

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE



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December 11, 2012

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT BOARD OF MARINE PILOTS SUNSET REVIEW

November 5, 2012

Audit Control Number
08-20076-13

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists the criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Per AS 08.03.010(c)(10), the Board of Marine Pilots (board) is scheduled to terminate on June 30, 2013.

In our opinion, the termination date for this board should be extended. Regulating and licensing qualified marine pilots benefits the public's safety and welfare, and protects the marine environment. We recommend the legislature extend the termination date to June 30, 2019.

This audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in

the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis". The signature is fluid and cursive, with the first name "Kris" and last name "Curtis" clearly distinguishable.

Kris Curtis, CPA, CISA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Marine Pilots (BMP or board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Per AS 08.03.010(c)(10), the board will terminate on June 30, 2013, and have one year from that date to conclude its administrative operations.

Objectives

The four, central audit objectives were to:

1. Determine if the board's termination date should be extended.
2. Determine if the board is operating in the public's interest.
3. Determine if the board has exercised appropriate regulatory oversight of licensed marine pilots.
4. Provide the current status of recommendations made in the prior sunset audit report.

Scope and Methodology

The assessment of BMP's operations and performance was based on criteria set in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

The audit examined the board's operations and activities from July 1, 2006, through June 30, 2012.

During the course of the audit, the following was examined:

- Applicable statutes and regulations to identify board functions and responsibilities. Changes to BMP regulations were reviewed to provide information on improvements to public safety and protection of the marine environment.
- Board members' applications and resumes filed with the Office of the Governor to verify that members met statutory requirements.
- Board meeting minutes, budget documents, and annual reports to understand board proceedings and activities as well as the nature and extent of public input.

- Public notice documentation to ascertain whether public notice for board meetings was published as required by statute and division policy.
- BMP's website for public notifications and information availability.
- Licensing files and documentation for a sample of pilots who obtained new and renewed licenses issued by BMP to ensure licensees met statutory and regulatory requirements.
- Trainee files to verify qualifications and examination requirements were met.
- Files maintained by the pilot associations and contractors to determine compliance with BMP's drug and alcohol testing program. Pilot associations' staff and contractors were interviewed to understand the associations' procedures.
- Select investigative files and documentation to assess the efficiency and effectiveness of the investigative process. The Division of Corporations, Business and Professional Licensing (DCBPL) chief investigator was interviewed to understand the investigative process and for information about specific investigations.
- The prior BMP sunset audit to identify previous and existing issues affecting the board.

BMP and DCBPL internal control procedures related to various audit objectives were assessed, including procedures over licensing, investigations, and board proceedings.

Inquiries regarding BMP-related complaints were made with the following organizations:

- The Department of Commerce, Community, and Economic Development's Commissioner's Office;
- The Office of the Governor;
- The Alaska State Commission for Human Rights;
- The Office of the Ombudsman;
- The Office of Victims' Rights;
- The Department of Administration's Division of Personnel and Labor Relations; and
- The United States (U.S.) Equal Employment Opportunity Commission.

Pilots licensed and regulated by BMP and industry stakeholders who utilize the pilotage services were surveyed to gauge the overall satisfaction level with BMP's operations and activities.

To identify and evaluate the various issues relating to BMP activities, the BMP coordinator, board members, marine pilots, industry stakeholders, and the U.S. Coast Guard licensing and enforcement staff were interviewed. The questions concerned board operations and duplication of efforts.

ORGANIZATION AND FUNCTION

The Board of Marine Pilots (BMP or board) was created by Ch. 106 SLA 70, which became effective May 7, 1970. The statutes were significantly changed with the passage of the *Marine Pilot Act of 1991*. In passing the 1991 *Marine Pilot Act*, the legislature gave BMP broad statutory authority which included establishing pilotage regions, maximum tariffs, and criteria for training and licensing marine pilots. The policy, findings, and intent of the *Marine Pilot Act* stated:

It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state.

In 1995, the legislature extensively revised the statutes and overall structure of BMP. The most significant change allowed pilot organizations recognized by the board to adopt and revise rates for pilotage services and enter into agreements with the master, owner, operator, or agent of a master, owner, or operator of a vessel concerning the terms and conditions under which the pilot organization provides pilotage services.

Board Membership

BMP is composed of seven members. Membership consists of two licensed pilots who are actively engaged in marine piloting, two agents or managers of vessels subject to the statutes, two public members, and the commissioner of the Department of Commerce, Community, and Economic Development (DCCED) or a designee. All members must be Alaska residents. Board members, as of June 2012, are listed in Exhibit 1.

By statute, not more than one pilot member and one agent may be from any one pilotage region established by the board. Additionally, not more than one registered agent may be employed by, be a contractor for, or hold a financial interest in the same marine industry business entity, including commonly owned, affiliated, or subsidiary business entities.

Public members cannot be engaged in the piloting profession, have a legal contract with a pilot, or have a direct financial interest in the piloting

Exhibit 1

Members of the Board of Marine Pilots At June 30, 2012

Curtis W. Thayer
Chair, and DCCED Designee

David Arzt
Pilot Member

Dale O. Collins
Pilot Member

Richard A. Erickson
Agent Member

Tom W. Rueter
Agent Member

Robert L. Richmond, Esq.
Public Member

Tylan C. Schrock
Public Member

profession.

BMP Duties

BMP responsibilities include:

1. Maintaining an efficient and competent pilotage service on the inland and coastal waters to ensure the protection of shipping, safety of human life and property, and protection of the marine environment.
2. Adopting regulations establishing the qualifications and required training for pilots and providing for the examination of pilots.
3. Issuing original or renewal pilot licenses to qualified persons.
4. Maintaining a register of licensed pilots, licensed deputy pilots, and agents.
5. Adopting regulations establishing pilotage regions, professional fees, and criteria to recognize pilot organizations.
6. Reviewing and approving training programs conducted by pilot organizations.
7. Reviewing and approving pilot organizations' articles, bylaws, and rules.
8. Auditing pilot organizations or an individual pilot, as necessary, to implement and enforce statutes and regulations.
9. Establishing and publishing the dates of future license examinations.
10. Approving or disapproving rates for pilotage services.

DCCED's Division of Corporations, Business, and Professional Licensing (DCBPL or division)

DCBPL provides administrative and investigative assistance to BMP. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. Investigative assistance is available upon request, or the division may conduct an investigation on its own initiative if it appears an individual has engaged – or is about to engage – in a practice over which the division has authority. DCBPL can issue an order that an individual

stop a practice, bring an action in Superior Court to enjoin the act, examine the books and records of a license holder and/or association, and subpoena witnesses and records.

Marine Pilot Coordinator

DCCED employs a marine pilot coordinator to assist the board in fulfilling its statutory duties. The duties of this position, whose hiring is subject to approval by BMP, are defined in AS 08.62.050. The marine pilot coordinator cannot work as a pilot, be an active member of a pilot association, or have a financial interest in a pilot association or the equipment that it uses. The coordinator position is funded by BMP fees.

Pilot Association Organizations

All Alaska marine pilots are required to belong to an association. Pilots have formed an association in three Alaskan regions to provide services to the maritime industry. The associations exist to facilitate joint activities such as billing and collecting for pilot services and to administer the rotation, dispatch, pilot boat and training operations. The board has delegated to the associations the responsibility for administering mandatory drug and alcohol testing program for pilots, trainees, and apprentices.

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BACKGROUND INFORMATION

Piloting involves directing sea-going vessels into and out of waters where navigation is dangerous or difficult. Difficulties can include: (1) restricted waterways, such as channels, ports, or harbors; (2) tides, currents, and water depths; and (3) type and nature of traffic. According to AS 08.62.163, state-licensed pilots are independent contractors and may not be employed as an employee of the owner or operator of a vessel subject to state pilotage. Pilots' knowledge of the local geography and waterways they are piloting makes them invaluable to vessels. Pilots are responsible for the safety of those aboard a vessel and for the protection of the marine environment.

Pilotage of international trade vessels in the United States (U.S.) is regulated by individual states. Each state maintains a pilotage system suited to the particular needs and circumstances of its waters. In 1789, the first U.S. Congress enacted a law giving states the right to regulate pilotage in their waters. The law created the state pilotage system which remains in effect today. Every foreign flag vessel and every U.S. flag vessel engaged in international trade or moving in a state's waters is required to use the services of a state-licensed pilot.

Enacted in 1970, Alaska's original piloting law created the Board of Marine Pilots (BMP or board) to regulate and license pilots.

Vessels Subject to Alaska Marine Pilotage Regulations

A pilot must be employed for vessels navigating inland and in the coastal waters of, or adjacent to, the State (as defined by the board). This includes any oil tanker of 50,000 dead-weight tons, or greater, navigating in state water beyond Alaska pilot stations. Vessels exempt from this regulation include: vessels subject to federal pilot requirements, U.S. or Canadian fishing vessels, and many U.S. and Canadian registered vessels and foreign flag yachts 65 feet or less in overall length.

Federal Licensing Requirements

The U.S. Coast Guard (USCG) enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, including Alaska, applicants must have a USCG pilot license in order to obtain a state license. The USCG license is usually referred to as a "*minimum standard of competence*" license. USCG licensing requires a minimum amount of qualifying sea service in addition to passing a written examination.

Federal licenses are valid for five years. For license renewals, pilots must submit evidence of one year of sea service within the previous five years. Pilotage endorsements on licenses do not expire, but every five years, each pilot must make one familiarization round-trip over the route for which they have an endorsement. For long or extended routes, pilots are not required to

physically make the familiarization trip; pilots can be certified based on a review of publications and charts.

State Licensing Requirements

Since knowledge of local geography and waterways is an essential aspect of the pilotage profession, individuals licensed as marine pilots are required to have extensive navigational experience. Established by state law, these requirements involve up to ten years experience in navigating vessels of various sizes.

Pilot trainee programs provide on-the-job training in the region where licensure is sought. Entry into an apprenticeship program typically requires less experience than entry as a trainee. Candidates in trainee and apprentice programs progress from either trainee or apprentice to deputy marine pilot (license issued by BMP) and, finally, to marine pilot. All training programs require candidates to ride a ship with a fully licensed training pilot, observing their handling of the ship. Over time, a trainee or apprentice begins to handle the ship under the training pilot's guidance. Statute requires a minimum of four years apprenticeship training to become a deputy marine pilot. A deputy marine pilot, in addition to other requirements set out in statute, must have three years experience as a licensed deputy marine pilot to obtain a marine pilot license.

Drug and Alcohol Testing Program

Under AS 08.62.040(b)(2), BMP is authorized to establish a mandatory random drug and alcohol testing program. Statutes allow BMP to delegate responsibility for administering the program to local pilot associations. The board requires each pilot association to establish a mandatory random drug and alcohol testing program for pilots, trainees, and apprentices. Board regulations specify that pilots must participate in a random drug testing program conducted according to the requirements of federal regulations (46 CFR 16 and 49 CFR 40).

Rate Setting Process

Under AS 08.62.046, local pilot associations set rates either (1) through negotiation with the master, owner, operator, or agent of a vessel; or (2) by providing due notice, before October 15th, to the board and to all registered agents. If no objection to the proposed rate is filed with the board, the rate takes effect on January 1st of the year following the year in which the notice of intent to adopt the rate was filed with the board.

Objections to the proposed rate and relevant evidence demonstrating that the rate is not reasonable must be filed with the board within 60 days of the final publication date. The board may hold a hearing to determine whether the proposed rate is reasonable, or the board may refer the objection to the Office of Administrative Hearings.¹

¹The board is not required by statute to use the Office of Administrative Hearings. However, the board has elected to use the Office Administrative Hearings when applicable to help address potential conflicts of interests by board members.

REPORT CONCLUSIONS

Under AS 08.03.010(c)(10), the Board of Marine Pilots (BMP or the board) is scheduled to terminate on June 30, 2013. We recommend BMP's termination date be extended to June 30, 2019. If the legislature does not take action to extend the board's termination date, AS 08.03.020 allows the board one year in which to conclude its administrative operations.

Regulating and licensing qualified marine pilots benefits the public's safety and welfare, and protects the marine environment. The board provides reasonable assurance that individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified.

The board has successfully resolved many of the problems identified in prior sunset audits. This report makes one new recommendation for improvements to BMP operational activities.

The Department of Commerce, Community, and Economic Development's Division of Corporations, Business and Professional Licensing (DCBPL or division) improved the allocation of division indirect costs to occupational licensing boards.

A June 2011, DCBPL special audit² recommended the division improve its methodology for allocating division indirect costs. The division had charged 100 percent of its indirect expenses to the professional licensing cost pool rather than allocating costs between the professional licensing cost pool and the corporations and business licensing cost pool. This resulted in the over-allocation of divisional indirect costs to occupational boards.

The indirect cost allocation finding has been resolved. DCBPL revised its indirect cost allocation methodology to correct noted deficiencies. The revised methodology appropriately allocates division indirect costs to both cost pools based on full time equivalent positions.

To facilitate correcting the fiscal impact of prior allocation errors, the division received a \$3.4 million supplemental appropriation in FY 12. Using financial data from the state accounting system and DCBPL position counts, the division restated the schedule of revenues and expenditures for all occupational boards back to FY 00 using the revised allocation methodology. The supplemental appropriation was used to eliminate occupational board deficits resulting from the incorrect allocation methodology. The revenue and expenditure schedule presented in Exhibit 2 (page 15) reflects the board's restated financial activity for the period FY 07 through FY 12.

²This issue was identified in the special audit, *Department of Commerce, Community, and Economic Development; Division of Corporations, Business and Professional Licensing; Select Occupational Licensing and Enforcement Issues, June 29, 2011*, Audit Control Number 08-30063-11.

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FINDINGS AND RECOMMENDATIONS

The prior, 2006 sunset audit³ included six recommendations; three of which were repeat recommendations from the 2002 sunset audit. Three prior recommendations to improve the drug and alcohol program's testing and reporting have been substantially implemented. Alaska Statutes were amended to incorporate trainees and apprentices into the drug and alcohol program. The Board of Marine Pilots (BMP or board) chair periodically issues detailed memos to pilot associations outlining responsibilities for the mandatory drug and alcohol testing program. Additionally, all pilots were enrolled in associations' drug and alcohol testing program for 2011, and the associations met the 50 percent random pilot testing and reporting requirements. Furthermore, all associations have signed agreements with a drug and alcohol testing contractor.

The prior recommendation to ensure coverage of the marine pilot coordinator's investigative functions during extended absences or a vacancy has been implemented by establishing appropriate procedures.

The prior recommendation to change the continuing professional education regulation has been implemented. The regulation now requires documentation that pilots have satisfactorily completed a board-approved simulator or manned-model course at a board-approved facility, and documentation that pilots have satisfactorily completed continuing education requirements as prescribed by the board-approved regional training program.

The prior recommendation to consider clarifying statutes regarding the use of pleasure craft exemption fees has not been implemented. According to Department of Commerce, Community, and Economic Development (DCCED) management, the exemption was enacted with the understanding that fees generated from the exemption would be used to offset related BMP expenses. DCCED management stated that administering the pleasure craft exemption takes considerable BMP time and effort. Based on this response and lack of action on behalf of the legislature to clarify statutes, this recommendation is not reiterated as part of this report.

Recommendation No. 1

The marine pilot coordinator should improve administration of BMP operational activities.

Analysis of BMP operational activities noted the following administrative deficiencies:

³Prior sunset audit: *Department of Commerce, Community, and Economic Development; Division of Corporations, Business and Professional Licensing; Board of Marine Pilots, Sunset Review, November 2, 2006, Audit Control Number 08-20045-06.*

- Three of the six meetings sampled were not publicly or timely noticed. The *Open Meetings Act* requires meetings be publicly noticed in a reasonable time frame. Division of Corporations, Business and Professional Licensing policy requires BMP notice meetings at least ten days prior to the meeting.
- Two new license and vessel endorsement application packages were not verified for completeness by the marine pilot coordinator. The application packages were missing required documents. In accordance with BMP regulations,⁴ the marine pilot coordinator is responsible for ensuring license applications are complete.
- The marine pilot coordinator did not have adequate oversight procedures over certain drug and alcohol program requirements. The marine pilot coordinator did not confirm the timeliness of the associations' drug testing. In one association, three pilots who received notification to test by mail may have not been drug tested timely. The associations' annual drug testing reports were not verified for accuracy by the coordinator. Two associations' annual reports did not tie to the detailed records. Furthermore, the drug testing program for one association's trainee was not approved by the board. Alaska Statute 08.62.040 authorizes BMP to establish a mandatory drug and alcohol testing program for licensed pilots and for trainees and apprentices seeking licensure. The board has delegated oversight of the drug and alcohol testing programs to the marine pilot coordinator.

When considered together, the administrative deficiencies described above indicate improvements in administrative activities are needed. Ongoing control deficiencies may endanger the public's safety and welfare as well as the marine environment.

We recommend the marine pilot coordinator improve procedures over administering BMP operational activities to ensure compliance with statutes and regulations.

⁴Title 12 of the Alaska Administrative Code, Section 56.025(i) states:

An application is considered complete when it satisfactorily documents that all applicable requirements for the examination, license, or endorsement have been met. The marine pilot coordinator shall review all applications that comply with all applicable requirements.

ANALYSIS OF PUBLIC NEED

The following analyses of Board of Marine Pilots (BMP or board) activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

As part of the audit, pilots licensed and regulated by the board and industry stakeholders⁵ who utilize the pilotage services were surveyed. Eighty-six pilots⁶ were provided the survey and 53 (62 percent) responded. Twenty-four industry stakeholders were provided the survey and 12 (50 percent) responded. Survey questions and results are presented in Appendices A, B, and C of this report.

Determine the extent to which the board, commission, or program has operated in the public interest.

BMP benefits the public's safety and welfare by licensing and regulating marine pilots and thereby protects shipping, human safety and property, and the marine environment. The board provides reasonable assurance that pilots are competent and qualified to pilot passenger and cargo ships in Alaskan waters. From FY 07 through FY 12, 16 marine pilots and 13 deputy marine pilots were newly licensed by the board. Furthermore, from FY 07 through FY 12, BMP revised or updated over 20 BMP regulations. The board also significantly resolved the 2006 sunset audit recommendations.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The majority of survey respondents reported overall satisfaction with the board's performance. Seventy-seven percent of pilot respondents and 100 percent of industry stakeholder respondents rated the board's performance between *fair* and *excellent*. The majority of respondents also gave the board a *fair* to *excellent* rating for its performance in addressing industry needs for protection of shipping, human safety and property, and the marine environment. However, 55 percent of the pilot respondents gave a *poor* rating for board member objectivity. Surveyed marine pilots expressed dissatisfaction with the current board chair's performance while the majority of industry stakeholders were satisfied. The appendices in this report include all survey questions and respondent answers.

Sixty percent of pilot survey respondents and 92 percent of industry stakeholder respondents viewed the board's handling of rate setting issues between *fair* and *excellent*. Currently, rate

⁵Industry stakeholders represent vessel agents, shipping and cruise firms, and vessel owners.

⁶Pilots surveyed included trainees.

setting disputes are either handled directly by the board or referred to the Office of Administrative Hearings. During the audit period, two rate setting disputes were brought to the board. In both instances the matter was referred to the Office of Administrative Hearings; however, the matters were withdrawn by the parties before the scheduled hearing.

The board made significant improvements in addressing prior sunset audit recommendations. However, continued improvements are needed regarding the administration of BMP operational activities. Administrative deficiencies include not verifying the accuracy of local pilot association annual drug testing reports; not confirming the timeliness of pilots' responses to drug testing notifications delivered by mail; and not seeking board approval for one trainee's drug testing program. Recommendation No. 1 further discusses the need to improve the administration of BMP operational activities.

The board's revenue is derived from yacht exemption fees, licensing fees, and renewal fees. License renewals are required biennially, creating a two-year cycle in which most revenues are received in odd-numbered fiscal years. During the audit period, license renewal fees remained fairly stable. From FY 07 through FY 10, the license fees were \$2,000, and in FY 11, the fee changed to \$2,500. The fee will remain the same for the upcoming renewal period.

A schedule of board revenues and expenditures for the period FY 07 through FY 12 is presented in Exhibit 2 (following page). The amounts in Exhibit 2 were provided by the Department of Commerce, Community, and Economic Development's (DCCED) Division of Corporations, Business and Professional Licensing (DCBPL or division) management and reflect the division's restatement of occupational board financial activity. The division restated all occupational board financial activity to adjust for the over allocation of DCBPL indirect costs to all occupational boards identified by a 2011 special audit.⁷

⁷This issue was identified in the special audit, *Department of Commerce, Community, and Economic Development; Division of Corporations, Business and Professional Licensing; Select Occupational Licensing and Enforcement Issues*, June 29, 2011, Audit Control Number 08-30063-11.

We did not audit the information in Exhibit 2. The summary schedule is provided for general information purposes.

Exhibit 2

State of Alaska Board of Marine Pilots Restated Schedule of Revenues and Expenditures FY 07 through FY12 (Unaudited)						
	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
Revenues						
Yacht Fees	\$ 73,350	\$ 99,500	\$ 73,800	\$ 78,050	\$ 81,950	\$ 53,300
Licensing Fees	159,769	27,786	160,601	14,611	225,042	27,155
Total Revenues	<u>233,119</u>	<u>127,286</u>	<u>234,401</u>	<u>92,661</u>	<u>306,992</u>	<u>80,455</u>
Direct Expenses						
Personal Services	90,157	100,075	107,625	116,502	119,314	121,210
Travel	30,406	13,957	22,698	17,541	10,528	17,931
Contractual	45,694	59,222	54,084	54,165	37,102	22,548
Supplies	6,002	1,962	272	313	1,661	436
Total Direct Expenses	<u>172,259</u>	<u>175,216</u>	<u>184,679</u>	<u>188,521</u>	<u>168,605</u>	<u>162,125</u>
Indirect Expenses	<u>5,197</u>	<u>3,791</u>	<u>3,886</u>	<u>4,740</u>	<u>4,688</u>	<u>6,745</u>
Total Expenses	<u>177,456</u>	<u>179,007</u>	<u>188,565</u>	<u>193,261</u>	<u>173,293</u>	<u>168,870</u>
Annual Surplus (Deficit)	<u>55,663</u>	<u>(51,721)</u>	<u>45,837</u>	<u>(100,600)</u>	<u>133,699</u>	<u>(88,415)</u>
Beginning Cumulative Surplus (Deficit)	<u>(46,987)</u>	<u>8,676</u>	<u>(43,045)</u>	<u>2,792</u>	<u>(97,808)</u>	<u>35,891</u>
Ending Cumulative Surplus (Deficit)	<u>\$ 8,676</u>	<u>\$(43,045)</u>	<u>\$ 2,792</u>	<u>\$(97,808)</u>	<u>\$ 35,891</u>	<u>\$(52,524)</u>

Source: DCBPL Management

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

There were no BMP statutory changes from FY 07 through FY 12. However, the board was active in revising and updating over 20 BMP regulations during this period. Most changes were intended to improve public safety and protect the marine environment. Significant regulation changes involved:

- License renewal, core examination, and continuing education requirements;
- General requirements for marine pilot licenses;
- Training programs for deputy marine pilots;
- Regional requirements for marine and deputy marine pilot licenses;
- Qualifications for transferring marine pilot licenses to different pilotage regions within the State;

- Training pilot endorsements;
- Registration and definition of vessel agents;
- Experience requirements for vessel endorsements;
- Supervised vessel movement documentation;
- Observer trip requirements for deputy marine pilots; and
- Pleasure craft exemptions.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

From FY 07 through FY 12, the board held between four and eight meetings per year which exceeded the minimum statutory requirement of three. Meetings were advertised on the BMP website and agendas were available from the marine pilot coordinator. However, in examining six of 31 meeting notifications, two meetings were not publicly noticed and another meeting was not noticed timely in accordance with regulation and division policies. Recommendation No. 1 further discusses the need to improve administration of BMP operational activities.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The board allots time for public comment at each board meeting. BMP, via its website, also offers individuals the ability to subscribe to an electronic mailing list to receive meeting notifications, board meeting agendas, and notice of proposed regulation changes. Meeting minutes are available on BMP's website.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

DCCED's Commissioner's Office, Office of the Governor, the Office of Victims' Rights, and the State's Office of the Ombudsman received no BMP-related complaints from July 1, 2006, through May 25, 2012.

Sixty percent of the marine pilots that responded to the survey and 75 percent of industry stakeholder respondents rated the board from *fair* to *excellent* for the board's timeliness of handling investigations. Another 30 percent of pilot respondents and 25 percent of industry stakeholder respondents gave no opinion for this survey question.

A sample of four of the 15 new BMP investigations from FY 07 through FY 12 showed action taken by BMP was adequately supported.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

For the period FY 07 through FY 12, the board issued new licenses to 16 marine pilots and 13 deputy marine pilots. Exhibit 3 provides the total number of pilots, trainees, and apprentices by region.

Exhibit 3

Number of Licensed Pilots, Trainees, and Apprentices by Region As of June 30, 2012						
<u>Region</u>	<u>Association</u>	<u>Marine Pilots</u>	<u>Deputy Marine Pilots</u>	<u>Trainees</u>	<u>Apprentices</u>	<u>Total</u>
Southeast	Southeast Alaska Pilots' Association	47	10	1	0	58
Western	Alaska Marine Pilots, LLC	8	3	0	0	11
Southcentral	Southwest Alaska Pilots Association	16	0	1	2	19
Total		71	13	2	2	88

Pilot and industry stakeholder survey respondents generally agreed that the number of licensed pilots in their region was adequate to cover industry needs. Industry stakeholder respondents rated the skills and knowledge demonstrated by pilots at an average level of eight on a scale between *one* and *ten* with *one* being unskilled and unknowledgeable and *ten* being very skilled and knowledgeable.

Except for two missing documents, a sample of new and renewal BMP licenses⁸ showed that pilots were licensed in compliance with statutes and regulations. Recommendation No. 1 further discusses the need to improve administration of BMP operational activities including verifying the completeness of licensing documentation.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

From July 1, 2006, through May 25, 2012, no BMP-related complaints were filed with the following agencies: the Alaska State Commission for Human Rights; the United States (U.S.) Equal Employment Opportunity Commission; and the Department of Administration's Division of Personnel and Labor Relations.

⁸New license documents for four marine pilots and three deputy marine pilots were reviewed for compliance. Documents for two new trainees and seven pilot license renewals were also reviewed.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

An analysis of BMP operational activities showed administrative deficiencies regarding public meeting notifications, licensing documentation, and the oversight of the pilot associations' drug and alcohol programs. Recommendation No. 1 further discusses the need to improve administration of BMP operational activities.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

BMP has effectively attained its objectives of regulating and promulgating safety with respect to inland marine pilotage in Alaska and has carried out its purpose in a reasonably efficient manner.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

BMP and the U.S. Coast Guard have overlapping licensing and investigation responsibilities. However, the activities are complimentary in nature and do not represent a duplication of efforts.

APPENDICES

As part of this audit, a survey was conducted of BMP pilots licensed and regulated by the board and industry stakeholders⁹ who utilize the pilotage services. Eighty-six pilots¹⁰ were provided the survey and 53 (62 percent) responded. Twenty-four industry stakeholders were provided the survey and 12 (50 percent) responded. Survey responses are summarized in the following appendices:

Appendix A: Survey Results for Questions Answered by the Marine Pilots and Industry Stakeholders.

Appendix B: Survey Results for Questions Answered by Marine Pilots.

Appendix C: Survey Results for Questions Answered by Industry Stakeholders.

⁹Industry stakeholders represent vessel agents, shipping and cruise firms, and vessel owners.

¹⁰Pilots surveyed included trainees.

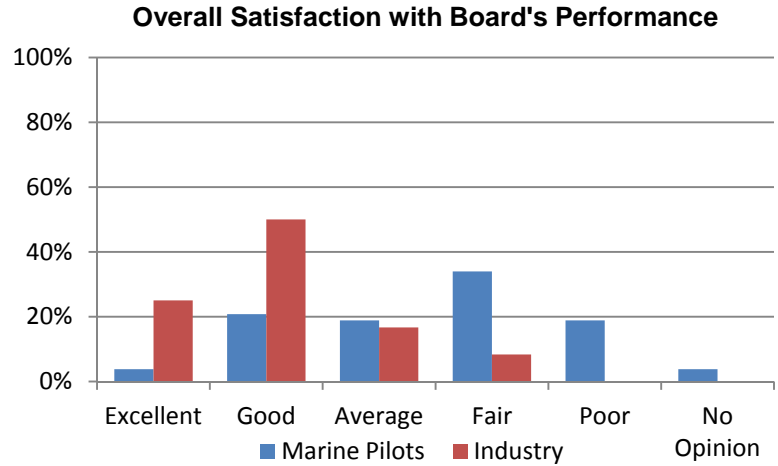
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Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders

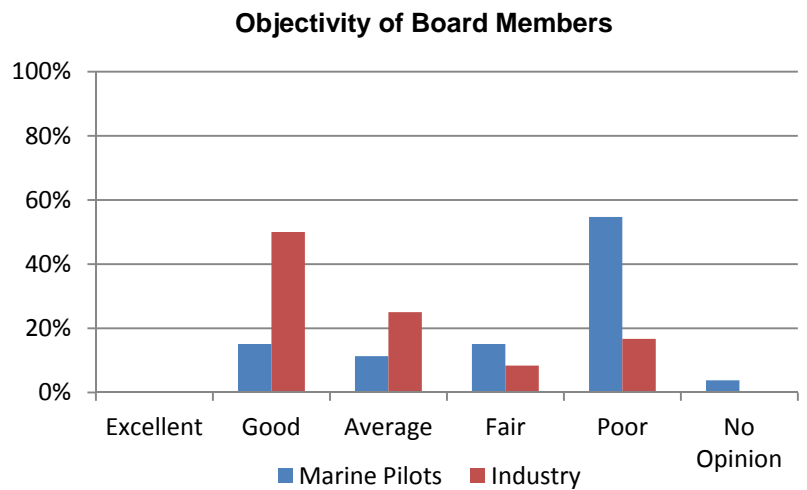
1. Rate your overall satisfaction with the board's performance.

	Marine Pilots	Industry Stakeholders
Excellent	2	3
Good	11	6
Average	10	2
Fair	18	1
Poor	10	0
No Opinion	2	0
Total Respondents	53	12



2. Rate the objectivity of the board members.

	Marine Pilots	Industry Stakeholders
Excellent	0	0
Good	8	6
Average	6	3
Fair	8	1
Poor	29	2
No Opinion	2	0
Total Respondents	53	12



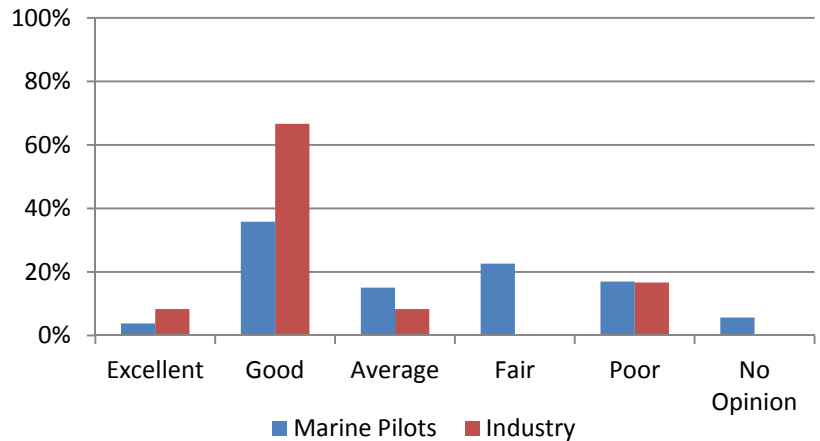
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

3. Rate industry knowledge of the board members.

	Marine Pilots	Industry Stakeholders
Excellent	2	1
Good	19	8
Average	8	1
Fair	12	0
Poor	9	2
No Opinion	3	0
Total Respondents	53	12

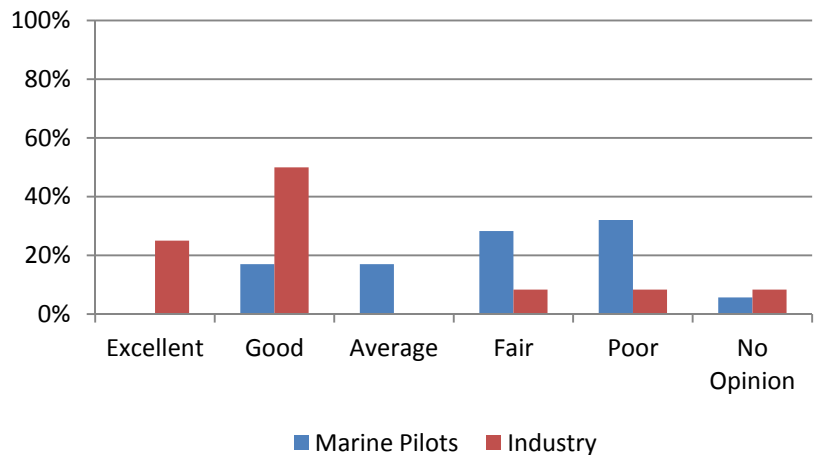
Industry Knowledge of Board Members



4. Rate the board's performance in addressing important issues.

	Marine Pilots	Industry Stakeholders
Excellent	0	3
Good	9	6
Average	9	0
Fair	15	1
Poor	17	1
No Opinion	3	1
Total Respondents	53	12

Board's Performance in Addressing Important Issues



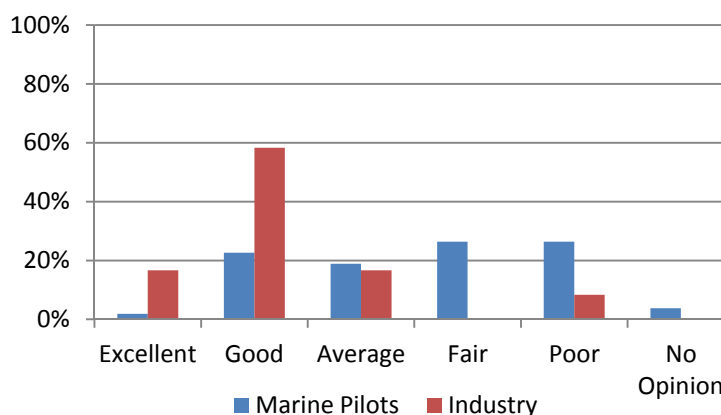
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

5. Rate the board's performance in addressing industry needs for protection of shipping, human safety and property, and the marine environment.

	Marine Pilots	Industry Stakeholders
Excellent	1	2
Good	12	7
Average	10	2
Fair	14	0
Poor	14	1
No Opinion	2	0
Total Respondents	53	12

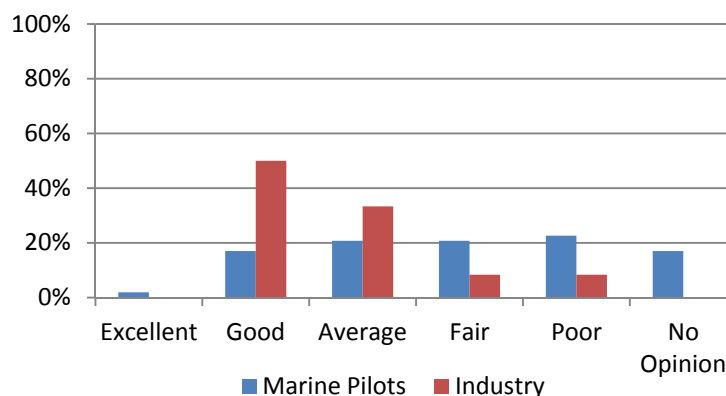
Board Performance over Industry Needs to Ensure Protection and Safety



6. Rate the board's handling of rate setting issues.

	Marine Pilots	Industry Stakeholders
Excellent	1	0
Good	9	6
Average	11	4
Fair	11	1
Poor	12	1
No Opinion	9	0
Total Respondents	53	12

Board Handling of Rate Setting Issues



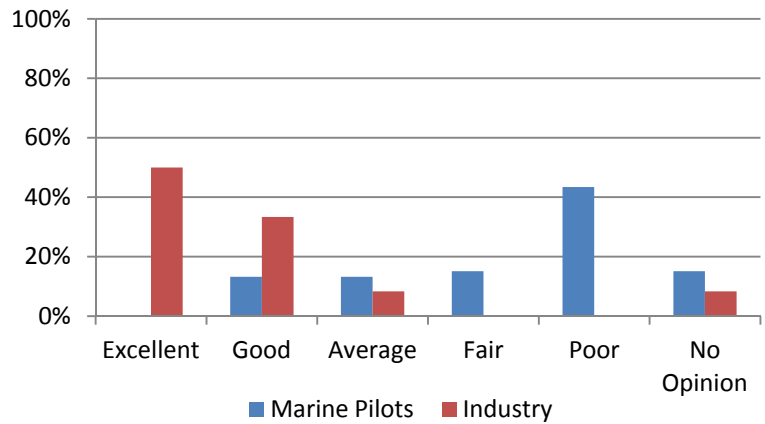
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

7. Rate your overall satisfaction with the current board chair's performance.

	Marine Pilots	Industry Stakeholders
Excellent	0	6
Good	7	4
Average	7	1
Fair	8	0
Poor	23	0
No Opinion	8	1
Total Respondents	53	12

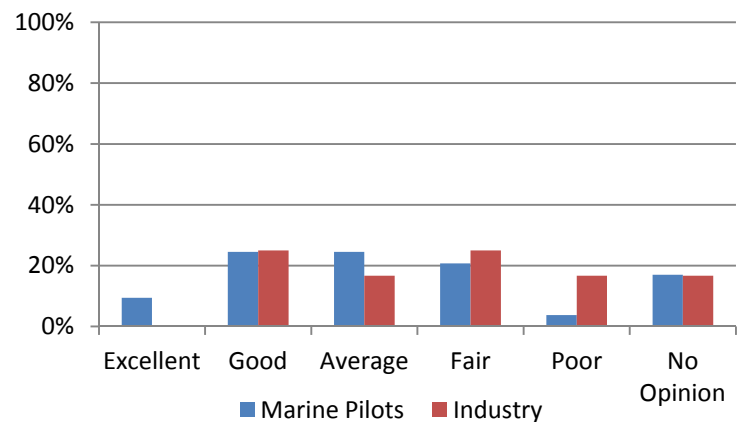
Current Board Chair's Performance



8. Rate your overall satisfaction with the former board chair's performance.

	Marine Pilots	Industry Stakeholders
Excellent	5	0
Good	13	3
Average	13	2
Fair	11	3
Poor	2	2
No Opinion	9	2
Total Respondents	53	12

Former Board Chair's Performance



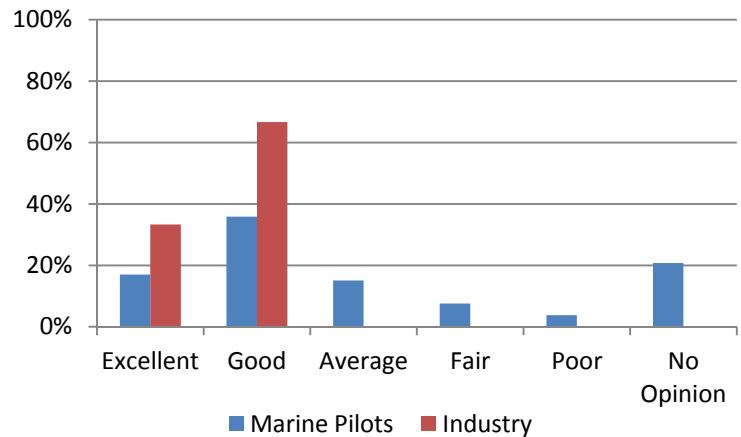
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

9. Rate your overall satisfaction with the current marine pilot coordinator's performance.

	Marine Pilots	Industry Stakeholders
Excellent	9	4
Good	19	8
Average	8	0
Fair	4	0
Poor	2	0
No Opinion	11	0
Total Respondents	53	12

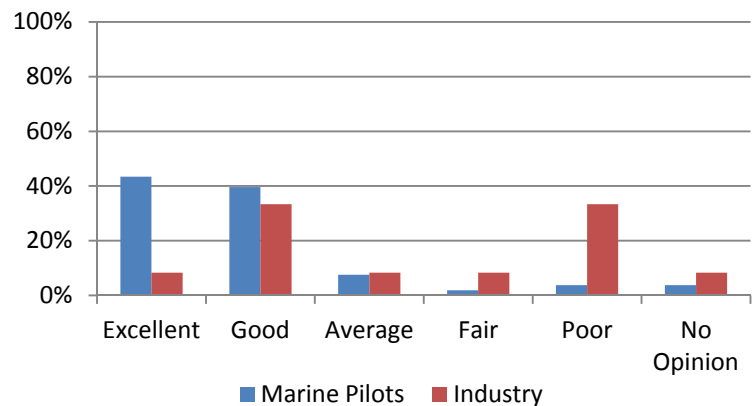
Satisfaction with the Current Marine Pilot Coordinator's Performance



10. Rate your overall satisfaction with the former marine pilot coordinator's performance.

	Marine Pilots	Industry Stakeholders
Excellent	23	1
Good	21	4
Average	4	1
Fair	1	1
Poor	2	4
No Opinion	2	1
Total Respondents	53	12

Satisfaction with the Former Marine Pilot Coordinator's Performance



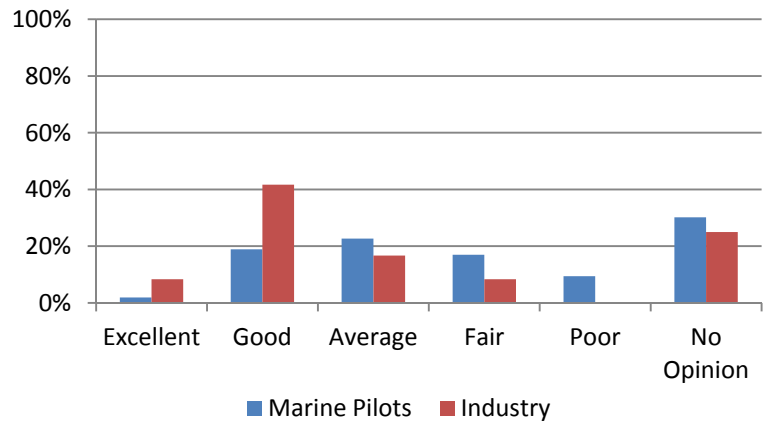
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

11. Rate the timeliness with which the board handled investigations.

	Marine Pilots	Industry Stakeholders
Excellent	1	1
Good	10	5
Average	12	2
Fair	9	1
Poor	5	0
No Opinion	16	3
Total Respondents	53	12

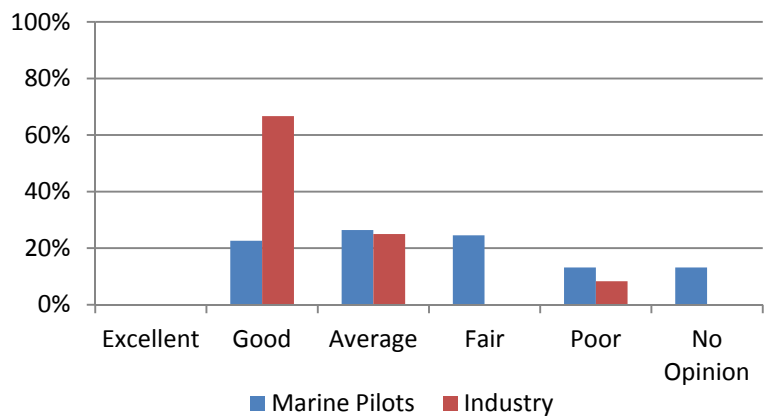
Timeliness of Board Handled Investigations



12. Rate the timeliness with which the board handled regulatory changes.

	Marine Pilots	Industry Stakeholders
Excellent	0	0
Good	12	8
Average	14	3
Fair	13	0
Poor	7	1
No Opinion	7	0
Total Respondents	53	12

Timeliness of Board Handled Regulatory Changes



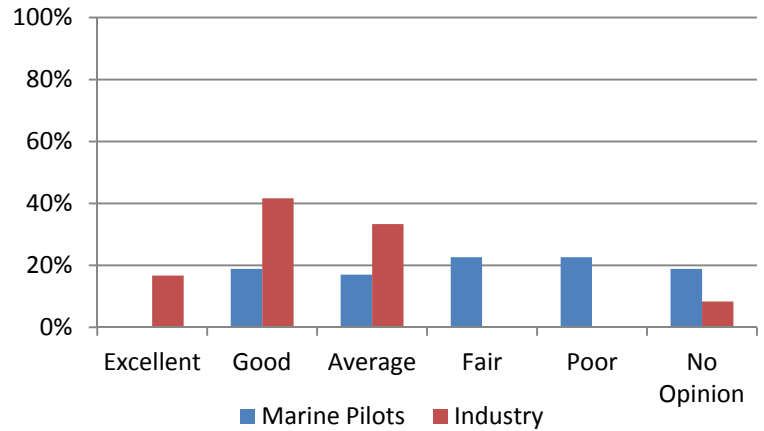
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

13. Rate the timeliness with which the board handled other important issues.

	Marine Pilots	Industry Stakeholders
Excellent	0	2
Good	10	5
Average	9	4
Fair	12	0
Poor	12	0
No Opinion	10	1
Total Respondents	53	12

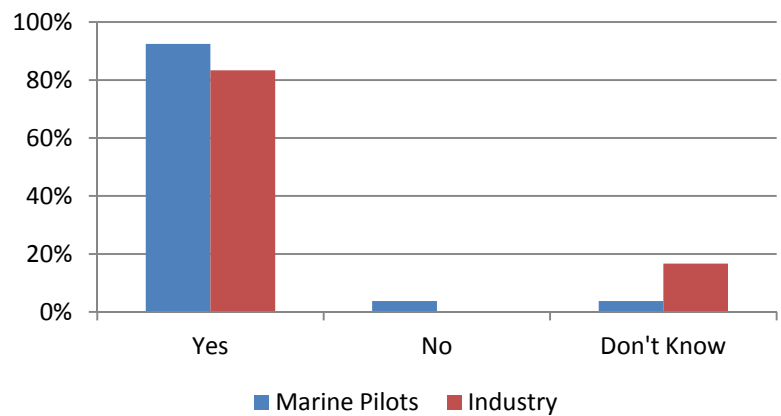
Timeliness with which the Board Handled Other Important Issues



14. Is the current number of licensed deputy and marine pilots in your region adequate to cover the needs of the industry?

	Marine Pilots	Industry Stakeholders
Yes	49	10
No	2	0
Don't Know	2	2
Total Respondents	53	12

Coverage of the Industry's Need for Licensed Pilots



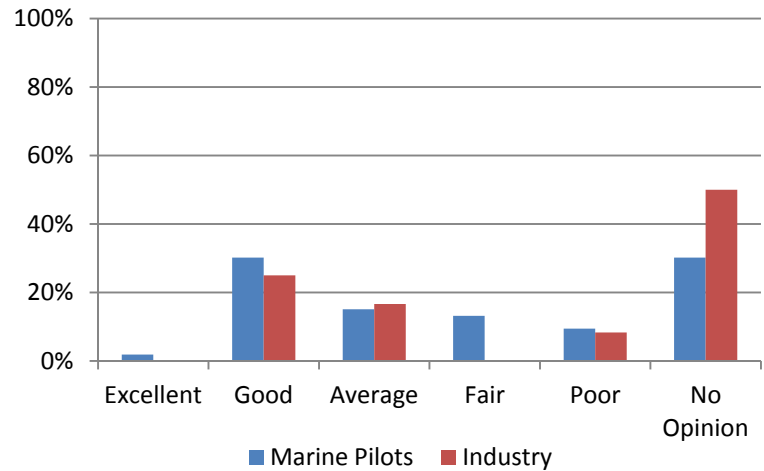
Appendix A

Survey Results for Questions Answered by Marine Pilots and Industry Stakeholders (Continued)

15. In your opinion, how has the board managed disciplinary situations involving pilots?

**Board Management of Disciplinary Situations
Involving Pilots**

	Marine Pilots	Industry
Excellent	1	0
Good	16	3
Average	8	2
Fair	7	0
Poor	5	1
No Opinion	16	6
Total Respondents	53	12



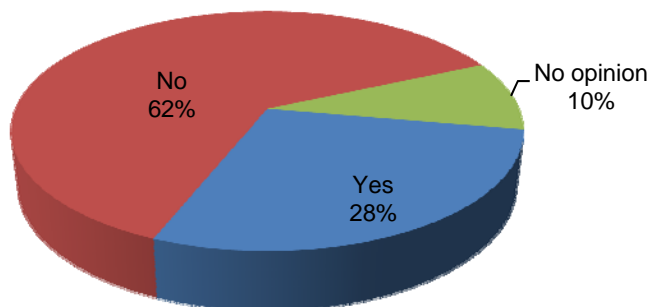
Appendix B

Survey Results for Questions Answered by Marine Pilots

1. Should continuing professional education be required more frequently than once every 6 years?

Yes	15	28%
No	33	62%
No Opinion	5	10%
Total Respondents	53	100%

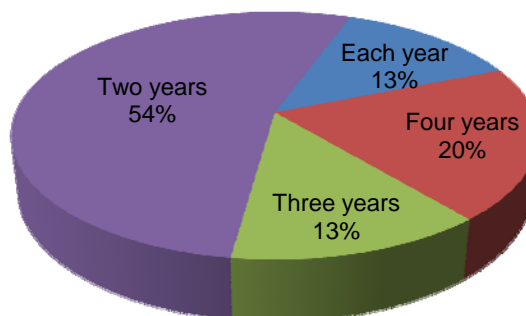
CPE Frequency Requirements



2. To those who answered "Yes" to question #1, how often should continuing professional education be required?

Each year	2	13%
Four years	3	20%
Three years	2	13%
Two years	8	54%
Total Respondents	15	100%

How often CPEs Should Be Required



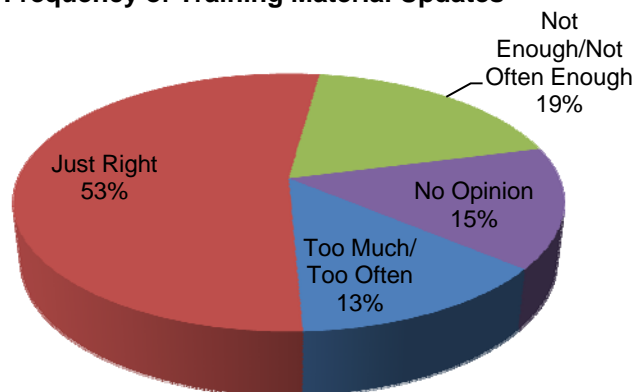
Appendix B

Survey Results for Questions Answered by Marine Pilots (Continued)

3. Rate the frequency with which training materials are updated.

Too Much/Too Often	7	13%
Just Right	28	53%
Not Enough/ Not Often Enough	10	19%
No Opinion	8	15%
Total Respondents	53	100%

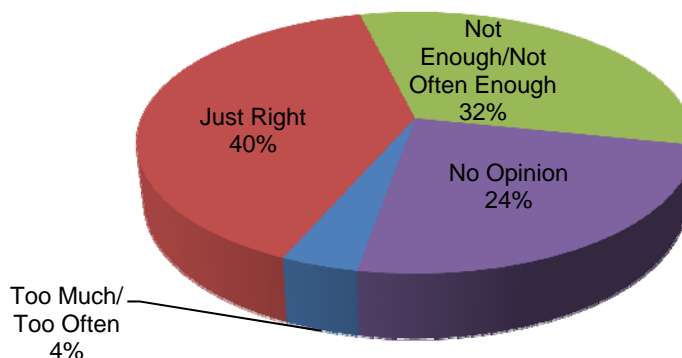
Frequency of Training Material Updates



4. Rate the frequency with which exam questions are updated.

Too Much/Too often	2	4%
Just Right	21	40%
Not Enough/ Not Often Enough	17	32%
No Opinion	13	24%
Total Respondents	53	100%

Frequency of Exam Updates



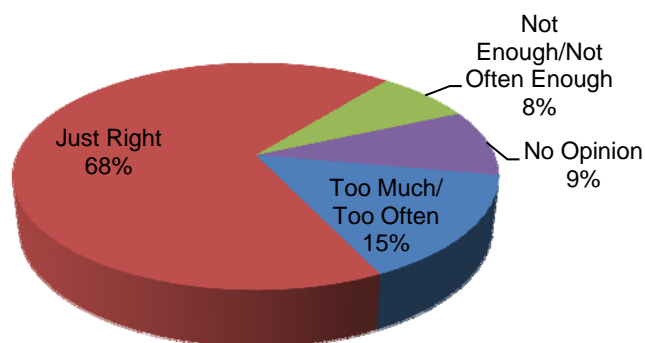
Appendix B

Survey Results for Questions Answered by Marine Pilots (Continued)

5. Rate the adequacy of trainee and apprentice pilot requirements.

Too Much/Too Often	8	15%
Just Right	36	68%
Not Enough/ Not Often Enough	4	8%
No Opinion	5	9%
Total Respondents	53	100%

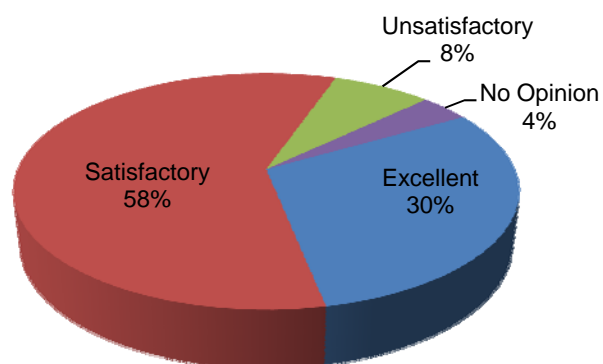
Adequacy of Trainee and Apprentice Pilot Requirements



6. Rate the effectiveness of your association's pilot recruitment.

Excellent	16	30%
Satisfactory	31	58%
Unsatisfactory	4	8%
No Opinion	2	4%
Total Respondents	53	100%

Pilot Association Effectiveness in Recruitment



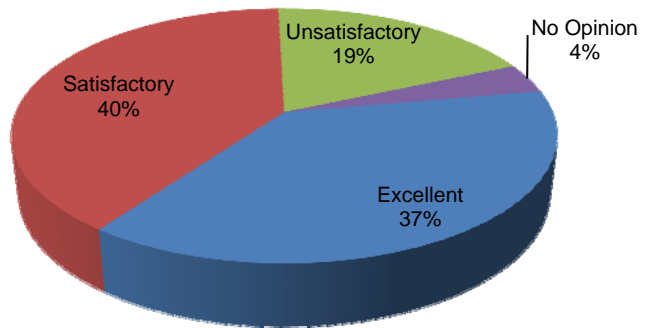
Appendix B

Survey Results for Questions Answered by Marine Pilots (Continued)

7. Rate the effectiveness of your association's pilot retention.

Excellent	20	37%
Satisfactory	21	40%
Unsatisfactory	10	19%
No Opinion	2	4%
Total Respondents	53	100%

Effectiveness of Pilot Association on Retention



Appendix C

Survey Results for Questions Answered by Industry Stakeholders

1. Rate the level of skill needed to pilot your vessels with *one* being unskilled and *ten* being very skilled.

Rating	Number of Responses	
7	2	17%
8	6	50%
9	2	17%
10	2	16%
Total	12	100%

2. Rate the level of knowledge needed to pilot your vessels with *one* being unknowledgeable and *ten* being very knowledgeable.

Rating	Number of Responses	
7	1	8%
8	4	34%
9	5	42%
10	2	16%
Total	12	100%

3. Rate the level of skill demonstrated by pilots on your vessels with *one* being unskilled and *ten* being very skilled.

Rating	Number of Responses	
6	1	8%
7	3	25%
8	3	25%
9	4	34%
10	1	8%
Total	12	100%

4. Rate the level of knowledge demonstrated by pilots on your vessels with *one* being unknowledgeable and *ten* being very knowledgeable.

Rating	Number of Responses	
6	1	8%
7	3	25%
8	3	25%
9	4	34%
10	1	8%
Total	12	100%

5. During the past six years, did any of your vessels or your clients' vessels suffer an incident as a result of a pilot's action?

	Number of Respondents	
No	9	75%
Yes	3	25%
Total	12	100%

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THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, Alaska 99811-0800
Main: 907.465.2500
TDD: 907.465.5437
Fax: 907.465.5442

December 17, 2012

Ms. Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED

DEC 20 2012

LEGISLATIVE AUDIT

RE: Preliminary Report Department of Commerce, Community, and Economic Development
(DCCED), Board of Marine Pilots (BMP or board)

Dear Ms. Curtis:

Thank you for the opportunity to respond to the November 5, 2012 preliminary audit report recommendation concerning the Board of Marine Pilots sunset review audit. The department concurs with the report conclusion that the board's termination date should be extended to June 30, 2019. Our comment on the sole audit recommendation is provided below.

Recommendation No.1

The marine pilot coordinator should improve procedures over the administration of BMP operational activities.

The department concurs with this recommendation. With the transition to a new marine pilot coordinator in the fall of 2011, it became apparent that a desk manual and written procedure to codify primary functions was needed. The new coordinator is developing the appropriate documentation and checklists to ensure an adequate oversight process is in place.

The division is also finalizing a revised policy pertaining to meeting preparation and public notice requirements to ensure meetings are publicly and timely noticed. Requirements of the Open Meetings Act were articulated to staff and board members during training sessions conducted in June 2012 and published in the recently developed Orientation Manual for Professional Licensing Boards & Commissions.

Thank you again for the opportunity to respond to the preliminary audit report conclusion and recommendation. If you have any additional questions, please contact me at 907-465-2500.

Sincerely,

A handwritten signature in blue ink that reads "Susan K. Bell".

Susan K. Bell
Commissioner

cc: JoEllen Hanrahan, Director ASD
Don Habeger, Director DCBPL

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THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

Department of Commerce, Community,
and Economic Development

BOARD OF MARINE PILOTS

P.O. Box 110806
Juneau, AK 99811-0806
Main: 907.465.2548
Fax: 907.465.2974

January 2, 2013

RECEIVED

JAN 02 2013

LEGISLATIVE AUDIT

Ms. Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, Alaska 99811-3300

RE: Preliminary Audit Report, Community of Commerce, Community, and Economic
Development, Board of Marine Pilots (BMP) Sunset Review

Dear Ms. Curtis:

Thank you for the opportunity to respond to your December 13, 2012 letter regarding the BMP audit findings.

On behalf of the BMP, we are extremely pleased with the outcome of the audit. As there will always be improvements that need to be made, I believe the BMP and the Marine Pilot Coordinator have made great improvements from the BMP 2002 and 2006 Sunset Audit findings. We have aggressively implemented the necessary changes which at times did not always meet with the approval of the pilots. I believe that is reflected in the survey results. I am pleased the Board has resolved many of the problems identified in prior sunset audits. The BMP routinely emphasizes the importance of internal controls, timelines and compliance with statutes and regulations.

Recommendation No. 1

I would concur with this recommendation. The BMP was unaware of the operational deficiencies noted. The Marine Pilot Coordinator (MPC) has been in the current position for less than one year at the time of the audit and it is important to note there was no transition period from the previous MPC who left unexpectedly prior to the incumbent starting. BMP will work with the MPC and the Division of Corporations, Business and Professional Licensing to improve upon the findings.

Thank you for the opportunity to respond to these findings and recommendations. I appreciate the professional manner in which the audit was conducted. If you need anything further for this process, please do not hesitate to contact me.

Sincerely,



Curtis W. Thayer
Chairman

cc: Susan Bell, Commissioner, DCCED
Daniel Patrick O'Tierney, Deputy Commissioner, DCCED
Don Habeger, CBPL Director, DCCED
Jo Ellen Hanrahan, Admin. Services Director, DCCED