

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

ASSOCIATION TO PRESERVE AND)
 PROTECT LOCAL LIVELIHOODS, et al.,)
)
Plaintiffs,)
)
 PENOBSCOT BAY AND RIVER PILOTS)
 ASSOCIATION,)
)
Plaintiff-Intervenor,)
)
 v.)
)
 TOWN OF BAR HARBOR,)
)
Defendant,)
)
 CHARLES SIDMAN,)
)
Defendant-Intervenor)
 _____)

Case No. 1:22-cv-416-LEW

STIPULATIONS

Plaintiffs the Association to Preserve and Protect Local Livelihoods (“APPLL”), B.H. Piers, L.L.C. (“BH Piers”), Golden Anchor, L.C., doing business as Harborside Hotel (“Harborside” and with BH Piers, the “Pier Owners”), B.H.W.W., L.L.C. (“BHWW”), Delray Explorer Hull 495 LLC (“495”), Delray Explorer Hull 493 LLC (“493”), and Acadia Explorer 492, LLC (“492” and together with 495 and 493, the “Tender Vessel Owners” or “Tender Owners”) (herein, APPLL, the Pier Owners, BHWW, and the Tender Owners may be referred to collectively as “Plaintiffs”), Plaintiff-Intervenor Penobscot Bay and River Pilots Association (“Pilots

Association”), Defendant Town of Bar Harbor (“Defendant” or “the Town”), and Defendant-Intervenor Charles Sidman (“Mr. Sidman”) stipulate to the following:¹

1. Bar Harbor is a popular port-of-call on a wide variety of cruise ship itineraries.
2. Both overnight and daytime visitors are drawn to Bar Harbor because of its proximity to the Maine coast and Acadia National Park.
3. “PortCall” is a maritime software platform that provides users real-time data related to vessel movements and port operations—obtained from port authorities, terminal operators, or other entities responsible for overseeing port operations and/or vessel movement.
4. CruiseMaine, a part of the Maine Office of Tourism, maintains the PortCall system for Maine ports, which posts some information for the general public at the following uniform resource locator (URL) address: <https://maine.portcall.com>.
5. State funding supports CruiseMaine.
6. During the 2023 cruise season, foreign-flagged cruise vessels are scheduled to spend, on average, approximately nine hours in their anchorage, based on scheduled arrival time and departure time.
7. The two private piers of the Pier Owners receive disembarking passengers via tenders from cruise vessels in Bar Harbor.
8. The Town does not have a definitive number for the number of tourists that come into Bar Harbor.
9. In 2008, the Town accepted a recommendation from the Town’s Cruise Ship Study Task Force (which also recommended the formation of a standing Cruise Ship Committee)

¹ All parties reserve the right to stipulate to additional facts up to and during the trial.

to observe a policy of daily cruise passenger caps of 5,500 passengers per day for the months of May, June, September and October, and 3,500 passengers per day for the months of July and August.

10. The daily passenger caps were calculated by using the lower berth capacity of cruise vessels.

11. Following its establishment by the Town Council, the Cruise Ship Committee made annual recommendations on passenger caps for cruise ship season for the months April through November.

12. The Town Council had the authority to accept or reject the Cruise Ship Committee's annual recommendations for cruise ship passenger caps.

13. The Town Council has acted on the Cruise Ship Committee recommendations annually.

14. From 2008 through 2021, the Town Council approved the Cruise Ship Committee's recommendations for passenger caps.

15. On February 15, 2022, the Town Council approved the formation and membership of a working group, which, in turn, negotiated with the cruise industry for modifications of the daily passenger limits for 2023 and 2024 for cruise ships visiting Bar Harbor.

16. On August 16, 2022, the Town Council initially approved a Memorandum of Agreement ("MOA") plan by a 5-2 vote.

17. After several months of discussions and revisions, the MOA was finalized on September 28, 2022.

18. The MOA included a shortened cruise ship season, by eliminating the months of April and November, and lower passenger caps that, in almost all cases, would reduce the number of daily cruise visitors disembarking at Bar Harbor.

19. The Town Council approved the passenger caps in the MOA with the individual cruise lines.

20. In September and October of 2022, the Town entered into MOAs with cruise lines.

21. On August 2, 2022, the Town Council voted to place a citizen's initiative (the "Initiative") on the warrant articles calling the November town meeting warrant.

22. Pursuant to the Town Charter, Article 3 became the Ordinance, effective December 8, 2022.

23. Generally, cruise itineraries are published 24 to 30 months from the first sailing in a given season.

24. Bar Harbor serves as a United States Customs and Border Protection ("CBP") Class A port of entry for foreign-flagged cruise vessels re-entering the United States.

25. Foreign-flagged cruise vessels re-entering the United States that cannot call at Bar Harbor will need to call at another CBP Class A port.

26. The Port of Portland is a CBP Class A port for foreign-flagged cruise vessels re-entering the United States.

27. The port of entry at Portland is an approximately 170-mile drive from Acadia National Park.

28. The Port of Eastport is a CBP Class A port for foreign-flagged cruise vessels re-entering the United States.

29. The port of entry at Eastport is an approximately 110-mile drive from Acadia National Park.

30. The port of entry at Bar Harbor is an approximately 2-mile drive from Acadia National Park.

31. American Cruise Lines (ACL) vessels that call at Bar Harbor sail under the flag of the United States.

32. Prior to the COVID-19 pandemic, approximately 158 cruise ships, with a combined lower berth capacity of 249,080 passengers, called at Bar Harbor in 2019.

33. Pilotage is a regulated industry.

34. The Pilots Association's pilotage operations are regulated by the Maine Pilotage Commission.

35. The Pilots Association's pilotage region extends 75 miles across from Boothbay Harbor to Frenchman Bay and 75 miles from the west pilot station on Penobscot Bay to the Penobscot River Port of Brewer.

Dated this 20th day of June, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2023, I caused the foregoing document to be served upon all counsel of record via the Court's CM/ECF system.

/s/ Janna L. Gau
Janna L. Gau