

Washington State Pilotage Final Report and Recommendations

Executive Summary

Washington State Joint Transportation Committee

DISCUSSION DRAFT

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*Community Attributes Inc. tells data-rich stories about communities
that are important to decision makers.*

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EXECUTIVE SUMMARY

Report Background and Purpose

The Washington State Joint Transportation Committee has commissioned Community Attributes Inc. and Gleason & Associates to conduct an assessment of pilotage practices in Washington state; to identify best practices in other pilotage districts and industries; to compare these best practices with Washington state; and to provide recommendations for how to implement those best practices in Washington (Washington State Legislature Joint Transportation Committee, 2017).

This analysis focuses on the following three areas within Washington state marine pilotage:

- **Addressing lack of diversity within marine pilotage.** This section addresses efforts to broaden recruitment of those qualified to sit for the pilotage exam as well as to minimize the potential for bias in the examination, training, selection, and licensing of pilots. And finally there is also a discussion of the broader maritime “pipeline” that feeds into pilotage.
- **Analytically driven tariff and fee rate-setting.** This section focusses on the process of tariff and fee rate-setting.
- **Effective oversight of maritime pilotage activities.** This section addresses board composition and overall governance.

The first phase of this analysis was a review of existing practices in Washington state. Analytics drew from a several sources, including existing documentation and reports, Revised Code of Washington (RCW), Washington Administrative Code (WAC), data gathered from the Board of Pilotage Commissioners, and stakeholder interviews. Best practices were then identified in other states and compared with practices in Washington state across each area of focus. Lastly, a set of recommendations is provided to improve pilotage across each area of study in Washington state.

Findings from this report are first presented, followed by a set of recommendations organized by each area or focus in this study.

Methods and Identification of Best Practices

Analysis in this study leveraged a range of sources. The consulting team conducted interviews with local stakeholders and industry leaders in Washington state as well as their counterparts in other states. Extensive research was done on practices outside Washington state using archival materials, statutory documents, reports, and interviews.

Our methodology for identifying best practices began with a distillation of key issues, challenges, and problems in the current pilotage system in Washington state. We then conducted a review of existing practices in other states to determine how they addressed the aforementioned key issues, challenges, and problems. Best practices in other states were identified as those practices that exemplified both: 1) applicability to Washington state; and 2) provided evidence that the outcomes of those practices represented a potential improvement over Washington's current system.

In several instances, practices described in statute did not accurately reflect actual, real world practices or were otherwise less than optimal. To further assess whether a "best practice" was in fact as it seemed according to statute, we conducted additional research, including interviews with stakeholders and regulatory agencies.

While most of our focus was specifically on agencies responsible for the regulation of marine pilotage, we also spent a great deal of time trying to better understand the role stakeholders play within the regulatory process and/or addressing issues of concern. For example, our research revealed that few regulatory agencies have initiated efforts to increase the diversity of the pilotage pool; the various pilot associations largely fill this void. As such, it emerged that efforts already underway through the BPC to address diversity, while not necessarily a best practice, clearly exceed those of other commissions.

Background on Marine Pilotage

Marine pilots' primary objective is to facilitate the safe movement of vessels into and out of ports situated in coastal and inland water bodies. These water bodies present a wide range of unique navigational challenges, requiring specialized local knowledge. Pilots represent one of the highest echelons of mariners, requiring years of training and rigorous selection process. Today there are 24 coastal states that regulate compulsory pilotage through a state licensing program.

Pilotage in Washington State

There are two pilotage districts in Washington state, Puget Sound and Grays Harbor. The Puget Sound district is defined as including "*all the waters of*

the state of Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia, Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude (Washington State RCW 88.16.050, 1935).” This district covers more than 7,000 square miles, 12 ports, and over two dozen anchorages.

The Grays Harbor district is defined to include *“all inland waters, channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor. The boundary line between Grays Harbor and Willapa Harbor and the high seas shall be defined by the board* (ibid).”The Grays Harbor district covers approximately 280 square miles.

The Puget Sound Pilots Association (PSP) represents the 52 independent contractors who provide pilotage services in Puget Sound. The PSP maintains a pilot station and two pilot boats in Port Angeles. They also maintain dispatching operations and an administrative office in Seattle. There are two Grays Harbor pilots, both of whom are Port of Grays Harbor employees.

Marine pilotage in Washington state is regulated by the Washington State Board of Pilotage Commissioners (BPC). The BPC’s authority is established in the Washington State Pilotage Act and includes the following:

- Regulatory oversight of pilotage;
- Propose legislation to ensure safe and compulsory pilotage;
- Adopt rules and enforce adherence to the Pilotage Act, which includes discipline and/or prosecution of violators;
- Train and license marine pilots;
- Set annual pilotage tariffs;
- Report and investigate incidents, lessons learned, and strive for continuous improvement; and
- Grant vessel exemptions from pilotage.

Pilotage revenues are generated through a district-specific tariff and associated fees. These charges are compulsory and cannot diverge from BPC-set rates. In 2016, the Puget Sound Pilotage District generated more than \$34 million in tariff and fee revenues. The tariff includes charges based length (length overall, or “LOA”), size of vessel (measured by gross tonnage), and distance travelled per ship movement (as described in the LOA Rate Schedule). The Grays Harbor Pilotage District tariff is primarily based on tonnage and draft; however, there are other factors, such as boarding charge and harbor shifts, that also determine fees.

Key Findings and Challenges within Marine Pilotage in Washington State

This report highlights the following key findings on current practices in pilotage in Washington state.

Addressing Lack of Diversity in Marine Pilotage

The following are key findings specific to pilotage in Washington state:

- **Pilots are at the pinnacle of the mariner profession.** The process for becoming a pilot is lengthy, exacting, and highly selective.
- **The lack of formal data collection on gender and ethnicity complicates efforts to evaluate performance on meeting diversity goals in pilotage.** What little information exists is anecdotal at best. This is both a local and national problem. Without reasonable and adequate data collection on the diversity of applicants and trainees, the Board of Pilotage Commissioners will be ill equipped to: 1) establish a baseline; and 2) track progress on improving diversity.
- **Potential subjectivity and bias in training and evaluation.** Past allegations of subjectivity and bias have led to increased awareness of the need to be more inclusive and welcoming of women and minorities. Efforts underway include establishment of the Joint Diversity Committee, the “Train the Trainer” program, and hiring of outside experts to review exam and training program.
- **BPC efforts to increase pool of qualified candidates.** In an effort to increase the number of applicants, the Board of Pilotage Commissioners (BPC) has eliminated the pre-qualification requirement for Coast Guard pilotage endorsements. Such pilotage endorsements can now be obtained during the pilot training program. This means a candidate does not have to seek rides from current pilots before taking an exam to get on the candidate list.
- **Lack of diversity is endemic in maritime industry.** The issue of pilot diversity is deeply tied to the overall diversity of the maritime industry and maritime professions.
 - The pool of qualified pilotage applicants directly comes from the maritime industry, which continues to struggle with diversity across all sectors. There are many reasons why the industry struggles with diversity issues. These include (but are not limited to) traditional avenues of recruitment, nepotism in certain sectors, the challenging workplace environment, and perceptions and stereotypes about the gender and ethnicity in many maritime professions.
 - The challenge of increasing diversity in the maritime sector extends beyond the scope and capabilities of any one agency or organization. There is need for a more holistic approach,

leveraging the resources and expertise of government and the private sector.

Observations outside Washington state

- **Diversity is a problem across all pilotage districts in the U.S.** Based on anecdotal information provided by the American Pilots' Association, of the more than 1,200 state-licensed pilots, less than 3% of the workforce is female. There is very little evidence regarding ethnicity. What evidence exists is also very anecdotal.
- **The majority of efforts to address diversity are conducted by the pilotage associations, in some cases with limited support from state pilotage licensing entities.** These efforts include scholarships, internships, mentoring, and targeted youth outreach to increase awareness about maritime broadly and also specifically about pilotage as a career option. Often these efforts involve partners in the broader maritime community.

Analytically Driven Tariff and Fee Rate-Setting

The following are observations and findings on tariff and fee rate-setting in Washington state:

- **Annual tariff and fee rate-setting is unnecessary.** The Washington State Pilotage Act requires the BPC to “annually fix the pilotage tariffs for pilotage services,” but provides no rationale for this annual requirement and very little additional guidance. The annual requirement incentivizes stakeholders to continuously advocate, either explicitly or implicitly, for adjustments. This ongoing advocacy for rate adjustments serves as a distraction and limits discussion on other important items under BPC jurisdiction, such as safety. Research on other states shows that tariff and fee rate-setting on an annual basis is rare. Rather, many states review rates on a “as needed” basis. Moreover, in many states the minimum duration for a rate adjustment is 18 months, two years, or longer.
- **No clearly defined methodology for the tariff and fee rate-setting process.** The BPC makes decisions on tariff adjustments without the benefit of an established and agreed upon methodology, or even consistent variables for consideration. There is disagreement among parties over whether and/or how the tariff should cover issues such as pilot compensation, retirement benefits, operating expenses, individual pilot business expenses, and capital expenditures. There is additional disagreement as to the appropriate metrics to track, such as revenue per assignment and average net compensation, as a means to track tariff performance. Moreover, there is lack of staff capacity to provide objective analysis, resulting in the stakeholders often providing data interpretation.

- **Data submission is not aligned with the tariff and fee rate-setting process.** There is a lack of consistency, clarity, and timeliness in the submission of data necessary to make informed rate adjustment decisions. Along with this, there is not an established and enforceable timeline for data submissions.
- **Significant uncertainty regarding capital expense financing.** There is no defined, rigorous, and enforceable process for evaluating pilotage capital expenses (e.g., replacement of a pilot boat, personal pilotage units). There is no timely submission of key data, funding plans, and other relevant information needed by the BPC to make informed decisions on financing requirements. This also inhibits the BPC's ability to track tariff and/or fee performance in financing these expenses.
- **Tariff and fee rate-setting distracts from other important matters.** All parties, including the BPC staff, PMSA, PSP, and the ports have noted that it is challenging to address other important issues related to pilotage when the tariff adjustment process is unclear and when the methodologies for determining the tariff rate are in dispute.

Observations in tariff and fee rate-setting outside Washington state

- **Public utility commission model as an effective process for rate-setting.** Oregon, Maryland, and Virginia use a public utility commission (PUC) process for setting rates. This has led to fewer rate hearings and an incentive among all parties to arrive at an agreement outside and in advance of a hearing. The benefits of a PUC model include a clearly defined, transparent, rigorous, and enforceable timeline and process.
- **Expertise on rate-setting.** Florida requires the participation of a CPA in rate-setting process. Financial and/or economic expertise helps establish a clear and robust approach to rate-setting.

Effective Oversight of Marine Pilotage in Washington

Many of the issues related to oversight have been identified under the above two areas. Research has not pointed to issues of concern related to other responsibilities of the BPC, such as safety. However, board composition may be present a challenge specifically on rate-setting.

- **Board composition may be suboptimal with respect to tariff and fee rate-setting.** Pilots and industry have equal representation on the BPC. Predictably, they often vote in the own self-interest, leaving the remaining Commissioners to cast deciding votes. With the frequent abstention of agency representatives, the three remaining Commissioners actually often cast deciding votes. These Commissioners represent the public interest and environmental considerations, but may not have relevant financial expertise.

Recommendations to the Legislature to Improve Washington State Pilotage Practices

The following recommendations are organized by key findings on issues that need to be addressed in Washington, and are informed by research on best practices in other states. Each recommendation includes a statement of finding, recommended action(s) to be taken, by whom, resources requirements, and expected outcomes if the recommended action is executed.

Addressing Lack of Diversity in Marine Pilotage

Finding #1: The lack of formal data collection on gender and ethnicity complicates efforts to evaluate performance on meeting diversity goals in pilotage

- **Recommendation #1:** Develop a voluntary data collection protocol to track gender and ethnicity among pilotage exam applicants, trainees, and licensed pilots.
 - *Who:* BPC
 - *Resource requirements:* low-cost, voluntary electronic survey. Can include modification of existing application to allow for self-identification.
 - *Expected outcomes:* Ability to evaluate progress and impact of subsequent efforts to improve diversity among applicants, trainees, and licensed pilots.

Finding #2: Potential subjectivity and bias in training and evaluation

- **Recommendation #2:** Expand and continue to improve upon efforts to minimize subjectivity and eliminate bias in the application, training, and licensing process.
 - *Who:* BPC
 - *Resource requirements:* Resources to support Joint Diversity Committee; further expansion of the “Train-the-Trainer” Program; and continued support for outside expert to review & consultation.
 - *Expected outcomes:* Efforts will minimize the risk that otherwise qualified candidates are not licensed due to explicit or inadvertent discrimination and/or bias in the application, training and selection process.

Finding #3: Lack of diversity is endemic in maritime industry

- **Recommendation #3:** Establish a statewide Task Force on Maritime Sector Workforce Development, to be led by the Governor’s Maritime Sector Lead and the Legislature, with a specific focus on increasing diversity. The Task Force should develop a timeline and deliverables upon convening and coordinate with existing efforts already

underway. The Task Force is not intended to replace the BPC's Joint Diversity Committee.

- The Task Force should include:
 - **State agencies and individuals:** Department of Commerce; Department of Transportation/WSF; State Workforce Training and Education Coordinating Board; OFM Assistant Director for Human Resources.
 - **Industry:** Pilots; ports & terminal operators; shipyards; tug & barge operations; shipping companies; recreational & commercial fishing; seafood processing; recreational boating; organized labor; marine transportation; research & technology; education, training providers, and youth programs.
- *Who:* Legislature, in coordination with Governor's Maritime Sector Lead.
- *Resource requirements:* State agency staff to support Task Force work.
- *Expected Outcomes:* A statewide strategy for a more inclusive maritime workforce, resulting in a more diverse pool of potential pilots.

Analytically Driven Tariff and Fee Rate-Setting

Two options are presented below for improving the tariff and fee rate-setting process in Washington state. The preferred option (A) recommends the transfer of rate-setting authority from the BPC to the Washington State Utility & Transportation Commission (UTC). This is based on findings from states that use a public utility commission model for pilotage tariff and fee rate-setting.

However, a second set of recommendations is presented for improving rate-setting if the Legislature decides to keep this authority within the BPC.

Option A: Transfer rate-setting authority to the Washington Utilities & Transportation Commission (UTC)

- *This is the single most effective action the Legislature can take to improve rate-setting in Washington state, but will require legislative changes to Washington State Pilotage Act.*
- The UTC process provides the structure, rules, expertise, and rigor necessary to achieve an analytically driven rate-setting process.
- Moreover, commissioners do not have direct material interest in the outcome of rate cases, unlike the current composition of the BPC board that includes both shipper and pilots voting on rate adjustments.
- *Who:* Legislature, to revise Washington State Pilotage Act.

- *Required resources:* UTC assessment on pilots will cover costs and is recoverable in the tariff.
- *Expected outcomes:* All parties will benefit from a process that is rules-based, enforceable, predictable, rigorous, and transparent

Option B: Improving a tariff and fee rate-setting authority that remains within the BPC

If the Legislature elects to retain tariff and fee rate-setting responsibilities within the BPC, the following recommendations are proposed to improve the current process.

Finding #4: Annual tariff and fee rate-setting is unnecessary

- **Recommendation #5:** Revise the RCW such that tariff and fee rate-setting reviews *occur only at the request of stakeholders*.
 - As part of this, define (in WAC) “economic and financial hardship,” establish an evidentiary, petition-based process for tariff and fee rate-setting adjustment that includes (at a minimum) a notice to file a petition, petition filing, and a timeline for data submission.
 - *Who:* Legislature (statutory changes) and BPC (administrative rule changes).
 - *Resources requirements:* existing BPC staff time.
 - *Expected outcomes:* rate hearings will reflect economic necessity rather than arbitrary timelines. Stakeholders incentivized to arrive at a mutually beneficial solution outside the hearing process.

Finding #5: No clearly defined methodology for the tariff and fee rate-setting process

- **Recommendation #6:** Hire a staff analyst or consulting economist to develop and administer an evidentiary-based process and include data analysis.
 - Consider use of an automatic adjuster or formulaic approach to rate-setting, as used in states and in Washington prior to 2006. Automatic adjusters contribute to greater predictability for stakeholders.
 - *Who:* Legislature and BPC.
 - *Required resources:* additional resources to support full-time or part-time staff or consulting economist.
 - *Expected outcomes:* More predictable and transparent tariff and fee rate-setting process based on defined methodology and independent, objective analysis.

Finding #6: Data submission not aligned with tariff and fee rate-setting process

- **Recommendation #7:** Include language in WAC requiring Pilots and/or Associations submit: a) quarterly assignment-level data on revenues generated by tariff and fee charge AND vessel type; and b) current year budget and future budget projections. Establish enforceability such that no rate adjustment may be considered if the timeline and submission requirements are not met. Include a vetting process to validate data submissions.
 - *Who:* BPC
 - *Resource requirements:* Electronic password-protected database of invoices may be one option for gathering and inventorying this information, and could be paid for through a surcharge.
 - *Expected outcomes:* Better alignment between data submission and decision-making on tariff and fee rate adjustment petitions.

Finding #7: Significant uncertainty regarding capital expense financing

- **Recommendation #8:** As part of petition-based adjustment process, Pilots must submit a funding plan, including capital projections.
 - Establish a Transportation Oversight Committee that reviews submitted requests for tariff and fee-based financing of capital expenses and provides approval or denial recommendation to BPC. The committee should include both maritime and financial subject matter expertise.
 - Consider using a one-time or defined-period surcharge rather than a general tariff increase.
 - Include binding funding plan w/expiration date for temporary adjustment
 - *Who:* Legislature and BPC.
 - *Required resources:* existing staff.
 - *Expected outcomes:* transparency and predictability regarding capital expense financing.

Effective Oversight of Marine Pilotage Activities in Washington State

As discussed above, the preferred alternative for rate-setting is to transfer tariff and fee rate-setting authority to the UTC. However, if the Legislature decides to retain rate-setting authority to within the BPC, we believe the following recommendations, as discussed above, will mitigate against this sub-optimality: an evidentiary, petition-based process; clearly defined methodology and timeline; increased staff capacity sufficient to provide unbiased, objective analysis.

No specific recommendations are proposed outside those already provided related to addressing diversity and tariff and fee rate-setting.