

MAINE STATE LEGISLATURE

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Program Evaluation Report of the Maine Pilotage Commission

Presented to the Joint Standing Committee on Transportation

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Pursuant to 3 MRSA §§ 955 (2) and 959(O)(4), the Maine State Pilotage Commission (MPC) respectfully submits this Program Evaluation Report to the Joint Standing Committee of the Maine Legislature having jurisdiction over transportation matters

A. Enabling or authorizing law or other relevant mandate, including any federal mandates;

The Maine Pilotage Commission functions to provide maximum safety from the dangers of navigation for vessels entering or leaving certain bodies of water in the state of Maine. Every foreign flagged vessel and every American vessel under register with a draft of 9 feet or more is required to take a state-licensed pilot.

The Maine Pilotage Commission (MPC) was once under the jurisdiction of the Maine Department of Professional & Financial Regulation. The Department of Professional & Financial Regulation requested the Maine Department of Transportation (MaineDOT) to take it over in the late 1990s, believing that MaineDOT was the proper agency to house the MPC given its interest and experience in promoting safe and competitive maritime commerce and transportation. In 1997, the legislature amended 23 MRSA § 4206 (H) and formalized the transfer of jurisdiction over the MPC from the Department of Professional & Financial Regulation to MaineDOT. The MPC's minimal overhead and administrative costs are absorbed through MaineDOT and pilotage license fees.

Pursuant to 23 MRSA § 86-A and §17-387 CMR Ch. 1, Part A, § 2. bodies of water under the Commission's jurisdiction include:

- Kennebec River
- Sheepscot River
- Boothbay Harbor
- Penobscot Bay
- Penobscot River
- Frenchman Bay
- Somes Sound
- Blue Hill Bay

- Eastport Area

Harbor pilots and docking masters that operate in Portland Harbor are licensed and regulated by the Portland Harbor Commission. The MPC and the Portland Harbor Commission work closely together on matters of common interest like pilot training and rules promulgation.

In the Lighthouse Act of 1789, Congress delegated pilotage regulation of foreign-flagged vessels to local authorities ("Until further provision is made by Congress, all pilots in bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States...."). This federal delegation is further reiterated in 46 U.S.C. § 8501(a), which states that "[e]xcept as otherwise provided in this subtitle, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States."

B. A description of each program administered by the agency or independent agency, including the following for each program:

(1) Established priorities, including the goals and objectives in meeting each priority;

The MPC establishes standards for licensing pilots, promulgates rules, rates, and investigates marine incidents involving possible pilot misconduct to ensure that pilotage continues to remain safe and reliable along the Maine coast. Currently, eleven licensed active pilots and three inactive pilots guide vessels through waters over which the Maine Pilotage Commission has jurisdiction.

With 176 cruise ship calls, 1,652,196 tons of dry cargo and 168,127,205 barrels of petroleum passing through Maine ports in 2008, the economic and environmental stakes of adequate pilotage are considerable. Fortunately, it has been some time since an incident involving the conduct of a MPC-licensed pilot has needed to be investigated. Given the dynamic nature of the port industry, vigilance in this area is still a continuous process that requires regular interaction with a variety of maritime stakeholders. More recently, this has included the updating of emergency procedures and incident management protocols.

(2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives;

The Maine Pilotage Commission strives to ensure the continued safe record of its 11 pilots who have active licenses. The MPC requires licensees to pass annual Merchant Marine physicals. Further, they must accomplish annual recency trips on the waters for which they are licensed and they must complete 40 hours of continuing education every five years. Pilots have undergone training in simulators which has enhanced their piloting skills. Finally, if a pilot with an inactive license wishes to transfer to active

status, the pilot must complete recency trips on appropriate water bodies and submit to a current merchant marine physical.

(3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives;

The main performance criteria of the Maine Pilotage Commission is to ensure the continued safe passage of foreign-flagged vessels in Maine waters. Given that goal, the MPC has been successful in recent years. The MPC continues to offer its pilots education and training to help pilots navigate through difficult circumstances such as inclement weather and mechanical failures. Further, pilots operating in Penobscot Bay and in the Penobscot River recently published a brochure on small boat/large vessel protocols and procedures help pilots navigate through inevitable hazards. The MPC continues to engage in outreach, training and partnering with other State and Federal agencies to further safe navigation.

C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;

The members of the Maine Pilotage Commission are appointed by the Governor for three-year terms as dictated by MRSA. Typically, the Commission meets three times a year (February, May and November) at the Maine Department of Transportation headquarters in Augusta.

The current slate of officers of the Maine Pilotage Commission is:

- Chair
 - Charles Weeks, Maine Maritime Academy Professor (Ret.)
 - John Worth, Maine Maritime Academy Professor
 - Jeff Murdy, Webber Energy
 - Shawn Moody, Chase Leavitt
 - Gerald Morrison, Eastport Area Pilot
 - David Gelinis, Penobscot Bay Pilot
 - Earl Walker, Kennebec River Pilot

The Maine Pilotage Commission (MPC), along with the Maine Port Authority, is housed within at MaineDOT in the Office of Freight and Business Services. This arrangement gives the public a central contact point to engage the MPC on port and maritime issues. The Administrator, Kevin Rousseau, is appointed by the Commissioner and has other Departmental duties besides the MPC. The legal counsel to the MPC is Richard Hewes of the MaineDOT Legal Services office.

D. Compliance with federal and state health and safety laws, including the Americans with Disabilities Act, the federal Occupational Safety and Health Act, affirmative action requirements and workers' compensation;

The Maine Pilotage Commission, under the direction of the Maine Department of Transportation, complies with all Federal and State health and safety laws, ADA, OSHA, affirmative action and workers compensation requirements.

E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;

When the Maine Pilotage Commission was transferred to MaineDOT in the late 1990s, an initial \$15,000 was allocated to the Commission. Since then, finances have been stable and self-sustaining through license renewal and application fees as outlined by controlling statutes.

F. When applicable, the regulatory agenda and the summary of rules adopted;

Rule changes have occurred twice in the last two years to address minor clarifications and add more specificity to certain areas of the Maine Pilotage Commission's rules.

The most recent rule changes, adopted in July 2009, included:

- New language to give the Commission more flexibility to license pilots on bodies of water with minimal current traffic;
- pilot station clarifications;
- requirement of a master of the vessel/pilot exchange;
- clarification of what is a reportable incident/casualty;
- requirement of submittal of a drug/alcohol test if requested by the Commission after such an incident;
- requirement that a pilot is to meet with a representative of the Commission after such an incident;
- and other minor technical clarifications.

G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;

The Maine Pilotage Commission effectively coordinates with other state agencies, such as MEMA, DMR, DEP, and with federal partners such as NOAA, NTSB and the Coast Guard. Negotiations with the Coast Guard Sector Northern New England are ongoing on establishing general cooperative casualty investigation protocols.

One example of this cooperation is demonstrated by the aggressive training program for state-licensed pilots run by the MPC. Through an interagency agreement with the Maine DEP, \$30,000 in funds collected from oil terminals are provided annually

to the MPC so that advanced training and continuing education programs is available to Maine pilots. Examples of recent training include the development of custom-made simulators, attendance at the renowned pilotage training programs and the implementation of one-day seminars on topics like *Pilotage Law & Liability* and *Cold Water Survival*. A 2008 incident involving the loss of engine power on a ship traveling to Eastport was handled in an excellent manner due to the pilot's recent training for such incidents under this training program.

On a federal level, the Maine Pilotage Commission recently negotiated an international reciprocity agreement with the U.S. Coast Guard and the Atlantic Pilotage Authority of Canada to ensure pilot licenses for both US and Canadian pilots are valid in the Eastport area since ships must traverse through both Canadian and U.S. waters.

The MPC has also been recently involved in helping the State assess the potential impacts and safety concerns for moving LNG tankers at various locations within the state. This has included supervising full-scale bridge simulation exercises in conjunction with the Coast Guard to help determine waterway suitability.

H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;

The Maine Pilotage Commission serves a number of constituencies including harbor pilots, shippers, terminal operators, steamship agents and various other port stakeholders. The MRSA-mandated makeup of the MPC ensures that these various stakeholders are represented on the Commission. Outreach to a broader number of constituents is done with notification of meetings and proposed rule changes.

I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;

Multi-agency cooperation has allowed the Maine Pilotage Commission to deliver its services in a cost-effective manner. As noted above, through an agreement with the Maine DEP \$30,000 annually is allocated to the Maine Pilotage Commission for pilot training. Through this cooperation, pilots and MPC staff have had access to full bridge simulations, cold water survival, pilotage law and liability, emergency shiphandling classes, etc.

J. Identification of emerging issues for the agency or program in the coming years;

Perhaps the largest emerging issue over the coming years will be the need to maintain eligible pilots in areas where there is minimal coverage or traffic. Given the necessarily stringent initial licensing requirements, the apprenticeship and development of pilot candidates is a long process that in many ways is the culmination of a successful maritime career. An example of this is in the Boothbay Harbor, Kennebec River and Sheepscot River area. One of the two active licensed pilots for the Kennebec River is nearing retirement age. The same individual is the only licensed pilot for Boothbay

Harbor and the Sheepscot River after the untimely death a few years ago of another licensed pilot for that area.

Another challenge facing the Commission will be the requirement of compulsory pilotage for all foreign-flagged vessels entering waters under the jurisdiction of MPC with a draft of nine feet or more *including private yachts*. The occurrence of these yachts along the Maine coast with a draft of nine feet or more has increased considerably over recent years. Typically, these yachts spend considerable time exploring the waters under the jurisdiction of the Commission as opposed to a large cargo vessel which moves directly between the pilot stations out at sea and the landside terminal.

Finally, the growing concern of small vessel/cargo ship interaction bears continued attention, especially in Penobscot Bay. The Penobscot Bay and River Pilots, Coast Guard, Maine DMR and the Pilotage Commission have continued the campaign to make recreation boaters, commercial fishermen and other users of the waterway aware of the characteristics and limitations of these large cargo vessels.

K. Any other information specifically requested by the committee of jurisdiction;

No other specific information was requested by the Transportation Committee. Members and the Administrator of the Maine Pilotage Commission would be pleased to submit more detail either in writing or in person if the Committee desires more information.

L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;

The delegation of pilotage oversight to local authorities was one of the first issues Congress dealt with under the Lighthouse Act of 1789. The pilotage of foreign-flagged vessels is one of the few areas where state jurisdiction supersedes federal authority. The Coast Guard has jurisdiction for the issuance of virtually all other maritime issues, conduct and licensing including those pertaining to the pilotage of U.S. flagged vessels and barges.

M. Agency policies for collecting, managing and using personal information over the Internet and non-electronically, information on the agency's implementation of information technologies and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement;

The collection of personal information of pilots that is necessary for the delivery of the Maine Pilotage Commission's mission is maintained at the Maine Department of Transportation under the policies, security and surveillance of the State's information technology system. Paper files of important documents are also maintained as backup.

N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:

- (1) The statutory authority for each filing requirement;**
- (2) The date each filing requirement was adopted or last amended by the agency;**
- (3) The frequency that filing is required;**
- (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and**
- (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication.**

Licensed harbor pilots are annually required each January to submit recency reports for the areas for which they hold a license. The statutory authority for these filing requirements is found in Commission's rules (Department 17 Section 387 Chapter 1). The filing requirements were adopted originally as part of rules on December 16, 2000.

Essentially, a recency report is a list of ship trips taken by the pilot on that body of water which in turns demonstrates continued proficiency. Also, an annual merchant marine physical is required to be submitted for the file. There have been 10 active pilot filings each of the last two years and 11 are anticipated to be filed annually for the next two years. All submitted recency reports are scanned into the State's computer system and an electronic file is created annually.

MAINE PILOTAGE COMMISSION RATES

I. General Provisions

(Effective dates are noted for each area.)

A. Calculation of Fees

Unless otherwise stated, rates are based on the following formula:

Length Over All x Extreme Breadth x Moulded Depth / 10,000 (all measurements are in feet)

$$\frac{\text{LOA} \times \text{B} \times \text{D}}{10,000} = \text{Pilot Units}$$

Vessel measurements will be based on the data listed in the most recent edition of classification society records.

All costs are in US dollars.

B. Arrivals

1. Pilots do not maintain a pilot boat on station. The pilot service depends directly on ships' ETA.
2. If pilot is ordered to station and said vessel is diverted, then pilot is entitled to receive one half the pilot rate applicable to the vessel.
3. When vessels owners, charterers, or agents do not correct their ETA within 4 hours of their last ETA given, compensation in the amount of \$75.00 per hour shall be charged and applies starting at the last ETA until actual arrival time of vessel at the pilot station - not to exceed \$150.00 for any one day.
4. Vessels unable to comply with a 12 hour ETA may be charged \$150.00 per day waiting time if pilot is at the pilot station awaiting vessel in excess of 24 hours.

C. Pilot Standing By or Lay Time

If pilot reports to vessel and said vessel does not sail within 2 hours of posted time, the pilot shall receive \$75.00 per hour for standing by.

D. Pilot Carried to Sea

Detention rate: \$250.00 per day plus actual expenses for first class air transportation back to pilot's choice of Bangor, or Portland, ME. USA

E. Pilots on Stand-By

Pilots put on stand-by for a ship's sailing shall be available on 3 hours notice

F. Courtesy Pilotage

It is the position of the Maine Pilotage Commission that any pilot licensed by this Commission may provide services, in an area where duly licensed, without charge, solely at the pilot's discretion, if; a) the vessel is a public vessel engaged in educational activities, or b) the vessel is otherwise exempted from state pilotage requirements by federal guidelines.

G. Truth in Lending Act Statement

1. The agent is considered as acting for the consignee and or the operators of the vessel and shall be responsible for pilotage fees.
2. All invoices are due upon presentation.
3. All invoices outstanding after 30 days from billing date will be charged 1 ½ % monthly carrying charge, annual percentage rate of 18%.

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4. All invoices outstanding after 90 days from billing date will be invoiced as a final notice. At this time no further extensions of credit will be allowed.
5. Accounts placed for collection with an attorney shall be subject to the inclusion of reasonable attorney's fees and court costs.

A. Penobscot Bay

(Including Searsport, Belfast, Castine)

\$1,850.00 for first 100 Pilot Units each way, plus

\$5.80 for each additional Pilot Unit each way. Minimum 100 Pilot Units each way.

(Effective January 1, 2009)

B. Penobscot River direct from Sea

(Including Bucksport, Winterport, Bangor, Brewer)

\$2,775.00 for first 100 Pilot Units each way, plus

\$8.70 for each additional Pilot Unit each way. Minimum 100 Pilot Units each way.

(Effective January 1, 2009)

C. Special Charges and Rates

(For Penobscot Bay and River Areas)

- Docking/Undocking without a tug or a working bow thruster -- rate plus 10%
- If vessel proceeds to anchor, an anchor fee of \$100 will be applied
- If vessel anchors for greater than 2 hours, additional boat hire may be incurred
- All rates include docking/undocking, whether day or night, and all pilot boat hire at the Sea Station.
- For tug and barge combinations, the length over all (LOA) shall be the combined length of the tug and barge when configured for pushing ahead; the extreme breadth (B) and moulded depth (D) shall be that of the barge.

D. Shifting Rates

(For Penobscot Bay and River Areas)

- Between docks at Searsport, or between Searsport docks and Searsport Anchorage, 25 % of the Penobscot Bay Rate for each movement.
- Between Searsport and either Bucksport, Winterport, Bangor, or Brewer, 50% of the Penobscot Bay Rate.
- Between Bucksport and either Bangor or Brewer, 50% of the Penobscot Bay Rate

E. Eastport

(Including Passamaquoddy and Cobscook Bays)

\$5.18 per Pilot Unit each way (Effective April 1, 2004)

Berthing - Minimum of 100 Pilot Units each way
Vessel shifting charged at 50 Pilot Units per move.

Berthing rates include docking/undocking, whether day or night. Pilot Boat hire will be charged at \$300.00 each way. Launch Hire (taking pilot to/from an anchored vessel) will be charged at \$300.00 each way.

F. Kennebec River, Boothbay Harbor, and Sheepscot River

\$7.73 per Pilot Unit (Effective August 1, 2008)

Minimum of 100 Pilot Units each way

Plus Launch Hire (if needed) at \$300.00 each way.

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It is recommended that transits into or out of these areas only be initiated during daylight hours and with at least ½ mile visibility. If visibility drops below ½ mile during transit it is the pilot's discretion on whether to continue or drop anchor. (In the Sheepscot River, Pilotage is restricted to Daytime Only as per Commission Rules 17-387, ch#1).

The Pilot Unit depth in this area to include protrusions beneath the base line, thus reflecting the navigational hazard presented by such protrusions

G. Frenchman Bay, Blue Hill Bay, and Eastern Way/Somes Sound

\$5.80 per Pilot Unit (Effective January 1, 2009)

Minimum 150 Pilot Units each way

(In Blue Hill Bay and Eastern Way/Somes Sound Pilotage is restricted to Daytime Only as per Commission Rules 17-387, ch#1)

H. Rockland and Camden Harbor

\$6.37 per Pilot Unit (effective January 1, 2009)

Minimum 150 Pilot Units each way. No anchor fee or boat hires.

Maine Pilotage Commission

Maine Pilotage Commission History

- Created in 1969 (*MRSA Ch. 38 Sec. 81-106*) to provide maximum safety from the dangers of navigation for vessels entering or leaving certain bodies of water in the state of Maine. Every foreign flagged vessel and every American vessel under register with a draft of 9 feet or more is required to take a pilot.
- The Maine Department of Professional & Financial Regulation requested the MaineDOT take over the Maine Pilotage Commission (MPC) in the late 1990s, believing that the MaineDOT was the proper state agency to house the MPC given its interest and experience in promoting competitive maritime commerce and ensuring safe vessel passage. Transfer occurred in 1998 and was formalized by the Legislature in 1999. All minimal overhead administrative costs are absorbed by MaineDOT and pilotage license fees.
- Harbor Pilots and Docking Masters that operate in Portland Harbor are licensed and regulated by the Portland Harbor Commission. The MPC and the Portland Harbor Commission work closely together on matters of common interest like pilot training.

Activities of the Maine Pilotage Commission

- The MPC establishes standards for licensing pilots, promulgates rules, rates, and investigates any marine incidents involving pilot conduct to ensure that pilotage continues to remain safe and reliable along the Maine coast. Given the dynamic nature of the port industry, this is a continuous process that requires regular interaction with a variety of maritime stakeholders.
- The MPC also stays apprised of issues that effect pilotage and the flow of commerce in Maine's ports such as pilot ladder safety or the lack of pilots for the Kennebec/Sheepscot/Boothbay Harbor region. For example, MPC recently negotiated an international reciprocity agreement with the U.S. Coast Guard and the Atlantic Pilotage Authority of Canada to ensure pilot licenses for both US and Canadian pilots are valid in the Eastport area since ships must traverse through both Canadian and U.S. waters.
- The MPC has been a factor in helping the State assess the potential impacts and safety concerns for moving LNG tankers at various locations within the state. This has involved supervising full-scale bridge simulation exercises in conjunction with the Coast Guard to help determine waterway suitability.
- MPC administers an aggressive training program for state-licensed pilots that, in turn, protects the Maine coast. Through an interagency agreement with the Maine DEP, \$30,000 in funds collected from oil terminals are provided annually to the MPC so that advanced training and continuing education programs are available to Maine pilots. Examples of training include the development of custom-made simulators, attendance at the world's best pilotage training programs, and the implementation of one-day seminars on topics like Pilotage Law & Liability and Cold Water Survival. A 2008 incident involving the loss of engine power on a ship traveling to Eastport was handled in an excellent manner thanks to the pilot's recent training for such incidents under this program.

The members of the Maine Pilotage Commission are appointed by the Governor for three-year terms. Typically, the Commission meets three times a year.

Current Slate of Officers of the Maine Pilotage Commission:

- Chair Charles Weeks, Maine Maritime Academy Professor
John Worth, Maine Maritime Academy Professor
Jeff Murdy, Webber Energy
Shawn Moody, Chase Leavitt
Gerald Morrison, Eastport Area Pilot
David Gelinis, Penobscot Bay Pilot
Earl Walker, Kennebec River Pilot

Appointed by the Commissioner of Transportation and serving at the pleasure of the Board:

- Administrator Kevin Rousseau, Maine DOT
- Legal Counsel Richard Hewes, Maine DOT

The Maine Pilotage Commission (MPC), along with the Maine Port Authority, is housed within the Maine DOT. This gives the public a central place with which to engage state government on port and maritime issues.

For more information contact:

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