



Transport Canada  
Safety and Security

Transports Canada  
Sécurité et sûreté

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Your file    Votre référence

Our file    Notre référence

February 1, 2007

**SUBJECT:    Consultations - Proposed Amendments to the *Pilotage Act***

Marine pilotage is an important element of safe marine navigation in Canada. Pilotage Authorities created under the *Pilotage Act* (the Act) are Crown Corporations and are required by law to be financially self-sustaining; which in recent years has been difficult to achieve. It is apparent that the business model created by the Act impedes this requirement.

The Act governs how Pilotage Authorities hire pilots, either as employees or pilot corporations, how they negotiate service contracts with pilot corporations, and imposes a regulatory review process additional to the Government's standard process - all of which can impinge upon an Authority's financial sustainability.

As such, Transport Canada will hold consultations on potential amendments to the Act beginning in February 2007. Transport Canada has engaged Mr. Michael Turner and Mr. Jacques Clavelle, two independent consultants, to chair the consultation meetings. Both have extensive knowledge of the Canadian consultation process and pilotage issues; Mr. Turner will be responsible for consultations in Vancouver, Prince Rupert and Oakville, Mr. Clavelle, in St. John's (Nfld.), Halifax, Quebec City, Montreal, and both will chair a meeting in Ottawa. Transport Canada will have a representative at each meeting to participate as an observer. You are invited to participate in these meetings and you will find the locations and dates listed in Appendix 1.

Two consultation days are scheduled in most cities; with three days scheduled in Montreal, and one day in Prince Rupert. During the first day, meeting chairs will make a brief presentation summarizing the consultation paper, then invite participants to make short (maximum 20 minute) **public** presentations expressing their understanding of the impacts of the proposed amendments. On the remaining day(s), meeting chairs will hold one-hour, one-on-one, **private** consultation sessions at the request of stakeholders. **First day meetings will be recorded** to ensure the accuracy in interpretation of the comments made. Appendix 2 of this invitation contains a consultation paper outlining the issues that will be discussed during the consultations.

Please confirm your attendance with Colleen Carmody via e-mail at [carmodc@tc.gc.ca](mailto:carmodc@tc.gc.ca) or by phone at 613-990-4616 before February 16, 2007 specifying:

- 1) Which meeting you would like to attend;
- 2) If you wish to make a **public** presentation; and
- 3) If you wish a one-on-one **private** session.

If you indicate the need for a one-on-one private session or the desire to make a public presentation, Transport Canada will assign you a session time.

We look forward to your active participation in this important process.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'W. Nash', with a horizontal line underneath.

William Nash  
Director General  
Marine Safety

**Appendix 1  
Consultation Schedule**

<b>City</b>	<b>Location</b>	<b>Date (2007)</b>	<b>Time</b>	<b>Consultant/ TC Observer</b>
<b>Vancouver</b>	<b>Hyatt Regency 655 Burrard Street</b>	<b>February 27-28</b>	<b>9 am</b>	<b>Mr. Michael Turner/ David Avey</b>
<b>Prince Rupert</b>	<b>Crest Hotel 222 West 1<sup>st</sup> Avenue</b>	<b>March 01</b>	<b>9 am</b>	<b>Mr. Michael Turner/ David Avey</b>
<b>St. John's, Nfld.</b>	<b>Delta St. John's 120 New Gower Street</b>	<b>February 26-27</b>	<b>9 am</b>	<b>Mr. Jacques Clavelle / Julie Bédard</b>
<b>Halifax</b>	<b>Delta Halifax 1990 Barrington St. Scotia Square</b>	<b>February 28-March 01</b>	<b>9 am</b>	<b>Mr. Jacques Clavelle/ Julie Bédard</b>
<b>Montreal</b>	<b>Delta Centre-ville 777 University Street</b>	<b>March 5-7</b>	<b>9 am</b>	<b>Mr. Jacques Clavelle/ Julie Bédard</b>
<b>Quebec City</b>	<b>Hotel Quartier 2955 Laurier Boulevard</b>	<b>March 8-09</b>	<b>9 am</b>	<b>Mr. Jacques Clavelle/ Julie Bédard</b>
<b>Oakville</b>	<b>Holiday Inn Select 2525 Wycroft Road</b>	<b>March 08-09</b>	<b>9 am</b>	<b>Mr. Michael Turner/ David Avey</b>
<b>Ottawa</b>	<b>Crowne Plaza Hotel 101 Lyon Street</b>	<b>March 12-13</b>	<b>9 am</b>	<b>Mr. Jacques Clavelle and Mr. Michael Turner/ Julie Bédard and David Avey</b>

## Consultation Document

### Discussion with Key Stakeholders: Proposed Amendments to the *Pilotage Act*

#### 1. Introduction

While, in 1995, the four Pilotage Authorities agreed that steps must be taken to improve efficiency and financial stability, it is becoming increasingly difficult for all Pilotage Authorities to have the capacity to remain financially self-sufficient. Over the past year, it has become apparent that there are areas of the *Pilotage Act* (the Act) that can be improved to ensure the continuing efficiency of the Pilotage Authorities across the country.

The Act governs, among other things, how Pilot Authorities hire pilots, negotiate service contracts with pilot corporations, as well as the regulatory review process they must adhere to over and above the Government's standard process – all of which impact, to some extent, the legislated requirement of an Authority to remain financially self-sufficient.

Thus, in order for Pilotage Authorities to achieve and maintain a sustainable financial structure, Transport Canada is proposing to commence consultations on targeted amendments to the *Pilotage Act*.

#### 2. Issues

This consultation process is intended to assemble the collective thinking of key pilotage stakeholders with a view to improving the efficiency of this very important safety area.

The issues directly related to the financial efficiency of the authorities, can be summarized under three main categories that impact four sections of the Act. They are:

- The governance structure of the Pilotage Authorities,
- Appeals to the Canadian Transportation Agency, and
- The regulatory review process.

#### **A) Factors influencing the governance structure of the Authorities**

##### *i) Arbitration - Final Offer Selection*

In the 1990's, pilot corporations agreed that contract disputes would not be settled by withdrawing services and agreed to work with a negotiation process based on mediation and final offer arbitration selection.

Under the "final offer" section of the Act, an arbitrator is bound to select in its entirety, one of the two offers presented. This can result in a situation where there is a difference between

the amount an Authority is entitled to charge for services and the amount it is required to pay the pilot corporation under the new service contract. If the arbitrator's decision were unsuccessfully challenged in Federal Court, the Authority's revenue could not be sufficient to pay for services and the service contract.

For example during past arbitration, a final offer containing a productivity clause has been accepted. This clause allows a 50% premium to be paid to pilots for all assignments over a certain number per year, for which there was no corresponding tariff increase allowed. This created an unbalanced revenue to cost ratio for an Authority, and a counter intuitive business model, one that would lead to exponential growth of debt.

#### *ii) Engagement of Pilots*

In addition to the final offer selection process described above, pilot corporations have a legislated contractual monopoly. Pilotage Authorities are prohibited from hiring individual employee pilots when a service contract between a Pilotage Authority and a pilot corporation exists.

These two elements, the final offer selection process, and the engagement of pilots, merge to form a precarious business model under which an Authority must operate.

#### **B) Filing an Objection with the Canadian Transportation Agency (CTA):**

The *Pilotage Act* allows any person, who has reasons to believe that a proposed tariff is prejudicial to the public interest, to file an objection with the CTA. The CTA is not obligated to take into account the Authority's financial considerations and obligations under the Act.

For example, if in order to correct arrears accumulated as a result of a service contract arbitration decision an Authority publishes a new tariff regulation, during the pre-publication period stakeholder groups can file an objection to these increases with the CTA. The CTA may rule in favour of the stakeholders, stating that the tariff is detrimental to the public interest and should not be implemented because the increase exceeds the Consumer Price Index and is not matched by improved quality of service nor productivity. Thus, the Authority is forced to operate in a situation where the tariffs they collect are lower than that which they must pay for their service contract.

The existence of two separate mechanisms (the CTA to rule on tariff increases and the requirement of the arbitrator to select one of two offers) has created an unstable financial situation for Authorities. These can and have lead to contradictory decisions, which could cause an Authority to experience a serious financial crisis.

#### **C) Review process for certain regulations**

The Act provides stakeholders the right to file a notice of objection to regulations published in the *Canada Gazette* concerning compulsory pilotage areas and prescribing the qualifications that a pilot must meet. The Minister is obligated to conduct an investigation if such a notice of objection is filed. The investigation process can, in some cases, be long and

arduous, and some stakeholders have used this process to delay implementation of regulations to which they object. In the past, some objections have been based on financial reasons rather than safety related reasons.

In 2001, Transport Canada implemented the Pilotage Risk Management Methodology that provides Authorities with a solid foundation for risk analysis for each regulatory amendment. This risk management approach has made investigations into objections obsolete as they duplicate much of the work already undertaken by the Authorities causing costly, unnecessary delays in the regulatory process.

### **3. Amendments to the *Pilotage Act* for consideration**

Pilotage is an important element of safe marine navigation in Canada. If the status quo is maintained and no amendments are made to the *Pilotage Act*, then Authorities run the risk of not being able to meet their legislated mandate to be financially self-sustaining. The status quo will perpetuate the now contradictory requirements of the legislation, and could require continued government intervention.

However, amendments could be made to the *Pilotage Act* to improve the governance and efficiency of the pilotage system. Therefore, the best course of action is to amend the *Pilotage Act*. Although not limited to the following, Transport Canada is seeking the opinions, comments and suggestions from the key stakeholders of the pilotage system on how to improve the *Pilotage Act*.

#### *A) Building a self-sustaining financial governance structure for Authorities:*

Transport Canada would like to investigate changes to subsection 15(2), which would permit Pilotage Authorities to hire both pilot corporations and employee pilots simultaneously, if required. This change would directly impact the Authority's capacity to develop an internal self-sustaining financial governance structure, as mandated by the Act. Authorities would be free to hire their own employees *and* contract to a pilot corporation if needed to compensate for workloads that their employee pilots would not be able to meet.

Furthermore, Transport Canada would like to investigate and consult on amendments to subsection 15.2(1) in order to allow an arbitrator to consider information beyond the final offers presented by the parties during arbitration. This change would allow the arbitrator more flexibility in the consideration of information and lead to decisions for which all implications, including financial ones, could be considered. Furthermore, amending this subsection and providing greater flexibility to an arbitrator would allow for the assessment of individual elements of the offers presented to the arbitrator and not only the offer in its entirety. The service contract and offers made by the Authorities could be assessed on their own merit.

*B) Filing an Objection with the Canadian Transportation Agency (CTA):*

Subsection 34(2) of the *Pilotage Act* permits stakeholders to file an objection with the CTA if they feel that a tariff published by an Authority is detrimental to the public interest, the CTA is then obligated under subsection 34(4) to conduct an investigation. Transport Canada would like to consult with its stakeholders on this process. Other avenues, such as the 30-day prepublication period in the *Canada Gazette*, which is available to stakeholders to comment on a proposed regulation, are worthy of consideration.

*C) Review process for certain regulations*

Subsection 21(1) allows stakeholders to object to regulations proposed by Authorities concerning the demarcation of mandatory pilotage areas and the training of pilots. Under subsection 21(2) the Minister is obligated to investigate each objection. Transport Canada would like to consult with its stakeholders to assess the implications of eliminating this investigation process. The default objection process is that delineated in the Government's standard regulatory policy. Stakeholders would be invited to comment on all regulations during the 30-day period when the regulations are prepublished in the *Canada Gazette*, Part I. The overall effect on safety would be nil because Authorities now use a solid risk management strategy to assess the level of risk associated with each regulatory change.

#### **4. Conclusion**

Stakeholders have repeatedly requested that Transport Canada amend the *Pilotage Act*. Over the past year, it has become apparent that the only long-term solution available to permanently rectify governance issues created by the *Pilotage Act* is to amend the Act. The above discussion describes proposed amendments that are administrative in nature. Any amendments made will *not* impact on the level of safety currently provided by the pilotage system in Canada.

January 2007

**Relevant Text from the Pilotage Act**  
**(Note: Not legal text, for reference only)**

15(2) Where a majority of licensed pilots within the region, or any part thereof, set out in respect of an Authority in the schedule who form or are members or shareholders of a body corporate elect not to become employees of the Authority, the Authority may contract with that body corporate for the services of licensed pilots and the training of apprentice pilots in the region or part thereof where the contract is to be effective, and the Authority shall not employ pilots or apprentice pilots in the region or that part thereof where such a contract is in effect.

**15.2** (1) The parties to the contract shall each submit a final offer in respect of the outstanding issues to each other and to the arbitrator within five days after the date on which those issues are referred to the arbitrator

**21.** (1) Any person who has reason to believe that a regulation that an Authority proposes to make under paragraph 20(1)(a) or (f) is not in the public interest may file a notice of objection setting out the grounds therefore with the Minister within thirty days following publication of the proposed regulation in the Canada Gazette under subsection 20(3).

**Investigation**

(2) Where a notice of objection is filed pursuant to subsection (1), the Minister shall appoint a person to make such investigation of the proposed regulation, including the holding of public hearings, as in the opinion of the Minister is necessary or desirable in the public interest.

Notice of objection to Canadian Transportation Agency

34(2) Any interested person who has reason to believe that any charge in a proposed tariff of pilotage charges is prejudicial to the public interest, including, without limiting the generality thereof, the public interest that is consistent with the national transportation policy set out in section 5 of the Canada Transportation Act, may file a notice of objection setting out the grounds therefore with the Canadian Transportation Agency within thirty days after publication of the proposed tariff in the Canada Gazette.

34(4) Where a notice of objection is filed pursuant to subsection (2), the Canadian Transportation Agency shall make such investigation of the proposed charge set out in the notice of objection, including the holding of public hearings, as in its opinion is necessary or desirable in the public interest.