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### COMMENTS OF AMERICAN PILOTS' ASSOCIATION ON LD 1874, “AN ACT TO ENABLE THE MAINE PILOT COMMISSION TO OVERSEE PILOTS OPERATING IN PORTLAND HARBOR”

May 3, 2025

The American Pilots' Association (APA) **strongly supports** Maine House of Representative Bill LD 1874, “An Act to Enable the Maine Pilot Commission to Oversee Pilots Operating in Portland Harbor.” Among APA's primary focuses is to work closely with State legislatures and State and local oversight authorities to assist and support the continual improvement of the compulsory pilotage system in the United States. The comments below are submitted in the spirit of that focus.

APA is a non-profit organization that has been the national association of the piloting profession in the United States since 1884. All the State-licensed pilot groups in operation in the 24 coastal States, including the groups in Maine, as well as the groups of U.S. registered pilots operating in the Great Lakes system under authorization by the Coast Guard are members of the APA. Pilots belonging to these APA-member pilots' associations handle well over 90 percent of all vessels moving in international trade in the waterways of the United States. The role and official responsibility of these pilots is to protect the safety of navigation and the marine environment in the waters for which they are licensed.

APA has long been a public and forceful advocate of stringent government oversight of pilotage. A pilot commission is the single most important component of a State system for the regulation of compulsory pilotage. Ultimately, the success of such a system will depend largely upon the performance of the pilot commission. As the primary agents of State regulation, pilot commissions must be effective and responsible if State pilotage is to maintain its traditional role in preserving the efficient, safe, and environmentally responsible flow of waterborne commerce through this country's ports. The interests of pilots, the shipping industry, the public and the state are all served by a strong, effective pilot commission.

Pilot commissions vary widely from State to State in their composition, authority and powers, legal status, and other features. Nevertheless, there is a commonality regarding the attributes of a commission that best serves the interests of pilots, the ship operating industry, and the public. A pilot commission should be active and fair in carrying out its oversight activities. It should take its licensing responsibilities seriously. It should investigate accidents and complaints against pilots and oversee

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the professional activities of the pilots in a purposeful manner. Finally, if practicable under the State legal and statutory frameworks, a pilot commission should operate as part of, or in coordination with, a State agency or department. Also, most State pilot commissions have a membership structure that includes specified numbers of maritime industry representatives, pilots, and "public members," with no one group have a plurality on the commission. The Maine Pilot Commission (MPC) has all these attributes.

APA has a long history of working with the MPC as it has overseen the operations of all the other groups of State-licensed pilots in Maine. The MPC has certainly earned the reputation as a "strong, effective pilot commission" and APA is pleased to support moving the "pilots operating in Portland Harbor" (i.e., the Portland Pilots) under the regulatory authority of the MPC along with the rest of the Maine licensed pilots.

The concept of having one State pilot commission oversee multiple groups of State-licensed pilots is not in any way novel or out of the mainstream. In fact, one of the largest States on the east coast, Florida, has a system where the Florida Board of Pilot Commissioners has oversight responsibilities over the nine State pilot groups operating in the State.<sup>1</sup>

APA also strongly supports LD 1874 because it proposes to maintain the current pilotage requirements in place in Portland, rather than attempting to harmonize every aspect of the pilotage requirements in place throughout the State of Maine. Ensuring that every port or waterway can have pilotage requirements tailored to the specific demands and needs of those waters is at the very heart of why we have a "State Pilot System" in the U.S.

The pilotage system in the U.S. is a system of State regulation and State responsibility. This system reflects a judgment made by Congress in 1789 – through the Lighthouse Act of 1789<sup>2</sup> – that due to the localized and unique nature of pilotage, its regulation is best left to the individual States.<sup>3</sup> This judgment has been upheld by the courts and Congress many times over the years and is now reflected in Title 46, Chapter 85 of the U.S. Code, which provides, in part, that pilotage of foreign flagged vessels, as well as U.S.-flagged vessels sailing between a U.S. port and a port in a foreign country (that is, sailing on register), is subject to State pilotage law and jurisdiction. It is in a State's environmental, marine safety, and economic best interest to maintain a modern, safe, efficient, and effective compulsory pilotage system.

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<sup>1</sup> See Florida Statutes, Title XXII, Chapter 310.

<sup>2</sup> Act of Aug. 7, 1789, ch. 9, 1 Stat 53, 54 (1789).

<sup>3</sup> See *In Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, 32 S. Ct. 626, 56 L.Ed. 1047 (1912), Justice Hughes recounting the early history of pilotage legislation: "[w]hen the Constitution of the United States was adopted, each State had its own regulations of pilotage. While this subject was embraced within the grant of power 'to regulate commerce with foreign nations, and among the several States' (Art. 1, sec. 8 [U.S.C.A. Const.]), Congress did not supersede the state legislation." See also, *Cooley v. Board of Wardens of the Port of Philadelphia*, 53 U.S. (12 How.) 299 at 320), Congress looked at the nature of piloting and reached the conclusion that it is "best provided for" at the state, not federal, level.). See also, a detailed discussion of the history, including this decision being the ninth act of the first Congress and upheld by subsequent Supreme Court cases since 1789 by Paul G. Kirchner & Clayton L. Diamond, *Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulation in the United States*, 23 U.S.F. Mar. L.J. 168 (2011). This scholarly article, published in the University of San Francisco Maritime Law Journal, provides a detailed history and overview of the State pilotage system in the United States. The article is available at:

[www.americanpilots.org/document\\_center/Activities/Unique\\_Institutions\\_\\_Indispensable\\_Cogs\\_\\_and\\_Hoary\\_Figures\\_Understanding\\_Pilotage\\_Regulation\\_in\\_the\\_United\\_States.pdf](http://www.americanpilots.org/document_center/Activities/Unique_Institutions__Indispensable_Cogs__and_Hoary_Figures_Understanding_Pilotage_Regulation_in_the_United_States.pdf)

Specifically, in *Cooley v. Board of Wardens of the Port of Philadelphia*<sup>4</sup> the U.S. Supreme Court reviewed Congress' reasoning in enacting the Lighthouse Act of 1789 and stressed:

The act of 1789 contains a clear and authoritative declaration by the first Congress, that the nature of [pilotage] is such, that until Congress should find it necessary to exert its power, it should be left to the legislation of the States; that it is **local and not national**; that it is likely to be the best provided for, not by one system, or plan of regulations, but by as many as the legislative **discretion of the several States should deem applicable to the local peculiarities of the ports within their limits.** (emphasis added).

It is right and fitting that LD 1874 leaves the current local pilotage requirements in place for the Portland Pilots rather than try to harmonize these requirements with the pilotage requirements in place in other Maine ports. In other words, Maine is ensuring that its pilotage system will effectively serve “the local peculiarities of the ports within [its] limits.”

Finally, LD 1874 also has the incidental benefit of separating the regulation of the traditional State-licensed Portland Pilots from the regulation of the docking masters in Portland Harbor. Under LD 1874 the docking masters will continue under the regulatory oversight of the Board of Harbor Commissioners for Portland Harbor, while the Portland Pilots will fall under the Maine Pilot Commission as do all other State-licensed pilots in Maine. APA supports this regulatory separation because, while State-licensed pilots and docking masters both have important duties, they have different purposes and resulting different regulatory oversight needs. APA is, therefore, of the strong view that the regulation of these related but different maritime professionals is best accomplished through separate and distinct regulatory bodies.

APA has long been a public and forceful advocate of stringent State government oversight of compulsory pilotage. We believe it is vital for States to maintain their traditional role in preserving the efficient, environmentally responsible, and safe flow of waterborne commerce through this country's ports. Having all State-licensed pilots in Maine fall under the oversight of the MPC and leaving local pilotage requirements in place for different ports, as LD 1874 would require, will help the State of Maine continue to improve its pilotage system. **APA, therefore, strongly supports LD 1874 and urges it be passed by the Maine Legislature.**

Respectfully,

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<sup>4</sup> 53 U.S. (12 How.) 299, 2008 AMC 2674 (1852).