

Maine Pilotage Commission



MaineDOT ~ Room 227B Conference Room
October 18, 2024

Minutes of Pilotage Commission Meeting

In fulfilling the direction of the Maine Pilotage Commission to establish a Legislative Subcommittee as adopted at the September 23, 2024; the first Legislative Subcommittee meeting was convened on October 18, 2024.

As duly voted, the members of the Legislative Subcommittee are as follows:

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| David Gelinis | – Pilot Member |
| Jerry Morrison | – Pilot Member |
| Lindsey Pinkham | – Public Member |
| Carrie Norton | – Public Member |
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| Brian Downey | – Pilotage Commission Administrator (Facilitator) |

The established goals of the Subcommittee are to:

1. Review the draft legislation intended to be presented to the 132nd Legislature in the First Regular Session of 2025 to shift regulatory jurisdiction of the Portland Branch Bar Pilots from the Portland Board of Harbor Commissioners to the Maine Pilotage Commission;
2. Identify any potential impacts to the Maine Pilotage Commission's statutes and rules in the event the legislature directs a shift in the aforementioned jurisdiction; and to
3. Make recommendations to the full Maine Pilotage Commission for comprehensive consideration of any necessary action or changes to statute or rules to effect a change in jurisdiction.

Subcommittee members in attendance were as follows:

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| David Gelinis | – Pilot Member |
| Jerry Morrison | – Pilot Member |
| Lindsey Pinkham ¹ | – Public Member |

Brian Downey

– Pilotage Commission Administrator (Facilitator)

Interested Parties in attendance were as follows:

Mark Klopp

– Klopp Marine Services

Calvin Klopp

– Portland Pilots Inc.

Steve Brenton ¹

– Portland Pilots Inc.

Adam Philbrook

– Penobscot Bay and River Pilots

Carrie Norton ¹

– Maine Pilotage Commission (Chair)

Jim Cohen

– Attorney

Maine DOT and legal staff present were:

Chris Mayo ¹

– MaineDOT

Tim Steigelman

– Maine Attorney General's Office

¹ via remote feed

Call to Order (Facilitator)

Brian Downey opened the meeting at 10:30 a.m. and acknowledged a quorum. Mr. Downey reviewed the goals and outlined the protocol of the Subcommittee, with particular emphasis that the Subcommittee is a review body that will make recommendations to the full Commission for any necessary action.

Gap Analysis Review Portland vs. Maine Pilotage Commission Rules

The Subcommittee reviewed the language of the draft legislation and arrived at the following conclusions as detailed in the Subcommittee Recommendation column of the table below.

STATUTORY GAP ANALYSIS			
38 MRS Chapter 1 Sub-chapter 3			
Item	MPC Reference	Suggested Edit Item	Subcommittee Feedback
1	38 MRSA §85-B, sub-§3	Proposed to be amended to read: 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	Change Port Clyde to Southport Island to permit a Portland Pilot to serve as a Commission member.

STATUTORY GAP ANALYSIS

38 MRS Chapter 1 Sub-chapter 3

Item	MPC Reference	Suggested Edit Item	Subcommittee Feedback
2	38 MRSA §86-A	<p>Proposed to add the following definition:</p> <p>3. Portland Harbor. Those waters specifically governed by the Board of Harbor Commissioners for the Harbor of Portland, except that the commission shall retain those duties set forth in section 90 as they relate to State Branch Bar Pilots operating in such waters. For purposes of this paragraph, "State Branch Bar Pilot" means any person taken on board a vessel for the purpose of navigating a vessel subject to pilotage through the entrance, approaches or any channel within a harbor, other than navigating incidental to the activity of directing the mooring, anchoring, docking or undocking of vessels. Nothing in this section is intended to confer jurisdiction or duties upon the commission with respect to the activities of docking masters governed by the Board of Harbor Commissioners for the Harbor of Portland.</p>	<p>More discussion is needed to clarify the intent and meaning of "incidental to the activity of directing the mooring, anchoring, docking or undocking of vessels."</p> <p>Take the opportunity to correct 86-A to remove Frenchman Bay and Eastport from the exempted waterways.</p>
3	38 MRSA §87-A, sub-§1, paragraph F,	<p>is proposed to read:</p> <p>F. Noncommercial foreign vessels with overall length of under 253 feet, except in the case of Portland Harbor; and.</p>	<p>More discussion is needed to clarify whether or not to keep the status quo with no exemption due to the confines and higher congestion of Portland Harbor.</p>
4	38 MRSA §87-A, sub-§1,	<p>paragraph G, is proposed to be enacted to read:</p> <p>G. In the case of Portland Harbor, foreign, noncommercial vessels under 350 gross tons for yacht or recreational purposes and American noncommercial vessels under 350 gross tons and sailing coastwise or under registry for yacht or recreational purposes.</p>	<p>More discussion is needed to clarify whether or not to keep the status quo with no exemption due to the confines and higher congestion of Portland Harbor.</p>
5	PS&L 1991, ch. 98, §5, sub-§2,	<p>is proposed to be repealed and replaced with the following:</p> <p>2. Operation as pilot. The rates, licensure, apprenticeship, continuing education, fees, safety and other activities related to State Branch Bar Pilots operating upon the waters subject to the jurisdiction of the commission shall be overseen and regulated by the Maine Pilotage Commission pursuant to title 38, chapter 1, subchapter 3 of the laws of Maine. Nothing in this section is intended to limit the authority of the commission to oversee and regulate the activities of docking masters operating on waters subject to the jurisdiction of the commission.</p>	<p>Portland Board of Harbor Commissioners Law – Not under Maine Pilotage Commission jurisdiction or control.</p>

STATUTORY GAP ANALYSIS

38 MRS Chapter 1 Sub-chapter 3

Item	MPC Reference	Suggested Edit Item	Subcommittee Feedback
6	Rulemaking. Resolved:	<p>Proposed to be added to read: Within three months of the effective date of this legislation, the Maine Pilotage Commission shall undertake a rulemaking with regard to Chapter 1 of its rules whereby the Commission adopts in substantially the same form the provisions contained in Section 17.0 of the rules of the Board of Harbor Commissioners for the Harbor of Portland as they relate to the licensure, apprenticeship, continuing education, safety, and other provisions therein as they relate to State Branch Bar Pilots operating in Portland Harbor; provided, however, that any fees assessed upon Sea Branch Bar Pilots operating in Portland Harbor are consistent with fees assessed upon pilots subject to the jurisdiction of the Commission. Nothing in this provision shall limit the ability of the Commission to organize the foregoing provisions and standards into the Commission’s existing rules provided that the application of such rules to State Branch Bar Pilots operating in Portland Harbor are substantially similar to the provisions in Section 17.0 of the rules of the Board of Harbor Commissioners for the Harbor of Portland. Rules adopted pursuant to this section are routine technical rules. Commencing on the effective date of this act and pending final adoption of rules pursuant to this section, State Branch Bar Pilots operating in Portland Harbor shall be subject to the jurisdiction of the Commission according to any terms or conditions in place during such time period as duly authorized by the Board of Harbor Commissioners for the Harbor of Portland.</p>	<p>3 months to draft rule amendments is not realistic. Recommend changing to 6 months.</p> <p>“Undertake” a rulemaking should be changed to “commence” rule making.</p> <p>Needs additional language to explain that in the interim between the effective date of the legislation and the revision/establishment of Maine Pilotage Commission Rules that the Portland Pilots will continue to follow the current Rules established under the Portland Board of Harbor Commissioners until the Portland Pilots are duly covered under established Maine Pilotage Commission Rules.</p> <p>Further, it is recommended that the legislative language permit the Maine Pilotage Commission to enforce the Portland Board of Harbor Commissioners rules during the interim phase in period.</p> <p>Need to continue discussion of the scope of the intent to keep rules “substantially similar to the provisions in Section 17.0 of the rules of the Board of Harbor Commissioners for the Harbor of Portland in effect on the effective date of the legislation.”</p>

The Subcommittee conducted a cursory review of most significant differences between the separate sets of rules governed by the Maine Pilotage Commission and the Portland Board of

Harbor Commissioners and arrived at the following conclusions as detailed in the Subcommittee Recommendation column of the table below.

		PILOTAGE RULE GAP ANALYSIS	
		17 – 387 Chapter 1	
Item	PHC Reference Item	MPC Reference	Subcommittee Recommendation
1	State Branch Bar Pilot License Requirements – 17.2(e)(i)(a)	Part A. 1(c)	MPC requires 1,600 GT and PHC requires second mate unlimited tonnage. No conclusion yet made.
2	State Branch Bar Pilot License Requirements – 17.2(e)(ii)	This is not a rule under the MPC.	Requires Maritime Academy Graduates Requires 2 nd Mate vs. Master 1600. No conclusion yet made. Need to continue discussion regarding requiring a maritime academy degree and maintaining Master of 1600.
3	State Branch Bar Pilot License Requirements – 17.2(f)(i)	This is not a rule under the MPC.	In the Port of Portland Harbor at least two (2) years' service as a licensed deck officer of seagoing vessels of a minimum dead gross tonnage of twenty thousand (20,000) tons or more within five (5) years immediately prior to the date of application for the license. No conclusion yet made. Need to continue discussion regarding this proposed this standard.
4	State Branch Bar Pilot License Requirements – 17.2(f)(ii)	Part A. 2 – opening paragraph	MPC would need to adopt the training requirements of 250 movements for Portland Harbor. 250 seems exceptionally high. MPCs highest 30 round trips (or 60 "movements." Which is for a region far longer than the Portland Harbor transit. No conclusion yet made. Need to continue discussion regarding 250 vessel moves for Portland only. No conclusion yet made but leaning toward maintaining a training threshold of 80,000 tons on 15% of training transits to meet VLCC possibilities at PPL.

It was determined that the Subcommittee will require more time to further assess the full scope of changes needed to both statute and rules and decided to meet again on October 31, 2024 to continue discussion.

Adjourn (Facilitator)

David Gelinus moved to adjourn, Jerry Morrison, seconded the motion. Hearing no objections, and Carrie Norton abstaining, it was thus:

RESOLVED to adjourn the Legislative Subcommittee meeting. Brian Downey adjourned the meeting at approximately 1:15 p.m..

Next Meeting: Legislative Subcommittee

October 31, 2024 at 10:30 a.m.

Maine DOT
Room 216
24 Child Street
Augusta, ME 04330

Following Meeting: Full Commission Meeting

November 18, 2024 at 10:30 a.m.

Maine DOT
Room 227B
24 Child Street
Augusta, ME 04330

Respectfully submitted:



Brian J. Downey Jr.
Maine Pilotage Commission
Administrator