

Views of the Atlantic Pilotage Authority on:

***Pilotage Act* Review**

Submission to Marc Grégoire, Chair of the Review

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Background

The Atlantic Pilotage Authority (APA) is one of four Pilotage Authorities in Canada created by the *Pilotage Act* and is defined as a Crown Corporation by the *Financial Administration Act* (FAA) and listed in Schedule III, Part I of that *Act*. The Authorities are not agents of the Crown and do not receive parliamentary appropriations.

Since 1972, the APA has operated, in the interest of safety, a marine pilotage service for all Canadian waters surrounding the four Atlantic Provinces, including the waters of the Bay of Chaleur in the Province of Quebec. This is the only program of business for the Authority.

The Authority provides licensed pilots to ships that enter Atlantic Canadian Ports to ensure that these ships travel within the pilotage area as safely and efficiently as possible. The APA has performed 88,537 assignments in the ten-year period from 2007 – 2016, including 34,505 tanker movements, while maintaining a safety record that is exemplary with an incident-free rate of 99.93%. The few shipping incidents that have occurred have been without injuries and no pollutants have been released into Canadian waters.

The Authority also examines qualified mariners, and issues pilotage certificates to successful candidates to enable them to navigate their ships within designated compulsory areas without a licensed pilot on board. In 2016, there were 1,678 movements performed by certificated masters, saving industry $4 million in pilotage fees. This also allows industry to gain operational flexibility by having their own qualified masters pilot their own vessels.

Due to the nature of its pilotage and the geography of the district, the APA applies the Pilotage Risk Management Methodology (PRMM) regularly to measure risk. Between 2010 and 2017, the Authority conducted 22 preliminary scans of ports or areas. In recent years the Authority has also conducted 12 full PRMM studies.

The operations of the Authority are organized according to geographic location, and has designated seventeen areas as requiring compulsory pilotage, with one further area currently in the regulatory process. Each of these seventeen areas has its own licensed pilots, pilot delivery arrangements, unique customers and industries, and tariff structure. A complete breakdown of all revenue and costs related to the pilotage service is calculated and totaled for each port and area, and summarized for the entire operation. The Authority endeavors to be financially self-sufficient on a port-by-port, area-by-area basis in order to minimize cross subsidization.

Nearly all of the pilots licensed by the Authority are employees (49); however, pilots may also be entrepreneurs contracting with the Authority for pilotage services (9). The employee pilots are members of the Canadian Merchant Service Guild and perform approximately 92% of the pilotage assignments.

Pilot vessel services may be owned and operated by the Authority or by a private operator who has a contract with the Authority. The Authority owns eleven pilot vessels, five crewed by the Authority with crewing contracts in place for the remainder. The APA employs launchmasters (8) who are members of the Canadian Merchant Service Guild, deckhands (8) who are members of the Public Service Alliance of Canada, and a pool of casuals to offer relief services. The Authority manages contracts for the provision of an additional fifteen vessels and crews to provide services in other ports.

At its head office in Halifax, Nova Scotia, the Authority employs dispatchers (5), who are members of the Public Service Alliance of Canada, vessel maintenance managers (2), and administrative personnel (12).

The APA works in close partnership with the marine industry, port authorities, terminal operators, and shipping and cruise lines to facilitate business development and economic growth in a safe and environmentally responsible manner. The APA makes every effort to be a leader in marine navigation by providing expertise in navigational safety and marine operations to industry and communities in Atlantic Canada. This *Pilotage Act* review is regarded by the Atlantic Pilotage Authority as an extension of this partnership, working towards these same purposes.

Areas for Reform

Governance

The *Canada Transportation Act* (CTA) Review made a recommendation to amalgamate the four Pilotage Authorities. Each of the four Authorities are unique and the pilotage provided by each varies significantly. While the APA performs harbour pilotage in a significant number of diverse ports, the other Authorities are more focussed on long distance river, seaway, and coastal pilotage. This presents different challenges to each Authority that is reflected in the structures and policies of each.

The APA has seventeen compulsory areas which are actively managed. Having local representation and an understanding of the challenges facing industry, pilots, and contractors in each of these areas is paramount to providing the safest, most efficient, and effective service possible. APA personnel maintain a close relationship with stakeholders to execute effective operations, to plan future resources, and to provide expertise regarding facility and business development. This local knowledge, consultation, and contact has created a synergy between customers, stakeholders, and the APA that allows for an efficient and effective pilotage service.

Essential to this stakeholder relationship is having a Board of Directors with an understanding of, and appreciation for, the challenges faced in the region. The Board of the APA is a representative one, in that each province is represented and the members bring a varied background and experience with them. The APA believes that the current composition of the Board provides the requisite knowledge and expertise for proper governance. The current Board includes members with marine pilot experience, members with knowledge and experience in the shipping industry, and public interest representatives that bring professional and board experience to the table. This balanced approach, in which each member has a fiduciary responsibility to make decisions based on the best interests of the Authority, mitigates the risk of conflict of interest. The APA recommends the current composition of the Board be maintained and formalized within the *Pilotage Act*.

Labour Models

As noted earlier, over 90% of APA assignments are performed by employee pilots. For the APA, this has created an environment of cooperation and consultation. The employee pilots partner with the management of the Authority to support stakeholders in developing new business and infrastructure in the region. The APA’s commitment of pilot resources and support begins from the ground floor of many major port and terminal developments in Atlantic Canada and proceeds through to completion. This in-house marine expertise is available to the Authority through the practise of having five district pilot chairs, elected by their peers, who represent their local areas and consult regularly with the management team of the Authority.

Pursuant to section 15(2), the *Pilotage Act* currently leaves the decision whether to be an employee or form a body corporate to the discretion of the licensed pilots. This creates a risk for the APA because the traffic level or tariff structure of various ports may not support a change in employment status, or that stakeholders may not be best served by the change. The APA recommends that the election in section 15(2) be by mutual agreement between the pilot(s) and the Authority.

Tariff Setting Process

During the APA’s annual planning stage, management meets with stakeholders to discuss future traffic levels, desired service outcomes, strategic plans, and the associated tariffs. Feedback is received from these groups and adjustments may be made to the plan or tariff. The Authority attempts to receive general agreement, or acceptance, from stakeholders that the tariffs are fair and reasonable before they are pre-published in the Canada Gazette.

Upon publication, any interested person who has reason to believe that the proposed tariff charges are prejudicial to the public interest may file a notice of objection with the Canadian Transportation Agency (CTA). If an objection is received, the CTA may make an attempt to mediate between the parties. If the mediation is not successful and the objection stands, the CTA is required to investigate the proposed tariff charges and render a recommendation to the Authority and the Minister of Transport. The Authority is obliged to abide by the recommendation.

The length of time required to approve, pre-publish, and finally publish a tariff has grown over the years to where it may now take 6-8 months to adjust tariffs that already have the support of the affected parties. With the volatility of traffic, this leads to years where the Authority has had large losses to absorb when traffic falls below plan, and years where the Authority has had large profits when traffic grows quickly beyond expectations. A timelier process would allow for rates to be adjusted to minimize both of these extremes.

The APA recommends a tariff or fee regime be implemented that is similar to that allowed Port Authorities under the *Canada Marine Act*, including similar process and methods of notification. The APA supports having a transparent consultative process with the ability for affected parties to file a notice of objection with the CTA, to be settled in a timely manner.

Economic and Public Policy Considerations

Due to the nature of harbour pilotage in the Atlantic, the APA has a substantial investment in capital assets needed to service the area, primarily pilot vessels, advanced navigation safety technology, wharves and other infrastructure. The cost of these assets is currently over $22 million. The maintenance and replacement of these assets is always a primary focus in the Authority’s strategic planning. Towards this end, the APA accumulates funds for their continuous upgrade and replacement.

The Pilotage Act currently provides the Authorities with the power, with the approval of the Minister of Finance, to invest in financial vehicles if they are guaranteed by the Federal Government, Provincial Government, or a municipality in Canada. These powers have become restrictive as commercial banks have moved away from basic savings accounts to Guaranteed Investment Certificates (GIC). The APA recommends that the *Pilotage Act* be amended to give the Authorities the same powers to invest as the Port Authorities have in the *Canada Marine Act.*

Enforcement and Emerging Issues

The APA does not have many annual occurrences of vessels contravening the *Pilotage Act*. The *Act* currently specifies that all pilotage charges are due to the Authority when a vessel proceeds through a compulsory pilotage area without a pilot, certificate holder, or granted waiver. The Authority recommends that the pilotage charges due when the *Act* is contravened be double the pilotage charges normally applied for a piloted assignment. This would represent an initial deterrence against non-compliance with the *Pilotage Act*.

The *Pilotage Act* also allows for a summary conviction for non-compliance with the *Act*, but limits the damages to $5,000. The legal costs that would be required by the APA to bring legal action against an entity would seldom be recovered with this limited penalty in place. The APA recommends that the limit for the maximum penalty be raised so that it would considered a more effective deterrence.

Summary

The Atlantic Pilotage Authority and Canada’s pilotage system have performed well for 45 years under the governance of the *Pilotage Act*, and have earned Canada an international reputation for safety and quality of service.

Each of the four Authorities is unique and perform very different forms of pilotage. For the APA, it is primarily harbour pilotage and docking which requires operations in seventeen compulsory areas. The Authority believes that amalgamation would threaten the benefits experienced through the constant communication and cooperation it has in each of these areas without significant efficiencies gained. The understanding of the operations in each of these areas is supported by having members on the Board with pilotage experience, marine business experience, and a public interest focus.

Even though the pilotage system has been successful under the *Pilotage Act*, the APA recognizes that changes can be made within it to achieve a more effective and efficient system. The Atlantic Pilotage Authority recommends the following changes to the *Pilotage Act*:

* The current allocation of Board members, evenly divided between members with local pilot experience, local marine industry experience, and public interest members be maintained and formalized within Section 3 under *Other Members.*
* Employment of Staff - Section 15 be updated to make the action of changing the employment structure between contracted service providers and employee pilots be by mutual agreement between the pilot(s) and the Authority.
* Regulations Prescribing Tariffs of Pilotage Charges - Section 34 be changed to make the tariff process comparable to what is applied to Port Authorities under the *Canada Marine Act*, including similar contents and methods of notification. The APA does not recommend significant changes to the current objection process contained in the *Pilotage Act*.
* Power to Invest – Section 37 changed to be similar to the less restrictive language contained in the *Canada Marine Act* for Port Authorities.
* Pilotage Charge in Case of Proceeding without a Pilot – Section 44 be updated so pilotage charges due when the *Act* is contravened be double the pilotage charges normally applied for a piloted assignment.
* Proceeding Without a Pilot – Section 47 and Contravention of Act or Regulations – Section 48 have their limitation of penalties increased to be more punitive.