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June 13, 2012

Mr. Gary Prosser
Secretary-General,
International Association of Marine Aids
to Navigation and Lighthouse Authorities
10 rue de Gaudines
78100 Saint Germain en Laye, France

Re: IALA Council Session 53: Agenda Item 9.6 (PAF)

Dear Mr. Prosser:

The American Pilots' Association (APA) is an associate member of IALA. The APA is the national association of the piloting profession in the United States. Pilots belonging to APA member groups handle over 95% of all international trade vessels moving in U.S. waters. We understand that the IALA Council at its 53rd session will consider for adoption several items reported to it by the "Pilotage Authority Forum" (PAF). We would like to offer some comments on those items and ask that you make these comments available to each of Council members at the session.

As a member of the International Maritime Pilots' Association (IMPA), the APA supports and endorses IMPA's opposition to the PAF and its stated mission. You and the members of the Council are no doubt aware of that opposition, and I will not repeat the grounds for it here. Several PAF items and activities to be considered by the Council, including the proposed "Report on Best Practice for Competent Pilotage Authorities" (the Report) are of particular concern to the APA, however. We believe that the Council would benefit from the

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following information regarding those items and activities from the perspective of pilotage in the United States.

1. U.S. Pilotage is Not Represented on PAF or on the Council. The primary responsibility for the regulation of pilotage in the United States rests with the individual state governments in the 24 coastal states. Simply, the pilotage system in the U.S. is the State Pilotage System. This has been the case since 1789 when our first Congress decided that pilotage is best regulated at the local or port level and is not suitable for a one-sizes-fits-all approach, even on a national basis. That decision has been reaffirmed by our Congress and courts many times since then, and the State system continues today with the support and encouragement of the national government. There are approximately 1,200 State-licensed pilots in the U.S. actively piloting today.

We know that a representative of the United States Coast Guard participates on the PAF. The Council should be aware, however, that the United States Coast Guard is a "Competent Pilotage Authority" for only 34 pilots operating on the U.S. Great Lakes. This is a small niche pilotage authority created in 1960 solely because the international boundary in the waters there requires a national regulatory entity legally capable of reaching bi-lateral agreements with the government of Canada. The number of U.S. Coast Guard-regulated pilots in the Great Lakes region (all of whom belong to APA member groups) is less than 3% of the total number of pilots of international vessels in the U.S.

2. The Report is inconsistent with, and inapplicable to, pilotage regulation in the U.S. A number of the regulatory practices recommended in the Report for competent pilotage authorities may work for the atypical pilotage systems maintained by the members of the PAF, but they would not work well in the United States. They are based on a type of pilotage that is not practiced in the United States. Other regulatory recommendations are so general or obvious that they have little value.

In addition, the Report's many recommendations on specific *piloting* practices, i.e., how pilots should do their jobs, include several ideas that are uninformed, impractical and contrary to current standards and practices established by professional organizations such as IMPA and the APA and followed by pilots throughout the world. The PAF is not qualified to be making such recommendations.

Finally, in at least one instance, the Report contains information about piloting that is directly contrary to well-established U.S. pilotage law. For example, in paragraph 5.3, the Report states that the role of a pilot is to "assist" in the safe conduct of a vessel by providing

"advice" to the master based on the pilot's local knowledge. This is not true in the United States. As the Commandant of the U. S. Coast Guard has stated, in a legal opinion representing the official position of the Coast Guard:

[A] pilot is more than a mere "advisor" or "servant" to the vessel master. **The popular misconception that a pilot is a mere advisor to the master is without substantial foundation either historically or legally, ...**

There is no question that the master of a vessel is in command of that vessel and is at all times ultimately responsible for her safety. However, there is also no question that **the pilot, while acting in that capacity, is in direct control of the ship's navigation and supersedes the master in that respect** until such time as the master, asserting his overall command authority, relieves the pilot of his duty and authority, or by his action countermands his orders. ... There is substantial volume of case law supporting this position.

RE: M/V SKAVA, 2001 AMC 2071 (Commandant Decision, May 14, 2001) (citations omitted, emphasis added).

The U.S. pilotage law on this issue may not be the same as the law in other places. We explain the U.S. law not to recommend it but only to note the dangers in trying to fashion an "internationally harmonized" pilotage system. Unlike the PAF, we would not presume to impose our pilotage system on other places in the world.

The errors and unsuitable features of the Report are a necessary consequence of the limited membership of the PAF. None of the five members is from a mainstream pilotage system, and none of the participants at PAF meetings, to our knowledge, has experience as a pilot. However much these individuals may believe that they have better ideas for regulating pilotage and providing pilotage services, they are not representative of worldwide pilotage.

3. The PAF's Support for ISPO Is Misplaced. As the introduction to the report and other items from PAF indicate, the Forum is interested in the so-called "International Standards for Maritime Pilot Organizations (ISPO) developed by a group of Dutch Pilots. That program is not supported by IMPA or by the APA. Despite the title given to it, it is not an international program but rather a commercial product currently being marketed. It has been adopted by only a handful of pilot organizations in certain places where the pilots feel that it may have some utility in their circumstances.

I would like the Council to know that ISPO is not appropriate for pilotage in the U.S. The APA has studied it very carefully. In fact, one of our officers was part of an IMPA team that reviewed the program for several years and ultimately rejected it as unsuited for IMPA and for many of its members. It is a vehicle for self-regulation and a device to assist pilot groups who have to compete for business. Fortunately, in the U.S. pilotage is heavily regulated and non-competitive – again based on long-standing judgments by the national and state governments. As result, we have no need for ISPO and see no reason why some group in which the U.S. pilotage system is not represented should tell us that it is a “best practice.”

4. International Harmonization Is Not Appropriate for Pilotage. As the Council is aware, IMPA has made it very clear that the IMO is, and has been, the proper forum for discussing whatever international aspects of pilotage and pilotage regulation might be warranted. IMO has formally and officially announced its conclusion, after long examination and debate, that “since each pilotage area needs highly specialized experience and local knowledge on the part of a pilot, IMO does not intend to become involved with either the certification or licensing of pilots or the systems of pilotage practiced in various States.” Res. A.960 (XXII) (2003) (identical statement in the predecessor Res. A.485 (XII) (1981)).

In these resolutions, IMO is not merely saying that the *IMO* should not pursue international harmonization of pilotage systems, it is saying that international harmonization of pilotage systems should not be pursued at all, because of the nature of pilotage and the need of each pilotage area for a system suited to its own circumstances. This is an important principle for pilotage in the U.S and one that is a fundamental tenet of the APA. It is mirrored in the judgment of the United States Congress first made in 1789 and consistently followed since then in favor of state rather than national regulation of pilotage. The U.S. Supreme Court described that judgment in 1851:

The practice of the States, and of the national government, has been in conformity with this this declaration, from the origin of the national government to this time; and the nature of the subject when examined is such as to leave no doubt of the superior fitness and propriety, not to say the absolute necessity, of different systems of regulation, drawn from local knowledge and experience, and conformed to local wants.

Cooley v. Board of Wardens for Port of Philadelphia, 53 US (12 How) 299 (1851). The rationale for local/State regulation of pilots in the U.S. rather than national regulation obviously applies with even greater force to national rather than international regulation.

Also, as an associate member of IALA; a sister organization to IALA (through our membership in IMPA); and a longtime friendly supporter of IALA and its traditional work, we are perplexed and disheartened by the apparent dogged determination of IALA to contest IMO on this issue and to set itself up in conflict and perhaps competition with that body. What good can come of this? Is the goal of the five members of PAF to use IALA to impose their minority views on pilotage on the rest of the world worth the damage to IALA's relationship with IMO and with IMPA and to IALA's reputation within the community of international maritime organizations? Why is IALA picking this fight?

5. Pilotage is Not "an Assistance External to the Ship." We note the assertion made by the Council in the report of its 51st session that pilotage "is an assistance external to the ship and thus falls within IALA's scope of work." Such a description of pilotage would certainly surprise, and confound, pilots in the U.S. Although it seems clearly to have been an expedient to justify IALA's recent incursion into pilotage, it is so contrary to the realities of piloting that we must object to it. Pilotage is a professional service provided on the bridge of a ship, and only on the bridge of a ship, by a licensed mariner. It is not a VTS function; it is not a maritime aid to navigation; it is not a commercial service purchased from a company.

If the Council truly understands pilotage to be merely "an assistance external to the ship," then such a fundamental misunderstanding is all the more reason why the U.S. pilotage system must oppose PAF and anything that comes out of it.

Respectfully,

A handwritten signature in blue ink, appearing to read "M. R. Watson", written in a cursive style.

Captain Michael R. Watson
President