

PMSA DATA REQUEST NO. 357: Regarding Exh. CLD-01T 12:3–14:17, your testimony regarding federal licensing of pilotage and holders of US Coast Guard-issued first-class pilot endorsements (FCPE), please respond to all of the following:

- 1) Describe the “minimum standard” required to be issued a FCPE by the US Coast Guard.
- 2) Define a “small segment of shipping in the U.S.”
- 3) Admit that individual seaports and states may ensure comprehensive, reliable, and expert pilotage operations composed of federally licensed pilots without the creation of a state-licensing requirement. If denied, explain why this is not possible.
- 4) Admit that the national standards for federally licensed pilots are adequate for the provision of safe vessel operations. If denied, provide evidence to support such an opinion which specifically addresses the safety records of federally licensed pilots.
- 5) Admit that the national standards for federally licensed pilots are just as adequate for the provision of safe vessel operations as state-licensed pilots. If denied, provide evidence to support such an opinion which specifically addresses the safety records of federally licensed pilots when compared to the safety records of state-licensed pilots.
- 6) Admit that the U.S. Coast Guard standards for issuance of a FCPE include physical examination, drug testing, proficiency with electronic navigation, experience standards including trips, examination, and creation of navigational charts from memory.

Admit that U.S. Coast Guard standards for issuance of a FCPE are significant with respect to the enhancement of navigational safety.

RESPONSE:

- 1) Describe the “minimum standard” required to be issued a FCPE by the US Coast Guard.

As discussed in more detail below, the U.S. Coast Guard has described that the federal pilotage licensing scheme serves as a “minimum standard.” Rear Admiral Henry Bell, then Chief of the Coast Guard’s Office of Merchant Marine Safety, said at a 1979 conference when referring to the federal pilot license, “[A federal pilot license] does not guarantee that he is capable of doing anything at all....[a]ll the license does is get a man in the door. It allows him to say, ‘Yes, **I have met the minimum standards.**’” (emphasis added)

All States require a formal apprentice program as the basis to certify candidates for eventual licensure as a state-licensed pilot. The length of apprentice programs can vary among the 24 coastal states. For example, for mariners with advanced credentials, apprenticeships can run anywhere from one to three years. In Puget Sound, for example, the training program can be up to 3 years. For mariners with lesser maritime experience and more junior mariner credentials, apprentice programs can be as long as seven years.

In any event, in the state pilot system, future pilots learn their craft under the tutelage of fully licensed and experienced pilots. Since pilots must be intimately familiar with local waters, navigational peculiarities, and local regulations, as well as know how to handle different types/sizes of ships and be able to conduct themselves on ships with bridge teams coming from all over the world, an intensive “on-the-job” training program is vital.

Time has shown that the skills required of a pilot are best developed, and then mastered, through locality-specific, “hands-on” apprentice training. Pilot apprenticeship programs include numerous instructional trips over an extended period (which captures different types of vessels and seasonal weather) through pilotage waters with an experienced pilot. Depending on the level of experience of the pilot trainee, the number of trips can range from hundreds to thousands. In Puget Sound, for example, trainees typically complete well over three hundred trips over the vast pilotage ground and under the supervision of experienced pilots before earning his or her state pilot license. The number of trips must be enough to ensure the pilot trainee becomes proficient at all different pilotage runs, on all different types of vessels, and under all types of weather conditions. In my opinion, there is simply no substitute for this experience.

Apprentice programs generally are progressive in nature, with apprentices gradually taking a greater and greater role. Initially, an apprentice will mostly observe, but over time, the apprentice will take on a more substantial role and will eventually conduct the navigation of the vessel under the senior pilot’s guidance. As the apprenticeship program draws to an end, the apprentice – under the watchful eye of the mentoring pilot – is handling the largest vessels that enter the pilotage waters.

In addition to a rigorous apprentice program, intensive classroom study is also a common feature of State pilot training programs. Classroom topics generally required before an individual is certified to become a fully licensed State pilot include basic, advanced, and emergency ship handling, radar and electronic navigation, fatigue, and bridge resource management training tailored for marine pilots. This required classroom work is supplemented with state-of-the-art bridge simulator and manned ship model training.

State licensed pilots, like other licensed professionals, are also required to complete a minimum number of continuing education units or credits during specified periods in order to maintain their state licenses.

Unlike the comprehensive certification, training/apprenticeship and licensing regimes of the States just discussed above, the federal regulations governing the issuance of a FCPE are very limited. Federal statutes and regulations³ do set out

³ Specifically, Title 46, Chapter 71 of the U.S. Code (USC) and Title 46, Part 11 of the Code of Federal Regulations (CFR).

rudimentary requirements for a federal first class pilot endorsement. For example, the federal pilot regulations require a minimum age of 21, annual physical examination, proficiency with electronic navigation, experience aboard a vessel in some capacity, small number of trips (12-20) of the pilotage area (but these trips can be made as an “observer”⁴ who is not in any way participating in, or even attentive to, the navigation or conning of the ship; and these trips can be made over the period of a few days or weeks on a single vessel), one-time written examination (usually multiple choice), sketch of the pilotage area, etc. It is critical to point out, however, a FCPE may be issued to an individual who has had no prior training as a pilot and who has not demonstrated any piloting or even basic conning skills.

The regulatory requirements for the holder of a FCPE to maintain proficiency and a current working knowledge of the waters and routes to which the federal license applies is also extremely limited. There are no continuing education or training requirements for those holding a federal license, and there is only one re-familiarization standard (the holder of a federal pilot license is required to transit the particular pilotage route just once every 5 years).⁵

- 2) Define a “small segment of shipping in the U.S.”

According to the U.S. Maritime Administration (MARAD), the number of ocean-going commercial ships exceeding 1,000 gross tons in the U.S. merchant fleet is considerably less than two hundred vessels. MARAD estimates that only 1.5% of U.S. waterborne imports or exports are carried on vessels of domestic registry. By contrast, the International Chamber of Shipping estimates that there are over 50,000 merchant ships trading internationally.

- 3) Admit that individual seaports and states may ensure comprehensive, reliable, and expert pilotage operations composed of federally licensed pilots without the creation of a state-licensing requirement. If denied, explain why this is not possible.

Deny. I strongly disagree with this assertion. Under U.S. law, federally licensed pilots are only authorized to pilot U.S.-flagged coastwise vessels (e.g., vessels transiting between two ports or places in the U.S.). See 46 U.S.C. § 8502. Conversely, per 46 U.S.C. § 8501, all foreign flag vessels and all U.S. flag vessels sailing on “register” (that is sailing between a foreign port or place and a U.S. port or place) must be under the direction and control of state-licensed pilot.

So, while federally licensed pilots are authorized to provide pilotage services to the small number of U.S.-flagged coastwise vessels calling at a port (see previous response to PMSA DATA REQUEST NO. 357 2)), as a matter of law these holders of FCPEs are not authorized to provide pilotage to the vast majority of large ocean-going ships calling at U.S. ports (which are foreign flag vessels or U.S.-flag vessels

⁴ 46 C.F.R. § 11.705(b)

⁵ 46 C.F.R. § 11.713.

sailing on register). In any estimation, for the reasons discussed above, a pilotage operation composed only of federally licensed pilots would not be a “comprehensive, reliable, and expert” pilotage system for a port.

Below is a more complete discussion of the pilotage system in the U.S.

The central feature of pilotage regulation in the U.S., including certification and licensure, is that States, not the national or federal government, play the central role. This system of State primacy reflects a judgment made by the first U.S. Congress that pilotage is best regulated at the State or local level. The legislation putting this judgment into effect, the Lighthouse Act of 1789⁶, has been reaffirmed by Congress and courts many times in the intervening two centuries. The U.S. Supreme Court declared that Congress’ decisions with respect to pilotage oversight “leave no doubt of the superior fitness and propriety, not to say the absolute necessity, of different systems of regulation, drawn from local knowledge and experience, and conformed to local wants.”⁷ As a result of this legislation, the U.S. system is principally a “State Pilot System”, with States being primarily responsible for oversight of pilotage.

Over the past 234 years Congress has, however, carved out a limited role for the federal government with respect to pilotage.⁸ Federal pilotage regulations, administered by the U.S. Coast Guard (USCG), apply only to certain U.S. flag vessels sailing between ports or places in the U.S. This small segment of shipping in the U.S. is required to be under the pilotage of an individual with a USCG-issued federal pilot endorsement.

Pilotage of international trade vessels in the U.S. (i.e., non-U.S. flag vessels entering/departing U.S. ports, or U.S. flag vessels sailing to/from a non-U.S. port), which accounts for about 95% of all large ocean-going traffic moving in U.S. waters, is governed by the 24 U.S. coastal States through comprehensive pilotage regulation systems. While in State pilotage waters, these vessels are required to be under the direction and control of a state-licensed pilot.

- 4) Admit that the national standards for federally licensed pilots are adequate for the provision of safe vessel operations. If denied, provide evidence to support such an opinion which specifically addresses the safety records of federally licensed pilots.

While, as I indicated in my original testimony, federal pilotage standards have a role in the overall pilotage system in the U.S., state training, certification, and

⁶ Section 4 of this Act states, “That all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States, respectively, wherein such pilots may be, or with such laws as the States may respectively hereafter enact for the purpose, until further legislative provision shall be made by Congress.”

⁷ Cooley v. Board of Wardens of the Port of Philadelphia, 53 U.S. 299 (1852).

⁸ For the general statutory framework establishing the division between State and federal pilotage responsibilities, see Title 46, Chapter 85 of the U.S. Code.

recertification requirements for pilots are far more stringent than those put in place by the federal government. This is an important point considering, as discussed above, that the vast majority of the large ocean-going vessels moving in U.S. waters are under the direction and control of state-licensed pilots.

The U.S. Coast Guard's view of the role the federal pilot endorsement is intended to play and how it compares to the comprehensive state pilotage licensing systems was perhaps best summed up in comments by Rear Admiral Henry Bell, who I mentioned earlier. RADM Bell stated, "This is precisely the philosophy behind the federal license. **It is not intended to guarantee, in any way, that the holder can walk aboard, and perform like a first class pilot. It does not guarantee that he is capable of doing anything at all....[a]ll the license does is get a man in the door. It allows him to say, 'Yes, I have met the minimum standards.'**" (emphasis added).

Admiral Bell went on to say, "it has never been the government's intention to try to make the license reflect competence....**The federal licensing program is not intended to achieve the ends that many of the state pilots' associations are designed to achieve** for their own people in their own area." See pages 113-114 of the Proceedings: Symposium on Piloting and VTS Systems, September 12, 1979, The National Research Council, Marine Transportation Research Board. (emphasis added).

It is also significant to point out that it is common for vessels that are not required to use the services of a state-licensed pilot (e.g., U.S. naval vessels and U.S. flag coastwise vessels) to voluntarily opt to do so rather than use the services of the holder of a FCPE. In my opinion, this is in large part due to the recognition that state training, certification, and recertification requirements for pilots are far more stringent than those put in place by the federal government.

- 5) Admit that the national standards for federally licensed pilots are just as adequate for the provision of safe vessel operations as state-licensed pilots. If denied, provide evidence to support such an opinion which specifically addresses the safety records of federally licensed pilots when compared to the safety records of state-licensed pilots.

I disagree with this statement. See responses above.

- 6) Admit that the U.S. Coast Guard standards for issuance of a FCPE include physical examination, drug testing, proficiency with electronic navigation, experience standards including trips, examination, and creation of navigational charts from memory.

See my responses above.

- 7) Admit that U.S. Coast Guard standards for issuance of a FCPE are significant with respect to the enhancement of navigational safety.

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