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October 27, 2017

Mr. Marc Grégoire
Chair
Pilotage Act Review
Transport Canada
Tower C, Place de Ville (ACL)
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Mr. Grégoire,

I wish to thank you for meeting our Board of Directors in Toronto on September 21, 2017, as it was very beneficial given the current *Pilotage Act Review*.

I have attached for you the Great Lakes Pilotage Authority's (GLPA) written brief on the Board's view of the issues that require addressing in the current *Pilotage Act Review*.

The GLPA has completed a full review of the *Pilotage Act*. Attached you will find two documents with proposed recommendations:

- Submission on the Pilotage Review of the *Pilotage Act*; and
- *Pilotage Act Review- GLPA Proposed Amendments October 2017*
 - including the applicable excerpts from the Gauthier Report 1988

The "*Pilotage Act Review - GLPA Proposed Amendments October 2017*" document is presented in a tabular format. There are seven columns and several numbered rows which directly correspond to the current *Pilotage Act* and the GLPA's proposed amendments to the *Pilotage Act*. The 4th and 5th columns are the articles prescribed from the current *Pilotage Act*, and the 6th and 7th columns are the GLPA's proposed wording amendments in both official languages. In the "Comments" column there are additional details and references which pertain to the adjoining lines or sections.

I look forward to discussing these items further with you and your staff, and plan on attending your roundtable events in Montreal, Toronto and Ottawa in the coming months.

I wish you and your team all the best in this important initiative.

Sincerely,

Robert F. Lemire
Chief Executive Officer

Attachments



SUBMISSION ON THE PILOTAGE REVIEW OF THE *PILOTAGE ACT*

GREAT LAKES PILOTAGE AUTHORITY

OCTOBER 2017

Background:

The Great Lakes Pilotage Authority (GLPA) is a federal Crown corporation and one of the four (4) Pilotage Authorities in Canada responsible for establishing, operating, monitoring and administering in the interest of safety an efficient pilotage service within the Great Lakes region. This area comprises all the Canadian waters in the Province of Quebec south of the northern entrance to St. Lambert Lock in Montreal, Quebec and all Canadian waters in and around the Provinces of Ontario and Manitoba.

The Authority has four separate pilot groups that are all GLPA employees and are represented by the Canadian Merchant Service Guild as four separate bargaining units. The Authority employs 65 pilots, as well as 10 dispatchers and 9 office employees that operate in the head office in Cornwall, Ontario.

The Authority is also responsible for issuing Pilotage Certificates and monitoring the 350 Canadian domestic officers sailing in the Great Lakes region. These officers are issued Pilotage Certificates under the *Pilotage Act* as their skill and knowledge are equivalent to the pilots transiting in the region. The Authority's safety record is spectacular as it sees year to year incident-free rates for its 7,000 yearly assignments at 99.9%. This safety record is also matched by the Canadian ships operating in the region. The current pilotage review is a good opportunity for users, providers and stakeholders to review the current practices and make the necessary adjustments to the *Pilotage Act* to maximize the benefit of pilotage to all users including the Canadian residents in the region that demand a clean and pollution-free environment. We look forward to the opportunity to discuss the recommendations listed below with the group undertaking the review and we assure you our complete cooperation.

Issues:

(1) Section 33 – Tariffs

The Authority continues to have difficulty meeting its business needs due to the untimely and unjustly demanding tariff processes in order to respond to a changing marine navigation industry. The Authority needs to have a consultative process where the users accept the tariffs being proposed to avoid an appeal process. Alternatively, it faces long months of delay to implement additional charges and additional, costly legal bills required to prepare a proper case to the Canadian Transportation Agency (CTA) for review. During an appeal process, the Authority cannot adjust its tariffs nor retroactively charge its users for the lost revenues.

On a number of occasions in the last eight years, the GLPA has knowingly accepted lower tariffs from initial tariff strategies and/or delayed other strategic initiatives on safety sensitive functions in order to avoid delays and additional costs to obtain the tariff approval without appeal. It is for these reasons the GLPA has not yet reached financial self-sufficiency, which is the Federal Government's objective. In 2017, the industry and the Authority both agreed to a 5% surcharge be applied to invoices in order to generate \$1.0 million to train the ten (10) GLPA apprentices required to replace the high levels of retirements. The Authority initiated its tariff process in September 2016. The 2017 tariff was published in February 2017 and received Governor in Council approval in June 2017, therefore the 2017 tariff adjustments were delayed until June 2017 (10 months after the start of the process). The Authority has calculated that this long delay will cost GLPA close to \$325,000 in 2017 which is proposed to be recuperated with a compensating 1.5% tariff increase in 2018 in addition to its proposed 2018 adjustments to all users.

GLPA and the other pilotage authorities should be granted the same tools to deal with tariff issues as the Canadian Ports and the St. Lawrence Seaway. This will avoid the systematic push back from users that have everything to gain in appealing a tariff. GLPA has increased the pilots' productivity by close to 30% since 2009 as they now perform over 130 assignments per year vs 100 in 2009.

The current process for altering the pilotage tariffs needs to be addressed and changed to allow the Authority the flexibility and control over its only source of revenue. The current practice in place is time-consuming which causes significant costs to the Authority as the current tariff process requires a minimum of six months to be tabled. In cases where the users object to the changes in tariff, we can see over a year in delays which is not acceptable in a business environment that is subject to unforecasted charges and uncertainty.

The Authority does agree that there is a role for the CTA in dealing with potential objectives from the users but the current system of implementing tariff charges faces significant systemic problems.

Adapting the regulatory process for Pilotage Authorities' tariff changes to a process similar to the port authorities' framework (or some such framework) would yield important benefits for the Authorities and the maritime industry. The Authorities could implement tariff changes within 60 days rather than eight months, and make tariff adjustments when appropriate. In addition, such a framework would allow the Pilotage Authorities to offer rebates, incentives or establish special arrangements to attract new business and assist in the competitiveness of our respective regions and the marine transportation system as a whole.

It is important to note that the above proposal for a timelier and more flexible tariff implementation process would not, in any way, remove the safeguards and checks and balances intended to protect clients and the public interest. We fully understand that as a regulated monopoly our customers have no choice but to use our services and as a result the CTA would need to be part of any tariff improvement. Any change would include

the continued ability for industry or stakeholders to file objections with respect to any tariff increase or modification before the CTA. This however would need to be time limited (say 60 days) otherwise it would not negate the risk of a similar situation developing as experienced in the Pacific region last year where nine months passed from the time the objection was lodged to the actual hearing.

Consideration should be given in having the objecting party assessed penalties and costs in the event the objection to the tariffs is found to be unwarranted and unfounded.

Lastly, we need to have the ability to charge for other administrative duties and processes that we are engaged in. An example is the Pilotage Certification Program, which costs approximately \$150,000 annually to administer. The GLPA certifies, audits and monitors over 350 Canadian navigation officers working on the Great Lakes as it assures safe and efficient navigation to all. Another example would be the ability to charge for the use of simulators or for our time consulting. These charges should not be borne by the industry hiring pilots but by the actual users of the service such as the operators seeking pilotage waivers or industry proponents seeking subject matter expertise from the GLPA.

(2) Board Representation:

The GLPA supports the current initiatives of the Government of Canada in Board appointments and is working with the Government in assuring representatives from all Canadians in a transparent process based on merit which represents our cultural diversity. In 1972 when the *Pilotage Act* was promulgated, the Board of Directors of the four Pilotage Authorities were set up so as to maximize the expertise of pilotage. Two pilots and two user representatives were selected to sit on these Boards with the three other members of the Board representing the public interest. It is very important to maintain the mix listed above as to continue the work the Boards have done in providing safe pilotage. The GLPA does support the full transparency of the Board appointments but recommends that the forty-five (45) years of practice of having two representatives from the pilots and industry groups be maintained and reflected in the changes to the current *Pilotage Act*.

(3) Renewal of Contracts (Section 15.1):

In 1998 the *Pilotage Act* was amended to resolve the potential issues of work stoppage in Pilotage services in Canada. The *Pilotage Act* sets up a final offer selection (FOS) exercise to deal with disputes in renewing contracts with body corporates once the contracts expired. This section of the Act applies to Pacific and Laurentian Pilotage and not to GLPA or Atlantic Pilotage, as the last two have employee pilots that fall under the *Canada Labour Code*.

GLPA would support changes to Section 15.1 to provide that the arbitrator must consider all aspects presented to him/her in the settlement of the contract or collective agreement renewal and be allowed to make a decision on different aspects of the demands from both parties. We see in the *Canada Labour Code* where arbitrators must execute all the

powers provided to an arbitrator pursuant to Section 16 and 60 of the *Canada Labour Code* in rendering their decision.

We realize that having a FOS increases the costs of settlements which need to be passed on to the users. The GLPA Board does support a resolution mechanism for the renewal of contracts and collective agreements but believes the current FOS must be amended to allow more flexibility to the arbitrator.

(4) Marine Lien for Unpaid Pilotage/Administration Charges (Section 42):

Under Section 42 of the *Pilotage Act*, the owner, master and agent of a ship are liable for all pilotage charges. However, unless charges are collected before the ship leaves the Canadian jurisdiction, the charges may be difficult to collect. Furthermore, shipowner bankruptcies usually result in insufficient funds to pay all creditors. A priority ranking would ensure payment of pilotage charges in priority to all other creditors except for marshall costs and seamen wages. Similar rights exist in favor of ports in connection with unpaid port dues in Section 122(1) of the *Canada Marine Act*.

(5) Offences and Punishment (Section 47):

Sections 47 through 51 identify the various fines on summary conviction as well as the fact that those fines shall be paid to the Authority concerned.

The most important of these is section 47 which deals with a vessel proceeding through pilotage waters without a pilot. The problem with this section is the level of the fine imposed and the fact that it is only on summary conviction. This means that the Authority must commence legal proceedings against the vessel that contravened the *Pilotage Act*. This is a costly venture in itself, particularly when the maximum penalty is limited to \$5,000. When you consider that a vessel requiring pilots to transit most sections of the Great Lakes will likely generate an invoice of \$6,000, the cost of the fine for contravention is actually less than the cost for pilotage services. The fine is not a deterrent for non-compliance.

In order to bring this into our present reality, this fine should be set at a maximum of \$150,000. At this level of penalty, a vessel would need to seriously consider their financial implication for non-compliance while allowing the Authority with financial justification to effectively monitor the vessels and pursue violators.

Similarly, the maximum fine under Section 48 should be set at \$150,000 for the same reasons as mentioned for Section 47.

Section 49 needs to be amended to state that all fines shall be paid to the Authority. The current wording does not provide any indication to whom the fine is paid to for a contravention under Section 48.1 or even who levies the fine under Section 48.1.

(6) Administrative Amendments to the Act

The GLPA has been issuing Pilotage Certificates to Canadian officers since 2013 and is now in the process of amending the GLPA Regulations to reflect some of the realities of the system. The GLPA has in place an MOU (attached) with the Canadian shipowners to reflect most of the changes until the GLPA Regulations are prepared. In order to properly administer GLPA's Pilotage Certificate System for the 350 Canadian officers sailing in the Great Lakes region, the *Pilotage Act* needs to be amended to:

- Add provisions with regards to pilot licences and pilotage certificates, including:
 - ❖ Need to introduce an expiry date;
 - ❖ Be able to prescribe renewal requirements;
 - ❖ Fraud, forgery;
 - ❖ Cheating (exam);
 - ❖ Destroyed or lost licence or certificate;
 - ❖ Level of pilotage certificates.

The Act also needs to be amended to:

- clarify the rights of Canadian pilots and certificate holders when piloting in U.S. waters.
- permit the Authorities to establish a monitoring system for the transits of Canadian vessels through compulsory pilotage areas.
- permit the Authorities to establish procedures and authorize auditing and approval of training courses and training programs.
- permit the Authorities to prescribe Bridge manning through compulsory pilotage areas.
- add provisions for refusal of issuance of a pilot licence or pilotage certificate.
- add a section for general prohibitions with regards to documentation.
- add provisions that a physician or optometrist may report to the Minister any medical conditions that could impede the issuance or validity of a medical certificate and to protect the physicians and optometrists from being legally pursued.

(7) Parallel Pilotage:

The GLPA is responsible to administer the Pilotage Certification regime in the Great Lakes and has done so since 2013. In the last five years, GLPA has obtained information that indicates that certain Canadian shipping companies have pilotage certificate holders that are not registered to any specific ship in their fleet and employ them as ship pilots.

The current environment in which the shipping industry in Canada finds itself is a complex one when it comes to staffing their vessels that trade in the Great Lakes region. We have been informed that due to the high rate of retirements lately, all companies are having an issue in finding properly trained mariners to replace the seasoned mariners taking their retirement. The Canadian industry must assure themselves that every section of each transit is manned by an officer that has sufficient knowledge and experience to safely con the vessels throughout the voyage. Companies are maximizing the availability of existing qualified staff and at times might have to move one officer from ship to ship in certain regions so as to assure the safety of the ship. The issue is not a safety one but a legislative one. These actions of moving one certificate holder to different ships in the same region is categorized as "Parallel Pilotage" if examined in a strict interpretation of the current *Pilotage Act*.

GLPA has tracked these individuals and is not certain on how these individuals fall within the current Act.

We have even seen a pilotage certificate holder for one company move a vessel for another company for which he/she was not employed.

GLPA is mandated in the *Pilotage Act* as the only legal entity responsible for establishing a pilotage service in the Great Lakes and has observed that certain shipping companies have established their own system of pilotage. The issue should be examined and discussed during the review.

Privatization/Commercialization of Pilots

GLPA operates at arm's length from the Government and the industry, as it is structured as a Crown corporation. The Pilotage Authorities do not receive Parliamentary appropriations, therefore do exercise some form of privatized company. The Authorities have but a few employees that are linked to the Government of Canada Superannuation Plan (pension) and does expose the Government of Canada to experience losses in the Plan although these have not been calculated or reported to GLPA.

Privatization would allow the Authorities to renegotiate contracts on transfer which could be costlier or less expensive. This information is not known at this time.

Pilot Employees vs. Pilots in a Corporation

There is a debate on which type of model is better suited to provide pilotage. Pilots are either employees (GLPA/APA) or perform their duties through a body corporate (PPA/LPA). Both models have their advantages and disadvantages, but listed below is a discussion of GLPA's experience in dealing with the differences. In the Great Lakes region, Canada has 65 employee pilots performing pilotage duties. The U.S. Government has 50 pilots doing the same duties in the same region as a body corporate. Based on local observations, GLPA sees the following results:

- Pilotage fees in Canada for employee pilots are less than pilotage fees in body corporate system
- Pilots working as employees have strict collective agreements and the Canada Labour Code provisions that allow better control on how the pilot performs his/her duties
- Administration of employee pilots is more complicated for Authorities as personnel issues are dealt with by the Authority which is bound by more rigorous legal obligations than those found in the body corporate system
- It appears that pilot employee system generates more ship-related pilotage delays than body corporate pilots.

Both systems are very different and require expertise to assure the good functioning of the systems. It seems the employee pilot system generates less expenses and allows more control to the Authority for the way pilotage is performed, therefore making it more acceptable to the users of the system.

Amalgamation of Authorities

This issue is a complex one and has been discussed earlier in GLPA's brief to the CTA in 2016.

It is clear that there is very little savings in amalgamating one, two or all four of the Authorities. The cost of doing so could be recuperated in 10-15 years, but would not yield a safer system in Canada. It could possibly lead to less safety, as inexperienced administrators would be responsible in areas where they have little expertise. Amalgamating GLPA and LPA would certainly be a challenge, as you have 65 employee pilots in the Great Lakes being united to contract pilots in the Laurentian area. These two different groups have a different mindset on how to provide the service, as well as both speak two different languages. The Great Lakes region has the benefit of sharing its work with U.S. Coast Guard pilots that operate totally different than LPA and GLPA pilots.

Finally on this issue, we see but one advantage to amalgamation and that is to have all existing collective agreements (GLPA/APA) and pilot contracts (LPA/PPA) rewritten to reflect the realities of 2017 and beyond, versus the realities of the early 1960s when all these collective agreements and contracts were initially put in place and for the most part exist today.

Conclusion:

The GLPA has been operating a safe and efficient pilotage service in the Great Lakes since 1972 and has a great deal of experience and knowledge in the subject matter. We are available during the Pilotage Review for all additional questions or inquiries that the Review officials might have. We look forward to this process in making pilotage safer and more efficient for the years to come.