



THE BRITISH COLUMBIA COAST PILOTS LTD.

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October 30, 2017

Mr. Gregoire
Chair
Pilotage Act Review

Dear Mr. Gregoire,

We are in receipt of your letter dated August 2017 where you requested our insights and advice regarding the current federal review of the *Pilotage Act*. In addition, we have received a copy of your document entitled *Pilotage Act Review Discussion Document* (the "*Document*") with your request for our review and participation. We believe we have articulated our views formally on the following pages, but remain available to you at any time, should any questions arise or clarifications be required.

The current pilotage model is successful in Canada and provides a safe, efficient, cost effective, and environmentally responsible service to the Canadian people and the environment while facilitating trade and maintaining public trust. We are confident the review will validate the success and appropriateness of the existing framework. Canada is a recognized world leader in marine pilotage and in fact, the President of the Canadian Marine Pilots Association also serves as the President of the International Marine Pilots Association which allows for our expertise to be shared worldwide.

Before we address the specifics raised in the *Document*, we offer the following general comments:

1. Purpose - Pilots serve the Canadian public through protection of the environment by providing independent safety related decisions. Pilotage provides ship-owners with the required social license to trade in Canadian waters. The customer of the pilotage service is the Canadian public and the pilot will always make decisions based on the best interests of the environment.
2. Safety – Pilotage in Canada is safe as demonstrated by the enviable safety record of 99.96% incident free assignments and the coastal communities and First Nations approval/confidence in the current regime.
3. Regulation – Pilotage in Canada is provided as a regulated monopoly: independence enables pilots to make safety sensitive decisions without competitive pressures and regulation provides the required safety structure under which pilots operate. Pilots are an essential service and are required by law to provide uninterrupted pilotage services.
4. Efficiency – Pilots facilitate trade by moving vessels into and out of harbors expeditiously without delays. The efficiency of the process is evidenced by the annual increase in tonnage safely moved through ports and harbors.

5. Quality of service - Pilots are professional mariners with many years of local knowledge who undergo lifelong training and assessments throughout their career. BCCP members adhere to the Company's Quality Assurance System which is reviewed and adjusted as required.
6. Technology – Pilots rapidly adopt new technology to increase service levels. An example of this is the customized navigational solution called "Portable Pilotage Units (PPU)" that pilots carry on board vessels. These are independent from the ship's systems and provide a greater degree of accuracy.
7. Tariff (rate) setting process – Pilotage tariffs must not be prejudicial to the public interest and are established through a transparent process involving dialogue with those who pay for the services. Any party has the right to request third party intervention to resolve any disputes. There are alternatives to pilotage such as certificates or waivers if the applicant can demonstrate comparable knowledge and ability to assure required safety levels and environmental protection can be upheld.
8. Cost – Pilotage provides a significant net cost-benefit ratio. Canadian tariffs are competitive with international rates and, in particular, with those in place at neighbouring American ports. Unlike other transportation models in Canada, pilotage does not suffer from safety related issues, high costs of infrastructure, manning or training issues. None of the pilotage costs are borne by government. On the Canadian west coast, foreign ship-owners pay the necessary fees to trade in Canadian waters including tugs, longshoreman, agents, port dues, Canadian Coast Guard service fees, and pilotage. While we understand the ship-owners desire to reduce expenses wherever possible, the focus of the review should always be on the improvement of safety and operational efficiency, not reduction or elimination of pilotage services due to cost.
9. Regionalization – The four Pilotage Authorities across Canada manage pilotage on a regional basis which provides the ability to respond quickly to local needs through proximity, local knowledge and access to historical practices. Although this may lead to minor differences in how pilotage is applied across the country, it adds value to the system by enabling customized approaches to local concerns. In the Pacific region, pilots have developed a strategic relationship with the Pilotage Authority and collaborate regularly with industry, as well as fostering ongoing relationships with stakeholders and coastal communities including First Nations.
10. Future - Pilotage is well positioned for the future. The *Pilotage Act* and Pilotage Regulations enable continuous improvement in response to fluctuations in traffic, evolution in vessel size, and changing technology. This perpetual "modernization" is evidenced when examining the changes which have occurred in pilotage since the Act was formed in 1972. Further modernization will continue over time to enhance environmental protection and public trust while continuing to accommodate industry's needs.

All the stated factors are critical elements to address the increasing risk aversion and higher level of awareness and expectation of safety and environmental protection by coastal communities and the public.

In response to the specific issues raised in the *Document* and subsequent conversations with Transport Canada, we offer the following:

1. Governance

a. Regionalization

The Pilotage Act has established four separate pilotage districts in Canada, each administered by a regional Pilotage Authority to ensure pilotage is provided in a safe, efficient, and environmentally responsible manner. This regionalization has enabled the Pilotage Authorities to customize pilotage services to respond quickly and efficiently to the unique characteristics of each district. In the Pacific, this has resulted in a service tailored to the distinct and unique coastal waterways of British Columbia.

Pilotage by nature is regionally distinct and was provided as such since pilots first serviced vessels in BC in the mid-1800s.

The suggestion that Pilotage Authorities should be amalgamated into a single entity to enable uniformity of services across the country is not a prudent one, as pilotage regions and public needs are not uniform.

Amalgamation models have shown that it is harder and more difficult to communicate and coordinate on regional issues, while regionalization provides a more flexible and responsive system.

In addition, amalgamation would limit the ability of regional stakeholders to have their voices heard, coupled with a reduced ability to respond to local concerns. Any changes to the current system could negatively impact the pilots and Pacific Pilotage Authority's relationship with coastal communities and First Nations which has been developed and is continually being fostered around common and historical regional values.

As such, we strongly advocate the current regional structure of pilotage be preserved.

b. Board Composition

The Pilotage Board of Directors' mandate is to provide safe, efficient, and environmentally responsible pilotage. The historical Board composition consists of seven members of which two are from industry, two are active Pilots, two are public members, and all are led by an independent Chair. The safety sensitive role of the Pilotage Board requires subject matter experts from both Pilots and Industry to ensure the Board meets its mandate and public expectations.

Pilot and industry representatives are required to protect the marine community by ensuring appropriate Board responses to marine concerns. A science/evidence based approach for decision making includes the use of the hands-on knowledge provided by the industry/pilot Board members to enable the Board to fulfill its mandate.

The balanced representation prevents perception of conflict of interest and provides counterpoints to any industry or pilotage specific discussions.

One alternative to concerns raised over composition is to consider appointing one of the public members to represent social and environmentally responsible interests, such as those of the coastal communities or First Nations.

The greater use of risk assessment processes and evidence based decision making should also be considered. This provides the opportunity for industry, pilots, the public and the regulator to be involved in the decision-making process and removes any perception of a conflict of interest by any party.

2. Safety

The Canadian pilotage system is a world leader with a 99.96% incident free assignments. This remarkable statistic was achieved under the current *Pilotage Act* through employing highly qualified mariners, requiring they undergo extensive training throughout their career, and adopting the latest technological advances to both provide additional layers of safety and enable increasing efficiencies.

a. Pilotage Risk Management Methodology (PRMM)

One of the challenges facing the marine industry is the ever-increasing size of vessels, using existing waterways with confined space or calling at berths designed for vessels a fraction of their size. Pilots and the Pilotage Authorities work with ports and stakeholders to review the risks associated with these vessels and agree upon risk mitigation strategies to reduce risk to acceptable levels.

The Pilotage Risk Management Methodology (PRMM) is the risk assessment process designated by Transport Canada for use by Pilotage Authorities. It was successfully used on several occasions in the Pacific region and provided all stakeholders the opportunity to participate in a transparent process. We strongly support increased reliance on science/evidenced-based decision making and suggest criteria be established to determine what changes require risk reviews such as larger vessels, increased lateral displacement in waterways, increased vessel traffic, new traffic, cultural/social issues, sovereignty, and environmental concerns. We would support any improvements to the risk review process that would reduce time and costs, but improves overall effectiveness to permit more frequent use/application.

b. Review of compulsory pilotage areas

The PRMM process is also used to review the compulsory pilotage areas. We recommend that these continue to be reviewed on a regular basis. There is a current need to conduct a review on the west coast in the immediate future to address coastal and First Nations communities' concerns that the compulsory pilotage district be expanded in specific areas to protect the environment and cultural values.

c. Waivers

The Pacific Pilotage Authority Regulations permit a pilotage waiver be granted to a vessel under 10,000 gross registered tonnes if the deck officers can demonstrate familiarity with the region they intend to transit. The recent grounding of the *Nathan E. Stewart* highlighted some deficiencies in the application of the waiver process, but following an extensive risk review with the marine industry, including the towboat community and coastal

communities, systems were implemented to rectify the deficiencies and prevent reoccurrence. We are confident the current waiver model for the west coast is sound and will serve BC well.

There are instances where a vessel is in distress and may request a waiver to seek a port of refuge. The safest response to such a request is to dispatch a pilot immediately to board the vessel to coordinate with Vessel Traffic Services, Canadian Coast Guard (CCG) and rescue tugs in the vicinity.

The available response time for unpiloted vessels in distress can be increased for both pilots and emergency response vessels such as CCG and tugs by improved vessel monitoring and increasing the pilotage district to ensure vessels remain further offshore, particularly on the west coast of Vancouver Island and Haida Gwaii. Only if pilots are unable to board should other options be considered in coordination with PPA/TC/MCTS and local representatives. Pre-approved regional plans should be developed to respond to waiver applications for vessels in distress.

d. Licensing and certification

- i. Licensing - The Pacific Pilotage Authority Regulations describe the minimum required local sea-time and certification before a mariner can apply to write the pilotage examinations. If successful, the candidate begins a 9 to 24 month apprenticeship where they are tutored by licensed pilots and undergo various forms of training. This is followed by a seven-year graduated increase in vessel size.

Pilots are assessed regularly throughout their career, undergo mandatory training, and are required to maintain currency for their piloting district. Pilot compliance is monitored by the PPA Board Pilot Training and Examination Committee as part of the Quality Assurance System.

Standardization exists for the TC mariners' certificate. Otherwise, the needs of the region establish the required sea time, apprenticeship period, training, graduated increase in vessel size, and assessments as determined by the regional pilot training committee.

This robust and extensive examination, training and assessment process was developed over a 45-year period and its success is demonstrated in the previously described safety record. The Pilot Training and Examination Committee continually reviews the process to make improvements as required.

Any dilution in the minimum requirements for licensing will negatively impact the rigorous process in place and potentially lead to a deterioration in safety and environmental protection.

- ii. Certification - Applicants for a certificate must be a regular member of the ship's complement and cannot join the vessel solely for the purposes of providing pilotage services.

The current PPA Regulations and Policies lack sufficient detail and controls regarding the issuance of pilotage certificates.

Certificate holders must demonstrate knowledge, ship handling skills, and competency equivalent to those of a licensed pilot. The certificate process should be limited to a maximum vessel size, similar to the waiver system. Certificate issuance should be dependent on the environmentally sensitive nature of the area. Applicants should be required to demonstrate competency in all the waters of the Area for which they have an endorsement, not merely a route within an Area, and follow the same training (manned model, simulation), assessment, and currency requirements as a licensed pilot.

We recommend a risk review to clearly identify the risks and mitigations for issuing piloting certificates.

e. Liability and sanctions

Both the Canadian government and other international governments have acknowledged that to have a pilot financially responsible for the intrinsic risks of pilotage would result in the pilots obtaining insurance coverage, the cost of which would be passed onto the shipping industry. Instead, Canadian Pilots have a Limitation of Liability of \$1,000.

Any perception that pilots are lax in their duties due to minimal risk of fines or levies is erroneous. We have witnessed first-hand the devastating psychological impact an accident or incident can have on a pilot's physical and mental health. Pilots are professional mariners at the pinnacle of their career and take great pride in the service they provide, recognizing the trust bestowed to them by the Canadian public.

BCCP's Quality Assurance System (QAS) describes the required behavior of its members and is continually reviewed to adopt new policies and procedures.

Suggestions that fines or sanctions should be imposed to make pilots more conscious of the impact of their actions are misplaced. The Pacific Pilotage Authority has the ability to suspend a pilot's license should they deem a pilot failed to exercise the judgment expected of a reasonably prudent pilot. The pilot receives no income during this period of suspension which has a far greater financial impact on the pilot than levying fines or sanctions.

3. Labour Models

a. Contract and Employee Pilots

The Pilotage Act permits each Pilotage Authority to either hire its own pilot employees for a specified region or contract the services out to a private company. On the west coast, the PPA has hired employee pilots to provide inland pilotage on the Fraser River and has a contract with The BC Coast Pilots Ltd. for the coastal pilotage. Each group of pilots are licensed to provide pilotage exclusively in their area.

The regulated monopoly structure provides the safest and most cost-effective model for pilotage as demonstrated by the Canadian experience. Other international districts have experimented with competition which inevitably leads to a reduction in safety as competing groups lower their safety standards to secure pilotage contracts.

Pilots are servants of the government and Canadian public, not the ship-owner or Master. There is evidence that Pilots in competitive market conditions were forced to provide pilotage services in unsafe conditions or risk losing future employment with the shipping company.

There is no need for the Pilotage Authorities to have their own pilots on staff to provide in-house expertise related to pilotage. In the Pacific region, the PPA relies on the collaborative working relationship with its employees and the BCCP to address any operational concerns. Through BCCP, the PPA can access the cumulative years of service experience provided by over 100 active pilots.

A risk assessment is conducted to resolve any impasse. In addition, the PPA employs former mariners and Transportation Safety Board employees on staff to work closely with the pilots and industry to resolve areas of concern. These individuals understand the complexity of the marine world which is critical when resolving safety and efficiency related matters.

The BCCP/PPA's collaborative and consultative process has worked successfully since 1973. A testament to the success of the process is the formal Strategic Partnership signed by both the PPA and the BCCP to further each party's obligations under the *Pilotage Act*.

b. Contract negotiations

- i. Final Offer Settlement - In 1998 industry expressed concern that pilots could withdraw services during labour negotiations. As such, pilots across Canada agreed to change the Pilotage Act to include an arbitrated contract negotiation process called Final Offer Settlement (FOS).

The FOS was utilized by the PPA and BCCP on several occasions and has resulted in awards for both the PPA and the BCCP at different times. In two of the FOS proceedings, the mediator also acted as the Selector with positive results.

The FOS process is designed to drive both parties together to replicate what would have been achieved in the absence of arbitration. We are satisfied that the process provides a settlement that both parties can support and see no need for any substantive change.

- ii. Evidence - Each negotiating party is responsible to present to the mediator or selector the information they deem most beneficial to support their positions. There is no requirement for the facilitator to take into consideration the financial condition of the Authority or that of the Company, nor should there be. If this was permitted, there would be nothing to prevent industry from contesting a PPA tariff increase solely to drive the Authority into a deficit prior to negotiations. Additionally, the Authority could apply for and/or receive a minor tariff increase prior to negotiations and state they do not have the ability to pay any requested contractual increase. Conversely, the facilitator should not be mandated to take into consideration the financial condition of the Company. Instead, it is up to the respective parties to make a compelling argument to the mediator or selector and convince them of the merits of their position.

Pilots are not indifferent to the needs and financial status of the Pilotage Authority or industry. In fact, BCCP recently waived a previously negotiated 3% rate increase in response to the PPA's financial condition, resulting in a loss in revenue to BCCP of approx. \$1,000,000. This same sensitivity is exercised during negotiations.

4. Tariff setting process

Although this issue is primarily between the Pilotage Authorities and industry, we note that the Pacific Pilotage Authority operates in an open and transparent manner with industry when proposing a tariff increase. We have evidenced on several occasions the PPA adjusting its proposed increase in response to industry needs and delaying setting the tariff until consensus is reached.

Nevertheless, all parties retain the right to object to a tariff increase if they believe it is prejudicial to the public interest, resulting in a review by the Canadian Transportation Agency (CTA). This right is fundamental to a regulated monopoly structure and should be retained.

Pilotage Authorities are required to be financially self-sufficient and cannot rely on government appropriations. As such, they need to be able to implement tariff increases in a timely manner. We would encourage government to develop procedures to streamline the tariff review process to significantly lessen the amount of time that transpires before a tariff is set. Additionally, if there is opposition to a tariff increase, the CTA should be given a fixed time period in which to resolve the matter.

5. Economic and Public Policy Considerations

a. Pilotage costs

As previously stated, Canadian Pilotage costs compare very favorably with other piloting districts and our nearest competitors. One of the mechanisms in place to manage costs is the use of private corporations such as the BCCP to provide pilotage services under contract to the Authority. The private company evaluates market conditions and employs sufficient pilots to meet the normal workload. If there is a downturn in the market with reduced vessel calls, the private company's revenue declines since compensation is based on the number of completed pilotage assignments. Consequently, pilot corporations absorb costs in market downturn. If market conditions exceed expectations, contract pilots increase their workload to meet the demand. Conversely, employee pilots represent a fixed cost to the Authority which must continue to pay pilot salary and benefits irrespective of market conditions.

b. Efficiencies

Pilots facilitate trade by the efficient movement of vessels into and out of ports. One of the greatest efficiencies pilotage provides to industry comes from maximizing the use of the waterway to facilitate larger vessels and increased traffic. It is through the pilots' use of new technology, advanced training, new procedures for tug utilization and berthing techniques that industry has benefited from larger cargo volumes and lower transportation costs as the larger vessels reduce the cost per tonne of product.

Technology is embraced by the Authority and the pilots and enhanced and developed in order to maximize the use of the waterways. Ports are able to accommodate extensive vessel size increases and their subsequent substantial financial benefits through collaboration with pilots and the use of the pilots' Portable Pilotage Units. New advances in technology are monitored and adopted by pilots wherever necessary to maintain port competitiveness while maintaining the highest safety and environmental protection standards.

Recent examples are contained in a study prepared by Transportation Economics and Management Systems, which describes how pilot innovation and adoption of technology with respect to tankers and large containers ships benefited west coast ports and ship-owners. For example, pilots were able to work with the Port of Vancouver to use technology to increase the limiting draft of outbound tankers through Second Narrows from 12.5m to 13.5m, representing millions of dollars in increased cargo throughput. A copy of the study is available at <http://www.apmc-cmpa.ca>.

Government can assist in increasing safety and port competitiveness by ensuring sufficient funding is available to provide real time meteorological and hydrographic data for use by onboard ship personnel and pilots. This includes wind speed and direction, multilayer current speed and direction, berthing scale electronic charts, and dynamic air gap information. This data is available in limited format for some of the berths in the Pacific, but widespread adoption will enable pilots to maximize use of waterway in the safest manner possible.

Pilots will remain heavily engaged in innovation and early adoption, but are concerned over unrealistic expectations and potential over-reliance on technology. Society's increased expectations of technology often exceeds real-life limitations. A recent example is the dialogue concerning autonomous shipping and the perception that vessels will be able to safely travel from berth to berth without any onboard personnel.

The development and use of new technological safety mitigations is to enhance the safety of the process through providing additional safety layers, not to reduce it by removing others such as pilotage.

The complexity of pilotage on the west coast with its narrow channels, dynamic underwater features, confined waterways, unique environmental conditions and the sensitivity of the public and coastal communities to environmental issues removes any possible reduction in the mandatory pilotage areas simply due to the advent of new technology.

6. Enforcement and Emerging Issues

a. Challenges

Pilotage remains well positioned for the future, however there are some challenges which will need to be managed, not only by pilots, but the entire marine industry.

i. Clarification of purpose of the *Pilotage Act*

Pilotage in Canada serves the public and the economy through protection of the environment by providing independent safety related decisions. It is clear through

dialogue with coastal communities and First Nations that they view pilots as primarily responsible to serve the public's interests through protection of the marine environment. The challenge is to harmonize the historical understanding that pilots serve the ship with today's expectation that pilots firstly serve the greater good on behalf of the Canadian public.

- ii. Social license - There is an increasing public aversion to environmental risk, particularly on the west coast of Canada, and maintaining public trust will be critical not only for any future expansion of marine trade, but also to retain the current traffic volumes and procedures. The increase in marine protected areas and heightened public awareness of marine mammals and other environmental concerns will increase the pressure on shipping to demonstrate it has the safest operational and management systems in place to ensure protection of the entire marine environment. The marine community must work with government to further improve the current safety practices and effectively communicate the safety of marine transportation to the public.
- iii. Increasing size of vessels - At the same time as the public is becoming more risk adverse, there is continued growth in vessel size as ship-owners work to capitalize on economies of scale. Terminals which were originally designed for 270m container ships now regularly see vessels over 360m. Plans for the arrival of 400m container ships are already under discussion. Cruise ships also continue to increase in size and work is underway to determine the maximum size of cruise ship which can safely pass under First Narrows Bridge into Vancouver and transit the Inside Passage to Alaska.

In the past, pilots were only occasionally requested to review tide and current restrictions for certain berths to optimize vessel arrivals and departures. Today, this is a frequent occurrence as larger vessels seek to occupy berths using expanded berthing windows and compete for transit times through restricted waterways.

There is a need for continued robust and efficient risk assessments to evaluate the risks of larger vessels and expanded berthing windows and determine the appropriate risk mitigations.

- iv. Overreliance on technology - Technology will continue to expand at a rapid pace and what today seems extreme may be commonplace within the next five years. Pilotage will continue to adopt new systems that provide additional layers of safety and increase the accuracy of data in the hands of the mariners. The challenge for users is to manage expectations to ensure that the product delivered is robust, has redundancy, and is reviewed as an additional layer of safety, not a substitute for human observation. Technology cannot replace the historical knowledge provided by pilots; it can only provide feedback for use as another navigational aid.

b. Opportunities

- i. The North - There is no better way to cement confidence and ensure protection in the North than to establish a modern quality pilotage district. Insurers will require vessels to take a pilot when one is required, drawing pilot candidates from the northern communities who have the extensive local knowledge required by marine pilots. A

structured pilotage system will provide confidence to the Canadian and international public that safety standards are established and maintained. The Canadian pilotage model is internationally recognized as amongst the best in the world and should be used as the basis for any regulated pilotage structure in the North.

- ii. Improved/more efficient pilot transportation – Recently, the PPA and BCCP conducted a helicopter winching trial at the northern pilot boarding station near Prince Rupert. Use of the helicopter to transport pilots between shore and ship reduced transportation time from 1.5 hours to nine minutes while improving the safety of the pilot transfer. A similar trial is under development in the southern region. Any improvements in the efficiency of pilot transportation will reduce the overall cost of the system and provide benefits to both industry and pilots.
- iii. Technology – Although over reliance on technology will be an ongoing challenge, there is opportunity for enhancements through improvements. More real-time information of environmental conditions provides additional opportunities to safely move vessels in limited visibility, increased current, and fluctuating tidal height. We encourage further investment into the increased research and development of the pilots’ Portable Pilot Units to access real time information provided by ports, Canadian Coast Guard, Environment and Climate Change Canada and Canadian Hydrographic Services. This real-time information should also be shared with coastal communities to increase their awareness of marine activities in their area.

Thank you for taking our comments into consideration as you conduct the review.

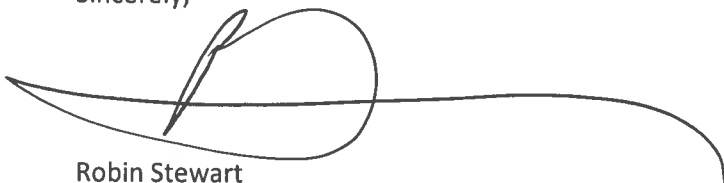
We believe the most critical issue to be addressed is to clearly identify the purpose of the Pilotage Act. A number of the other issues under consideration such as governance and safety can be better addressed once this primary issue is resolved.

We strongly encourage the Government of Canada to ensure any proposed changes will add significant value to the system and are not merely “change for change sake.”

As we are certain you are aware, the West Coast of Canada is very environmentally conscious and based on our working relationships with key stakeholders, we believe it is unlikely coastal communities will support any changes that negatively impact the provision of pilotage services or the regional responsiveness of the system.

We look forward to additional opportunities to provide input into the process over the coming months.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Robin Stewart
President