board of Supervisors directs the County Administration Office (CAO), Sheriff’s Department, and EMA to evaluate the feasibility of reducing Harbor Patrol service levels due to escalating costs. At this time, Harbor Patrol consumes 17% (\$3.6M in FY 85/86) of the HBP budget. Identified alternatives to reduce service levels:
- Reduce Harbor Patrol operational responsibilities

- Reduce operation hours
- Utilize lower paid position classifications to staff Harbor Patrol operations
- Contract with private companies for some Harbor Patrol services
- Charge user fees to increase revenue
- Pursue city contributions to Harbor Patrol operation and maintenance
- Ensure that only Harbor Patrol Services are charged to HBP

Study conclusions:

- Reducing service levels through a reduction of service hours or elimination of specific services is not desirable.
- The County could save \$862,000 by reducing the position classification level of Deputy Sheriff to Sheriff Special Officers.
- There is insufficient evidence to suggest that privatizing Harbor Patrol services would be feasible and/or efficient.
- User fees should be established to offset the cost of assistance rendered by Harbor Patrol staff to boaters.

The Sheriff sends letter to the CAO criticizing various aspects of the study.

The CAO recommends and in August 1986 the Board approves the replacement of Deputy Sheriff positions with lower cost Sheriff Special Officer positions. However, on November 25, 1986, due to the emergence of a variety of implementation issues, including a past history of these duties being performed by safety retirement personnel as well as several public letters expressing dissent, the Board rescinds this decision.

In addition, the Agenda Item to the Board from the CAO stated that some of the Harbor Patrol activities (firefighting and law enforcement) "...appear to be beyond the responsibility of the Harbors, Beaches, and Parks District. Compensation from cities which benefit from this level of service should be sought."

- 1985 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation Code section 5956 to allow for District funds to be expended on museums.
- 1985 The County of Orange and the City of Huntington Beach enter into a new agreement regarding the responsibilities for administering, operating, and maintaining Huntington Harbor.
- 1986 The County of Orange proposes and the California legislature approves changes to Harbors & Navigation Code section 5950 to allow for District funds to be expended on the promotion and advertisement of Harbors, Beaches and Parks facilities and programs.

- 1987 By Resolution 87-515, the Board of Supervisors approves a revised HBP fee schedule, including a new fee of \$48/hour for the provision of Harbor Patrol services to boaters such as non-emergency towing. This fee is never implemented as County Counsel opines in Opinion 88-385 that in order for Harbor Patrol to charge fees for towing it must have Coast Guard certifications.
- 1988-
- 1989 Near the end of fiscal year 1987/88, the Orange County Auditor-Controller determines that the County is likely to exceed its Gann Limit in that fiscal year (i.e., the approved voter Initiative which limited annual increases in appropriations by a factor for population growth and inflation). If the County exceeded the Gann limit in two consecutive years, it would have been required to effectively refund tax proceeds over the Limit through a future reduction in tax rates or fee schedules. This situation was exacerbated by a 1987 Court of Appeal opinion requiring another county to include in the appropriations that counted against its Gann Limit the annual payments to its retirement system. In April 1988, the Auditor-Controller advised that if the court decision were applied to Orange County, it would put the County \$13.8M over its Gann Limit. In order to mitigate this situation by the end of FY 87/88, the County, with the approval of the Local Agency Formation Commission (LAFCO), quickly dissolved the Harbors, Beaches & Parks District in order to add its \$44M Gann Limit to the County's Gann Limit. Subsequently, the County formed HBP County Service Area (CSA) 26. LAFCO approvals for these actions were subject to the condition that the County/CSA 26 would perform the following functions, which the County Board adopted by resolution:
- Assume the financial responsibility for providing HBP services.
 - Assume all liability for any outstanding HBP District bonds and any other contracts and liabilities.
 - Accept the transfer of all HBP District assets and that all assets would be used exclusively for HBP District purposes.
 - Assume all property tax revenues that formerly went to the HBP District.
 - Exercise the powers of and provide the facilities and services formerly provided by the HBP District.
- 1989 Internal memo from the County Harbor Master (Harbor Patrol Captain) reiterating Sheriff/Harbor Patrol vs. City of Newport Beach Police Department jurisdictional responsibilities. As primary duties: the Newport Beach Police Department is responsible for all crime that occurs in Newport Harbor. The Sheriff/Harbor Patrol is responsible for enforcing boating regulations in the harbor. When it becomes necessary for the Sheriff Harbor Patrol to arrest an individual in Newport Harbor, the following policy has been established: Newport Beach Police Department will accept and transport all persons detained for criminal activity (e.g., assault, theft, possession of stolen property) and those persons arrested for bench warrants; NBPD will not accept or

transport arrests for possession of narcotics, misdemeanor alcohol-related offenses, traffic offenses, or warrants other than those noted above.

- 1989 The Board of Supervisors adopts Resolution 89-1160 determining which Sheriff services are provided throughout the County free of charge. The Sheriff's Dive Team, part of Harbor Patrol, is one such listed service. The cost of the Dive Team, therefore, may not be charged to other entities.
- 1991-
- 1993 The Board, local community leaders, and the CAO examine the feasibility of contracting out a variety of County services, including Harbor Patrol operations. The study determines that contracting out for Harbor Patrol services is not feasible without the passing of state legislation. Senate Bill 1544 is proposed to allow for the privatization of certain County services but fails. As a result, the consideration of privatizing Harbor Patrol operations is discontinued.
- 1994 The County declares bankruptcy in December 1994. In 1995, the County issues a 20-year bond issue to assist in paying off bankruptcy debt. To repay bond holders, the County agrees to divert numerous sources of revenues. One such revenue source is a portion of property taxes apportioned to HBP CSA 26. Beginning in 1995, CSA 26 diverts \$4 million which is adjusted upward annually. The FY 10/11 payment is estimated to be \$9.3 million. These payments will cease after FY 15/16 and will result in substantial increased revenue to CSA 26.
- 1995 The Board of Supervisors directs EMA and the Sheriff Department to examine cost recovery options for Harbor Patrol emergency response and towing services. EMA and the Sheriff's Department complete a comprehensive review of many Harbor Patrol issues and cost saving proposals, and recommend: (1) no material changes in the current Harbor Patrol operation be made at this time, (2) all revenue enhancement opportunities be reviewed by County Counsel for legality/liability purposes, (3) reallocate all or a portion of the County's share of boat sales tax, property tax and fuel tax to the Sheriff's budget. In addition, Assembly Bill 122 is introduced that proposes the establishment of a trust fund administered by the state Department of Boating and Waterways which would appropriate 20% of the revenues from vessel fuel taxes and registration fees for prorated allocation to counties based on their percentage of vessels registered statewide. This legislation fails to pass.
- 1996 For internal purposes, the Sheriff's Department compiles a document which provides a general overview of Harbor Patrol operations and a listing of all major issues.
- 1995 A private group called "Public Assets Management" proposes to contract with the County of Orange to provide Harbor Patrol services. The CAO and Sheriff Department recommend against this proposal and no further action is taken.

- 1999 The Newport Beach City Council conducts a study session to review the pros and cons of various Newport Tidelands issues, including identifying the pros and cons of the City asking the County to allow the City to begin administering the Newport Bay Harbor Patrol operations. There is no information to determine what happens as a result of this discussion.
- 2001 The Board of Supervisors approves the implementation of the 3% @ 50 retirement plan (implemented in June 2002) and authorizes a 4% general salary increase for public safety employees, resulting in significant increases to Harbor Patrol expenditures (18.5% in 02/03 and 9.6% in 03/04), further exacerbating the parks/harbors funding equity issue.
- 2005 The Board of Supervisors directs the County Executive Office (CEO), Sheriff, and HBP staff to study the Harbor Patrol staffing and budget, including an assessment of funds that are and could be used to pay for Harbor Patrol, in an effort to support a viable deferred maintenance and capital improvement program for inland parks. Pertinent study results:
- With the exception of section 510, the Harbors & Navigation Code enables the County to provide Harbor Patrol services, but there is no legal requirement to do so. (This assumed—partly erroneously—that all the harbors were within city limits and did not take account of the requirements arguably imposed on the County by the 1988/89 LAFCO resolutions.)
 - Duties of Harbor Patrol staff have increased in recent years to including training, education, mutual aid, and the growing area of Homeland Security.
 - Annual costs of Harbor Patrol are \$10M which represents a 100% increase over the past 10 years. This increase is primarily attributable to increases in salaries and benefits which represent 95% of the Harbor Patrol budget. Therefore, any meaningful reduction in costs must be made in this expense category.
 - Potential sources of alternative funding identified:
 - County General Fund -- given the regional nature of County harbors/beaches which attract more people per year than all inland County parks combined, the tremendous amount of revenue generated in these areas, and increased homeland security role played, the use of County General Funds should be considered as a revenue source.
 - Cities – The harbor cities derive substantial benefit from the harbors and harbor patrol. In the event the County determines it is practical and necessary to reduce current Harbor Patrol costs/service levels, individual cities may desire to continue or increase current County service levels using city funds.
 - Prop 172 – Harbor Patrol services are funded 100% by HBP and Tidelands funds; no Prop 172 funds are contributed. The allocation of some Prop 172 funds for Harbor Patrol is reasonable.

- Service level reductions (staff, hours, activities, use of lower level classifications).

- 2006 The new Memorandum of Understanding with the Association of Orange County Deputy Sheriffs is approved which results in substantial increases to Harbor Patrol expenses. This increase is primarily due to increases in P.O.S.T. pay and a series of three general salary increases: 4.75% in October 2006, 4.6% in October 2007, and 3.0% in October 2008.
- 2007 Subsequent to the 2005 study of Harbor Patrol by the CEO's Office, the Board of Supervisors approves replacing HBP CSA 26 funds allocated for Harbor Patrol with County General Funds for FY 07/08. This approach is discontinued after this year.
- 2008 The Sheriff's Department signs MOU with US Coast Guard (USCG) regarding law enforcement, harbor safety, and Homeland Security in the coastal areas of Orange County. The purpose of the agreement is to: (1) define the nature and extent of services, systems, and facilities each agency will provide, (2) provide a coordinated response by the USCG and OCSD to incidents threatening life, environment or property, (3) agree on the use of the National Incident Management System/Incident Command System for a coordinated multi-agency response, and (4) provide for the timely exchange of information.
- 2008 The Board of Supervisors directs the CEO and Sheriff's Department to identify and evaluate Harbor Patrol activities. The project is called the Marine Operations Statistical Analysis (MOSAP). A sample of the type of statistics collected include:
- % of harbor versus ocean (local and international waters) activities
 - % of law enforcement versus non-law enforcement activities
 - Type of activity by harbor and by time of day
 - Boat usage by activity
 - Codes enforced by Harbor Patrol deputies
 - Written agreements with cities of Newport Beach, Huntington Beach, Seal Beach; Seal Beach Naval Weapons Station; Coast Guard
 - Staffing plan developed based on compliance only with Harbors & Navigation Code 510 requirements
- 2009 An October 13 memo from Sheriff Hutchens to Supervisor Moorlach concludes that for a variety of reasons, the Sheriff believes it is currently not appropriate to implement reduced staffing levels or different position classifications for Harbor Patrol.
- 2010 During the FY 09/10 Budget Hearings on June 9, 2009, the Board of Supervisors directs the CEO, Sheriff and Board staff to form a Harbor Patrol Working Group to provide the Board with an analysis of three issues: (1) what portion of Harbor Patrol should be

performed by the Sheriff Department?, (2) how should Harbor Patrol be funded?, and (3) how should Harbor Patrol be staffed? The Board considers the Working Group's Oral Report at its January 12, 2010 meeting which provides the following findings:

- In the incorporated (city) areas, the Sheriff performs duties well beyond the requirements of the law, including such activities as law enforcement functions (that could be done by cities), educational functions, homeland security functions, marine and residential firefighting, and environmental protection and enforcement.
- Other California harbors such as Channel Islands, Santa Barbara, and Oceanside employ 830.31 and 830.33 peace officers who have a more limited peace officer duty capability and cost less than the 830.1 deputy sheriff employees utilized by the Sheriff for Harbor Patrol activities.
- The Board of Supervisors has no direct control over the Sheriff's decision on how to staff Harbor Patrol either directly or through budgetary measures.
- There are perhaps three alternatives to funding Harbor Patrol: (1) continue the current funding arrangement using a cost apply method; (2) fund Harbor Patrol through the Sheriff's Department through a General Fund commitment; (3) use alternatives (1) and (2), but obtain contributions from cities that directly benefit from Harbor Patrol services.
- It appears that it is not currently feasible for the Sheriff to contribute to Harbor Patrol funding.
- The County cannot compel cities to contribute toward the cost of Harbor Patrol and it cannot discontinue Harbor Patrol services, at least those which are statutorily mandated. Thus, all the county can do is discontinue all non-mandated services.
- The Working Group was unable to reach a consensus on the best method for raising revenue or for funding Harbor Patrol.
- The essential nature of the County's harbors appears to be regional, not local.

At the conclusion of January 12 Board meeting, the Board directed that this issue be studied further by the Office of the Performance Audit Director. Subsequently, on January 26, 2010, the Board approved a scope of work for the study, directing the Office of the Performance Audit Director to address the following issues related to Harbor Patrol:

- Detail all harbor patrol activities not mandated by State law.
- Describe all harbor patrol services currently provided by the Sheriff's Department.
- Determine if the Sheriff's Department has the appropriate number and level of staff to adequately perform mandated services.
- Identify non-mandated services that could be performed by the private sector.
- Detail all existing and potential harbor-related revenue.
- Detail and analyze all harbor patrol expenses both current and historical.

Appendix C: Comparison of Orange County’s Harbor Patrol Operations/ Funding with Other California Municipal Harbor Patrol Operations

Agency/ Municipality	Description	Departmental Alignment	Other Law Enforcement Presence on the Water	Level of Patrol Staff	Fire Fighting	EMT Trained	Dive Team	Coast Guard Towing Endorsement
Orange County	The Harbor Patrol / Marine Operations Bureau patrols the County’s three harbors: Huntington Beach / Sunset Beach Harbor, Newport Harbor, and Dana Point Harbor	County Sheriff’s Department	No other general law enforcement in the harbors. City lifeguards in Newport Beach and Huntington Beach have ability to enforce boating laws, but do not patrol harbors.	Fully Sworn Peace Officers	Yes	No	Yes	No
Channel Islands/ Ventura County	Harbor is owned and operated by the County of Ventura.	Harbor Department	County Sheriff has boats but they do not patrol the harbor; Sheriff and City have dive teams.	Limited Peace Officers	Yes	Yes	No	Yes
City of Santa Barbara	The Harbor Patrol is operated by the city’s Waterfront Department.	Waterfront Department	County Sheriff is responsible for County waters and has a dive team, but Sheriff has only one boat and does not have a consistent presence.	Limited Peace Officers	Yes	Yes	No	Yes
City of Oceanside	Harbor Police are a unit of the City of Oceanside city police department as of October 2009.	City Police Department	No other general law enforcement in the harbor. Harbor Patrol is part of city police department.	Fully Sworn Peace Officers	Yes	Yes	Yes	No
City of San Diego (Mission Bay)	The Lifeguard Boating Safety Unit provides harbor patrol and ocean rescue services for Mission Bay, San Diego’s recreational harbor.	City Fire Department	No other law enforcement presence in the harbor. City of San Diego’s boating unit was recently eliminated due to budget cuts.	Limited Peace Officers	Yes	Yes	Yes	No
Santa Cruz Port District	Santa Cruz harbor’s Harbor Patrol is provided by the Port District, a political sub-division of the State of California.	Special District	No other general law enforcement in the harbor.	Fully Sworn Peace Officers	Yes	Partial	No	Yes
City of Long Beach	The City’s fire department operates the Rescue Boat Division.	City Fire Department	Long Beach port has two police boats staffed by police officers that stay mostly in the port area but will occasionally come to the recreational area if needed. Otherwise, no other consistent law enforcement.	Both Limited Peace Officers and Public Officers	Yes	Yes	Yes	Yes
City of Monterey	The primary role of the City’s harbor patrol is to observe and report incidences.	City	The harbor patrol does not conduct law enforcement duties; rather, law enforcement on the waters is primarily the responsibility of the Coast Guard with land support by City police.	Civilian	No	No	No	No
Los Angeles County (Marina Del Rey)	The Boat Operations Unit/Harbor Patrol of LA County’s Marine Unit operates along 72 miles of coastline and within the marina	Sheriff’s Department	No other general law enforcement in the marina and along the coast (aside from Port Police in the port areas)	Fully Sworn Peace Officers	Yes, but not primary responsibility	Yes	Yes	Partial (approx. 50% of deputies have license)

Agency/ Municipality	Funding Source	Approx. Budget	Jurisdiction	Staff	Patrol Vessels	Maintenance
Orange County	Tidelands Funds, County Service Area Fund	\$12.0M (across 3 harbors)	Harbors and 3 miles out along the coast	1 Lt/ 7 Sgts/ 40 Deputies	6 fire boats, 9 patrol boats, 1 dive team inflatable boat	8 full time maintenance staff plus 1 clerical staff
Channel Islands/ Ventura County	Enterprise Fund	\$2.0M (salaries only)	Routine patrol in harbor and 1 mile radius around harbor entrance	1 Capt/ 2 Sgts / 13 officers	1 fireboat, 6 patrol boats, 4 Boston Whalers, 1 RIB	7 full-time maintenance staff (also responsible for beaches and land/ facilities)
City of Santa Barbara	Enterprise Fund	\$1.8M (\$1.6M in salaries)	Within city limits and out 3 miles	1 Capt / 1 Sgt / 9 officers	2 fire boats, 1 backup barge with water pump, 2 smaller boats	1 in-house mechanic; outsource larger jobs
City of Oceanside	Enterprise Fund	\$1.5M	Routine patrol in harbor only	1 Commander / 1 Sgt / 8 Officers	3 fire boats, 1 patrol/rescue boat	Outsourced
City of San Diego (Mission Bay)	General Fund	\$16.2M for entire Lifeguard Unit	Mission Bay and 3 miles out	Boating Safety Unit 1 Chief/ 1 Capt/ 1 Lt/ 4 Sgts/ 24 officers- Lifeguards 3 Lts/ 12 Sgts/ 44 Officers	2 fire boats, 7 rescue boats	2 full time maintenance staff
Santa Cruz Port District	Special District	\$2.5M	Within channel	1 Lt / 1 Sgt / 10-13 Officers	2 patrol boats, 2 cars	10-12 staff (for entire port district)
City of Long Beach	Marina Fund, Harbor Fund, Tidelands Fund	\$6.7M (includes entire boat division and lifeguards)	Within breakwater, 2 marinas within the harbor	1 Capt / 11 Sgt / 11 Officers	3 boats	Outsourced
City of Monterey	Marina Fund, General Fund	\$3.5M (includes harbor mgmt.)	Within waterfront / harbor	11 Civilian Staff	2 boats (work platforms)	1 in-house mechanic; outsource larger jobs
Los Angeles County (Marina Del Rey)	Sheriff's General Fund	\$2.0M* (approx.)	Marina and along the coast	1 Lt. / 1 Sgt / 16 Officers	6 boats in marina unit	1 mechanic and 1 boatwright in-house, but looking to outsource

* Based on January 2009 Survey conducted by OCSD Harbor Patrol

Appendix D: Total Property Tax Contributions to CSA 26, by City

Jurisdiction	Sum of Secured Revenue to CSA 26	Unsecured Revenue to CSA 26	Supplemental Revenue to CSA 26	Total Property Tax Revenue to CSA 26	Population (1-1-2010)	Total Prop. Tax Contribution to CSA 26 Per Capita
Newport Beach	\$5,062,957	\$212,703	\$98,362	\$5,374,021	86,738	\$61.96
Laguna Beach	\$1,377,524	\$13,356	\$32,665	\$1,423,545	25,354	\$56.15
Dana Point	\$1,083,111	\$37,836	\$14,585	\$1,135,532	37,326	\$30.42
Irvine	\$6,016,455	\$451,199	\$46,458	\$6,514,113	217,686	\$29.92
San Clemente	\$1,717,613	\$32,259	\$11,552	\$1,761,424	68,763	\$25.62
Villa Park	\$155,176	\$745	\$2,220	\$158,141	6,307	\$25.07
Unincorporated Total	\$2,626,985	\$47,086	\$25,001	\$2,699,072	120,088	\$22.48
Laguna Niguel	\$1,383,221	\$16,503	\$10,121	\$1,409,845	67,666	\$20.84
Aliso Viejo	\$936,416	\$33,937	\$21,651	\$992,005	46,123	\$21.51
Laguna Hills	\$631,778	\$20,244	\$3,373	\$655,395	33,593	\$19.51
Seal Beach	\$472,792	\$16,647	\$12,138	\$501,576	26,010	\$19.28
Rancho Santa Margarita	\$881,550	\$30,390	\$3,375	\$915,314	49,945	\$18.33
San Juan Capistrano	\$655,363	\$10,646	\$1,798	\$667,807	37,233	\$17.94
Lake Forest	\$1,216,093	\$75,196	\$7,259	\$1,298,548	78,720	\$16.50
Laguna Woods	\$287,262	\$6,796	\$3,041	\$297,098	18,747	\$15.85
Costa Mesa	\$1,766,088	\$146,109	\$16,441	\$1,928,639	117,178	\$16.46
Huntington Beach	\$3,043,264	\$118,786	\$42,410	\$3,204,460	203,484	\$15.75
Mission Viejo	\$1,474,964	\$27,557	\$11,932	\$1,514,454	100,725	\$15.04
Yorba Linda	\$909,550	\$7,977	\$12,405	\$929,932	69,273	\$13.42
Los Alamitos	\$154,040	\$15,830	\$2,390	\$172,260	12,270	\$14.04
Tustin	\$930,174	\$38,988	\$10,001	\$979,163	75,773	\$12.92
Orange	\$1,659,295	\$57,303	\$13,461	\$1,730,058	142,708	\$12.12
Anaheim	\$3,923,494	\$161,986	\$20,866	\$4,106,346	353,643	\$11.61
Fullerton	\$1,495,695	\$87,573	\$19,035	\$1,602,304	138,610	\$11.56
Fountain Valley	\$619,821	\$15,312	\$12,609	\$647,743	58,741	\$11.03
Brea	\$425,270	\$19,392	\$3,438	\$448,100	40,377	\$11.10
Placentia	\$542,480	\$15,881	\$3,114	\$561,475	52,305	\$10.73
Cypress	\$419,431	\$23,291	\$4,902	\$447,625	49,981	\$8.96
La Palma	\$135,614	\$1,905	\$1,275	\$138,794	16,304	\$8.51
La Habra	\$474,612	\$14,573	\$2,735	\$491,920	63,184	\$7.79
Buena Park	\$555,459	\$24,434	\$1,803	\$581,696	84,141	\$6.91
Garden Grove	\$1,042,509	\$36,208	\$5,247	\$1,083,964	175,618	\$6.17
Santa Ana	\$1,822,732	\$102,290	-\$27,378	\$1,897,643	357,754	\$5.30
Westminster	\$346,271	\$11,392	\$0	\$357,663	94,294	\$3.79
Stanton	\$95,644	-\$4,992	-\$9	\$90,643	39,799	\$2.28
Grand Total	\$46,340,704	\$1,927,340	\$450,278	\$48,718,321	3,166,461	\$15.39

*Please note that the Totals for Secured, Unsecured, and Supplemental Property Tax Revenues do not match exactly the totals noted in the Revenue section of this report. This differential exists because the totals in the Revenue section include some additional property tax categories, such as prior year tax revenues. In addition, the numbers in the chart above are based on estimates from the Auditor-Controller's Office, as where the amounts cited earlier in the report are precisely tracked in the CAPS+ System.

Appendix E: Potential Methods for Achieving Option 1 (Shared Cost Model)

A. **NCC Limited.** Each year, during budget development, the County Executive Office provides a rate by which all General Fund/Net County Costs (NCC) are allowed to grow. This growth rate is determined through an analysis of projected revenue for the upcoming fiscal year. Method A would limit the rate by which OCSD can increase its charges to OC Parks/DPH for Harbor Patrol to only the approved NCC growth rate in each year, with OCSD paying the difference. The chart below illustrates how this method would unfold:

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)		\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Projected NCC Growth Rate		-6.00%	-2.00%	2.00%	2.00%	2.00%
OC Parks/DPH/Tidelands Contribution (M)	\$ 12.0	\$ 12.0	\$ 12.0	\$ 12.2	\$ 12.5	\$ 12.7
OCSD Contribution (M)	\$ -	\$ 0.8	\$ 0.9	\$ 1.1	\$ 1.1	\$ 1.0

** In years of negative NCC growth, OC Parks/DPH contribution is held flat*

In the above example, in Year 2, the OC Parks/DPH/Tidelands Funds contribution is held flat because the NCC Growth Rate is projected to be negative (-2%).

B. **Freeze OC Parks Contribution.** In this method, the cost of Harbor Patrol billed to OC Parks/DPH is held at \$12.0M (actual cost in FY 09/10); in each year, OCSD pays the difference between \$12.0M and the actual cost of Harbor Patrol until the Estimated Cost of using “OC Parks Harbor Patrol Officers” (vs. using Deputy Sheriff) exceeds \$12.0M. The chart below illustrates how this method would unfold:

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Estimated Cost of "OC Parks Harbor Patrol Officer"		\$ 10.3	\$ 10.4	\$ 10.7	\$ 10.8	\$ 10.9
Incremental Cost of using Deputy Sheriffs		\$ 2.5	\$ 2.5	\$ 2.7	\$ 2.8	\$ 2.9
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
OC Parks/DPH/Tidelands Contribution (M)		\$ 12.0	\$ 12.0	\$ 12.0	\$ 12.0	\$ 12.0
OCSD Contribution (M)		\$ 0.8	\$ 0.9	\$ 1.3	\$ 1.5	\$ 1.8

Using this method, in the example above, OC Parks/DPH/Tidelands Funds contribution remains at \$12.0M through Year 5, as the Estimated Cost of using “OC Parks Harbor Patrol Officers” has not reached the \$12.0M threshold. When it does reach the threshold in a future year, OC Parks/DPH/Tidelands Funds will contribute only up to the Estimated Costs of using “OC Parks Harbor Patrol Officers.”

C. **Escalating Proportional Cost.** In this method, OCSD pays an escalating proportion of the incremental cost of using fully sworn deputies in that particular year. In this example, the escalation period is 5 years, in which case OCSD pays 1/5 of the incremental cost in Year 1, 2/5 of the incremental cost in Year 2, etc., until OCSD is paying the entire incremental cost by Year 5 and in each subsequent year. The chart below illustrates how this method would unfold:

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Estimated Cost of "OC Parks Harbor Patrol Officer"		\$ 10.3	\$ 10.4	\$ 10.7	\$ 10.8	\$ 10.9
Incremental Cost of using Deputy Sheriffs		\$ 2.5	\$ 2.5	\$ 2.7	\$ 2.8	\$ 2.9
OC Parks/DPH/Tidelands Contribution (M)		\$ 12.3	\$ 11.9	\$ 11.7	\$ 11.3	\$ 10.9
OCSD Contribution (M)	\$ -	\$ 0.5	\$ 1.0	\$ 1.6	\$ 2.2	\$ 2.9

In the example above, OCSD’s contribution of \$0.5M in Year 1 is 1/5 of the Incremental Cost of \$2.5M. In Year 2, OCSD contributes 2/5 of the \$2.5M Incremental Cost. This continues until OCSD contributes 5/5 (i.e., all) of the \$2.9M in Incremental Cost in Year 5. Going forward, OCSD would continue to pay the full Incremental Cost.

The review team has developed three variations of the Escalating Proportional Cost method, which incorporate OCSD’s and OC Parks/DHP’s ability to pay:

- i. Variation 1: OCSD still pays 1/5 of the current year’s cost differential in Year 1; however, escalation to the next 1/5 (i.e., 2/5, 3/5, 4/5, 5/5) is only triggered when the current year’s percentage change in Proposition 172 Sales Tax Revenue is positive. Current sales tax projections indicate that OCSD would be covering the full differential by Year 5; however, this variation allows for a pause in the escalation schedule if sales tax revenues stay flat or decline.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Estimated Cost of "OC Parks Harbor Patrol Officer"		\$ 10.3	\$ 10.4	\$ 10.7	\$ 10.8	\$ 10.9
Incremental Cost of using Deputy Sheriffs		\$ 2.5	\$ 2.5	\$ 2.7	\$ 2.8	\$ 2.9
Projected Increase in Prop 172 Sales Tax		3.5%	4.95%	5.0%	5.0%	5.0%
OC Parks/DPH/Tidelands Contribution (M)		\$ 12.3	\$ 11.9	\$ 11.7	\$ 11.3	\$ 10.9
OCSD Contribution (M)		\$ 0.5	\$ 1.0	\$ 1.6	\$ 2.2	\$ 2.9

- ii. Variation 2: OCSD still pays 1/5 of the current year’s cost differential; however, escalation to the next 1/5 (i.e., 2/5, 3/5, 4/5, 5/5) is only triggered when the current year’s percentage increase in Proposition 172 Sales Tax exceeds the percentage increase in Property Tax Revenue. Using current sales tax and property tax growth projections, OCSD would not be covering the full differential by Year 5. Notice that in Year 2 the escalation is paused because sales tax growth is less than property tax growth.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Estimated Cost of "OC Parks Harbor Patrol Officer"		\$ 10.3	\$ 10.4	\$ 10.7	\$ 10.8	\$ 10.9
Incremental Cost of using Deputy Sheriffs		\$ 2.5	\$ 2.5	\$ 2.7	\$ 2.8	\$ 2.9
Projected Increase in Prop 172 Sales Tax		3.5%	4.95%	5.0%	5.0%	5.0%
Increase in Property Taxes		-1.4%	5.5%	4.0%	4.4%	4.5%
OC Parks/DPH/Tidelands Contribution (M)		\$ 12.3	\$ 12.4	\$ 12.3	\$ 11.9	\$ 11.4
OCSD Contribution (M)		\$ 0.5	\$ 0.5	\$ 1.1	\$ 1.7	\$ 2.3

- iii. Variation 3: OCSD still pays 1/5 of the current year’s cost differential; however, escalation to the next 1/5 (i.e., 2/5, 3/5, 4/5, 5/5) is only triggered when the current year’s percentage increase in Proposition 172 Sales Tax exceeds the percentage increase in NCC. Using current sales tax and NCC growth projections, OCSD would be covering the full differential by Year 5.

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected Full Cost of Harbor Patrol (M)	\$ 12.0	\$ 12.8	\$ 12.9	\$ 13.3	\$ 13.5	\$ 13.8
Estimated Cost of "OC Parks Harbor Patrol Officer"		\$ 10.3	\$ 10.4	\$ 10.7	\$ 10.8	\$ 10.9
Incremental Cost of using Deputy Sheriffs		\$ 2.5	\$ 2.5	\$ 2.7	\$ 2.8	\$ 2.9
Projected Increase in Prop 172 Sales Tax		3.5%	4.95%	5.0%	5.0%	5.0%
Projected NCC Growth Rate		-6.00%	-2.00%	2.00%	2.00%	2.00%
OC Parks/DPH/Tidelands Contribution (M)		\$ 12.3	\$ 11.9	\$ 11.7	\$ 11.3	\$ 10.9
OCSD Contribution (M)		\$ 0.5	\$ 1.0	\$ 1.6	\$ 2.2	\$ 2.9

Summary

OCSD’s contribution each year in all three methods (A, B, and C) is relatively small in comparison to projected Prop 172 Sales Tax Revenues (< 1.5%), as shown in the table on the following page:

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
		FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Projected % Increase in Prop 172 Sales Tax		3.5%	4.95%	5.0%	5.0%	5.0%
Projected Dollar Increase in Prop 172 Sales Tax (M)		\$ 6.3	\$ 9.3	\$ 9.8	\$ 10.3	\$ 10.8
Projected Prop 172 Sales Tax Revenue (M)	\$ 180.6	\$ 187.0	\$ 196.2	\$ 206.0	\$ 216.3	\$ 227.2
Method A: OCSD Contribution as a % of Total Prop 172 Sales Tax Revenue	0.0%	0.4%	0.5%	0.5%	0.5%	0.5%
Method B: OCSD Contribution as a % of Total Prop 172 Sales Tax Revenue	0.0%	0.4%	0.5%	0.7%	0.7%	0.8%
Method C: OCSD Contribution as a % of Total Prop 172 Sales Tax Revenue	0.0%	0.3%	0.5%	0.8%	1.0%	1.3%

Appendix F: Estimated Unsecured Property Tax on Boats and Possessory Interests, by City for FY 09/10

City/Jurisdiction	Estimated Unsecured Property Tax on Boats	Estimated Possessory Interest Tax	Total Boating/Harbor Related Revenues
Newport Beach	\$723,365	\$28,413	\$751,778
Huntington Beach	\$218,167	\$29,179	\$247,346
Dana Point	\$129,208	\$71,556	\$200,765
Costa Mesa	\$2,983	\$159,402	\$162,386
Irvine	\$4,620	\$37,763	\$42,383
<i>Unincorporated*</i>	\$3,081	\$28,554	\$31,634
Seal Beach	\$18,659	\$11,475	\$30,133
Anaheim	\$1,766	\$21,306	\$23,072
Fullerton	\$778	\$16,606	\$17,384
Fountain Valley	\$181	\$15,063	\$15,243
Lake Forest	\$227	\$13,118	\$13,345
San Clemente	\$3,279	\$1,756	\$5,035
Santa Ana	\$351	\$4,467	\$4,817
Orange	\$899	\$3,864	\$4,763
Yorba Linda	\$3,096	\$1,173	\$4,269
Cypress	\$0	\$3,254	\$3,254
La Palma	\$557	\$2,237	\$2,794
Garden Grove	\$364	\$2,239	\$2,603
Laguna Niguel	\$1,470	\$212	\$1,682
Westminster	\$161	\$1,517	\$1,678
Tustin	\$1,340	\$264	\$1,604
Laguna Hills	\$187	\$1,399	\$1,586
Mission Viejo	\$870	\$323	\$1,193
Laguna Beach	\$282	\$859	\$1,141
San Juan Capistrano	\$175	\$701	\$876
Rancho Santa Margarita	\$475	\$376	\$851
Stanton	\$0	\$689	\$689
Buena Park	\$305	\$342	\$646
Aliso Viejo	\$0	\$636	\$636
Villa Park	\$436	\$0	\$436
Placentia	\$134	\$6	\$140
Brea	\$2	\$117	\$119
La Habra	\$95	\$20	\$115
Laguna Woods	\$0	\$0	\$0
Los Alamitos	\$0	\$0	\$0
Grand Total	\$1,117,513	\$458,885	\$1,576,398

*All unsecured property taxes from unincorporated areas flow to the County.

*Only a portion of Unsecured Property Tax on Possessory Interests pertains to boat slips. The detailed data needed to discern this proportion is not readily available.