

A History of Pilotage in Maine

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Much of Maine's history has been based around its coastline. The approximate 3,500 miles of jutting rocks, hidden shoals, and jagged reefs create dangerous passage for all those seeking to enjoy its great beauty, prosperous ports and safe harbors. Pilots have aided those seeking safe routes to and from ports in America since Colonial times and their responsibility in Maine-though probably prevalent before-was legally established shortly after statehood was obtained in 1820. This paper's purpose is to give its reader a better picture of how the profession of pilotage has developed in Maine.

The Beginning of Professional Pilotage

The pilot's profession has a long history; the first known professional pilot was Frans Naerebout of Holland. He set himself up in this position in 1749 and kept it until his death in 1818. The Netherlands lead in organizing a modern pilotage system that employed professional pilots. The difference between these pilots and those who did similar jobs before them was the organized and continuous schedule of services they offered to vessels. Before professional pilots, local individuals with a good working knowledge of an area would assist those vessels who asked for help.¹

Pilotage in Colonial America

In America, pilotage was emerging within the Colonies while they were still ruled by Great Britain. When the United States finally declared itself an independent country and adopted the Constitution in 1789, a system of state pilotage had already been in effect for many years. Individual state systems had no authority once the Constitution was in effect because of the Commerce Clause. This clause gave the federal government the privilege of regulating commerce with foreign Nations as well as within the States and pilotage was an activity encompassed as commerce. Fortunately, Congress recognized how effective the state pilotage systems already were and, by passing the Lighthouse Act of 1789, worked quickly to ensure that they were not disturbed. This Act stated that all of the pilots within the country could continue to work within the guidelines of their State's existing laws and those laws the States enacted thereafter. From this point on, the federal government only changed its stance on state pilotage systems in minor ways such as to solve disputes between state systems; to ensure fair rating arrangements; to guarantee that a federally licensed pilot be aboard steam powered vessels at all times except when they are on the high seas; and to give legal definition to terminology associated with steam vessels.²

¹ Clothier, Captain Ernest A., and Captain W. Hilton Lowe. State Pilotage in America. Washington D.C.: American Pilots' Association, 1979. p. 4-5.

² Ibid., p. 107-126.

Maine's Early Statehood and the Establishment of Pilotage (1820-1861)

In 1821, almost a year after Maine statehood, the Legislature passed their first bill pertaining to the operation of pilots within its ports. This bill was entitled *An Act Regulating Pilotage in the Several Ports in this State*³ and contained six sections. Section one granted the Governor, with the advice of the Executive Council, the authority to appoint and commission, as necessary, one or more pilots for the ports in Maine. These pilots were to be given branches or warrants proclaiming their position. Section two provided the oath that was to be taken in the presence of a Justice of the Peace by those wishing to become pilots before they could enter into their duties. This section also outlined the bonds that each branch pilot had to enter into with the State Treasurer for the sum of \$5,000. Once these two acts were done, the commissioned pilot could then take charge of vessels drawing nine feet of water or more, excluding coasting and fishing vessels. The third section stated that the Governor, with the advice of the Council, could then determine and fix the rates a pilot could charge for his work. This section included the provisions for a non-compulsory pilotage system by recording that “any master of a vessel who may choose to hazard the pilotage of his own vessel into or out of any port, shall be at liberty so to do.”⁴ The fourth section made certain the liability of pilots while they were in control of vessels. It stated that any vessel lost, cast away, or run aground through unskilled or neglectful habits of the pilot would have its value and its cargo’s value or any accountable damaged paid for by that pilot. Up to the fourth section, the wording was all for inbound vessels so section five provided that all of the before said rules were also true for outgoing vessels. Finally, section six empowered the Governor and the Council to hear and determine any cases of complaints had against the pilots. The Governor and Council could then decide to remove unqualified persons and replace them by appointing new pilots in their place.⁵

Between 1821 and 1840 the above Act gained an extra section because the second section was eventually split into two. Also the third section was amended between 1840 and 1857 to make the ruling of non-compulsory pilotage clearer. The wording changes from “any master of a vessel who may choose to hazard the pilotage of his own vessel into or out of any port, shall be at liberty so to do,”⁶ to, “any master may pilot his own vessel, without being subject to pay therefore.”⁷

The Governor received a report from his Executive Council regarding the application for the appointment of a pilot for the Port of Passamaquoddy in 1827. The

3 State of Maine. Legislature. *An Act Regulating Pilotage in the Several Ports in this State*. PL. Ch 73, 1821. Original document may be found at the Maine State Archives in box 6.

⁴ MRSA Ch. CLXXVII Sec. 3.

⁵ Ibid.

⁶ Ibid.

⁷ MRSA Ch. 36 Sec. 2.

report advised the Governor to appoint William Godfrey of Lubec as the pilot for this port with the authority given to him in the above 1821 Act. The report also recommended that the fees charged by William Godfrey be as follows: for a vessel with a nine to ten foot draft, fifty cents per foot, while any vessel with a draft larger than ten feet be charged seventy-five cents per foot. This appointment was approved by the Governor and accepted by the Council.⁸

The Executive Council reported again in 1830 regarding the Port of Passamaquoddy. The report sought to have the same fees that had been approved for William Godfrey extended to William Miars, a new pilot appointed by the Governor for the same port. It also asked that Mr. Miars be given the right to demand and receive the fees for pilotage.⁹

In 1861, a private and special law was passed regarding the Piscataqua River and Portsmouth harbor. This law stated that when a pilot in this area offered to assist any vessel, except for a coasting or fishing vessel, of 150 tons bound into the river and harbor, that the said pilot should be entitled one half of the fees specified in his warrant even if his services were turned down.¹⁰

Another public law was also passed in 1861 with regards to the Port of Passamaquoddy and contained two sections. The first section authorized and directed the pilots in the port to take charge of all foreign vessels above 100 tons, as well as, all American sailing vessels under register above 300 tons inbound to or outbound from the port. A registered vessel is a vessel that has documentation declaring its nationality and allowing it to assert its nationality anywhere it may go.¹¹ The section determined that these vessels could be taken by the pilot when they were outside of East or West Quoddy Lights. This section also stated that the American sailing vessels affected by this act be required to pay one half of the pilotage fees, not exceeding ten dollars in any area, should they decline assistance. Section two of the Act worked towards increasing efficiency and protecting the interests of pilots by giving them a lien on their pilotage fees for the space of 10 days upon the hull of any vessel liable to the pilot. These liens were to be enforced in the same way liens were for labor and material.¹²

Maine Leads the Fight Against Pilotage (1885-1917)

⁸ State of Maine. Executive Council. Report on the Application for the Appointment of a Pilot for the Port of Passamaquoddy. 1827. Original document may be found at the Maine State Archives in box 18-55.

⁹ State of Maine. Executive Council. Report on the Fees for Pilotage for the Port of Passamaquoddy. 1830. Original document may be found at the Maine State Archives in box 32-6.

¹⁰ State of Maine. Legislature. An Act Relating to Pilots in Piscataqua River and Harbor. P&S. Ch 101, 1861. Original document may be found at the Maine State Archives in box 374.

¹¹ Kirchner, Paul G. The Legal Aspects of Pilotage. 2005. Tab 3. Page 18.

¹² State of Maine. Legislature. An Act Respecting Pilots for the Port of Passamaquoddy. PL. Ch 162, 1861. Original document may be found at the Maine State Archives in box 376.

Though the great need for pilots to ensure safety navigating the rocky coast of Maine was obvious, between the years of 1885 and 1917, United States Congressmen from Maine fought to have the state pilotage systems abolished and a federally-ruled system that would not include compulsory pilotage, established. The most influential of these men were Congressmen James G. Blaine, Congressman Nelson Dingley, Jr., Honorable Thomas B. Reed, and Honorable William P. Frye. So great was Maine's desire for a non-compulsory pilotage system that they made the pilotage along the Maine coast non-compulsory and led many other New England states to do the same. This confusing objective can be explained only by the prosperous business happening in coastwise trade between New England and southern states. Much of this business was done through sailing vessels, since at the time it was much more profitable than using steam ships. Sailing vessels, however, were subject to compulsory pilotage fees in the southern states. As much of the shipping industry turned towards steam vessels, the federal government mandated that a federally-licensed pilot be aboard the ships at all times except for when they were on the high seas. This mandate led to the steam ships being exempt from compulsory pilotage in coastwise trade. The business men that ran sailing vessels found this unfair and struggled to get similar mandates for their boats so that they too could escape the cost of pilots.¹³

From 1885 when Congressman Dingley of Maine first introduced bills H.R. 999 and H.R. 6390, Maine led the way with anti-pilotage bills. All of the bills that were proposed were very repetitive and could usually be defeated with the same defense as the last. Failure was unavoidable because the nature of steam vessels and sailing vessels is vastly different. Steam vessels at the time always had federally licensed pilots onboard and frequented the same ports so often that it was assumed they would have the knowledge of the harbors and channels needed to traverse them safely. The mandate for federal pilots onboard steam vessels was motivated by the fear of pressure boilers catching on fire or exploding. Sailing vessels did not have this problem and were considered to have an unavoidable need for local pilots because they were always at the unpredictable whims of the wind. This lessened a sailing vessels ability to maneuver so much that an unaware captain could easily be driven into sand bars and rocky shoals. Once heading on a dangerous path the sailing vessel also lacked the ability to back down. With these facts in consideration, alongside the Congress's trust of the state pilotage systems that was constantly supported by the American Pilot's Association, all of the anti-pilotage bills introduced were blocked. This preserved the service that has always ensured the safety of people, boats, and cargo within American ports.¹⁴

Compulsory Pilotage Era in Maine (1969-Present)

Maine's state pilotage system remained non-compulsory until 1969 when section 86 was added to MRSA Title 38, Chapter 410. This section was entitled *Vessels Required to Take Pilot* and included the ruling that if a vessel falling within the guidelines requiring them to take a pilot aboard declines the service they must pay the

¹³ Clothier, Captain Ernest A. p. 43-64.

¹⁴ Ibid.

pilotage fees as if they had taken the service. Today, the section is still standing but has been amended to require a vessel failing to take a pilot to pay a civil penalty not exceeding \$15,000 per day to the State.¹⁵

The amendments to Title 38 in 1969 did not stop there. Sections 85 through 105 were introduced in order to establish a system of state pilotage for the Penobscot Bay and River area to provide maximum safety there. This included the above-section 86 that ruled that every foreign vessel and American vessel under register with a draft greater than nine feet must take a pilot. This, however, did not include fishing vessels, vessels under enrollment, or sailing vessels. An enrolled vessel is one that has recorded its national character and received documentation so that they may obtain a license.¹⁶ Section 89 was added to establish the outline of membership within the Penobscot Bay and River Pilotage Commission. Eventually, this Commission took the power over pilotage that had once been the Governor's. In 1985 Title 38's sections 81 through 84, outlining the Governor's authority, were repealed, reflecting this change.

The Commission transitioned into the Maine State Pilotage Commission between 1988 and 1989 before becoming the Maine Pilotage Commission. Originally the Commission included three members that were appointed by the Governor. One member had to be a pilot from the Penobscot Bay and River Pilot's Association, one had to represent the marine industry in Maine, and one had to have a marine background to represent the public. When the Commission transitioned to the Maine State Pilotage Commission the membership increased to 5. The additional 2 members came from a change that required one pilot representative from Penobscot Bay, Bar Harbor, and Eastport or Bath. In 2007, the membership increased by 2 again so that 2 people could represent the marine industry and 2 could represent the public in addition to the 3 pilots. These representatives have always served three year terms.¹⁷

In 1997, the Legislature passed a ruling that transferred the responsibility of the Maine Pilotage Commission from the Department of Professional and Financial Regulation to the Department of Transportation. The ruling read as follows:

To acquire, construct, operate and maintain such harbor facilities as may be necessary to implement the planned development of coastal resources, ports and harbors; to operate and maintain the port facilities as now within or as may hereafter come within the jurisdiction of the Department of Transportation; and to oversee the administration of the Maine State Pilotage commission.¹⁸

Portland Harbor is the only harbor in Maine that controls its port's pilot licensing and other pilotage regulations. The conduct of the pilotage profession in Portland Harbor is overseen by their Harbor Commission. This Commission was established in 1981 and

¹⁵ MRSA Title 38 Sec 86.

¹⁶ Kirchner, Paul G. The Legal Aspects of Pilotage. 2005. Tab 3. Page 18.

¹⁷ MRSA Title 38 Sec. 89.

¹⁸ MRSA Title 23 Sec. 4206. Sub. Ch. H.

oversees pilotage issues on the Portland waterfront. The Board of Harbor Commissioners replaced the very powerful Board of Trade that had controlled the pilotage in Portland Harbor since the Board of Trade's incorporation by the State Legislature on March 22, 1854. Pilotage remained optional in Portland Harbor, however, until July 15, 1927. At that time, the law was amended to require compulsory pilotage for the Port of Portland. The State Branch Bar Pilot License that the Commission issues allows the pilot to operate within Portland Harbor and its outer approaches. All applicants for this license must be a citizen of the United States, a resident of Maine, and at least twenty-one years old. The applicant must also have their United States Coast Guard unlimited master's license and be a graduate of a State Maritime Academy, the Federal Maritime Academy, or an equal training program. Along with this the pilot must also have adequate experience from within 5 years of the application. Candidates must meet all of the requirements to enter into the Apprenticeship program. An apprentice has to complete a minimum of 12 months of training as well as any additional time required to gain ample experience. The State Branch Bar Pilot License is issued for 5 years and must be renewed in order for a pilot to continue operating within the harbor.¹⁹

Maine pilots can be found continuing the work of those before them by helping in training those to come. In 2007, members of the Penobscot Bay and River Pilots Association helped to educate the next generation of Maine pilots by cooperating with Maine Maritime Academy to offer hands-on experience to students. These fortunate students were allowed to observe and assist the pilots on the bridges of ships they handled at Mack Point, Searsport. This relationship was beneficial to all parties as the students gained priceless experience and the pilots were able to use the Academy's Tug *Pentagoet* and Barge *Cleanwater 21* to complete their recency trips for the Maine Pilotage Commission.²⁰

The legacy of a pilot's hard work can still be seen today in other areas as well. For example, the area including Passamaquoddy Bay has three pilots operating out of the Port of Eastport: Captain Robert Peacock, Captain Gerald Morrison and Captain Douglas Lord. Captain Peacock was featured in an article entitled "Eastport Pilot: Lots of Planning, a Few Close Calls" in The Working Waterfront in August of 2008. According to the article, up to that time he had brought 483 ships into Eastport and 496 ships out of the same port using Head Harbour Passage. Amazingly this number is only the work he has done in Passamaquoddy Bay. Captain Peacock has also worked as a harbor pilot in Penobscot Bay and River, as well as Bar Harbor. His life is a great example of the years of dedication it takes to gain the knowledge and ability to become a pilot; for example, he spent 12 years as a pilot observer for the Penobscot Bay pilots before he received their experienced approval. He also holds a B.S. in nautical science from Maine Maritime Academy and served in the United States Navy for over 30 years. By looking at his

¹⁹ "Rules & Regulations." *Board of Harbor Commissioners*. 03 March 2008. Port of Portland. 19 Jun 2009 <http://www.portlandharbor.org/Rules_Master.htm>.

²⁰ Worth, John. "Penobscot Bay and River Pilots Help MMA Students." Mariner Spring 2007: 32.

resume one could surely see a great example of the experience Maine pilots are depended upon having.²¹

The traditional focus on safety that encouraged pilotage systems from the beginning is still the objective today. Maine pilots participate each year in the Maine and New Hampshire Port Safety Forum where they can receive an overview of the accomplishments made towards safety along the coast and serve on subcommittees to work towards maintaining and cultivating relevant projects. By always striving to better themselves Maine pilots can guarantee their continued importance in the present and future navigation of this grand coast.

Over the years of Maine's statehood pilotage has been a consistent part of history. Though pilots had to fight against representatives from Maine for the stability of their careers on the United States' coast their service is now compulsory for many vessels. With continued growth of activity along the Maine coast may pilots find that their knowledge is required for a long time to come and may their stories continue to be rich ones.

²¹ Gustafson, Bob. "Eastport Pilot: Lots of Planning, a Few Close Calls." The Working Waterfront August 2008. 10 June 2009 <<http://www.workingwaterfront.com/articles/Eastport-Pilot-Lots-of-Planning-a-Few-Close-Calls/12537/>>.

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