

PUGET SOUND PILOTS' RESPONSES TO PMSA DATA REQUESTS Nos. 191-223

DATE PREPARED: December 21, 2022 DOCKET: TP-220513 REQUESTER: Pacific Merchant Shipping Association ("PMSA")	WITNESS: CAPTAIN SANDY BENDIXEN RESPONDER: CAPTAIN SANDY BENDIXEN PUGET SOUND PILOTS DATE: January 10, 2023 TEL: 206-914-1330 EMAIL: sbendixen@pspilots.org
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PMSA DATA REQUEST NO. 191: Regarding your duty to “oversee[] and administer[] the application and training process” as Chair of the Board of Pilotage Commissioners’ Training and Evaluation Committee, described at Exh. SB-01T 3:4–9, does the Training and Evaluation Committee employ a qualitative process to rank potential pilot trainee applicants prior to receiving an application or at the time of the receipt of an application? If so, please describe and provide all documents demonstrating this process.

RESPONSE: PSP objects that the request is unduly burdensome in that it calls for documents and information that are publicly available. Specifically, the process for ranking pilot trainee applicants is described in the Washington Administrative Code (“WAC”) and Revised Code of Washington (“RCW”). PSP further objects that the request is vague as to the meaning of “qualitative process” and “rank potential.” Subject to the objections, Captain Bendixen responds as follows:

The request fundamentally mischaracterizes my testimony and role as Chair of the Training and Evaluation Committee (“TEC”). Neither I nor any other member of the TEC individually oversees or administers the application and training process. BPC staff, specifically the training program administrator, oversees and administers the application and training process with the support of a contractor who administers the Washington state pilotage exam (but is not involved in overseeing the training process). Further, the TEC and BPC applies the standards contained in the WAC and RCW to determine the eligibility of trainee applicants and, ultimately, their rank with respect to admission into the BPC administered training program.

PMSA DATA REQUEST NO. 192: Regarding your duty to “oversee[] and administer[] the application and training process” as Chair of the Board of Pilotage Commissioners’ Training and Evaluation Committee, described at Exh. SB-01T 3:4–9, please admit that the Board of Pilotage Commissioners training and licensing process results in the licensure of competent, safe, and adequately trained pilots. If denied, please describe the manner in which incompetent, unsafe, or inadequately trained trainees are licensed as pilots.

RESPONSE: PSP objects that the request is vague as to “competent, safe, and adequately trained pilots.” Subject to the objection, Captain Bendixen responds as follows:

The request fundamentally mischaracterizes my testimony and role as Chair of the TEC. Neither I nor any other member of the TEC individually oversees or administers the application and training process. BPC staff, specifically the training program administrator, oversees and administers the application and training process with the support of a contractor who administers the Washington state pilotage exam (but is not involved in overseeing the training process). Further, the TEC and BPC applies the standards contained in the WAC and RCW to determine the eligibility of trainee applicants and, ultimately, their rank with respect to admission into the BPC administered training program.

It is true that only trainees who successfully complete the training program’s requirements are eligible to become licensed pilots. However, this represents the minimum threshold to become a limited pilot, and as PMSA knows or at least should know, completing the training program and obtaining a limited pilot’s license is not the endpoint of a Puget Sound Pilot’s professional development. Rather, the development of a pilot’s competence, safety and training continues after licensure as reflected in the WAC and RCW, which provide for different levels in licensure and corresponding restrictions based on a pilot’s training and years of experience. Moreover, even unlimited pilots continue to improve and build upon their training and expertise throughout their careers.

At a more basic level, I am compelled to respond to PMSA’s emphasis in this data request (and several others that follow) on “adequacy,” i.e., meeting bare minimum requirements. It is frankly disturbing to me that PMSA appears to believe that this is where the bar is or should be set when it comes to resourcing a pilotage system that is the front line of defense protecting Puget Sound from a catastrophic oil spill or other major maritime casualty.

I want to be clear at the outset: “adequacy” is not the standard to which PSP and its member pilots hold ourselves. Rather, our objective is excellence, exceptionalism, and an insatiable drive to improve our performance. This is what motivates us to constantly upgrade our training, engage in diversity outreach and other critical

initiatives, and implement policies to attract the most elite applicants from a small national pool. This is what we expect from ourselves and, more importantly, it is what the citizens of the State of Washington expect and deserve from us. As a Puget Sound Pilot and member of the BPC, I will never be satisfied with “adequacy” when it comes my professional responsibilities, the constituency of PSP’s membership, and the level of protection we provide to our state’s waters.

PMSA DATA REQUEST NO. 193: Regarding your duty to “oversee[] and administer[] the application and training process” as Chair of the Board of Pilotage Commissioners’ Training and Evaluation Committee, described at Exh. SB-01T 3:4–9, please admit that you have never voted to deny a license to a trainee that has fully completed the training process. If denied, please describe the situation in which you have voted to deny a license to a trainee that has fully completed the training process.

RESPONSE: Like DRs 191 and 192, this request mischaracterizes my testimony and role as Chair of the TEC. Neither I nor any other member of the TEC individually oversees or administers the application and training process. BPC staff, specifically the training program administrator, oversees and administers the application and training process with the support of a contractor who administers the Washington state pilotage exam (but is not involved in overseeing the training process). Further, the TEC and BPC applies the standards contained in the WAC and RCW to determine the eligibility of trainee applicants and, ultimately, their rank with respect to admission into the BPC administered training program. Moreover, it is the Board of Pilotage Commissioners, not the TEC that votes on whether to remove a trainee from the training program. The request also fundamentally misunderstands the nature and administration of the training program, which is designed to ensure that trainees who will not become eligible to receive a pilot’s license are removed prior to completion of the training program.

Subject to these clarifications, I have, in my capacity as a member of the BPC, voted in favor of removing a trainee from the training program. I cannot, however, discuss the specific reasons for my vote as it was confidential and a matter of closed session at the Board of Pilotage Commissioners.

PMSA DATA REQUEST NO. 194: Regarding your duty to “oversee[] and administer[] the application and training process” as Chair of the Board of Pilotage Commissioners’ Training and Evaluation Committee, described at Exh. SB-01T 3:4–9, please admit that during your time on the Committee that the Board has never had a trainee position remain vacant and unfilled by a qualified applicant. If denied, please describe the situation in which a trainee position has remained vacant and unfilled by a qualified applicant.

RESPONSE: Please see my previous responses regarding PMSA’s mischaracterization of my role and authority as Chair of the TEC, which is overseen by the BPC. Subject to these clarifications, deny. During my time as a member of the BPC I have observed two vacant trainee positions for the Grays Harbor pilotage district. These positions were filled by pilot candidates who were eligible to train in Puget Sound but instead chose the Port of Grays Harbor.

PMSA DATA REQUEST NO. 195 Regarding Exh. SB-01T 3:16–26, admit that as of October 1, 2022, the total number of pilots licensed by the Board of Pilotage Commissioners was 53.

RESPONSE: Admit that despite BPC’s authorization of 56 pilots for Puget Sound, as of October 1, 2022, only 53 were licensed. Further admit that this pilot shortage has been problematic and has caused, for example, high call back rates that interfere with pilots’ off-duty rest time.

PMSA DATA REQUEST NO. 196: Regarding Exh. SB-01T 3:24–26, of the total pilots licensed as of October 1, 2022, how many were actively piloting and how many were not actively piloting? Please provide the reasons for why each licensee who is licensed but not actively piloting was not actively providing pilotage services.

RESPONSE: PSP objects to the request as vague as to the meaning of “actively piloting.” Subject to the objection, Captain Bendixen responds as follows:

PSP’s President, Captain Ivan Carlson, performs full time managerial and administrative responsibilities. Additionally, at any given time, the BPC register of active pilots may include pilots who are not fit for duty for injury or medical purposes. This was particularly the case during the Covid-19 pandemic, statistics regarding which are publicly available information discussed monthly at BPC meetings.

PMSA DATA REQUEST NO. 197: Regarding Exh. SB-01T 4:7–14, please define the term “PSP’s accident-prevention capability.”

RESPONSE: PSP’s accident prevention capability refers to the ability of PSP as an association of individually licensed pilots to fulfill its safety-critical transportation role in a manner that prevents accidents within our pilotage district. PSP’s accident prevention capability is not static and is influenced by multiple variables. I would also like to note that PSP is not satisfied with “adequate” accident-prevention capability. Rather, we constantly endeavor to improve our accident prevention capability through multiple initiatives including but not limited to ongoing professional development, cutting edge training and continuing education, DEI outreach, and our nation-leading maternity leave policy.

PMSA DATA REQUEST NO. 198: Regarding Exh. SB-01T 4:7–14, please describe the manner by which one may quantify the “level” to which “PSP’s accident-prevention capability” exists.

RESPONSE: The level of PSP’s accident prevention capability is a function of the ability of its pilots, individually and collectively, to prevent accidents through their training, expertise, and diverse skills and experience.

PMSA DATA REQUEST NO. 199: Regarding Exh. SB-01T 4:7–14, please admit that PSP’s current accident-prevention capability is adequate for the provision of safe pilotage. If denied, please describe precisely which vessel customers have received unsafe pilotage service as a result of PSP’s accident-prevention capability being inadequate or deficient.

RESPONSE: PSP objects to the term “adequate” as vague and misleading to the extent it implies that is ever acceptable to be complacent with respect to the continued improvement of safe pilotage and the prevention of maritime casualties. Subject to the objection, Captain Bendixen responds as follows:

Please see my explanation regarding the impropriety of PMSA’s attempt to divide matters of safety and pilot performance along vague lines of “adequacy” and “inadequacy” included in my response to DR 192. Subject to my response to DR 192, admit that notwithstanding its exceptional safety record, PSP and its member pilots are constantly engaged on multiple fronts – including but not limited to PSP’s ongoing efforts to diversify its pilot corps – to improve PSP’s accident prevention capability and the safety of pilotage on Puget Sound.

PMSA DATA REQUEST NO. 200: Regarding Exh. SB-01T 4:7–14, please admit that it is your testimony that PSP’s current group diversification is inadequate. If denied, please describe precisely in which ways PSP’s diversification is adequate.

RESPONSE: PSP objects to the terms “adequate” and “inadequate” as vague and misleading to the extent they imply that the diversity of PSP’s pilot corps is or should be something other than an ongoing process of improvement. Subject to the objection, Captain Bendixen responds as follows:

Again, please see my response to DR 192. As with our training, safety record, and all other facets of our professional performance, PSP and our member pilots simply do not operate in terms of “adequate” versus “inadequate” with respect to the diversity of our pilot corps. Nor do I accept PMSA’s repeated suggestion contained in this and several other DRs that striving to improve implies inadequacy or, conversely, that meeting minimum standards implies that it is acceptable to become complacent. Rather, just like other elite professionals from disciplines as diverse as medicine to athletics, my mission and PSP’s mission is to constantly be better in all facets of our professional performance, both individually and collectively. This ethos guides PSP’s efforts to support the diversification of our corps through outreach initiatives and policies designed to attract diverse applicants to the BPC training program, which PSP continues to engage in on an ongoing basis.

As PSP’s first female pilot, I also want to express that on a personal level I find the cynicism contained in PMSA’s DRs regarding the topic of DEI to be repugnant. This is a matter that PSP and its members, including myself, take extremely seriously precisely because we understand its importance to our organizational mission. It is disappointing, to put it mildly, that PMSA apparently does not share our understanding of the importance this issue to PSP’s mission of safety and public service. Lastly, I would also note that PSP’s ongoing commitment to initiatives designed to attract a diverse group of applicants to the BPC’s training program aligns with the State of Washington’s priorities, including as expressed in the Pro-Equity Anti-Racism (“PEAR”) initiative signed by Governor Inslee in March 2022 as Executive Order 22-04. For PMSA’s ease of reference, a copy of that Executive Order is available here: https://www.governor.wa.gov/sites/default/files/exe_order/22-04%20-%20Implementing%20PEAR%20%28tmp%29.pdf.

PMSA DATA REQUEST NO. 201: Regarding Exh. SB-01T 4:7–14, please admit that PSP presently does not suffer from a lack of decision-making process, from an inadequate decision-making process, and/or from “group think.” If denied, please describe precisely in which ways PSP’s management suffers from these issues.

RESPONSE: PSP objects that the request, like DR’s 199 and 200 is misleading in that it assumes that PSP’s high level of performance and competence somehow negates the need for it to hone best practices and constantly strive for improvement on all fronts, with safety and environmental stewardship being the most important. Subject to the objection, Captain Bendixen responds as follows:

PMSA’s exhausting theme of presenting data requests in the form of false dichotomies between “adequate or inadequate” or “suffers from or does not suffer from” is intellectually bankrupt. The only conclusion to be drawn from this tactic is that PMSA either has absolutely no understanding of how professionals and their associations operate, or it is presenting these data requests in bad faith. The fact is that the following statements are both true simultaneously and in equal measure: (a) PSP’s decision-making processes operate at an extremely high level; and (b) PSP can and should be constantly seeking out ways to improve its decision-making and minimize group think within our organization, including but not limited to through PSP’s ongoing efforts to attract a diverse group of elite applicants to the BPC training program.

PMSA DATA REQUEST NO. 202: Regarding Exh. SB-01T 2:13–15 please describe “all available means of diversifying” which are available to pilot groups throughout the United States.

RESPONSE: To be clear, PSP (unlike many pilot groups around the U.S.) does not directly control which individuals become licensed Puget Sound Pilots. Rather, that determination is made by the BPC in accordance with the applicable RCW and WAC. What PSP can and does do is take proactive steps to maximize the likelihood of attracting all elites candidates including but not limited to diverse applicants to the BPC’s training program. Specifically, PSP: (a) provides outreach and opportunities to individuals with diverse backgrounds and/or who identify as members of groups that have historically been underrepresented in our profession; and (b) develops, enacts and promotes policies such as PSP’s maternity leave policy that help reduce barriers to entry into piloting that disproportionately affect historically underrepresented groups. Critically, however, one of if not the single most important means of attracting a diverse group of elite applicants to the BPC’s training program is the availability of a compensation package for Puget Sound Pilots that is nationally competitive. The current lack of competitive compensation for pilots in our district, which PMSA seeks to continue through its opposition to this rate case, is a major obstacle that is undermining PSP and BPC’s efforts to promote diversity in our pilot corps.

PMSA DATA REQUEST NO. 203: For each of the “available means of diversifying” described in response to DR 202, please describe whether each was adopted by PSP, and if so, when adopted, and provide copies of the documents which confirm the adoption.

RESPONSE: PSP objects that the request is unduly burdensome in that it calls for public information that is equally available to PMSA. Subject to the objection, Captain Bendixen responds as follows:

Please see my response to DR 202. PSP’s diversity outreach initiatives are a periodic topic of discussion during BPC meetings, as PMSA Vice President Michael Moore should be aware based on his frequent attendance and participation at those meetings. As to PSP’s maternity leave policy and DEI policy, in addition to being a matter of public record with the BPC, copies of these documents have already been provided to PMSA in this rate case.

PMSA DATA REQUEST NO. 204: Regarding Exh. SB-01T 4:6–9, 19–21, please describe any manner or ways in which the pilot trainee application and licensing process as administered by the Board of Pilotage Commissioners is handled differently for applicants based on their diversity of career background, maritime work experience, sailing experience, gender, or racial background.

RESPONSE: PSP objects that the request is unduly burdensome in that it calls for public information that is equally available to PMSA. Subject to the objection, Captain Bendixen responds as follows:

The BPC's application, training and licensing process and requirements are prescribed by rule and statute, all of which are publicly available. These requirements are objective and applied to the letter equally to all applicants without favoritism. PMSA is or should be aware of this fact, particularly given its Vice President Michael Moore's regular attendance and participation at BPC meetings.

PMSA DATA REQUEST NO. 205: Regarding Exh. SB-01T 5:16–21 and the relative compensation of the Puget Sound Pilots “on the West Coast,” please state whether you have direct and personal knowledge of the compensation and benefits available to pilots during 2021 in any or all of the following pilotage grounds: Port of San Diego, Port of Los Angeles, Port of Long Beach, Port Hueneme in Hawaii, Southeast Alaska, and Southwest Alaska.

RESPONSE: With respect to the six pilotage grounds listed in this DR, my direct and personal knowledge is limited to what is set forth in the testimony of PSP expert witness David Lough, which includes information regarding the compensation and benefits for 14 pilot groups across the United States including the LA Harbor Pilots who provide pilotage services within the Port of Los Angeles and are employed by the City of Los Angeles. Mr. Lough’s table summarizing the compensation and benefits for these 14 pilot groups is set out on page 10 of his testimony and he devotes pages 10-20 of his testimony to further analysis of those conversation/benefits packages. His testimony is supported by publicly available records regarding the compensation and benefits paid to these groups, specifically Exh. DL-06 through DL-23. I do not have any direct or personal knowledge of the five other West Coast pilot groups listed in this DR. Lastly, I note for the record that Port Hueneme is not located in Hawaii.

PMSA DATA REQUEST NO. 206: For each pilotage grounds for which you have direct and personal knowledge in response to DR 205, please provide the level of compensation and benefits and any documentation you have of the compensation and benefits.

RESPONSE: Please refer to my response to DR 205 and the testimony of David Lough.

PMSA DATA REQUEST NO. 207: Regarding Exh. SB-01T 5:16–21 and the relative compensation of the Puget Sound Pilots as “an outlier nationally on medical insurance benefits,” please state whether you have direct and personal knowledge of the compensation and benefits available to pilots during 2021 in any pilotage grounds not otherwise listed in DR 205 or otherwise included in the testimony of David Lough.

RESPONSE: See response to DR 205.

PMSA DATA REQUEST NO. 208: For each pilotage grounds for which you have direct and personal knowledge in response to DR 207, please provide the level of compensation and benefits and any documentation you have of the compensation and benefits.

RESPONSE: See response to DR 206.

PMSA DATA REQUEST NO. 209: Please identify the Rule cited at Exh. SB-01T 7:2–4, “PSP has a rule that if a pilot is medically unfit to pilot, that pilot is entitled to participate in a major medical leave program that provides six months’ paid leave subject to the approval of PSP’s board,” and if that document has not already been provided in this rate case, please provide a copy of the rule.

RESPONSE: Please see PSP Operating Rules 19 and 20 attached as DR 209 Response.

PMSA DATA REQUEST NO. 210: Further regarding the Rule cited at Exh. SB-01T 7:2-4, please provide documentation or a summary of the basis for your testimony at Exh. SB-01T 7:4–6, regarding the historic application of this rule to major injury, accident, or other situations where a pilot is unfit for duty for an extended period of time.

RESPONSE: Determinations that a pilot is unfit for duty for an extended period of time are matters of public record with the BPC. Subject to the objection, the basis for my testimony regarding the historic application of PSP Operating Rule 19 is my personal knowledge and experience as a member of PSP.

PMSA DATA REQUEST NO. 211: Regarding your testimony regarding “legal risk” at Exh. SB-01T 4:23–25, as a layperson, please define and describe your understanding of the term “legal risk” as you use it in this context and what it entails.

RESPONSE: I understand legal risk in this context to refer to the risk of personal liability.

PMSA DATA REQUEST NO. 212: Further regarding your testimony regarding “legal risk” at Exh. SB-01T 4:23–25, please describe all of the following: 1) the nature of and cumulative legal risks posed to a state licensed Puget Sound pilot; 2) the nature of and cumulative legal risks posed to a vessel master; and 3) why in your opinion the legal risks posed to a pilot are “much greater” than the legal risks posed to a vessel master.

RESPONSE: The relevant legal risks arise primarily from a maritime casualty resulting or alleged to result from pilot or master error. In this situation, the personal legal risk to a pilot is greater because of both the generally higher degree of difficulty and danger associated with the pilot’s work assignment and the nature of the pilot’s independent status operating under his or her own license as opposed to a vessel master operating as an employee or agent of the shipowner or charterer. Thus, while the nature of the risks may arise from similar circumstances (i.e., maritime casualty), the magnitude of legal risk to the pilot is greater. Further, a pilot’s highly specialized experience and training may subject them to heightened scrutiny and performance expectations in the event of a casualty, which further increases the pilot’s legal risk relative to a ship’s master.

PMSA DATA REQUEST NO. 213: Further regarding your testimony regarding “legal risk” at Exh. SB-01T 4:23–25, please admit that as a vessel master, prior to becoming a pilot from 2010-2014 as described at Exh. SB-02, that you were exposed to the legal risks that you describe in DR 212.

RESPONSE: Please see my response to DR 212. Except as stated therein, deny.

PMSA DATA REQUEST NO. 215: Regarding your testimony at Exh. SB-01T 8:22–25, please define what you mean by “the best of the best merchant mariners.”

RESPONSE: The large majority of applicants to pilot training programs are very highly skilled and experienced merchant mariners. The “best of the best” as used in my testimony refers to the exceptionally elite mariners within that already select group.

PMSA DATA REQUEST NO. 216: Further regarding your testimony at Exh. SB-01T 8:22–25, please identify how many of the trainees who passed the April 2021 trainee examination administered by the Board of Pilotage Commissioners fall within the definition of “the best of the best merchant mariners” provided in response to DR 215 and how many of the trainees who passed the April 2021 trainee exam do not fall with the definition of “the best of the best merchant mariners” provided in response to DR 215, including the basis for this assessment for each group of identified trainees.

RESPONSE: PSP objects to the form of this request as being argumentative in nature and is not a good-faith request for relevant information. PSP further objects that the request is unduly burdensome and calls for information protected by the self-critical analysis privilege and/or its underlying policy considerations. As PSP has previously advised, PMSA’s continued requests that PSP critique individual pilots and/or trainees is highly inappropriate and appears intended solely as a cynical exercise that jeopardizes morale and risks injecting bias into the training process. Subject to the foregoing objections, Captain Bendixen responds as follows:

Performance assessments of all pilot trainees are required by the BPC to be kept confidential for precisely the reasons stated in PSP’s objections to this DR, and individual pilots are explicitly prohibited from discussing trainee performance outside of appropriate channels.

PMSA DATA REQUEST NO. 220: Regarding your testimony at Exh. SB-01T 11:15–26, please provide a citation and a copy of the original source document from which the image of the placard was obtained.

RESPONSE: The placard is in accordance with SOLAS Regulations V/23, a copy of which is available here: <https://cms3.revize.com/revize/americanpilots/SOLAS%20Reg%20V-23.pdf>, and IHO Resolution A 1045(27), a copy of which is available here: [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1045\(27\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1045(27).pdf). The placard itself is in accordance IMO requirements and available from multiple source locations including, for example, here: [https://cms3.revize.com/revize/americanpilots/MSC.1-Circ.1428%20-%20Required%20boarding%20arrangements%20for%20pilots%20\(Secretariat\).pdf](https://cms3.revize.com/revize/americanpilots/MSC.1-Circ.1428%20-%20Required%20boarding%20arrangements%20for%20pilots%20(Secretariat).pdf), and here: <https://pilotladdersafety.com/reference/imo-imp-a-wheelhouse-poster/>.