

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The limits of the District as described in the governing legislation (p. 474) do not correspond to realistic requirements. The only pilotage that exists is port pilotage at Pugwash; there is no pilotage along the ten-mile coastline from Pugwash Point to Cape Cliff, nor is there any need for coastal pilotage. Therefore, the District limits should be modified to meet present day requirements and comprise only the approach to the port of Pugwash and its restricted waters.

In practice, Pugwash is the only harbour in the District. Port Philip situated about a mile and a half up River Philip has very little importance, if any, from the pilotage point of view because it is accessible to small vessels only. The entrance to the river is obstructed by a bar of sand and stones and the narrow, tortuous channel has a depth of only five feet. High tides range between eight and six and a half feet.

Pugwash harbour is situated at the head of Pugwash Bay at the entrance to Pugwash River. Increased activity in recent years is mainly due to larger salt exports from local mines. The harbour freezes over during the winter.

The three-mile long channel is indicated by a buoy marking the edge of the reef on the west hand side and by a first set of range lights that guide the first one-mile straight course. A second straight course is also guided by a set of range lights that lead over the bar to the remaining one-mile winding channel, well marked by buoys, and to the main wharves. Except for small vessels, navigation upriver is obstructed by the Palmerstone bridge with 10' vertical clearance (no longer a drawbridge) which crosses the river at Chapel Point, beyond which there is no pilotage.

The minimum depth over the bar is 13 feet, and high tides range between eight and six and a half feet. Depths alongside the piers at low water are 22 and 24 feet.

The Aids to Navigation Branch of the Department of Transport has reported (Ex. 1527) that since 1963 a new set of range lights has been es-

tablished and that six lighted buoys, two of them with radar reflectors, have been placed at the approach to Pugwash. Extensive dredging of the channel (by the Department of Public Works) was proposed.

The following table, drawn from D.B.S. statistics of ships over 250 NRT and the data contained in the Pilotage Authority's annual reports, indicates the extent and importance of the traffic and the pilots' workload (in pilotage statistics, a trip normally means two assignments).

Year	D.B.S. Statistics (Ships over 250 NRT)		Pilotage Reports		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships	Average NRT
1959.....	13	584.5	2		
1960.....	5	1,421.2	2	12	Not available
1961.....	19	1,454.4	2	24	Not available
1962.....	32	1,595.6	2	34	Not available
1963.....	36	1,626.9	2	36	1,636.9
1964.....	41	1,638.7	2	40	1,733.3
1965.....	37	1,305.7	3	37	1,339.4
1966.....	52	1,344.4	3	46	1,469.8
1967.....	43	1,502.6	3	35	1,766.0

Traffic has increased since 1962 mainly on account of increased salt exports. Most ships, even small ones, employ a pilot but some regular traders do not. The effect of the controlling depth at the bar is noticeable by the fact that the average net tonnage of ships remains unchanged. The pilots' individual workload is light.

In 1963, Pilot Brownell testified that the maximum draught of any ship he had piloted out was 21 feet. He added that the largest vessels that had been piloted were two ships in 1962, each about 350 feet long and 2,000 NRT.

Vessels are normally piloted in during the end of a rising tide when the inflowing tidal stream is slight but enough to assist in turning the ship on arrival at the wharf. Ships with shallow draught can be brought in at any time, but those of deeper draught must wait until the tide allows them to pass over the bar.

Since 1962, some pilotage has been conducted at night, mostly for vessels that carry salt, but the majority of ships are piloted during daylight hours. It takes from half an hour to a maximum of one hour to pilot a ship in from the boarding station to the wharf, and vice versa, depending on size and draught and the state of the tide.

2. PILOTAGE ORGANIZATION

The Pilotage Authority is composed of five members. This is too large a number for the few duties to be performed but appears to serve the local political purpose of granting honorific titles.

The five Pilot Commissioners were replaced "en bloc" in 1958 and on December 9, 1963, four of them were dismissed. Each time the break was complete, since the function of Secretary and Treasurer is discharged by one of the Commissioners who in each case was among those dismissed, and there was no continuity from one administration to the next.

At the time of the Commission's hearing in 1963, the Secretary, Mr. D. M. Macaulay, stated that when he took office in 1958 all that he could obtain from his predecessor was a copy of the 1958 annual report and a copy of the By-law. The then Chairman of the Commission, Mr. H. I. Smith, testified that not sufficient stress had been placed on the political angle. He added that since there was a change in the Government he predicted that all the Pilot Commissioners would be replaced and that one of the two pilots would be dismissed, a practice he considered inhibited good administration and operations.

The reason for the dismissal of the Commissioners and Secretary in 1963 was that they were all members of the opposing political party and were active in politics.

The two regular pilots resigned at the beginning of the following season of navigation, leaving the District without a pilot. The reason for the crisis was stated to have been the appointment of the new Secretary (Ex. 1517(q)).

At the time of the Commission's hearing, the two pilots were Pilot Gordon Bollong, licensed in 1936 and Pilot Fred Brownell, licensed in 1956. Neither held a marine certificate of competency; both were local fishermen with knowledge of the District waters. Pilot Brownell had gained his knowledge by accompanying other pilots for two years, after which he was examined as to competency by a Pugwash resident holding a Master's coastal certificate.

Pilot Brownell testified that, since neither could make a living from piloting alone, they were engaged in lobster fishing. In the spring and fall, one piloted while the other fished, but on occasion they were both engaged in piloting. Regardless of the number of pilotage assignments performed by each, they shared their pilotage earnings equally. This is no longer the practice.

Their resignation early in 1964 left the District without pilots. In that emergency, the new Commission sought the assistance of the 75-year old ex-pilot and Pilot Master, Mr. H. Van Ember (referred to in the annual reports as "Captain of Pilots"), to train, assist and direct the two inexperienced persons to whom pilot licences were granted. He also operated

the pilot vessel. Mr. Van Ember acted as such for two years and a half. The number of pilots was increased to three in 1965.

Although the By-law did not provide for apprenticeship up to 1964, there were always one or two apprentices to whom a certain remuneration was paid. Mr. Macaulay stated that the small remuneration paid the apprentices (\$10 per ship) did not prove sufficiently attractive to hold them.

3. PILOTAGE OPERATIONS

The pilots embark and disembark at the entrance to the bay on the west side in the vicinity of the red buoy indicating the edge of deep water. They use their own fishing boats as pilot vessels. These are not licensed by the Authority.

There is no despatching as such and the pilots arrange the distribution of work among themselves. The demand for pilotage is infrequent and could well be attended to by one pilot who, on an average, would have not more than 12 assignments (6 ships) per month. With travelling time added, each trip averages two hours and the total average monthly workload is 24 hours divided among three pilots.

Once again the fact that the demand is so light forces the pilots to be otherwise employed and pilotage becomes a secondary occupation. For this reason there must be sufficient pilots to ensure that one is always available when required.

The rate structure for pilotage voyages is similar to adjacent Districts, i.e., based on draught and net tonnage. In 1964, the charge was increased substantially to \$2 per foot draught and 2¢ per NRT.

The tariff provides for an additional charge of 2.5¢ per NRT for ships proceeding past the drawbridges on the Pugwash River or River Philip. The wording of this provision is archaic since the drawbridges have long since been replaced by fixed bridges. Mr. Macaulay stated that he never had occasion to apply this additional charge because there is no pilotage traffic beyond the bridges.

The By-law provides a \$10 charge for movages. In the last decade, according to the annual reports, the pilots have never been called upon to perform a movage.

Up to 1963 inclusive, the pilots shared their earnings equally. From 1960 to 1963 their "take home pay", after the deduction of the Secretary's 5 per cent remuneration, was shown as \$418.73, \$1,008.00, \$1,949.75 and \$2,157.00. However, this was not entirely net, for the pilots provide their own pilot vessel transportation and follow the custom of paying their own linesman.

This procedure was changed under the new organization following the resignation of the two pilots in 1964. The uneven amount of the earnings of the three pilots indicates that while the work is equitably distributed, each pilot received the dues he earned, less his share of operating expenses. In 1967, the pilots received respectively \$3,113.89, \$2,642.21 and \$2,622.21, making a total of \$8,378.31 out of the total District earnings of \$9,308.08.

4. FINANCIAL ADMINISTRATION

The Secretary is responsible for financial administration, i.e., billing and controlling pilotage dues, settling District operating accounts and paying the pilots their net earnings. He also prepares the required annual report for submission to the Department of Transport.

The various disruptions that have occurred are reflected in the financial administration by such a lack of continuity that financial statements a few years apart are not comparable, e.g., the resignation of the two pilots in 1964 resulted in new items of expense such as the cost of the services of the Captain of Pilots. Even the meagre information contained in the annual reports showed that many changes also occur from year to year, e.g., earnings are no longer pooled and extra charges, not provided for in the By-law, are being made for linesman service. These are collected as pilotage dues as are the charges for the services of small boats used as tugs.

COMMENTS

It appears from the annual reports that the District is operated and administered as if it were a private business and that the governing legislation is totally ignored. This creates a situation which is incompatible with the public function of the Pilotage Authority and which may involve the personal responsibility of the Pilot Commissioners, the Secretary and Treasurer and also the Crown. Such a state of affairs should not be allowed to continue. It is the duty of the District Pilotage Authority to adopt the administrative procedure and enact the rules best suited to meet the requirements of the service by defining them in its regulations. These should be amended from time to time to meet changing requirements, but once they have been made and approved they should be strictly adhered to until they are amended legally.

Such an unsatisfactory legal situation would not have occurred if, on one hand, appointments had not been considered political rewards and the Pilot Commissioners had been chosen for their administrative ability and shipping knowledge, and, on the other, the Department of Transport had effectively discharged its surveillance responsibilities and adopted a positive attitude of guiding and helping the District rather than following a policy of non involvement.

Subsection IX

PILOTAGE DISTRICT OF PICTOU, N.S.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

The special legislation for the District of Pictou is contained in two Orders in Council concerning the formation of the District and the District General By-law.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The legal existence of the District is found in P.C. 225½ dated March 23, 1874, by which the Governor in Council created it, appointed a local Commission to be its Pilotage Authority, defined its limits and decreed the payment of pilotage dues to be compulsory. Except for appointments and the District limits this Order in Council is still in force (Ex. 1518(a)).

By Order in Council P.C. 1891 of July 26, 1913 (Ex. 1518(f)) the District limits were reinstated as they had been first defined in 1874:

“. . . and that in lieu thereof the limits of the above mentioned District be as follows:

The Pilot Limits for the Port of Pictou shall extend from the most easterly point of Pictou Island, on a line running thence south-east, until it strikes the Gulf shore at Arisaig Pier; and shall be bounded on the west by a line drawn from Amet Island to Rocky Point at the county line; and shall embrace all the navigable waters in the county of Pictou”.

The Order in Council confuses “District limits” with the “pilot limits” for the port, an error frequently made at that time, but it is clear from the text that they are synonymous.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

The current General By-law dates from 1963 (sanctioned by P.C. 1963-214 dated Feb. 8, 1963, Ex. 1518(i)) which superseded the 1940 By-law (Ex. 1518(g)). It makes the regulations of the District uniform with those of adjacent Districts and, in theory, ends the free enterprise

system and changes the status of the pilots to that of *de facto* employees by establishing full control over the provision of services. As in the other Commission Districts those provisions which do not conform to local requirements are ignored.

The General By-law provides for a service controlled by the Secretary. The pilots' earnings are pooled, their remuneration is an equal share of the net revenue of the District and all absences are without pay. The Secretary's salary is fixed at 5% of the gross receipts. There is no apprenticeship. A pilot candidate is not required to hold a marine certificate of competency or to have sea experience of any kind but he must pass an examination before a Board of Examiners on nautical and local knowledge. If successful, he is issued a probationary licence followed by a permanent one, provided his service is satisfactory. The pilotage tariff structure is the same as in adjacent Districts and voyage rates are based on draught and tonnage, i.e., \$2.00 per foot of draught and 2¢ per ton, plus an additional charge of \$1.00 per foot of draught for river piloting. Movages and pilot vessel service charges are fixed at \$10.00 each.

2. HISTORY OF LEGISLATION

Pilotage at Pictou began as early as 1819. In that year a Nova Scotia statute (Chapter 14) empowered the Justices of the Session of the Peace for the County of Pictou to license pilots, fix pilotage dues and make regulations for the government of pilots for the port of Pictou. This Act, as amended, was replaced in 1849 by another Act relating to the harbours of Pugwash, Wallace and Pictou which provided for the appointment of a Commission to licence and regulate pilots in each of these ports. The 1849 Act was superseded in 1851 by a general statute which applied to named ports, including Pictou. By consolidation this Act was the statutory legislation in force at the time of Confederation.

Pictou was established as a Pilotage District March 23, 1874, by P.C. 225½ aforementioned. The first By-law which followed (sanctioned by P.C. 537 of May 11, 1874) retained the organizational features provided by the regulations made by the former authority. This By-law, as amended, was superseded by P.C. 1724 of May 1, 1940 (Ex. 1518(g)) which also retained the same organizational structure and the main features dating back to pre-Confederation legislation. Free enterprise was continued and the pilots could act individually or as a company not exceeding four in number. Each pilot working individually received the dues he earned, less his share of District expenses, but the dues earned by a company, less its share of District expenses, were paid to its members to be divided among them in equal shares, unless they had made other arrangements. The Pilotage Authority kept a Pilot Fund for the benefit of the pilots or their dependents

in need. It was raised by accumulating half the compulsory pilotage dues received from vessels spoken to which refused the services of a pilot. Vessels not spoken to before reaching an imaginary line drawn from Cole's Point to Mackenzie Head were exempt from compulsory payment. Compulsory payment did not apply to river pilotage. A pilot who had piloted a vessel inwards was entitled to pilot her in the river and on her outbound trip, provided there was no complaint from the Master, or the Authority did not order otherwise. The pilots had to furnish an annual bond to guarantee faithful performance of their duty. The rate structure for inward and outward voyages was the same as in Halifax, i.e., a scale based on tonnage, the outward rates being somewhat less than those inward. River pilotage called for an additional charge based on draught (25¢ per foot); the movage charge was \$4.00; there was no pilot boat charge.

This By-law was superseded by the current By-law which purported to establish fully controlled pilotage. It abandoned the pilots' requirement to post a bond, abolished the Pilot Fund and adopted the rate structure that prevailed in all the small Commission Districts.

The 1874 Order in Council established the District limits as they now exist, i.e., all the navigable waters between the west boundary of the county of Pictou and on the east extending up to Arisaig in the county of Antigonish and extending seaward on the west to Amet Island and in the east to Pictou Island.

In 1908, P.C. 1608 dated July 21, 1908 (Ex. 1518(e)) extended the eastern limit on the Nova Scotia coast from Arisaig to Cape George, i.e., some 70 miles along the Nova Scotia coast, the seaward limit to include all the waters of Northumberland Strait up to that part of the coast of Prince Edward Island which lies between the two headlands of Point Prim and Cape Bear.

This large additional area of open water in which pilot vessels were obliged to cruise to meet inbound traffic soon proved to be too extensive and, hence, detrimental to the efficiency of the service. It also became redundant as power-driven vessels displaced sailing ships for they frequently suffered long delays off the entrance to the harbour awaiting the arrival of a pilot. Therefore, in 1913, P.C. 1891 of July 26 (Ex. 1518(f)) restored the former limits.

Chapter B

BRIEFS

No briefs were submitted.

EVIDENCE

1. GENERAL DESCRIPTION

The governing Order in Council defines the District waters as extending along some 50 miles of the Nova Scotia coast from Rocky Point in Amet Sound to Arisaig. They include a large expanse of open water which extends for more than 10 miles seaward from the edge of deep water at the approach to Pictou harbour. The only pilotage now being performed is at the approaches to, and inside, Pictou harbour and occasionally in the East River flowing into it. Inbound vessels from the west negotiate Caribou Channel without the services of a pilot, and there appears to be no reason why they should not be required to do the same outbound. The pilot boarding area could well be established at the edge of deep water at the harbour entrance.

The present overextended District, which was originally designed for sailing ships, has long since ceased to be necessary. In this modern age of improved aids to navigation the District limits should be redefined to meet modern requirements.

Pilotage in the Pictou District is a combination of port and river pilotage, i.e., port pilotage to and from Pictou Harbour, and river pilotage on the East River up to Trenton and occasionally to New Glasgow.

The harbour of Pictou is situated at the junction of the West, Middle and East Rivers. It is considered one of the best harbours in Northumberland Strait.

The approach to Pictou Harbour presents no navigational difficulties. Pilots board vessels in deep water south of Pictou Island. The controlling depth of the approach channel is 21 feet over the bar to reach the fairway buoy. High tides range between $5\frac{1}{2}$ and $4\frac{1}{2}$ feet. From the fairway buoy to the wharf at Pictou, a distance of about 3 miles, the channel is wide and deep, shows no sign of siltation and is well defined by leading range lights and buoys. The harbour has extensive good anchorage grounds in 40 to 45 feet of water and several wharves with up to 25 feet of water alongside. There is little difficulty berthing ships at Pictou, but at Pictou Landing across the harbour it is most difficult to berth during a strong ebb tide.

The harbour freezes over during the winter and the season of navigation extends from about May 1 to December 1 depending on the severity of the weather.

Causeways that reach from shore to shore now preclude vessels from navigating the Middle and West Rivers. The East River is navigable for small tankers and vessels for 4½ miles to Trenton where pilotage traffic ends. With the aid of a rising tide shallow draught vessels may proceed to New Glasgow 2 miles further upstream. From Pictou Harbour to Trenton, river pilotage is accompanied by the hazards created by changing tides and currents. Only small vessels, mostly tankers of 300 to 400 net tons, go there. The channel is dredged to 12 feet. The deepest wharf is the Irving Oil Company wharf with 9 feet at low tide.

River pilotage is conducted in daylight hours only, whereas pilotage for Pictou and Pictou Landing is conducted on a 24-hour basis but usually during daylight hours.

Pictou is important commercially in the coastal trade and for lumber shipments overseas. Ferguson Industries Limited operate fully equipped ship construction, repair and conversion yards and several vessels arrive and depart in this connection. Trenton is a large steel manufacturing centre. These two ports, as well as Pictou Landing and New Glasgow, are served by railways.

(1) MARITIME AND PILOTAGE TRAFFIC

Vessels plying the District consist of small coastal freighters, small oil tankers, medium-sized ocean-going freighters and fishing and pleasure craft.

The following table, compiled from D.B.S. Statistics of ships of 250 NRT and over (Ex. 1483) and from statistics contained in the District's annual reports (Ex. 326), indicates the extent and importance of general and pilotage traffic and the aggregate workload of the pilots. (For workload purposes one ship piloted means two trips, to which should be added 21 occasional movages since 1962.)

Year	D.B.S. Statistics (Ships over 250 NRT)		Pilotage Returns		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships Piloted	Average NRT
1959.....	82	564.9	2	13	847.2
1960.....	80	547.4	2	14	996.5
1961.....	74	628.0	2	26	862.1
1962.....	96	579.5	2	25	788.8
1963.....	90	694.1	2	21	735.8
1964.....	85	627.7	2	32	820.3
1965.....	54	622.7	2	31	539.0
1966.....	87	629.0	2	35	682.9
1967.....	84	910.0	4	46	1,040.9

Neither D.B.S. nor pilotage statistics provide segregated data for Trenton. The pilots testified that only a small number of Irving Oil tankers proceed there, and that the small vessels that occasionally visit New Glasgow do not employ a pilot.

This table demonstrates the curious fact that, despite easy access and comparatively deep water, the vessels piloted in this District are, on the average, smaller than those calling at Caraquet. On a nine year average 75% of vessels over 250 NRT dispensed with the services of pilots. However, when larger ships entered the District in 1967 a larger number employed them. Traffic is mainly composed of oil tankers with tonnages varying from 300 to 1,000 NRT. A few foreign ships call for pulp and lumber, and two coastal passenger cargo vessels which do not employ pilots make regular calls (M.V. *North Gaspé* and M.V. *Fergus*).

2. PILOTAGE ORGANIZATION

The function of Pilotage Authority is performed by a board of three Pilot Commissioners, one of whom carries out the duties of Secretary-Treasurer. The tenure of office is stable. Mr. D. M. MacPherson, the Chairman, was appointed in 1962 replacing the late Mr. Ashton Munro who had been in office since 1936.

The appointment of the second member, Mr. J. F. English, dates from 1936, and the appointment of the third member and Secretary, Mr. R. F. English, dates from 1953. Mr. MacPherson testified that the Secretary is well informed and handles all the business of the Commission and there is, therefore, no reason to hold meetings.

The Secretary testified that all pilotage records prior to 1959 were lost in a fire which destroyed the waterfront, including the pilot office. He is the manager of the Magdalen Transportation Company. He considers his post with the local Commission a sideline and conducts its business from his own office free of charge. He further treats the salary he receives as the local Commission's Secretary (5% of the gross earnings) as office rental.

Mr. MacPherson agreed to the Secretary's suggestion that in small ports such as Pictou there should be no local Commission and that all the various functions associated with a public harbour, i.e., Harbour Master, wharfinger and Pilotage Authority, should be discharged by a single civil servant. He pointed out that a great deal of the Secretary's time was spent communicating with the Harbour Master and the wharfinger. The Department of Transport indicated that the suggestion might be difficult to implement because the various port administrative duties came under different branches of the Department.

The Secretary further stated that although he had obtained his position with the local Commission through political influence, politics did not, in any way, interfere with pilotage. He further considered that pilotage should not be compulsory and that the Master of a vessel should decide whether or not he needs a pilot.

3. PILOTS

For a number of years after 1926, there were four pilots on strength. From 1957 to 1966, the number was reduced to two, but was increased to four again in June, 1967.

The two pilots in 1963 had been licensed since 1953. One of them, Charles W. Fraser, was variously employed prior to receiving his licence. He spent several years in tugboats and for a period was engaged in laying cables in Northumberland Strait, during which time he obtained a Master's Certificate of Service for vessels up to 17 NRT. During his early youth he served as a pilot apprentice for about 12 years and made several trips with the pilots but never handled a ship until he became a pilot. To acquire his licence he passed an oral examination at Pictou before an Inspector of Masters and Mates who had previously been Harbour Master at Pictou.

Since becoming a pilot he had engaged apprentices from time to time. Their main duties were to look after and handle the pilot vessel, but occasionally he took them with him on pilotage trips. Some stayed for five or six years, but there was so little incentive they all left to seek better employment elsewhere. The local Commission did not provide in its regulations any rules for apprenticeship. The opinion was expressed that due to lack of financial incentive it would be difficult to obtain applicants.

The Authority does not regulate the pilots' annual leave or other absences, but permits the pilots to make arrangements among themselves.

There is no record of any shipping casualty for the past 15 years.

4. PILOTAGE OPERATIONS

At the time of the Commission's hearing in 1963, only one of the two pilots on strength, C. W. Fraser, was fully employed in pilotage. The other pilot, who had a full time local occupation as a rigger, acted as relief pilot performing only a few assignments per year. The pilots were satisfied with this arrangement. The Secretary was of the opinion that another pilot should not be employed for fear of losing the efficient pilot on strength, since there would not be sufficient remuneration for both.

Pilot Fraser received advance notice ranging from one to 48 hours that his services would be required depending on whether a departure or an arrival was involved. Such notice generally came from the Secretary but sometimes directly from the shipping agent.

Pilot Fraser used his own boat, usually operated by his son, and boarded vessels anywhere in an area nine miles seaward from Pictou Bar. If a ship was stopped and showed no sign of coming closer, he would go out as far as 14 to 15 miles. However, he boarded the majority of vessels in the deep water area off the gas and bell buoy that marks the eastern end of Caribou Channel about three miles from the fairway buoy at Pictou.

He disembarked from outbound ships proceeding eastward when clear of the channel off the fairway buoy, but he piloted vessels bound west through Caribou Channel and disembarked at its western end off Gull Island Light about seven miles from Pictou Channel fairway buoy.

Pilot Fraser testified that he did not pilot inwards in poor visibility because the land background makes the outside buoys too difficult to locate. The inside buoys are hidden by the land. He never had occasion to use radar.

The pilots themselves arranged for handling mooring lines when berthing or unberthing. They made no charge for this service.

A lack of detailed information makes it impossible to assess accurately the workload of the pilots but there is enough information to indicate that even in 1967 the workload for one pilot was far from sufficient to keep him fully employed. In that year there were 92 trips and no movages, an average of about 12 trips per month that were shared between the pilot and the relief pilot.

Pilot Fraser stated that it takes about one hour to one hour and a half to pilot a ship in and berth her and the outward trip is of approximately the same duration. Counting travelling time in the pilot vessel this makes an average of about three hours per trip from or to Pictou. The trip from Pictou to Trenton takes an hour and a half to an hour and three-quarters, and returning takes about one hour. Ships are not piloted there at night because the channel has too many curves and there are no leading lights for guidance.

Here again, the determining factor in fixing the number of pilots required is to the extent to which the availability of a pilot can be counted upon since pilotage in this District must be treated as a pilot's secondary occupation. If one pilot happens to have an occupation which leaves him free to take a pilotage assignment at short notice, a second pilot acting as a relief would be all that is needed (as was the arrangement for several years prior to 1967).

5. PILOTS' REMUNERATION AND TARIFF

The By-law provides for the pilots' earnings to be pooled and shared equally on the basis of availability for duty. The factual situation, however, is quite different. As seen earlier, for several years up to 1967, most of the work was done by one pilot, the other pilot merely acting as a relief. Their earnings were not pooled but each received the dues he had earned less his prorated share of the District operating expenses. Since the addition of two pilots

in 1967 the same method has been followed with the result that none of them received the same amount. For example, the remuneration of the two pilots in 1966 was respectively \$3,049.52 and \$175.64 while in 1967 it was by order of seniority \$1,731.57, \$295.08, 1,346.19 and \$1,955.16.

The pilots do not benefit from unemployment insurance or Workmen's Compensation. They do not participate in any group insurance or welfare plan.

The rate structure is the same as in the other local Commission Districts (for comments vide pp. 381-382).

The tariff realistically provides an additional charge for river piloting between Pictou and Trenton because most vessels do not proceed beyond Pictou.

6. FINANCIAL ADMINISTRATION

The Secretary conducts the business of the local Commission, which consists mainly of collecting pilotage dues on behalf of the pilots. There is no difficulty collecting these dues even when a ship which is subject to the compulsory payment of dues does not employ a pilot. In such cases the pilot boat charge is not made.

The By-law provides that the pilots' earnings should be shared equally among the pilots at the end of each month but each pilot is actually paid the dues he has earned personally (less the Secretary's 5% remuneration) as soon as the money is received. There is no other deduction—the few minor operating expenses of the Commission, e.g., telephone and stationery, are absorbed by the Secretary. Each pilot pays his own transportation expenses.

The annual reports contain only the aggregate amount of revenues collected and the amounts paid each pilot and the Secretary. The District gross earnings for 1959 and for 1967 amounted to \$776.78 and \$5,606.77 respectively. The marked increase is explained by the facts that the number of ships piloted and their size have increased substantially (vide table p. 489) and higher rates have been imposed since 1963.



Subsection X

PILOTAGE DISTRICT OF SHEET HARBOUR, N.S.

PREAMBLE

The Pilotage Authority of Sheet Harbour was invited to appear before this Commission during the hearings in Halifax in May, 1963, but no reply was received and, hence, no evidence was submitted (Ex. 1519(f)). The information contained in this Subsection is taken from District annual reports and other official documents.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

All special legislation for this District (except for appointments) is contained in the Order in Council creating the District and in the District General By-law.

(1) CREATION OF THE DISTRICT

The District's legal existence is governed by the Order made by the Governor in Council on December 8, 1938 (P.C. 3075, Ex. 1519(a)) which created it and appointed as its Pilotage Authority a Board of three Pilot Commissioners recruited locally. The same Order also decreed the compulsory payment of dues and fixed the District limits. Except for the name of the Pilot Commissioners, it has not been modified and is still in force.

The District limits are described as follows:

"All the coastal waters of the County of Halifax in the Province of Nova Scotia lying North of an imaginary line drawn from Taylor Head to Fishery Point, and West of an imaginary line drawn from Fishery Point to the front lighthouse of the Sheet Harbour Passage Range, and shall include all the tidal waters of Mashaboom Harbour and Sheet Harbour, and the tributary waters thereof as far as the tide ebbs and flows."

There is a conflict between this description and that of the Halifax District in that the Halifax District, according to its official description, includes all the navigable waters within and along the County of Halifax and, hence, those of Sheet Harbour (pp. 157 and ff.). This legal conflict will be automatically settled if, as recommended, the Halifax District is redefined to comprise only the confined waters of the port and its immediate approaches (p. 245).

(2) PILOTAGE AUTHORITY'S ENACTMENT

All the regulations made by the Pilotage Authority are contained in the District General By-law which was sanctioned by the Governor in Council on January 19, 1961 (P.C. 1961/69, Ex. 1519(h)).

This By-law, which is similar in form and content to those of the adjacent Commission Districts, is also a result of the standardization policy of the Department of Transport. It provides for pilotage fully controlled by the Pilotage Authority through the Secretary whose remuneration is 5 per cent of the gross earnings. The pilots' status is that of *de facto* employees who perform pilotage as directed by the Secretary and whose remuneration is an equal share of the net earnings of the District for equal availability. There is no apprenticeship and a pilot candidate need not have any marine qualification or any sea experience or experience in the pilotage waters of the District, provided he satisfies the Board of Examiners he possesses the required nautical and local knowledge. The first licence issued is probationary and is followed by a permanent licence if the services of the pilot are satisfactory. Absence is always without pay. The rate structure for pilotage voyage charges is the same as in the other Commission Districts, i.e., it is based on draught and tonnage (\$2 per foot draught plus 2¢ per ton). Movage rates vary with tonnage and there is a 50 per cent surcharge if the distance run is over four miles. The pilot boat fee is \$10. There is no regulation concerning exemptions.

2. HISTORY OF LEGISLATION

It is clear that pilotage in that region was unorganized prior to Confederation because none of the harbours now in the Sheet Harbour District are named in the governing pre-Confederation statutes (pp. 169 and ff.).

The only official pilotage that may have existed in Sheet Harbour after Confederation and prior to the creation of the District in 1938 was when the Halifax Pilot Commissioners appointed pilots for the outports between 1874 and 1908. However, there were no special regulations and the Halifax by-laws applied *mutatis mutandis* without legislative authority (pp. 159 and ff.).

As seen above, the District was created in 1938 by P.C. 3075 which, except for the name of the Pilot Commissioners, has not been amended or rescinded since.

The District's first By-law was sanctioned by P.C. 1129 of May 13, 1939 (Ex. 1519(b)) and remained in force until superseded in 1961 by the current General By-law. The 1939 By-law provided for fully controlled pilotage through despatching, pooling earnings and a common pilot vessel service. The By-law also established a boarding station inside the seaward limit and adopted a rate structure (still in force), including pilot boat charges. The only pilot licence was a term licence renewable every two years.

A 1952 amendment (P.C. 3622, Ex. 1519(d)) introduced a minimum voyage charge fixed at \$50, but this was not retained in the 1961 By-law.

Chapter B

BRIEFS

No brief was submitted.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The District comprises two large, deep harbours: Sheet Harbour and Mashaboom Harbour, both situated in the bay between Taylor Head and Fishery Point, the seaward limits of the District.

Sheet Harbour, the main harbour, is considered one of the finest along the Nova Scotia Atlantic coast. The depth at the entrance is over 50 feet and, since the leading marks are clearly visible, little difficulty should be experienced entering in good weather.

At Church Point, some five miles from the entrance, the harbour divides into the northeast and the northwest arms. The village of Sheet Harbour is situated on the northeast arm. The wide approach channel provides good depths to a minimum of 32 feet up to Church Point and thence diminishing to 18 feet at the village of Sheet Harbour.

Ice forms about the middle of January and breaks up early in March. The District is well provided with leading lights and buoys; several new ones were placed in 1963. There is no record of shipping casualties.

The following table shows the extent and importance of traffic involving ships 250 NRT and over (Ex. 1483) and pilotage traffic (Ex. 1151) and, at the same time, indicates the workload.

Year	D.B.S. Statistics (Ships of 250 NRT and over)		Pilotage Returns		
	No. of Ships	Average NRT	No. of Pilots	No. of Ships	Average NRT
1959.....	14	1,487.8	1	15	1,865.1
1960.....	9	1,945.8	1	11	2,295.5
1961.....	12	1,772.7	1	12	839.2
1962.....	28	1,362.8	1	29	1,354.9
1963.....	25	1,389.2	1	27	1,475.0
1964.....	31	1,915.2	1	31	1,915.0
1965.....	24	2,240.0	1	23	2,274.3
1966.....	34	1,261.2	1	34	1,263.4
1967.....	24	734.1	1	23	750.0

This table clearly shows that the District serves only local needs which vary from year to year. Hence, traffic is variable and unpredictable. As a rule, all ships over 250 NRT take pilots as do a few smaller vessels on occasion. The reason why most vessels take pilots is apparent from cargo statistics: practically all cargoes handled involve foreign vessels. For example, in 1960, 1961 and 1964 no cargo was handled from coastwise vessels; 27,668 tons of cargo were handled from foreign vessels, but only 3,300 tons from coastwise vessels in 1967.

Shaw Steamship Co., Limited of Halifax complained to the Minister of Transport in 1961 about the compulsory payment of dues at Sheet Harbour. One of the company's ships, S.S. *Mayfall*, net tonnage 268, entered the harbour for a load of 240 cords of wood for Puerto Rico and was charged pilotage dues, despite the fact there was no pilot to meet the ship when she arrived in the District. The pilotage dues were \$31.36 on entry and \$35.36 on leaving which, the company charged, made the cost prohibitive for the small amount of cargo loaded.

S.S. *Mayfall* was obliged to pay dues because she was engaged in a voyage other than one defined in subsec. 346(e) C.S.A. and the general exemption to vessels of dominion registry is up to 250 NRT only, i.e., 18 tons less than the *Mayfall's* NRT.

The Minister suggested that Mr. Shaw approach the Pilotage Authority asking it to recommend to the Governor in Council that dues should not be compulsory. It is not stated whether the company made this request of the Pilotage Authority but it is known that the regulations have not been amended and that the company's vessels have not visited Sheet Harbour since that date.

2. ORGANIZATION AND PILOTS

The Pilotage Authority is still composed of three Pilot Commissioners recruited locally, one of whom doubles as Secretary-Treasurer. The tenure of office is stable. The present Commissioners were appointed in 1960, 1962 and 1965 respectively. Mr. I. J. Behie, who was replaced in 1962, had been in office for 22 years.

Since the establishment of the District in 1938, there have never been more than two pilots and from about 1950 only one pilot has been actively engaged in pilotage. A second pilot was licensed in 1964 but up to the end of 1967 he had not performed any pilotage duties. It is clear that this appointment became necessary because the other pilot, Mr. Ruben Power, Sr., was 68 years of age at the time. Although he reached 70 in 1966, his annual licence was renewed both in 1966 and 1967 and during those two years he performed all the pilotage in the District.

COMMENT

Since 1966, the legal situation has been that pilotage has been performed by an unlicensed pilot. The annual licence the Pilotage Authority purported to grant to Mr. Power was worthless because he had passed the final age limit fixed by sec. 338 C.S.A. The 1964 licence of pilot George Levy lapsed automatically in 1966 in view of the provisions of sec. 336 C.S.A. since he had done no pilotage during the two preceding years. His licence was reinstated in 1967.

The fact that Pilot Power is over age and, therefore, unlicensed does not make it illegal for him to pilot provided there is no licensed pilot available, but this should be only an occasional occurrence and not the rule. It is the duty of the Pilotage Authority to arrange for a competent pilot to be available for licensing and, if it is unable to find a candidate or fails to take appropriate action, the District should be abolished on the ground that the Pilotage Authority is incapable of performing its main function, namely, to act as licensing authority.

As indicated by the table on p. 500, the workload is light and can easily be attended to by one pilot.

3. FINANCIAL ADMINISTRATION

The District annual reports contain no financial information beyond aggregate amounts.

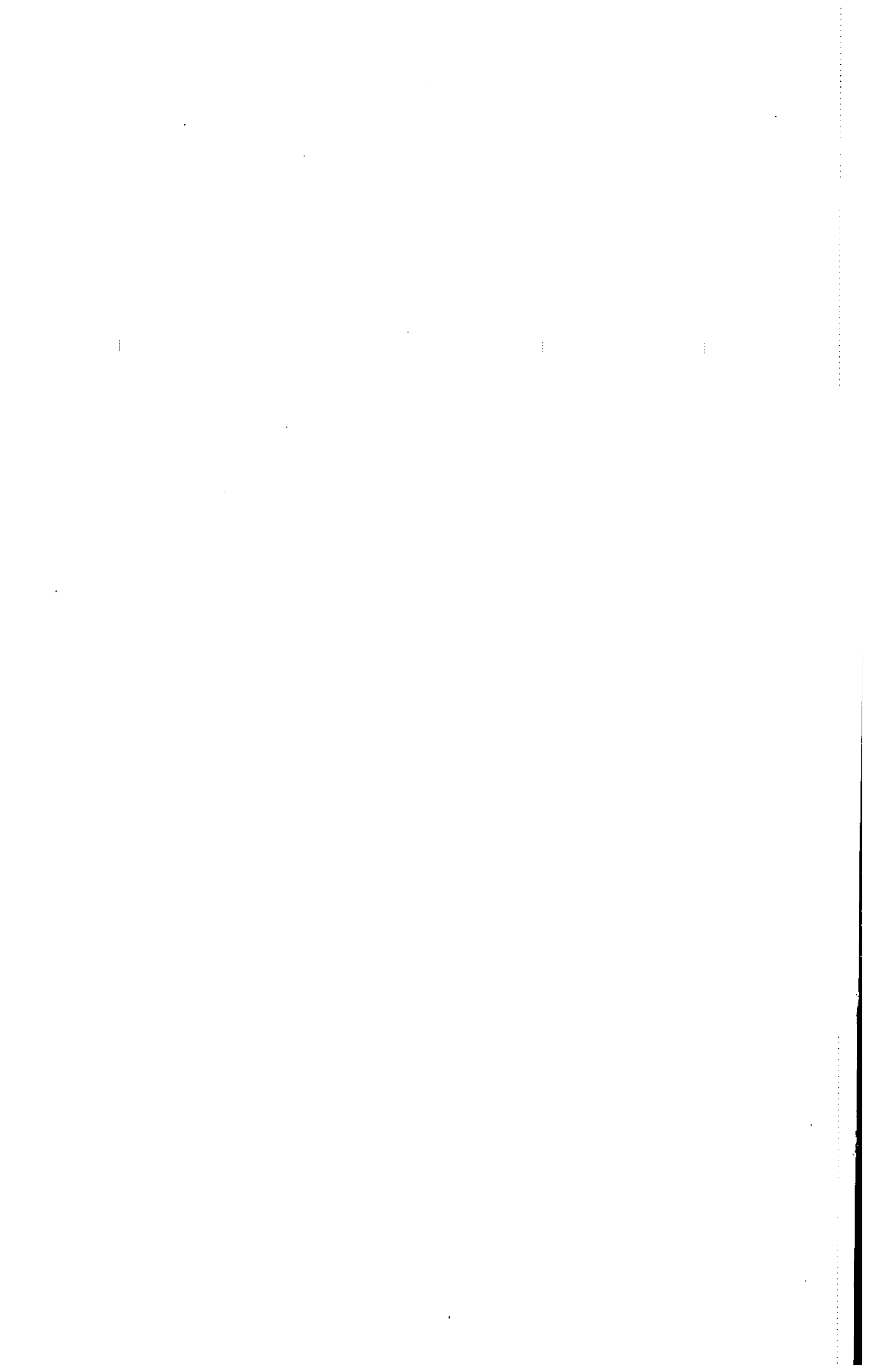
It would appear that prior to 1962 the pilot himself collected pilotage dues and that the Secretary at that time did very little beside preparing and forwarding the annual report. Although the By-law entitled him to 2 per cent of the earnings as remuneration, he took no pay. It would also appear that when the new Secretary took office in 1962 he assumed the responsibility of collecting pilotage dues and charged his remuneration, which the 1961 By-law had raised to 5 per cent of the District gross earnings.

Year	Gross Earnings	District Operating Expenses (including Secretary's remuneration)	Pilot's Remuneration
1958/59.....	\$ 1,281.40	nil	\$ 1,281.40
1959/60.....	1,575.27	nil	1,575.27
1960.....	1,252.22	nil	1,252.22
1961.....	1,323.68	nil	1,323.68
1962.....	4,069.96	\$ 102.09	3,967.87
1963.....	3,848.60	192.43	3,656.17
1964.....	5,048.14	251.42	4,796.72
1965.....	3,976.56	617.74	3,358.82
1966.....	4,418.92	900.81	3,518.11
1967.....	2,450.98	582.42	1,868.56

The preceding figures taken from the annual reports provide the only available financial information.

The substantial increase in gross earnings after 1961 is mainly due to the increase in pilotage traffic (vide Table, p. 500).

For the years 1963 and 1964 the District operating expenses corresponded to the 5 per cent remuneration of the Secretary. In the following years, this item shows a considerable increase and accounts respectively for 15.5, 20.4 and 23.8 per cent of the District gross revenues. The annual returns contain no explanation of this change nor any details of the various items of expenditures.



Subsection XI

PORT OF GASPÉ, QUE.

PREAMBLE

Publicly controlled or organized pilotage has apparently never been exercised in Gaspé although it came under the jurisdiction of Quebec Trinity House in 1805, formed part of the area composing the port of Quebec as defined in the 1805 Trinity House Act and Quebec Trinity House made regulations for it. Gaspé has never been included in the limits of a federal Pilotage District since Confederation. However, pilotage as a private enterprise has been performed there for many years and still is today.

GENERAL DESCRIPTION

Gaspé is situated at the head of Gaspé Bay which extends northwest along the east side of Gaspé Peninsula. Its geographical location suggests it should be grouped with the ports in the Bay of Chaleur rather than with those situated along the Gulf and River St. Lawrence.

Gaspé was proclaimed a public harbour by Order in Council P.C. 1158½ (sic) of September 22, 1874 (Ex. 923(i)). It is a Port of Entry.

The approach is wide, unobstructed and deep. It is entered through a deep channel 3½ cables wide between the north shore of the Bay and a breakwater that extends to Sandy Beach Bar. The main harbour, about 4½ miles long by a mile wide, provides a sheltered anchorage which was used for the assembly of convoys during two World Wars.

On the southwest shore of the harbour is the mouth of the York River. This forms the Southwest Arm on the north shore of which is the town of Gaspé which is joined to the village of Gaspé Harbour on the south shore by a bascule bridge, about 1,000 feet long with a 90-foot span. To the westward of the bridge and adjacent to it is located the main commercial wharves, with depths ranging from 17 to 28 feet alongside, and the shipping facilities of Gaspé.

About a mile eastward from the Southwest Arm is a large Government wharf with depths alongside at low water of 26 to 36 feet. In this area there is also a marine railway and a shipbuilding yard for draggers and wooden craft. High tides range from 4 to 5½ feet. The harbour freezes over during the winter.

The harbour and its approach are adequately provided with aids to navigation. There are no navigational hazards or difficulties to impede a vessel into or within the harbour except when transiting the bascule bridge where great care must be taken.

The port serves regional needs, exports lumber, pulp wood, fish and ore, and is a railway terminal. Traffic consists of motor fishing schooners, small coasting vessels, coastal passenger ships, general cargo carriers, foreign ocean-going cargo vessels, small tankers and Government vessels.

The following figures provided by the Dominion Bureau of Statistics show the total number of vessels of 250 NRT and over that arrived at Gaspé from 1962 to 1967, together with the amount of foreign and coast-wise cargo handled.

Year	No. of Vessels	Average NRT (per ship)	Tons Cargo Handled	
			Foreign	Coastwise
1962.....	87	1,642.6	21,947	144,222
1963.....	25	2,349.7	2,197	52,369
1964.....	58	2,283.7	11,035	125,759
1965.....	68	1,798.7	7,456	128,407
1966.....	63	2,908.6	15,701	156,705
1967.....	74	2,042.5	9,586	167,034

This table indicates, *inter alia*, that traffic consists mostly of regular coastal traders which least need the services of a pilot.

PILOTAGE SERVICE

Pilotage service is provided by local fishermen acting independently as private entrepreneurs. One of these "pilots", Mr. N. Roberts, stated that he occasionally meets a vessel four or five miles to seaward from Cape Gaspé, i.e., approximately 12 miles from the port, in order to "beat his competitors".

Foreign ocean-going vessels bound for Gaspé for the first time, invariably request the services of a pilot and generally also on subsequent trips, but local and coastwise vessels do not employ a pilot.

By general agreement among the pilots the price charged for their services is \$3 per foot of the *mean draught* of a vessel, a criterion not used in any Pilotage District in Canada. There is no additional charge. The pilot pays his boatman, usually \$15 or \$20 according to the size of the ship concerned. The pilots use their own fishing boats as pilot vessels.

Mr. Roberts complained of pilotage competition. Since the port is not within a Pilotage District, vessels are not bound to accept the first pilot who hails them but may select a pilot of their choice. Shipping agents generally choose their pilot and provide him with an E.T.A. Mr. Roberts complained that often before he can reach a vessel to which he has been assigned by the agent she has been boarded by another pilot bearing his family name (but not related) who is mistakenly accepted by the Master as the one chosen by the agent. The result is that the verbal instructions given by the agent with regard to timing and berthing are not carried out and, in addition, there are frequent disputes about which pilot has the right to pilotage dues.

Shipping agents give notice long in advance of the expected arrival of a vessel because the pilots are usually fishing and requests for their services are infrequent.

The "pilots" are unlicensed, uncertified seamen, but they are well acquainted with the harbour and adjacent waters and have gained skill by experience in coastal and other ships from time to time.

In 1935, Mr. N. Roberts endeavoured to obtain a pilot's licence but was informed by the Department of Marine that his request could not be complied with because the port of Gaspé was not within any Pilotage District, but that he was free to offer his services to any Master willing to accept them. This reply is used by Mr. Roberts as a sort of official document to establish his right to pilot (vide Part I, p. 40).

Local collectors of customs stated that about 20 foreign-going vessels call at Gaspé each season and employ pilots.

The only reported shipping casualties date from 1951 and 1953. In 1951, a vessel outward bound struck the bridge while passing under it and immobilised it for two months. Damages were assessed at \$25,000. In 1953, an Italian vessel approaching the Government wharf struck another vessel secured alongside. On both occasions local pilots were on board. No other accidents of a serious nature are reported.

The above shipping casualties prompted Mr. G. F. Allard, a licensed customs broker at Gaspé, to suggest that Gaspé Harbour be made a Pilotage District and the payment of pilotage dues compulsory.

This request was not granted on the ground that the Gaspé outer harbour and approaches are unencumbered and Masters can navigate their vessels without the assistance of a pilot, while the inner harbour serves only small local vessels whose personnel are well acquainted with the locality and would not require pilots. It was the opinion of the Department of Transport that the establishment of a Pilotage District at Gaspé was not warranted at that time.

Mr. T. J. Eden, the Harbour Master at Gaspé since 1942, suggested in his evidence that, since there is a certain demand for pilotage services, competent pilots should be licensed, presumably because certain Masters prefer to employ a pilot in case of an accident involving insurance.

Subsection XII

PORT OF CHANDLER, QUE.

PREAMBLE

Publicly controlled or organized pilotage has never been instituted at Chandler. The only Pilotage District created along the north shore of the Bay of Chaleur was the Bonaventure District which at no time included the port of Chandler (vide p. 357). Pilotage has always been, and still is, conducted as a private enterprise.

GENERAL DESCRIPTION

The port of Chandler is situated on the south shore of the Gaspé Peninsula at the entrance to the Bay of Chaleur about 15 miles southwest from Cap d'Espoir. It was proclaimed a public harbour in 1927 by P.C. 554 of March 29, 1927 (Ex. 511) in which its limits are defined as:

"All the waters of Baie des Chaleurs northwesterly of a line tangent to Pabos point running N.32°25' E. a distance of approximately three and a half statute miles to a point on the shore of said bay distant about 3100 feet from Vieux Quai."

Chandler is an open port and exposed to southeasterly and southwesterly winds. The only wharf, which is owned by the Federal Government, is situated at the eastern point of Anse à l'Îlot, and provides a berthing space of 450 feet on either side with a least depth of 22 feet alongside.

The approach to the port, which is made from the open sea on a course indicated by range lights, leads directly to the wharf. The end of the wharf is marked by a light and the only shoal along its approach is marked by a buoy. There is a minimum depth of 21 feet in the wide natural approach channel which runs for a distance of five cables from the edge of deep water.

The approach channel presents no navigational difficulties. However, in the area adjacent to the end of the wharf the depth is affected by a shifting sandbar. Berthing is a difficult manoeuvre at times because of the wharf's exposure to winds and tidal currents. Pilot Pierre Molloy stated in his evidence that with a rising tide a current is created that flows toward the wharf with a velocity estimated at three to four knots, depending on weather conditions, and with a falling tide a counter-current flows westward. As a result of the currents, a sandbar a foot or a foot and a half high is formed about 200 feet from the south end of the wharf. The sandbar is transient and disappears after a gale; then it gradually builds up again.

Because of the exposed position of the wharf to the prevailing winds and currents, all vessels are berthed with their bows to seaward to allow a quick departure in the event of adverse weather.

There are no tugboats available. When manoeuvring to berth, vessels are often turned on the anchor and allowed to drift slowly alongside. On other occasions vessels are turned at the end of the wharf using hawsers and the prevailing tide or current.

The tides rise from four to six feet. Although not completely ice free the port is open to navigation throughout the year.

The port serves local needs, and its main industry is pulp and paper. It is a Port of Entry. Customs also serve as immigration. Radio pratique can be obtained through the authorities at Quebec City.

MARITIME AND PILOTAGE TRAFFIC

Vessels calling at Chandler are local craft, small foreign ocean-going freighters and one or two tankers that make several calls throughout the year.

The following table based on statistics furnished by the Dominion Bureau of Statistics shows the number of arrivals of vessels of 250 NRT and over.

Year	D.B.S. Statistics (Ships of 250 NRT and over)	
	No. of Arrivals	Average NRT
1962.....	37	1,802.2
1963.....	38	1,744.3
1964.....	47	1,584.2
1965.....	51	1,696.2
1966.....	32	1,693.8
1967.....	21	1,790.6

Other D.B.S. statistics show that, on the average, foreign cargo is slightly above coastwise cargo.

This table confirms that the port serves only local needs which are variable and unpredictable. Most vessels use the services of local pilots, probably because there are few regular traders, and the Masters who call would not usually have up-to-date knowledge of the changing sandbar or currents off the wharf.

No major casualties have been reported. Pilot Molloy complained that the corners of the wharf were not sufficiently protected by fenders and, as a result, vessels were apt to get their shell plating dented by bumping against the wharf when berthing, as occasionally happened.

PILOTAGE SERVICE

Pilotage service is provided by two uncertified men, Mr. Pierre Molloy and his brother. The latter pilots only occasionally and is described as an apprentice who generally works with his brother and also operates their own fishing boat which serves as a pilot vessel.

In 1963, Pilot Pierre Molloy had been acting as a pilot for the previous twelve years. He had no previous sea experience but had travelled in ships on trials. From the age of 14 he was trained by his father who was a pilot before him and who is now Harbour Master at Chandler. He was trained in this way for twelve years before piloting alone and he has always been engaged in pilotage since then. There is no competition for pilotage services.

Pilot Pierre Molloy is advised by the shipping agent of ETA's and embarkation takes place three to five miles seaward from the wharf. Depending on weather conditions, it takes about an hour, but never longer than two, to pilot a ship in, including berthing. On departure, the pilot is not generally employed because the vessel is headed to seaward. However, if he is required for unberthing service, he spends 10 or 15 minutes on board advising the Master prior to departure, leaves the vessel at the wharf and thus saves time by avoiding a stop to disembark into the pilot boat.

July and August are the busiest months. During the winter there are only one or two vessels per month.

The charge for the pilot's service is a flat rate of \$125, which includes both inward and outward pilotage and pilot boat service.

Pilot Pierre Molloy stated that his *net earnings* were about \$50 per ship because from the \$125 he receives for pilotage he pays the cost of various services, namely \$25 for the boatman each time the pilot boat is used plus a \$5 fee to each of four linesmen required for each berthing. On this basis, the net earnings should be \$80, assuming that the pilot boat is used only once, but it was subsequently revealed that the discrepancy resulted from a \$25 "kick-back" which the pilot had to give most Masters who threatened to dispense with his services if he refused to pay the bribe.

Subsection XIII

RECOMMENDATIONS

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE COMMISSION DISTRICTS ALONG THE NEW BRUNSWICK AND NOVA SCOTIA COASTS AND PILOTAGE AREAS IN CHALEUR BAY AND GASPÉ BAY

RECOMMENDATION NO. 1

The Existing Pilotage Services in the Districts of Restigouche, Bathurst, Caraquet, Miramichi, Buctouche, Shediac, Pugwash and Pictou, and Other Pilotage Services in Ports along the Mainland Coast Bordering on the Gulf of St. Lawrence and Northumberland Strait from Gaspé in the North to the Strait of Canso in the South, to Be Amalgamated in a Single Merger Type District

These Districts do not function properly because the organizational structure provided in Part VI C.S.A. does not apply to them, at least in practice. The basic principle, which is still valid today (vide General Recommendation No. 8, Part I, p. 476), that there be one distinct Pilotage Authority for each local pilotage service, can apply only where there is sufficient pilotage demand to keep a number of pilots fully occupied, e.g., a separate District is indicated at New Westminster, B.C., and a three-member Commission works well as its Pilotage Authority. However, to apply the same organizational structure in a District when there is little demand for pilotage results in over-organization and inefficiency. Most of these small individual Districts are relics of the past and except for the Districts of Restigouche and Miramichi, none would otherwise continue to exist. Like Gaspé and Chandler they no longer require the type of pilotage organization envisaged in Part VI C.S.A. Hence, most of these Districts should be abolished unless more practical alternatives can be provided under new legislation.

This Commission has recommended (General Recommendation No. 6, Part I, p. 470) that pilotage statutory provisions be extended to cover all the various situations that may be met and that the compromise solution of a merger type District be adopted in the case of a number of distinct pilotage services within the same geographical region whose individual importance does not warrant the creation of separate Districts (Part I, pp. 476 and ff.).

In a Pilotage District of the merger type a distinction should be made between the Pilotage Authority's "potential jurisdiction" and the Pilotage Authority's "actual jurisdiction", and both should be defined in governing Pilotage Orders.

To be effective, the organization of a merger District should be restricted to the pilotage services within the same geographical area where a Pilotage Authority can reasonably be expected to exercise the limited control required. This geographical area determines the extent of the Pilotage Authority's *potential jurisdiction*.

On the other hand, the District limits, in the accepted meaning of the term, should be defined to reflect the factual situation, i.e., the existence of a number of separate, unconnected pilotage services under one single Pilotage Authority. In the merger type organization, ports should not lose their physical identity, they should not be artificially connected by stretches of open water where pilotage is not required and each separate service should be governed by its own regulations (Part I, p. 478). In this way the District limits define the extent of *actual jurisdiction*. It follows that, if a port is included in a Pilotage District, a prerequisite is the availability of qualified pilots or qualified pilotage advisers. If there are none, the port should not be included; if the supply fails and there are no qualified applicants, the limits of the merger District should be amended immediately to exclude the port in question (unless pilotage service is classified as a public service, which is not the case here).

It is the Pilotage Authority's responsibility to keep itself *au fait* with the pilotage situation within the geographical area over its potential jurisdiction extends. This includes investigating the possibility and advisability of extending its actual jurisdiction (hence, control and surveillance) to pilotage services in other ports. It should forward its findings and recommendations to the Central Authority who will then be in a position to issue any necessary Pilotage Orders amending the Pilotage Authority's actual jurisdiction.

The merger type District is the suitable alternative in this case. The geographical area of the proposed District, hereinafter called the Gulf of St. Lawrence District, should extend along the mainland coast bordering the Gulf of St. Lawrence from the port of Gaspé in the north to the western entrance of the Strait of Canso in the south. Prince Edward Island and the Cape Breton area are specifically excluded from this area and should, as already recommended, continue to remain separate merger Districts (p. 24 and p. 340).

The existing pilotage services in the Districts of Restigouche, Bathurst, Caraquet, Miramichi, Buctouche, Shediac, Pugwash and Pictou, the private services now provided in Gaspé, Chandler, Belledune and Restigouche, and

other ports where a demand for pilotage develops should come under the actual jurisdiction of the Pilotage Authority of the proposed Gulf of St. Lawrence District, always subject to the availability of competent pilots or pilotage advisers.

RECOMMENDATION No. 2

The Various Pilotage Services within the Proposed Gulf of St. Lawrence District to Be Classified as Private Services

According to the criteria enunciated in General Recommendation No. 17 (Part I, p. 509), the various pilotage services listed here should all be classified as *private services*. They all serve only their immediate neighbourhood and the economy of the country would not be adversely affected if pilotage was discontinued at any one.

Therefore, if local interests consider pilotage to their advantage, it should be their responsibility to offer sufficiently attractive inducements to enlist and retain suitable pilots or pilotage advisers.

The powers and responsibilities of the Pilotage Authority would be limited to licensing (including surveillance and appraisal) rate-fixing and making the necessary regulations for the discharge of these functions. The number of pilots or pilotage advisers should be limited, since constant practice is a basic requirement for maintaining and improving local knowledge and skill, but consideration should also be given to local circumstances with the aim of ensuring constant pilotage service without imposing unduly on individual pilots or pilotage advisers who may be obliged to accept other employment.

The Pilotage Authority should have neither the responsibility nor the power to provide service: this should be organized locally by private arrangements. However, no franchise should be issued except the obligation inherent in a licence that only licensed pilots or pilotage advisers are to be employed.

The regulations should define the procedure to be followed by vessels requiring pilotage service, i.e., the ETA's ETD's or other requirements and they should be published in *Notices to Mariners*.

The Pilotage Authority should also make and amend regulations to ensure the constant availability of pilots, bearing in mind local conditions. These regulations should normally be suggested by the pilots as a group and then incorporated in the regulations if approved by the Pilotage Authority. They should make unjustified refusal or neglect to meet a request for pilotage an offence punishable by suspension of the licence and withdrawal in the event of a recurrence.

RECOMMENDATION NO. 3

**The Pilotage Authority to Be Empowered to
Issue Pilotage Advisers' Licences**

The Pilotage Authority should be authorized to issue Pilotage Advisers' licences (General Recommendation No. 12, pp. 492 and 493) because qualified mariners are not always available to qualify for a pilot's licence and the navigational problems encountered in the various ports of the proposed Gulf of St. Lawrence District are not complex.

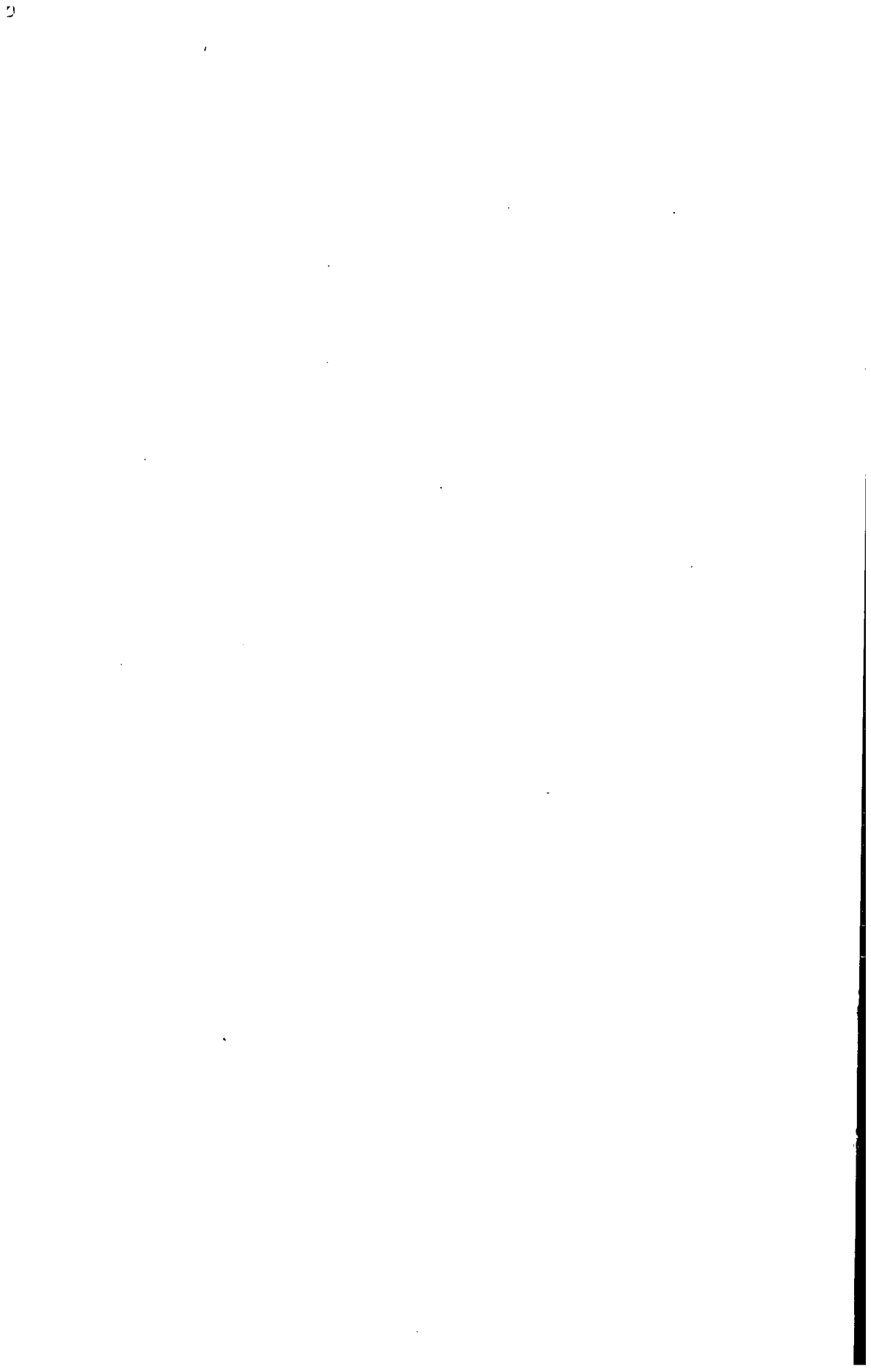
The satisfactory service the great majority of "pilots" have given in the small Commission Districts (despite the fact they do not possess any marine certificate of competency) indicates that there is no need to change a system which has worked well. However, these men should not be called *pilots* because the Pilotage Authority can not vouch they are competent to take charge of the navigation of the various types of vessel that call at these ports. A Pilotage Adviser's licence would by its very name be a warning to Masters that the holder's qualifications are limited.

RECOMMENDATION NO. 4

**The Pilotage District of Sheet Harbour to Be Attached for
Licensing and Rate-fixing Purposes to the District of Halifax;
Other Pilotage Services in Ports along the Atlantic Coast of
Nova Scotia (Cape Breton Island Excepted), and in the Bay
of Fundy to Be Attached for the Same Purposes to either
the District of Halifax or the District of Saint John as the
Central Authority May Deem Advisable**

The various services that exist, or may exist, in ports along the Atlantic coast of Nova Scotia, except Cape Breton for which a separate recommendation is made, and in the Bay of Fundy are too far removed from the Gulf area to be included in the proposed Gulf of St. Lawrence District. Furthermore, they are too far apart and not important enough together to warrant the creation of another merger type District. On the other hand, the existence of two important Pilotage Districts nearby provides an opportunity to have the limited control required exercised by the Pilotage Authority of either District (vide General Recommendation 8, Part I, p. 479).

The responsibility and power of the Halifax or Saint John Pilotage Authority, as the case may be, would be limited to licensing, including surveillance and reappraisal, rate-fixing and making the necessary regulations for the discharge of these functions. Therefore, in the case of Sheet Harbour, it would be the responsibility of the Halifax Pilotage Authority to make the applicable regulations. Pilotage there, as elsewhere in this area, should be classified as a private service.



Section Six

PILOTAGE DISTRICT OF ST. JOHN'S, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Since January 1, 1965, the pilotage organization of St. John's has come under Part VI of the Canada Shipping Act. The only legislation that now applies specifically to this District is contained in the regulations made by the Governor in Council in December, 1964, establishing the District and appointing its Pilotage Authority, and one Order in Council passed in August, 1959, authorizing the Department of Transport to provide the pilot station and pilot vessel service at public expense. There are no regulations made by the District Pilotage Authority.

Sec. 18 of the Terms of Union of Newfoundland with Canada Act (13 Geo. VI c. 1) provided for the continuity of legislation and administration during the transition period in that the laws in force in Newfoundland at the time of Union were to continue in effect until repealed or altered by the Parliament of Canada, if under federal jurisdiction, and the regulations made under such Newfoundland laws were to remain in effect until revoked or amended. Federal statutes in force at the time of Union were to apply in Newfoundland when so directed by an Act of Parliament or by proclamation of the Governor General in Council. Commissions, authorities, officers and officials were to remain unchanged until altered, abolished, terminated or dismissed by the appropriate authority.

On April 1, 1949, the Governor General issued a proclamation bringing into force in the Province of Newfoundland certain statutes of the Parliament of Canada, effective that day, including the Canada Shipping Act, 1934, except sec. 21 and Part VI which deals with pilotage. Therefore, with respect to pilotage, the laws of Newfoundland in force at the time of Union were not affected and continued to govern pilotage matters. The same situation prevailed regarding the legislation governing the Newfoundland ports. Any of these ports could have come under Part X of the Canada Shipping Act if it had been proclaimed a "public harbour" as required by sec. 600 C.S.A. but this was not done. Nor did they come under the National Harbours Board for lack of an Order in Council issued pursuant to subsec. 6(1)(b) of the National Harbours Board Act to that effect.

It took fifteen years to bring the port of St. John's and its pilotage service under federal laws. One main problem appears to have been whether St. John's harbour would become a port administered by the National Harbours Board or by an autonomous Commission under Part X C.S.A. On the pilotage side, difficulties arose deciding the type of Authority with which the District should be provided, the status of the pilots and how to make the new regulations which would have to be in conformity with Part VI C.S.A. Many attempts were made between 1949 and 1964 to complete the necessary arrangements so that Part VI C.S.A. could be proclaimed, but all proved fruitless.

In 1964, the Federal Parliament passed an Act titled "An Act to repeal certain Acts of the Province of Newfoundland respecting Harbours and Pilotage" (13 Eliz. II c. 33) which abrogated as of a date to be fixed by proclamation all the Newfoundland legislation concerning ports and pilotage. The pertinent section dealing with the legislation of the port and Pilotage District of St. John's reads as follows:

"3. An Act respecting Pilotage and to provide for regulations for the Port and Harbour of St. John's, No. 1 of the Statutes of Newfoundland, 1946, and The Port and Harbour of St. John's Act, Chapter 217 of the Revised Statutes of Newfoundland, 1952 and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

On December 23, 1964, the Government arranged by a series of proclamations and orders for the pilotage service at St. John's to come under federal legislation:

- (a) a first proclamation (SOR/65-21) giving effect, as of December 31, 1964, to sec. 3 of the 1964 Act and thereby abrogating the whole of the Newfoundland legislation, including regulations, that had hitherto governed the pilotage service at St. John's (Ex. 1462 (b));
- (b) a second proclamation (SOR/65-22) making Part VI C.S.A. applicable to Newfoundland effective January 1, 1965 (Ex. 1462 (b));
- (c) an Order in Council made under secs. 324 and 326 C.S.A. creating under Part VI C.S.A., effective January 1, 1965, the Pilotage District of St. John's (P.C. 1964-2019, Ex. 1462(f)), fixing its limits and making the payment of pilotage dues compulsory;
- (d) a further Order in Council made under sec. 325 C.S.A. appointing, effective January 1, 1965, the St. John's Pilotage Authority (P.C. 1964-2020, Ex. 1462(f)).

Coincidentally, by Order in Council P.C. 1964-1923 dated December 10, 1964, made pursuant to Term 33 of the Terms of Union and of subsec. 6(1)(b) of the National Harbours Board Act, the Port of St. John's was transferred to the National Harbours Board. The assets and properties of

the defunct Harbour and Pilotage Authority were vested in the National Harbours Board with the exception of some buildings and pieces of land used for specific purposes which were transferred to the Department or Crown Corporation concerned, e.g., the sites known as "Queen's Wharf" and "King's Wharf" together with certain adjacent premises were transferred to the Department of Transport "for purposes appurtenant to Pilotage" (Ex. 1463(f)).

Neither at that time nor up to the present (mid 1969) have any regulations been made by the Pilotage Authority.

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of St. John's was created as a federal Pilotage District by P.C. 1964-2019 effective January 1, 1965. The Order also made the payment of pilotage dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation, namely:

" . . . to include therein all of the navigable waters of St. John's Harbour west of a line from North Head to South Head and the waters two miles to seaward from any point on the said line;"

By a separate Order in Council, P.C. 1964-2020, also effective January 1, 1965, the Governor General constituted the Pilotage Authority which continued the system of a local Commission and reappointed the three former Harbour and Pilotage Commissioners, Mr. J. C. Grieve, Chairman, Mr. J. E. Hickey and Captain J. J. Whelan, members. There was, however, a substantial difference in their jurisdiction in that it was limited to the pilotage service. The port as such was to be administered by a separate Port Authority, the National Harbours Board, and its local representatives who at present (mid 1969) are Mr. B. E. Higgins, Engineer, as Port Manager, Captain H. W. Stone who was continued as Harbour Master and Mr. W. J. Channing as Administrative Officer.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Since sec. 3 of c. 33 of the 1964 Act and Part VI C.S.A. came into force no District regulations have been made by the Pilotage Authority.

The former District regulations could not survive the repeal of the Newfoundland statute under which they had been made by reason of the specific repeal of all such regulations (sec. 3 of the 1964 Act). Therefore, since January 1, 1965, the District has been deprived of an essential part of its required legislation without which it can not legally function. *Inter alia*, there is no tariff and; hence, the compulsory payment of dues can not be enforced and the Pilotage Authority has no power either to collect or to handle pilotage monies. For lack of criteria for establishing

the qualifications of candidates, the Pilotage Authority can not exercise its licensing powers nor can it deprive of his licence a pilot who has become physically or mentally unfit.

With regard to exemptions to the compulsory payment system, since the Pilotage Authority has so far made no regulations under sec. 347 and subsec. 346(c) C.S.A., the applicable exemptions (if a tariff is legally established) are the absolute and relative exemptions set out in sec. 346 and subsec. 357(2) C.S.A. (Part I, pp. 221 & ff.). It follows that foreign ships (non-dominion registry) do not enjoy any exemption even if they are under 250 NRT. Hence, all foreign ships engaged in fishing are subject to the compulsory payment of dues. On the other hand, since all steamships registered in one of the dominions are exempted when engaged in any of the voyages defined in subsec. 346(e) C.S.A., all CNR vessels, both ferries and coasters, have been exempt since Jan. 1, 1965.¹

Since January 1, 1965, the St. John's Pilotage Authority has been operating in complete illegality by continuing to apply, in spite of Parliament, the regulations which were specifically repealed by the 1964 Act, and by adopting new rules and new rates that have neither been approved by the Governor in Council nor published as required by Part VI C.S.A. and the Regulations Act.

The Department of Transport Auditor's report dated March 11, 1966 (Ex. 250) contains, *inter alia*, the following remarks on the matter:

"2. As at the date of audit, February 4th to 8th, 1966, no bylaws for the Authority were formally approved. Considering this lack of bylaws, the fees which are charged, have little legal formality and approval."

"5. The following are excerpts from the minutes of the meeting of the Authority held on November 15, 1965, in the Harbour Master's Office.

"Item 4(a)"

It has been sanctioned by the Pilotage Authority at to-day's meeting that pay for the secretary of the Pilotage Authority be granted in the amount of \$750.00 in appreciation of his services, retroactive from June 1, 1965:

"Item 4(b)"

It has also been decided at to-day's meeting that the annual stipend for the St. John's Pilotage Authority members be in the aggregate of \$1,200.00 per annum to be retroactive as from January 1st, 1965.

¹This is the legal situation under the existing statutory legislation (vide Part I, pp. 221 & ff.). It may be added that all ships, including fishing vessels, without regard to size or nationality enjoy an absolute statutory exemption (hence, one that can not be changed by regulation) if entering the harbour of St. John's for refuge (subsec. 346(g) C.S.A.). With regard to the preferential treatment given by sec. 346 to ships registered in any of Her Majesty's dominions, it is quite possible that these provisions of the Act may come in conflict with treaties such as the 1954 Trade Agreement between Canada and Portugal, but such treaties do not affect the validity of the federal legislation involved. Parliament and the Department of Transport were fully aware of such possible conflicts and the question was raised, *inter alia*, in 1959 during the debates on Bill S-3. Vide Part I, pp. 224 and 225 re the legality of compulsory pilotage, if and when imposed on grounds of safety of navigation.

6. It may be observed from the attached financial statement that the amounts of monies mentioned in paragraph 5 were paid out.

7. The Canada Shipping Act Part VI, permits the Authority, with the sanction of the Governor in Council, to remunerate a legally appointed Secretary. The Canada Shipping Act does not appear to permit remuneration for other Board members”.

The Auditor recommended that: “the Authority be correctly authorized to fully conduct the business of the enterprise”.

No serious heed was given to this warning and to date these practices have been continued illegally.

It is further noted from the financial statements that higher rates are being charged without any supporting authority, e.g., the 3 per cent surcharge has been increased substantially to 6 per cent or possibly more.

In a letter dated February 4, 1969 (Ex. 1463(j)) the Department of Transport informed this Commission that a new General By-law was finally agreed upon and signed by the Pilotage Authority of St. John's on March 29, 1967, after numerous draft copies had been submitted by the Department. However, this By-law was not submitted to the Governor in Council for approval because negotiations were continuing between the St. John's pilots and their Pilotage Authority concerning a tariff increase. Following the publication of Part I of this Report the legal advisers of the Department felt the proposed By-law should be redrafted before being submitted to Council. As of February 1969 redrafting had not yet been completed.

This is a most serious state of affairs. It is a further glaring example of the basic cause of the serious problems which have beset pilotage and have resulted in the loss of authority of those in charge, i.e., the apparent failure by those officers and officials charged by Parliament or the Government with pilotage responsibilities to appreciate that under the scheme of organization of Part VI C.S.A. legislation in being is the limit of their powers, rights and obligations, and that to exceed whatever is specifically authorized in the Act and the regulations made under it is to act illegally. Such action by officers of the Crown should not be tolerated no matter how justifiable the measure or action appears to be.

Regulations need not all be made and approved at the same time, nor must they be final. The ease with which they can be amended and brought into force is the essential advantage of legislation by delegation. The District should not have been allowed to function without basic regulations. For instance, the fact that the pilots were pressing for an increase in the rates was no bar to adopting the former tariff as an interim measure, subject to modification if and when the pilots' requests were met. Nor was the lack of agreement on other provisions of the proposed regulations justification for not at least adopting a tariff by itself. The most pressing responsibility was not to

allow the District to function without a legally established tariff, and a possible increase in the rates was a matter of minor importance. The same remarks apply to all other subject-matters of the District regulations.

The Pilotage Commissioners have continued to employ as Secretary of the Commission Capt. H. W. Stone, who was also retained by the National Harbours Board as Harbour Master.

(3) ORDER IN COUNCIL NOT PASSED UNDER THE CANADA SHIPPING ACT
AND AFFECTING THE ORGANIZATION OF THE
PILOTAGE DISTRICT

Order in Council P.C. 1959-19/1093 dated August 27, 1959 (Ex. 52) extended to the Pilotage Districts of St. John's, Nfld., and New Westminster, B.C., authority for the Department of Transport to assume the cost of establishment and operation of pilot stations and pilot vessel service.

2. HISTORY OF LEGISLATION

It appears that the first pilotage legislation applicable to St. John's dates back to April 17, 1833, when "An Act for the Regulation of Pilots and the Pilotage of Vessels at the Port of St. John's" was adopted (3 W. IV c. 7). As the title indicates, it was not an Act of general application but was restricted to St. John's. Pilotage in St. John's continued to be governed by its own special legislation until this legislation was superseded January 1, 1965, by Part VI of the Canada Shipping Act.

The various provisions of the 1833 Act bear a close resemblance to Canadian pilotage legislation since they all come from the same source—the pilotage legislation of the United Kingdom. Furthermore, this Act established the pattern for the development of pilotage throughout Newfoundland. The statutes governing pilotage which were in force at the time of Confederation with Canada were modelled on this Act, some sections of which were repeated word for word.

The 1833 Act provided for limited Government control over free enterprise pilotage services. The powers of the Pilotage Authority were limited to licensing and making regulations concerning the marking and rigging of pilot boats, "extra remuneration in cases of extraordinary kind", and the further regulation of pilots. Such a By-law had to be approved by the Governor or Commander-in-Chief. Since the 1833 Act was *ad hoc* legislation for St. John's, it dealt with certain matters normally left for regulations, such as the constitution of the Pilotage Authority (the Act established a Commission of five members) and the fixing of rates, which took the form of a scale based on "ships rates" for H.M. ships and on tonnage for others. The Act listed a series of offences concerning the conduct of pilots and various violations of its provisions, and also made the payment of pilotage dues compulsory. It

provided for an *Expense or Maintenance Fund* to defray the salary of the Secretary and other contingent expenses relating to the implementation of the Act. The surplus, if any, was to be appropriated for the benefit of disabled pilots. The money required for the *Maintenance Fund* came from three sources: a five per cent compulsory contribution from all pilotage dues earned, fines after deduction of one-third to be paid to the informer, and licence fees. The Act applied to both licensed and unlicensed pilots, the latter being obliged, however, to give up the guidance of a vessel to the first licensed pilot who came on board. Any pilot taken to sea against his will was entitled to receive compensation for loss of time at the rate of three pounds, ten shillings per month over and above his board and his passage home. The Act acknowledged the liability of both licensed and unlicensed pilots for negligence, and sec. 9 provided that it was not to be construed as relieving "any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action at the suit of the party injured".

Between 1833 and 1946, in which latter year the Port and Harbour of St. John's Act was adopted, several statutory changes were made. The main one came in 1928 when the function of Pilotage Authority was merged with that of Harbour Authority and the duties and responsibilities of both functions were entrusted to a Commission of three members. Thus, the operation of the port and the function of the Pilotage Authority were combined for the first time and remained so until divided again, as seen earlier, effective January 1, 1965.

The Port and Harbour of St. John's Act was adopted in 1946. It was mainly a consolidation of the previous statutory legislation. It retained the feature of the function of Pilotage Authority being vested in the Harbour Authority. The duties and responsibilities of the Pilotage Authority were still limited to those exercised over a service provided by pilots who were private contractors.

The 1946 Act specifically abrogated all previous legislation governing the port of St. John's and its pilotage service (including the regulations). In order to provide continuity, new port and pilotage regulations were enacted together by the Legislature and appeared in the form of schedules to the Act. Thereafter, these regulations could be amended by the Harbour and Pilot Commissioners from time to time as required.

This Act was divided into four parts: Part I dealt with interpretation, Part II with the creation of the Harbour Commission and its powers, Part III with the powers of the Commission as Harbour Authority and Part IV with pilotage. Part IV was in itself a distinct, complete pilotage statute which applied only to the pilotage service of the port.

Still being *ad hoc* legislation, the Act established the legal existence of the District, determined its limits and designated the Harbour Authority

as its Pilotage Authority. It was, however, limited in its application to licensed pilots, the term "pilot" being defined as "pilot duly licensed for the District" (Part I, p. 22). However, it applied to all vessels which were defined as meaning "any ship, vessel or boat of any kind whatsoever" and, therefore, had a much broader application than Part VI of the Canada Shipping Act (Part I, pp. 213 & ff.).

The Port Authority was "a Commission of three persons to be known as the St. John's Harbour and Pilotage Commission". The Commissioner for Public Utilities was *ex officio* Chairman of the Commission. The other two members were to be appointed by the "Governor in Commission" and had to be connected with trade and shipping. The members, other than the Chairman, were to receive a remuneration not to exceed \$500 per year, provided they did not hold any salaried appointment under the Government of Newfoundland.

The function of the Secretary and Chief Executive Officer of the Commission was discharged, in addition to his other duties, by the Harbour Master who also was a Government appointee. The organization was to be financially self-supporting and the Authority was given power to pay its operating expenses, including the maintenance of pilot boats and the general expenses of the pilotage service, out of the aggregate amount of funds received by it from any source, including harbour dues, without any formality other than the obligation to account yearly to the Commissioner for Finance.

The Act provided for the compulsory payment of pilotage dues. Apart from exemptions to be provided in regulations, there was an absolute exemption for Government ships and for vessels exempted by other statute or treaty. There appears to have been no other statute providing for any exemption and, with respect to those arising from treaty obligations, no such exemptions were claimed between 1949 and 1965, nor were there any apparently ever applied up to the time of Confederation. A vessel was automatically exempted if, having shown the required flag before entering the narrows, it had not been spoken to by a pilot.

The Commission's regulation-making powers with regard to pilotage were very similar to those enumerated in sec. 329 C.S.A. with, apparently, unlimited powers to grant exemptions but not to withdraw the few stipulated in the Act.

Despite the fact that only annual licences were issued, pilots were guaranteed permanency of tenure in that the annual licence was to be renewed automatically upon payment of the prescribed \$5 renewal fee. There was no ultimate age limit but a physical fitness certificate was a prerequisite for renewal after the age of 65.

As under the Canada Shipping Act, the owner of a vessel was responsible for the act of the pilot as if he were his servant but the Act did not limit the pilot's own responsibility.

It contained the usual provisions regarding the overcarriage of a pilot and his forced detention due to quarantine but, in addition, it also provided a \$200 fine for the Master of a vessel who took a pilot to sea against his will.

The District by-laws contained in the second Schedule of the 1946 Act were amended four times before they were abrogated January 1, 1965. All such amendments concerned rates, financial administration and the control of pilots.

Despite the fact that the by-laws stated that the Commission Secretary, i.e., the Harbour Master, had the control of pilots, it was a control that was to be exercised in a very general way over a free enterprise system. The regulations left it entirely to the pilots to arrange for the provision of services and the disposal of the dues they earned. Although the dues were to be handed over to the Harbour Master, he had to remit them to the pilots after the prescribed deductions were made "at such time and in such a manner as may be arranged with the pilots". The pilotage dues were the absolute property of the pilot who earned them and it was left entirely up to him to make whatever arrangements he wished with the other pilots as to their disposal. If pooling was effected, it was merely through a private agreement arrived at by all pilots which the Pilotage Authority, through its regulations, had consented to accept.

To cover the operating expenses of the District the regulations provided a surcharge on rates for inward and outward trips (extended in 1957 to all pilotage dues except pilot boat charges). The money so collected belonged to the Harbour and Pilotage Authority as the pilotage contribution toward the general expenses of the port, including pilot vessel service, salaries and expenses of clerical staff and the establishment of trust accounts (Benevolent Fund) for licensed pilots. This surcharge was fixed in the 1946 By-law at 10%, later raised to 15%, but was reduced to 3% in 1960 when the Department of Transport assumed the responsibility of providing pilot vessel service. On this occasion, the \$10 pilot boat charge was added to the tariff which was to be paid over to the Receiver General of Canada as part reimbursement for the cost of maintaining pilot vessel service.

In the discharge of his responsibility toward the pilots the Harbour Master was assisted by two Master Pilots (no doubt one for each watch) whose duties were limited to surveillance over the pilots' conduct and attendance. These Pilot Masters were elected each year by the pilots themselves, and represented the pilots just as Pilot Committees do in other Districts.

Like Part VI of the Canada Shipping Act, the St. John's Act left the qualifications required of a candidate for a pilot's licence to be determined by regulation. The original 1946 regulations on this matter remained

unchanged. The only requirement was that candidates be examined by the Board of Examiners for Masters and mates for Newfoundland with respect to local knowledge, the International Rules of the Road, quarantine, Harbour Regulations, and other subjects pertaining to the duties of a pilot that the Board considered necessary. Pilots were also to be physically fit. The regulations did not provide for apprenticeship nor require even a minimum marine certificate of competency or any sea experience.

The regulations retained the unique form of Pilot Fund that had been instituted in 1940, and the system of individual trust accounts devised to provide a retirement benefit (p. 563).

The tariff and regulations regarding exemptions were last legally defined in the 1957 and 1960 By-law amendments. The tariff items will be studied in detail later.

The exemptions contained in the By-law affected Canadian vessels engaged in fishing or transporting passengers or goods between places in Newfoundland. These vessels were exempt from the payment of dues if no pilot was engaged and had to pay only half rates if one was employed. These exemptions, which originally applied only to Newfoundland vessels, were extended to Canadian vessels after Confederation.

In 1952, the 1946 Act was incorporated in the Newfoundland Revised Statutes where it became Chapter 217. Its only modifications were those necessary to bring certain expressions up to date; for instance, the expressions "Governor in Commission" and "Commission for Public Utilities" were replaced by "Lieutenant-Governor in Council" and "Minister of Public Works".

No doubt to dispose of any possible controversy whether the Provincial Government had power after Confederation to deal in any way with the pre-Confederation Newfoundland statutes concerning matters of the original jurisdiction of the Federal Government, sec. 3 of the 1964 Act mentioned both the 1946 Act and Chapter 217 as being repealed, together with all regulations made thereunder.

Chapter B

BRIEFS

Three briefs were filed by:

- (a) The St. John's Harbour and Pilotage Commission (Ex. 252);
- (b) St. John's Pilots' Brief and Annex (Ex. 254);
- (c) The Canadian Merchant Service Guild (Ex. 1382).

(The references following each recommendation in the briefs show where the subject is covered in the Report.)

(1) THE ST. JOHN'S HARBOUR AND PILOTAGE COMMISSION

The main part of their brief refers to a situation that has been corrected, i.e., certain difficulties connected with the St. John's Commissioners' function as Port Authority from the time of Confederation until pilotage and port operations finally came under federal law effective January 1, 1965. Since that time, they, like any other Pilotage Authority in Canada, have had full power to discharge the limited responsibility derived from the C.S.A. provided they take advantage of the provisions of Part VI to make the necessary regulations. The Pilot Commissioners now have no responsibility for the port itself, except an implied duty to cooperate with the Port Authorities and convey to them suggestions for improvements to facilities which would enhance pilotage efficiency and the safety of navigation.

They also recommend that pilotage in their District be organized as in the Districts of Sydney, Halifax and Saint John, N.B., and that their pilots be placed on a comparable financial basis. In particular:

- (a) In the event of the pilots becoming civil servants, they recommend that they should receive equal consideration because they consider them equal in all aspects to pilots in other Canadian ports (pp. 210 and 554).
- (b) The pilot vessels should be replaced because they were "advanced in age and wear and tear" (p. 544).
- (c) The pilots should be provided with an official, permanent pilot station constructed on the same site where the pilots have

temporary, unsuitable quarters, i.e., on Queen's Wharf in line with the range lights indicating the centre of the entrance channel. This site provides a clear seaward view through the entrance channel, i.e., The Narrows, and permits the pilots on watch to see the visual signals of foreign fishing vessels which often fail to give notice of their arrival off the port, generally because their RT equipment is out of order (p. 543).

- (d) The landing at Queen's Wharf should be improved to provide proper moorings for pilot vessels and embarkation and disembarkation facilities for pilots and pilot vessel crews (landing access completely rebuilt 1965-66, Ex. 1463(v)).

(2) ST. JOHN'S PILOTS' BRIEF

The pilots express their satisfaction with the organization of pilotage at St. John's and recommend that the basic organization be retained with some improvements.

Their main recommendations may be summed up as follows:

- (a) The pilotage service at St. John's is an important service to shipping and should be maintained (p. 566).
- (b) Compulsory pilotage or compulsory payment of dues should also be retained (p. 539).
- (c) New pilot vessels should be provided to replace those in service (p. 544).
- (d) The location of the pilot station and the pilot boat mooring should not be changed (p. 543).
- (e) Since the earnings of the St. John's pilots are far below those of a large percentage of pilots elsewhere in Canada and of Masters of a large percentage of ships, appropriate measures should be taken to ensure the pilots an income commensurate with their qualifications, duties and responsibilities (p. 554).
- (f) The Government should help to provide an adequate pension scheme for the pilots (p. 564).
- (g) Coastal pilots should be competent, experienced and preferably licensed. The St. John's pilots are most suitable to perform coastal pilotage and two or three of them should be made available at all times for this work (Subsection VI, Recommendation 3).

(3) THE CANADIAN MERCHANT SERVICE GUILD

The Canadian Merchant Service Guild's brief deals mainly with pilotage in general, but contains one section that specifically supports the St. John's pilots' recommendation on coastal pilotage (Subsection VI, Recommendation 3).

EVIDENCE

1. GENERAL DESCRIPTION

The Pilotage District of St. John's comprises the harbour of St. John's, The Narrows and two miles of open water.

St. John's, the capital city and principal port in the Province of Newfoundland, is situated along the perimeter of a land-locked harbour sheltered by high hills and is open to navigation all year round.

The restricted entrance from the sea, called The Narrows, does not form part of the harbour. The harbour limits are described as follows (P.C. 1964-1923, Ex. 1463(f)):

"(1) . . . All that area, including the shore at High Water Mark, extending in a general eastwardly direction to Chain Rock and extending in a general westwardly direction from Prosser Rock, from and to a line drawn North and South at the western end of the "Gas Works" (which "Gas Works" are situate westward of Long Bridge), the eastward Harbour Limit being a line drawn from Chain Rock to Prosser Rock aforesaid."

The port is operated and controlled by the National Harbours Board and is a Port of Entry. The port provides all major shipping facilities including some 37 berths at wharves with 20 to 33 feet alongside, a dry-dock, machine shops, repair yards and heavy lift cranes. The harbour is frequently used as a port of refuge and a focal point for supplies and repairs for the multi-national fishing fleets that operate in the waters of the nearby Grand Banks and those off Greenland.

The entrance to The Narrows has high land on either side and is not visible from a distance, but as the land is approached its position may be identified by Cape Spear, Fort Amherst and the buildings and flagstaffs on Signal Hill. The entrance lies between North and South Heads, 330 yards apart, and thence a channel leads westward through The Narrows for about 5 cables to the open, deep harbour. The western portion of The Narrows for a distance of about 900 feet to a position 200 feet north of Prosser Rock Light buoy is restricted by rocks marked by light buoys and has a width of 250 feet at its narrowest point. This stretch of the channel has a controlling depth of 37 feet, while Merlin Rock has 35 feet of water over it at low water spring tides. The tidal range is about 4 feet.

The entrance channel is provided with adequate aids to navigation and its centre line is well defined by leading lights visible far out at sea.

The kidney shaped harbour extends to the southwest for a little more than a mile from the western end of The Narrows, and is from about four to two cables wide. Its compact area is secure and convenient and provides good anchorage with excellent holding ground. The only siltation area is at the mouth of Waterford River at the west end of the harbour where maintenance dredging is carried out.

Tidal currents, both within the harbour and in The Narrows, cause few difficulties. Fog is a serious hazard, especially between April and September when there may be up to 14 days of fog in any given month. During these periods the pilots will not bring in a ship at night.

The major navigational difficulty is the entrance channel where there is little room for large vessels to meet and pass with safety in the narrowest section. The pilots adopt the practice of avoiding such meetings, usually by short delays, and their example is followed by the regular traders who do not employ pilots. The management of Canadian National Railways notifies the pilot station of the expected times of arrival and departure of their vessels. These precautions have worked so well that there has been no collision in The Narrows since at least 1956.

The narrow confines of the harbour cause a serious traffic problem when a large number of fishing vessels arrive either to take refuge from hurricanes or to call for supplies. Since there are insufficient berths, a large number must either anchor or keep under way in the harbour, thus causing congestion and many movages. When the harbour was a naval base during World War II the naval authorities were obliged to resort to compulsory pilotage in order to resolve the problems that resulted from a large number of controlled ship movements and to lessen collisions and accidents. In addition to the 12 civilian pilots on strength, the Navy appointed four naval docking pilots who came under the direction of the Captain of the Port. The Navy also instituted traffic control through The Narrows by installing a system of lights which showed when the channel was clear.

In 1963, there was only one small commercial tug available. When a number of assisting vessels are required, e.g., a disabled ship entering for refuge, the pilots use other available vessels, including a ferry, with a pilot on board each one and all working as a team.

Since 1963, the Department of Public Works has conducted a general programme to clear the harbour of obstructions. In 1963, the wreck of the sunken vessel *Edward Suzanne* was removed as well as the remnants of the trot mooring system and miscellaneous *débris*. In addition, the entrance channel was enlarged and deepened to 35 feet by the removal of material in the Merlin Rock area. Maintenance dredging has been carried out regularly especially in the vicinity of King's Wharf, R.C.N. Wharf, C.O.T.C. Wharf and the C.N.R. drydock (Ex. 1463(w)).

(1) MARITIME AND PILOTAGE TRAFFIC

Maritime traffic can be divided into three distinct categories:

- (a) ocean-going and coastal vessels carrying the imports and exports of St. John's and adjacent localities;
- (b) foreign vessels engaged in fishing on the Grand Banks and in Greenland waters which call for supplies, repairs or refuge;
- (c) disabled vessels of all types, ranging from cargo ships to fishing vessels, which call in appreciable numbers. St. John's is the most easterly North American port in the Atlantic with repair facilities.

Although shipping statistics do not segregate traffic in these categories, the data available are sufficiently clear with regard to (a) and (b) but information on (c) is lacking.

Because of the many changes in the administration of the port and the pilotage service during the last twenty years, consistent comparative records are not available. The following table is compiled from information provided by the National Harbours Board since it became responsible for the port, by the Dominion Bureau of Statistics and by the Pilotage Authority. The National Harbours Board's statistics show all arrivals, those from Dominion Bureau of Statistics show only the number of arrivals of vessels of 250 NRT and over and the pilotage figures show the number of ships that paid pilotage dues whether they entered the port or not. These different factors account for the differences in numbers and in the average net tonnage of vessels in each category.

Year	N.H.B. Statistics (Ex. 479)		D.B.S. Statistics of Vessels of 250 NRT and over (Ex. 1483)		Pilotage Statistics Ships Paying Dues (Ex 250)	
	No. of Ships	Average NRT	No. of Ships	Average NRT	No. of Ships	Average NRT
1958.....	n/a	n/a	1,134	811.6	1,023	1,088.5
1959.....	n/a	n/a	1,033	1,120.3	989	1,193.5
1960.....	n/a	n/a	969	1,225.0	991	1,179.2
1961.....	n/a	n/a	930	1,147.6	1,003	1,016.3
1962.....	n/a	n/a	895	1,326.6	990	1,120.6
1963.....	n/a	n/a	491	1,577.3	1,024	958.3
1964.....	n/a	n/a	466	1,807.6	1,214	924.7
1965.....	1,851	776.5	487	1,664.3	1,359	935.1
1966.....	1,928	933.3	614	1,805.0	1,513	1,083.0
1967.....	2,019	856.3	601	1,698.7	1,590	1,027.3

A comparison of the above figures indicates (a) the majority of the above vessels are under 250 NRT, (b) many vessels do not use the services of a pilot, (c) most of the vessels piloted and/or paying pilotage dues are fishing vessels under 250 NRT.

Most *general traffic* consists of cargo ships up to 3,500 GRT, passenger and cargo vessels and a substantial number of oil tankers. The largest vessel to call at St. John's as of 1963 was an oil tanker of 17,000 GRT.

The Canadian National Railways vessels call regularly; some are engaged exclusively in provincial trade. In recent years, the Sydney ferry has operated in the winter months to St. John's rather than to Port aux Basques. These vessels generally do not take pilots but have been paying dues which amounted in pilotage revenues for the years 1965, 1966 and 1967 to \$3,186.62, \$8,084.00 and \$12,525.00 respectively (Ex. 402).

In 1963, Furness Withy & Co. Ltd. operated from St. John's three cargo type freighters of about 4,000 tons gross (about 1,800 NRT) every two weeks which amounted to 70 arrivals a year. These vessels always took pilots. Its Manager, Mr. Maurice G. Devine, stated that the company was highly satisfied with the efficiency of the service and the pilots' cooperation.

Blue Peter Steamships Limited operated from St. John's four ships they owned averaging 300 NRT, and during the summer two or three chartered vessels as well. These vessels account for about 100 to 150 arrivals per year. The Masters of the company's vessels do not employ pilots although the company has left them at liberty to do so since they are required to pay pilotage dues. They are thoroughly familiar with the harbour and have never suffered a casualty there.

Each year during the month of May a group of Portuguese handline *fishing vessels*, known as the *White Fleet*, call for provisions, fuel, stores, etc., before proceeding to Greenland waters. They account for the May traffic peak.

However, the heaviest concentration of fishing vessels occurs in September and October when they seek shelter as a result of hurricane warnings. There may be over 80 of them in the harbour at one time.

Next to the White Fleet, the Spanish vessels are the most numerous. They operate in pairs, one with a fishing Master and the other a sailing Master.

In this group there are also larger vessels which call occasionally for fuel, supplies or repairs, e.g., "fish factory ships" averaging 3,000 gross tons, trawlers between 200 and 1,700 gross tons, beam trawlers between 1,200 and 1,600 gross tons, and Russian water tankers.

When fishing vessels arrive in groups a pilot boards the first vessel to reach the entrance channel and leads them into the harbour in groups of 2 to 12. There are not enough pilots to attend to each vessel individually, despite the fact that the off-duty watch comes to assist. Instructions about anchorages and berths are drawn up by the Harbour Master and passed by radio. Since all vessels can not berth at once, some keep under way until allotted a berth. A full pilotage charge is made for each fishing vessel conducted in, except for the pilot boat charge which is made only once per group of vessels piloted.

This fishing vessel traffic accounts for about 25% of pilotage revenue.

Maritime traffic varies greatly from year to year and from month to month. The graph Appendix A(1) (p. 568) shows these variations on a monthly basis for the period 1961-1964, both in number of ships and aggregate NRT. The graph Appendix B(1) (p. 570) shows for the same period on a monthly basis the per cent increase or decrease both in number of vessels and average NRT per vessel. They show that pilotage traffic is irregularly spread throughout the twelve months but there is a constant pattern from year to year. Traffic rises to peaks in the late spring and late summer or early fall and drops to its lowest point during the winter months and August. The main cause of this variation is the arrival of the fishing fleets. The late summer peak is dependent upon the intensity of the hurricane season. If there are no warnings, the fishing vessels do not visit St. John's. Winter traffic is also dependent upon the ice situation in the Gulf which occasionally blocks traffic completely.

The legal situation with regard to the compulsory payment system both prior to and after January 1, 1965, is explained on pp. 522 and ff. The factual situation is that the Pilotage Authority has continued to apply the 1946 regulations, as amended in 1957, as if they had not been abrogated (Ex. 240).

The pilotage statistics do not contain any information about the number of ships paying dues without employing pilots. The Harbour Master's function as Secretary to the Pilotage Authority is only a part time occupation. He exercises no control over the provision of services and performs only clerical duties, mainly limited to bookkeeping. His statistics are in terms of bills paid and show little about the actual pilotage situation.

In order to obtain more details, the Commission analyzed the *Pilots' Diary* for the year 1962. There was a substantial difference between their figures and the Authority's statistics contained in the official annual report. The *Pilots' Diary* showed 1,070 arrivals and 390 movages (compared to 990 arrivals and 387 movages shown on the annual report). Vessels accounting for 156 arrivals did not employ pilots although dues were paid, and 133 of the movages were in the same category—135 of the 1,070 arrivals were ships under 250 NRT (Ex. 1462(s)).

On the basis of assignments, the St. John's pilots' log book again indicates different figures for the year 1962 (Ex. 1462(s)).

	Arrivals (inward trip)	Departures (outward trip)	Movages	Total Assignments
With pilots.....	861	763	258	1,882
Without pilots.....	155	158	115	428
Total.....	1,016	921	373	2,310

The discrepancy between inward and outward trips is partly covered by off-harbour services (vide p. 546) where each ship is counted as an inward trip, i.e., one-half the total pilotage charge. It is also partly covered by small ships which call at St. John's frequently and take a pilot inward but not outward, although they pay dues. It was pointed out that this practice became more pronounced after the introduction of the \$10 pilot boat charge in 1960 (Ex. 1462(s)).

2. ORGANIZATION

The District has retained the pilotage type of organization provided by the 1946 pre-Confederation statute. The function of the Pilotage Authority is limited to licensing, rate-fixing and related matters, while the provision of services and the collection and distribution of pilotage revenue are left to the pilots. The small amount of administration which devolves on the Pilotage Authority is attended to by the Secretary, to which post the Pilot Commissioners reappointed their former Secretary and Harbour Master, Capt. H. W. Stone, who is still employed by the National Harbours Board as Harbour Master.

The Pilotage Authority remains a Commission of three members. As seen earlier, on December 23, 1964, the three former Harbour and Pilotage Commissioners in office were reappointed as Pilot Commissioners under Part VI of the Canada Shipping Act.

The three members of the present Pilotage Commission are all connected with trade and shipping and all well qualified for the function. Mr. James C. Grieve is Director of a shipping firm, Mr. Maurice G. Devine is the Manager of Furness Withy & Co. Ltd. and Capt. J. Whelan is a retired Master Mariner, Ship Surveyor and Nautical Assessor. The Secretary, Capt. H. W. Stone, is also a Master Mariner.

The first administrative problem, and also the most important, was created by the Union of Newfoundland with Canada. The long delay before the proclamation of Part VI of the Canada Shipping Act in Newfoundland is said to have been largely due to the fact that port and pilotage administration was completely integrated. The Federal Government had to decide how to administer the port before dealing with pilotage organization.

At the time of the Union (1949), the Department of Transport allowed the former Examiner for Masters and Mates to continue to act as Harbour Master and Secretary of the Commission. Later, the Department appointed a new Examiner for Masters and Mates who also fulfilled the duties of Harbour Master and Supervisor of Pilots although he was already on its salary list. This plurality of offices brought the Department more closely into pilotage matters in St. John's than is usually the case where pilotage is

administered by a local Commission. The Department of Transport endeavoured to assist the Pilotage Commission by offering advice on pilotage matters but it had no control over the District and merely acted as an intermediary between the Pilotage Authority and the Governor in Council when the Commission wished to have amendments to its By-law sanctioned by Order in Council.

Preparations were made to reorganize both the port and the pilotage service in anticipation of the proclamation of Part VI C.S.A. During the course of discussions between the Harbour and Pilot Commissioners, the pilots and officers of the Department of Transport, the impression arose that St. John's would become a Pilotage District with the Minister of Transport as Authority. In the course of the evidence given before this Commission the pilots stated that they would prefer to be under a local Commission, because they would rather have local men dealing with pilotage matters. This came as a surprise to the Department of Transport's officials who claimed that they were not aware that the pilots did not wish to come under the authority of the Minister of Transport. In fact, they thought there was full agreement between them and the pilots on the matter. It was pointed out that if the Minister were Pilotage Authority it would be simpler to provide pilot vessels, offices and staff for the District. However, no doubt on account of local opposition, the Department of Transport abandoned the idea and, as seen above, when the District was reorganized under Part VI C.S.A. the Harbour and Pilotage Commissioners were merely reconfirmed in their pilotage functions.

The Department of Transport endeavoured to arrange for a new By-law to be ready for approval as soon as Part VI was proclaimed and drafts were submitted to the Harbour and Pilotage Commissioners for consideration. At the same time, they were asked if they would accept an appointment as the new Pilotage Commissioners. No agreement was reached on the proposed regulations, with the result that when sec. 3 of the 1964 Act and Part VI C.S.A. were proclaimed the new District was left without any legal regulations. It is incredible that this situation still prevails four years later (vide p. 524).

In 1958, the pilots, following the example of their colleagues in other main Districts, appointed a Pilots' Committee, although there was no provision for it in the regulations at the time. Its three members are elected annually by the general meeting of the pilots. Committee meetings are informal. Its function is to protect and promote the interests of the pilots both as individuals and as a group.

The Committee did not assume the functions of the two Master Pilots whom the pilots continue to elect in turn annually under sec. 4 of the 1946 By-law, no doubt one for each watch. They are not necessarily members of the Pilots' Committee. Their rôle is to supervise the provision of services and to collect and share pilotage dues and other revenue of the pilots as a group, e.g., charges for linesmen's services.

The opinions expressed before this Commission on *compulsory payment of dues or compulsory pilotage* are varied and based on different premises.

The consensus of opinion was that an efficient, reliable pilotage service should be available and all expressed their satisfaction with the competence and cooperation of the St. John's pilots.

Capt. John J. Whelan, a member of the Pilotage Commission and a mariner of great experience, advocated that a pilotage service should be maintained for the safety of ships and harbour installations. This opinion was shared by Mr. M. G. Devine, the Manager of Furness Withy & Co. Ltd.

With regard to compulsory pilotage, regular traders such as Canadian National Railways and Imperial Oil Limited urged that regular traders should be fully exempted. Blue Peter Steamships Ltd. urged that the Masters of their four company-owned vessels be granted pilotage certificates.

The St. John's Harbour and Pilotage Commission did not view favourably the possibility of exempting foreign fishing vessels (even those of small size) but the reasons advanced—traffic control, protection of public and private property and loss of revenue—are not grounds to warrant the imposition of compulsory pilotage. They pointed out that there would be chaos in the harbour if the fishing vessels were not guided by the pilots but this is not a pilotage problem: it is a question of traffic control by the Port Authority which should be resolved by other means than licensing an unnecessary number of pilots to meet occasional brief demands. The possible danger to navigation or damage to vessels and port installations is minimal and, if damages are incurred, the offended parties have adequate legal means at their disposal to protect their interests. It should be the responsibility of Masters or agents of small fishing vessels to employ a pilot if they find it to their benefit to do so. If a small vessel foundered in the harbour or in the Narrows, there would be no serious interference with navigation. Loss of revenue is not a reason for imposing compulsory pilotage directly or indirectly. As already pointed out, one unjustified consequence is the creation of an artificial demand for pilotage resulting in too large an establishment and a general weakening of the whole system (Part I, General Recommendation No. 22).

3. PILOTS

The pilots are not grouped in any association but most of them are members, on an individual basis, of the Canadian Merchant Service Guild. They are represented as a group by their unofficial Pilots' Committee.

At present, in view of the absence of District regulations made under sec. 329 C.S.A., there are neither prerequisites, qualifications nor licensing procedure. No pilots have been appointed since Part VI C.S.A. came into force. Although the former regulations contained little in this regard except that candidates were to satisfy the Examiner for Masters and Mates of their qualifications to act as a pilot (p. 529), even this simple requirement was apparently never met by the former Port and Pilotage Authority. The evidence before this Commission is to the effect that none of the pilots on strength had ever been examined by the Examiner for Masters and Mates or passed an examination of any sort and that the Pilotage Commission's choice was based on the candidate's record plus an occasional interview by the Commission or the Secretary.

Nevertheless, this informal process has produced highly qualified, responsible pilots, doubtless because in Newfoundland there is an extensive coastal trade which develops experienced candidates.

Pilots were, in fact, recruited from qualified mariners with actual experience in coastal navigation and harbour waters. The average admission age was 35. No apprenticeship or probationary period was required by the former regulations. However, the custom has been to allow newly licensed pilots sufficient time to become adjusted during an unofficial probationary period. They were required to accompany experienced pilots on assignments, if necessary for two or three months until they felt competent to pilot on their own, usually starting with smaller ships. During this probationary period they received the same remuneration as the other pilots.

The eight pilots on strength at the time of the Commission's hearing in 1963 had considerable sea experience and all possessed a Master's certificate, either Foreign-going or Home Trade.

In recent years there have been no requests to increase the number of pilots. In fact, in 1960 and 1962 they were reduced from ten to eight by normal wastage at the pilots' own request. The pilots were of the opinion that eight pilots were sufficient to meet the demand at that time, including coastal pilotage. Their request was accepted by the Pilotage Authority with the reservation that, if there were any general complaints of lack of pilotage services, their number would be increased. It does not appear that this matter received further study by the Pilotage Authority.

The latest By-law (now abrogated) contained no provision for leave of absence but the pilots arranged among themselves for periods of absence from duty. In addition to off-duty periods they took two weeks' unofficial annual leave with only one being absent at any one time. The Secretary was

advised of their leave schedule and informed when a pilot left the province. In actual fact, this holiday extended to 25 consecutive days including off-duty periods.

The pilots follow a watch system of five days on and five days off. During their days off the pilots are free to do as they please provided they can be reached and recalled in case of emergency. For instance, the off-duty watch is generally called when the fishing vessels arrive in groups. The pilots take advantage of off-duty periods to perform coastal pilotage.

Under this system each pilot is off duty for a little more than six months per year, i.e., about 190 days, not including some idle days while on duty watch. Such an extensive aggregate period of leave can only indicate that there are too many pilots for the present workload.

Nor did the same By-law, which was devised for a free enterprise system, provide for sick leave, since, according to the regulations, remuneration was not based on availability. The pilots, having unofficially adopted a pooling system to share the net earnings equally, continued such remuneration during periods of absence due to illness or injury. It is assumed that an exception is made when a pilot's absence is due to an injury which is being compensated under the Workmen's Compensation legislation, a situation which has occurred three times (p. 554).

Between 1960 and 1963, the Harbour and Pilotage Commission had only one disciplinary case. This occurred in July, 1961, when a pilot's licence was withdrawn on the ground that he had consumed intoxicating liquor regularly and to such an extent that his duties were not performed satisfactorily.

The case was dealt with in an informal manner but the pilot in question was given the opportunity to defend himself. He had previously appeared many times before the Commission on charges of drinking while on duty and had admitted committing the offences. He was first admonished but after several recurrences the Commission consulted the Pilots' Committee proposing to suspend his licence for six months without pay and review the case later to determine whether he should be reinstated or not. By a majority decision the pilots approved the proposed action but four of them advocated immediate dismissal. The Commission then imposed the six months' suspension of which the pilot was advised by letter. This award was later changed to withdrawal of his licence following a unanimous decision of the three Commissioners.

However, for the same reasons that are developed in Part I, C.9, regarding Part VI C.S.A., it appears that the local Commission had no power under the governing Newfoundland statute to act as a tribunal. Sec. 30 of the 1946 Newfoundland Act required that the trial be held before a stipendiary magistrate.

In the period 1960-1967, only two shipping casualties involving a pilot are reported. On August 26, 1963, M.V. *Galatia* dragged both anchors

when berthing in a strong wind. Slight damage was done to the tug. On December 10, 1966, an outward bound vessel struck Prosser Rock, situated off the western entrance to The Narrows and indicated by a light buoy. This accident occurred well inside District waters and at a point where the navigational risk is greatest. It is reported that the pilot had left the ship with the Master's consent since his services had been required for unberthing only (Ex. 250).

4. PILOTAGE OPERATIONS

(1) PILOT BOARDING STATION AND PILOT STATION

There is no official pilot boarding station. The pilots normally embark not more than two miles from the harbour entrance. In many cases they are not employed for outward voyages and at times, as seen earlier, their services are limited to unberthing. On such occasions, the pilots may be disembarked well inside the harbour with the Master's consent. They normally disembark before passing the Heads or even earlier if a heavy swell prevails. In adverse weather they sometimes have to board in Bay Bulls, which can easily be entered even by a stranger. Bay Bulls is situated 18 miles from St. John's. The necessary transportation arrangements, including hiring a local boat, are made by the agents concerned who then assume the extra cost.

The pilot station is located in the Department of Public Works Building on Queen's Wharf well inside the harbour. The pilots claim that the location is excellent because of its alignment with the range lights indicating the centre line of the approach channel from the sea, and recommended that it should not be changed. From this location the pilots claim they can observe ships approaching from seaward and objected to the station being moved to a site where this view could not be obtained. However, their argument is not particularly valid because there is a very limited arc of sight through The Narrows and a visual watch from the base has only a limited value. Indeed, arrangements were made for the lighthouse keeper at Fort Amherst, which is situated on high ground overlooking the entrance to the harbour and manned 24 hours a day, to report to the pilots vessels sighted off the harbour entrance.

However, it was claimed that a visual watch is necessary, particularly for the fishing vessels whose R.T. equipment is out of order. There had been some discussion about allocating Fort Amherst to the pilots as an observation post, but apparently nothing came of it.

The pilot station is equipped with a VHF transmitter-receiver radio and a land telephone both supplied free of charge by the Department of Transport. There is also a Hallicrafter radio receiver tuned to 2182 kilocycles, supplied and owned by the pilots. The station includes sleeping quarters for pilots on duty watch. The typewriter, heating system and other similar equipment are supplied by the Pilot Commissioners, while the bedding, linen,

food, cooking equipment and cutlery are furnished by the pilots themselves. Office space is also made available for administrative purposes.

The station was in a rather dilapidated state in 1963 and it appeared that the Government did not plan to undertake any major repairs to the building which belonged to the Department of Public Works. This situation prompted the recommendation made both by the Pilotage Authority and the pilots that a modern station be erected for the pilots on the same site. Their request was not granted (Ex. 1463(h)).

It would appear that the real question is whether there should be a pilot station at all.

COMMENTS

It is considered that a pilot station provided with sleeping quarters where the pilots on duty keep a constant watch is an anachronism.

The city of St. John's is not large and there is no reason why a system of despatching the pilots from their homes (which is successfully used in all major Districts) should not be adopted here. If a visual watch must be maintained, it should be carried out from an effective base such as Fort Amherst and by persons other than the pilots who should not have their workload unnecessarily increased by such duties. Nor is there any good reason why sleeping quarters should be made available for the pilots when they can all be reached at their homes by telephone and be despatched from them at short notice.

All that is required is a pilotage office suitable for administering the District and the service.

(2) PILOT VESSEL SERVICE

When the Commission sat in St. John's in 1963 there were two pilot vessels in service: *Canada Pilot No. 1*, built in 1953, and *Canada Pilot No. 2*, built in 1948. They were both wooden vessels sheathed with greenheart, equipped with radiotelephone and licensed by the Canadian Steamship Inspection Service to carry five passengers. They were manned and operated by the Department of Transport (vide p. 525).

They each required a boat crew of two, one of whom was certificated, on duty 24 hours a day at the pilot station. Both vessels were kept ready for service but could not be used at the same time unless one of the two off-duty crew was called out. A total of six were employed as boat's crew, working two at a time, 24 hours on and 48 hours off. A pilot vessel engaged on duty maintained constant radio communication with the pilot station.

These vessels were the responsibility of the local D.O.T. representative, the Examiner for Masters and Mates. He expressed the opinion that they were both old and should be replaced, supporting the Pilot Commissioners and the pilots' recommendation to that effect.

Replacement became necessary when *Canada Pilot No. 2* sank January 1, 1964. The vessel was returning to the wharf through thin ice and sank when the ice pierced the sides. The Sydney pilot vessel, *Canada Pilot No. 3*, was a temporary replacement which proved unsatisfactory. The Department submitted specifications for a new pilot vessel which the pilots found adequate. The wreck of *Canada Pilot No. 2* was sold by the Department for the sum of \$1,000 which was deposited in the District Pilotage Fund.

Before these pilot vessels were taken over by the Department of Transport they belonged to the Pilotage Authority, who transferred them to the Crown for \$1 each. At the same time, the outstanding pilot vessel accounts, including a loan from the Government of Newfoundland, were assumed by the Department of Transport.

A new pilot vessel, also named *Canada Pilot No. 2*, was built at the C.N. Dockyard at St. John's and entered service on completion in July, 1967. Its principal particulars are length overall 51'4½", beam 13'6", extreme draught 5'9", speed on trials 9.5 knots (Ex. 1463(i)).

The former Sydney pilot vessel is now stationed at St. John's for relief purposes. Both vessels are fitted with FM/AM and VHF/FM radiotelephones and radar. *Canada Pilot No. 1* was declared surplus and turned over to Crown Assets Disposal Corporation for sale in September, 1967.

The personnel now required for manning these pilot vessels number nine, one Supervisor and eight crew. Two are employed at a time on shifts of 24 hours on and 72 hours off (Ex. 1463(i)).

In 1965, the total cost of the pilot vessel service was, in round figures, \$62,000, 34 per cent of which was met by shipping through the \$10 pilot boat charge, and the remaining operational deficit of 66 per cent, \$41,000, was assumed by the Crown as an indirect subsidy to the local pilotage service (vide Part I, p. 679). Operating expenses, not counting the capital expenditure for the new pilot vessel, have increased substantially since then.

The pilot vessels are also used for other purposes. They are required to participate in search and rescue operations when called upon. Occasionally when an emergency occurs, they are used by the pilots to run lines when berthing, although normally a local boat is used for that purpose. They are also used to carry persons to or from vessels that do not enter the harbour—a common occurrence being the transfer of the sick or injured. They also transport coastal pilots (p. 550).

COMMENTS

Every advantage should be taken of the availability of the pilot vessel for employment in the harbour, but at an adequate service rate, provided such use does not interfere with the pilot vessel service. Service rates should

be established by the Department of Transport through the Financial Administration Act. The pilot vessel service is very costly to maintain and every reasonable effort should be made to reduce its operating deficit.

(3) DESPATCHING

Despatching is arranged by the pilots themselves. They are divided into two watches, each working alternately five days on and five days off. When the four pilots on the duty watch are not performing pilotage, they stand by at the pilot station and are expected to remain and sleep there throughout the five-day period.

Shipping agents who require a pilot generally contact the pilot station directly but vessels at sea sometimes send messages to the Department of Transport or to the Harbour Master. These messages are then relayed to the pilots for action.

There is no regulation or publication specifying how much notice must be given for a pilot requirement. Two or three hours' notice is sometimes given, but occasionally, as in the case of vessels unable to give their ETA by radio, there is no notice at all, in which event the pilot leaves the pilot station immediately the vessel is sighted off the harbour entrance. Under present arrangements, only short notice is required for an inward trip since there is always a pilot available at the station, but if pilots are to be despatched from their homes a suitable notice period would have to be fixed.

The present practice is for the pilot who has piloted a ship inward to pilot her outward, unless his services are dispensed with or the outward trip does not occur during his watch period.

COMMENTS

Although the despatching system works satisfactorily and no complaints were received, it is considered an anachronism and an undue imposition on the pilots. It also involves the expense of maintaining a pilot station which could otherwise be dispensed with.

In this day and age it is absurd for pilots to depend on sighting ships visually when modern radio communications are available, and in a harbour like St. John's there is no reason why pilots can not be despatched from their homes. Alternative and more up-to-date means should be employed to communicate visual sightings, e.g., a constant watch maintained at Fort Amherst lighthouse, or a land-based radar, which would prove even more effective since fog would not interfere with it.

There is also no reason why the pilots should be required to handle their own despatching. This should be effected by the District supporting staff under the direction of the Secretary. Here, as in other Districts, advantage should be taken of the constant availability of the pilot vessel crew (p. 248).

(4) WORKLOAD

For lack of specific data, the actual workload of the pilots can be obtained in only a general way from statistics kept for other purposes.

The pilots themselves kept certain records, not to establish their workload but to compute pilotage bills. Hence, the statistical information that may be drawn from them does not show the number of trips, because for the purpose of billing non-exempt ships only arrivals are significant, whether or not a pilot was employed.

The "off-harbour service" consists of making a pilot vessel available to transport persons to or from ships which do not enter the confined waters of the District but remain in the open sea. The only service rendered is transportation which is totally foreign to pilotage except when a coastal pilot is transported, in which case it is not a function of the St. John's Pilotage District. In each instance, however, a St. John's pilot travels on board the pilot vessel, the service is counted as an arrival in pilotage statistics and a half pilotage charge is made, i.e., an inward trip charge.

This is obviously a relic from the past when the pilots were port employees and operated the only reliable, constantly available harbour transportation service. In these circumstances, they were required as occasion demanded to perform such transportation services as operators of the pilot vessels. Now that Department of Transport personnel operate the pilot vessels, a St. John's pilot should not be on board the pilot vessel unless his services have been requested for outport or coastal pilotage, or for other pilotage services.

The irregularity of the situation must have been realized since the pilotage tariff never listed a charge for such a service (p. 556), although it should have been provided for in the harbour tariff. It is reported that during 1960 to 1964 inclusive these off-harbour services accounted for 26, 23, 56, 46 and 12 of the reported pilotage arrivals.

Even in the pilotage statistics the number of arrivals gives an unreliable indication of the pilots' workload since fishing vessels are often piloted in groups of from 2 to 12. Hence, only one pilot is employed for each group or pilotage unit although the record shows that each fishing vessel is counted as an arrival.

Furthermore, a number of ships dispense with the pilot immediately after unberthing or do not employ one for outward trips.

In addition, the aggregate numbers shown in the various sources of information regarding the same item do not agree (pp. 534 & ff.). In its first annual report after taking over St. John's Harbour in 1965, the National Harbours Board refrained from making a comparison with the previous Port Authority's statistics by saying (Ex. 479):

"Due to the dissimilarity of records prior to 1965, it is difficult to establish with any degree of accuracy comparative statistics for the data collected by the Board during the period January 1—December 31, 1965".

For statistics showing the number of arrivals and the average NRT per ship based on statistics from the National Harbours Board, D.B.S. statistics of vessels of 250 NRT and over and pilotage statistics, reference is made to the table p. 534.

Re the distribution of work throughout the year, two main factors should be considered:

- (a) the number of assignments at any given period;
- (b) the nature of pilotage traffic at that time.

Traffic is very unevenly distributed from month to month. There are two lows: the longest and most significant during the winter months from November to April inclusive with the lowest point in March or April, and a lesser one in mid-summer (vide traffic graphs Appendix A(1)).

The large increases in the other months are mainly due to visits by foreign fishing fleets as shown by the significant drops in the average tonnage of ships corresponding with the peaks in number of vessels. For instance, while in January, 1961, there were 45 ships piloted with an average NRT of 1,698.6 tons per ship, the peak month for that year was September with 181 ships with an average NRT of only 678.6 tons per ship. This fact is self-evident from the graphs (App. B(1)) showing in percentage the variation per month in the number of ships and in average NRT.

This workload is unevenly shared by the pilots because of their division into two watches, a system which they have retained from the distant past when they worked as companies in pilot vessels that had to keep cruising at the seaward limit of the District. The result is that only four pilots attend to all pilotage during their five-day duty watch. Since assignments vary greatly from one period to another, there are wide differences in the yearly aggregate performed by each pilot. For instance, the records show that in 1962 the eight pilots performed 290, 227, 221, 219, 217, 213, 201 and 171 assignments respectively, making a grand total of 1,759. However, it should also be remembered that these figures refer to the number of ships and not to the actual number of assignments which would be lower, since fishing vessels are conducted in groups by one pilot.

The available records contain no details of the time involved in the performance of pilotage duties. Source forms merely identify the type of service rendered and list tonnages. Hence, the only available information is oral evidence which lacks precision. However, judging by the size of the harbour and its short distance from or to the open sea, normal pilotage trips must be of short duration. Unfortunately, the lack of data as to time involved prevents even a rough appraisal of the incidence of longer trips.

According to the testimony received, the breakdown of time involved in the performance of pilotage duties is as follows:

- (a) Travelling time in the pilot vessel between the pilot station and embarking off the harbour entrance varies from thirty minutes,

- under normal conditions, up to three or four hours when the vessel is delayed or when the weather is adverse.
- (b) Inward trips from the time boarded to the completion of berthing normally take about one hour, but in the case of large ships may take from two to three hours by the time the vessel is finally berthed.
 - (c) Movages may take half an hour to two hours from the time the pilot leaves the station until he returns, depending on the traffic conditions in the harbour, the size of the vessels, whether a tug is used, the number of mooring lines, prevailing weather conditions and the location of the berth(s).
 - (d) For outward pilotage, assuming the ship is ready to sail, it takes approximately half an hour from the time the pilot boards the vessel until he disembarks, i.e., if he disembarks outside the harbour and not well inside, as the evidence indicates the practice to be.
 - (e) Travelling time from the seaward boarding area to the pilot station takes from ten to fifteen minutes in the pilot vessel.

One pilot with seven years' experience stated that the greatest number of assignments which he performed in a 24-hour period was seven. This occurred during the "hurricane season" of 1958 or 1959. During the same period, it was said that some of the pilots performed possibly as many as ten assignments, but on the average the maximum number of assignments in a 24-hour period was three, whether they involved outward or inward pilotage or movages. For example, on May 23, 1962, the busiest day of the busiest month for that year, one pilot did three assignments, i.e., two outward pilotages and one inward pilotage. The two outward pilotages together required approximately one hour and a half, and the inward one an hour and a half, a total of three hours altogether.

In addition, the pilots perform other duties both connected and unconnected with pilotage, e.g.,

- (a) When the pilots of the duty watch are on standby at the station they provide agents and ship owners with a shipping information service by reporting on vessel movements in and out of the harbour. It was stated that this is not time consuming and usually amounts to no more than a few telephone calls.
- (b) They arrange for line handling in accordance with long established practice.
- (c) They collect pilotage dues and linesmen's fees.
- (d) They perform coastal pilotage in their off-duty periods, provided their services are not required for in-District pilotage (p. 550).

Line Handling

For over 50 years the pilots, as a group, have been providing a line handling service when requested by the agents. It is not compulsory nor is there any set charge. The usual rates depend on the length of the ship. In 1963, the charge for a ship of 200 to 300 feet was \$20; \$30 for a ship of 300 to 400 feet and so on proportionately.

The pilots supply from two to eight or ten men, depending upon the size of the vessel and the location of her berth.

The pilots hire and pay the linesmen. They live near the waterfront and can be reached by telephone at any time. When the pilots owned and operated the pilot vessels they carried the lines in them but now they hire a private boat for that purpose and use a pilot vessel only in case of emergency.

Since this is a service provided by the pilots as a group, the fees for line handling are collected with the pilotage dues. The Master Pilot pays the linesmen and the boat owner, and shares the remainder of the fees equally among all the pilots.

COMMENTS

It is obvious that in 1962 eight pilots were in excess of the pilotage demand, since the same number now readily handle many more assignments.

Although the few incomplete statistics available show that the demand for pilotage has increased substantially, the present workload could clearly be attended to by a smaller number of pilots. In fact, here as elsewhere, there should be no more pilots on strength than those required during regular peaks of considerable duration. The service should be organized to ensure that the pilots are not engaged in other occupations and that the best advantage is taken of their availability. In addition to instituting the basic reforms that have proved beneficial in other Districts, a detailed study should be made of the nature and demand for pilotage and the service organization amended as necessary.

The Harbour and Pilot Commissioners recommended in their brief, *inter alia*, parity of treatment and remuneration for the St. John's pilots with those of the other main Atlantic Coast Districts.

This would be a reasonable request if duties, responsibilities and working conditions were similar but this is not the case, e.g., pilotage problems in St. John's can not be compared with those in Saint John, N.B., and pilotage trips in St. John's are shorter and less complicated than in Halifax or Sydney. Each District is an individual case and comparisons are likely to be misleading.

Parity of remuneration with other ports has been attained in recent years because more ships are paying pilotage dues at St. John's. This may not be true in future if, as recommended by this Commission, the compulsory payment of dues is abolished and replaced where indicated by

compulsory pilotage based on the safety of navigation (General Recommendations Nos. 22 and 23, Part I, pp. 532 and ff.).

An increase in rates may reduce traffic by making St. John's less competitive as a port for supplies, repairs and refuge.

If the present status of the pilots is retained, their income could be increased by reducing their number.

The first step in that direction would be to abolish the watch system which allows extensive off-duty periods while maintaining an unnecessarily high reserve of pilots who make no practical contribution to pilotage operations. Five days off out of every ten is unreasonable and clearly indicates that the present workload could easily be attended to by a smaller number of pilots following a more realistic routine. Duty-watches have been advantageously replaced in the Halifax and Sydney Districts by despatching the pilots from their homes according to a regular tour de rôle but also allowing them adequate periods of rest and leave. There is no reason why the same system should not be applied in St. John's.

There is no justification for employing a large number of pilots to perform non-pilotage duties that can be undertaken more economically and efficiently by other persons, e.g., off-harbour services, despatching, harbour traffic control, information service, billing and collecting pilotage dues and linesmen's charges.

Coastal and outport pilotage, which is a completely separate service, should not be a factor in determining the number of pilots required for the St. John's District. In the absence of organized coastal pilotage, there is no objection if such services are occasionally rendered by the St. John's pilots, provided they continue to be available when needed in their home port (vide pp. 578-579).

A realistic attitude should also be taken about the comparatively simple problem of piloting and berthing fishing vessels. As experience indicates, there is no reason why a large number of pilots should be kept solely for the purpose of providing one pilot per fishing vessel at any given time because this would mean increasing substantially even the present number of pilots to meet a situation which occurs only a few days per year. When these vessels arrive in large numbers they should be dealt with as exceptional cases.

- (a) If pilots are not available for all these vessels when they arrive, there is no reason why they should not be kept waiting in the boarding area, observing that St. John's can be entered by such small vessels at any time of the day or state of the tide. Any delays would be short and should be expected and accepted under the circumstances.
- (b) They should be piloted in groups as at present to save time and encouraged to accept the practice by a reduced tariff for each vessel so piloted.

- (c) If fishing vessels decide to proceed inward or outward without a pilot, they should be allowed to do so since their shallow draught does not present a navigational hazard in The Narrows.
- (d) To deal with the brief peaks created by the arrival of fishing vessels, relief pilots with licences limited to the pilotage of such vessels might be called on by the Pilotage Authority.

Compulsory pilotage should not be imposed merely as a means to provide revenue or effect traffic control, but only if dictated by public interest and the safety of navigation.

5. PILOTS' REMUNERATION AND TARIFF

According to the Canada Shipping Act, the pilot is a self-employed free entrepreneur whose remuneration consists of the dues he has personally earned by his services. The Pilotage Authority is authorized to make regulations imposing deductions for the maintenance of a Pilot Fund (subsec. 319(I), 1934 C.S.A.) and toward the payment of duly authorized District operating expenses (sec. 328 C.S.A.). Subsec 329(c) does not apply since the provision of pilot vessel service is no longer the responsibility of the pilots. Regulations may also provide a method of collection by making the dues payable to the Pilotage Authority on behalf of the pilots. Therefore, in the absence of regulations the pilotage dues are payable only to the pilot who has earned them and belong to him in their entirety.

However, fixing the amount of pilotage dues is a subject-matter which belongs exclusively to the regulation-making jurisdiction of the Pilotage Authority. The absence of such regulations renders the whole pilotage organization ineffective because the licensed pilot lacks the legal capacity to fix a price for his services and, therefore, any claim he may make for services rendered can not be enforced in law. This is the present legal situation and it will remain so as long as the Pilotage Authority does not fulfill its mandatory duties.

The pilots were never required to pool their earnings by District regulations. The dues, except the surcharge which under the repealed regulations belonged to the District Expense Fund and the pilot boat charges which belonged to the Receiver General of Canada, were the property of the pilot who earned them and had to be paid directly to him unless the Commission Secretary, i.e., the Harbour Master, was otherwise instructed by the pilot concerned.

In fact, the pilots have grouped themselves in a tacit partnership to provide the required pilotage services and to pool their earnings. As seen earlier, they have devised their own rules for the former and adopted a pooling system to share the latter.

Study of St. John's, Nfld., Pilotage District

Except for surcharges and pilot boat charges, pilotage dues have never been used to meet the expenses of the District. The only expenses the pilots incurred out of the pool were the \$5 annual renewal fee for their licence, their \$50 compulsory contribution to the Provident Fund and expenses for travelling, charts and books, advertising and, on one occasion, the purchase of a Hallicrafter radio. They found it advisable to advertise their service and the port facilities (availability of bunkers, supplies, repair services) in shipping periodicals such as the *British Nautical Magazine* and Swedish journals. These expenditures are not reflected in the District financial report and no figures were given by the pilots. Except for the purchase of the radio which is a non-recurring expense, the other expenditures are minimal, e.g., travelling expenses between the pilot station and harbour berths.

The following table indicates for the years 1965, 1966 and 1967 the pilots remuneration from different concepts (Part II, pp. 132 and ff.) The *Aggregate Pilotage Earnings and Pilot's Share of the Cost of District* do not include the cost of the pilot vessel service either to shipping or to the Department of Transport. The table does not cover any year prior to 1965, since at that time pilotage operations were not segregated from those of the port and available reports show wide discrepancies. For information regarding the period 1961-1965, reference is made to the study made by the Commission's accounting consultants appearing as Appendix IX to Part I, pp. 645 and ff.

	1965	1966	1967
Pilots on Strength.....	8	8	8
Aggregate Pilotage Earnings (excluding pilot boat charges).....	\$84,333.91	\$106,321.68	\$109,975.91
Pilot's share of cost of			
District (not including cost of pilot vessel service).....	10,541.74	13,290.21	13,746.99
Pilots' Pool*.....	81,674.13	99,896.76	102,778.90
Pilot's share in pool†.....	10,209.27	12,487.10	12,847.33
Amounts paid by Pilotage Authority on pilot's behalf out of its Expense Fund.			
Authority's share to Provident Fund....	50.00	50.00	50.00
Workmen's Compensation Premium....	159.75	134.59	162.50
Pilot's gross remuneration.....	10,419.02	12,671.69	13,059.83
Pilot's "take home pay"‡.....	10,154.27	12,432.10	12,792.33

*Pilots' Pool consists of the aggregate pilotage earnings collected, less the surcharge which belongs to the Pilotage Authority's own expense fund.

†Pilot's share in the pool corresponds to the actual share of each pilot except for the year 1965 when only seven pilots were fully available; one pilot who retired was not immediately replaced.

‡Pilot's "take-home pay" is the pilot's share in the pool less \$50 for his share of the \$100 contribution to the Provident Fund and less his \$5 annual licence fee; it is prior to Income Tax deduction.

For the years 1958 to 1964, the pilot's individual remuneration is reported to have been as follows (Ex. 243):

Year	No. of Pilots	Gross Remuneration	Net Remuneration
1958.....	10	\$ 7,821.43	\$ 7,766.43
1959.....	10	8,350.00	8,295.00
1960.....	10	7,802.25	7,747.25
1961.....	9	7,286.07	7,231.07
1962.....	8	8,590.83	8,535.83
1963.....	8	8,142.42	8,087.42
1964.....	8	9,189.38	9,134.38

However, the foregoing figures do not present all the revenue the pilots derive from pilotage or related services. As seen earlier, they provide linesmen's services when required and share the profits equally but do not include them in any official reports. In addition, they perform coastal and outport pilotage but the ensuing earnings are not entered in the District revenue and are not shown on any financial report.

Each year since 1958 the Pilotage Authority has effected at source Income Tax deductions from the pilots' pilotage earnings (excluding linesman service and coastal pilotage earnings) as if the pilots were its employees. The Income Tax authorities now consider the trust accounts (Provident Fund) a registered Pension Plan.

Since the pilots were considered self-employed, the most recent District By-law did not provide for sick benefits with pay, half pay or without remuneration as is customary when pooling is in effect. In case of injury caused by accident while on duty the pilots are covered by Workmen's Compensation legislation. However, through a private agreement between the pilots, absences due to other injuries or sickness are ignored and the pilot draws his share of the pool notwithstanding his absence.

It was stated it would be extremely difficult to establish a welfare plan or pension plan because of the small number of pilots and the disparity in their ages.

Offers to Pilots to Become "Prevailing Rate Employees"

The Department of Transport made the St. John's pilots two offers to employ them under the Prevailing Rate Employees Regulations, and several discussions resulted. The main problems were the basis for remuneration, benefits and job evaluation.

In early 1961, a salary of \$600 per month, increased to \$660 per month in May, 1963, was offered (plus pension and other fringe benefits) but was not accepted.

It was stated that the Department was not seeking to place the pilots under the Prevailing Rate Employees Regulations but rather was informing them of the possibilities available to them if they wished to accept. These discussions were related to studies and negotiations before the proclamation of Part VI C.S.A. in Newfoundland (Ex. 1365).

COMMENTS

In their brief the pilots compared their remuneration with the salary received by Masters but the comparison is not valid since the functions, duties and responsibilities are dissimilar. Here, as in other Districts, the criterion is that the salary or target income (depending upon the mode of remuneration adopted) together with fringe benefits should be sufficient to retain the pilots and attract qualified candidates.

For further comments, reference is made to Part I, C.6 and to the Commission's Comments on the status and remuneration of pilots as Crown employees pp. 210-213.

Workmen's Compensation

In an effort to provide social benefits for their pilots, the St. John's Harbour Pilotage Commission, after lengthy negotiations made necessary by their ambiguous status (Part I, p. 82), obtained Workmen's Compensation coverage commencing December 9, 1955 (Ex. 251). For purposes of Workmen's Compensation, the pilots are considered employees of their Pilotage Authority and the full assessment is paid by the Commission out of the Commission's Expense Fund.

The "industry" was described as "Pilotage of ships, including the operation of a pilot boat in and around the waters adjacent to St. John's and all work incidental thereto". A pertinent question here is whether the pilots are covered while performing coastal and outport pilotage.

The records show that compensation was paid for three accidents in recent years. The first occurred Nov. 30, 1961, when a pilot fell against the rail on the forward part of the pilot vessel after disembarking from a ship during rough weather. The second was on Dec. 14, 1961, when a pilot had both feet and ankles injured when climbing the pilot ladder as he boarded a trawler. The pilot vessel rose on a swell and crushed both his feet against the side of the ship. The third was in Feb., 1962, when a pilot fell into the pilot vessel from the side of the ship he was boarding.

Tariff

The Commission has been informed that the pilotage dues currently charged (except for the surcharge which was unofficially increased) are those detailed in the 1957 By-law amendment (sanctioned May 15, 1957, by P.C. 1957-690) and repealed as of Dec. 31, 1964.

The tariff structure is based on a pilotage service integrated with the port organization and with the Authority and the pilots maintaining separate Funds, a system which is not permissible under Part VI C.S.A. The tariff provides for three distinct types of pilotage dues:

- (a) dues that are the remuneration of the pilots and must be paid to them or on their behalf;
- (b) dues that belong to the Pilotage Authority and form part of its operating Expense Fund;
- (c) dues that belong to the Receiver General of Canada, i.e., charges for pilot vessel service provided by the Department of Transport.

The various rates provided are:

- (a) *voyage rate* composed of:
 - (i) a basic rate computed on net tonnage;
 - (ii) an additional charge for disabled ships towed in or out;
 - (iii) a mooring charge for using the trot system;
 - (iv) the surcharge;
 - (v) a 50 per cent reduction in respect of Canadian vessels engaged in fishing or transporting passengers or goods between places in Newfoundland and not carrying goods loaded at, or destined for, a place outside Newfoundland.
- (b) *movage rates* with:
 - (i) a basic rate computed on net tonnage;
 - (ii) an additional charge for the trot system;
 - (iii) the surcharge.
- (c) *special services rates*:
 - (i) trial trips and compass adjusting in the form of a flat rate;
 - (ii) services not otherwise specified in the form of an hourly charge;
 - (iii) the surcharge in both cases.
- (d) *detention*:
 - (i) a charge per hour from the first hour;
 - (ii) the surcharge.
- (e) *pilot boat charge*:
 - (i) a \$10 flat rate (without surcharge) each time the pilot vessel is used.

Observing that the last remnants of the trot system were removed from the harbour bottom in 1963, the special rates for its use are no longer applicable.

In addition, although it was not provided for in the tariff, half a pilotage voyage charge is made when the pilot vessel is used for off-harbour service (p. 546). This is unjustified since no pilotage services are being provided. The fact that the pilot vessel is used does not make such transportation a pilotage service entitling the pilots to receive remuneration.

It is not known when this half pilotage charge was first made but it has not been provided for in any pilotage tariff since 1946 at least. It appears that it had been levied for several years. In an effort to rationalize the practice, the opinion was expressed that it was necessary to engage a pilot for the proper handling of vessels arriving off the entrance of the harbour within the District limits both for their safety and for the protection of persons disembarking. This argument is not valid, first, because the compulsory payment system can not apply since it is neither a pilotage voyage nor a moorage and, second, there is already a charge provided in the By-law which is the "per hour rate" for pilotage services which are not otherwise provided for in the tariff but only if a pilot has specifically been hired by the Master for that purpose.

According to long established practice, the voyage rate is in the form of a scale based on tonnage which provide that small vessels pay a proportionally higher rate than large ones. The present scale rises from a minimum of \$8.40 by \$1.40 per additional 50 tons from 100 to 800 and by 100 tons thereafter with no maximum.

It is considered that there is no reason to discriminate against small vessels and that there are no special factors peculiar to the harbour of St. John's to warrant a proportionally lower charge for large vessels (vide also pp. 232-233). The pilotage voyage rate should be based on a fixed price per ton of maximum gross tonnage with a minimum charge to prevent wasting the pilots' time on small vessels which should be exempt. If, however, vessels still employ a pilot, they should pay an adequate minimum charge.

The former tariff provided special charges in the case of one type of navigation unit, the *disabled vessel in tow*, a fairly common occurrence on account of the port's location near the Atlantic shipping lanes and its proximity to the fishing grounds. The rates provided were full rate for the towing vessel and one and a half rates for the disabled vessel, plus \$15 per additional tug employed to assist. The tariff, however, was deficient because it did not provide for other navigational units (for definition of the term, vide Part I, p. 475) such as a barge or scow being towed, or a vessel not disabled but towed as a dead ship.

In 1957, a detention charge was added in two cases when a pilot is kept on board for reasons beyond the ship's control: stress of weather or non-availability of a berth. Detention was grouped in the tariff provision with services bearing no relationship to detention. The principles for fixing remuneration for services rendered do not apply to the indemnities, including detention (Part I, pp. 201-203). The remuneration for services rendered,

if based on time involved, is to apply from the first minute, which should not be the case with indemnities. The detention charge is liquidated damages for a breach of a pilotage contract and, therefore, the detention provision should apply only when a definite breach of contract has occurred. To establish such a breach, the inherent difficulty of establishing in advance an exact hour of arrival or departure must be taken into consideration. Therefore, a reasonable delay should be allowed and the indemnity should never be applied when the cause of the delay is beyond the ship's control, such as adverse weather or unavailability of a berth (vide also Part I, p. 490; Part II, p. 157).

In practice, according to the evidence and despite the fact that it was not provided for in the tariff, a detention charge is also applied in an altogether different case, i.e., when a pilot has to wait because a ship's departure has been delayed. According to information available, a detention charge is rarely made, e.g., for the year 1959/60 it was applied only once and amounted to \$16.88 (Ex. 238).

The moorage charge is based on tonnage: \$10 if the ship is below 1,000 tons and \$20 if more than 1,000 tons.

For lack of reliable, detailed statistics, it is impossible to establish the incidence of any of these tariff items, except the surcharge on the aggregate pilotage revenues of the District. The District financial reports segregate the surcharge, as they should because its proceeds belong to a separate fund. All the other items, including the half charge for off-harbour services, are entered under two bookkeeping items *Scale fees collected* and *Harbour shifts*. It would appear that the latter comprise only the moorage charges while all the other rate items are included in the former.

For the years 1966 and 1967, the scale fees, shift fees and surcharge amounted respectively to 83.9 per cent, 9.6 per cent and 6.5 per cent in 1966, and in 1967 to 84 per cent, 9.9 per cent and 6.1 per cent of the total pilotage dues received.

6. FINANCIAL ADMINISTRATION

The financial administration of the District is conducted by the Pilot Commissioners as if Part VI C.S.A. had never been made applicable to Newfoundland, and the former structure, practices and procedure have been continued as if the repealed St. John's pilotage legislation were still in force. They continued to maintain a separate fund for expenditures with which they dealt freely as formerly authorized p. 527, e.g., they voted themselves the remuneration which they were authorized to receive under the repealed Act but failed to have the expenditure approved under sec. 328 C.S.A. (Ex. 1463 (k)).

Notwithstanding subsec. 2(2) of the former By-law, the dues were never, and are still not, collected by the Secretary. This responsibility is attended to by the two Master Pilots, except for pilot boat charges which

are collected by the Department of Transport billing the agents directly. This is an unnecessary duplication of effort.

The Master Pilots calculate the dues (including the surcharge) for each service rendered, partly from the source form made by the pilot concerned and countersigned by the Master, partly from the pilot vessel log book for detention. The source form (entitled *Pilotage Certificate*) was designed for the rates which existed when it was first introduced. The form was not amended when new items were added to the tariff, with the result that incomplete information is provided. The source form contains no information about time. Hence, the St. John's statistics do not show how long the pilots spent on board vessels and their workload can not be appraised without these essential data.

The Master Pilots then make out the invoice on forms supplied by the Authority and make collections, generally by calling personally at the agents. At the same time they collect any other money owed the pilots, e.g., coastal and outport fees and the linesmen's charges.

Twice monthly the Master Pilots hand over to the Secretary the pilotage dues they have collected (excluding coastal and outport fees) together with the supporting documents. The Secretary, after checking the source forms, invoices and his own records as Harbour Master, deposits the receipts in a special bank account in the name of the Pilotage Authority. The pilots' shares are then determined. The Secretary pays into the Pilotage Authority's Expense Fund the amount yielded by the surcharge, divides the remainder of the bank account equally among the eight pilots and after withholding their income tax deductions, issues each pilot a cheque in the net amount of his share. For his part, the Master Pilot divides equally among all the pilots the profits accruing from the linesmen's service after meeting expenses.

Financing and Bookkeeping

The method of meeting the District's administrative and operating expenses is inherited from the first pilotage legislation in Newfoundland, the 1833 Act (pp. 525-526) which was the most appropriate for that period. Later, the control and surveillance of pilotage service became an accessory function of the Harbour Authority which had to have revenues and assets of its own. At present, three types of Fund are kept, all segregated:

- (a) what may be called the *Pilotage Fund* in which all the pilotage dues are deposited;
- (b) the District *Expense Fund*, also called the Maintenance Fund, which belongs to the Pilotage Authority and serves for defraying District operating expenses;
- (c) The *Provident Fund* also called the Trust Accounts. (vide p. 562).

The accounting procedure takes the simplest possible form: separate bank accounts with all expenditures made by cheque. In this report (Ex. 250) dated March 11, 1966, the Department of Transport Auditor made the following appraisal of the system:

"(b) Insufficient financial records are maintained. The present state of accounting is that cheques are issued to meet payrolls, and monies are deposited to the respective bank accounts. No formal bookkeeping records are maintained to reflect financial transactions and balances. The necessary summaries were compiled at the time of audit, for the purpose of completing financial statements."

The Auditor recommended that:

"(b) the financial documentation be placed in qualified hands for financial control, to ensure protection of all persons involved, the pilots, the persons acting on the Authority and the Secretary, Capt. H. W. Stone."

This recommendation was followed. The bookkeeping has been supervised since then by an accountant and each year an audited financial statement is made.

The *Pilotage Fund* is a separate bank account into which all pilotage dues collected by or on behalf of the Pilotage Authority are deposited. Despite the governing By-law provision, pilot boat charges do not form part of this fund because, as seen earlier, the Department of Transport duplicates the procedure (and contrary to the practice followed in the New Westminster District where the situation is the same) assumes responsibility for collecting them. In the following comparative table the revenue yielded from this source has been added in order to give a complete picture.

All the pilotage dues in this fund belong to the pilots and are paid either to them or on their behalf. The cost to the pilots of the pilot vessel is the amount of boat charges collected; hence, the receipts and expenditure entries for this item are identical. Following local practice, the cost to the pilots of the administration of the District is the amount yielded by the surcharge (hence, the expenditure item under this heading).

This fund is supposed to be expended fully twice a month, with neither balance nor reserve kept, since none is required. In fact, a small balance is always carried over.

The financial statements reflect the factual situation by showing the three funds as a single operation where the distinction between the three funds, especially the Pilotage Fund and the Expense Fund, is not strictly respected. For better comprehension comparative separate tables were made, one for each fund, on the information provided in the financial statements for the years 1965, 1966 and 1967.

The first two tables show the operation of the *Pilotage Fund* and the *Expense Fund* on the basis of receipts and disbursements. The third table shows the extent of the aggregate monetary assets in both funds as of December 31 of each year (a comparative statement for the *Provident Fund* is on p. 563).

Study of St. John's, Nfld., Pilotage District

	Pilotage Fund (Receipts and Disbursements)		
	1965	1966	1967
Receipts			
Pilotage dues:			
Voyages (scale fees).....	\$ 75,461.13	\$ 89,351.76	\$ 92,239.90
Movages (shift fees).....	6,213.00	10,545.00	10,539.00
Surcharge.....	2,659.78	6,424.92	7,197.01
Pilot boat charges.....	21,890.00	22,000.00	22,190.00
	\$106,223.91	\$128,321.68	\$132,165.91
Disbursements			
Administration (surcharge).....	\$ 2,659.78	\$ 6,424.92	\$ 7,197.01
Pilot vessel service.....	21,890.00	22,000.00	22,190.00
Pilots' contribution to Provident Fund....	400.00	400.00	400.00
Pilots' licences.....	45.00	40.00	nil
Pilots' remuneration.....	81,403.88	99,457.12	102,378.64
	\$106,398.66	\$128,322.04	\$132,165.65
Surplus or deficit.....	-\$174.75	-\$0.36	\$0.26

This fund is, or should be, expended in the following way and order:

- (a) The surcharge, which represents the pilots' contribution out of pilotage dues toward District expenses is paid to the Pilotage Authority's Expense Fund. It is a final expenditure.
- (b) The aggregate amount of the pilot boat charges collected, if collected by the District Authority, is paid to the Receiver General of Canada as the cost to the pilots of the pilot vessel service provided for them by the Department of Transport.
- (c) The \$5 annual licence renewal fee each pilot had to pay is a further contribution by the pilots to the Expense Fund. It was apparently discontinued in 1967.
- (d) The \$50 that each pilot has to pay once a year into his own trust account is his share of the \$100 contribution to his retirement fund.
- (e) The remainder is paid over to the pilots who, in accordance with their private arrangements, pool it with their other revenues derived from linesmen's services and outport and coastal pilotage.

The *Expense Fund* is a trust fund in the hands of the Pilotage Authority to finance District administration. It is a relic of the time when the Pilotage Authority was also the Harbour Authority, administration was handled by a common staff and costs could not be segregated. This is the problem with

which the auditors were faced in 1964 when they had to segregate the pilotage assets from those of the port in arranging for the National Harbours Board to take over the administration of the port.

Prior to 1965, this fund was the Harbour Authority's Fund into which the present receipts of the Expense Fund were paid, i.e., the pilotage surcharge, the pilots' annual licence renewal fees and fines. It was stated that this pilotage contribution was never sufficient to meet the expense of operating the service (the most important item was the cost of pilot vessel service) and the resultant deficit was met out of harbour revenues.

After the pilotage services was separate from port administration, the same system was retained and the former pilotage contribution to the Harbour Fund became the Pilotage Authority's Expense Fund, which the Pilotage Authority considers it may spend as required without authorization. Such a system is not permissible under the present governing legislation, i.e., sec. 328 C.S.A. (Part I, pp. 100 to 116).

The details of this Expense Fund for 1965, 1966 and 1967 are:

	Expense Fund (Receipts and Disbursements)		
	1965	1966	1967
Receipts			
Surcharge.....	\$ 2,659.78	\$ 6,424.92	\$ 7,197.01
Licence fees.....	45.00	40.00	nil
Interest.....	164.96	102.99	257.50
Miscellaneous.....	nil	26.00	nil
	<u>\$ 2,869.74</u>	<u>\$ 6,593.91</u>	<u>\$ 7,454.51</u>
Disbursements			
Pilot Commissioners' remuneration.....	\$ 1,200.00	\$ 1,100.00	\$ 1,200.00
Secretary's salary.....	437.50	750.00	750.00
Casual wages.....	275.00	10.00	75.00
Workmen's Compensation.....	1,278.00	1,076.75	1,300.00
Authority's share to Provident Fund.....	400.00	400.00	400.00
Pilot house: supplies.....	75.13	nil	nil
heating.....	169.01	nil	nil
Repairs and maintenance.....	nil	74.83	nil
Depreciation.....	nil	59.16	47.32
Office expenses.....	163.18	65.77	295.25
Tel. & tel.....	69.63	34.26	24.95
Travelling.....	17.90	nil	75.00
Advertisement.....	103.65	nil	nil
Bank charges.....	19.75	16.70	23.26
Audit & accounting.....	nil	350.00	350.00
Miscellaneous.....	20.75	83.58	159.81
	<u>\$ 4,229.50</u>	<u>\$ 4,021.05</u>	<u>\$ 4,700.59</u>
Surplus or deficit.....	-\$1,359.76	\$ 2,572.86	\$ 2,753.92

	Money on Hand December 31 (excluding Provident Fund and Fixed Assets)		
	1965	1966	1967
Petty cash.....	\$ 3.84	\$ 3.55	\$ 6.29
Pilots' payroll bank account.....	649.21	167.56	76.16
Maintenance bank account.....	1,083.29	1,801.25	3,246.41
Savings accounts.....	3,399.44	3,502.43	3,759.93
Investments.....	nil	2,000.00	3,000.00
	\$ 5,135.78	\$ 7,474.79	\$10,088.79

This fund, which is used exclusively to meet the expenses of operating the District, appears to be used judiciously. However, as pointed out to the Pilotage Authority in 1966 by the Department of Transport Auditor, the expenses are illegally incurred since the procedural requirements of Part VI C.S.A. are not being observed. The Auditor recommended that the proper authority be obtained but apparently no action was taken on his recommendation.

COMMENTS

Accumulating a surplus and building a reserve (as is now being done) is not permissible under the present statute. Furthermore, such action is not warranted in St. John's since, with D.O.T. providing the pilot vessel service and the pilot station, there are no longer any substantial expenditures to be financed in advance. This practice is an unauthorized accumulation of public funds and should be discontinued.

If the surcharge is retained, it should be adjusted from year to year so that the proceeds simply meet current anticipated expenditures, or anticipated capital expenditures, if any.

The surcharge should be abolished until the accumulated reserve is exhausted, or until a new financing system is introduced as a result of reorganizing the pilotage administration under the recommended new Pilotage Act.

Until sec. 328 C.S.A. is abolished or modified, the Pilotage Authority is bound by its provisions and must seek the necessary approval for its expenditures from the Governor in Council.

7. PENSION FUND

The *Provident Fund*, as explained earlier, is a type of savings fund to provide the pilots with a lump sum of money at the time of their retirement.

It was first established in 1940 when it replaced the financial assistance provisions contained in the legislation which up to then had authorized the Pilotage Authority to provide what financial assistance was deemed

necessary for incapacitated pilots out of the surplus of the Authority's fund, then called the Pilots' Fund (p. 529). In 1940, the Trust Account system was adopted (vide Part I, C.10, Gen. Recommendation No. 39 and p. 765). A Trust account was opened in the name of the Pilotage Authority in trust for each pilot. The accumulated money in the Pilots' Fund was divided equally among the Trust Accounts, each pilot being credited with \$300. Thereafter, the annual contribution to each Trust Account was fixed at \$100 per year, \$50 being contributed by the pilot and \$50 by the Pilotage Authority out of its Expense Fund. The pilot, if he so desires, may add voluntary contributions to it. The accumulated money, plus the accrued interest at bank rates, forms the retirement fund of each pilot. Payment is effected by merely handing over to the ex-pilot, or his estate, control over the bank account concerned. In the event of premature retirement for causes other than physical unfitness, only the pilot's own contributions are returned to him. When the Canada Pension Plan was introduced the Pilotage Authority felt that it met the same aims as their Provident Fund which they then decided to discontinue. In fact, the full amount appearing to each pilot's credit was paid to each of them, thus bringing each Trust Account balance to nil. On June 14, 1966, a directive was received from the Director of Taxation advising that for the purposes of the Canada Pension Plan the pilots could not be considered as employees of the Pilotage Authority and, therefore, that the full contribution should come from the pilots' earnings. The full contribution to the Canada Pension plan was then deducted from the pilots' earnings, and the Pilotage Authority reinstated the Provident Fund on the same basis as before. The first deposit was made November 30, 1966, at the Eastern & Chartered Trust Company Savings Department, the St. John's Pilotage Authority depositing \$50 for each pilot per year and each pilot contributing the same amount (Ex. 1463(q)).

The following table indicates the situation for the years 1965, 1966, and 1967:

	Provident Fund (Assets and Revenues)		
	1965	1966	1967
Assets and Revenues			
On hand January 1.....	\$11,761.45	\$12,922.77	\$ 800.00
Receipts:			
Pilots' share (one half).....	400.00	400.00	400.00
Authority's share (one half).....	400.00	400.00	400.00
Interest.....	361.32	nil	31.60
	12,922.77	13,722.77	1,631.60
Expenditures.....	nil	12,922.77	nil
Money on hand December 31.....	\$12,922.77	\$ 800.00	\$ 1,631.60

The Provident Fund was never intended to be a pension scheme. The pilots find the system unsatisfactory and would like to be provided with a true pension plan but refuse to assume the full cost of it themselves. The attempt to establish a satisfactory pension plan appears to have been one of the principal administrative problems of the St. John's Harbour and Pilotage Commission.

In 1956, the Department of Transport made a proposal which the pilots found unsatisfactory because they were expected to bear the whole financial burden. The subject was dropped when the St. John's Commission was unable to raise the money required to set up a pension plan based on a sharing of costs by the pilots and the Commission.

This Commission's views on the matter are expressed in Part I, C.10 and General Recommendation No. 39, to which reference is made.

Chapter D

RECOMMENDATIONS

SPECIFIC RECOMMENDATIONS AFFECTING THE ST. JOHN'S, NFLD., PILOTAGE DISTRICT

PREAMBLE

The St. John's pilots provide excellent service and are exceptionally well qualified.

The main problem in this District is adjusting the administrative organization of both the District and the service to the governing legislation and to current needs. Specific recommendations were made in the form of comments and remarks as the subject-matters concerned were studied. They have not been listed here to avoid repetition and also because they should be read in their context for better comprehension.

RECOMMENDATION No. 1

Appropriate Measures to Be Taken Immediately to Regularize the Pilotage Service in the Pilotage District of St. John's, Nfld.

As seen on p. 524, the District and its pilotage service have been operated without any legal authority for the last four years because the District has lacked local regulations since December 31, 1964, without which it can not function legally.

From the explanations received (p. 524), it is clear that this deplorable state of affairs is not attributable to bad faith but to a profound misconception by all concerned of the public character of a Pilotage District and of the rôle played by District regulations in the scheme of organization provided in Part VI C.S.A.

If this were not the case, other steps should have been taken to correct the situation. If the stage had been reached where the two Authorities involved in the regulation-making process had reached an *impasse*, either the Pilot Commissioners should have resigned because they had been placed in the untenable position of not being able to discharge their mandatory responsibilities, or the Governor in Council should have taken the only coercive steps permitted him under Part VI C.S.A., i.e., either abrogate the District

or annul the appointment of the Pilot Commissioners and appoint new members, or, as an interim measure, appoint the Minister of Transport Pilotage Authority in order to draw up the required regulations.

If the Commission's General Recommendation No. 19 is implemented (Part I, p. 515), a problem of this nature can be solved readily since the proposed Central Authority will have the power to enact the essential regulations *proprio motu*. Any interested party, including the Pilotage Authority, will then be entitled to register opposition to such regulations, in which case a public hearing will have to be held. An unsuccessful opposing party will have a right of appeal to the proposed Pilotage Regulations Appeal Board.

For the time being, if complete agreement has not been reached between all concerned on some of the provisions of a complete set of regulations, then, at least as an interim measure, temporary provisions should be enacted forthwith by the Pilotage Authority to reflect and legitimize the rates being charged and the practice now being followed.

RECOMMENDATION No. 2

Pilotage in the District of St. John's to Be Classified a Public Service

It is in the public interest that an adequate and efficient pilotage service be available at St. John's but under the prevailing circumstances and conditions such a service should not be classified an essential public service.

St. John's, as a port, is not dependent upon one or a few local industries but is the main port in Newfoundland and provides for the essential needs of the whole province and of shipping in general.

Although its harbour is excellent with only minor navigational difficulties, a Master unfamiliar with it would hesitate, except under favourable conditions, to negotiate the exposed entrance and the restricted channel of The Narrows and manoeuvre in its confined waters. Competent, qualified pilots provide shipping with an appreciable service which also helps the port authorities to expedite vessel movements. Otherwise, vessels, especially the larger ones, are liable to suffer prolonged delays during fog, adverse weather or periods of congested traffic.

The physical limitations of The Narrows and of the harbour emphasize the need for well qualified pilots to conduct the larger ships that are likely to replace those now calling at St. John's.

On the other hand, local navigational knowledge can readily be acquired. Regular traders do not employ a pilot, as is clearly shown by the high percentage of non-exempt vessels dispensing with pilotage services with no adverse effect on the safety of navigation.

Chapter E

APPENDICES

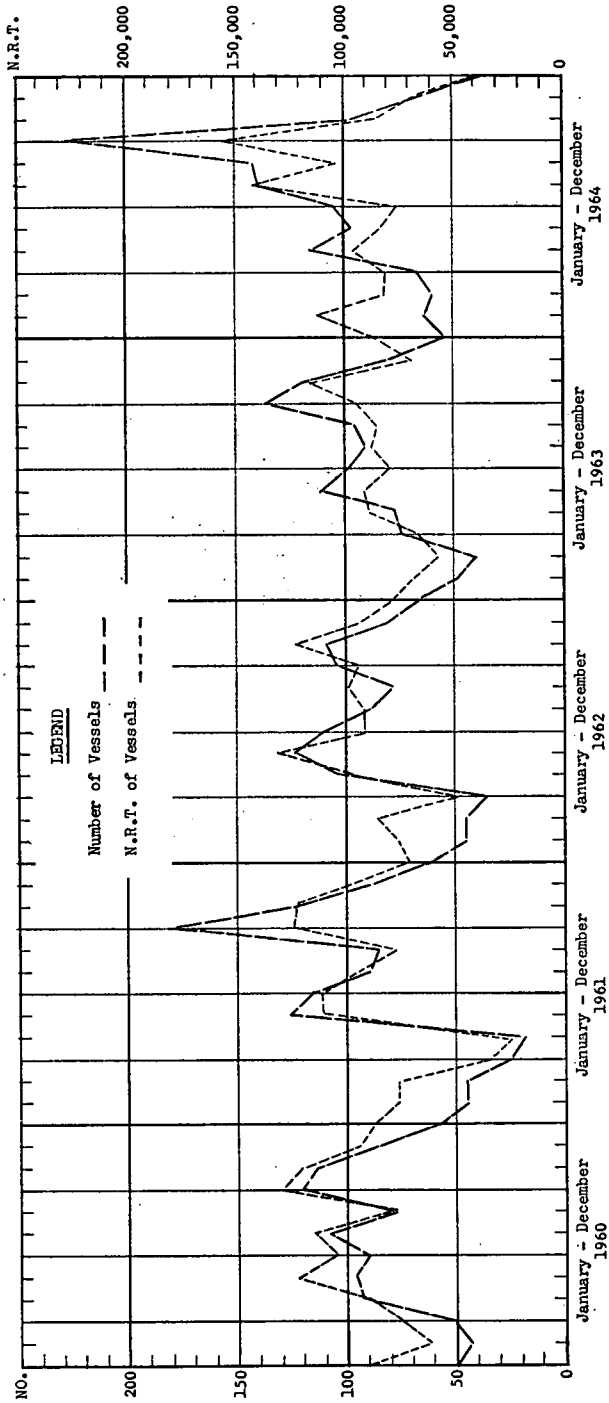
APPENDIX A

- (1) *Graph*—Monthly Number of Vessels and N.R.T. Entering St. John's, Nfld., during the Years 1960-1964 Inclusive.
- (2) *Table*—1960-1964 Figures on Which the Above Graph is Based, Giving in Addition the Annual Total and Monthly Average for Both the Number of Vessels and N.R.T. of Vessels Entering St. John's Nfld., during the Five-year Period, together with Their Source of Information.

APPENDIX B

- (1) *Graph*—Per Cent Increase or Decrease in Volume of Traffic Entering St. John's, Nfld., Monthly for Each Year during 1960-1964.
- (2) *Table*—1960-1964 Figures on Which the Above Graph is Based, Giving the Actual Number of Vessels Entering Each Month, the Annual Total Number of Vessels Entering Each Year, the Per Cent Increase or Decrease Each Month, the Average N.R.T. per Vessel Entering Each Month, the Annual Average N.R.T. per Vessel Each Year, the Per Cent Increase or Decrease each Month, together with the Source of Information for Both Tables.

Appendix A (1)
 MONTHLY NUMBER OF VESSELS AND N.R.T. ENTERING ST. JOHN'S, NFLD.,
 During the Years 1960-1964 Inclusive



Appendix A (2)

MONTHLY NUMBER OF VESSELS ENTERING ST. JOHN'S, NFLD.,
During the Five-Year Period 1960-1964

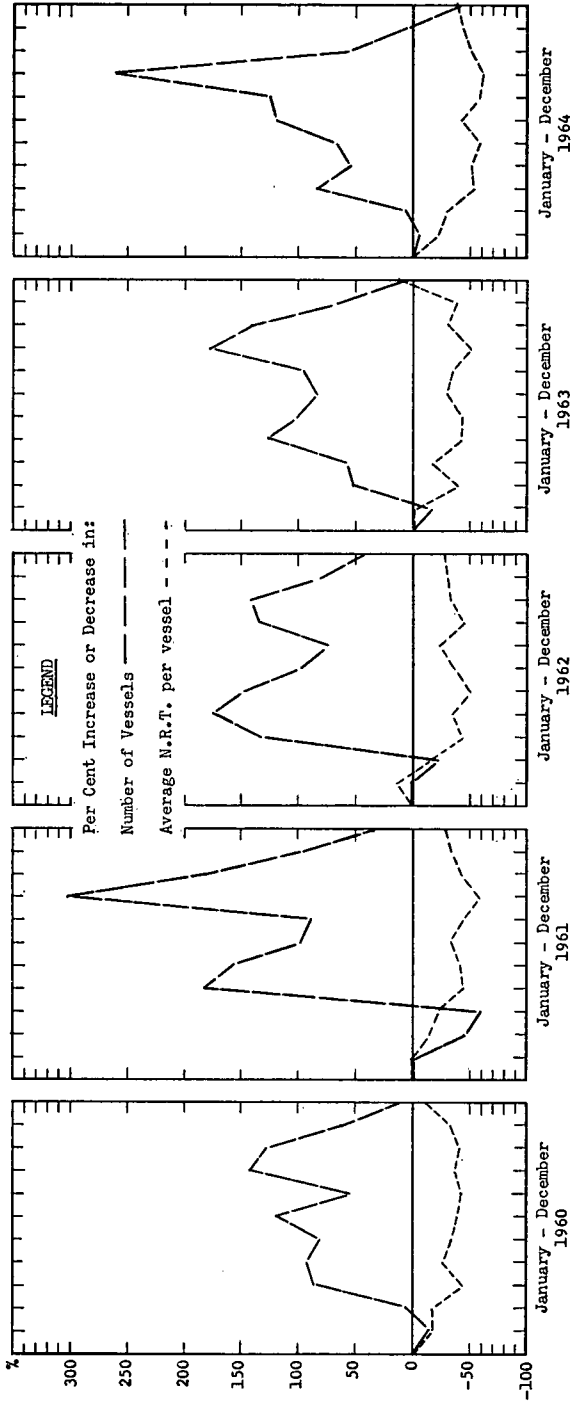
Month	1960	1961	1962	1963	1964
January.....	50	45	45	49	63
February.....	43	45	45	40	59
March.....	52	24	35	74	66
April.....	93	18	104	77	115
May.....	96	126	123	111	97
June.....	90	115	111	98	105
July.....	109	89	89	90	138
August.....	77	85	78	96	142
September.....	121	181	105	136	227
October.....	114	126	109	118	98
November.....	81	89	81	81	67
December.....	56	60	65	54	37
Total.....	982	1,003	990	1,024	1,214
Monthly Average.....	81.8	83.6	82.5	85.3	101.2

N.R.T. OF VESSELS ENTERING ST. JOHN'S, NFLD.,
During the Five-Year Period 1960-1964

Month	1960	1961	1962	1963	1964
January.....	88,972	76,439	75,864	69,065	111,932
February.....	61,982	76,295	84,725	56,368	81,849
March.....	75,159	33,657	49,215	62,193	81,367
April.....	89,666	22,750	95,896	87,626	95,663
May.....	122,661	110,620	131,362	91,431	83,812
June.....	104,567	111,845	91,428	79,287	76,340
July.....	116,428	95,988	92,103	87,337	140,505
August.....	77,655	77,343	99,441	85,319	104,422
September.....	130,441	122,832	94,187	93,920	155,199
October.....	120,779	121,714	123,148	114,994	86,249
November.....	94,169	98,139	94,172	69,118	65,786
December.....	86,776	71,743	77,876	84,663	39,418
Total.....	1,169,255	1,019,365	1,109,417	981,321	1,122,542
Monthly Average.....	97,437.9	84,947.1	92,451.4	81,776.8	93,545.2

SOURCE OF INFORMATION: Exhibit 245.

Appendix B (1)
PER CENT INCREASE OR DECREASE IN VOLUME OF TRAFFIC ENTERING ST. JOHN'S, NFLD.,
Monthly for Each Year During 1960-1964



Appendix B (2)
PER CENT INCREASE OR DECREASE IN VOLUME OF TRAFFIC ENTERING ST. JOHN'S, NFLD.,
 Monthly During the Five Year Period 1960-1964

Month	VESSELS									
	1960		1961		1962		1963		1964	
	No.	%	No.	%	No.	%	No.	%	No.	%
January.....	50	0	45	0	45	0	49	0	63	0
February.....	43	-14.0	45	0.0	45	0.0	40	-18.4	59	-6.4
March.....	52	4.0	24	-46.7	35	-22.2	74	51.0	66	4.8
April.....	93	86.0	18	-60.0	104	131.1	77	57.1	115	82.5
May.....	96	92.0	126	180.0	123	173.3	111	126.5	97	54.0
June.....	90	80.0	115	155.6	111	146.7	98	100.0	105	66.7
July.....	109	118.0	89	97.8	89	97.8	90	83.7	138	119.1
August.....	77	54.0	85	88.9	78	73.3	96	95.9	142	125.4
September.....	121	142.0	181	302.2	105	133.3	136	177.6	227	260.3
October.....	114	128.0	126	180.0	109	142.2	118	140.8	98	55.6
November.....	81	62.0	89	97.8	81	80.0	81	65.3	67	6.4
December.....	56	12.0	60	33.3	65	44.4	54	10.2	37	-41.3
Annual Total.....	982		1,003		990		1,024		1,214	

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Month	AVERAGE NET REGISTERED TONNAGE PER VESSEL											
	1960		1961		1962		1963		1964		1964	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
January.....	1,779.4	0	1,698.6	0	1,685.9	0	1,409.5	0	1,776.7	0	1,776.7	0
February.....	1,441.4	-19.0	1,695.4	-0.2	1,882.8	11.7	1,409.2	-0.02	1,387.3	-21.9	1,387.3	-21.9
March.....	1,445.4	-18.8	1,402.4	-17.4	1,406.1	-16.6	840.5	-40.4	1,232.8	-30.6	1,232.8	-30.6
April.....	964.2	-45.8	1,263.9	-25.6	922.1	-45.3	1,138.0	-19.3	831.9	-53.2	831.9	-53.2
May.....	1,277.7	-28.2	877.9	-48.3	1,068.0	-36.7	823.7	-41.6	864.0	-51.4	864.0	-51.4
June.....	1,161.9	-34.7	972.6	-42.7	823.7	-51.1	809.1	-42.6	727.1	-59.1	727.1	-59.1
July.....	1,068.2	-40.0	1,078.5	-36.5	1,034.9	-38.6	970.4	-31.2	1,018.2	-42.7	1,018.2	-42.7
August.....	1,008.5	-43.3	909.9	-46.4	1,274.9	-24.4	888.7	-37.0	735.4	-58.6	735.4	-58.6
September.....	1,078.0	-39.4	678.6	-60.1	897.0	-46.8	690.6	-51.0	683.7	-61.5	683.7	-61.5
October.....	1,059.5	-40.5	966.0	-43.1	1,129.8	-33.0	974.5	-30.9	880.1	-50.5	880.1	-50.5
November.....	1,162.6	-34.7	1,102.7	-35.1	1,162.6	-31.0	853.3	-39.5	981.9	-44.7	981.9	-44.7
December.....	1,549.6	-12.9	1,195.7	-29.6	1,198.1	-28.9	1,567.8	11.2	1,065.4	-40.0	1,065.4	-40.0
Annual Average.....	1,190.7		1,016.3		1,120.6		958.3		924.7		924.7	

SOURCE OF INFORMATION: Exhibit 245.

Section Seven

PILOTAGE IN NEWFOUNDLAND OUTPORTS AND COASTAL AREAS

PREAMBLE

Apart from port pilotage in St. John's, the following pilotage services exist in Newfoundland:

- (a) port pilotage at various ports referred to hereafter as outports;
- (b) coastal pilotage along the northeast coast;
- (c) inland and port pilotage at the mainland harbour of Goose Bay.
(Goose Bay is a special case which will be studied separately in Section Eight.)

A large number of outports have local pilots but except in the three other Newfoundland Pilotage Districts (Botwood, Humber Arm and Port aux Basques) they meet competition from outside pilots. This is usually the case on the northeast coast when a coastal pilot is on board and attends to pilotage at the various ports where the ship calls *en route*.

There has never been legislation governing coastal pilotage. Between 1888 and 1965, a general Newfoundland statute placed pilotage services in outports designated by the Government under public control, but did not integrate these services with port operations as a separate statute had done for St. John's from 1928 to 1964. On January 1, 1965, the Newfoundland pilotage legislation for outports was superseded by Part VI C.S.A., in the same way as the latter became applicable to St. John's.

Subsection I

COASTAL PILOTAGE AND OUTPORTS

1. HISTORICAL BACKGROUND

Before road and railway communications were built, ships were the only adequate means of transportation between the various communities along the Newfoundland coast. Generally, a number of local pilots who exercised their profession without legislative control were available in each port. They made their own charges and conditions and competed as private contractors. This situation still obtains in most of the outports. In 1888, an Act was passed to provide the basis for public control where required in the public interest. This control was extended to the main outports, but they declined in number as shipping traffic decreased as a result of competition from increased land transportation, so much so that now only three outports have their pilotage service publicly regulated, i.e., Botwood, Humber Arm and Port aux Basques.

The first pilotage statute governing Newfoundland outports was adopted in 1888 (51 Vic. c.26). It was entitled "An Act respecting Pilots and Pilotage for Ports in this Island other than St. John's". It was modelled on the 1833 St. John's pilotage statute with the difference that, since the statute was legislation of general application, it left local details to be arranged by regulation.

The provisions of the Act were to apply only to those outports to be designated as *Pilotage Ports* by the Governor in proclamations. The Act provided for a separate Pilotage Authority for each port in the form of a Board composed of three members serving gratuitously. The Pilotage Authority's powers and functions were limited to general control over a free enterprise service, i.e., licensing, surveillance and the arbitration of disputes, regulation-making concerning rates for pilotage and the general conduct of pilots. Offences and breaches of regulations committed by pilots were to be dealt with by the regular courts and an appeal was provided when a penalty exceeding \$12 was imposed.

The Act of 1888 became Chapter 179 of the Consolidated Statutes of Newfoundland, 1916, "Of Outport Pilots and Pilotage", amended in 1930 by 21 Geo. V. c. 17 (Ex. 1462(a)).

The 1916 Act was mainly a consolidation of the 1888 Act. It made the Pilot Commissioners a statutory Court for the determination of all claims for pilotage and salvage of anchors and cables in which a pilot was concerned; procedure, court costs, tariff and means to enforce judgments were to be the same as those used in Magistrates' Courts. However, their judicial jurisdiction still did not extend to offences and breaches of regulations committed by pilots which were to be prosecuted before the regular tribunals of penal jurisdiction. The Act applied to all ships and vessels and made the payment

Study of Pilotage in Newfoundland Outports and Coastal Areas

of dues compulsory. The rates, together with exemptions, were to be fixed by the Pilot Commissioners through regulations which became effective when duly published. The Act provided for absolute statutory exemptions for H.M. ships, vessels belonging to the Royal Yacht Club, coasting and fishing vessels. It recognized the right of unlicensed pilots to pilot in the absence of licensed pilots and to receive payment at official rates.

The outports which were proclaimed *Pilotage Ports* under the foregoing Newfoundland legislation were:

Outport	Date of Proclamation	Effective Date
Fogo.....	July 17, 1888	February 1, 1889
Little Bay.....	September 19, 1888	April 2, 1889
Philleys Island.....	April 24, 1893	November 1, 1893
Lewisporte.....	July 14, 1902	April 1, 1903
Botwoodville (Botwood).....	August 24, 1909	March 1, 1910
Port aux Basques.....	December 13, 1910	July 1, 1911
Humbermouth, later called Bay of Islands, now known as Humber Arm..	August 18, 1923	August 5, 1924
Catalina and Port Union.....	November 20, 1933	November 20, 1933
Bay Bulls.....	January 12, 1943	March 1, 1943

Of these nine Pilotage Ports, only three are now operating as Pilotage Districts: Botwood, Port aux Basques and Humber Arm (Corner Brook).

The Newfoundland outport pilotage legislation was abrogated effective December 31, 1964, through the same legislative process as was adopted for St. John's. The 1964 federal Act (13 Eliz. II c. 33) first section, reads as follows:

"1. *An Act respecting Outport Pilots and Pilotage*, Chapter 179 of the Consolidated Statutes of Newfoundland, 1916 and *The Outport Pilots and Pilotage Act*, Chapter 215 of the Revised Statutes of Newfoundland, 1952, and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

This provision of the Act was to come into force when proclaimed by the Governor in Council. This was done by proclamation dated December 23, 1964, effective December 31, 1964 (SOR/65-21, Ex. 1462(b)). Concurrently, Part VI C.S.A. was proclaimed for all Newfoundland (SOR/65-22, Ex. 1462(b)). At the same time as for St. John's, the necessary regulations were made by the Governor in Council for the reorganization under Part VI C.S.A. of three of the four existing outport pilotage organizations (Lewisporte was not reactivated). These Governor in Council regulations will be referred to in the subsections dealing with each of these three Districts.

2. EVIDENCE

Coastal pilotage as such is available only on the northeast coast of Newfoundland for traffic proceeding through the 50-mile inside passage of Sir Charles Hamilton Sound instead of taking the outside route off Funk Island. Sir Charles Hamilton Sound, situated to the south and west of Fogo Island, is often clear of ice owing to the southerly current that flows from Cape Fogo, while the outside route is blocked.

This inside route saves time and is particularly useful for vessels bound to or from Notre Dame Bay ports, such as Twillingate, or the Bay of Exploits ports of Botwood and Lewisporte. Local knowledge and experience are necessary to navigate these restricted waters safely. The Botwood Pilotage Authority recommended the installation of a light and radio beacon on Funk Island, but even with this additional aid to navigation a stranger or non-regular trader would be most unwise to attempt the inside route without the services of a pilot.

Coastal pilotage should not be confused with navigation in open waters along the coast. When a pilot travels in a vessel making a coastal trip that covers long stretches of open water and is engaged solely to perform port pilotage at ports of call, his presence on board (whether or not he assists with the navigation) does not constitute coastal pilotage. This practice is adopted to ensure the ready availability of a pilot at ports where pilotage is not provided or the local service is not reliable. This is particularly the case along the northeast coast for vessels proceeding to Conception Bay ports, such as Holyrood, Long Pond, Manuels and Harbour Grace, and also occasionally along the west coast of the province.

The available shipping statistics do not permit analysis of the volume of traffic which uses the inside passage, even with pilots on board, since those provided by the D.B.S. merely record port arrivals, while ports situated north and northwest of the passage may well be visited from outside open water when the ice has disappeared. However, since most coastal pilotage is performed by the St. John's pilots, their records provide a reasonably accurate picture, assuming that all vessels bound to ports west of the passage and employing a pilot would use the inside passage.

Prior to 1960, the St. John's pilots as a group performed neither coastal pilotage nor pilotage at outports (except Holyrood) although for many years individual St. John's pilots undertook to do this work when requested. Up to 1961, there were several coastal pilots other than the St. John's pilots who were thus employed, but in 1965 the St. John's pilots reported that these men had either died or retired and most of this work has now fallen upon their shoulders at the request of agents, owners or Masters.

The St. John's pilots did this type of work during their five days off duty. If one was away on a coastal trip when his turn of duty at St. John's came, he was replaced at St. John's by one of his colleagues.

On January 17, 1963, the St. John's pilots as a group decided to discontinue offering their services for coastal and outport pilotage mainly because they considered some of their colleagues not fully qualified for this type of work (Ex. 265). However, this decision was reversed early in 1964, as is shown by the supplementary brief filed by the St. John's pilots (Ex. 254) in which they stated they were unanimously in favour of continuing this pilotage. Pilots who were fully qualified for this type of work would perform it, while their colleagues who felt that they did not have sufficient knowledge to do so would perform harbour pilotage in St. John's. The pilots available for outports and coastal work make up their own assignment list and pilot in turn.

According to the statistics filed by the St. John's pilots (Ex. 1192), it appears that the main users of coastal and outport pilots are oil tankers. However, there are also cable ships, cargo ships carrying asbestos, copper, paper, timber and general cargo, hospital ships and tugs with tows.

When the St. John's pilots are engaged on coastal work they usually embark off St. John's and remain with the ship until her return. However, there are cases when vessels sail directly from outports for overseas, in which event the pilot returns to St. John's *via* land or air transportation. This occurs particularly when vessels have been piloted to the Botwood District boarding area.

The pilots filed testimonial letters from three Masters and one officer serving on board Irving Oil coastal tankers trading to Newfoundland's northern outports. Irving Oil tankers have been sailing along the coast for several years. These letters commend the St. John's pilots as capable men who are familiar with the approaches to the various outports and coastal anchorages and know the best routes to follow.

Since these pilotage services are not regulated under the Canada Shipping Act, free enterprise prevails, with the result that anyone performing them may fix his own price.

The fees charged in 1963 by the St. John's pilots for this type of work (with the exception of Holyrood) were composed of several items:

- (a) A *coastal pilotage charge* of two components, first, 1¢ per gross ton per one way trip (hence, made twice for a round trip) no matter how many calls the vessel made *en route*; second, a mileage charge of 50¢ per mile calculated from the place the pilot boarded, generally off St. John's, until he disembarked at the completion of the coastal trip, whether the vessel was navigated in open water or in the confined waters of the inside passage (contrary to the practice of the B.C. pilots (Part II, p. 150).
- (b) A *port pilotage charge* for each port pilotage performed *en route*, calculated at the same rates and on the same basis as pilotage

inward and outward at St. John's. If at any of the outports, except the Pilotage District of Botwood (Ex. 1192), the St. John's pilot is not called to perform port pilotage, half a port charge (i.e., one inward trip charge) is made nevertheless, in the same way as half a port charge is made by the St. John's pilots for their off-harbour service p. 546).

- (c) A *transportation charge* in the amount of the out-of-pocket expenses actually incurred by the pilot, including the \$10 pilot boat charge at St. John's.

The revenue derived from outport and coastal pilotage prior to 1960 was kept by the pilot who performed the services. When the St. John's pilots provided this service as a group in 1961, the revenues were pooled and shared equally by all of them (p. 550). For a short period in 1963 they returned to the previous practice but private pooling has since been resumed under new arrangements.

At various outports there are local pilots who may be employed if the ship's Master so decides: at Twillingate, local men employed by the fish plant attend to port pilotage; at Port Union—Catalina, there are two local pilots; since Botwood is a Pilotage District, the St. John's pilots have to hand over to the local licensed pilots; some shipping companies use their own pilots, e.g., the Commission was informed in 1963 that at Long Pond, Manuels, Newfoundland Minerals Limited hired a man who travelled from Nova Scotia whenever his services were required to supervise loading operations and who also attended to pilotage.

Although pilotage in most of the west coast outports is performed by local pilots, the Humber Arm Pilotage Authority has occasionally been asked to make its pilots available for service in the neighbouring outports. When such a request can be complied with, the Humber Arm tariff is applied plus transportation expenses. Contrary to the procedure in St. John's, the dues so earned are included in the District earnings and shown as a separate item of revenue on the financial statement (p. 640). However, these earnings are not shared among the pilots but are paid to the pilot who performed the outside service.

In the fall of 1962, four vessels called at St. George's Bay. One was approximately 22,000 gross tons and the others varied between 6,000 and 12,000 tons. The first vessel was piloted in by the Humber Arm pilot and the others by the local pilot.

Local unlicensed pilotage also existed at Port Harmon, a harbour especially built to serve the former U.S. Air Force base at Stephenville. Pilotage was then performed by a Canadian holding a Master's foreign-going certificate and employed for that purpose by the United States Authorities on a monthly basis.

Near Port Harmon is Port au Port where there is a limestone quarry that supplied the iron ore works in Sydney, N.S. Two company-owned vessels were on a regular run. It appeared that a local pilot was available.

Bonne Bay, where vessels call occasionally, is forty miles north of Bay of Islands. The Commission was informed that the traffic consists of regular traders who do not need pilots.

Approximately 100 miles north of Bay of Islands is Hawke Bay where small vessels call for pulpwood. Since there is no wharf, vessels are forced to anchor. Pilotage is limited to the channel which is ten miles long and five hundred yards wide at its narrowest.

The Chairman of the Humber Arm Pilotage Commission was of the opinion that there is no practical need to extend pilotage to the west coast of Newfoundland because vessels calling at the above-mentioned ports are regular traders and do not need pilots.

3. STATISTICS

The pilots may be called upon to pilot a ship in and out of any harbour or landing place along the whole coast of the Island. While most coastal and outport pilotage performed by the St. John's pilots is in the 300-mile area between Bay Bulls and St. Anthony, they are also occasionally required to pilot vessels to other ports, e.g., on one occasion during the three-year period 1962-1964, one piloted a ship to a position off Corner Brook, and, in 1961, a St. John's pilot was even used to deliver an R.C.A.F. rescue boat from Argentia to Chicoutimi, P.Q.

The table on pp. 586-587 indicates in geographical order from south to north the various ports of call where the St. John's pilots may go in the performance of such services. The table shows the number of arrivals at each port of ships of 250 NRT and over for the years 1960 to 1967 and their average NRT per year. It also shows the number of requests met by the St. John's pilots in the years 1962, 1963 and 1964. The table on pp. 588-589 shows for the west and south coasts the same information with the exception of the St. John's pilots' statistics since they very seldom had any occasion to pilot in that area.

4. PRINCIPAL OUTPORTS

HOLYROOD

Holyrood Bay is situated at the southeastern end of Conception Bay some 30 miles by road and 50 miles by sea from St. John's. The head of the Bay divides into two coves named North and South Arms. A T-shaped wharf with 33 feet alongside, the property of Golden Eagle Refining Company of Canada Limited, is situated on the eastern side of South Arm.

This port accounts for about one third of the St. John's pilots' outport pilotage. They began taking crude oil tankers to Holyrood February 5, 1961. By way of exception, coastal fees are not charged whether the pilot boards or disembarks off St. John's or off Holyrood, nor is there any charge made for the pilots' transportation. When the pilots travel by land they arrange their own transportation and are reimbursed their out-of-pocket expenses, or \$6 per one-way trip, out of their pooled earnings. As a rule, the pilots board at St. John's Harbour entrance when vessels are inward bound to Holyrood and sometimes remain with the ship in order to pilot them out. The pilots disembark off Holyrood in Conception Bay and the company's launch is then used to bring them back to Holyrood.

Golden Eagle Refining Company of Canada Limited advises vessels calling at Holyrood that pilotage, though not compulsory, is available on signal at St. John's Harbour entrance. It further advises that the company has a launch available for taking pilots, customs officers and other officials to and from the ships within Holyrood Bay.

The tankers calling at Holyrood are in the vicinity of 7,000 or 8,000 tons net, or 12,000 to 14,000 tons gross.

In April, 1962, the pilots addressed a memorandum to the St. John's Harbour and Pilotage Commission seeking to include Holyrood in the St. John's District. They submitted that they provided a necessary service and that they should be entitled to official Government recognition. The Pilotage Commission did not accede to this request. It is reported that the Pilot Commissioners agreed in principle with the pilots' proposal but thought that the time was not opportune to raise the matter.

BAY ROBERTS

Bay Roberts is situated on the western side of Conception Bay some 40 miles from St. John's by sea. There is a coal terminal for landing and distributing coal locally. Only coasting vessels engaged in the coal trade call. Cables from Europe and the United States terminate at Bay Roberts. Pilots are seldom employed.

HARBOUR GRACE

Harbour Grace, also situated on the western side of Conception Bay, is some 38 miles from St. John's by sea. There is an oil terminal for local distribution of petroleum products. Only small tankers call. The entrance channel runs between submerged reefs and is indicated by two buoys only. The *Newfoundland Pilot*, (3rd. Edition), p. 275 (Ex. 222) states, "Pilotage is not compulsory, but pilots may be obtained, on prior notice, off Harbour Grace Island".

LONG POND, MANUELS

Long Pond, Manuels, situated in the southeastern part of Conception Bay, is some 42 miles from St. John's by sea. Newfoundland Minerals Limited ships pyrophyllite from there. The company charters for that purpose one ship annually, but not necessarily the same ship every year. This ship makes approximately six trips a year to Long Pond, Manuels.

The Commission was informed that the company hires its own pilot who is flown from Nova Scotia to St. John's whenever his services are required, boards the vessel off Long Pond, Manuels from a rented craft and stays with the vessel until she leaves, which may be from two days to a week. However, this pilot is also employed by the company to advise on loading operations and the use of equipment in general.

It appears that this company has never used a St. John's pilot for the purpose of piloting its chartered vessels in and out of Long Pond, Manuels.

WABANA

Wabana is a company town and port on Bell Island which is situated on the eastern side of Conception Bay approximately 34 miles from St. John's by sea.

Iron ore mining on the northern side of the island used to be an extensive operation and the ore was exported through Wabana. The number of arrivals and the size of vessels have drastically decreased from 258 ships averaging 4,934.5 NRT in 1960 to 10 ships averaging 1,753.2 NRT in 1967.

CLARENVILLE

Clarenville is situated at the western end of the northwest arm of Trinity Bay, approximately 90 miles from St. John's by sea. There is an oil terminal for local distribution of petroleum products, and a railway pier used for loading scrap. The entrance is narrow, landlocked and not marked by buoys. Vessels bound for Clarenville are advised by the *Newfoundland Pilot*, (3rd. Ed.) to obtain a pilot at Hickman's Harbour.

Newfoundland Hardwoods Limited operates a creosoting plant, a timber yard and an asphalt plant at Clarenville. The company owns its wharf. Vessels calling at the company's wharf are handled by a local pilot who owns and operates schooners. Vessels handled at the company's wharves range from 3,000 to 12,000 gross tons. They are chartered. The frequency of calls varies from a minimum of three to a maximum of 14 a year: in 1962, there were four calls and in 1961, eight. The asphalt tankers make approximately one trip every three weeks between May and October.

The fee charged by the local pilot in 1963 was \$85 for a round trip, i.e., inward and outward pilotage including the use of the pilot boat for boarding and disembarking.

CATALINA—PORT UNION

Catalina is situated on the northern side of the entrance of Trinity Bay, approximately 58 miles from St. John's by sea.

It is a large fishing centre, exporting fish, either cured, salted, in boxes or in casks. Imports include general cargo, oil and coal.

The *Newfoundland Pilot*, (3rd Ed.), p. 304 (Ex. 222) states, "fishermen are trustworthy pilots, and are nearly always to be found near the harbour in daytime".

There are two local pilots in Catalina. Their fee in 1963 was \$30 for inward or outward pilotage.

TWILLINGATE

Twillingate, on the southeastern side of Notre Dame Bay approximately 178 miles by sea from St. John's, has an oil terminal with a new channel dredged to the pier. The pilotage service there is for tankers. It was reported that a local pilot is available.

TILT COVE

Tilt Cove is situated on the northern side of Notre Dame Bay near Cape St. John approximately 211 miles from St. John's by sea.

Copper is shipped out of Tilt Cove. There are also oil storage tanks. Since the harbour is very small and open to the sea, vessels have to be ready to leave at a moment's notice.

LA SCIE

La Scie is situated immediately west of Cape St. John at the western entrance of Notre Dame Bay approximately 215 miles from St. John's by sea.

It is a very small port exposed to the sea.

BAIE VERTE

Baie Verte is a sheltered harbour on the peninsula between Cape St. John and White Bay approximately 238 miles from St. John's by sea.

At the lumbering settlement about a mile and a quarter from the head of the bay there are storage facilities for coal and oil. The vessels taken to Baie Verte by pilots are mostly small Irving Oil tankers.

An increase in traffic ranging from three to five ships per week was foreseen in 1963 for shipments of asbestos from local asbestos mines. However, from D.B.S. statistics table on p. 587, the number of arrivals in 1967 is the lowest since 1960, although the average NRT per vessel has slightly increased.

ST. ANTHONY

St. Anthony, situated almost at the tip of the northernmost peninsula of Newfoundland near Belle Isle, some 260 miles from St. John's by sea, is the most important outport in that part of Newfoundland. It is the headquarters of the International Grenfell Mission which maintains a large hospital, an orphanage and a slip for repairing wooden vessels. It is also an oil distribution centre. Fishing is the main source of income.

The entrance channel, which is very narrow and winding, is approximately half a mile long. There are no buoys and few other aids to navigation.

Tommy's Arm.....	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	1012,089,714,050.3	for.	100.0		
Little Bay.....	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	68	687.3	801.6	100.0	
Tit Cove†.....	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	48	663.8	1,675.2	100.0	
La Siet.....	780.8	100.0	96	766.1	96	894.7	95	773.4	61	569.1	63	782.8	57	773.4	87	889.7	**	**	**	**	4	2	2
Baie Verte§.....	16.1	100.0	111	625.1	106	619.3	105	560.9	98	522.4	83	551.3	**	**	**	**	**	**	**	**	—	1	1
	557.4	100.0	99	803.9	90	738.3	110	738.2	97	612.1	94	937.0	89	1,211.4	152	818.1	**	**	**	**	3	7	9
Hampton†.....	53.9	100.0	44	710.7	37	651.4	2	789.5	39	538.1	39	585.0	**	**	**	**	**	**	**	**	2	—	—
St. Anthony†.....	142.9	100.0	76	784.7	96	801.6	99	740.3	97	774.1	87	794.0	91	766.4	108	727.6	**	**	**	**	—	—	4
Others.....																					61	81	143

* Listed but not coded by D.B.S. (Exhibit 1483).

** Not listed during these years in D.B.S. statistics (Exhibit 1483).

*** Pilotage services available (*Newfoundland Pilot, Third Edition, Exhibit 222*).

† Ferry services to port (Exhibit 222).

‡ Regular steamer communication services (Exhibit 222).

§ Tug services available (Exhibit 222).

VOLUME AND TYPE OF TRAFFIC ENTERING NEWFOUNDLAND PORTS ON THE WEST AND SOUTH COASTS*

Port	1960 CARGO HANDLED			ARRIVALS OF VESSELS 250 N.R.T. AND OVER												1967 CARGO HANDLED						
	Average total tonnage	Mai. type	% of total tons	1960		1961		1962		1963		1964		1965		1966		1967		Average total tonnage	Mai. type	% of total tons
				No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT	No.	Av. NRT			
WEST COAST																						
Hawke Bay.....	26.8	est.	100.0	14	695.6	6	797.2	9	811.2	13	1,786.7	10	2,614.0	17	2,677.9	19	2,333.7	27	1,672.6	1,858.0	est.	100.0
Conner Brook* † †.....	6,816.5	est.	74.5	293	2,125.8	326	2,103.8	313	2,015.8	238	2,522.3	289	2,264.2	292	2,351.5	363	1,874.6	309	1,861.1	2,919.4	**	63.5
Port au Port, Agathunag.....	8,780.6	est.	100.0	42	3,586.5	31	3,738.1	23	3,679.8	28	4,054.2	20	3,872.5	2	4,248.0	**	**	**	**	**	**	**
St. John's.....	7,521.9	est.	99.9	151	1,315.9	8	593.4	9	2,872.1	7	2,416.6	17	4,888.3	32	5,914.1	30	6,461.0	29	5,560.1	14,121.6	for.	80.4
SOUTH COAST																						
Port aux Basques † †.....	449.1	est.	99.9	727	2,466.4	781	2,260.3	849	1,986.2	995	1,876.6	886	1,937.8	940	3,081.8	1,021	3,187.8	1,147	3,143.1	337.8	est.	99.9
Isle aux Morthes***.....	129.3	est.	52.8	10	557.1	19	544.9	12	531.8	7	435.6	10	399.4	10	399.4	**	**	**	**	**	**	**
Rose Blanche***.....	10.5	est.	100.0	135	609.1	137	633.8	134	576.9	142	599.4	124	651.3	**	**	**	**	**	**	**	**	**
Burgeo***.....	79.3	est.	65.8	159	609.0	149	624.0	175	562.1	186	574.6	148	651.3	162	583.9	176	605.9	**	**	**	**	**
Ramea***.....	27.1	est.	100.0	133	603.8	135	622.6	133	576.5	144	590.1	125	660.2	**	**	**	**	**	**	**	**	**
François***.....	3.4	est.	100.0	103	570.9	104	564.2	102	583.2	106	623.2	95	694.6	**	**	**	**	**	**	**	**	**
Rencontre West***.....	3.4	est.	100.0	105	572.5	105	563.2	106	589.9	106	626.2	95	700.5	**	**	**	**	**	**	**	**	**
Bonne Bay.....	5.6	est.	100.0	36	627.7	36	622.4	31	574.6	40	570.4	44	593.7	**	**	**	**	**	**	**	**	**
Milltown.....	15.7	est.	100.0	108	583.0	103	557.2	116	575.2	104	635.7	112	766.6	**	**	**	**	**	**	**	**	**
St. Albans***.....	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	† † †	217	700.9	153.5	est.	56.9
Gallois***.....	18.5	est.	100.0	108	572.7	110	558.9	114	581.3	116	617.6	101	679.5	**	**	**	**	**	**	**	**	**
Hermitage***.....	7.5	est.	100.0	109	583.2	105	539.7	106	588.6	103	627.2	97	690.4	**	**	**	**	**	**	**	**	**
Bay l'Argent***.....	17.3	est.	100.0	107	607.9	105	581.5	107	596.0	107	634.1	99	775.1	**	**	**	**	**	**	**	**	**
Rencontre East.....	1.9	est.	100.0	98	579.7	104	559.6	107	583.3	102	627.7	96	693.3	**	**	**	**	**	**	**	**	**
Belleoram*** † † †.....	2.6	est.	100.0	104	570.0	104	558.1	106	581.9	104	625.7	93	695.4	**	**	**	**	**	**	**	**	**
English Harbour																						
West*** † † †.....	13.9	est.	100.0	105	576.9	106	564.0	107	582.6	103	623.6	98	695.6	**	**	**	**	**	**	153.6	est.	77.5
Harbour Breton***.....	31.3	est.	99.4	116	624.9	117	629.3	114	599.5	131	629.9	129	754.8	186	685.5	204	721.4	256	711.3	129.1	est.	82.7
Grand Bank***.....	132.8	est.	85.2	153	577.7	172	551.5	176	542.5	181	557.6	155	620.7	190	581.4	170	601.7	214	670.2	129.1	est.	82.7
Lamaline.....	22.6	est.	100.0	26	497.5	19	508.0	6	522.0	11	521.9	1	469.0	**	**	**	**	**	**	**	**	**
St. Lawrence.....	487.5	est.	99.1	149	756.4	146	740.0	165	743.2	151	808.5	137	919.0	163	837.0	148	791.8	142	854.4	564.6	est.	100.0

Harbour Buffet.....	773.3	est.	72.4	15	712.9	92	490.2	196	436.8	210	448.9	216	442.5	**	**	**	**	**	**	94.0	
Port Elizabeth.....	19.9	est.	100.0	13	460.0	28	452.3	17	429.2	7	425.0	1	425.0	**	**	**	**	**	**	112.2	
Marystown.....	20.5	est.	100.0	92	619.0	147	530.0	283	486.4	290	521.7	262	523.3	325	510.4	**	**	298	561.1	112.2	est.
Burin***.....	181.3	est.	73.9	163	630.1	210	588.7	374	530.0	363	527.9	329	589.6	364	562.8	388	551.9	355	611.5	114.4	est.
Argentina\$ ***.....	391.1	est.	99.0	87	738.2	189	663.0	278	554.2	291	502.9	292	527.2	328	528.3	412	471.4	408	509.7	153.3	est.
Placentia Bay***.....	126.5	est.	55.8	10	596.4	9	547.8	12	300.7	3	300.7	3	604.0	**	**	**	**	**	**	**	**
Trepassey\$\$\$.....									548.1	3	926.7	4	399.0	**	**	**	**	**	**	**	**

*St. John's pilots have made only the occasional call in the above ports, i.e., only one call was made to Corner Brook in the three-year period 1962-1963-1964.

†Pilotage District.

‡Includes Curling, Humbermouth and Hughes Brook.

\$Pilot services available. (Exhibit 222, *Newfoundland Pilot, Third Edition*).

**Listed but not coded by D.B.S. (Exhibit 1483).

††Includes St. George's, Flat Bay, Flat Point and Turf Point.

†††Tug services available (Exhibit 222).

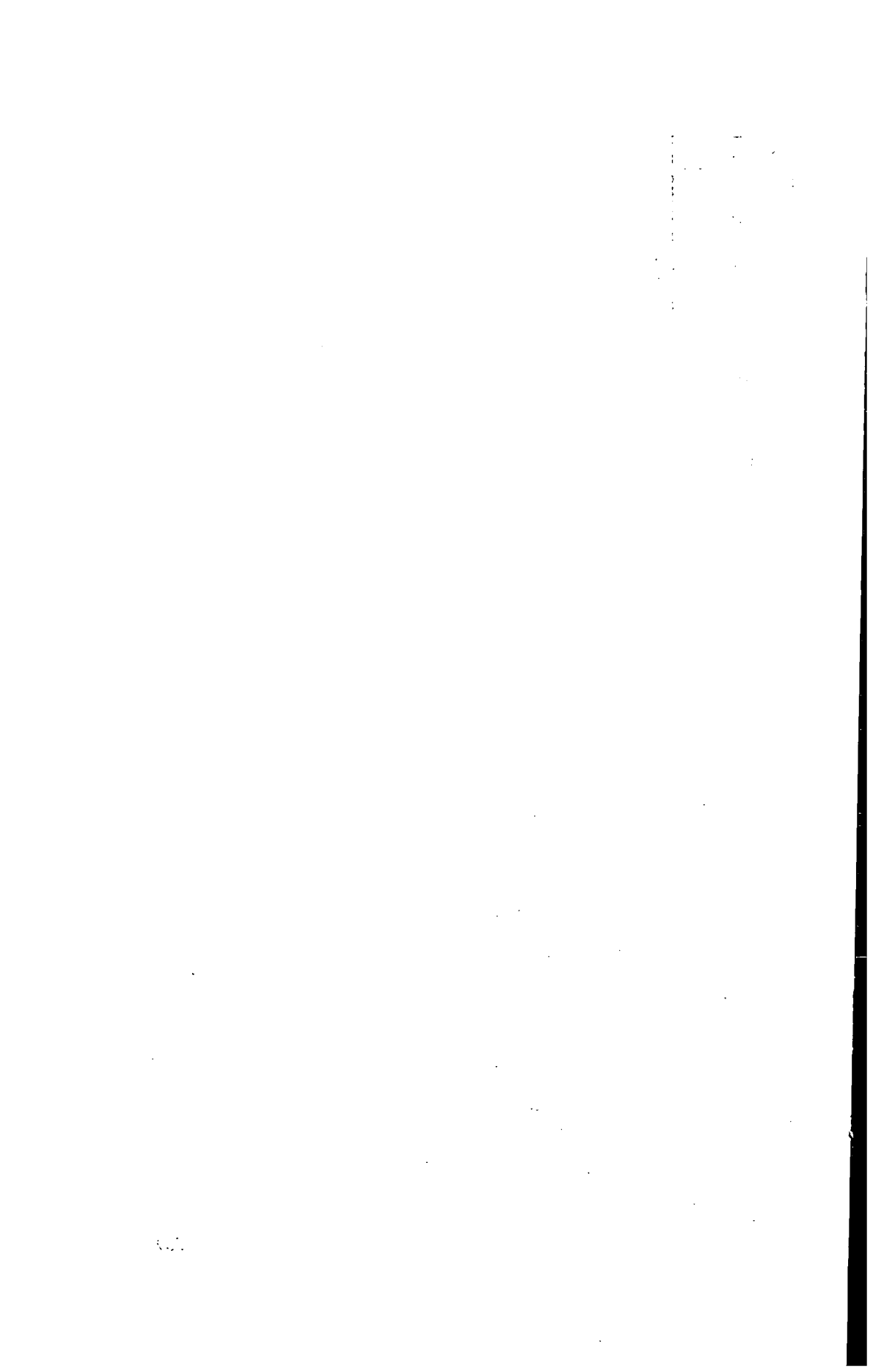
§§Regular ferry service.

***Regular ship communication services (Exhibit 222).

††††Not listed in D.B.S. statistics (Exhibit 1483).

‡‡‡Port available for small craft only.

§§§Local fishermen available as pilots.



Subsection II

PILOTAGE DISTRICT OF BOTWOOD, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

Since January 1, 1965, the pilotage organization at Botwood has come under Part VI of the Canada Shipping Act. The only legislation that now applies specifically to this District is contained in the regulations made by the Governor in Council in December, 1964, establishing the District and appointing its Pilotage Authority, and the District regulations that were made by the Pilotage Authority.

Before Confederation, the governing legislation for Botwood differed from that for St. John's in that, through its special statute, St. John's was the only port in Newfoundland where pilotage and harbour operations were legally integrated under a single Authority. Botwood, like the other outports, was governed in pilotage matters by the general statute "An Act respecting Outport Pilots and Pilotage" of 1916 (p. 576). Therefore, as would have been provided under the Canada Shipping Act, the Pilot Commissioners' responsibilities were limited to the pilotage service.

As explained earlier (vide p. 520), sec. 18 of the Terms of Union provided for the continuity of legislation and administration during the transition period.

On December 21, 1961, P.C. 1961-1843 proclaimed Botwood a public harbour pursuant to sec. 600 of the Canada Shipping Act and established its limits as follows (Ex. 1462(h)):

"All the waters of the Bay of Exploits south of a straight line drawn from Phillips Head to Lower Sandy Point".

The 1964 federal Act entitled "An Act to repeal certain Acts of the Province of Newfoundland respecting Harbours and Pilotage" (13 Eliz. II c. 33) contained a provision abrogating as of a date to be fixed by proclamation all the governing Newfoundland legislation concerning pilotage at outports. The pertinent section reads as follows:

"1. *An Act respecting Outport Pilots and Pilotage*, Chapter 179 of the Consolidated Statutes of Newfoundland 1916, and *The Outport Pilots and Pilotage Act*, Chapter 215 of the Revised Statutes of Newfoundland, 1952, and all amendments thereto and all orders, rules and regulations made thereunder are repealed."

On December 23, 1964, the Government arranged by a series of proclamations and orders for the pilotage service at Botwood to come under federal legislation. Apart from the two proclamations giving effect, *inter alia*, to sec. 1 of the 1964 Act effective December 31, 1964 (SOR/65-21), and making Part VI C.S.A. applicable to Newfoundland effective January 1, 1965 (SOR/65-22), the two following Orders were made concerning Botwood specifically:

- (a) an Order in Council made pursuant to secs. 324 and 326 C.S.A. creating under Part VI, effective January 1, 1965, the Botwood Pilotage District, fixing its limits and making the payment of dues compulsory (P.C. 1964-2013, Ex. 1462(d));
- (b) a further Order in Council made under sec. 325 C.S.A. appointing, effective January 1, 1965, the Botwood Pilotage Authority (P.C. 1964-2014, Ex. 1462(d)).

The Botwood legislation was completed when, on April 29, 1965, by P.C. 1965-791, the new District regulations made by the Pilotage Authority were approved (Ex. 268).

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of Botwood was created as aforesaid by P.C. 1964-2013 effective January 1, 1965. The Order in Council made the payment of pilotage dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation, namely:

“...to include therein all the navigable waters of the Bay of Exploits west and south of a line from Surgeon Cove Point to Waldron Cove Point;...”

By a separate Order in Council, P.C. 1964-2014, also effective January 1, 1965, the Governor General constituted the Pilotage Authority which continued the system of a local Commission and reappointed the three former Pilot Commissioners, Mr. E. P. Newman, Chairman, Mr. D. R. Butt and Mr. T. W. Antle members, and also appointed Mr. Antle Secretary-Treasurer pursuant to sec. 328 C.S.A. However, the Order in Council is silent as to his remuneration.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, the Pilot Commissioners submitted on February 8, 1965, a new set of by-laws to replace the former ones that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on April 29, 1965, as aforesaid (P.C. 1965-791). The confirming order erroneously mentioned that it revoked the by-laws made pursuant to the Newfoundland Statute “Of Outport Pilots and Pilotage”, Chapter 179 of the Consolidated Statutes of Newfoundland 1916.

As stated earlier, these by-laws had already been revoked by Parliament through sec. 1 of the 1964 Act effective December 31, 1964, the date set in the proclamation.

The only amendment to the By-law so far (1969) occurred May 11, 1967, when by P.C. 1967-937 a new tariff was approved. The main features of this General By-law are:

- (a) It provides for a fully controlled pilotage service, the pilots being *de facto* employees of their Authority under the direction of the Secretary who attends to despatching. Their remuneration is a share of the earnings derived from the tariff, except the surcharge.
- (b) It provides for leave with pay and without pay: 21 days' annual leave with pay; leave without pay, which may be granted up to six months; leave because of disability through illness or injury for three months with pay, except when the injury occurred when on duty, in which case leave up to one year may be granted. The provision does not indicate whether in this case it would be with or without pay. According to the rules of interpretation, since in this case no mention is made in contrast to the specific mention in all other cases, it should be concluded that such leave should be without pay. This is obviously not the intention and it should be corrected. Furthermore, subsec. 21(3) provides that leave on account of sickness or injury may be granted with pay *at the discretion of the Authority*. It is considered, apart from the question of the legality of pooling (Part I, p. 249), that the amount of remuneration should never be left to be determined at the sole discretion of any individual but should be fully established in the regulations (Part I, p. 192).
- (c) The Secretary's salary is established at 7½ per cent of the gross receipts, (pilotage dues, surcharge, examination fees and licence fees) of the District.
- (d) The exemption to local and coastal traders is withdrawn for all vessels over 300 NRT, in other words the relative exemption of sec. 346(e) C.S.A. is retained only for steamships of dominion registry between 250 and 300 NRT, those under 250 enjoying an absolute statutory exemption under subsec. 346(f). The By-law does not provide under subsec. 346(c) an exemption for small foreign ships.
- (e) Regarding financial administration, the practice that had been established through the repealed regulations was retained. The District receipts are divided into two funds; the *pilots' pool* composed of the pilotage dues less the surcharge, and the *Pilotage Authority's Expense Fund* composed of the surcharge, examination and licence fees, fines and any interest from an unexpended balance. The first fund belongs entirely to the pilots and is their remuneration. The

- second fund is used solely to cover the operating expenses of both the District and the service, including the acquisition, maintenance and operation of pilot vessels. The By-law does not provide for reimbursing the pilots for any other expenses they may incur.
- (f) It provides that the pilots are not to be otherwise employed during the navigation season. However, the term "navigation season" is not defined. This may cause difficulty since, as will be seen later, the port is kept open with the aid of icebreakers throughout the winter.
 - (g) With regard to licensing it provides as a "transitory measure" for the recognition of those pilots who held a licence as of December 31, 1964, but contains no requirements for future pilots except those regarding age (between 21 and 60) physical, mental and moral fitness and passing an examination before a Board of Examiners on knowledge of the District and general marine knowledge. The first licence is probationary. Its duration as well as the remuneration of the pilot during that period are left to be decided by administrative decision of the Pilotage Authority (Part I, p. 268).
 - (h) The By-law purports to give the Pilotage Authority judicial powers over the pilots for breaches of regulations (Part I, p. 400).
 - (i) The tariff, as amended in 1967, provides rates for voyages and movages only, all subject to a surcharge. The rate for pilotage voyages is in the form of a scale based on net tonnage: a minimum charge of \$40 for vessels up to 300 NRT, plus \$5 per 100 tons up to 1,000 tons, and thereafter plus \$2.50 per 100 tons. Two movage rates are provided: \$15 for ships below 1,000 tons and \$25 for those over 1,000 tons. The surcharge is 50 per cent. There are no pilot boat, detention or cancellation charges. Only the amount of the rates was altered—the structure remained the same. The main change was the increase in the surcharge from 30 per cent to 50 per cent.
 - (j) No Pilot Fund or Pension Fund is provided for.

2. HISTORY OF LEGISLATION

Botwood was proclaimed a Pilotage Port under the provisions of the Outport Pilots and Pilotage Act on August 24, 1909, effective March 1, 1910, and from that date became equivalent to a Pilotage District. Its first By-law was approved by the Governor in Council of Newfoundland on June 14, 1910 (Ex. 279). It was still in force at the time of Union with Canada and remained so until Newfoundland pilotage legislation was abrogated effective December 31, 1964. It was amended twice since Union, in 1951 and 1954, in both cases regarding tariff and exemptions.

This By-law was similar in content to the Humber Arm By-law which the Supreme Court of Newfoundland, in an *obiter dictum*, considered ultra vires (Dyke v Pilot Commissioners of Humber Arm, vide Part I, p. 282) because it provided for the control of the pilotage service by the Pilotage Authority although this was not permitted either under the Outport Pilotage statute or Part VI of the Canada Shipping Act.

The only rates were for voyages which were devised according to a scale of tonnage, plus a 50 per cent surcharge, a rate structure which has since been retained. The By-law did not provide for a moorage rate. Exemptions were the same as for St. John's with the same preferential treatment for exempt ships by granting them a 50 per cent reduction when they took pilots (p. 527). It established a seaward pilot limit by prescribing that pilots "may go to sea a distance of one mile and a half if necessary", and required that a pilot station be maintained on Exploits Island at the Notre Dame Bay seaward entrance of the District, where the pilots were to remain throughout the navigation season, except when performing pilotage. It was the Pilot Commissioners' responsibility to provide the pilots with two good pilot boats and to keep them in good repair, the cost being part of the operating expenses of the District toward which the 50 per cent surcharge on the voyage rates was applied. The By-law did not refer to the qualifications of pilots.

The scale of rates was amended in 1951 (P.C. 6456 of December 4, 1951) and, at the same time, the surcharge was reduced to 10 per cent. The exemptions were extended to Canadian vessels. The exempt vessels continued to enjoy a 50 per cent reduction if they employed a pilot, and coastal vessels were required to pay half pilotage if they entered or left the port of Botwood with a pilot from another District. The amendment further introduced a moorage charge which was not subject to compulsory payment. The 50 per cent rebate for exempt vessels did not apply if they entered or left Botwood with a pilot from another port on board.

The scale of rates and the exemptions were again revised in 1954 (P.C. 1954-720). The 10 per cent surcharge was retained. It is reported that in December, 1959, the surcharge was raised to 50 per cent and reduced to 30 per cent on January 1, 1962, but neither change was made the subject of a By-law amendment.

The 1965 General By-law, as amended, now in force retains the characteristics of the 1910 By-law, as amended, as well as the rate structure which remains unchanged.

Chapter B

BRIEFS

The only brief received was submitted by the Botwood Pilotage Commission (Ex. 267) which recommended as follows (references in brackets show where each recommendation is dealt with in the Report):

- "1. The provision of a Pension Scheme for the Botwood pilots and advice as to the best method of instituting a pension scheme". (Part I, C.10, and General Recommendation No. 39).
- "2. Installation of a light and radio beacon on Funk Island". (p. 599).
- "3. Cape John Gull Island radio beacon to be put on a 12 month operational basis". (p. 599).

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

The Pilotage District of Botwood comprises the waters of the western arm of the Bay of Exploits and the harbour of Botwood.

The Bay of Exploits, located on the southeast part of Notre Dame Bay, is divided by numerous islands into three main arms which lead to various bays and arms at its head. The eastern arm formerly comprised the now defunct Pilotage Port of Lewisporte (vide. Subsec. III).

The western arm is entered through Ship Run between Northern Head on the mainland and Exploits Islands. The seaward limit of the Pilotage District lies at the narrowest part of the entrance (16 cables) between Waldron Cove Point on the mainland and Surgeon Cove Point on southwestern Exploits Island.

The approach to the harbour of Botwood is from the deep, open waters of Notre Dame Bay by the western entrance and from thence within the District for about 20 miles through the deep, wide channel of the western arm (Ship Run) to the seaward limits of the harbour of Botwood, defined as a line between Phillips Head and Lower Sandy Point, and where the channel narrows to three-quarters of a mile, with its deep portion reduced in width to about half a mile by the existence of a sand bar with a patch of 5½ fathoms over it. This presents the only significant navigational hazard for deep draught vessels in the District which otherwise is free from obstruction.

From thence, passage for five miles is in deep, open water within the harbour to the wharves.

The pilots do not consider that the currents in the channel constitute a danger since their maximum velocity on both flood and ebb tides is only two knots and they flow parallel to the channel. The currents inside the harbour are mostly tidal and create berthing difficulties at times because they run parallel to the wharves at a maximum rate of four to five knots on the ebb tide and two knots on the flood.

Now that most vessels are equipped with radar, fog no longer has the same effect on their movements and traffic is very seldom halted because of

it. Ice does not present a major hazard. However, when the arctic ice flows down about the end of February it may accumulate near the District seaward entrance and bring traffic to a standstill unless an icebreaker is available.

Owing to the extreme depth of water, it is difficult, and sometimes impossible, for a vessel to anchor close to the channel. Since the coast is steep, anchorages are few.

Navigation used to cease during the winter but Botwood may now be considered a year round port due to improved icebreaker service, modern communications and the aerial surveys carried out by the Federal Government and private interests.

Aids to navigation are adequate in the opinion of the pilots, except that they would like to see the light on Lower Sandy Point moved to Phillips Head. Between the boarding station and Botwood there were six lighthouses and five unwatched lights giving satisfaction in 1963.

The Botwood Pilotage Commission made recommendations regarding aids to navigation along the approach routes to Notre Dame Bay and thence into the District. First, they recommended that the radio beacon situated at Cape John Gull Island on the northwest tip of Notre Dame Bay be put on a twelve-month operational basis and not closed down in the winter months as was then the practice; second, they recommended that a light and radio beacon be installed on Funk Island, the most seaward point of land northeast of Notre Dame Bay, in order to simplify the approach to Notre Dame Bay for ships not using the inside passage.

Marine Services of the Department of Transport in a letter dated March 6, 1969 (Ex. 1463 (o)) reported on the present situation regarding these aids to navigation:

"The three aids on which you requested information were the Funk Island Light, Gull Island Radio Beacon, and Sandy Point Light.

There have been no changes in any of these aids in recent years. Planning for the Funk Island Light is dependent on a hydrographic survey which will be done by another Department. This project is still in the programme although not of high priority.

Funk Island lies 95 miles outside the pilotage station for Botwood pilots.

Gull Island Radio Beacon is operated during the navigation season. If the season is now year-round then changes are indicated. Gull Island lies 30 miles outside the station for Botwood pilots.

Sandy Point is in pilotage waters and the pilots have a legitimate interest in this aid. We have received no recommendation from the pilots to relocate the aid and an inspection of the chart failed to reveal any advantage in doing so. In fact, the advantage seems to be with the present location. Before incurring expense in moving the light, the pilots would be required to demonstrate the advantage to be gained.

In the normal departmental procedure of steadily improving the service the light on Funk Island has been under study for a considerable time. The islands are the breeding ground of a rare species of sea birds and special arrangements were necessary to preserve wild life. We now have permission to use an off lying rock as a site for the proposed light which will eventually be established."

Botwood, the only public port in the District, is situated on the north-western side of Peter Arm at the head of the western arm of the Bay. It is the shipping port for the pulp and paper products of the Anglo Newfoundland Development Company Limited of Grand Falls as well as the ore concentrates of the American Smelting and Refining Company at Buchans and Botwood. Grand Falls is situated 22 miles from Botwood and is connected by a private railroad, while Buchans, about 90 miles distant, is served by a railway line of the Canadian National Railways and the private lines of the mine and paper companies. All companies have facilities for discharging oil from tankers. The port is also used as a freight distributing centre for goods shipped to central Newfoundland. Botwood is a Port of Entry.

(1) MARITIME AND PILOTAGE TRAFFIC

Tankers, ore carriers, vessels with general cargo and ships calling for pulp and paper products visit Botwood. The volume of traffic varies with the activities of the industries in the area.

The following table, compiled from D.B.S. statistics of ships of 250 NRT and over (Ex. 1483) and from statistics contained in the District annual reports (Ex. 281), shows the importance of general and pilotage traffic and the aggregate workload of the pilots (for workload purposes, one ship piloted means two trips).

COMPARISON BETWEEN D.B.S. AND PILOTAGE STATISTICS
FOR BOTWOOD, NFLD.*

Year	Arrivals of Vessels 250 N.R.T. and over		No. of Pilots	Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.		No. of Ships	Average N.R.T.
1958.....	263	1,001.8	4	—	—
1959.....	107	2,562.1	3	92	2,823.2
1960.....	106	3,080.8	3	99	3,453.0
1961.....	95	2,674.2	3	96	2,671.4
1962.....	93	2,901.6	3	102	2,958.8
1963.....	92	3,234.8	3	100	3,095.9
1964.....	108	2,795.5	3	118	2,632.0
1965.....	102	3,183.1	3	108	3,217.4
1966.....	109	3,129.3	3	109	3,121.5
1967.....	116	2,988.0	3	113	3,169.5

*D.B.S. does not include pilotage information in its statistics.

These statistics indicate that, since 1959, most vessels have been fairly large and their number has remained steady. There are three reasons for this: the harbour and its approaches can accommodate very large ships; most vessels are bulk carriers (imports of oil and exports of pulp and paper products and ore concentrates); and the export and import needs of the region have remained relatively stable.

The larger vessels, although regular traders, all employ pilots. According to evidence given by the pilots themselves, all vessels use their services, except on the rare occasions when a pilot is not available. This is borne out from information contained in the pilots' logbook, which the Commission examined. From 1958 to 1962, the maximum number of times the services of pilots were dispensed with by non-exempt ships occurred in 1960, i.e., 14 trips out of a total of 215, or 6.5 per cent. This is a significant contrast to the situation prevailing in the other Newfoundland Districts. The compulsory payment of dues may be a factor but it would appear that it is mainly due to the nature of the trade which requires the employment of larger ships at Botwood.

2. ORGANIZATION

The function of Pilotage Authority is performed by a Board of three Pilot Commissioners recruited locally. The tenure of office is stable; the respective appointments of the present Commissioners date from 1958 and 1959. They were all continued in office when the District was reorganized under Part VI C.S.A. (p. 593). They are all business men conversant with the shipping industry. At the time of the Commission's hearing, the Chairman, Mr. E.P. Newman, was a business man and also the Harbour Master, Mr. D.R. Butt worked for a steamship agent in Botwood and Mr. T.W. Antle, the Secretary-Treasurer, was General Shipping Superintendent, Anglo Newfoundland Development Company.

The main issues the Pilot Commissioners had to face in recent years were reorganizing the District under the Canada Shipping Act, increasing the pilots' earnings and improving pilot boat service and communications between Botwood and the seaward boarding station. They have shown a keen interest in their function and the District is administered efficiently.

It appears that their most difficult task, at least since 1959, has been to find the funds required to operate the District efficiently (p. 610). As for providing the District with the necessary regulations under Part VI C.S.A., the Department of Transport took the initiative and sent the Botwood Pilotage Commission a draft of proposed regulations. An exchange of correspondence followed. The regulations were still in the drafting stage when the Commission sat in Newfoundland, the problem being retention in the regulations made under Part VI C.S.A. of the desirable practices and customs that had developed under the legislation about to be repealed. An

agreement had been reached when Part VI was proclaimed. The new regulations were adopted by the Pilotage Authority February 8, 1965, and became law when sanctioned by the Governor in Council April 29, 1965 (pp. 593-595). (Botwood, p. 3 to 6).

Despite the text of the regulations, the function of the Secretary-Treasurer is mostly clerical. He does not actually take charge of despatching—the pilots themselves make the assignments. This procedure is particularly appropriate in view of their small number and the fact that one of them normally mans the pilot vessel.

The Secretary attends the Pilotage Authority's meetings and keeps records of the proceedings. Meetings are held at irregular intervals as required. His remuneration which, up to then, had been 5 per cent of the gross receipts of the District was raised to 7½ per cent at the time of the reorganization under Part VI C.S.A. This remuneration is paid out of the Pilotage Authority's Expense Fund.

In addition, the Secretary attends to the financial administration, collects the dues (except those earned from movages and from the unofficial berthing and unberthing charges which are collected and handled by the pilots themselves) and keeps records of all information necessary for the operation of the District. The record book is divided into two parts: the first part contains the date of arrival of each vessel, name, invoice number, net and gross tonnage, pilotage voyage fees and the surcharge, referred to as the "service charge"; the second part contains the bookkeeping entries.

For their own information, the pilots keep their records, as is the custom in all Newfoundland Districts. These show date of arrival of each vessel, her name, name of the pilot and sailing date.

3. PILOTS

(1) RECRUITING AND QUALIFICATIONS OF PILOTS

Prior to 1958, there were four pilots; they were reduced to three that year by the resignation of an elderly pilot. This reduction has meant improved earnings for the three remaining pilots without an increase in pilotage rates.

Neither before nor since Part VI C.S.A. came into force have the regulations contained any professional requirements for pilot candidates. Provided they are physically fit and of good character and pass an examination on local and general marine knowledge, they may be licensed. Formerly, the examination, as for St. John's, was held before the Examiner of Masters and mates in St. John's. The By-law now provides for the examination to be held before a Board of Examiners appointed by the Authority.

It had not been the practice for the former Pilotage Authority to issue pilot licences. The first licences were issued in 1961 at the request of the pilots. The licences so issued contained a restriction to the effect that they

could be withdrawn at any time at the discretion of the Botwood Pilotage Authority. This limitation was in conformity with the provisions of the Outport Pilotage statute (sec. 4) which left the duration of the pilots' licences at the entire discretion of the Pilotage Authority. Such a restriction is no longer valid under Part VI C.S.A. and, since the regulations contain no restriction, licences are now permanent (Part I, p. 264).

At the time of the Commission's hearing in 1963, the senior pilot, who had been engaged in piloting since 1937, held a temporary Master's certificate. His experience was obtained in fishing vessels under sail for four or five years. Apart from being a pilot, he had served since 1960 as Master of a small icebreaker owned by Montreal Shipping Limited and stationed at Botwood. This icebreaker operated in the port of Botwood, in Exploits River and in the channel whenever ice was a hazard to navigation between early December and middle or late April.

The second pilot had been engaged in that profession for 18 years. His previous sea experience was limited to small boats in local waters. Although he did not serve any apprenticeship, he stated that he had had no difficulty handling large steamships.

None of the pilots had any formal training of any kind in large steamships. Their experience was gained after they became pilots.

For the period 1960 to 1967, no casualties occurred or were reported in Botwood. Two groundings which occurred several years previously were mentioned. A pilot was on board each vessel. The cause in one instance was fog, and in the other the anchor dragged. No damage was sustained in either case.

Discipline has never been a problem in Botwood and there is no record of disciplinary action.

(2) WORKING CONDITIONS AND PILOTS' WORKLOAD

On account of the concept of the pilot's function inherited from the distant past, the statistics on the pilots' workload and their pilotage revenues are incomplete and can not be compared with those of other Districts.

The official pilotage work of the pilots is considered to be limited to navigating vessels in and out of the District; this practice had no doubt been adopted on account of the lack of formal qualifications of the pilots in shiphandling.

The custom has developed in Botwood that the pilot's work is considered completed when the vessel arrives off her berth, and berthing or unberthing are not considered part of his assignment. The Master of the vessel is left free to perform these operations himself but the pilot offers his services for an extra remuneration amounting to \$20. This is considered a private agreement between the Master and the pilot.

Similarly, despite the fact that movage rates have now long been provided in the tariff and that compulsory payment has applied since 1965, Masters are still left free to move their vessels within the harbour without being called upon to pay the movage fees payable under the compulsory system. However, the pilots make themselves available; any movages they perform are unofficial and their fees do not form part of the District revenue.

It is reported that there are very few Masters who do not avail themselves of the services offered by the pilots for berthing, unberthing and movages. Canadian lake vessels and Canadian tankers trading for Golden Eagle Refining Co. Ltd., are exceptions.

The graph, *Appendix A(1)*, compiled from the pilots' log-book shows the number of trips, movages for which dues were paid and their aggregate number on a monthly basis for the period 1960-1964. It indicates a fairly even distribution of pilotage workload throughout the normal navigation season, from May to December, although there are still a substantial number in January, as might be expected with the type of traffic involved. However, traffic is greatly reduced in February, March and April.

Before the pilot station was moved to Govers Harbour, a normal inward or outward trip from Surgeon Cove to Botwood averaged approximately two hours, transportation by pilot vessel from Botwood to the seaward station took about four hours and the round trip for the pilot roughly six hours. This has now been considerably reduced since the pilotage trip has been shortened by about one third and the pilots can now commute between Botwood and the pilot station by road.

COMMENTS

The Secretary-Treasurer was of the opinion that the service could be operated with two pilots only, provided the boatman could occasionally serve as a pilot. Even assuming that the annual expectancy of 100 to 150 arrivals all took place during the eight-month normal navigation season, the monthly average per pilot, would be 4 to 6 arrivals, i.e., 8 to 12 trips.

This local practice of not considering berthing, unberthing or movages as official duties of the pilots is not permissible under the present legislation and the pilots are committing a statutory offence under sec. 372 C.S.A. when they ask an extra \$20 for berthing or unberthing a ship when engaged in piloting her inward or outward. Sec. 361 C.S.A. makes it an obligation for the pilot to act as such until the ship is "finally anchored or safely moored". Berthing and unberthing are part of inward and outward voyages.

Futhermore, the compulsory payment obligation applies to all movements of ships, including movages, and, therefore, under the present legislation the Pilotage Authority has no discretion whether to apply it or not (Part I, p. 217).

There is no objection if the voyage charge is broken down into two components: a trip charge and a berthing charge. This, however, would serve a useful purpose only in the case of exempt ships employing a pilot for the inward or outward trip but dispensing with his services for berthing or unberthing. If the practice is to be extended to all vessels, the compulsory payment obligation should be abolished first.

4. PILOTAGE OPERATIONS

(1) BOARDING AREA AND PILOT STATION

The pilots used to embark in the sheltered waters of the entrance to the inlet at the District seaward limit. The pilot station was relocated in 1965 and the boarding area is now off Govers Harbour.

The pilot station used to be maintained by the Pilotage Authority on the east side of the entrance to the inlet at Surgeon Cove on southwestern Exploits Island where the pilot vessel moorings were also located. Prior to 1960, the pilots lived at Exploits, a settlement on Exploits Islands, and commuted to Surgeon Cove pilot station by foot path or boat as necessary. The Exploits settlement, in common with many other small island communities of Newfoundland, is rapidly becoming depopulated and the pilots have moved their living quarters to Botwood. The pilot vessel was then used as required to transport pilots between Botwood and the pilot station.

The station was not manned regularly but most of the time a pilot was at the station on standby. However, if no ship was expected or about to leave, the station might be unattended for a few days. Occasionally, a pilot would stay at the station for a number of days. There were no set watches. This station had been in existence for over 50 years.

In their brief, the Pilot Commissioners indicated that it was their intention to move the station from the island to the mainland on the west side of the inlet when the road which was being built to reach the small settlements on the northwest side of Exploits Bay running through, *inter alia*, "Point au Bay" and on to Fortune Harbour was completed. This has now been done and the pilot station has been relocated at Govers Harbour approximately 13 miles inland from the seaward limit of the District (Waldron Cove). The area contains two of the few good anchorages in the inlet.

The pilots now commute by car between Botwood and the pilot station to suit the arrival and departure times of vessels. Vessels now sail into the sheltered waters of Ship Run and embark their pilots off Govers Harbour. Pilots are no longer exposed to the hazards of boarding vessels in heavy seas nor are vessels required to heave to on an exposed coastline to embark a pilot. It is reported that both pilots and Masters are pleased with the new arrangements Ex. 1463(m)).

(2) PILOT VESSEL SERVICE

Pilot vessel service is now operated from a small wharf which the Pilotage Authority built at Govers Harbour near the pilot station. The pilot vessel belongs to, and is maintained by, the Authority and is normally manned by the pilots themselves, but when one is not available a boatman is hired and paid by the Authority out of its own fund.

The vessel now in use (1969) is 22 feet long, 6 feet wide, powered by a gas engine, equipped with a ship-to-shore radiotelephone and carries standard equipment.

She was built in 1960 to replace one fifty years old, and was paid for out of the Pilotage Authority's Expense Fund. Construction costs, excluding radiotelephone equipment, were approximately \$3,000. She is not equipped with radar or echo sounding device but is sheathed with greenheart for ice protection.

Unlike other Districts there is no pilot boat charge, because the surcharge on pilotage rates was instituted specially to cover the expense of maintaining the pilot vessel service as well as for other operating expenses of the District.

(3) DESPATCHING

Despatching is quite informal. The pilots themselves man the radiotelephone at the station and answer all calls. The normal procedure for a vessel bound to Botwood and requiring a pilot is to send a message to the Pilotage Authority through Cabbage Harbour Head lighthouse. There is no set period of advance notice.

5. PILOTS' REMUNERATION AND TARIFF

Remuneration

As for St. John's, the tariff divides the pilotage dues into those that belong to the pilots as their remuneration and those that belong to the Pilotage Authority for the exclusive purpose of meeting the operating expenses of the District. The pilots' remuneration is an equal share of the pool which consists of the pilotage dues collected less the surcharge. However, the official figures showing the share of each pilot do not correspond to their actual net earnings since they merely refer to the pilot's share of the aggregate revenues derived from inward and outward pilotage which, together

with the surcharge, are the only pilotage dues the Secretary collects. These dues (except the surcharge) are fully divided into equal shares by the Secretary and paid to the pilots twice a month. The Secretary's percentage, although calculated on total receipts, is taken from the Expense Fund.

With respect to the unofficial berthing and unberthing charges and to the moorage fees, a private pooling arrangement has always existed. The pilots make their own collection and share these fees equally, usually every month.

The pilots are also employed in the icebreaker operated by Montreal Shipping Limited during the winter. In that respect, the three of them together received for instance, \$6,000 in 1961 and \$5,100 in 1962.

The practice of calculating the official pilots' earnings solely on the fees they earn when piloting ships inward or outward results in a deceptively low figure being shown as their income. It is not possible to ascertain with accuracy what additional remuneration they make from berthing and unberthing charges since not all, but most, vessels employ them for that purpose. There are also no official statistics of movages performed (these are reported as *nil* on the official financial statements) but according to the pilots' log-book, there are between 30 and 40 per year. It is believed this extra revenue would increase their official income by at least 30 per cent.

With these reservations, each pilot's official remuneration prior to income tax deductions is reported to have been as shown in the following table (the figures are an average share of official net earnings, i.e., the pool divided by 3). They generally correspond to the actual earnings of each of the three pilots but occasionally the actual revenue of two of them would be higher because the third was not always available, or there was a vacancy which was not immediately filled.

PILOT'S AVERAGE OFFICIAL REMUNERATION

Year		Year	
1959.....	\$ 3,273.25	1964.....	\$ 4,107.27
1960.....	3,953.38	1965.....	4,269.52
1961.....	3,060.58	1966.....	4,209.92
1962.....	3,565.67	1967.....	4,793.50
1963.....	3,826.17		

The slight increase up to 1966 is due to the increase in the tonnage of ships. In 1967, the rates were raised slightly.

Apart from the payment by the Pilotage Authority as District operating expenses of all the pilots' expenses for providing service, their only fringe benefit is the Workmen's Compensation coverage they have enjoyed since 1960. The premiums are treated as District operating expenses and, therefore, are provided free of charge to the pilots.

Workmen's Compensation benefits were obtained by the Botwood Pilotage Commission in an endeavour to make their pilots' working conditions more attractive. The subject was first broached by the pilots themselves. As in the St. John's District, the Pilotage Authority was named the employer for the purposes of Workmen's Compensation. The boatman is also covered when employed by the Authority.

Since the Canada Pension Plan was introduced, the Pilotage Authority treats its pilots as employees and pays the employer's contribution of 1.8 per cent of each pilot's official earnings minus the first \$600.00 exemption, which amounted to \$194.94 in 1966 and \$237.24 in 1967.

The Authority also endeavoured to obtain Unemployment Insurance benefits for its pilots but was unsuccessful. However, such benefits were extended to the boatman.

The pilots incur no personal expenses while providing service. They are reimbursed all their transportation expenses, which have been quite substantial since the pilot station was relocated in 1965 and can now be reached by land from Botwood.

Tariff

The District has retained the tariff structure that was copied from the tariff in force at St. John's at the time the pilotage organization first came under pilotage legislation in 1910. Comments made in this regard for St. John's apply here (pp. 556-557).

A moveage is officially recognized in the tariff as one of the services the pilots may officially render. Therefore, it is the duty and responsibility of the Secretary of the Pilotage Authority to keep records of moveages, to collect moveage charges and credit them to the Pilotage Fund.

The unofficial berthing and unberthing charge is illegal and its collection by the pilots should be discontinued. Since berthing and unberthing are part of the pilots' duty when piloting a vessel inward or outward, the voyage rate should be increased if it is considered too low.

6. FINANCIAL ADMINISTRATION

Although the By-law requires the Secretary to attend to the collection of all the pilotage dues and to deposit all pilotage earnings and other District receipts in a bank account called the *Botwood Pilotage Fund*, in practice, as seen earlier, he follows the former procedure—despite the regulations—and concerns himself only with those dues derived from official inward and outward trip charges and the surcharge. Therefore, none of the records kept by the Botwood Pilotage Authority shows the receipts yielded by the movages performed by the pilots, nor the extra remuneration they obtain from berthing and unberthing vessels during inward or outward trips. These fees are collected and pooled privately by the pilots themselves.

The Secretary prepares the invoices for inward and outward pilotage, including the surcharge, on the basis of arrivals and departures and from information on tonnage obtained from the agents. Source forms are not used. The Secretary reported he never had any difficulty making collections.

In accordance with the practice modelled on the St. John's system, there are two separate funds but they are segregated only through bookkeeping entries in the Pilotage Fund:

- (a) *pool money*;
- (b) the Pilotage Authority's *Expense Fund*.

All the money collected by the Secretary is deposited in the bank to the credit of the Pilotage Fund. Twice a month, the Secretary establishes the gross share of the pilots by dividing equally the dues collected from inward and outward trips and, after making the required individual deductions for income tax and Canada Pension Plan, pays each pilot his net share. What remains comprises the Expense Fund.

Each remittance to a pilot includes a statement showing the details of the pool being shared, i.e., listing the bills collected with the names of the vessels, net and gross tonnage, dates piloted, gross share and personal deductions. Apart from this document and the T4-form at the end of the year, the pilots receive no financial statement from the Authority.

Unlike the practice in St. John's, the surplus, i.e., the Expense Fund, is neither invested nor deposited in savings accounts. All money handled by the Pilotage Authority is shown in the current bank account, i.e., the Pilotage Fund (Ex. 1463(t)).

The financial statements which appear on the official Pilotage District annual reports are in the form of receipts and disbursements of both the pool and the Expense Fund without segregation and are restricted to that part of the pilotage dues collected by the Authority, but do not show the interest, if any, on the accumulated unexpended surpluses in the bank accounts or the total accumulated assets in the Expense Fund.

Study of Botwood, Nfld., Pilotage District

The following comparative table shows the details of the receipts and expenditures of the Pilotage Fund, based on the information contained in the annual reports (Ex. 281) for the years 1965, 1966 and 1967; the operational deficits were met out of the accumulated surpluses of the Expense Fund.

	1965	1966	1967
<i>Receipts</i>			
Pilotage dues: Trips*.....	\$12,808.56	\$12,629.76	\$14,380.50
Movages†.....	—	—	—
Surcharge.....	3,827.75	3,789.13	6,688.42
Other revenue.....	not shown	not shown	not shown
	<u>16,636.31</u>	<u>16,418.89</u>	<u>21,068.92</u>
Less: refund of overcharge.....	119.93	—	—
	<u>\$16,516.38</u>	<u>\$16,418.89</u>	<u>\$21,068.92</u>
<i>Expenditures</i>			
Pilots' remuneration‡.....	\$12,808.56	\$12,629.76	\$14,380.50
Secretary's remuneration.....	1,247.70	1,185.32	1,674.38
Boatman's salary§.....	916.56	472.11	680.80
Workmen's Compensation.....	369.65	414.24	411.39
Canada Pension Plan**.....	247.85	203.82	526.33
New pilot station.....	2,605.47	—	—
Boat and station operations.....	1,015.87	807.81	1,319.88
Travelling expenses of pilots.....	625.75	1,341.00	1,245.81
Printing and publications.....	191.54	—	18.93
Sundries.....	37.17	36.84	10.00
	<u>20,066.12</u>	<u>17,090.90</u>	<u>20,268.02</u>
Operating surplus or deficit.....	-3,549.74	-672.01	800.90
	<u>\$16,516.38</u>	<u>\$16,418.89</u>	<u>\$21,068.92</u>

SOURCE OF INFORMATION: District Annual Reports, Exhibit 281.

*Pilotage dues for trips do not include the \$20 unofficial berthing or unberthing charge.

†Movage fees are not entered in the Pilotage Fund.

‡Including income tax and Canada Pension Plan participation.

§After income tax and Canada Pension Plan deductions.

**Pilotage Authority's share for pilots and boatman, including income tax and Canada Pension Plan deductions for boatman.

According to the practice followed before Part VI C.S.A. came into force, the Pilotage Authority kept a fund of its own (referred to here as the Pilotage Authority's Expense Fund) for the purpose of defraying the District and service operating expenses, and also to constitute a reserve to finance expected capital expenditures (as to legality under Part VI C.S.A., vide p. 562).

The Pilotage Authority pays all operating expenses out of this fund, including the pilots' operating expenses, their Workmen's Compensation coverage and the Pilotage Authority's share of the Canada Pension Plan contribution.

In 1959, the Pilotage Commission was faced with the problem of renewing its pilot boat and repairing the building used as a pilot station at Surgeon Cove. Representations were made to the Department of Transport in the hope of obtaining Government assistance but without success. The Department of Transport informed the Pilotage Commission that no financial assistance would be forthcoming from the Federal Government and suggested that a bank loan be obtained for the purchase of a new boat and that an adjustment in the tariff be made in order to reimburse this loan.

On the basis of that advice, the Pilotage Commission increased the surcharge from 10 to 50 per cent in order to accumulate the necessary funds. This increase was never sanctioned by a By-law amendment but was collected nevertheless. It appears from the Department of Transport Auditor's report, dated May 15, 1961 (Ex. 248) that the Pilotage Authority endeavoured to have the surcharge properly approved but this was not done. The surcharge remained at 50 per cent from December, 1959, to January 1, 1962, when it was reduced to 30 per cent. However, the surcharge was regularly established with the adoption of the 1965 By-law. It was then fixed at 30 per cent and later raised to 50 per cent by a By-law amendment in 1967.

The following figures show the unexpended balance of the Expense Fund as of Dec. 31, 1964-1967 (Ex. 1463(t)):

1964	\$6,338.98	1967	2,633.99
1965	4,120.38	1968	4,856.03
1966	2,019.08		

These figures are the actual bank balance as of December 31 and, therefore, do not take into account outstanding cheques.

7. PENSION FUND

The Pilotage Commission had studied the question of a pension for their pilots and had endeavoured to devise ways and means of instituting some form of pension plan, but without success. It considered increasing the pilotage rates in order to raise the pilots' remuneration and thus provide a pension scheme. However, after inquiring about pilotage dues applicable in other ports of the Atlantic Provinces, the Pilot Commissioners felt that an increase in the rates could not be justified.

One of the recommendations in their brief to this Commission was that their pilots be provided with pension protection, the absence of which they considered a weakness in the system.

This Commission's views on the matter are expressed in Part I, C.10, and General Recommendation No. 39, p. 581.

Chapter D

For Recommendations affecting Botwood vide Subsection VI.

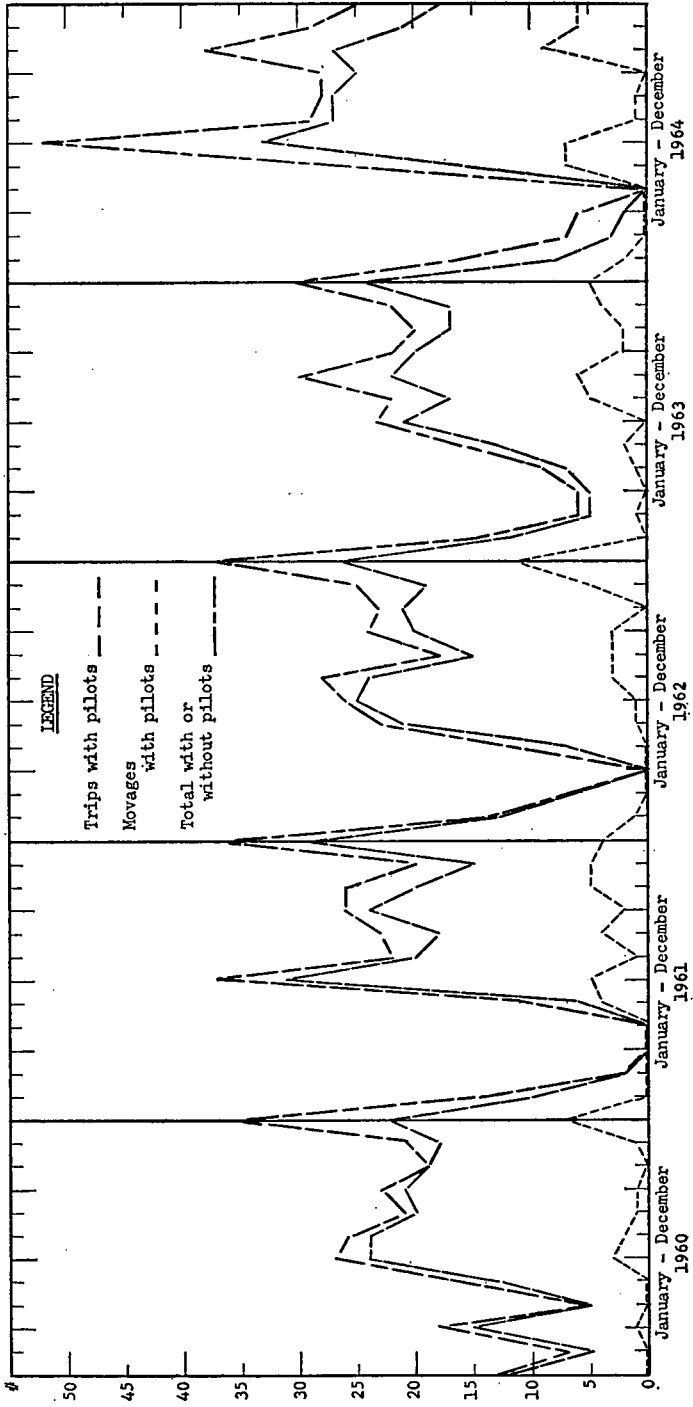
Chapter E

APPENDICES

APPENDIX A

- (1) *Graph*—Monthly Volume of Traffic in the Pilotage District of Botwood, NFLD., during the Five-Year Period 1960-1964.
- (2) *Table*—Monthly Volume of Traffic in the Pilotage District of Botwood, NFLD., during the Five-Year Period 1960-1964.

Appendix A (1)
MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF BOTWOOD, NFLD.,
DURING THE FIVE-YEAR PERIOD 1960-1964



Appendix A (2)
 MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF BOTWOOD, NFLD.,
 DURING THE FIVE-YEAR PERIOD 1960-1964

Month	Trips in and out with Pilots				Movages with Pilots				Total Traffic (trips in and out, movages) with and without Pilots						
	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964
January.....	12	10	13	12	8	0	0	1	0	2	13	15	14	15	17
February.....	5	2	0	5	3	0	0	0	1	0	7	2	0	6	7
March.....	15	0	0	5	2	1	0	0	0	0	18	0	0	6	6
April.....	5	0	7	7	0	0	0	0	1	0	5	0	7	9	0
May.....	13	6	21	13	16	0	4	1	2	7	14	11	23	16	25
June.....	24	31	25	21	33	3	5	1	0	7	27	37	26	23	52
July.....	24	20	24	17	27	2	1	3	5	1	26	22	28	22	29
August.....	20	18	15	22	27	1	4	3	6	1	21	23	18	30	28
September.....	22	24	20	20	25	1	2	3	2	0	23	26	24	22	28
October.....	19	20	22	17	27	0	5	0	2	9	19	26	22	20	38
November.....	18	15	19	17	21	1	5	5	4	6	21	20	25	22	29
December.....	22	29	26	24	18	7	4	11	5	6	35	36	37	30	25
TOTAL.....	199	175	192	180	207	16	30	28	28	39	229	218	224	221	284
AVERAGE.....	16.6	14.6	16.0	15.0	17.3	1.3	2.5	2.3	2.3	3.3	19.1	18.2	18.7	18.4	23.7

SOURCE OF INFORMATION: Exhibit 1462 (s) (4).

Subsection III

PORT OF LEWISPORTE, NFLD.

GENERAL SUMMARY

At the time of Union in 1949, Lewisporte was one of the four remaining outports still operating as a *Pilotage Port* under the Newfoundland Outport Pilotage legislation. When preparations were under way for the reorganization of these Pilotage Ports under Part VI C.S.A., it was decided by the Department of Transport, after consultation with the local authorities, that public control over pilotage at Lewisporte should be allowed to lapse. This occurred when the Outport Pilotage legislation was repealed by sec. 1 of the 1964 federal statute effective December 31, 1964 (vide p. 592).

The town of Lewisporte is situated on the west side of Burnt Bay at the head of the eastern arm of the Bay of Exploits. The eastern arm is entered from Notre Dame Bay through a wide, deep channel between Black Island and New World Island which continues southward through unimpeded waters for 17 miles to Mussel Bed Rocks, some 5 miles from Lewisporte. Shortly thereafter the channel narrows to about 2 cables between Cat and Freak Islands, but remains deep all the way to Lewisporte. There are no major navigational hazards and a vessel following the middle of the channel is in no danger. However, great caution is needed when approaching and passing Mussel Bed Rocks and also when passing between Cat and Freak Islands, all unmarked by lights or buoys. Due east from Cat Island lies Seal Rock (1 foot high but also unmarked by a light or buoy) with an intervening channel 2 cables wide. Due to the danger in this area, vessels generally use the passage between Cat and Freak Islands.

Navigation is conducted on a twenty-four hour basis. The pilot testified that he had navigated without difficulty at night and in fog with the aid of radar. Tides and currents are mild and present no difficulties. The harbour at Lewisporte is open all year round. Ice in the channel occasionally creates a hazard but it can be overcome with the aid of an icebreaker from St. John's (there is none locally). Lewisporte harbour is deep with good anchorages and is a Port of Entry.

The absence of serious navigational hazards and the fact that most ships calling at Lewisporte are of small size explains why pilotage is rarely required. No artificial need for the service was ever created, since the compulsory payment of pilotage dues was never imposed.

Aids to navigation are few. In this regard, the pilot stated in his evidence that guiding lights at Mussel Bed Rocks, Cat and Freak Islands and Seal Rock would greatly enhance navigation. Indeed, it may be surmised that if this were done, even a stranger to the area could navigate with confidence.

Lewisporte serves the limited needs of the immediate region. The principal export is fish; petroleum products and general merchandise are imported.

Maritime traffic consists mostly of small and medium-sized cargo vessels and tankers, with an occasional large tanker from 5,000 to 18,000 GRT.

The following table based on D.B.S. statistics of arrivals of vessels of 250 NRT and over (Ex. 1483) and from the Pilotage Port statistics up to 1964 (Ex. 261) shows the extent and importance of maritime traffic and the limited use made of the pilotage service. This table indicates that most vessels calling at Lewisporte are small and that a pilot is employed by a few larger vessels only.

COMPARISON BETWEEN D.B.S. AND PILOTAGE STATISTICS
FOR LEWISPORTE, NFLD.*

Year	Arrivals of Vessels 250 N.R.T. and over			Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.	No. of Pilots	No. of Ships	Average N.R.T.
1958.....	288	536.0	2	11	4,568.6
1959.....	98	1,509.6	2	13	4,633.5
1960.....	106	1,258.3	1	9	3,940.3
1961.....	88	1,160.9	1	7	2,735.7
1962.....	94	1,226.2	2	6	3,678.2
1963.....	97	1,137.8	1	8	3,376.3
1964.....	131	1,068.0	—	—	—
1965.....	103	1,253.9	—	—	—
1966.....	186	868.2	—	—	—
1967.....	162	959.8	—	—	—

*D.B.S. does not include pilotage information in its statistics.

However, pilotage statistics since 1961 do not give the true picture since occasional vessels were piloted in and out by their coastal pilots on board when local pilots were not readily available.

The infrequency of pilotage demand was reflected in the organization and availability of the service. The pilots could not reasonably be expected to be constantly available and they considered pilotage a secondary occupation.

The service was provided by two pilots, one regular and one on standby. A third person occasionally acted as pilot when the two others were not available.

The regular pilot, who lived on the mainland, held a Master's Coast-wise Certificate. He had served in small vessels engaged in local trade and also with the Royal Canadian Navy. The standby pilot was a fisherman who resided on Black Island, close to the pilot boarding area.

There have been no reported casualties within the last decade.

Study of Pilotage in Port of Lewisporte, Nfld.

There was no pilot station as such, but the recognized pilot boarding area for inbound vessels was east of Black Island at the entrance to the Eastern Arm. Requests for pilots were received from agents by the Commission's Secretary who passed the information on to the regular pilot, or, in his absence, to the relief pilot. For an inward pilotage, either the relief pilot who resided on Black Island would board the vessel from his own power fishing boat and bring the vessel in, or the regular pilot would go to Black Island in his power fishing boat and there await the vessel's arrival. After embarking, his boat would follow the ship into port. The reverse procedure would take place for outbound vessels.

The billing and collection of dues earned by the Lewisporte pilots were effected by the Secretary, who was also one of the three Pilot Commissioners. Information for billing was supplied by the Master of the ship or the shipping agent.

The rate structure was the same as for other Newfoundland Pilotage Ports, i.e., a scale based on net tonnage (Ex. 266).

Similarly, pilotage earnings were also shared between the pilots and the Pilot Commissioners. Here, however, the Pilot Commissioners' share took the form, not of a surcharge, but of a 10 per cent deduction from the gross receipts.

The following table shows the distribution of pilotage earnings for the years 1960 to 1963 (Ex. 261).

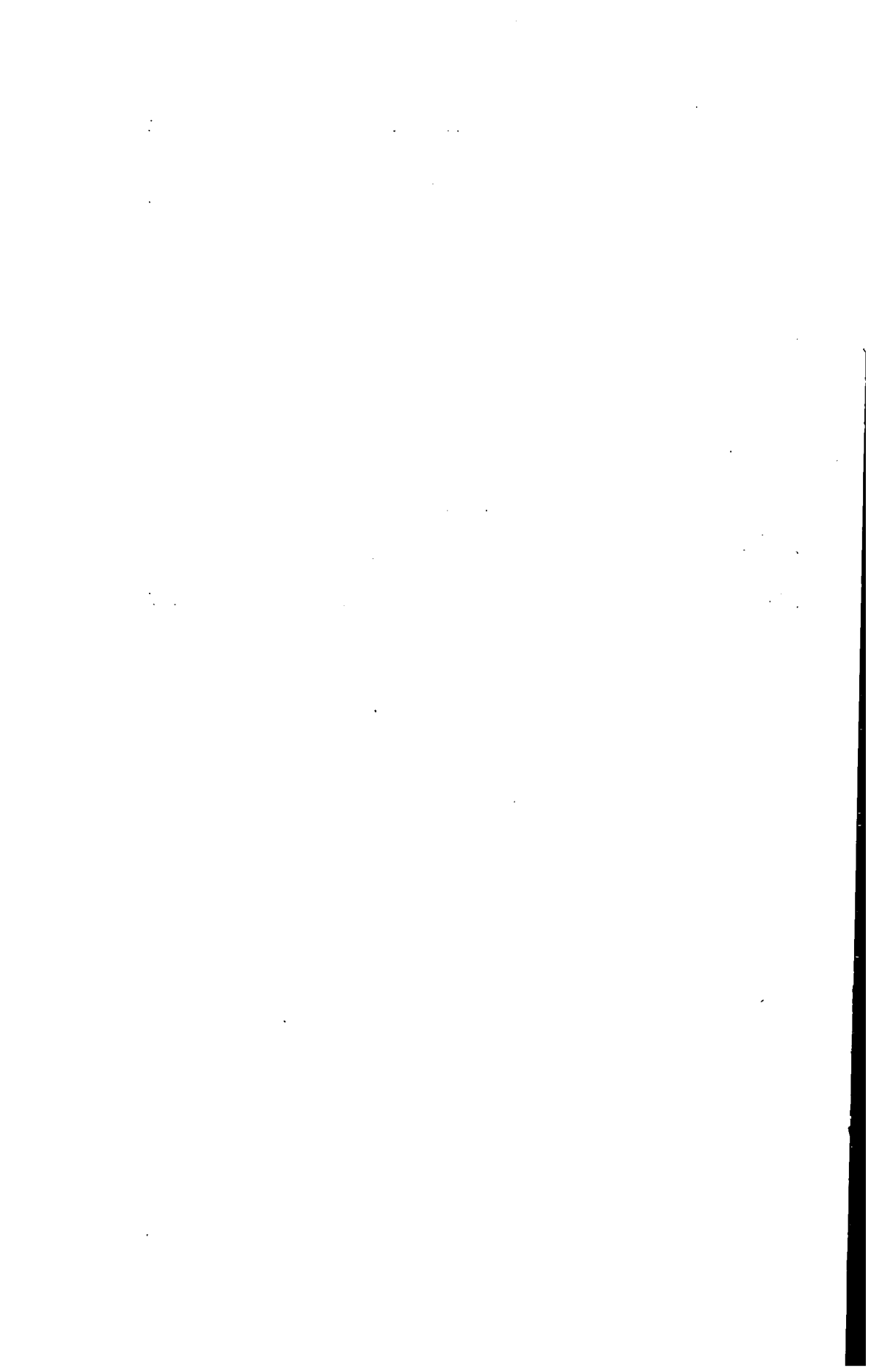
Year	Gross Receipts	10%	Pilot	Standby Pilot
1960.....	\$ 799.82	\$ 79.98	\$ 499.80	\$ 220.40
1961.....	475.02	47.50	427.52	—
1962.....	506.83	50.68	218.08	50.00
				188.07
1963.....	609.84	60.98	548.86	—

This 10 per cent deduction, although not provided for in the By-law, served to pay expenses incurred in the administration of the District, such as telegrams and long distance telephone calls, and the balance of the fund thus created was shared equally by the members of the Commission at the end of each year, notwithstanding sec. 2 of the Outport Pilotage statute which enacted that the Commissioners were to act gratuitously. However, the amounts involved were small and no complaints were ever voiced. This deduction had been made for several years and the members of the Pilotage Commission were unable to explain how it originated. The possible origin would appear to be the 1923 amendment which increased the rates by 10 per cent. The Lewisporte pilots had no welfare plan, did not benefit from Workmen's Compensation and had no Pension Fund.

In its brief to this Commission (Ex. 256), the Lewisporte Chamber of Commerce advocated that a suitable pilotage service be maintained. It pointed out that, since neither pilotage nor the payment of dues was compulsory, very few vessels made use of the pilots' services and, therefore, the pilotage organization was very weak financially and unable to maintain an adequate service. It recommended that Lewisporte be made a Pilotage District under Part VI of the Canada Shipping Act and the compulsory payment of dues imposed in order to raise the necessary funds. This brief was supported by the Lewisporte town council. (Ex. 260.)

COMMENTS

It is considered that the decision not to create a Pilotage District for Lewisporte under Part VI C.S.A. was correct because the limited demand does not warrant such a comparatively large organization. Pilotage guidance for larger vessels which call only occasionally could easily be provided by qualified Pilotage Advisers (Part I, pp. 492-3). It is further considered that the safety of navigation would be greatly enhanced if, as proposed by the pilots, adequate aids to navigation were provided at Mussel Bed Rocks and the hazardous locations in Burnt Bay.



Subsection IV

PILOTAGE DISTRICT OF HUMBER ARM, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The legislative situation in this Pilotage District is the same as in Botwood (p. 592). Two Orders in Council concern Humber Arm specifically:

- (a) P.C. 1964-2015 (Ex. 1462 (e)) made pursuant to Part VI C.S.A. secs. 324 and 326 creating the Humber Arm Pilotage District, effective January 1, 1965, fixing its limits and making the payment of dues compulsory.
- (b) P.C. 1964-2016 (Ex. 1462 (e)) made under sec. 325 C.S.A. appointing the Humber Arm Pilotage Authority effective January 1, 1965.

In addition, on February 19, 1965, P.C. 1965-303 approved the new District regulations made by the Pilotage Authority (Ex. 269), and on March 25, 1965, Corner Brook was proclaimed a "Public Harbour" by P.C. 1965-563 with limits established about half way through the Pilotage District some five miles west of the town and six miles inside the seaward pilotage limit as follows (Ex. 511):

"All the waters of Humber Arm lying East of Longitude 58° 04' W. and including the Humber River to the bridge crossing at Latitude 47° 57' 12" N.; Longitude 57° 53' 18" W."

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The Pilotage District of Humber Arm was created by P.C. 1964-2015, effective January 1, 1965. The Order in Council made the payment of dues compulsory and fixed the District limits to cover the same area as defined under the repealed legislation:

"... to include therein all the navigable waters of Humber Arm east of a line from Frenchman's Head to McIver Point;..."

The District comprises all the waters of Humber Arm, the southern of the three arms that extend eastward from the Bay of Islands. Corner Brook lies at the head near the mouth of the Humber River 11 miles from the seaward limit of the District.

By a separate Order in Council, P.C. 1964-2016, also effective January 1, 1965, the Governor General in Council continued the system of a local Commission and appointed the three former Pilot Commissioners as the Pilotage Authority, Mr. F. B. Hawkins, Chairman, Mr. A. M. Dunphy and Mr. H. W. Dawe, members, and also appointed Mr. Dawe Secretary-Treasurer pursuant to sec. 328 C.S.A. This Order in Council is silent as to his remuneration which is fixed in the District General By-law at 5% of the gross receipts.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, on January 20, 1965, the Pilot Commissioners submitted a District General By-law to replace the former by-laws that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on February 19, 1965. Here again, the confirming Order in Council erroneously mentioned that this General By-law revoked the previous by-laws. The fact that these previous by-laws had been made after Union and confirmed by the Governor General in Council did not alter the legal situation since they had all been made under the now repealed Newfoundland statute "Of Outport Pilots and Pilotage".

The only amendment to the By-law to date (1969) occurred September 29, 1966, when, P.C. 1966-1858 approved a new tariff and modified the exemptions.

Except for exemptions and financial administration, the provisions of this By-law are the same as those of the Botwood By-law (vide pp. 594-595). However, as far as sick leave is concerned, there is no problem of interpretation such as posed by the Botwood By-law since subsec. 21(6) does not contain the words "with pay". The provisions covering exemptions and financial administration differ in two respects.

- (a) *Withdrawal of statutory relative exemptions* (Part I, p. 221). In 1965, the former scheme of exemptions was retained and the exemption of subsec. 346 (e) C.S.A. was withdrawn except for vessels owned by a resident or a corporation of Newfoundland, or for vessels engaged exclusively in the Newfoundland coasting trade. Since 1966, however, the exemption of subsec. 346 (e) C.S.A. has been limited to small vessels, between 250 and 800 NRT, provided they are fully engaged in Newfoundland coastal trade. Vessels under 250 NRT enjoy the absolute exemption of subsec. 346 (f) which can not be modified no matter what type of trade they are engaged in. This provision is illegal in so far as it purports to apply to vessels which are not "steamships" as defined in subsec. 2(105) C.S.A.
- (b) *Financial administration*. Humber Arm retained the system laid down in the former By-law, i.e., only one fund is maintained, contrary to the practice at St. John's and Botwood. This fund is

operated like a Pilotage Fund, i.e., the pilots' aggregate revenue is the net amount in the Fund after all operating expenses have been paid. Each month the pilots are paid their salary as determined by the Authority. At the end of the year, any surplus remaining after a reserve in an amount determined by the Authority has been deducted is distributed to the pilots and boatman as directed by the Authority. Under Part VI C.S.A. the Pilotage Authority can not accumulate any reserve and, therefore, the system is illegal. The Act does not allow the Pilotage Authority to take any responsibility whatever for providing services, or for the financial obligations which would ensue. (The present legislation does not provide for fully controlled pilotage, a situation which this Commission has recommended should be corrected (Part I, General Recommendations 14, 18 and 20). These financial provisions of the By-law are also illegal in that the amount of the pilots' remuneration is left to the arbitrary decision of the Pilotage Authority while, according to Part VI C.S.A., their remuneration should be fully dealt with in the regulations, a statutory provision which is sound and should be retained in the proposed new Pilotage Act. The aforementioned By-law provisions were considered ultra vires by the Supreme Court of Newfoundland in 1955 (Nathan Dyke v The Pilotage Commissioners for Humber Arm, Ex. 1528). (For further comments, vide Part I, pp. 92 and 317.)

2. HISTORY OF LEGISLATION

Humber Arm, previously referred to as Humber Mouth and later called Bay of Islands, was proclaimed a Pilotage Port under the Newfoundland Outport Pilotage legislation on August 18, 1923, effective August 5, 1924. From 1941 to 1952, the port and pilotage services were made a joint operation, although both were governed by separate statutes, by the stratagem of appointing the same members to the two controlling boards under the name "The Board of Harbour and Pilotage Commissioners for Humber Arm". In other words, the same persons were acting in different capacities under one name. In 1952, when two of the present members were appointed, the Board endeavoured to draw up new by-laws but was advised by the Department of Transport that any by-law made by the Board as Pilotage Authority could not contain any provisions dealing with the management and control of the harbour. Hence, the Commission limited itself to pilotage and has done so ever since. In any case, its only revenue was derived from pilotage.

The first General By-law became effective August 5, 1924, and, after amendment, *inter alia*, by P.C. 3844 of September 4, 1952, was superseded

by new regulations made by the Pilot Commissioners from time to time pursuant to the powers they derived from the Newfoundland Outport Pilotage statute (for the 1941 by-laws, vide Ex. 285). The last By-law before Union was confirmed by the Governor in Council September 9, 1953, by P.C. 1953-1375. Its tariff was amended on January 18, 1962 by Order in Council P.C. 1962-76 (Ex. 269).

This By-law was studied by Mr. Justice Dunfield in the case of Nathan Dyke previously referred to. With regard to its validity, he came to the following conclusions:

"Here we have regulations purporting to be made by the Pilotage Commissioners and to be confirmed by the Governor-General in Council on the recommendation of the Minister of Transport (the Federal Minister) which set up the Commissioners with a financial structure and a list of duties and responsibilities such as it seems to me are utterly beyond the scope of Section 6 of Chapter 179, which is a licensing act and practically nothing but a licensing act. That is the situation on the basis that Chapter 179 was embalmed and preserved, temporarily adopted, in a sense, as a Federal Act, by the Terms of Union Act; and perhaps also by Cap. 20 of 1952-53; but as to this latter, an interesting question may arise, which I need not here decide."

Moreover, Mr. F. P. Varcoe, then Deputy Minister of Justice, in a letter dated November 12, 1956 (Ex. 1165) containing an opinion he gave to the Deputy Minister of Transport, acknowledged that the above-mentioned decision was correct. Nevertheless, the organization which was objectionable from the legal point of view, but proved satisfactory in practice, was retained in the 1965 By-law, despite the fact that Part VI of the Act had not been amended to make it legal as the Deputy Minister of Justice had mentioned as the required course of action.

The 1953 By-law is a model of regulations for a system of controlled pilotage. It is clearly apparent that it was drafted for local needs by businessmen directly connected with local shipping operations. They succeeded in providing for a sound and economically run pilotage organization. The principal features of the By-law were:

- (a) Responsibility for administering the District and the service was shared by three persons:
 - (i) The Chairman of the Board had overall responsibility, i.e., he directed the general operations of the service, ensured that the pilots were on duty at the pilot station as and when required, and superintended the maintenance of the pilot station and the pilot vessel.
 - (ii) The functions of the Secretary-Treasurer were clerical, i.e., financial matters, minutes of meetings and statistics.
 - (iii) Day-to-day operations were the responsibility of the Chief Pilot.

- (b) The pilots were employees of the Board of Commissioners who engaged and licensed them on a yearly basis under given conditions. They had to be available for duty at all times (except when on vacation) and at least one pilot had to be at the pilot station or on board the pilot vessel throughout the navigation season, unless all the pilots were engaged in piloting. They were entitled to two weeks' vacation, normally during the closed season. The Chief Pilot had to ascertain from one of the Commissioners the daily expected arrivals and departures and it was the responsibility of the pilots to arrange assignments among themselves, and to notify the Secretary-Treasurer when a vessel entered the District and was offered a pilot. They were also required to assist in maintaining the pilot house by carrying out minor repairs. They supplied their own victuals for the pilot station and the pilot boat.
- (c) At the pilot station near the boarding station the Pilot Commissioners supplied a house with a kitchen and sleeping accommodation for three, as well as a pilot vessel operated by a boatman hired by them for the season and placed under the direction of the Chief Pilot. The boatman manned and maintained the pilot vessel. The pilot vessel was to be used exclusively for the pilotage service, except in case of emergency or by special permission or order of the Board of Commissioners.
- (d) The boarding station was defined as being "located in the vicinity of a line between Frenchman's Head and McIver Point at the entrance to Humber Arm", i.e., the seaward pilotage limit.
- (e) The payment of dues was compulsory whenever the services of a pilot were used or whenever a pilot offered his services to a non-exempt vessel and was refused. Exemptions were limited to Newfoundland vessels employed in fisheries; "coastal vessels and coasting vessels"; Government ships and pleasure yachts not exceeding 150 NRT whether registered in Canada or not. Vessels entering for refuge and hospital ships of the Government of Canada were also exempted and paid only half pilotage rate when a pilot was employed.
- (f) The pilots, the boatman and the Secretary-Treasurer (who was a member of the Board) were to receive the salary or remuneration determined for each by the Board at its annual meeting. Operating expenses were paid as incurred and any surplus of funds at the end of the year was to be divided between the pilots and the boatman at the Board's discretion, after a reserve had been set aside for depreciation or the replacement or renewal of the pilot boat and the pilot station, and "a safe operating capital" had been retained in an amount determined by the Board.

- (g) The tariff provided rates for pilotage voyages and movages according to scales based on net tonnage, with the exception of provincial mail steamers whose rate was based on horse power until revoked in 1962. In addition, a \$10 pilot boat charge was added in 1962.

This By-law was a self-contained set of legislation covering all aspects of the operation of the service, including the accessory services such as administration and the pilot vessel service, so that the service and accessory services were all governed by the same set of legislation and fully integrated. It was *ad hoc* legislation made locally to fit local needs. This is the ideal situation which conforms with the Recommendations of this Commission (Part I, pp. 513-514).

This General By-law ceased to have force and effect on December 31, 1964, when all Newfoundland pilotage legislation was repealed.

Chapter B

BRIEFS

Two briefs were submitted.

(1) THE BOARD OF PILOTAGE COMMISSIONERS FOR HUMBER ARM

After a brief historical review of the legislation that had applied to Humber Arm as a *Pilotage Port*, they made three recommendations (Ex. 287) that may be summed up as follows:

- (a) Pilotage in Newfoundland should be governed by Part VI of the Canada Shipping Act. (This has since been done).
- (b) The relative exemptions of subsec. 346 (e) C.S.A. should be limited, either through an amendment to the Act or through a regulation made under sec. 347 C.S.A., to vessels coasting in the waters of the province in which they are registered. In the case of Newfoundland the exemption would apply only to vessels registered in the province and operating in provincial coastal trade. (As seen earlier, this recommendation was implemented by the Pilotage Commissioners in their 1965 General By-law.)
- (c) Humber Arm should be given the financial assistance granted from public funds to other Districts for the operation of a pilot vessel service by the Pilotage Authority. (For this Commission's views, reference is made to General Recommendations 20 and 21, Part I, pp. 521 and 524.)

(2) THE HUMBER ARM PILOTS

Their three recommendations (Ex. 288) were:

- (a) The exemptions to the compulsory payment of dues should be restricted to Government ships, pleasure yachts, and fishing craft and ships under 200 NRT.
- (b) The compulsory payment of dues should be extended to movages.
- (c) The District pilotage regulations should be drafted in accordance with Part VI of the Canada Shipping Act.

Chapter C

EVIDENCE

1. GENERAL DESCRIPTION

Humber Arm is situated on the west coast of Newfoundland at the southeastern extremity of Bay of Islands.

The entrance of the Arm between McIver's Point and Frenchman's Head southwestward from Woods Island is the seaward District limit. The Arm is roughly one mile wide and thirteen miles long and extends inland in a gentle curve to the south and east. The water is deep and extends close to the steep shores.

There are two good anchorages, one close to the Western Terminal Wharf at Corner Brook and the other at Pettipas Cove on the northern side of the Arm, one and a half miles across from Corner Brook. A third lies halfway down the Arm between Fox and Halfway Points. All these anchorages are within two or three cables of the shore.

Currents are not considered a problem by the pilots. They are strongest from the southeast but follow the axis of the channel; they are tidal and seasonal but of no great velocity.

Strong winds which occasionally reach 60 knots pose the greatest navigational problems and at times force vessels to anchor.

The Arm usually freezes over toward the end of December and clears at the end of April but it is reported that it remained clear of ice during the winter of 1968-9. Usually the ice is not thick enough to impede navigation, although it occasionally makes berthing and unberthing more difficult. When necessary the Bowater's improvised icebreaker consisting of a tug fitted with a bow plough assists. During severe winters when the ice may be heavier than usual, the Coast Guard icebreakers stationed at Sydney come to assist. When the Commission sat at Corner Brook in 1963, it was reported that on a few occasions when ice was heavy Port aux Basques was used as an alternative port, but Corner Brook is now considered open to navigation all year round.

The principal port in the District is *Corner Brook* situated in the southeastern part of the head of Humber Arm. It accommodates one of the world's largest paper mills. The main mill wharves have a continuous

frontage of approximately 2,000 feet. At the eastern end of the waterfront are the 300-foot Western Terminals wharf and the 120-foot Town wharf. Further eastward is the 600-foot C.N.R. wharf constructed in 1962.

The pilots stated they also occasionally pilot vessels near Brake Point situated about a mile east of Corner Brook to a wharf for handling cement and gypsum, and to Curling about two miles to the west to a small Government wharf for tankers.

(1) AIDS TO NAVIGATION

There is one unwatched light on Woods Island off the entrance to the Arm, a second at Frenchman's Head and a third at Meadows Point halfway down the Arm.

The pilots consider these aids satisfactory, even for a Master who enters the Arm for the first time.

The high cliffs which rise sharply from the shoreline give an excellent radar presentation.

The pilots make full use of radar and have found it reliable. They use echo sounding machines only when proceeding to an anchorage.

(2) MARITIME AND PILOTAGE TRAFFIC

Shipping traffic is mostly composed of vessels of about 3,000 NRT and under serving the export and import needs of the local paper mills of Bowater's Newfoundland Pulp and Paper Mills Limited and the North Star Cement Limited, and smaller cargo vessels handled by Western Terminals Limited.

In 1963, in addition to other vessels calling at its terminal, the Bowater's Company owned 11 vessels which it operated out of Corner Brook: three steamships each 419 feet in length and 3,900 NRT; six motor vessels each 325 feet in length and 2,071 NRT; one steamship 391 feet in length and 3,432 NRT and one 328 feet in length and 1,651 NRT.

The following table shows the extent of maritime traffic of vessels of 250 NRT and over and of the pilotage traffic together with the average NRT per ship in both cases, on a period basis (sources of information, Ex. 1483 D.B.S. and Ex. 270 (District annual reports)):

In 1959, the shipping pattern changed basically as larger vessels replaced twice as many small vessels. However, the aggregate NRT remained almost the same. Since then, the pattern has remained relatively constant except that there is a recent tendency toward smaller vessels, contrary to the experience in major ports. This indicates that the harbour activities are directly dependent upon local industries.

**COMPARISON BETWEEN D.B.S. AND PILOTAGE
STATISTICS FOR HUMBER ARM**
(Corner Brook—including Hughes Brook, Curling and Humbermouth)

Year	Arrivals of Vessels 250 N.R.T. and over.(D.B.S.)			Vessels Paying Pilotage Dues	
	No. of Ships	Average N.R.T.	No. of Pilots	No. of Ships	Average N.R.T.
1958.....	741	1,077.4	—	not available	not available
1959.....	304	2,062.5	—	not available	not available
1960.....	293	2,125.8	2	279	2,305.1
1961.....	326	2,103.8	2	325	2,098.3
1962.....	313	2,015.8	3	304	2,074.0
1963.....	238	2,522.3	3	248	2,390.3
1964.....	289	2,264.2	3	309	2,111.1
1965.....	292	2,351.5	3	289	2,301.9
1966.....	363	1,874.6	3	345	1,988.8
1967.....	309	1,861.1	3	297	1,976.6

However, the pilotage statistics are somewhat misleading in that they do not indicate the number of ships piloted but only those paying dues. The following comparative table of the movements of ships paying dues was compiled from statistics (Ex. 1463(b)(2)) drawn from the pilots' log-book, except the 1963 and 1964 figures which were furnished by the Pilotage Authority (Ex. 274). It shows the use made of the pilots' services and the number of ships' movements involving the payment of dues although pilots were not employed. (Vide also graph Appendix A(1).)

MOVEMENTS OF SHIPS PAYING DUES

Year	With Pilots				Without Pilots				Total Move- ments
	In- ward Trips	Out- ward Trips	Mov- ages	Total	In- ward Trips	Out- ward Trips	Mov- ages	Total	
1958.....	233	161	114	508	21	83	20	124	632
1959.....	284	200	171	655	12	77	11	100	755
1960.....	271	210	157	638	5	46	6	57	695
1961.....	286	194	105	585	43	102	18	163	748
1962.....	246	201	66	513	60	85	14	159	672
1963.....	223	191	(135)*	—	25	57	*	—	631
1964.....	216	205	(110)*	—	97	108	*	—	736

*The Pilotage Authority's statistics for 1963 and 1964 do not segregate movages with and without pilots.

This table shows that a large number of non-exempt vessels dispense with the services of pilots even though they pay dues. In 1961 and 1962, the percentage was 21.8 and 23.7 respectively of total ships' movements, mainly on outward trips. The Pilotage Authority explained (Ex. 1463(b)) that the majority of sailings without pilots involve small vessels whose Masters are familiar with the waters of the District and dispense with a pilot on outward trips when the weather is favourable. This fact also confirms the comparative ease of navigation in the District. It can be safely surmised that the use made of the pilotage service is not wholly governed by a genuine need for assistance but is influenced to a considerable extent by the fact that the payment of dues is compulsory. Indeed, a complaint was registered with this Commission (Ex. 1463(e)) on August 3, 1965, on behalf of Mr. H.C. Druce, the charterer of S.S *Rockcliffe Hall*, who was forced by the revocation of the ship's coasting licence and withholding of clearance on July 29, 1965, to pay dues for trips without a pilot. The vessel was trading between two ports in Newfoundland: Corner Brook and Hawke Bay. The complaint stated that the Master was fully qualified to bring the ship into Corner Brook, and had done so without a pilot on eight occasions that year, and that "in fact pilotage is not necessary at Corner Brook". This coasting vessel was subjected to the compulsory payment of dues on account of the discriminatory provision in the District By-law in favour of vessels owned in Newfoundland. (This provision was not retained in the 1966 amendment.) (Re the legality of the suspension of a coasting licence as a means of enforcing the collection of dues, vide Part I, p. 197.)

Statistics furnished by Bowater's Newfoundland Pulp and Paper Mills Ltd. show that their facilities were used by a greater number of ships and, on the average, by larger ones than any other terminal. Most loaded mill products; others brought in bulk cargoes such as limestone, fuel oil, equipment and pulp wood; and some vessels, mostly coastal and C.N.R. vessels, exclusive of regular paper carriers, were merely supplied with bunkers (Ex.283). The details are as follows:

Year	No. of Arrivals	Aggregate NRT	Average NRT
1960.....	215	557,111	2,591.2
1961.....	202	573,442	2,838.8
1962.....	158	449,310	2,843.7
1963.....	160	470,900	2,943.1
1964.....	169	493,449	2,919.8

The following table gives particulars of the traffic handled at Western Terminals Limited. The statistics. (Ex. 284) provide gross tonnage only; the net tonnage would be substantially lower. Most ships calling at this terminal are comparatively small and many are coastal vessels.

Year	No. of Vessels	Aggregate Gross Tonnage	Average Gross Tonnage
1960.....	103	159,067	1,544.3
1961.....	104	131,624	1,265.6
1962.....	106	107,308	1,012.3
1963.....	115	143,328	1,246.3
1964.....	79	117,593	1,488.5

The details of North Star Cement Limited shipping (Ex. 1463 (b)) operations are as follows:

Year	No. of Vessels	Aggregate NRT	Average NRT
1960.....	29	15,844	546.3
1961.....	42	21,043	501.0
1962.....	34	13,026	383.1
1963.....	42	25,438	605.6
1964.....	37	18,937	511.8

The traffic at the North Star Cement wharf consists mainly of small coastal vessels calling to load cement.

2. ORGANIZATION

When the Commission sat at Corner Brook in 1963, a Board composed of three Pilot Commissioners formed the Pilotage Authority. All were local residents connected with shipping: Mr. F. B. Hawkins, Chairman, appointed in 1952; Mr. A. M. Dunphy, Vice-Chairman, appointed in 1941; Mr. H. W. Dawe, member and Secretary-Treasurer, appointed in 1952.

In November, 1966, Mr. Dawe died, and was temporarily replaced as Secretary-Treasurer by his widow, Mrs. Edith Dawe, who was subsequently appointed as such in May, 1967 (Ex. 1463(u)).

In February, 1969, the Chairman, Mr. Hawkins, died creating a second vacancy on the Board. As of March 1 steps were being taken to appoint replacements.

Minutes are kept of all meetings (Ex. 286). These well kept minutes provide a continuous picture of the Humber Arm Pilotage Commission's administrative activities.

The Commissioners pay themselves a remuneration which is entered in the financial statement as "Commissioners' expenses". For further details, vide p. 641.

The Secretary-Treasurer's functions are merely clerical: day-to-day administration, establishment book, financial statistics, reports and financial statements.

The Secretary-Treasurer's remuneration is fixed by the By-law at 5 per cent of the gross receipts of the District. Mr. Dawe used his own car in the course of his duties but considered his remuneration reimbursed him for all expenses including rental for his office in his own home.

Pilotage operations are directed by the senior pilot.

3. PILOTS

In 1961, the number of pilots was increased from two to three and none has been licensed since.

In 1963, the senior pilot had been engaged as pilot since July 1, 1948; his licence was issued April 1, 1954. He held a Mate's Home Trade Certificate. The second pilot was first engaged as an apprentice pilot July 1, 1954, and was issued his pilot's licence April 1, 1955. He held certificates as Master Home Trade and Mate Foreign-going. The third pilot was also first engaged as an apprentice pilot as well as a boatman July 1, 1960; his pilot's licence was issued April 1, 1963. He also held certificates as Master Home Trade and Mate Foreign-going. None of these pilots had undergone any formal examination before being licensed but apparently they were well known to the members of the Pilotage Commission.

There were neither apprenticeship nor probationary periods at that time and a newly appointed pilot was allowed to pilot vessels without restriction.

The late Secretary-Treasurer testified that he exercised no surveillance over the pilots' leave during any given year because the system was not abused. At that time, they were authorized to take a week off annually if they could make suitable arrangements among themselves. Since 1965, the By-law has provided for 21 days' annual leave to be taken at a time to be determined by the Secretary, usually during the winter when traffic is minimal.

In recent years there have been no cases requiring disciplinary measures and no shipping casualties have been reported.

The pilots have had minor accidents, in none of which they were apparently at fault. One occurred in 1956 when approaching a wharf to berth and colliding with it causing damage to the wharf but none to the vessel. A second occurred in February, 1959, with the same vessel when berthing at night in ice. The vessel struck ice close to the wharf and sheered into it, but little damage resulted.

4. PILOTAGE OPERATIONS

(1) BOARDING AND PILOT STATIONS

When the Commission sat at Corner Brook, the 1953 by-laws then in force established the pilot boarding station at the seaward limits of the District, i.e., in the vicinity of a line between Frenchman's Head and McIver's Point, but these by-laws were repealed in 1965 and the new General By-law is silent on the subject. Therefore, there is no officially designated pilot boarding station. However, in actual practice there are two boarding areas, one off Frenchman's Cove adjacent to Frenchman's Head and about 12 miles from Corner Brook, and the other off Curling adjacent to Petries Point and about 3 miles from the wharves at Corner Brook. The pilot vessel's moorings are at Curling. The pilots usually board incoming vessels and disembark from those outgoing off Frenchman's Cove (Ex. 1463(p)) with the exception of vessels serving Bowater's and other local firms whose Masters are well acquainted with the District, who when inbound embark a pilot off Curling, and when outbound disembark him off Meadows Point, about 5 miles from Corner Brook. The Masters of several vessels were reported to have mentioned to the pilots that the boarding station could be moved inside the Arm to Meadows Point without any inconvenience.

There was a pilot station at Frenchman's Cove which was used extensively until 1956, but it has since been abandoned, and the pilots now reside in Corner Brook from where they are despatched. The practice of keeping pilots at the seaward limit of the District was discontinued when a radio-telephone was installed on board the pilot vessel, and since then the pilot station has been used only occasionally as a shelter during the fall. For all practical purposes it has been unused for several years and was dilapidated in 1963.

The late Secretary-Treasurer expressed the opinion that the station was of no further use but the pilots felt it should be retained because of the possibility of a new station being built on the site. It was revealed in 1963 that the Pilotage Authority had no title of ownership to the land, approximately 140 feet by 60 feet fronting on the Arm, but this was corrected November 26, 1964, when a deed of conveyance was granted by the owners of the land, Bowater's Newfoundland Pulp and Paper Mills Limited (Ex. 1463(b)). At present no pilot station is maintained.

(2) PILOT VESSEL SERVICE

Pilot vessel service is provided by the Pilotage Authority which owns M/V *Humber Pilot* and employs boatmen to operate and maintain her. Her moorings are at Curling, a section of Corner Brook (Ex. 1463(p)). The cost of this service forms part of the operating expenses of the District. To

finance capital expenditures, a reserve from pilotage earnings is accumulated from year to year in an amount deemed necessary to meet future requirements.

This pilot vessel was built for the Pilot Commissioners in 1955 at a cost of \$10,634.83 and paid for out of funds accumulated for the purpose. Her length is 38.8 feet, beam 11.9 feet, draught 5.0 feet, GRT 15 and NRT 9. She is powered by a 54 h.p. engine and fitted with standard equipment. In 1956, the Pilot Commissioners purchased and installed a radiotelephone on board and a new set in 1963 (Ex. 271). She is fully insured for \$11,000.

For several years only one boatman was employed on a seasonal basis. He held a temporary Master's certificate of service for that type of vessel. He was given one day's leave per week when the vessel was operated by one of the pilots. Since June, 1965, there have been two boatmen. Their remuneration is a fixed salary and a bonus granted at the end of the year at the discretion of the Pilotage Authority (p. 638).

In 1961 and 1962, the cost of operating the pilot vessel service, not counting depreciation on capital investment but including boatmen's remuneration, amounted to \$7,425.86 and \$8,232.70 respectively (Ex. 273). Since then costs have increased, (vide Table p. 640) but have been partly offset by the revenue yielded from the pilot boat charge (\$4,480 in 1962).

During the winter period when the pilot vessel is laid up for repairs, the pilots use an icebreaker belonging to the Bowater's Company. Prior to 1963, it appears that no charge was made for its use but since then, by verbal agreement, the regular boat fee is paid the company when their icebreaker is used for embarking or disembarking.

No special arrangements are made for a substitute pilot vessel. It was stated that, if necessary, any local boat available would be used but this need has not arisen in recent years.

The pilots expressed the opinion that their pilot vessel was a good sea boat and well equipped. They also considered that the installation of the radiotelephone had greatly improved the service and their working conditions.

(3) DESPATCHING

Despatching is done by the senior pilot from Corner Brook. He receives all ETA's and requests for pilots and then arranges despatching. Although it was stated that the pilots are assigned on a roster basis as directed by the senior pilot (Ex. 1463(p)), the records show that assignments are not equally shared.

(4) WORKLOAD

The extent of the pilots' work on a yearly basis is shown in the table on p. 631.

Pilotage traffic is spread unevenly throughout the year. As shown by the graphs in App. A(1), the volume is light during the five months from

December to April with extreme lows in February or March. As may be expected, traffic is greater during the summer months but varies from year to year with no set pattern. From October on it decreases rapidly and does not resume until the spring.

With respect to time spent on assignments, the following particulars were given:

- (a) The trip on board the pilot vessel from Corner Brook to Frenchman's Cove takes between an hour and an hour and ten minutes, and about half an hour to Curling the normal boarding place. It is reported that waiting for ships' arrivals is short nowadays.
- (b) The normal inward trip from Frenchman's Cove, including berthing, takes roughly an hour and a half; steaming alone varies between 40 to 50 minutes depending on weather conditions and the speed of the vessel; from Curling, it takes about 20 to 25 minutes less;
- (c) The pilots are not required to travel by land.
- (d) On account of the location and special features of certain wharves, some movages are protracted. It was reported, for instance, that a movage from Bowater's wharf to the North Star Cement wharf might take four hours (Ex. 1196). (For the number of movages performed, vide Table p. 631).

Therefore, the normal time for an inward trip including travel time on board the pilot vessel is roughly two hours and a half if the ship is boarded off Frenchman's Cove, and about one-third less if she is boarded off Curling. If the total number of assignments in any given year is divided by three, the pilots' workload is shown to be moderate, despite the fact that they do not all perform the same number of assignments.

The Commission received no complaints about workload, either from the pilots themselves or from the Pilotage Commission.

5. PILOTS' REMUNERATION AND TARIFF

(1) PILOTS' REMUNERATION

The salary of the pilots is fixed unilaterally at the beginning of each year by the Pilotage Authority on the basis of the previous year's revenue and an estimate of income in the ensuing year. It is paid every two weeks throughout the year. Originally, because of the reduction in traffic during the winter months, the third pilot was taken off pay from the time the pilot vessel was hauled up for the winter season until she was refloated in the spring. This practice was discontinued in 1965 and the three pilots now receive almost the same remuneration.

At Christmas, the Pilotage Commission calculates what will remain after all expenses are met and sets aside a certain amount in reserve toward such items as replacing the pilot vessel or her engine, or for any other unpre-

table expenditures, as well as for current expenses during the winter season including the semi-monthly salaries of pilots. The remainder is then distributed among the pilots and boatmen in the form of bonuses (vide details for 1965 shown in Table p. 641).

The amount shown as the pilots' individual remuneration also contains:

- (a) annuity premiums for each pilot (p. 642); since the premiums are established according to individual age, the amounts vary and account mainly for the difference in the individual remuneration figures; (except for 1967, when the accounting procedure in this respect was changed, the annuity premiums are shown as a separate item of expenditure; in the following table this was corrected so that the 1967 figures are comparable with those of other years);
- (b) occasional outport pilotage dues; it appears that such dues are paid to the pilot who performs the service in addition to his regular salary, e.g., this accounts for the \$34.80 discrepancy in the 1967 pilots' "take home pay" which appears to be due to two pilots sharing \$108.60 outside pilotage revenue, less \$20 boat charges.

The following table lists the three pilots' actual remuneration for the years 1962 to 1967 inclusive:

Year	Individual Remuneration			Average Share Per Establishment Pilot of the District Total Cost
	1st Pilot	2nd Pilot	3rd Pilot	
1962.....	\$7,790.68	\$7,389.40	\$6,142.10	\$12,041.44
1963.....	7,940.68	7,539.40	6,004.60	11,728.08
1964.....	8,240.68	7,839.40	6,484.60	12,108.33
1965.....	7,940.68	7,539.40	7,204.60	12,348.66
1966.....	8,332.03	7,930.75	7,820.95	13,747.12
1967.....	7,940.68	7,574.20	7,539.40	13,995.80

In addition, the Commission pays on behalf of the pilots the contribution for Workmen's Compensation and half the contribution to the Canada Pension Plan as employer (Part 1, p. 81). These expenditures are shown as District operating expenses and are not reflected in the individual remuneration figures quoted above.

The pilots have been under Workmen's Compensation since 1953, with the Board of Harbour and Pilotage Commissioners for Humber Arm being shown as their employer. The pilots do not enjoy the benefits of Unemployment Insurance. In 1959, the Unemployment Insurance Commission advised the Pilot Commissioners that the pilots could not be included with the boatman for Unemployment Insurance purposes.

The pilots incur no personal expense in the performance of their duties.

(2) TARIFF

The tariff structure is the same as in the other Newfoundland Pilotage Districts, i.e., a scale based on net tonnage plus a surcharge. The tariff was last revised in 1966 when the voyage rates and the pilot boat fee were raised by 20 per cent but the moorage fees remained unchanged.

The tariff provides that when the pilot boat can not be used owing to ice conditions or for other reasons the actual cost of hiring a substitute pilot vessel will be charged.

The only complaint made against the tariff was by the pilots who have often requested that a detention charge be provided for. This has so far not been granted by the Pilotage Authority. It is reported that the pilots are not normally called upon to wait and any waiting time would not exceed one hour at the most. For the Commission's comments on detention charges, vide Part II, pp. 157 and ff.

COMMENTS

There is no specific reason for retaining the surcharge in the tariff structure. In the Districts of St. John's and Botwood, there is a reason for making the surcharge a separate component of pilotage dues, i.e., it forms a separate Fund, but in Humber Arm the revenue derived from the surcharge is placed in the same Fund as the revenue from other pilotage rates. Therefore, the only limited advantage it provides is a simple method of varying the rates by modifying the percentage of the surcharge.

6. FINANCIAL ADMINISTRATION

The Secretary-Treasurer attends to billing and collecting pilotage dues. The late Secretary reported he had had some difficulty collecting dues from certain non-exempt ships which did not employ pilots. In the few instances of this nature it appears that the explanation given by him with particular reference to those sections of the By-law dealing with exemptions was sufficient to convince the shipowners or their agents that the payment of pilotage dues was compulsory. As seen earlier (p. 632), coercive measures were necessary in 1965 to enforce compulsory payment upon S.S. *Rockcliffe Hall*. Legal proceedings had to be taken again in 1967.

The District and the service are financially administered as if they formed a private corporation, with the exception that any profits after paying all expenses and setting aside a reserve for eventual capital or other expenditures belong to the pilots as their remuneration.

Therefore, two funds are maintained:

- (a) The *Pilotage Fund* is the current bank account into which the pilotage receipts are entered and from which the day-to-day operating expenses are paid. No distinction is made between the revenue yielded by the surcharge and other revenue. This fund is expended

at the end of each year except for a sum retained to meet expected current expenditures, pay the salaries of the pilots and boatmen whose services have not been terminated during the winter and build up reserves. Any surplus is divided by the Pilotage Authority among the pilots and the boatmen at its discretion. If there is not enough money to cover the year's expenses including adequate remuneration for the pilots, the additional funds required are withdrawn from the Reserve Fund.

- (b) The *Reserve Fund* takes the form of a savings bank account into which the sum set aside to form a reserve is deposited at the end of each year. The money in this fund bears interest at the current bank rate for savings accounts. It is used to finance anticipated capital expenditures (thus spreading the cost over a period of years); and also to ensure that the pilots receive adequate remuneration in years when pilotage receipts are insufficient, e. g., 1965 and 1966.

The financial statements shown on the District's annual reports do not reflect this financial arrangement, but consist merely of statements of receipts and disbursements for the year. A comparative table of such statements for the years 1965, 1966 and 1967 follows:

	1965	1966	1967
REVENUES			
Voyage dues.....	\$31,211.00	\$34,955.20	\$35,349.80
Movages.....	1,695.00	1,456.00	2,300.00
Boat charges.....	4,140.00	4,476.00	4,224.00
Outside pilotage.....	—	250.00	108.60
Transportation of pilots.....	—	104.16	5.00
Total revenues.....	37,046.00	41,241.36	41,987.40
EXPENDITURES			
Pilots' remuneration.....	22,684.68	24,083.73	23,054.28
Boatmen's remuneration.....	7,865.80	9,290.80	8,510.00
Secretary's remuneration.....	1,852.30	2,062.06	2,091.16
Commissioners' expenses.....	600.00	600.00	600.00
Pilot vessel operating cost.....	4,707.82	5,201.34	3,768.87
Pilots' expenses.....	205.85	119.16	669.65
Transportation.....	—	—	5.00
Canada Pension Plan.....	—	366.20	409.15
Workmen's Compensation.....	600.00	759.75	840.40
Unemployment Insurance.....	71.40	169.32	11.32
Auditing.....	100.00	100.00	100.00
Stationery.....	97.25	110.29	31.36
Postage and telephone.....	21.60	67.60	—
Bank charges.....	1.09	0.32	—
Miscellaneous.....	80.87	118.36	25.00
Legal fees.....	246.80	—	93.50
Total.....	39,135.46	43,048.93	40,209.69
Deficit or surplus.....	-2,089.46	-1,807.57	+1,777.71
	\$37,046.00	\$41,241.36	\$41,987.40

The deficit of \$2,089.46 as shown in 1965 resulted from the bonuses (for details see the following table) granted by the Authority to the pilots and boatmen in the amount of \$3,625.00. This sum exceeded the unspent balance of the year's earnings by the former amount which was paid from the Reserve Fund.

Pilots' and boatmen's salaries, bonuses and annuity premiums that year were as follows:

	Salary	Bonuses	Annuity Premiums	Remuner- ation
1st Pilot.....	\$6,000.00	1,000.00	940.68	7,940.68
2nd Pilot.....	6,000.00	1,000.00	539.40	7,539.40
3rd Pilot.....	5,700.00	1,000.00	504.60	7,204.60
Total for pilots.....	17,700.00	3,000.00	1,984.48	22,684.68
1st boatman.....	4,800.00	400.00	340.80	5,540.80
2nd boatman.....	2,100.00	225.00	—	2,325.00
		(3,625.00)	2,325.48)	
Totals.....	24,600.00	5,950.48		30,550.48

As of December 31, 1965, the undistributed amounts totalled \$24,646.22 divided as follows:

<i>Pilotage Fund:</i>	
On hand, in transit and in current account.....	\$10,024.06
<i>Reserve Fund:</i>	
Cash in savings account, St. John's.....	10,640.95
Cash in savings account, Bank of Montreal, Corner Brook.....	3,981.21
Total cash assets, December 31, 1965.....	\$24,646.22

Although the Newfoundland Outport Pilotage legislation stipulated that the Pilot Commissioners were to serve gratuitously and no remuneration was provided for them in any By-law, their custom has been to vote themselves a remuneration. This doubtless can be traced back to the time when pilotage and harbour operations were combined through the device of having the two required boards composed of the same persons. The current remuneration for the Chairman and the Vice-Chairman is \$600 shared between them. For bookkeeping purposes, this amount is entered misleadingly as *Commissioners' expenses*. This remuneration was decided by motion at a regular meeting of the Pilotage Commissioners. The third member received only his authorized remuneration as Secretary, i.e., 5 per cent of the District gross earnings.

The legal fees incurred in 1965 and 1967 were for the collection of outstanding pilotage bills.

The operating costs of the pilot vessel include the cost of hire of a replacement vessel during the winter months when the pilot vessel is laid up.

The item *pilots' expenses* comprises the cost of uniforms, medical examination and taxis.

COMMENTS

The financial procedure is illegal under the present legislation. First, the necessary approval for expenditures has not been obtained (except for the remuneration of the Secretary) as required by sec. 328 C.S.A. Second, all the dues belong to the pilots except the few deductions authorized by the Act; it is at present illegal to maintain a reserve, no matter how desirable and logical this may be now that pilotage is fully controlled (vide Part I, C. 5).

This financial procedure has one serious drawback, namely, the discretionary power exercised through administrative decisions by the Pilotage Authority to determine the pilots' remuneration. Whatever system is used, the pilots' remuneration must not be established by the unilateral decision of one of the parties involved but must be provided for in the legislation itself (vide Comments pp. 210 and ff.). In this connection see also General Recommendations Nos. 14, 18, 20, 21 and 25.

7. PENSION FUND

For a considerable time, the Humber Arm Pilotage Commission tried to get their pilots under some sort of pension scheme. In 1962, when an increase in the rates became effective, an independent insurance company submitted a plan which was accepted. Prior to this submission, the matter had been discussed with the Department of Labour and the Department of Finance.

Each pilot holds a separate non-participating policy issued by the Manufacturers Life Insurance Company of Canada for retirement savings annuity payable during the life of the annuitant, with 120 monthly payments of \$120 guaranteed in any event (Ex. 1463 (b)). This was decided at a joint meeting of the Pilot Commissioners and the District pilots. Each pilot authorized the Secretary and Treasurer in writing to deduct from his earnings a sum sufficient to cover the premium. The premiums, which vary with the age of the pilot (vide p. 638), are deducted by the Pilotage Authority from the pilot's remuneration and forwarded to the insurance company.

CHAPTER D

For Recommendations affecting this District see Subsection VI.

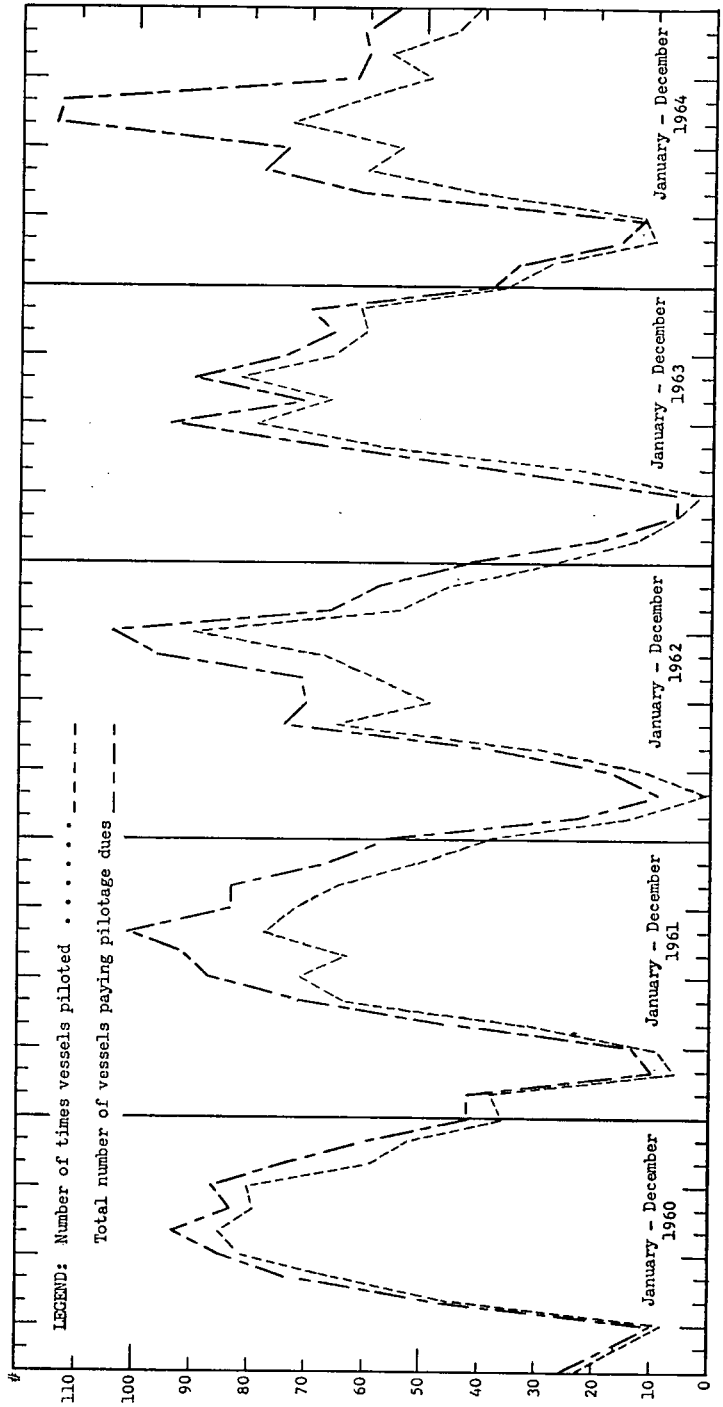
Chapter E

APPENDICES

APPENDIX A

- (1) *Graph*—Monthly Volume of Traffic in the Pilotage District of Humber Arm during the Five-Year Period 1960–1964.
- (2) *Table*—Monthly Volume of Traffic in the Pilotage District of Humber Arm during the Five-Year Period 1960–1964.

Appendix A (1)
 MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF HUMBER ARM
 During the Five-Year Period 1960-1964

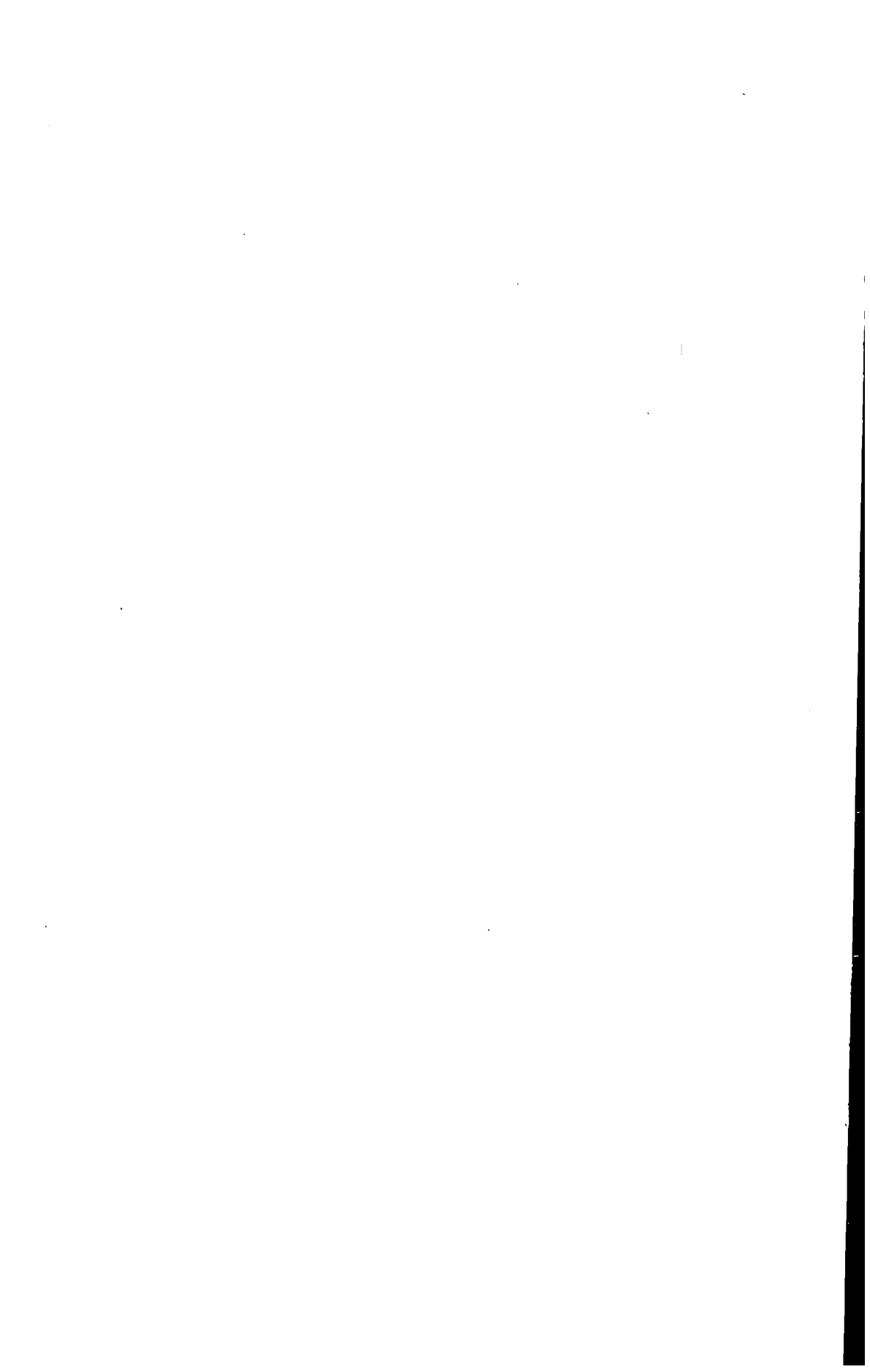


Appendix A (2)

MONTHLY VOLUME OF TRAFFIC IN THE PILOTAGE DISTRICT OF HUMBER ARM
During the Five-Year Period 1960-1964

Month	Number of Arrivals, Departures and Movages* without a Pilot					Number of Times Vessels Piloted					Total Number of Vessels Paying Pilotage Dues				
	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964	1960	1961	1962	1963	1964
January.....	2	3	9	7	6	23	38	14	13	28	25	41	23	20	34
February.....	0	4	8	0	6	16	6	1	6	10	16	10	9	6	16
March.....	2	4	7	4	0	8	9	11	2	12	10	13	18	6	12
April.....	4	15	10	8	20	44	31	30	21	41	48	46	40	29	61
May.....	10	8	9	10	18	63	63	65	57	60	73	71	74	67	78
June.....	4	16	21	15	20	81	71	49	79	54	85	87	70	94	74
July.....	8	28	13	5	39	85	63	58	66	73	93	91	71	71	112
August.....	4	24	29	8	49	79	77	67	82	62	83	101	96	90	111
September.....	6	11	14	8	13	82	72	90	66	49	88	83	104	74	62
October.....	5	18	12	6	4	69	65	54	60	56	74	83	66	66	60
November.....	7	15	12	9	16	52	51	46	61	45	59	66	58	70	61
December.....	5	17	15	2	14	36	39	28	36	41	41	56	43	38	55
TOTAL.....	57	163	159	82	205	638	585	513	549	531	695	748	672	631	736
Average per Month.....	4.8	13.6	13.3	6.8	17.1	53.2	48.8	42.8	45.8	44.3	57.9	62.3	56.0	52.6	61.3

*For the years 1963 and 1964, the movage figure does not indicate whether or not the vessels are piloted; consequently, for these two years, the total number of movages are added to the "number of times vessels piloted" (trips in and out, and movages).



Subsection V

PILOTAGE DISTRICT OF PORT AUX BASQUES, NFLD.

Chapter A

LEGISLATION

1. LAW AND REGULATIONS

PREAMBLE

The legal situation is the same as described in the Pilotage District of Botwood (vide p. 592). Port aux Basques was the third Newfoundland Pilotage Port created a Pilotage District after Part VI of the Canada Shipping Act was made applicable to Newfoundland.

Two Orders were made by the Governor in Council to create the District and appoint its Pilotage Authority:

- (a) P.C. 1964-2017 dated December 23, 1964, made pursuant to secs. 324 and 326 C.S.A. creating the Port aux Basques Pilotage District effective January 1, 1965, fixing its limits and making the payment of dues compulsory (Ex. 1462(c));
- (b) P.C. 1964-2018 dated December 23, 1964, made pursuant to sec. 325 appointing the Port aux Basques Pilotage Authority effective January 1, 1965 (Ex. 1462(c)).

Port aux Basques had already been proclaimed a public harbour under sec. 600 C.S.A. by P.C. 1957-1659 dated December 13, 1957, with limits described as follows:

"All tidal waters of Port aux Basques west of Longitude 59° 07' W. and north of Latitude 47° 34' N." (1462(i)).

The Port aux Basques legislation was completed on March 25, 1965, when P.C. 1965-560 approved the new District regulations made by the Pilotage Authority (Ex. 278).

(1) CREATION OF THE DISTRICT AND RELATED MATTERS

The District was created as aforesaid by P.C. 1964-2017 dated December 23, 1964. This Order in Council made the payment of dues compulsory and fixed as District limits the same area defined in the earlier but now repealed legislation, namely:

"... to include therein all the navigable waters of Port aux Basques Harbour northwest of a line from Channel Head to Shoal Point;...".

Contrary to the usual practice, the District waters so defined do not include all the waters of the public harbour. The seaward District limits are about 1200 feet inside the apex of the lines delineating the seaward harbour limits.

In P.C. 1964-2018 the Governor General in Council continued the system of a local Commission and appointed as Pilotage Authority the three former Pilot Commissioners: Mr. I. E. Davis, Chairman, Dr. C. L. Legrow and Mr. H. Dolomont, members, and pursuant to sec. 328 C.S.A. sanctioned the appointment made by the Pilotage Authority of Mr. H. Dolomont as Secretary-Treasurer. This Order in Council is silent as to the remuneration of the latter, but the subject is covered in the District By-law.

(2) PILOTAGE AUTHORITY'S ENACTMENTS

Shortly after their appointment, the Pilot Commissioners submitted a District General By-law to replace the former by-laws that had been repealed as of December 31, 1964. This General By-law received approval by the Governor in Council on March 25, 1965, as aforesaid (P.C. 1965-560), Ex. 278). The confirming Order again erroneously mentioned that this General By-law was "revoking the By-laws made pursuant to the Newfoundland Statute "Of Outport Pilots and Pilotage", chapter 179 of the Consolidated Statutes of Newfoundland 1916 (Third Series), and making the annexed Port aux Basques Pilotage District General By-law in substitution therefor". (Vide p. 592).

This General By-law has not been amended since. It is a verbatim copy of the General By-law of the District of Botwood (vide pp. 593 and ff.), with the following exceptions:

- (a) The Secretary's remuneration is established at 5 per cent of the District gross receipts.
- (b) Small foreign vessels under 250 NRT are exempted and the exemption to steamships engaged in the voyages defined in subsecs. 346(e)(ii) and 346(e)(iii) C.S.A. partially withdrawn. There is full exemption for all steamships wholly engaged in the coastal trade of Newfoundland, and for steamships under 1,000 NRT trading in coastal or inland waters. For such vessels of 1,000 NRT and over, compulsory payment is imposed to the extent of one fifth in the case of a "steamship that regularly enters and leaves the District at least once every 48 hours, according to a published Schedule of arrivals and departures", i.e., the C.N.R. car ferry plying between Sydney and Port aux Basques, and to the extent of two thirds for other steamships.
- (c) The method of financing District and service operating costs is the same as in the Humber Arm District. All receipts are purported to belong to the Pilotage Authority, the pilots' remuneration takes

the form of a salary fixed unilaterally each year by the Pilotage Authority plus any bonus it may decide to grant at the end of the year, and the unexpended surplus after the end of the year is accumulated to form a reserve for current expenditures, anticipated large capital expenditures and possible operational deficits. The only significant difference in the text of this section is that in the Humber Arm District it is mandatory (*shall*) for the Pilotage Authority to issue bonuses after the required deduction has been made for the reserve fund while at Port aux Basques it is discretionary (*may*).

- (d) The rates take the usual form of a scale based on net tonnage with the difference that each rate is for a round trip (inward and outward). There is a minimum of \$11.20 for vessels up to 120 NRT; for vessels between 700 and 800 NRT the charge is \$48 and for every 100 tons in excess there is a flat rate of \$2.40 per 100 tons. Morage charges are uniformly \$12. There is no tug boat charge. In addition, there is a 15 per cent surcharge on all pilotage dues.

2. HISTORY OF LEGISLATION

Port aux Basques was proclaimed a Pilotage Port under the Newfoundland Outport Pilotage legislation dated December 13, 1910, effective July 1, 1911. Its pilotage regulations from 1911 to 1953 were patterned after those of other Newfoundland outports, more particularly those of Humber Arm, and were sanctioned by the Governor General in Council pursuant to the powers derived from Term 11 of the Terms of Union of Newfoundland with Canada and sec. 6 of the Newfoundland Statute "Of Outport Pilots and Pilotage" by P.C. 1953-1234 dated August 5 (Ex. 278).

The District limits remained unchanged and a boarding station was to be located in the vicinity of the District seaward limit. The By-law provided for fully controlled pilotage and the various responsibilities were divided among the Commission Chairman, the Secretary-Treasurer and the Chief Pilot as at Humber Arm. Pilots were employees of the Pilotage Authority and the financial organization and procedure were also the same. The only slight differences were that, although the Pilotage Commissioners had to furnish a pilot vessel and provide for its operation, they did not provide a pilot station. The exemptions were the same, except that all vessels not exceeding 100 NRT were also exempted. The Secretary-Treasurer's remuneration was to be determined by the Board at its annual meeting.

The rates were the same as those now in force, including the 15 per cent surcharge, with the main difference that at the time there was a maximum charge of \$48 for sailing vessels and \$96 for steamships. Vessels registered in Newfoundland and operating on a schedule between any other province of Canada and the port were required to pay half the regular pilotage rate.

Chapter B

BRIEFS

The only brief which specifically concerned pilotage in Port aux Basques was filed in Sydney by Canadian National Railways (Ex. 402). For the recommendations contained in this brief, vide pp. 272-273.