



**COMMENTS ON THE DRAFTING INSTRUCTIONS FOR
THE NEW *MARINE PILOTAGE REGULATIONS***

August 6, 2021

We thank Transport Canada for the opportunity to submit comments on the proposed drafting instructions for the new *Marine Pilotage Regulations*.

The Federation's membership consists of the owners, operators and agents of ocean ships that carry Canada's imports and exports to and from overseas ports. Our members are the main users of pilotage services provided by the four pilotage authorities and we are an active partner in the implementation of the new *Pilotage Act* and the modernization of pilotage services in the Atlantic, the Laurentian, the Great Lakes and the Pacific regions.

DRAFTING INSTRUCTIONS FOR THE INTEGRATED MANAGEMENT SYSTEM:

We welcome the proposed approach whereby the integrated management system and its corresponding procedures will apply to both employees and contractual pilots. This will ensure that the four pilotage authorities have the necessary tools and authority to effectively manage all elements of pilotage within their respective regions.

Having said that, we believe that the proposed scope of the integrated management system is too narrow. The current version of the drafting instructions states that the integrated management system will address safety, environmental and health and quality management. This approach will, in our opinion, fail to fully implement the new *Pilotage Act* – which calls for the provision of pilotage services in accordance with a set of principles that extends not only to the safety of navigation, but also to pilotage services provided in an efficient and cost-effective manner and for evolving technologies to be taken into consideration.

We note that under Item 9 (Operational and Logistical Control- Pilotage Authorities), there is a reference to effective and efficient pilotage services but only in relation to financial procedures. This is not sufficient considering that operational procedures will also be required to achieve efficient and cost-effective pilotage services, in addition to financial procedures, and that such measures must be applied to the employees (i.e., contractual and employee pilots), in addition to external service providers (sub-contractors).

In view of the above, efficiency/cost-effectiveness as well as evolving technologies must be **1)** explicitly identified as minimum functional requirements of the integrated management system

under Items 3, 4 (b), and 6 of the drafting instructions and **2**) the pilotage authorities must be required to develop procedures on these elements under Items 9 and 13 of the instructions. This is essential if the pilotage authorities are to truly integrate efficiency/cost-effectiveness and evolving technologies considerations into the day-to-day management of their operations, along with safety, as mandated for under section 2(b) and (c) of the new *Pilotage Act*.¹

In addition to the above, we question the approach taken in the drafting instructions with regard to sustainability and environmental management. Firstly, the *Pilotage Act* does not introduce any sustainability obligation and therefore this elusive concept should not be identified as a minimum functional requirement of an integrated management system. Any reference to the term sustainability must be removed from the drafting instructions— as falling outside of the scope of the Act. Secondly, we are puzzled by the language under Item 9 which calls for *Procedures on environmental goals* AND *Setting and establishing policies and procedures for environmental objectives*. We believe that this language must be tightened to ensure that environmental management takes place within the framework set for in the *Pilotage Act* (i.e., pilotage services provided in a manner that protects the environment) – as opposed to a vague requirement for pilotage authorities to set broad scale environmental objectives/goals. The latter would again fall outside the scope of the duties of the Pilotage Authorities under the *Pilotage Act*. We also expect that the intent here is not for the Pilotage Authorities (and their “employees” as defined in the drafting instructions) to develop new environmental requirements regarding navigation (considering that pilotage is only one component of the navigation system). In view of the above, we proposed the following amendments to the drafting instructions:

~~*Procedures on environmental goals; to ensure compliance with legal requirements regarding environment and environmental impacts.*~~

~~*Setting and establishing policies and procedures for environmental objectives*~~

To be replaced by:

Procedures to ensure compliance with legal requirements and to support due consideration of voluntary measures established by competent recognized entities, in so far as said requirements and measures minimize environmental impacts of pilotage services.

The above language aims at addressing situations such as voluntary slowdowns to protect whales in piloted waters on the west coast and in the Saint Lawrence River – where such measures are developed under the auspices of several competent entities, with the necessary buy-in from pilotage authorities, pilots, AND the vessels, on voyage-by-voyage basis (in addition to compliance with legal requirements).

We also note that Item 9 refers to procedures for the use of Portable Pilotage Units (PPUs). Although we support this approach, we are of the opinion that the principle whereby evolving technologies must be taken into consideration (section 2 (c) of the *Pilotage Act*) encompasses a

¹The term “quality of pilotage services” contained in the proposed drafting instructions cannot be viewed as an equivalent to or a proxy for the principle provided under section 2(c) of the Act.

broader set of technological developments (than just PPU) – including for example, the current initiatives by some pilotage authorities to develop “smart pilotage services” using big data². Equally important is the need for the integrated management system to contain procedures for the consideration of evolving navigation technologies on board ships and onshore, as these technological developments have been too often overlooked in the past, and have the potential to assist in introducing greater efficiency in pilotage services (in addition to evolving technologies that are under the ownership of pilots).³ Therefore, we strongly believe that the proposed drafting instructions should be amended to include a broader requirement:

To establish policies and procedures for taking into consideration evolving technologies for the provision of pilotage services, as well as relevant technological developments on board ships and onshore.

As a last comment on Item 9, we suggest amending the following statement to better reflect the decision-making process and the authority of the Pilotage Authorities:

*Procedures for Pilotage Authority to determine the requirement for more than one pilot to be dispatched which include ~~accepting and reviewing~~ **assessing** recommendations from pilots.*

With regard to Item 13 (Customer Related Processes), we seek clarification on the scope of the following statement: *Pilotage Authorities must consult with customers/stakeholders regarding any proposed changes to pilotage services that will affect them. The communications must include the rationale for the change to pilotage services and the proposed timeline.* We assume that this

² As an example, the LPA’s Corporate Plan Summary 2020-2024 describes the authority’s work on smart pilotage as following: *In order to limit the impacts on navigation and improve the transits of certain ships, the LPA has begun to advise various users as they transit through its territory. This free service, described as “smart pilotage,” has been very well received by its beneficiaries. The Authority wishes to develop and expand this offering to its clientele in order to make it a complete service. This option would help optimize transits on the river by increasing navigation flow and safety along the Les Escoumins—Montreal section and would permit users to realize savings. To do so, the Authority must equip itself with modern and appropriate tools so that comprehensive information on transits can be entered and all of the restrictions that apply to a ship can be taken into account to analyze various scenarios. An additional resource will be required to develop, put in place and operate this system.*

https://www.pilotagestlaurent.gc.ca/files/pdf/Plan_Entreprise/2020_2024_Corporate_Plan_Summary_FIN_AL.pdf

³ *Additionally, navigation technology has advanced considerably since the Pilotage Act was enacted. Previous reviews of pilotage have noted the lack of adaptation of new technology in the pilotage sector. Some stakeholders have expressed support for an expanded use of technology as a way to reduce the cost of pilotage. Other stakeholders were concerned that technology could have an impact on safety. To address these concerns, a new risk assessment process should be established through regulation which has a clear methodology, standards, guidelines, and conduct for assessment, and which considers all navigational aspects of risk, including technological advances. The Pilotage Act should also be amended to establish an objective that the Pilotage Authorities optimize the use of new technologies.* Report from Marc Gregoire, 2018 Review of the Pilotage Act,

https://tc.canada.ca/sites/default/files/migrated/17308_tc_pilotage_act_review_v8_final.pdf

is meant to be in addition to the consultation process under the regulatory process, when applicable.

Concerning near misses and accident management, we question how much the approach under the *Railway Safety Management Systems Regulations* can be used as a template/model – in view of the fact that Transport Canada has an active role in risk assessment process under the *Pilotage Act*, which is not the case for the railway companies. More specifically, it seems to us that Item 14 (Risk, Incident, Near Misses and Accident Management) must be reviewed to provide clarity on the interplay between Transport Canada and the Pilotage Authorities, when it comes to the unfolding of the risk assessment process. This is important in a context where the regulatory provisions on the integrated management system will be implemented prior to the yet to be drafted regulations on risk assessments (section 52(1)(m) of the Act).

We also note that there is very little explicit requirement for transparency and accountability to the users of pilotage services in the proposed framework for the integrated management system. Although Item 13 contains a requirement to establish and implement *effective arrangements for communicating with customers* regarding four specific areas of services and complaints, we believe that this not sufficient. We suggest adding an explicit provision for transparency and accountability to users on risk occurrence, marine occurrence reports, results of risk assessments, risk treatments and/or corrective actions (Item 14)⁴, as well as on the continuous improvement of the integrated management system (under Item 15 (Measurement, analysis and improvement)). In this respect, we note a situation encountered by one of our members in the Great Lakes, whereby the shipowner's request to obtain a written report on a marine occurrence/incident involving one of its ships was denied, pursuant to section 18(5) of the *Great Lakes Pilotage Regulations*. To our knowledge, a similar provision limiting the sharing of factual information on marine occurrences does not exist in the regulations of the other Pilotage Authorities. We believe that the approach on the sharing of information regarding marine occurrences must be reviewed, in order to promote a certain level of transparency to better enable the shipowners to implement corrective/improvement measures (as relevant), while respecting the right against self-incrimination for the pilots.

Transport Canada has publicly stated that the new *Pilotage Act supports Canada's excellent pilotage safety record and strengthens the pilotage system by introducing more consistency, efficiency, and transparency*⁵. The regulatory framework on the integrated management system must fully implement all of these elements.

⁴ The proposed drafting instructions lack clarity in this respect, stating that risk treatments and/or corrective actions are communicated and their effectiveness reviewed.

⁵ Transport Canada's website, *Report to Canadians: Investing in our coasts through the Oceans Protection Plan*, <https://tc.canada.ca/en/initiatives/oceans-protection-plan/report-canadians-investing-our-coasts-through-oceans-protection-plan#world-leading>

DRAFTING INSTRUCTIONS – MARINE PILOTAGE REGULATIONS CONSOLIDATION

At this stage, we wish to state our disappointment with the scope of the amendments proposed under the consolidation sections – since the approach taken does not introduce meaningful changes for achieving greater efficiency and cost-effectiveness in pilotage services. In the past, the pilotage authorities have too often operated under a model where increases in pilotage costs were simply passed on to users, to be recovered as part of an automatic increased pilotage tariff – without due consideration to efficiency and cost-effectiveness. In recognition of that situation, the new *Pilotage Act* introduced a principle under which pilotage services must be implemented in an efficient and cost-effective manner. We cannot insist enough on the need for a fundamental paradigm shift when it comes to embedding efficiency and cost effectiveness in pilotage services. Unfortunately, this first iteration of the proposed drafting instructions for the *Marine Pilotage Regulations* is maintaining the status quo on key issues that have the potential to provide greater efficiency in the system (e.g., notices to obtain pilots/arrivals/departures), minimum number of pilots on board ships under certain conditions, night departure, etc.).

Although we understand that Transport Canada plans to review the risk assessment methodology under the new *Pilotage Act*, which is a key element for considering changes to the conditions for pilotage services, we note that there has been no progress on that front since the adoption of the new Act in June 2019. In fact, inertia is currently building up in the system while we are “waiting” for a new risk assessment process, as illustrated by the situation in the Great Lakes:

Subsequent to the Authority publishing its Notice, the Authority has had further discussions with Transport Canada officials on the compulsory pilotage area review initiative. Given the responsibility for establishing compulsory pilotage areas will be transitioning to the Minister of Transport per s. 52(a) of the Pilotage Act in the near future and the main tool to conduct such a review (PRMM - Pilotage Risk Management Methodology) is currently being examined by Transport Canada, it was decided to defer such a review.⁶

Assuming that it may take two to three years (or even more) for Transport Canada to develop the new risk assessment methodology, there is a need for an efficient “bridging” approach so that some of the overdue risk assessments can take place, in accordance with the principles provided under the new *Pilotage Act* – while Transport Canada is developing the new navigation risk assessment methodology. This is key to supporting regulatory amendments in the not-too-distant future that will provide for greater efficiency and cost-effectiveness in pilotage services.

Looking now at the details of the proposed drafting instructions, we note that all four pilotage authorities are issuing waivers for the following situations, i.e., ships in distress, ships engaged in rescue or salvage operations and ships seeking refuge, which leads us to suggest that consideration be given to a common section on waivers to cover the above situations (on the path to harmonization, where relevant), while any remaining waiver situations/conditions that are

⁶ Statement by the Great Lakes Pilotage Authority as part of the authority’s publication of its revised pilotage charge for 2021.

specific to a pilotage area would be listed under the relevant divisions of each of the Pilotage Authorities, along with the actual authority to issue waivers.⁷

We also suggest adding a question on the Pilot-Master Exchange requirements under Item 16 (Evaluation Process), in order to support greater awareness/buy-in of these procedures from all parties.

DRAFTING INSTRUCTIONS FOR ADMINISTRATIVE MONETARY PENALTIES

Item 7 (Economic Benefit): The gradation in the severity of the offence between subsection b) *if the violation provided some economic or competitive benefit* and subsection [rated as moderate] and section c) *if the violation provided economic or competitive benefit [rated as high]* is not clear to us. Can Transport Canada provide additional information to enable us to properly assessed the impact?

Division 1 – Violation of the *Pilotage Act*

Item 1 (Prohibition where pilotage compulsory): We are seeking additional information on the criteria that Transport Canada will be using to decide whether the offence will be pursued as an AMPs or a summary conviction? There will be a need for consistency in the assessment of what constitutes an “egregious case of non-compliance”, considering the various categories of stakeholders affected (i.e., certificate holders, waivers, and foreign seafarers), in order to avoid any perception of discrimination.

Items 9 and 10 (Powers on entry): The proposed maximum penalty range for a comparable offence under the *Wrecked, Abandoned or Hazardous Vessels Act* (WAHDA) is 10 times higher under the *Pilotage Act* (\$250,000 versus \$25,000 under WAHVA). We question the reason for this disparity and also wish to underline the approach taken under WAHVA which states that for this type of offence, the purpose is *to promote compliance (...) and not to punish* (section 90(6) of WAHVA). We have the same concern regarding Item 12 (Powers – direction to provide information).

Division 3 – Violations of the Provisions Related to Integrated Management Systems

Item 9 (Annual Review): Under the proposed regime, a failure to demonstrate that a safety policy has been reviewed annually would be a “minor” violation. We question this approach considering that continuous improvement through annual review of the integrated management system is key to safety. We believe that it should be a “serious violation”.

Item 52 (Annual report): We also question the designation of the failure to carry out annual reporting on monitoring activities as a “minor” violation – considering that both, monitoring and reporting on such monitoring, are key to identifying, minimizing, and managing risks. We also note that the proposed penalty range would be quite lower than that approach taken in the rail

⁷ The waivers provisions in the Common Sections would contain a cross reference to the relevant provisions of the respective Pilotage Authority’s divisions.

model for a comparable violation (i.e., proposed maximum of \$25,000 compared to \$125,000 under the rail model). We have similar concerns with Item 55 (Audit Plan) being labelled as a “minor” violation (considering again the role of audit in managing risks).

Division 4 – Violation of the Atlantic Pilotage Regulations

Item 5 (Required Information): We believe that failure for a ship to provide a notice with information regarding a pilotage certificate holder, when said ship is proceeding through that compulsory area under the conduct of the certificate holder, should be a “serious” violation – considering the need for a pilotage authority to properly monitor these ships, when operating in compulsory pilotage areas (which starts with the Pilotage Authority having the necessary information). This would also be in line with the approach taken under Item 2 – Division 7 of the *Pacific Pilotage Regulations*.

Division 5 – Violation of the Laurentian Pilotage Regulations

Item 1 (Required information): See above comments provided under Item 5 – Violation of the Atlantic Pilotage Authority – which also apply to the proposed AMP for a similar violation under the Laurentian Pilotage Regulations.

Division 6 – Violation of the Great Lakes Pilotage Regulations

We note that the Great Lakes Pilotage Regulations do not contain a requirement for a ship to provide information regarding a pilotage certificate holder onboard. We believe that this information should also be required in the Great Lakes (as it is the case in the APA, LPA, and PPA) and failure to provide said information should be designated as a “serious” violation– for the same reasons as those mentioned above under the APA and LPA divisions. This matter is important considering the momentum to develop an efficient certification program across all the pilotage authorities, which could lead to the issuance of more pilotage certificates.

Item 8 (Shipping Casualty): It seems to us that the designation as a “minor” violation is not aligned with the proposed approach under the Atlantic Pilotage Regulations (Item 12), the Laurentian Pilotage Regulations (Item 10) and the Pacific Pilotage Regulations (Item 11), which all consider the failure of a license/certificate holder to immediately report an incident/accident as a serious “violation”.

Division 7 – Violation of the Pacific Pilotage Regulations

Item 4 (Minimum Number of Licensed Pilots or Holders of Pilotage Certificates on Board): We note that for the Pacific region, the proposed penalty range extends to both Individual AND Other person/ship – which is different from the approach taken under the Atlantic (Item 11, only ships), Laurentian (Item 8, only ships), and is also different for the Great Lakes, where there seems to be no similar provision at all. We suggest that this item should be discussed in order to consider the opportunities and/or challenges for harmonization among the four pilotage authorities.

We trust that our comments will be useful in Transport Canada's effort to refine its first set of drafting instructions and we look forward to an opportunity to further discuss our proposed modifications.

Respectfully submitted,

A handwritten signature in black ink that reads "M. Broad". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Michael Broad, President