



The Canadian Merchant Service Guild

A NATIONAL ASSOCIATION OF MASTERS - MATES - PILOTS - ENGINEERS AND OTHER MARINE OFFICERS

La Guilde de la Marine Marchande du Canada

ASSOCIATION NATIONALE DES CAPITAINES - OFFICIERS DE PONT - PILOTES - MÉCANICIENS ET AUTRES OFFICIERS MARINS

AFFILIATED WITH / AFFILIÉE À

INTERNATIONAL MARITIME PILOTS' ASSOCIATION - INTERNATIONAL TRANSPORT WORKERS' FEDERATION - NATIONAL JOINT COUNCIL OF CANADA
ASSOCIATION INTERNATIONALE DES PILOTES MARITIMES - FÉDÉRATION INTERNATIONALE DES OUVRIERS DU TRANSPORT - CONSEIL NATIONAL MIXTE DU CANADA

OTTAWA - VANCOUVER - THOROLD - QUÉBEC - DARTMOUTH - ST. JOHN'S

October 30, 2017

Mr. Marc Grégoire

Chair

Pilotage Act Review

Transport Canada

Place de Ville - 330 Sparks Street

Ottawa, ON K1A 0N5

Dear Mr. Grégoire,

Further to your invitation when we met in September, I am pleased to enclose a submission from the Canadian Merchant Service Guild on matters concerning the Review of the *Pilotage Act* you are currently undertaking.

We appreciate the opportunity to participate in the Review's deliberations, and we look forward to discussing the Guild's position as well as the viewpoints of other stakeholders when we meet on November 9, 2017.

If you require any further, I can be reached at cmsg@ottawa-email.com or (613) 727-9531.

Sincerely,

Mark Boucher

National President

Government of Canada
***Pilotage Act* Review**

Submission by the
Canadian Merchant Service Guild

October 2017

I. The Canadian Merchant Service Guild

The Canadian Merchant Service Guild (the Guild) is a national association representing ships' officers and marine pilots in Canada. The Guild was established by an Act of Parliament in 1919 and its objectives are to promote the social, economic, cultural, educational and material interests of its members.

The Guild negotiates collective agreements on behalf of its members covering every segment of shipping from offshore supply vessels to tankers, freighters, towboats, lakers, deep sea vessels, passenger ferries and pilotage operations from Newfoundland to British Columbia. Guild representatives collaborate with the federal government on a wide variety of policy and operational matters affecting Canadian seafarers. The Guild is also an important advocate for improvements to regulations related to the safety of life at sea and the well-being of all seafarers.

The Guild provides members with legal defence insurance to cover the cost of legal representation in the event of marine-related incidents or mishaps.

II. Pilotage Act Review

The federal government's 2016 Oceans Protection Plan focused on improved marine safety, responsible shipping, protection of the environment, strengthening partnerships with Indigenous communities, and investing in evidence-based decision making. To ensure safe, efficient and environmentally responsible pilotage services into the future, the strategy included a review of the *Pilotage Act*.

With the appointment of a Chairperson on May 31, 2017, the Review commenced its work with the goal of facilitating discussion about marine pilotage in Canada and to seek stakeholders input as to how the Act might be modernized to enhance performance.

Because pilotage is essential to a safe and efficient marine navigation system, it is of vital importance to the ships' officers represented by the Guild. For this reason, the Guild welcomes the opportunity to participate in the deliberations of the Review. This document responds to a request from the Review Chairperson to provide an initial submission on pilotage issues, and follows the outline of the September 2017 *Pilotage Act* Review Discussion Document.

III. Scope of Review

The Discussion Document of September 2017 indicates that the pilotage system is working well. The document also states that, despite many reviews since the enactment of the *Pilotage Act*, few amendments to the legislation have been identified as necessary for the continued success of the system. The Guild strongly endorses these statements.

The Guild disagrees, however, with the Discussion Document's subsequent assertion that conclusions of the reviews - that virtually no amendments to the Act were required - now somehow justifies "action...to modernize the legislative framework." Surely, the opposite is actually the case. Because the findings of the many reviews undertaken to date have generally confirmed the system's enduring effectiveness in delivering safe and practical pilotage, there is no pressing need for a wholesale rethinking of Canada's pilotage system.

Accordingly, the Guild believes a constructive discussion of pilotage in Canada should begin with an acknowledgement of the validity of the existing pilotage framework and, from there, move on to an examination of clearly defined, specific issues that stakeholders identify as needing attention. In this regard, the Guild finds the six themes described in the Discussion Document as a useful way of organizing such a discussion, and this submission follows that outline.

IV. Topics for Consideration

Governance

Board of Directors

Aside from the general requirements to ensure good governance and regard for the public interest, pilotage authority boards of directors benefit from more than the usual degree of subject matter expertise. Inasmuch as the corporation is the regulator and the licensor, as well as the operating entity for pilotage services, a thorough understanding of technical requirements and an appreciation of the practical impact of decisions taken, is essential. For this reason, the long-standing practice of having both licensed pilots and shipowners' representatives on the board is a sound practice that should be continued.

Centralization

The traditional reason for centralization of operations, being efficiency and cost effectiveness, may well apply to pilotage, at least to some extent. Whatever benefits might accrue, however, would need to out-weigh any diminishment of region-specific practices, expertise and rule-making, which have been hallmarks of Canada's pilotage system. Also, the regional nature of the pilotage corporations means that board members are very much representatives of the region, aware of local circumstances and responsive to local concerns.

Safety

The Guild strongly endorses the statement in the Discussion Document that pilotage in Canada has an exemplary safety record. This impressive performance is especially important to the ships' officers operating Canadian vessels. Canada's waterways are busy thoroughfares with a great variety of vessels operating in often-challenging conditions. The fact that so many of these vessels are under the conduct of pilots with extensive local knowledge is reassuring to ships' officers sharing the same waterways. It follows that the Guild strongly supports any measure that maintains or even strengthens the pilotage system, and opposes initiatives that could compromise safe operations in favour of relatively insignificant cost savings or for reasons of minor convenience.

Pilotage Risk Management Methodology (PRMM)

For the reasons stated above, the practice of undertaking a PRMM whenever a material change in pilotage practices is contemplated is sound public policy. It allows for the possibility that changing circumstances warrant a change in practice, but it ensures that a thorough, balanced risk assessment is conducted before decisions are made.

The PRMM methodology is designed to gather input from all stakeholders, and to then expertly evaluate risk and benefit. It is transparent and independent; as such, it fosters sound decision-making that the public can have confidence in.

Certification Requirements

The *Pilotage Act* provides for ships' officers who can demonstrate sufficient local knowledge in compulsory pilotage areas to be issued pilotage certificates, thus exempting the vessel from having to board a licensed marine pilot in the designated waters.

For decades after the passage of the *Pilotage Act*, almost no pilotage certificates were applied for or issued in either the Laurentian or Great Lakes pilotage regions. Despite the provision in the legislation allowing ships' officers to become certificate holders on the basis of objective criteria related to skill and experience, and despite complaints from shipowners of what they considered to be the onerous obligation to board pilots, the companies rarely took advantage of the opportunity to arrange for their officers to obtain certificates, and thereby not be obliged to board pilots in compulsory areas.

In the Great Lakes region, this led to a situation where, for decades, Canadian vessels took advantage of what was intended to be a transitional arrangement to virtually institutionalize exemption from pilotage without the issuance of certificates. In 2007, a report by the Auditor General of Canada denounced this practice as essentially illegal, and called for immediate remedy. This finally led to the implementation of a pilotage certification regime in the region in 2010.

In the Laurentian region, industry spokespersons said that they considered the application process for certification to be cumbersome and biased against applicants, and therefore chose not to avail themselves of it. In response to these industry complaints, an all-stakeholder review of the process in 2003-04 for issuing certificates resulted in changes to both the syllabus for certificate-holder candidates and the membership of the examination panel.

In both regions, there are now a significant number of ships' officers who are certificate-holders. This industry response is a sure sign that the system not only functions well, but is being used as intended.

Waivers

The *Pilotage Act* provides for one-time waivers from the requirement to board a pilot in a compulsory area, owing to very special circumstances.

While the provision in the Act allowing for waivers to be issued is warranted on the basis of operational flexibility and accommodation of unexpected situations, the practice of granting waivers must be carefully controlled. To the extent that it can be demonstrated that changes to the pilotage regulations might be useful, so as to safeguard the very special nature of waivers, the Guild would have no objection.

Labour

Contract Negotiations

The Guild is aware of the concerns expressed by some regarding the provision in the *Pilotage Act* that stipulates Final Offer Selection (FOS) as the final default mechanism for settling contract negotiations between pilotage authorities and pilot corporations. The Guild's long experience in collective bargaining suggests that there are both advantages and disadvantages to FOS, as there are with any mechanism for settling an impasse at the negotiating table. It is important to note however, that the legislation does not necessarily require the parties to resort to FOS; other dispute resolution mechanisms can be used if the parties agree.

Economic & Public Policy Considerations

The notion of evidence-based policy-making may seem obvious, but examples of decisions being made on less substantive grounds abound. For this reason, the Guild is strongly of the view that when considering questions related to the appropriateness of pilotage fees, macro-economic impacts and broad public policy implications be taken into account, and be influenced by findings drawn from solid research and reliable data.

In this regard, a recently-completed landmark study undertaken by the Canadian Marine Pilots' Association providing an objective cost benefit analysis of pilotage in Canada should be an important input to the Review's consideration of pilotage fees. The study convincingly demonstrates that there is an enormous net economic benefit derived from pilotage. Unless any proposed reduction in pilotage costs can be clearly demonstrated not to result in a consequential reduction in pilotage services, it would be a false economy.

Conclusion

The pilotage system in Canada not only works well, but fully achieves the purpose for which it was established – to make a vital contribution to the safe and efficient operation of Canada's marine transportation system.

When something works as well as pilotage in Canada, the very need for that service becomes less apparent, and leads to a tendency to question its relevance and value. The Guild is concerned that, to a significant degree, complaints from industry about pilotage are motivated by a narrow focus on the bottom-line of the companies in question, and take little account of larger socio-economic considerations and the public interest. If these profit-driven concerns are given more weight than they would otherwise warrant because of complacency developed as a result of the excellent performance of the pilotage system itself, that would be egregious.

The challenge for all Canadians, and particularly its policymakers, is to reconcile the interests of the private sector with the regulation and oversight needed to ensure the public good. The questions currently being raised about pilotage bring this larger issue into focus, and the Review has an opportunity to contribute to this dialogue by re-affirming the value of a service that provides tremendous benefit to everyone, at a very reasonable and certainly sustainable cost to its users. This does not preclude the identification and subsequent implementation of measures to improve pilotage, but it must safeguard against actions that would compromise the system's independence, integrity and effectiveness.