

WATERS AND NAVIGATION

CHAPTER 1 OPERATION OF VESSELS

SUBCHAPTER III PILOTS

38 § 81. Appointment; bond (REPEALED)

Section History:
1975, c. 771, § 413 (AMD).
1985, c. 389, § 27 (RP).

38 § 82. Duties (REPEALED)

Section History:
1985, c. 389, § 29 (RP).

38 § 83. Fees; complaints; suspension or removal (REPEALED)

Section History:
1975, c. 771, § 414 (AMD).
1985, c. 389, § 30 (RP).

38 § 84. Liability for damage (REPEALED)

Section History:
1985, c. 389, § 31 (RP).

38 § 85. Declaration of policy

It is declared to be the policy and intent of the Legislature and the purpose of this subchapter to provide for a system of state pilotage in order to provide maximum safety from the dangers of navigation for vessels entering or leaving the waters described in this subchapter, to maintain a state pilotage system devoted to the preservation and protection of lives, property, the environment and vessels entering or leaving these waters at the highest standard of efficiency and to insure the availability of pilots well qualified for the discharge of their duties in aid of commerce and navigation. [1999, c. 355, §2 (amd).]

Section History:
1969, c. 410, § 1 (NEW).
1985, c. 389, § 32 (AMD).
1999, c. 355, § 2 (AMD).

38 § 85-A. Definitions (REPEALED)

Section History:
1983, c. 758, § 13 (NEW).
1991, c. 509, § 46 (AMD).

1997, c. 727, § C17 (AMD).

1999, c. 355, § 3 (RP).

38 § 85-B. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 355, §4 (new).]

1. Actively piloting. "Actively piloting" means a person licensed as a pilot by the commission who is engaged in providing pilot services on a regular and ongoing basis within the area for which that person is licensed.

[1999, c. 355, §4 (new).]

2. Coastal waters. "Coastal waters" means the jurisdictional area of the commission, which waters are all coastal navigable waters that are contained within, flow through, or border upon the State or any portion thereof, including those portions of the Atlantic Ocean within the jurisdiction of the State, up to state or international boundaries, and including all waters between Isle au Haut and Seal Island westward of a straight line between Western Ear Ledge on Isle au Haut drawn to Eastern Ledge on Seal Island.

[1999, c. 355, §4 (new).]

3. Coastal zones. "Coastal zones" means the 3 areas of Maine coastal waters relevant to the commission membership, Calais to Schoodic Point, Schoodic Point to Port Clyde, and Port Clyde to Kittery, excepting the port of Portland and Casco Bay.

[1999, c. 355, §4 (new).]

4. Commission. "Commission" means the Maine Pilotage Commission.

[1999, c. 355, §4 (new).]

5. Commissioner. "Commissioner" means the Commissioner of Transportation.

[1999, c. 355, §4 (new).]

6. Department. "Department" means the Department of Transportation.

[1999, c. 355, §4 (new).]

7. Pilotage areas. "Pilotage areas" means specific areas of the Maine coast where the commission has established licensing requirements.

[1999, c. 355, §4 (new).]

Section History:

1999, c. 355, § 4 (NEW).

38 § 86. Vessels required to take pilot

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, entering or departing from any port or harbor within the waters described in section 86-A must take a pilot licensed under this chapter. Any master, owner, agent or consignee that fails to take a pilot licensed under this subchapter is subject to a civil penalty not to exceed \$15,000 per day, payable to the State. This penalty is recoverable in a civil action. [1999, c. 355, §5 (amd).]

Section History:
1969, c. 410, § 1 (NEW).
1985, c. 389, § 32 (AMD).
1991, c. 698, § 2 (AMD).
1999, c. 355, § 5 (AMD).

38 § 86-A. Jurisdiction over coastal waters and rivers

This subchapter applies to all Maine coastal waters and navigable waters with the exception of: [1987, c. 689, § 1 (rpr).]

1. Piscataqua River. The Piscataqua River;

[1987, c. 689, § 1 (rpr).]

2. Exempt waters. Those waters specifically exempted by the Maine Pilotage Commission; or

[1999, c. 355, § 6 (amd).]

3. Portland harbor. Those waters specifically governed by the Board of Harbor Commissioners for the Harbor of Portland.

[1987, c. 689, § 1 (rpr).]

Section History:
1985, c. 389, § 33 (NEW).
1987, c. 689, § 1 (RPR).
1999, c. 355, § 6 (AMD).

38 § 87. Vessels exempt (REPEALED)

Section History:
1969, c. 410, § 1 (NEW).
1985, c. 389, § 34 (RP).

38 § 87-A. Exceptions

1. Vessels exempt. This subchapter does not apply to:

A. Vessels under enrollment; [1985, c. 389, § 35 (new).]

B. Fishing vessels; [1985, c. 389, § 35 (new).]

C. Vessels powered predominantly by sail; [1999, c. 355, § 7 (amd).]

D. The vessel on regularly scheduled ferry operations between Bar Harbor, Maine and Yarmouth, Nova Scotia, provided that the master of such vessel has completed an appropriate number of trips, as established by commission rules and has met any appropriate federal requirements. [1999, c. 355, § 7 (amd).]

E. All military ships navigating the Kennebec River to and from the Bath Iron Works Corporation for the purpose of accomplishing overhaul, repair, post shakedown availability and sea trials. [1999, c. 355, § 7 (amd).]

[1999, c. 355, § 7 (amd).]

2. Limitation. If any such vessel employs a pilot, the pilot is entitled to receive as compensation for that pilot's service pilotage fees in the amount established by the commission.

[1999, c. 355, §7 (amd).]

Section History:

1985, c. 389, § 35 (NEW).

1999, c. 355, § 7 (AMD).

38 § 88. Piloting without license

It is unlawful for any person not licensed as a pilot under this subchapter to pilot or offer to pilot a vessel not exempt from this subchapter. Any person found to be in violation of this subchapter must be assessed a fine not to exceed \$5,000 for each instance of piloting, or offering to pilot without a license. Violation of this provision is a Class E crime. [1999, c. 355, §8 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 696, § 332 (AMD).

1999, c. 355, § 8 (AMD).

38 § 89. Maine Pilotage Commission members

The Maine Pilotage Commission, as established by Title 5, section 12004-A, subsection 40, consists of 7 members who are citizens of the United States and the State of Maine appointed by the Governor as follows: Three licensed pilots who are actively piloting, one member from each of the coastal zones; 2 members who are not licensed pilots but are from a maritime industry that utilizes the services of pilots; and 2 members representing the public who are not licensed pilots but have a maritime background. Appointments are for 3-year terms. Appointments of members must comply with Title 32, section 60. The members of the commission are entitled to compensation according to Title 5, chapter 379. [1999, c. 355, §9 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1975, c. 771, § 415 (AMD).

1983, c. 812, § 288 (AMD).

1985, c. 389, § 36 (RPR).

1989, c. 503, § B174 (AMD).

1993, c. 600, § A281 (AMD).

1999, c. 355, § 9 (AMD).

38 § 90. Duties of commission

1. Duties. The commission shall perform the duties set forth and such other duties as may be provided by law:

- A. Make, establish and enforce such rules and regulations not inconsistent with law that are binding upon all pilots licensed by the commission, and upon all parties employing such pilots; [1999, c. 355, §10 (amd).]
- B. Make and establish rates of pilotage for those vessels that are subject to this subchapter; [1999, c. 355, §10 (amd).]
- C. Establish and determine the qualifications of any person applying for a pilot's license and conduct examinations; [1969, c. 410, § 1 (new).]

- D. Issue any pilot's license in accordance with this subchapter and initiate proceedings to suspend or revoke these licenses; [1999, c. 355, §11 (amd).]
- E. Cause the laws, rules and regulations concerning pilots and pilotage matters to be fully observed and executed; [1969, c. 410, § 1 (new).]
- F. Hear and decide complaints made in writing or initiated on its own motion against any pilot for any misbehavior, neglect of, or breach of rules or regulations that it determines material to be investigated; [1999, c. 355, §12 (amd).]
- G. Hear and decide complaints made in writing by any pilot against any charterer, owner, agent, master or seaman of a vessel for any misbehavior toward such pilot in the performance of his duty, or any breach of the rules and regulations; [1969, c. 410, § 1 (new).]
- H. [1991, c. 837, Pt. A, §79 (rp).]
- I. To do all other things reasonable, necessary and expedient to insure proper and safe pilotage and to facilitate the efficient administration of this subchapter. [1999, c. 355, §12 (amd).]

[1999, c. 355, §§10-12 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 694, § 747 (AMD).

1985, c. 389, § 37 (AMD).

1991, c. 837, § A79 (AMD).

1999, c. 355, § 10-12 (AMD).

38 § 90-A. Reports; liaison; limitations

On or before August 1st of each year, the commission shall submit to the commissioner for the preceding fiscal year ending June 30th its annual report of its operations and financial position, together with those comments and recommendations that the commission considers essential. [1999, c. 355, §13 (amd).]

The commissioner shall act as a liaison between the commission and the Governor. [1977, c. 604, § 42 (new).]

The commissioner shall not have the authority to exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the commission. [1977, c. 604, § 42 (new).]

Section History:

1977, c. 604, § 42 (NEW).

1981, c. 456, § A121 (AMD).

1983, c. 758, § 14 (AMD).

1999, c. 355, § 13 (AMD).

38 § 90-B. Budget

The commission's budget must be prepared and submitted to the commissioner for approval. 1997, c. 727, Pt. C, §18 (amd).]

Section History:

1977, c. 604, § 42 (NEW).

1981, c. 456, § A122 (AMD).

1983, c. 758, § 15 (AMD).

1995, c. 397, § 125 (RPR).

1997, c. 727, § C18 (AMD).

38 § 90-C. Employees

The commissioner may appoint employees as necessary. 1997, c. 727, Pt. C, §19 (amd).]]

Section History:

1983, c. 758, § 16 (NEW).

1995, c. 397, § 126 (NEW).

1997, c. 727, § C19 (AMD).

38 § 91. Qualifications of licensees

Every person who applies for a license to act as a pilot in the waters covered in this subchapter must be a citizen of the United States and the State of Maine. If applicable, the applicant must possess a federal first class pilot's endorsement, issued by a duly constituted authority of the United States, covering areas for which the applicant is making application. The commission shall set standards for application, testing and granting of a state license. In those areas where no federal endorsement is available, the commission may set additional standards for a state license. An applicant for a license must satisfy the commission that the applicant has or will have proper means available for boarding and leaving vessels which the applicant may be called upon to pilot. [1999, c. 355, §14 (amd).]

An applicant must complete a training trip in the area for which that person is making application under the direction of a licensed pilot actively piloting in that area. These training trips must be on vessels of at least 1600 gross tons. The commission shall establish standards for proof of such training and the minimum number of trips required. Once those standards are established, they may be amended only upon a 2/3 vote of the commission. [1999, c. 355, §14 (new).]

Section History:

1969, c. 410, § 1 (NEW).

1985, c. 389, § 38 (AMD).

1999, c. 355, § 14 (AMD).

38 § 92. Duration and renewal of licenses

Licenses issued by the pilotage commission must be renewed every 5 years to coincide, if possible, with the renewal of the individual's federal license. [1999, c. 355, §15 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1983, c. 758, § 17 (AMD).

1991, c. 509, § 47 (AMD).

1999, c. 355, § 15 (AMD).

38 § 93. License fees

Every new application for a license to act as a pilot on coastal waters must be accompanied by an application fee of \$500 for the first pilotage area and \$50 for each

successive pilotage area. Original and renewal license fees are \$375 for 5 years, regardless of number of areas being renewed. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of \$100 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the licensing renewal date is subject to all requirements governing new applicants under this chapter. [1999, c. 355, §16 (amd).]

A holder of a license on the effective date of this paragraph is not required to renew that license until the next expiration and renewal of the federal license. [1999, c. 355, §16 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1991, c. 509, § 48 (AMD).

1999, c. 355, § 16 (AMD).

38 § 94. Accounts of fees; payments to commission (REPEALED)

Section History:

1969, c. 410, § 1 (NEW).

1991, c. 509, § 49 (AMD).

1999, c. 355, § 17 (RP).

38 § 95. Pilot's bond (REPEALED)

Section History:

1969, c. 410, § 1 (NEW).

1991, c. 509, § 50 (RP).

38 § 96. Lawful compensation

No pilot shall demand or receive any greater, lesser or different compensation for piloting a vessel upon any of the pilotage grounds than is allowed by law. [1969, c. 410, § 1 (new).]

Section History:

1969, c. 410, § 1 (NEW).

38 § 97. Authority of pilots

A pilot licensed under this subchapter may pilot any vessel required to take a state pilot anywhere upon the pilotage area for which the pilot is licensed. [1999, c. 355, §18 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1999, c. 355, § 18 (AMD).

38 § 98. Commissions prohibited

A master, agent, owner, charterer or consignee may not charge a commission or receive any payment directly or indirectly, for the assignment of pilotage, nor may any pilot pay or offer to pay to any person any commission for the assignment of pilotage. Any person violating this section commits a civil violation for which a forfeiture not to exceed \$5,000 may be adjudged for each violation. [1999, c. 355, §19 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 696, § 333 (AMD).

1999, c. 355, § 19 (AMD).

38 § 99. Grounds for disciplinary action

The commission may suspend any pilot for any period that it may consider proper and may suspend, revoke or annul any pilot's license that is issued under this subchapter, upon satisfactory proof that a pilot has willfully disobeyed or violated any of the provisions of this subchapter or any rule established by the commission; or a pilot has negligently lost or damaged any vessel under that pilot's care; or a pilot is habitually intemperate in the use of alcohol or habitually uses narcotic or hypnotic or other substances so as to be unfit to be entrusted with the charge of a vessel; or the pilot is so mentally or physically incapable as to be unfit to carry on the duties of a pilot. [1999, c. 355, §20 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 694, § 748 (AMD).

1985, c. 389, § 39 (AMD).

1999, c. 355, § 20 (AMD).

38 § 99-A. Pilot liability

1. Acts or omissions of another pilot; no liability. A pilot is not liable directly or as a member of an organization of pilots for a claim that arises from an act or omission of another pilot or organization of pilots or that relates directly or indirectly to pilot services.

[1999, c. 355, §21 (new).]

2. Limitation on liability. A pilot providing pilot services is not liable for more than \$5,000 in damages or loss caused by any negligent act or omission in the performance of pilot services. A pilot providing piloting services is liable for:

A. Damages or loss arising from the intentional, willful or reckless misconduct of the pilot; or [1999, c. 355, §21 (new).]

B. Liability for exemplary damages for intentional, willful or reckless conduct of the pilot for which no other person is jointly or severally liable. [1999, c. 355, §21 (new).]

[RR 1999, c. 1, §52 (cor).]

Nothing in this section may be construed to exempt an owner or operator of a vessel from liability for damage or loss caused by that vessel. [RR 1999, c. 1, §52 (cor).]

Section History:

1999, c. 355, § 21 (NEW).

1999, RR c. 1, § 52 (COR).

38 § 100. Notice of hearing on complaint

Before any person shall be proceeded against on any complaint, such person or pilot shall be notified in writing to appear before the commission. Such notice shall specify

the nature and substance of such complaint and shall be served personally or by certified mail addressed to such pilot at his last and usual place of abode at least 15 days before the time fixed in the notice for his appearance. [1977, c. 694, § 749 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 694, § 749 (AMD).

38 § 100-A. Confidentiality of complaints and investigative records

1. During investigation. All complaints and investigative records of the commission are confidential during the pendency of an investigation. Those records become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this section, an investigation is concluded when:

- A. A notice of an adjudicatory hearing under Title 5, chapter 375, subchapter IV has been issued; [1999, c. 355, §22 (new).]
- B. The complaint has been listed on a meeting agenda of the commission; [1999, c. 355, §22 (new).]
- C. A consent agreement has been executed; or [1999, c. 355, §22 (new).]
- D. A letter of dismissal has been issued or the investigation has otherwise been closed. [1999, c. 355, §22 (new).]

[1999, c. 355, §22 (new).]

2. Exceptions. Notwithstanding subsection 1, during the pendency of an investigation, a complaint or investigative record may be disclosed:

- A. To department employees designated by the commissioner; [1999, c. 355, §22 (new).]
- B. To designated complaint officers of the commission; [1999, c. 355, §22 (new).]
- C. By a department employee or complaint officer designated by the commissioner when and to the extent considered necessary to facilitate the investigation; [1999, c. 355, §22 (new).]
- D. To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies; [1999, c. 355, §22 (new).]
- E. When and to the extent considered necessary by the commissioner to avoid imminent and serious harm. The authority of the commissioner to make such a disclosure may not be delegated; [1999, c. 355, §22 (new).]
- F. Pursuant to rules adopted by the department, when it is determined that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; and [1999, c. 355, §22 (new).]
- G. To the person investigated on that person's request. The commissioner may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure would prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated. [RR 1999, c. 1, §53 (cor).]

[RR 1999, c. 1, §53 (cor).]

3. Violation. A person who knowingly or intentionally makes a disclosure in violation of this section commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

[1999, c. 355, §22 (new).]

Section History:

1999, c. 355, § 22 (NEW).

1999, RR c. 1, § 53 (COR).

38 § 101. Surrender of suspended or revoked license

A pilot whose license has been revoked or suspended shall surrender the license to the commission, which shall retain it until the period of the pilot's suspension expires. Any suspended pilot who refuses to surrender the license on demand or continues to pilot commits a civil violation for which a penalty not to exceed \$5,000 may be adjudged for each week after demand that the pilot refuses to surrender or for each vessel piloted without a license, and the commission may cause to be published in a newspaper of general circulation published in the State a notice that that person has no authority to act as pilot unless and until reinstated by law. [1999, c. 355, §23 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1977, c. 696, § 334 (RPR).

1999, c. 355, § 23 (AMD).

38 § 102. Reinstatement following suspension

Any pilot whose license has been suspended shall, following the expiration of the period of his suspension, be entitled to the reinstatement of his license, provided he shall possess the qualifications required of pilots as of the time his suspension expires. [1969, c. 410, § 1 (new).]

Section History:

1969, c. 410, § 1 (NEW).

38 § 103. Lapsed

Any pilot heretofore licensed by the commission whose license lapses for any reason may be reinstated upon compliance with sections 91 and 93, as if applying for an initial license. [1999, c. 355, §24 (amd).]

Section History:

1969, c. 410, § 1 (NEW).

1999, c. 355, § 24 (AMD).

38 § 104. Appeals from commission

Any person aggrieved by any final order or decision of the commission with respect to any disciplinary action or any application for, or denial of, a pilot's license may appeal therefrom to the Superior Court in accordance with the Maine Administrative Procedure Act. [1977, c. 694, § 750 (rpr).]

Section History:

1969, c. 410, § 1 (NEW).

1973, c. 303, § 3 (AMD).

1977, c. 694, § 750 (RPR).

38 § 105. Pilots currently serving (REPEALED)

Section History:

1969, c. 410, § 1 (NEW).

1979, c. 127, § 206 (AMD).

1999, c. 355, § 25 (RP).

38 § 106. Disposition of fees

All money received by the commission must be paid to the Treasurer of State and credited to the account for the commission within the budget of the Department of Transportation. 1997, c. 727, Pt. C, §20 (amd).]]

Money received by the commission must be used for the expenses of administering its statutory responsibilities, including, but not limited to, the costs of conducting investigations, taking testimony and procuring the attendance of witnesses, the costs of all legal proceedings initiated for enforcement and administrative expenses. [1995, c. 397, §127 (new).]

Any balance of these fees may not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. [1995, c. 397, §127 (new).]

Section History:

1985, c. 389, § 40 (NEW).

1995, c. 397, § 127 (RPR).

1995, c. 502, § H48 (AMD).

1997, c. 727, § C20 (AMD).