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The Impact of Competition on Pilotage

Safe and efficient marine transportation requires that marine pilots operate in an environment which allows them to exercise their professional judgement in an independent manner.

Compulsory pilotage in designated waters is the norm for maritime shipping everywhere in the world, essentially to ensure the safe passage of ships and the protection of the environment and nearby populations. Most jurisdictions, including the European Union, the United States and Canada, have concluded that the public interest and marine safety are best served through pilotage services being provided, on an exclusive basis, by a single group of pilots in any given compulsory area.

Canadian pilotage: the right model

Pursuant to the **Pilotage Act** of 1972, pilotage service in Canada is regulated and delivered by four regional pilotage authorities. The pilotage authorities designate which waters and type of vessels are subject to compulsory pilotage and provide the pilotage services required. For the provision of those services in any pilotage district, the authorities can **either** hire their own duly qualified pilots, **or** they can enter into a contract with a pilot group constituted for that purpose. They may not, however, use **both** employee and contract pilots in the same district.

This approach ensures that pilots will be able to exercise their professional, independent judgement during high-risk operations without commercial pressure. It is in the public interest for pilots to be able to not commence, or to stop, an unsafe operation without fear of adverse consequences to their careers or livelihood.

Canada's pilotage system has served the country well. The outstanding safety record of piloted vessels not only means that the environment and human life have been well protected, but that marine transportation has been able to operate efficiently. This has been accomplished at a cost that is as low as almost anywhere else in the world.

Competition between licensed pilots within the **same** district would do great damage to the independence – and effectiveness – of pilotage. In such circumstances, pilots would inevitably be subject to pressure to accommodate commercial needs, even at the expense of the public interest. The experience of other jurisdictions convincingly demonstrates this point.

Some jurisdictions, such as Australia, have selected a "franchise" approach, whereby a contract is awarded on a competitive basis to a private organization for a given period. Service is then provided by that single supplier on a monopoly basis for the period of the contract.

Other jurisdictions, such as Alaska, Florida, Argentina and the United Kingdom chose a more direct approach to competition, whereby rival pilot organizations compete against each other on an on-going basis to provide pilotage service. In every case, it was subsequently determined these competitive models did not meet the requirement to provide for a safe marine transportation environment where pilots can carry out their duties keeping the public interest paramount.

United States

In the United States, each state has its own compulsory pilotage laws covering the ports and waters of the state, and each state licenses and regulates pilots operating in its waters. **Competition plays no role in the pilotage system of any state.** Either a single pilotage group operates in a given pilotage area or, in the case of compulsory pilotage areas on a boundary between states, two or more pilot groups operate a joint service under a single rotation or divide the work under a formula provided by law.

While there is currently no place in the United States where pilots compete with each other, some

states have had experience with competitive pilotage.

Alaska

In Alaska, competition between pilots developed during the 1980s, when growth of the cruise ship industry and certain sectors of the fishing industry created demand for more pilotage services. The consequences of this competition are best summarized in a report prepared by the state Office of Management and Budget entitled *Alaska's Marine Pilotage System Revisited, 1994*. The report stated:

- *"Competition... severely compromised the... ability to maintain high professional standards";*
- *"...the pressures of competition to secure market share reportedly led to shortcutting the traditional training process by having unqualified trainees in the program as well as other dubious practices";*
- *"The reasoning (for allowing competition in 1981) was that tariff competition would allow market forces to most efficiently allocate resources. These provisions led to the quasi competitive system in place today and are the source of the many problems described in this report";* and
- *"The public interest in maintaining a safe and efficient pilotage service has fallen victim to legal challenges and special interest politics".*

Following the grounding of the cruise ship **Nieuw Amsterdam** in 1997, an Alaska Government report stated *"competition between (pilot) associations has had a seriously negative effect on public safety"*. This finding echoed the earlier US National Transportation Safety Board's finding that *"the lack of effective pilotage services"* was the central cause of the infamous **Exxon Valdez** disaster.

Florida

After briefly experimenting with competition, Florida passed legislation explicitly abolishing competition between pilot organizations. The conclusion reached by a study commissioned for the Florida state legislature in 1986 was definitive:

"There is a significant conflict of interest between a vessel owner's economic needs and the public interest in safe passage. It is in the public's best interests for the pilot's judgement to be absolutely free of economic consideration to the shipowner when piloting his vessel. If pilots must compete against one another to win assignments, there is a likelihood that a pilot will compromise safety considerations in order to accommodate the financial interest of the shipowner, for in so doing, he will have a competitive edge over another pilot."

The first two articles of the statute concerning pilotage now state:

- *"piloting is an essential service of such paramount importance that its continued existence must be secured by the state and may not be left open to market forces";* and
- *"because safety is the primary objective in the regulation of pilotage by the state and because of the significant economies of scale in delivering the service, the requirement of a large capital investment in order to provide required services and the fact that pilots are supplying services that are considered to be essential to the economy and the public welfare, it is determined that economic regulation, rather than competition in the market place, will better serve to protect the public health, safety and welfare".*

United Kingdom

The United Kingdom abolished state oversight of standards for pilot training and work practices in the 1987 **Pilotage Act** and delegated regulatory responsibilities to Harbour Authorities. Following an inquiry into the grounding of the **Sea Empress**, a review of that **Act** in 1998 resulted in the restoration of the status quo ante.

Australia

Australian coastal pilotage was de-regulated in 1993 utilizing the "franchise" approach described above. Following grounding of the container ship **Bunga Teratai Satu** in 2000 and environmental concerns over damage to the Great Barrier Reef, the Australian Government ordered a Review of

Ship Safety and Pollution Measures in the Great Barrier Reef.

The Review's recommendations included several related to pilotage, including the extension of compulsory pilotage areas and changes to the recruitment, licensing, training and qualification practices for coastal pilots. It is significant that these concerns over pilotage standards surfaced in a system where service was provided by competing pilots, mirroring the experience of the State of Alaska's experiment with de-regulation.

The urgency and gravity of the issue was underlined when the bulk carrier **Doric Chariot** grounded on the Great Barrier Reef in July, 2002. The Government of Australia accepted the review's recommendations the same month.

Argentina

Argentina introduced competition in pilotage in 1997. In 2000, following 18 major maritime accidents - compared to none in the 20 years preceding its introduction - the Government introduced legislation to abolish competition. The preamble states that:

- *"the nature of pilotage is that of a non-commercial public service of national interest";*
- *"pilotage has no commercial basis and it is essentially a government function";* and
- *"competition leads pilots to do things they would refuse to do for safety reasons in a non-competitive setting".*