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Policy Letter 1-15 Pilotage Investigations

March 11, 2015

From: Brian J. Downey, Administrator

To: Maine Pilotage Commission

1. Purpose: This outlines the Maine Pilotage Commission's policy regarding investigations into professional misconduct, negligence, or incompetence of pilots licensed by this Commission.

2. Definitions: The following are common terms used in this policy.

- Complaint: A formal written summary of alleged misconduct, negligence, incompetence, or other violation of Maine Pilotage laws or rules. Formal written complaints shall be signed and dated and submitted to the Commission for consideration of further investigation, hearing, or dismissal. Complaints must include:
 - Specific grounds for the complaint;
 - Specific facts constituting an alleged act or offense; and
 - The reason the complainant is making the complaint.
- Complaint Officer: A member of the Commission designated by the Commission to assist the Commission in carrying out the investigative and disciplinary functions set forth in the Pilotage Rules. The Complaint Officer may use the Commission Administrator and other MaineDOT personnel to assist in discharging these duties.
- Incompetence: The inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.
- Misconduct: A human behavior which violates some commonly accepted rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.
- Negligence: The commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station under the same circumstances, would not fail to perform.
- Piloting without a license: Any person who actively operates a vessel meeting the 38 § 86 requirements for a State licensed pilot who does not hold an active license. Piloting without a license also applies to Maine state pilots who pilot a vessel with an expired license or an inactive license (a properly issued license without adequate recency, proof of valid physical, proof of continuing education, or other state pilot license prerequisite).

3. Discussion: In accordance with 38 § 100-100-A of the MRSA and Part C of the Pilotage Rules of the Maine Pilotage Commission, an investigation may be initiated upon receipt of a formal written complaint. Moreover, any accident involving a vessel under Maine state pilotage, may be investigated by investigators designated by the Commission. In the event of an accident, investigators should endeavor to access the accident scene as quickly as possible to initiate the investigation. Investigations will be carried out, as required, by at least one designated Commission Investigator, but may work in teams as appropriate. Further, Commission investigators will partner within the confines of State and Federal law and regulation, with other investigating agencies to enhance the investigation process. All investigations conducted by the Maine Pilotage Commission shall be focused on safety enhancement. Criminal or other non-safety related findings shall be deferred to other appropriate agencies or State offices.

4. Cooperation with Federal Agencies: The Coast Guard shares an investigation mandate to analyze marine casualties and violations of maritime law and regulation within their jurisdiction of the shipping community. The Coast Guard's jurisdiction typically does not extend to pilotage functions aboard foreign vessels under pilotage. Nevertheless, the Pilotage Commission and the U.S. Coast Guard will strive to conduct joint investigations whenever possible and will share information, findings and recommendations with each other in order to minimize any regulatory gaps in an effort to promote maritime safety. The National Transportation Safety Board (NTSB), may at their discretion, participate in any safety related investigation. During any NTSB investigation, the Maine Pilotage Commission will coordinate as closely as possible with NTSB investigators and will seek to be included a Party in Interest to afford input into the investigative findings.

4. Investigators: The following are designated by the Pilot Commission to investigate contraventions of the Maine Pilotage laws and Rules.

- Mr. Brian Downey (Administrator)
- Mr. Thomas Dobbins (Commissioner)
- Captain Shawn Moody (Commissioner)
- Captain John Worth (Commissioner)

All investigators shall be issued a “go-kit” to aid in conducting an investigation. Go-kits shall minimally consist of:

- 1 digital camera
- 1 pair of coveralls
- 1 pair of gloves
- 1 issue protective eye wear
- Hearing protection
- Pad of paper and pens/pencils
- 1 hard hat
- 1 Ruler
- 1 digital audio recorder
- 1 hand-held GPS device
- 1 bag to carry all of the above equipment.

Upon issuance, the investigator shall be responsible for equipment maintenance. All equipment is owned by the State of Maine and must be returned to the Commission upon discontinuation of investigation designation.

5. Investigator Training: When practicable, designated investigators should be trained in common marine investigation practices and concepts through an appropriate course or seminar approved by the Commission. Such acceptable courses or seminars may be offered through:

- U.S. Coast Guard
- NTSB
- Classification Societies
- National Association of State Boating Law Administrators

Sincerely,

Brian J. Downey Jr.
Maine Pilotage Commission
Administrator