

**BOARD FOR BRANCH PILOTS
MEETING AGENDA
June 15, 2020 at 11:00 a.m.
Norfolk, Virginia**

1. Call to Order
2. Safety Evacuation Instructions
3. Welcome New Board Member—Captain January Collins
4. Approval of Agenda
5. Approval of Minutes—March 13, 2020, Board Meeting
6. Public Comment Period
7. VPA Announces 2020 Leadership Team
8. Vice-President Election
9. Exam Administrator's Report
10. Dodson Initial License Examination (9/14/20)
11. Review of Notification Letter—Captain Charles I. Boggs, Jr. – M/V Jing Jin Hai
12. APA Request—Pilot Ladder Safety
13. Letter from Captain Cofer
14. 2021 Meeting Schedule
15. Financial Statements
16. Other Business
17. Conflict of Interest Forms/Travel Vouchers
18. Adjourn

NEXT MEETING SCHEDULED FOR SEPTEMBER 15, 2020 AT 11:00 A.M.

*Agenda materials made available to the public do not include disciplinary case files or application files pursuant to §54.1-108 of the *Code of Virginia*.

*Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the Department at (804) 367-8514 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

DRAFT AGENDA
Materials contained in this agenda are proposed only for discussion
and are not to be construed as regulation or official policy.
DRAFT AGENDA

- DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
DRAFT AGENDA
- 1. Call to Order**
 - 2. Safety Evacuation Instructions**
 - 3. Welcome New Board Member—Captain January Collins**
 - 4. Approval of Agenda**

**BOARD FOR BRANCH PILOTS MEETING
MINUTES**

The Virginia Board for Branch Pilots met on Friday, March 13, 2020, at the Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia, with the following members present:

Captain E. Waightstill Avery
I. Vincent Behm, Jr
Captain J.W. Whiting Chisman, III
Captain J. William Cofer
Michael W. Coleman
Thomas P. Host, III
Patrick B. McDermott
Christine N. Piersall

Board member Captain Robert H. Callis, III was not present with regrets.

Staff present for all or part of the meeting were:

Kathleen R. Nosbisch, Executive Director
Tanya M. Pettus, Administrative Assistant

There was no one present from the office of the Attorney General.

Members of the Audience included:

Mark Coberly, Manager, Maritime Law Department, Representative from Vandeventer Black
Captain David Ware, Virginia Pilots Association

Finding a quorum of the Board present, Ms. Piersall, President, called the **Call to Order** meeting to order at 11:02 a.m.

Ms. Nosbisch stated Mary Broz-Vaughan, Captain Callis, Heather Lockerman, and Elizabeth Peay send regrets, and introduced Tanya Pettus, administrative assistant, to the Board.

Ms. Nosbisch advised the Board of the emergency evacuation procedure.

**Safety
Evacuation
Instructions**

Mr. McDermott moved to approve the agenda as presented. Captain Avery seconded the motion which was unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

**Approval of
Agenda**

Captain Chisman moved to approve the minutes from the December 13, 2019 Board meeting as presented. Mr. Host seconded the motion which was

**Approval of
Minutes**

unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

There were no public comments.

**Public Comment
Period**

Ms. Nobsch introduced Mark Coberly, counsel to the Virginia Pilots Association and Captain David Ware who were both present to observe the meeting.

The Board reviewed a follow-up letter from Captain Nathaniel T. Green, II, providing further information on an incident involving M/V IJSSEL CONFIDENCE reviewed by the Board at its December 13, 2019 meeting. The follow-up letter was submitted at the request of the Board.

**Notification
Letter Follow-up,
Captain
Nathaniel Green,
II-M/V IJSSEL
CONFIDENCE**

On September 23, 2019 Captain Green was ordered to sail the M/V IJSSEL CONFIDENCE from Elizabeth River Terminal (ERT) Berth 2 to Sea. The IJSSEL CONFIDENCE is a 590' x 98' bulk carrier drawing 32 '05". Weather conditions were clear with light SW winds and the current was ebbing. The ship was berthed portside to, which meant the ship would be coming off the berth and backing downriver to Money Point where the ship would be turned to port and headed out of the Southern Branch of the Elizabeth River. Due to channel depth and characteristics, this maneuver results in the stern of the ship being near to the DCP Midstream Terminal, which is on the south side of the river. This is a normal procedure when sailing vessels from ERT that are too large to turn around off the berth.

Upon entering the wheelhouse, Captain Green introduced himself to the Captain and greeted the docking master. Captain Green reviewed the pilot card and confirmed the vessel's draft with the docking master. After conducting a Master/Pilot exchange with the Captain, Captain Green ascertained the ship was in good working order and let the docking master know they were ready to get underway.

The docking master was using two tugs for the maneuver. The NANCY MCALLISTER was made fast to the bow using the center lead and the GM MCALLISTER was made fast to the starboard quarter. The docking master had the conn and pulled the ship off the berth and proceeded to back the ship down river towards Money Point. The approach from ERT to Money Point is from east to west. At a point about 2/3s of the way to Money Point, the channel angles more to the northwest so the vessel's stern needs to be steered in that direction accordingly. The docking master gave an order to "work ahead" to the GM MCALLISTER in order to do this. The intention of this order was to bring the stern of the IJSSEL CONFIDENCE to port.

It would be expected that the tug would work at about a 90-degree angle to the ship. However, it appears that the tug worked ahead on an angle of 45 to 60 degrees. The result of this was twofold. The ship's stern movement to port was

less than anticipated and the added thrust from the tug at this angle increased the sternway. When this became apparent the docking master ordered the ship's engine ahead and the rudder "hard to starboard". The effect of the ship's engine was not as strong expected by the docking pilot, so engine speed was increased incrementally until "full ahead" was ordered. The docking master also shifted the rudder from "hard starboard" to "midships" and back to both reduce sternway and move the stern to port. Captain Green felt his actions were appropriate under the circumstances and therefore there was no reason to intercede. At one point Captain Green entered the wheelhouse to verify that the engine telegraph was on "full ahead" as ordered by the docking master after hearing him ask the captain to confirm that order. When Captain Green came back out on the wing of the ship, he noted that the GM MCALLISTER was lying alongside the ship in order to clear the eastern-most mooring dolphin of the DCP Midstream Terminal. As the ship neared the main pier structure of the DCP Terminal the ship's engine had fully checked the sternway, and the docking master ordered "stop engine." The vessel at that time had a bit of offshore drift and was not at risk of striking any structures. At this time (0657) the GM MCALLISTER went from being stopped to working ahead with right rudder. This threw the tug's stem against a catwalk, a catwalk support, and a second catwalk. This knocked both catwalks into the river. Captain Green asked the docking pilot something to the effect of "What the heck is going on?" and he replied he had no idea and that his last order to the tug was "all stop". The M/V IJSSEL CONFIDENCE never made contact with the pier or grounded.

Captain Green reported the incident to the Coast Guard via telephone and proceeded to sea. After disembarking the vessel, he went to the drug testing facility and took both the State and Federal drug tests.

Because of the initial damage estimate to the DCP Midstream Terminal and the potential loss of operations during repairs, Captain Green was asked to appear before an inquiry held by the Coast Guard and the National Transportation and Safety Board on October 15, 2019. He appeared and gave testimony as to what he saw and answered questions. Captain Green affirmed to both parties that the captain, crew and docking pilot had all acted in a professional manner. Captain Green has not been contacted by the USCG or the NTSB again regarding this incident.

Mr. Coleman recused himself from the meeting for the Board decision and vote on the incident involving M/V IJSSEL CONFIDENCE.

Recusal of Board Member

After review and discussion, Mr. McDermott moved that the letter be filed and that the Board take no action, as there appears to be no violation of the Board's regulations or statutes and this letter was informational in nature. Mr. Behm seconded the motion which was approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Host, McDermott, and Piersall.

Notification Letter Follow-up, Captain Nathaniel Green, II-M/V IJSSEL CONFIDENCE,

Mr. Coleman returned to the meeting.

Discussion was held on the transfer of authority, and the incidents that fall under the Board's purview. The Board agreed by consensus to further discuss the topic as an agenda item at its June meeting.

The Board reviewed a letter from Captain Robert H. Callis, III, providing information on an occurrence involving the Maersk Memphis. Captain Callis informed the Board of the event for informational purposes, as the Maersk Memphis did not ground or allide with any objects at any time during the occurrence.

On February 15, 2020 Captain Callis was ordered to sail the Maersk Memphis from NIT North to sea at 18:30. The Maersk Memphis is a containership of 74,642 gross tons, 299 meters in length and 40 meters in breadth. The maximum draft was 10.9 meters. The vessel has a functional 2,700hp bow thruster and was starboard side to in the middle of the North Berth. The weather was calm with good visibility.

Captain Callis arrived on board around 18:00. He introduced himself to the Captain and had a master/pilot exchange of information. Everything in the exchange was typical except for the Captain stating because of the type of fuel being used the initial start of the engine uses a lot of the starting air, but after that initial start everything is normal.

A short time later the docking master, Captain Josh Parker, arrived. He had two tugboats, the Jack Moran and Clayton Moran. He received the same information from the Captain. The Jack Moran was made fast on the port quarter and the Clayton Moran was forward without a line since the bow thruster was available.

Promptly at 18:30 the ship began to take in lines and slowly pull away from the berth using the aft tugboat and the bow thruster. Once the ship was on a heading to begin forward motion Captain Parker ordered "dead slow ahead", but the engine sputtered and did not turn over. A few more attempts were made with the telegraph, stopping and restarting, but we were not successful getting the engine to run.

It was agreed to put the ship back alongside the berth. Captain Parker did a great job maneuvering the ship with the tugboats and bow thruster to keep the

Continued

Return of Board Member

Notification Letter Follow-up, Captain Nathaniel Green, II-M/V IJSSEL CONFIDENCE, Continued

Review of Notification Letter-Captain Callis-Maersk Memphis

ship in a safe position at all times. Berthing positions were assigned at the southern end of NIT North where the vessel was eventually berthed without incident. Captain Callis assisted the captain by contacting the Coast Guard ensuring notice was made and explained the situation. Captain Callis left the vessel at 20:00.

After review and discussion, Mr. Coleman moved to accept Captain Callis' letter as informational only, and find that there had been no incident. Mr. McDermott seconded the motion unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

Ms. Piersall advised the Board of the death of Sandy Hook Pilot Captain Dennis R. Sherwood on December 30, 2019. Captain Sherwood succumbed to injuries he received after falling from an accommodation ladder while boarding a container vessel inbound to the Port of New York & New Jersey.

Sandy Hook Pilot Tragedy

Captain Cofer provided, for informational purposes, a letter from the American Pilots' Association to state pilotage authorities addressing accommodation ladder-pilot ladder combinations and pilot safety.

Captain Avery provided the Board with a report of examinations conducted by the Exam Administrators on March 13, 2020. The following report was made:

Exam Administrator's Report

Ryan Robert Nienstedt answered oral questions related to the raise in grade. The subjects included safe anchoring positions in Lynnhaven, Cape Charles, and Sewell's Point, anchoring deep draft vessels, inner harbor transits, vessel squat and under-kneel clearance, limitations of bow thrusters and adequate tugboat assistance, hazards of marine construction and dredging, traffic management and safe vessel speed.

Timothy Delaney Oksman answered oral questions related to the raise in grade. The subjects included safe anchoring positions in Lynnhaven, Cape Charles, and Sewell's Point, anchoring deep draft vessels, inner harbor transits, vessel squat and under-kneel clearance, limitations of bow thrusters and adequate tugboat assistance, hazards of marine construction and dredging, traffic management and safe vessel speed.

Richard Austin Lyons answered oral questions related to the raise in grade. The subjects included safe anchoring positions in Lynnhaven, Cape Charles, and Sewell's Point, anchoring deep draft vessels, inner harbor transits, vessel squat and under-kneel clearance, limitations of bow thrusters and adequate tugboat assistance, hazards of marine construction and dredging, traffic management and safe vessel speed.

After considering the results of the examination, Captain Avery moved Captain Ryan Robert Nienstedt be raised in grade from a Foxtrot classification (65,000

gross tons and 42 feet maximum draft) to a Golf classification (75,000 gross tons and 44 feet maximum draft). Mr. Coleman seconded the motion which was unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

After considering the results of the examination, Captain Avery moved Captain Timothy Delaney Oksman be raised in grade from a Foxtrot classification (65,000 gross tons and 42 feet maximum draft) to a Golf classification (75,000 gross tons and 44 feet maximum draft). Mr. Host seconded the motion which was unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

After considering the results of the examination, Captain Avery moved Captain Richard Austin Lyons be raised in grade from a Foxtrot classification (65,000 gross tons and 42 feet maximum draft) to a Golf classification (75,000 gross tons and 44 feet maximum draft). Mr. McDermott seconded the motion which was unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

Ms. Piersall advised the Board of the Virginia Maritime Association's 17th Annual International Trade Symposium to be held May 13-15, 2020 in Norfolk, VA. Ms. Nobsisch stated that Mr. McDermott will attend as a representative of the Board.

VMA's 17th International Trade Symposium

Ms. Nobsisch provided the Board with an update of DPOR activity as a result of the JLARC study conducted from 2017 to 2018.

JLARC Study Update

Ms. Nobsisch stated the financial statements were provided for informational purposes.

Financial Statements

There was no other business discussed.

Other Business

Ms. Piersall advised the Board that after 29 years of service on the Board, Captain Bill Cofer will be retiring in May. Board members considered the following resolution in honor of Board Vice-President, Captain Bill Cofer.

Retirement and Resolution-Captain Bill Cofer

Captain J. William Cofer

WHEREAS, **J. William Cofer**, did faithfully and diligently serve as a member of the Virginia Board for Branch Pilots from May 1991 to May 15, 2020;

WHEREAS, **J. William Cofer**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **J. William Cofer**, did endeavor at all times to render decisions with fairness and good judgement so as to promote and preserve the best interests of our citizens and the profession of piloting in Virginia; and

WHEREAS, the Virginia Board for Branch Pilots acknowledges its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, this thirteenth day of March 2020, that the Virginia Board for Branch Pilots expresses its utmost regard and respect for **J. William Cofer** and his professional legacy to this Board; and, so that all may know of the Board's depth of its expression, it is ORDERED that this resolution be spread upon the official minutes of the Board and that a copy hereof be presented to J. William Cofer.

Mr. Host moved to adopt the resolution. Mr. Coleman seconded the motion which was unanimously approved by Messrs., Mme. and Captains: Avery, Behm, Chisman, Cofer, Coleman, Host, McDermott, and Piersall.

Captain Cofer expressed his gratitude and stated it has been an honor serving the Board. Captain Cofer shared an excerpt from an incident report written by Judge Edgar Massenburg in order to demonstrate what he feels is the purpose and responsibility of the Board.

Ms. Nosbisch stated it has been a pleasure working with Captain Cofer and thanked him for being a mentor.

Mr. Host expressed appreciation to Captain Cofer for being a formative representative of all pilots, being well-respected by everyone within the community, from the ports to elected officials.

Captain Cofer thanked the Board and DPOR staff, and mentioned the three individuals who made a huge impact on him as a new board member: Richard Zorn, counsel from the Attorney General's office who served the board for fifteen years and understood the Board; Bruce Cherry, who loved the profession and had a great legal mind from his experience as Clerk of Courts, and Judge Edgar Massenburg, a mighty man of the law and a very special person.

Captain Cofer worked with Judge Massenburg on a report relating to the Collision of the M/V Columbus America and the Neptune Jade and although the Board previously reviewed this document, Captain Cofer, in parting, wanted to read aloud some of the pertinent comments Judge Massenburg made in this report:

The Board for Branch Pilots...is a permanent collegial body which is both a supervisory board and a regulatory board...Briefly, the Board is authorized to promulgate regulations necessary for the proper licensing and regulation of pilots and to prescribe penalties for violations of regulations...the Board may summarily suspend a license if it finds that there is substantial danger to the public health or safety. The Board is specifically prohibited from deciding

upon the liability of a pilot in the event of negligence or misconduct which may result in a loss to others. However, for cause, and in accordance with the Administrative Process Act, it may suspend or revoke a license, impose monetary penalties and recover costs...Regulations Governing Pilots, Part IV, Standards of Conduct, charges pilots with the duty of making timely reports to the Board of all collisions, groundings, or other maritime mishaps of any description. Moreover, pilots are obligated to report any physical, emotional or psychological impairments. Indeed, the regulations are so inclusive that the Board is advised of minor, innocuous incidents that would go unnoticed in other forums. The History of pilotage in Virginia and the Commonwealth's inherent concern for the health, safety and welfare of its citizens, along with pilot's statutory duty to vessel safety and the safety of our waters and ports, require no less than the full attention of this Board...

Waterborne commerce has been a part of the economic fabric of this Commonwealth since the seventeenth century. Seafaring methods, cargos and equipment have changed, but the bedrock principles of good seamanship, safety and service to the ports of Virginia remain steadfast. Pilotage in Virginia is an around the clock enterprise; vessels enter and depart the Port of Hampton Roads twenty-four hours a day, and ships sail the James, York and Potomac rivers daily. Cargo may be hazardous or harmless. Ships and equipment may be state-of-the-art or marginal. In some instances, navigational equipment may be completely inoperable. Indeed, the pilot must be adept at responding to any circumstance, and must be sufficiently skilled to con any vessel, be it an aircraft carrier, a nuclear submarine or a merchant ship which may exceed one thousand feet in length, and be loaded to a draft of fifty feet. The Board looks with pride at the history of pilotage in Virginia The Board is fully cognizant of its responsibilities and attendant obligations to vessel safety, safety of Virginia's waters and ports and the promotion of commerce. The element of danger is ever present, as it is with all modes of transportation. Thus, no regulatory agency—federal or state—can warrant against future incidents, whether minor or catastrophic. But the General Assembly, the maritime industry and all interested agencies can be assured that the Board for Branch Pilots remains vigilant; that its licensees are skilled; and that pilot training is contemporary and responsive to ever-changing technologies

The Board, by consensus asked that this document be sent to them again in its entirety for further reference.

Conflict of Interest forms and travel vouchers were completed by all members present.

Conflict of Interest Forms and Travel Vouchers

There being no further business, the meeting was adjourned at 11:52 a.m.

Adjourn

Christine Piersall, President

Mary Broz-Vaughan, Secretary

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
DRAFT AGENDA

DRAFT

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
DRAFT AGENDA

5. Public Comment Period

DRAFT AGENDA
Materials contained in this agenda
and are not to be construed as
DRAFT AGENDA

VIRGINIA PILOT ASSOCIATION BOARD OF DIRECTORS



BEGINNING MAY, 2020

Captain J.W. Whiting Chisman, III
President

Captain Frank M. Rabena
Vice President

Captain E. Waightstill Avery
Treasurer

Karen M. Smith
Secretary

Captain Charles I. Boggs, Jr.
Captain David B. Ware
Captain Michael S. Eubanks
Captain Jacob R. Johnson
Board

Virginia Pilot Association
3329 Shore Drive, Virginia Beach, Virginia 23451 14
"Always on Station"

VAFT AGLE
Material is not to be construed as
DRAWN AGLE
Virginia Pilot Association
3329 Shore Drive
Virginia Beach, VA 23451

“Always on Station”

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position.
DRAFT AGENDA

8. Vice-President Election

9. Exam Administrator's Report

10. Dodson Initial License Examination (9/14/20)

Charles I. Boggs, Jr.
212 69th Street
Virginia Beach, Virginia 23451

March 16, 2020

Christine N. Piersall
President, Board for Branch Pilots
1605 Kingfisher Court
Chesapeake, Virginia 23321

Dear Ms. Piersall:

On Sunday, March 8th 2020, I was ordered to M/V Jing Jin Hai for 1345 hrs. to sail from DTA coal pier in Newport News. The weather was clear and the winds were light, 5-10 from the SW. The current was near maximum ebb. The Jing Jin Hai was loaded with a draft of 47' 06". Docking Master Kevin Eley used 3 McAllister tugs for the undocking, which occurred without any apparent difficulty. After the Jing Jin Hai was in the stream, the conn was turned over to me to take the vessel outbound.

After Capt. Eley had left the navigation bridge and was walking towards the pilot ladder, the Master of the Jing Jin Hai asked me if I had felt the tug land hard on the port quarter during the undocking maneuver. I responded to the Master that if he had an issue with the tugs to ask Docking Master Kevin Eley before he leaves the vessel. I told the Master that I needed to concentrate my efforts on piloting the vessel. At the time we were meeting an inbound Cape Class approaching the turn into Newport News Channel at the the Monitor Merrimac Bridge tunnel and I was maneuvering the deeply loaded Jing Jin Hai at low speed with a following max current at a low speed. I do not know if anyone spoke to Capt. Eley before he departed, but he did not return to the bridge. He departed on the Steven McAllister which then approached the port quarter of the Jing Jin Hai and appeared to inspect for any visual damage. At the Master's request, I called Steven McAllister on the radio and Capt. Eley told me he took some pictures and would send them to my phone so I could show the Master after Capt. Eley docked the inbound Cape Class at Pier IX.

About an hour later I received a phone call from Capt. Eley and he said he had decided not to send the pics, but he would describe the affected area and that I could pass that information to the Master. Capt. Eley's best guess from his view from the Steven McAllister was the dent was 12"-16" square with a depth of 2-3". I passed this information to the Master. The Master had already launched his own investigation, and because of the low freeboard of the loaded Jing Jin Hai, was able to get some very accurate pictures, and using a straight piece of bamboo with a

ruler it showed the damage was 1/2 meter square with a maximum depth of 3 cm. He seemed content with his pictures showing minimal damage, appeared to be documenting his findings. There was no further discussion about it.

I departed the navigation bridge at 1635 and the Master shook my hand thanking for my assistance in the outbound voyage.

Respectfully Submitted,

Charles I. Boggs, Jr.

cc: Kathleen R. Nosbisch

DRAFT AGENDA
Materials contained in this agenda are proposed topics for discussion
and are not to be construed as regulation or official Board position
DRAFT AGENDA



AMERICAN PILOTS' ASSOCIATION

INCORPORATED
499 SOUTH CAPITOL STREET, S.W., SUITE 409
WASHINGTON, DC 20003
PHONE: 202-484-0700
www.americanpilots.org

CAPTAIN JORGE J. VISO
PRESIDENT

CAPTAIN WHIT SMITH
SECRETARY-TREASURER

PAUL G. KIRCHNER
EXECUTIVE DIRECTOR-GENERAL COUNSEL

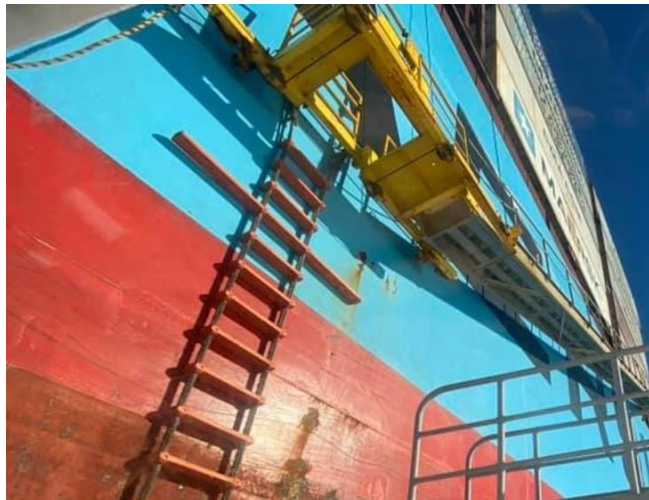
CLAYTON L. DIAMOND
DEPUTY DIRECTOR-ASSOCIATE GENERAL COUNSEL

LISA P. TOWNSHEND
OPERATIONS DIRECTOR

WILLIAM R. CAIRNS
NAVIGATION TECHNOLOGY DIRECTOR

A Request from the American Pilots' Association to State Pilotage Authorities Regarding Pilot Safety

This past December 30th, Captain Dennis Sherwood, a New York licensed pilot, was killed from a fall while embarking an inbound container ship. The embarkation in this instance was via a combination arrangement of an accommodation ladder and a pilot ladder. Such a combination is required whenever the distance from the surface of the water to the point of access to the ship is more than nine meters. This particular combination arrangement, however, involved a trapdoor in the platform of the accommodation ladder with the pilot ladder hanging from a cross beam near the bottom of the platform, and with the top step of the ladder significantly below the level of the platform. This requires a pilot to pull himself or herself up through the trapdoor while twisting to get a secure footing on the platform. Captain Sherwood fell while attempting to make that difficult maneuver to transfer from the pilot ladder to the platform above.



Example of trapdoor arrangement with ladder hanging from bottom of platform

This trapdoor arrangement is currently found on a number of ships with accommodation ladder-pilot ladder combinations, despite the facts that it has long been considered by pilots to be unsafe and that the IMO has recognized that it is unsafe by taking steps to eliminate it. Since at least 1979, IMO guidelines have recommended that pilot ladders used with a trapdoor extend to the height of the platform's handrail. The purpose of that recommended practice is to bring the ladder steps up to a level from which the pilot can step across to the platform rather than pull himself or herself up to it.

CAPT. ERIC A. NIELSEN
VICE PRESIDENT
NORTH ATLANTIC STATES

CAPT. W. CRAYTON WALTERS III
VICE PRESIDENT
SOUTH ATLANTIC STATES

CAPT. MICHAEL C. TORJUSEN
VICE PRESIDENT
GULF STATES

CAPT. BRETT A. PALMER
VICE PRESIDENT
GULF STATES - LOUISIANA

CAPT. KATHLEEN R. FLURY
VICE PRESIDENT
PACIFIC STATES

CAPT. DANNY H. GALAGHER
VICE PRESIDENT
GREAT LAKES

Nine years ago, the IMO revised the SOLAS pilot transfer regulation (SOLAS V/23) and its implementing guidelines (Res. A.1045) in response to continuing complaints about unsafe pilot transfer arrangements. The effective date for the new standards was July 1, 2012. Several of the revisions addressed the use of trapdoors in combination arrangements and were intended to eliminate pilot ladders that hang from the bottom or near-bottom of the platform, as well as other problems with such arrangements.

To address the pilot ladder-platform transition issue, Regulation 23 specifies that a pilot ladder “shall be rigged through the trapdoor and extend to the height of the handrail” (V/23.3.3.2.1) and, in addition, “means shall be provided to secure the lower platform of the accommodation ladder to the ship’s side, so as to ensure that the lower end of the accommodation ladder and the lower platform are held firmly against the ship’s side.” (V/23.3.3.2). Similarly, Resolution A.1045 provides that when a trapdoor is used in a combination arrangement, “the pilot ladder should extend above the lower platform to the height of the handrail and remain in alignment with and against the ship’s side.” (A.1045, paragraph 3.8).

Against this background, it is frustrating, and now tragic, that pilots continue to encounter, and have to deal with, trapdoor arrangements like the one found on the ship from which Captain Sherwood fell. **BUT, it doesn’t have to be this way.** Complying with Regulation 23 and Resolution A.1045 is not an expensive proposition. Replacing or retrofitting equipment to meet the standards would not be a significant project.

On behalf of the 1,200 pilots in the U.S. state pilotage system, we are asking for your help in bringing about a swift end to this dangerous situation by taking responsible measures, including, but not limited to, the ones proposed below, to protect the safety of the pilots under your jurisdiction.

1. Message to Pilots.

By whatever means you normally use to communicate with your pilots and pilot association(s), remind them that a pilot may refuse to use a transfer arrangement that he or she reasonably believes is unsafe. In particular, you should note the problems with a trapdoor arrangement similar to the one from which Captain Sherwood fell, and provide a brief description of the current IMO standards for combination arrangements using a trapdoor. You should also confirm that you will support, and defer to the judgement of, a pilot who refuses to use a transfer arrangement that he or she believes is unsafe, unless that refusal is later shown to be clearly unreasonable or insincere.

2. Message to the Maritime Community

By whatever means you consider appropriate, issue a notice to pilot users and others in your local maritime community that you are aware that some ships may offer a pilot transfer arrangement consisting of an accommodation ladder/pilot ladder combination with a trapdoor that does not meet IMO standards in effect since at least 2012. Further, advise that, in response, you have reminded the pilots that they may refuse to use a pilot transfer arrangement that they reasonably believe is unsafe, particularly the offending trapdoor arrangement. Urge ships with a trapdoor arrangement to bring their arrangements into compliance with the current IMO standards as soon as possible in order to avoid potential disruptions to ship schedules and port operations. Ships can either (1) switch to the more traditional system of a pilot ladder hung from the ship’s deck, positioned adjacent to the accommodation ladder platform, and secured to the ship’s hull at a point nominally 1.5m above the platform; or (2) ensure that the trapdoor arrangement meets the following IMO standards:

- a. pilot ladder rigged through the trapdoor extending above the platform to the height of the handrail;
- b. lower platform of accommodation ladder secured to the ship's side, so as to ensure that the lower end of the accommodation and the lower platform are held firmly against the ship's side; and
- c. pilot ladder remains against the ship's side.

If you have any questions, please don't hesitate to contact us. Also, we would welcome any suggestions that you might have for alternative methods or strategies for improving this or any other situation jeopardizing pilot safety. We look forward to working with you on this important matter.

SOLAS V/23 and Resolution A.1045 (27) are available at:

http://www.americanpilots.org/document_center/Activities/SOLAS%20V%20Reg%202023%20and%20Res.%201045.pdf

J. William Cofer
1440 Watersedge Drive
Virginia Beach, Virginia 23452

May 15, 2020

Dear Members of the Board for Branch Pilots,

As I approached retirement, I spent the last few months reading many of the minutes of past board meetings as well as the rules and regulations relating to pilotage in the Commonwealth of Virginia. I realize that it might be beneficial to share with the members of the Board for Branch Pilots the perspective I have regarding why this board was formed and the governance and structure.

Compulsory pilotage upon the waters of the Commonwealth, by Virginia licensed pilots, has been in existence since the 1600s. Different oversight boards were formed over those years for governance of ship pilots who by law were not allowed to form an Association of more than four individuals. It was not until the conclusion of the Civil War that the pilots petitioned the General Assembly to allow them to form an Association not limited in the numbers of licensees. This need arose because almost all the pilot boats were lost in the war so it made sense to combine the forces of many who could use far fewer assets to conduct the duty of pilotage in Virginia. Thus, the Virginia Pilot Association was formed in 1866 and its first pilot boat was the schooner *William Starkey* which had to be purchased from Boston.

As part of the formation of the Virginia Pilot Association, changes were made to the Virginia pilot examining board and the Board of Pilot Commissioners was established, made up of lay-persons and pilots. Renamed the Board for Branch Pilots in 1988, it has remained as the oversight board for pilots in the Commonwealth continuously since 1866.

In 1906, a landmark U.S. Supreme Court case was decided in relation to pilots in the *Guy v. Donald* decision. That case considered whether an association and all its member pilots may be liable for the tort of any one member. Generally, under the law the answer is “yes.” But, the essence of the decision in this case was to the contrary; that one is not answerable for the torts of another whom he or she cannot select, control or discharge. Thus, *Guy v. Donald* stands for the principle that members of a pilot association, recognized by state statute and to which every pilot licensed by the state belongs, are not to be held liable as partners to owners of piloted vessels for the negligence of each other.

That decision is still the law and remains critically important in shaping the structure of pilot organizations and decision-making in pilot associations around the country. Interestingly, *Guy v. Donald* was a Virginia case that impacted all United States coastal piloting authorities.

This Supreme Court case turned on the power of the Board for Branch Pilots to control the licensing and sanctioning of pilots, and the corresponding absence of that power in the Association, thereby providing shelter from liability to the Association and its members. Consequently, the Virginia Pilot Association does not and cannot sanction its members for shipboard negligence or misconduct. That role is that of the Board for Branch Pilots.

Associations are not legal entities in Virginia and are also not limited liability partnerships. If it had not been for the *Guy v. Donald* decision, every pilot in the Association would be personally liable for the acts of every other pilot. An untenable situation! *Guy v. Donald* declared that because the Board for Branch Pilots held and exercised the power to issue licenses, sanction pilots, suspend licenses and revoke licenses, the Virginia Pilot Association had no control over pilots and therefore it and its members should have no liability for the actions of pilots while performing piloting duties.

In my previous role as President of the Association, one of my most challenging responsibilities as the presiding officer of the organization was policing *Guy v. Donald* activities. The Association cannot sanction any pilot for any reason while the pilot is on piloting duty without jeopardizing the immunity that exists only by virtue of case law. It is natural for fellow Branch pilots to want to hold others accountable within the Association. In fact, for most it would be considered a natural responsibility for an association board to be responsible for sanctioning their own members. But this is not the case in the piloting profession. In relation to the performance of a Branch pilot's duties while assigned to ships, sanctioning is wholly in the hands of the Board for Branch Pilots.

This Board has exercised its oversight well over the 40 years I have been observing it. Those of us who served with Mr. Bruce Cherry on this Board remember how adamant he was that this authority must be controlled by this board, not by the Coast Guard or any state agency assigned to the board.

The Department of Professional and Occupational Regulation's (DPOR) role is mainly administrative in nature. They are critical to the effective administration of a board whose makeup is from voluntary members. DPOR is also charged in investigating complaints of violations of Virginia statutes and regulations by the license holders from the many different boards DPOR administers. Virginia Code 54.1-304 and 306 empowers DPOR to enforce applicable Virginia Statutes and regulations. They have an extremely important role to play in the proper regulation of public licensees in the Commonwealth and are greatly respected for the duties for which they are charged. I can tell you personally that in my time on the Board, I had great respect for DPOR personnel as I held each of those assigned to us in high esteem.

Individuals like Willi Fobbs, Mark Courtney and Kate Nosbisch who have proved to be dedicated servants and an incredible asset to the Commonwealth.

However, the Board for Branch Pilots duties go beyond enforcing applicable Virginia Statutes and regulations. The Board regulates Branch pilots who do 90% of their work as compulsory pilots on foreign ships, governed by United States maritime law, international conventions and U.S. Coast Guard regulations, NAVICs and Captain of the Port Orders. Any determination of *negligence or misconduct* which the Board for Branch Pilots oversees, would have to be drawn from Federal law and regulations and at times, international standards that other state agencies would not be familiar. Branch pilots are aware of all of these Federal codes and regulations as each Virginia Branch Pilot is required to hold a USCG First Class Pilots license and is examined extensively on federal laws and regulations that are given on the Virginia State Pilot Exams that this Board regulates on a yearly basis.

The measure of that *negligence or misconduct* is found in:

- 1) The U.S. Code.
- 2) The U.S. Code of Federal Regulations.
- 3) U.S. Coast Guard NAVICs and orders
- 4) The General maritime law as established in the federal case law.
- 5) International Maritime Treaties applicable.
- 6) The IMO (International Maritime Organization) standards and requirements that have been accepted/followed in the U.S.
- 7) Tenants of Good Seamanship, including the Rules of the Road incorporated in the Code of Federal Regulations.

This helps define the uniqueness of the Board for Branch Pilots and how critical it is to understand the reach of the law and the Board member's role in oversight. There is only one general Virginia statute or regulation that provides a basis for license action against a pilot based on performance of duties. This one exception is 18 VAC 45-20-40 (5), which provides that "*negligence or misconduct in the performance of duties*" is a basis for license suspension or

revocation. The determination of whether this statute is breached must be brought before the Board for Branch Pilots whose expertise in piloting matters enable them to conduct an investigation informed by knowledge of maritime law and standards applicable to piloting.

Pilots and the Board for Branch Pilots are unique in other ways. Pilots do not do their work in offices or buildings at a desk or in multiple visits to a job site, or at a barber chair, where errors also can be made, but not catastrophic in terms of millions upon millions of dollars of damage. Branch Pilots work on the bridge of ships that are as long as the Empire State Building is tall. The mass is so great that touching a bridge or dock at five miles an hour would destroy the bridge and put the dock out of service for months. A pilot grazing a bridge in San Francisco caused a \$70 million oil spill in addition to millions in repairs to the ship and bridge. A pilot striking a bridge in Tampa caused dozens of deaths of those who drove off the bridge in the fog.

The result of the improper performance of a pilot's professional services is monumental. And it naturally follows then that the result of improper performance of this Board in supervising and overseeing pilots can also be monumental. This is why this Board, unlike any other, may summarily suspend a license without due process. This was not an oversight; it was recognition that the results of not abiding by professional conduct and demonstrating the highest standards of seamanship could and would be disastrous for the Commonwealth. In Hampton Roads waterways for example, one ship blocking the channel can close the port to both commercial and naval vessels, resulting in both state and national consequences.

The critical nature of a pilot correctly performing his or her duties is one reason a state pilot's license is only good for one year. It is renewed each year by being sworn in as an officer of the state, in a circuit court, swearing an oath to the highest performance of their duties and to the protection of the waters and infrastructure of the Commonwealth. The Branch Pilot posts a

bond to perform said functions according to the law and is held to the highest standard of conduct in having to produce proof of good character in the performance of the duties as well as being required to come to the Board in person to produce evidence of successful compliance to these regulations and completion of continuing education training mandated by this very Board but not contained in Virginia law or regulations.

Although Virginia Branch Pilots conduct their duties over waters within the geographical boundaries of Virginia, the waterways themselves are within federal admiralty jurisdiction and controlled by Federal law. State law does not apply to commercial vessels on navigable waters. The U.S. Constitution gives states oversight of local pilots, but the law they operate under is federal admiralty and maritime law.

The role of investigation into complaints, incidents and accidents are the sole responsibility of the Board for Branch Pilots which is unique among state boards. The Board must choose the best appropriate route to attain necessary facts for the Board to conduct an informal or formal evaluation as prescribed by the Administrative Process Act (“APA”) Va Code § 2.2-4000. It often is dependent upon the nature of the complaint or incident. One must be equipped to apply maritime law and federal regulations in attaining those facts. In some cases, it may only involve the DPOR investigator (drug and alcohol related complaints), in others the Board may determine an IFF (Informal fact finding) panel may have to be appointed and in doing so, may hire a maritime investigator to work alongside a DPOR investigator to ensure a relevant scope of maritime related facts are attained.

The position the Board for Branch Pilots have taken from the beginning is that any complaint is a possible violation. That is why DPOR passes along any complaints they receive to the Board president so the president can determine if the complaint rises to a need for a special

meeting of a quorum of Board members to determine next steps. However, if the President determines that is not necessary, the complaint is turned back to DPOR for their own required investigation.

The Board for Branch Pilots is a standalone state regulatory board. Board members are not political appointees by the governor; they are selected and appointed from the port cities to serve unrestricted to political pressures but rather sound mariner related background judgment. There are less than 45 pilots and these pilots are required to self-report incidents to the Board for Branch Pilots per statute and regulation. The Board for Branch Pilots meets multiple times a year to evaluate complaints and ship incidents, on a case by case basis.

In the past, the Board maintained several names of maritime consultants/investigators that could be called on short notice to support an investigation, whether it is a supportive role to DPOR in a complaint or a complicated accident investigation where immediate maritime incident fact finding is critical.

In what would be considered a major incident, it is the duty of this Board to immediately begin a detailed investigation of its licensee utilizing professional maritime investigators. It might be wise to update these names and contacts at the December board meeting for use the following calendar year. Captain Atkinson, a retired USCG ship master and past captain with EXXON tankers, was hired by this Board and utilized as the chief investigator in the *Neptune Jade/Columbus America* accident to perform a completely independent detailed investigation of that incident in which the USCG was conducting simultaneously. Captain Atkinson's professional evaluation of the facts of that incident was invaluable to the members of the Board and the ultimate correct conclusion of that case. Others have been utilized in previous years but updating the Board's list is critical as experienced maritime consultants in this field are few.

With the incredible ship transit safety record possessed by Virginia Branch Pilots, potential investigative events occur so rarely that personnel changes on the Board, within DPOR and the Attorney General's office cause us to lose the institutional memory and experience of past cases. I am not aware of any Board document that captures these important concepts that Board members need to understand. Perhaps adding an updated flow chart would enhance Board members' understanding even further, especially as it relates to the investigative procedures required under the Administrative Process Act.

Most of our investigations are ship incidents or allision related which are automatically reviewed by the Board at regularly scheduled meetings. However, the board occasionally receives a complaint concerning a licensee that may seem to be frivolous. However, something that may appear trivial to the uninformed, might matter in the profession of piloting and may justifiably rise to *misconduct and negligence*. Thus, this Board reviews complaints along with DPOR. It is these licensees who are charged with the protection of our Commonwealth's waters and infrastructure. Thus, this Board must be the entity driving the evaluation of what rises to misconduct or negligence. This is an obligation owed to the licensee and the public we serve.

It has taken me many years to learn and understand the unique legal position of the pilots, the Board and supporting state agencies including the AG's office and DPOR. It is my hope to pass along what I have slowly learned though my experience over the years to current and future Board members and supporting staff.

It has been one of the great pleasures of my life to have been a part of this Board and to get to know and work with each of you for the good of the Commonwealth of Virginia.

Sincerely,



J. William Cofer

DRAFT

2021 UPGRADE SCHEDULE

DATES BELOW ARE WHEN APPRENTICES/LIMITED BRANCH PILOTS BECOME ELIGIBLE FOR ORIGINAL OR LIMITED BRANCH LICENSE UPGRADE

2021

**March 15 , 2021, 8:30 (EXAM)
10:30 (MEETING)**

Dodson

Charlie

**June 15, 2021, 8:30 (Exam)
10:30 (MEETING)**

Dodson

Delta

**September 14 , 2021, 8:30 (EXAM)
10:30 (MEETING)**

Dodson

Echo

Dec. 13, 2021, 9:00-4:00

Renewals - Va. Pilot Assoc.

Dec. 14, 2021, 9:00-4:00

Renewals - Va. Pilot Assoc.

Dec. 17, 2021 10:30 (MEETING)

2022

**March 15 , 2022, 8:30 (EXAM)
10:30 (MEETING)**

Dodson

Charlie

**Department of Professional and Occupational Regulation
Statement of Financial Activity**

**Board for Branch Pilots
954190**

2018-2020 Biennium

April 2020

	April 2020 Activity	Biennium-to-Date Comparison	
		July 2016 - April 2018	July 2018 - April 2020
Cash/Revenue Balance Brought Forward			22,951
Revenues	0	5,520	5,160
Cumulative Revenues			28,111
Cost Categories:			
Board Expenditures	189	4,354	5,630
Board Administration	12	264	284
Administration of Exams	0	0	0
Enforcement	0	0	1
Legal Services	1	203	8
Information Systems	10	177	218
Facilities and Support Services	2	327	98
Agency Administration	6	159	130
Other / Transfers	0	13	0
Total Expenses	220	5,496	6,369
Transfer To/(From) Cash Reserves	0	0	21,205
Ending Cash/Revenue Balance			538

Cash Reserve Beginning Balance	21,205	0	0
Change in Cash Reserve	0	0	21,205
Ending Cash Reserve Balance	21,205	0	21,205

Number of Regulants	
Current Month	41
Previous Biennium-to-Date	46

16. Other Business

17. Conflict of Interest Forms/Travel Vouchers

18. Adjourn