



CGD SEVEN (m)
Policy Ltr 1-97
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From: Commander, Seventh Coast Guard District (m)
To: Distribution

Subj: ENFORCEMENT OF PILOTAGE REGULATIONS

Ref: (a) 46 USC 8501 et al

1. Pilotage is a complex and highly variable service which manifests itself differently in nearly every port. In broadest terms an individual who navigates a ship in, out, or through a port, river, or channel is a pilot. Laws regarding pilotage can be traced back to Roman times with the earliest American laws being passed by the Pennsylvania legislature in 1776. The present statutes which govern pilotage in the United States are contained in 46 USC 8501-8503; however, the majority of pilotage issues are addressed and established through case law rather than statute.

2. The first section of 46 USC 8501 states "Except as otherwise provided in this subtitle, pilots in the bays, rivers, harbor, and ports of the United States shall be regulated only in conformity with the laws of the states." Consequently, except in those few instances where the federal government has decided to preempt, the states control the oversight and regulation of pilotage within the United States. Federal preemption is primarily limited to two cases:

a. Coastwise seagoing vessels which are propelled by machinery or subject to inspection under the Tank Vessel statutes (which include tank barges). Pilotage is compulsory for these vessels while within U. S. Navigable Waters.

b. and, The federal government may decide to exercise its preemptive authority when pilotage is voluntary under state law. State pilotage may either be compulsory or voluntary depending upon the construction of the state statute. For example, a state statute may require pilotage across a river bar and up a river to the port, but may not require pilotage from the confines of the port to the pier. In this case pilotage is compulsory for crossing the bar and transversing the river but voluntary within the confines of the port itself. If safety concerns demanded, the federal government may step in and promulgate regulation for federal pilotage within the harbor to fill the regulatory gap in the state pilotage laws.

3. Jurisdiction over pilotage is determined by the authorities outlined above and is focussed on the trade of the vessel. Based on concepts established through case law, discipline of pilots is reserved to the governmental entity which exercises pilotage jurisdiction and generally directed at the pilot's license rather than his person.

a. Vessels in coastwise trade are serviced by federally licensed pilots. As such, only the federal government (Coast Guard) may take disciplinary

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action against the pilots federal license; usually through suspension or revocation proceedings. These proceedings determine a pilots fitness to continue operating under the authority of the federal license but lack jurisdiction over the pilot's state license.

b. When a vessel operates in registry trade, a state pilot is required and the state, usually through a chartered pilots association, exercises disciplinary control over the pilot's state license. Based on this concept, an individual may lose his federal pilot's license for negligence but continue to act as a pilot under his state license or vice versa.

4. Disciplinary control of "docking masters" and/or "harbor pilots" is even further diluted. These types of pilots are typically operators of uninspected towing vessels who utilize tugs in conjunction with a ships propulsion to bring a vessel into or out of berth.

a. When moving a vessel engaged in coastwise trade, these pilots are considered to be operating under the authority of licenses issued by the Coast Guard and pilotage is mandatory. Such pilots generally operate under the authority of two federal licenses; Operator of Uninspected Towing Vessels and federal First Class Pilots license. Depending on the incident, one or both of these licenses may be subject to disciplinary action.

b. When moving vessels engaged in registry trade, harbor pilotage may or may not be voluntary under state law. If mandatory, the state will exercise disciplinary jurisdiction, if voluntary, they are not regulated at all and no entity exercises disciplinary jurisdiction.

5. Regardless of the ability of the Coast Guard or a state to discipline pilots, pilots are always subject to judicial control through the civil courts. In civil cases however, a pilot is fairly well protected from personal liability. While a pilot is embarked, the master of a vessel still retains ultimate responsibility for the actions of the vessel even though he exercises only minimal navigational control. The master may relieve the pilot, but he does so at his own peril and at his own risk of liability. As established by case law, the master is obligated to relieve the pilot if the pilot is manifestly incompetent or impaired due to alcohol, drugs, etc., or if the pilot is steering into immediate peril. In such cases the master may be held liable for his failure to relieve the pilot. Pilots, on the other hand, may be held liable only if negligence can be proven; and then only if the pilot was the sole cause of the casualty of damage. If negligence can be proven, 46 USC 2302 provides a civil penalty of not more than \$1,000.00 for each violation. If proven to be grossly negligent that endangers the life, limb, or property of a person, 46 UGS 2302 also classes the violation as a class A misdemeanor.

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6. Further complicating the liability issue, and subsequently insulating the pilots from civil action, is that voluntary pilots (such as most docking masters) are considered as employees of the vessel owner and/or operator. Because of this construct, liability for pilot error remains with the vessel owners who have only limited resources against an individual pilot as a corporate employee.

7. In summary then, control over the actions of pilots is diluted through the full range of government oversight and/or judicial review. Consequently, effective discipline and control of pilots requires a level of coordination between federal, state, and judicial entities which can rarely be achieved.

8. The lack of coordination or cooperation between the governing agencies is generally the crux of any port specific pilotage difficulties. However, to ensure the safety of the navigable waterways and the port areas the Officer in Charge Marine Inspection/Captain of the Port (OCMI/COTP) has several tools available.

a. When a state does not have mandatory pilotage regulations in place, the OCMI has the jurisdiction to designate first class pilotage waters in accordance with 46 USC 8503 for the purpose of safe navigation, thus requiring pilots to work under the authority of their federal license. This preemption tool should not be used solely for the purpose of clarifying culpability but for those areas which pose an unacceptable navigation hazard.

b. If the state has mandatory pilotage regulations in place and the problem is lack of policing of the pilots then the COTP, after exhausting diplomatic pressures to better state enforcement, may wish to employ one of the following OCMI/COTP enforcement tools:

(1) The Ports and Waterways Safety Act as amended (33 USC 1221 et al) provides the COTP with additional enforcement tools to eliminate or reduce safety hazards within his/her QJTP Zone. Also, 33 CFR 160.109 - 160.115 provides the COTP a means of controlling the movement, cargo operations, and facility operations for reasons, perils, or hazardous conditions which adversely effect the safety of the port or the environment. The specific document/tool to be used to employ this enforcement tool is the COTP order. The COTP order is issued to a specific entity to control the movement of a specific vessel or control a specific cargo operation until such time as the hazard which precipitated the order is resolved/corrected.

(2) The second enforcement tool is the Safety Zone. This is a federal regulation, which may be temporary, emergency, or permanent in duration. In general this is used to mitigate safety or environmental threats to a specific geographic area. A Safety Zone regulates all persons, vessels and things within the boundaries of the Zone, and may be on the water, shore, or both.

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If the Safety Zone will retrain in effect longer than 120 days, it must go through the normal rulemaking process; Notice of Proposed Rulemaking, Proposed Rule, Environmental Impact Statement, etc.

(3) Another long term solution/enforcement tool is the establishment of a "Regulated Navigation Zone" (RNA). A Regulated Navigation Area is a water area within a defined boundary for which regulations for vessel navigation have been established. RNA's may specify: (a) Times of vessel entry, movement, or departure to, from, within or through ports, harbors, or other waters; (b) Establish vessel size, speed, draft limitations, and operating conditions; and (c) May restrict vessel operation in a hazardous area or under hazardous conditions to vessels which have particular characteristics or capabilities which are considered necessary for safe operation under the circumstances. RNA's are established through the normal rulemaking process; Notice of Proposed Rulemaking, Proposed Rule, Environmental Impact Statement, etc.

9. When considering the exercise of enforcement options discussed in paragraph 8 above:

a. Ensure the entity with actual jurisdictional control over the pilots has been afforded full opportunity to address the concerns at issue prior to initiating unilateral Coast Guard actions.

b. To ensure consistency in enforcement of the Pilotage Laws, all actions in relation to pilotage other than those covered by 46 USC 7701, 7703, shall be cleared with the Chief, Marine Safety Division prior to initiation.


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