



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
CONNECTICUT PILOT COMMISSION



CONNECTICUT PILOT COMMISSION
ANNUAL REPORT

JULY 1, 2006 – JULY 1, 2007

Pursuant to Conn. Gen. Stat. ch. 263, sec. 15-13c, the Connecticut Pilot Commission advises the Commissioner of Transportation (“DOT”) on issues related to the licensure of marine pilots, the safe conduct of vessels, pilotage rates, and the protection of the ports and waters of Connecticut. The nine Commission members, including appointees of the Governor and various legislative leaders, a designee of the Commissioner of Transportation, and a pilot representative, represent a broad spectrum of business, maritime, and environmental interests. The Commission currently includes members with expertise in admiralty law and marine regulation, environmental law, involvement in marine-related business, and experience as Merchant Marine, Navy, and Coast Guard officers. This is a report of the Commission’s activities for the period July 1, 2006 through July 1, 2007.

Background

Long Island Sound ports (consisting of Connecticut’s three deepwater ports and petroleum terminals on Long Island’s north shore) are vital to the regional economy. These ports provide millions of people with access to global commerce and offer the potential to reduce congestion along the northeast corridor. In addition to petroleum products, Connecticut ports handle lumber, steel, scrap, fruit, and chemical cargoes shipped to and from every part of the world.

As is the case throughout the maritime world, merchant ships arriving at Long Island Sound ports are required by law to take aboard a local pilot, who has up-to-date knowledge about hazards to navigation, tides and current, communications, and vessel traffic. Conn. Gen. Stat. ch. 263, sec. 15-15. As advisors to the ship’s Master, pilots typically direct the vessel’s movement in restricted or congested waters, including docking and undocking. Pursuant to the Federal Boundary Waters Act, 46 U.S.C. sec. 8501(b) and Conn. Gen. Stat. ch. 263, sec. 15-15d, Connecticut and New York share authority to regulate pilotage on Long Island Sound. The Boundary Waters Act entitles New York-licensed pilots to pilot ships to all Connecticut ports and Connecticut-licensed

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pilots to pilot ships on the New York waters of Long Island Sound. The two states are party to a 1999 Memorandum of Agreement (“MOA”), implemented by regulation, under which Connecticut-licensed pilots and New York-licensed pilots participate in a joint rotation to provide pilotage service for all ports on the Long Island Sound. Conn. Agencies Regs. Sec. 15-15a-17. The rotation is administered by a Joint Administrator, designated by the mutual agreement of Connecticut and New York. The Joint Administrator establishes work rules, dispatches pilots to assignments, collects pilotage fees, pays expenses, and distributes earnings. During calendar year 2006, the Joint Administrator dispatched pilots to 1,031 assignments (up from 943 in 2005), generating more than \$2 million in pilotage fees.

Under the MOA, the DOT retains authority to promulgate regulations respecting the licensing, conduct, and duties of Connecticut-licensed pilots as necessary to ensure public safety and protection of the environment. Conn. Gen. Stat. ch. 263, sec. 15-15a. The Pilot Commission and DOT work closely with the New York Board of Commissioners of Pilots to coordinate the regulation of pilotage on Long Island Sound. The Pilot Commission and DOT also maintain an active working relationship with the U.S. Coast Guard, which regulates many aspects of merchant vessel operations.

Enrolled vessels (coastwise U.S.-flag vessels) and public vessels are not subject to compulsory state pilotage. Pilotage of these vessels is regulated by the U.S. Coast Guard, which issues federal pilotage endorsements. Connecticut-licensed pilots may pilot enrolled or public vessels on the authority of their federal endorsements outside the joint rotation.

The Commission Members

Chairman: Michael J. Eisele. Appointed by the Governor for a term ending June 30, 2008 to represent non-recreational maritime industry interests.

Vice-Chairman: Vernon C. Miller, Jr. Appointed by the House Minority Leader for a term ending June 30, 2007 as a member with expertise in admiralty law.

Member: Captain Richard E. Barry, Jr. Appointed by the Senate Minority Leader for a term ending June 30, 2010 as a retired ship’s Master.

Member: David T. Shuda. Appointed by the Speaker of the House for a term ending June 30, 2008 to represent non-recreational maritime industry interests.

Member: David E. Pohorylo. Appointed by the Senate Majority Leader for a term ending June 30, 2008 to represent environmental interests.

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Member: William C. Gash, Jr. Appointed by the Senate President Pro Tempore Donald E. Williams, Jr. for a term ending June 30, 2007 to represent environmental interests.

Member: Joseph Russo. Appointed by the House Majority Leader for a term ending June 30, 2007 to represent non-recreational maritime industry interests.

Member: Captain Vincent Cashin. Elected by a majority of Connecticut-only licensed pilots for an indefinite term as a pilot representative.

Member: CAPT Charles C. Beck, U.S.C.G. (Ret.). Designated by the Commissioner of Transportation for an indefinite term to represent DOT.

Current Issues

Pilotage Rates

Pursuant to Conn. Gen. Stat. sec. 15-14, the DOT is obligated to set pilotage rates. The Commission is charged with the duty to advise the Commissioner on “the establishment of fair and reasonable rates of pilotage . . . including establishment of a hearing process for the setting of fair and reasonable rates of pilotage[.]” Conn. Gen. Stat. Sec. 15-13c. Pilotage rates have not been changed since 1983, although certain related fees (principally docking and standby fees) are not regulated by the DOT and have been periodically adjusted.

Over the past several years, the Commission has been engaged in a lengthy process to solicit and consider comments from all stakeholders regarding pilotage rates. The Commission also reviewed revenues generated by the current rate structure, costs incurred by pilots to provide services, pilotage fees in ports which compete with Connecticut, and income earned by pilots in comparable ports. In conducting its analysis, the Commission sought to balance a desire to keep Connecticut ports competitive with the notion that the rate structure should fairly compensate pilots, justify the substantial capital investment required to acquire and maintain pilot boats, and provide for training and certification costs.

On January 9, 2007 the Commission recommended to the Commissioner of Transportation that pilotage rates be increased a total of 18% over a three-year period and that the DOT begin to regulate fees for certain pilotage services which had not previously been regulated. The Commission also recommended that a 6% fee on gross pilot revenues currently paid by each pilot to the General Fund pursuant to Conn. Agencies. Regs. Sec. 15-14-4 instead be escrowed and utilized for pilot training and certification expenses as approved by the Commissioner of Transportation.

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On January 31, 2007 the Commission was advised that the DOT supported the recommendation. DOT prepared proposed regulations for review by the Office of Policy and Management (“OPM”) in anticipation of a public comment period. On June 8, the Commission was advised that OPM would not approve the proposed regulations. OPM expressed concern both about the diversion of the 6% fee from the General Fund to pilot training and certification costs and the effect that a pilotage rate increase might have on the competitiveness of Connecticut ports. As of July 1, this issue was still under review by the Governor’s office.

Although the MOA entitles Connecticut and New York to separately set pilotage rates for those pilots operating under their respective authority, the Commission believes that it is highly desirable for the two states to maintain identical rate structures. Accordingly, the Commission sought to coordinate any change in rates with New York, which requires legislative approval of certain components of its rates. On April 25, 2007 a bill was introduced in the New York State Senate to increase pilotage rates consistent with the Commission’s recommendation. S. 5303-A, 2007-2008 Reg. Sess. (2007). That bill was passed by the State Senate on June 5, 2007 and the General Assembly on June 20, 2007. As of July 1, the bill was awaiting the Governor’s signature.

Beginning in February, 2006 DOT and the New York Board imposed a temporary fuel surcharge based on a November 28, 2005 recommendation of the Commission. The fuel surcharge is intended to compensate pilots for sharp increases in the cost of diesel fuel, a major factor in the cost of operating pilot boats. Since its imposition, the fuel surcharge has been reviewed by the Commission at six month intervals. The Commission recommended continuation of the fuel surcharge (currently \$200 per boarding or disembarkation) on July 13, 2006, January 9, 2007, and June 15, 2007. The temporary fuel surcharge is currently scheduled to expire on January 31, 2008.

Joint Rotation Operation

Pursuant to the MOA and implementing regulation, participation in the joint rotation is mandatory for both Connecticut-licensed pilots and New York-licensed pilots. The Joint Administrator dispatches pilots, collects fees, pays expenses (including pilot boat costs) and distributes profits among the pilots. Unlike most other jurisdictions, pilots participating in the joint rotation are not compelled to belong to a single business entity. During the past year, four separate pilot organizations operated within the joint rotation, each utilizing its own pilot boats.

Connecticut currently licenses 15 pilots, 7 of whom are also licensed by the New York Board. As a condition of maintaining their Connecticut licenses, all of these pilots must also possess federal licenses endorsed for first-class pilotage. The 8 pilots who are only licensed by Connecticut participate in the Connecticut side of the joint rotation and are allocated 70% of vessel movements subject to the joint rotation pursuant to the terms of the MOA. Pilots licensed by New York

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(including the 7 pilots who are licensed by both Connecticut and New York) participate on the New York side of the joint rotation and are allocated 30% of vessel movements. During 2006, a total of 11 pilots participated on the New York side of the rotation. The 8 pilots participating on the Connecticut side of the joint rotation covered 708 of the 1,031 assignments made by the Joint Administrator during that year (68.7%). The largest number of movements handled by a Connecticut pilot was 115; the smallest was 32.

The joint rotation is administered by Sound Pilots, Inc. (d/b/a Block Island Pilots), selected by agreement of the DOT and the New York Board. The operation of the joint rotation is overseen by a Rotation System Executive Board, consisting of three pilots from the Connecticut side and three pilots from the New York side of the rotation. The implementing regulations require an annual evaluation of the Joint Administrator's performance. The Pilot Commission began an evaluation during 2005 with an intention to make a recommendation to the DOT. That evaluation has not been completed.

In July, 2006 DOT presented a concept for the management and operation of a state marine pilotage system by a contractor. As envisioned, the contractor would be responsible for providing, maintaining, and operating pilot boats, scheduling and dispatching pilots, developing apprenticeship and training programs, billing, collection, and distribution of fees, and enforcement of work rules. DOT is continuing to develop a Request for Proposals to carry out this work.

Boarding Stations

The Commission's mandate specifically includes the provision of advice regarding the designation of pilot boarding and disembarkation stations. Conn. Gen. Stat. ch. 263, sec. 15-13c(e)(9). During 2004, the Commission issued a comprehensive report recommending that DOT designate mandatory pilot stations at Point Judith, Rhode Island and Montauk Point, New York under authority of existing regulations. After reviewing industry comments and consulting with the New York Board and U.S. Coast Guard, the DOT issued instructions to Connecticut-licensed pilots dated March 1, 2005 requiring use of the Point Judith and Montauk Point pilot stations. The DOT's instructions are consistent with the New York Board's requirements for New York-licensed pilots.

During 2005, the DOT initiated administrative proceedings against a Connecticut-licensed pilot for a failure to use the pilot stations on five occasions. On August 25, 2006 a Hearing Officer issued an Order upholding the DOT's designation of pilot stations in international waters and imposing a one year probationary period. The pilot's appeal of that Order was subsequently withdrawn and the probationary period was imposed.

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Beginning in late 2005, DOT received numerous complaints from an individual pilot regarding boardings and disembarkations by a number of pilots at locations other than the designated pilot stations. A number of additional complaints were received in 2006 and 2007. Those complaints are under review at DOT.

On May 30, 2007, in response to industry and pilot concerns, the Commission made a recommendation to DOT to designate a heavy weather pilot station inside Block Island Sound for use by vessels transiting Montauk Channel. The Commission recommended that use of the heavy weather pilot station only be authorized when (1) weather or sea conditions at Montauk Point preclude safe boarding or disembarkation, (2) in the judgment of the pilot, the vessel is capable of safely transiting Montauk Channel without a pilot aboard, and (3) the vessel is in compliance with U.S. Coast Guard requirements regarding navigational equipment. The Commission's recommendation also calls for a requirement that pilots provide a justification to DOT each time the heavy weather pilot station is used.

As of July 1, DOT is considering the Commission's recommendation, including the necessity to amend regulation to establish a heavy weather pilot station. In addition, DOT and the Commission have been involved in continuing discussions with the New York Board regarding designation of a heavy weather pilot station.

Broadwater Energy LNG Project

In November, 2004 Broadwater Energy submitted to the U.S. Coast Guard a letter of intent to construct and operate a floating storage and regasification unit ("FSRU") for LNG in the New York waters of Long Island Sound. The proposed FSRU would receive shipments from LNG carriers for regasification and transmission ashore via submarine pipelines. Broadwater Energy anticipates that the project will involve 100 to 160 vessel calls annually. These ships are expected to be up to 1,000' LOA, drawing as much as 39'.

The Federal Energy Regulatory Commission, in cooperation with the Coast Guard and other agencies, is charged with licensing the proposed FSRU. The Coast Guard is principally responsible for addressing issues related to routing, navigation safety, and port security. On September 21, 2006 the Coast Guard completed its assessment of the project, issuing a Waterways Suitability Report which calls for the imposition of certain safety and security requirements. Those conclusions will be incorporated into FERC's Environmental Impact Statement and considered in the licensing decision.

At the invitation of the Pilot Commission, representatives of Broadwater Energy have briefed the Commission on the project. It is not anticipated that the Pilot Commission will have any role in the licensing process other than to respond to any inquiries from the regulatory agencies. However, the Pilot Commission believes that the project has implications for pilotage, particularly given the

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number, size, and complexity of LNG vessels, and is considering making recommendations to DOT with respect to the number, selection, training and qualification of pilots handling LNG vessels. The Pilot Commission will also consult closely with the New York Board in an effort to implement uniform requirements for the pilotage of these vessels.

Legislation

During the spring, 2006 legislative session, several competing bills impacting the Commission were introduced in the legislature. Ultimately, Senate Bill 519 (concerning the composition and authority of the Pilot Commission) was incorporated into Substitute Bill 5664 and passed by both the State Senate and House. The bill was signed by the Governor in July, 2006 and became effective immediately.

As enacted, Substitute Bill 5664 amended Sec. 15-13c of the General Statutes to add two members to the Commission, one to be the Commissioner of the DOT or his designee and one to be elected by the pilots participating on the Connecticut side of the joint rotation. The bill also required that those Commission members who are designated to represent environmental interests have no economic interest in pilotage matters and that one Commission representing maritime-related industry have a shipping agent perspective. In addition, the bill empowered the Commission to establish pilot qualifications, examination requirements, and the number of pilots, subject to DOT approval, as well as to continue to advise DOT on a broad range of pilotage issues.

Captain Charles C. Beck, U.S.C.G. (Ret.), Transportation Maritime Manager at DOT was designated by the Commissioner of Transportation to be a Commission member. The eight pilots participating on the Connecticut side of the joint rotation elected Captain Vince Cashin to be a Commission member. Both Captain Beck and Captain Cashin serve for indefinite terms.

Litigation

In 2003, New England Shipping Company, Inc., a local agency representing ship owners and charterers, filed suit in the U.S. District Court for the Eastern District of New York against Block Island Pilots, the New York Board, and related individual defendants. New England Shipping Company, Inc. v. Block Island Pilots, et al., Civil Case No. 03-4273. In this case, New England Shipping Company essentially sought a declaration that New York does not have exclusive jurisdiction to regulate pilotage in western Block Island Sound, a position taken by the New York Board prior to implementation of the MOA. On August 23, 2006 the Court issued a decision in which it found that the dispute had been mooted by virtue of the implementation of the MOA. The parties did not dispute this conclusion and the case was dismissed without prejudice on September 29, 2006.

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Other Items

On September 20, 2006 the 600' collier M/V BARKALD, bound for sea from Bridgeport, collided with the 92' S/V ESSENCE in the New York waters of Long Island Sound resulting in the tragic loss of a crewmember of the ESSENCE and the sinking of the yacht. The BARKALD was piloted by a New York – licensed pilot at the time of the collision. The U.S. Coast Guard and the Board of Commissioners of Pilots of the State of New York are conducting investigations of this casualty in cooperation with the Marshall Islands and the Cayman Islands, the two flags of registry involved. In addition, civil litigation is pending in the Southern District of New York. Because this collision involved a New York – licensed pilot in New York waters, it is not expected that the Commission or DOT will have any role in the various investigations.

Finally, the Pilot Commission extends its sincere thanks to CAPT Peter Boynton, U.S.C.G. (Ret.) and LCDR Alan Blume, U.S.C.G (Ret.), both of whom retired from the Coast Guard during 2007. Captain Boynton last served as Commanding Officer, Sector Long Island Sound and Captain of the Port; Lieutenant Commander Blume last served as Chief, Prevention Department, Sector Long Island Sound. Both these officers provided the Pilot Commission with invaluable support and assistance and will be greatly missed. We wish them fair winds and following seas.

Michael J. Eisele
Chairman, Connecticut Pilot Commission