

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 13, 2010

5:08 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Joe Thomas, Vice Chair
Senator Hollis French
Senator Linda Menard

MEMBERS ABSENT

Senator Albert Kookesh

COMMITTEE CALENDAR

INFORMATIONAL HEARING: ARCTIC INDUSTRIAL ACTIVITY & PREVENTION SYSTEMS

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

EDWARD S. ITTA, mayor
North Slope Borough
Barrow, AK

POSITION STATEMENT: Spoke in support of compulsory marine pilotage in the arctic.

CAPTAIN CALLUM FINLAYSON, regional marine manager
Shell Oil Company
New Orleans, LA

POSITION STATEMENT: Spoke in opposition to compulsory marine pilotage in the arctic.

CURTIS THAYER, deputy commissioner
Department of Commerce, Community and Economic Development
(DCCED)
And chairman,
Alaska Board of Marine Pilots
Anchorage, AK

POSITION STATEMENT: Testified that the board does not have the needed information to make a decision about how to move forward in mitigating environmental risk for the increased arctic traffic.

CLAYTON DIMOND, deputy director
American Pilots Association (APA),
Washington D.C.

POSITION STATEMENT: Spoke in support of compulsory marine pilotage in the arctic.

SHIRLEY MCCOURT, mayor
Unalaska, AK

POSITION STATEMENT: Spoke in support of compulsory marine pilotage in the arctic.

PETE GARAY, president
Alaska Marine Pilots (AMP)
Dutch Harbor, AK

POSITION STATEMENT: Spoke in support of compulsory marine pilotage in the arctic.

ACTION NARRATIVE

[5:08:45 PM](#)

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at 5:08 p.m. Present at the call to order were Senators Thomas, Menard, and Olson.

INFORMATIONAL HEARING: ARCTIC INDUSTRIAL ACTIVITY & PREVENTION SYSTEMS

[5:09:03 PM](#)

CHAIR OLSON announced the first order of business to come before the committee was an informational hearing on Arctic Industrial Activity and Prevention Systems. The invited speakers represent a range of positions on whether marine transportation in the Arctic Ocean should be subject to compulsory marine pilotage. The shrinking polar ice cap and warming Arctic Ocean are opening new commercial activity in the area. Going between Asia and Europe through arctic waters cuts off up to eight days on shipping times and saves millions in freight costs. As ice recedes, new offshore oil and gas potential is exposed. New fisheries are possible as species migrate north into warming waters. A Northwest Passage will also entice cruise ships and tourism. Requiring state licensed marine pilots on certain commercial ships is a precautionary measure used in other

regions. These pilots report to the state instead of the operating companies. Marine pilots are required in other Alaskan waters and an debate is underway as to whether this requirement should extend to the arctic.

CHAIR OLSON recognized Senator French as joining the meeting.

EDWARD S. ITTA, mayor, North Slope Borough, said he cannot see why the state would not require state licensed marine pilots in the arctic. Marine pilotage is required in all other Alaska coastal areas; every coastal state in the U.S. requires marine pilotage in some circumstances. It is a basic safety measure used to protect coastal waters. The requirement only applies to certain big vessels and when ships come to ports and harbors and in ship to ship activities.

5:12:29 PM

Some ship to ship activities take place beyond the state's three mile limit which is why federal law allows the state to assert its pilotage authority beyond three miles. He questioned why Alaska would abandon the opportunity to take control in federal waters; if it does not, no oversight will be in place.

A pilot that works for Shell or another company is beholden to that company; a state license pilot reports to the state and is an independent set of eyes and skills. They have handled all cruise ship traffic and traffic to and from the Red Dog Mine. They have more arctic experience than any other marine pilots in America. As the oil industry ramps up, the Alaska marine pilots can expand their skills in ice infested waters.

5:15:01 PM

Now is the time to instigate the safety precautions. It will not happen later. The state is taking no action to provide basic safety in the Arctic Ocean. We are about to allow the oil industry a lower safety standard than mining or cruising even though its operations are riskier. Although Governor Parnell said he would not sacrifice one resource for another, his administration is considering sacrificing a safety standard that works everywhere else in Alaska and in other U.S. coastal areas. If not required in the Arctic, Alaskans will make a big sacrifice they do not want to make.

SENATOR THOMAS asked if the proposal is to do what is done in Prince William Sound.

MR. ITTA replied yes, it is modeled after that system.

SENATOR THOMAS asked if the proposal is similar to Canada's policy.

MR. ITTA replied yes, the concept is similar.

[5:17:44 PM](#)

CHAIR OLSON asked Mr. Itta he fears happening the most.

MR. ITTA replied that the biggest fear is oil spills which are caused by the transport of oil in tankers.

CHAIR OLSON asked where the closest oil spill response team is.

MR. ITTA replied that Alaska Clean Seas is in Prudhoe Bay with limited equipment. For a major spill, the nearest response would probably come from Unalaska, thousands of miles away.

CAPTAIN CALLUM FINLAYSON, regional marine manager, Shell Oil Company, said he is accountable for marine activities in Alaska, down through the Gulf of Mexico and beyond. He questioned the accuracy of Mayor Itta's earlier statement that federal law allows the extension of compulsory marine pilotage.

CHAIR OLSON said he thinks Mr. Itta was referring to state law.

MR. FINLAYSON said a letter from the U.S. Coast Guard addresses the legal issues quite clearly. Pilots are a necessary, added-value resource when it comes to managing marine risk for vessels coming in and out of port. The risks off-shore are different and are managed differently.

[5:21:51 PM](#)

He showed a slide depicting where the two main areas of operations are going to be in the Beaufort and Chukchi Seas. Operations between vessels will be taking place this year, and possibly one off-shore rig. Dutch Harbor and Nome will be the primary ports used and pilots will be used in both harbors. Rig moves, done by specialist vessels, resupplying and research will be the main marine activities. General cargo, water, fuel and people will be carried.

MR. FINLAYSON's next slide addressed agency involvement. The marine industry is heavily regulated. The regulatory body in the marine sector is the U.S. Coast Guard. The International Maritime Organization sets legislation from an international perspective. Approximately 26 vessels are anticipated to be in

the region in 2010. Weather and ice-forecasting have been the focus of much investment so far. Comprehensive oil spill response plans are in place with about 11 of the 26 ships dedicated as resources for oil spill response.

[5:25:28 PM](#)

SENATOR FRENCH asked who will be piloting the 26 vessels.

MR. FINLAYSON replied that the 26 vessels will have their own vessel master on board and a number will also have ice advisors.

SENATOR FRENCH asked if activities such as docking or refueling take place with the same people at the helm.

MR. FINLAYSON replied yes.

SENATOR FRENCH asked if the masters and ice advisors are Alaskans.

MR. FINLAYSON replied some of them are Alaskans. He said a good number of the vessels are American.

SENATOR FRENCH asked where the vessels come from.

MR. FINLAYSON replied that the majority are U.S. flag ships, including some supply ships from Louisiana. Some are foreign ships, such as a Russian ice management vessel. He noted some smaller, locally owned vessels are also present.

[5:27:57 PM](#)

CHAIR OLSON asked what Mr. Finlayson meant by locally owned.

MR. FINLAYSON replied locally owned Alaskan vessels that have been chartered to support activities.

He went on to a slide about risk prevention. The first layer is planning and risk assessment. Procedures and standards are then developed. For example, any vessel transferring fuel to a rig must be dynamically positioned and follow procedures for coming in close proximity to the rig. On-site mechanical barriers, oil spill equipment, are on board the vessel Nanuq. Should barriers fail, on-site responses are prepared and contingency plans exist.

[5:30:37 PM](#)

MR. FINLAYSON showed another slide on ice-forecasting. He noted he would welcome the opportunity to provide deeper insight. The

next slide addressed mitigation which can be broken down to people, processes and equipment. "People" does not include pilots. When the theatre includes ice management, risk is mitigated through ice advisors. The introduction of pilots, who currently do not have experience and competency in the area, adds another interface and increases the risk.

[5:33:27 PM](#)

Shell extensively audits the companies that own the vessels and every vessel is strictly inspected. Vessels follow a deep technical dynamic positioning assurance process.

CHAIR OLSON interjected, saying the hearing is for information related to marine pilots. He asked for the relevant information and a summary.

MR. FINLAYSON said the content of the slides was meant to demonstrate that the risk is being mitigated through alternative means, not using marine pilots.

SENATOR FRENCH said his concern is that Mr. Finlayson, his pilots and masters, have not operated in this ocean.

MR. FINLAYSON interjected that some of them have.

SENATOR FRENCH said the Arctic Ocean is unforgiving of error. An error will cause Shell enormously bad consequences and be even worse for local people. Having an Alaskan pilot seems to be a small insurance policy and offers assurance to the people of Alaska. He is surprised Shell has not embraced this.

[5:36:46 PM](#)

MR. FINLAYSON said the masters that Shell has on ice management vessels are experienced ice masters. Some masters, and all ice advisors, have worked in the area previously.

CHAIR OLSON asked if they have worked both in the Beaufort and Chukchi Seas.

MR. FINLAYSON replied yes.

CHAIR OLSON asked, "always as Shell employees?"

MR. FINLAYSON replied no, not always as Shell employees.

CURTIS THAYER, deputy commissioner, Department of Commerce, Community and Economic Development (DCCED), said he was

appointed chairman of the Alaska Board of Marine Pilots in January 2010. The board provides for the maintenance of efficient, competent pilotage services on the inland and coastal waters, to ensure the protection of shipping, safety of human life and property and protection of the marine environment.

At a January 2008 board meeting, Alaska Marine Pilots (AMP) addressed the protection of arctic waters, compulsory pilotage and adoption of an ice regime in the arctic. Mr. Thayer summarized the topics that the presenter covered. AMP submitted draft regulations to the board that would extend the state's compulsory pilotage area 200 miles into the Beaufort and Chukchi Seas. All foreign flagged vessels would be required to employ an Alaska marine pilot. The proposed mandatory pilotage regulations have gone through many drafts and have been put out for public comment. In the April 2009 board meeting, it was suggested that a record, based on findings, could help defend such far reaching regulations. An attempt was made to solicit these findings from stakeholders but did not succeed and the proposed regulations were withdrawn.

[5:40:16 PM](#)

The board is greatly concerned that any current traffic, future resource development and maritime activity in arctic waters be carried out by professionals with the training and experience required to provide the highest level of safety to the environment and coastal communities. The board does not possess all the information needed to make a decision about how to move forward in mitigating environmental risk for arctic traffic. The jurisdiction of the Board of Marine Pilots, outside of the three mile limit, is still unknown. Traditionally the US Coast Guard is in charge of safety, navigation and the licensing of maritime professionals in open waters around the U.S.

[5:43:01 PM](#)

In an April 2008 letter to the state, the Coast Guard expressed concern about the impact of state regulation on the principles of domestic and customary international laws of navigation, on which vital U.S. national security and economic industry depend. Mr. Thayer said he plans to prepare a list of questions for board approval which will be presented to the Attorney General (AG) to help delineate a clear legal path as the state designs guidelines to safely take us into the future.

SENATOR THOMAS asked if any previous work had been done on this by Mr. Thayer's predecessors.

MR. THAYER replied that no pending regulations or action on arctic pilotage is before the board. He reiterated that the board previously drafted regulations which were withdrawn.

SENATOR FRENCH asked what the administration's plan is for overseeing activity to ensure the integrity of our waters in the absence of marine pilots.

MR. THAYER replied that there is no activity for marine pilots. The board needs to ask the AG about its jurisdiction beyond three miles.

SENATOR FRENCH said drill ships are coming into the Beaufort and Chukchi Seas this year. He repeated his question about the administration's plan concerning who is observing activity and ensuring protection. He hopes the administration is as aggressive at asserting its domain in these waters as it has been in other conflicts with the federal government.

[5:45:47 PM](#)

MR. THAYER replied that he would have to get back to Senator French with the position from the state. The Board of Marine Pilots has nothing pending before it and does not have the jurisdiction to put pilots on the boats.

SENATOR FRENCH asked what Mr. Thayer thinks should happen.

MR. THAYER replied by reiterating that the board needs to find out what its legal jurisdiction is. The board has jurisdiction within three miles of shore and, in some cases, between 6 and 9 miles of shore. Two-hundred miles off-shore is federal waters.

SENATOR FRENCH said the state should take a proactive stance, assert its right to marine pilots and let Shell Oil Company sue and say the state does not have [jurisdiction]. He commented that Shell would be hesitant to take such action. Most Alaskans would support the state taking on this role.

MR. THAYER responded that exchanges with the Coast Guard, who currently has jurisdiction, began about a month ago to establish where their jurisdiction ends and the state's begins and what oversight process they want to see in place.

[5:47:57 PM](#)

SENATOR FRENCH asked where the closest Coast Guard base is.

MR. THAYER replied that the Coast Guard does fly-overs out of Kodiak.

SENATOR FRENCH asked how many days it takes to get a boat from Kodiak to these waters.

MR. THAYER replied that this concern has been discussed with the Coast Guard. Necessary ports for staging for off-shore response are not available.

CHAIR OLSON referred to Mr. Thayer's earlier comment that no activity is going on in the Arctic Ocean. He believes a number of cruise ships have come through the Northwest Passage.

MR. THAYER replied that some activity has taken place but no off-shore drilling.

CHAIR OLSON asked if the department is in favor of having marine pilots on board the 26 vessels, some of which are foreign flagged.

MR. THAYER replied by reiterating that the board is trying to determine their jurisdiction beyond three miles.

CHAIR OLSON said, "So you are not in favor of it."

MR. THAYER said the board has not taken a position.

[5:49:48 PM](#)

CLAYTON DIMOND, deputy director, American Pilots Association (APA), Washington D.C., gave some details of his background and the APA. The APA supports the committee's exploration of expanding Alaska's compulsory pilot requirements to the newly opened arctic waters. The pilot system is one of state regulation and responsibility and the state can adjust its pilotage to changing developments.

[5:52:09 PM](#)

Compulsory state pilotage is often considered to be the most effective form of navigation safety regulation. A state pilot exercises judgment independently from the economic interests of the ship owners and operators, answers only to the state and has the sole objective of protecting the waters. In an effective compulsory pilot system, pilots must be available at all times, to all ships required to have a pilot, equally. Pilot associations must maintain training programs, dispatch services, rotation systems and all needed equipment. It will take some

time to put a professional ice pilot infrastructure in place. Alaska should explore exercising the fullest extent of their pollution prevention and marine safety authority and the compulsory pilotage system is the most viable, effective mechanism to do so. A compulsory pilotage system would ensure that pilots are US citizens subject to state oversight, are true local navigation experts and are accountable only to the citizens of Alaska.

[5:55:09 PM](#)

It is established, beyond question, that a state can extend jurisdiction as far as necessary to achieve the objective of its piloting system. This was confirmed by a 2002 U.S. Fifth Circuit court decision which stated that the geographic reach of a state's pilot jurisdiction is neither limited to three miles nor preempted by federal law. This decision cites several other decisions by the U.S. Supreme Court and other federal courts and recognizes a states broad authority to regulate pilotage. A state's authority absolutely includes jurisdiction to extend compulsory pilotage well beyond three miles.

SENATOR THOMAS asked how long it would take a current pilot serving on a ship for Shell to have the same requirements as are being asked for.

MR. DIMOND deferred to Captain Garay.

[5:57:22 PM](#)

SENATOR FRENCH asked Mr. Dimond to email the legal citation regarding the Fifth Circuit case that he mentioned.

MR. DIMOND responded that he will do so.

CHAIR OLSON asked if it was an appellate court level ruling.

MR. DIMOND replied that it was the U.S. Fifth Circuit.

SHIRLEY MCCOURT, mayor, Unalaska, said she will speak about her experience with pilots in Aleutian region, which is also a National Maritime Refuge. If Alaska pilots are not involved in the movement of larger vessels, safety in the port is compromised. She noted, however, that most oil spills in the Aleutian region in the last 20 years have come from fishing vessels. She hopes the committee will consider what the pilots themselves have to say and their experience. A pilot's sole focus on board a vessel is that vessel.

[6:00:27 PM](#)

Pilots in Unalaska are part of the community; the area is their backyard and they know in detail. Pilots have the information to keep things safe without stifling the economic pace.

CHAIR OLSON said it sounds like she is in favor of marine pilots and he asked for an example of a pilot preventing a disaster.

MS. MCCOURT replied that she serves on the advisory panel of Aleutian Island Risk Assessment and vessels spill oil for many reasons. The situation depends on the experience and training of the crew and whether the ship is in good working order. The trampers and freighters are the primary "problem children." Pilotage is important; she is not sure that every vessel needs a pilot on board but she would certainly be concerned about drill rigs and fueling ships.

[6:03:03 PM](#)

PETE GARAY, president, Alaska Marine Pilots (AMP), gave some of his personal background, including 20 years of piloting experience from Kodiak through the Aleutians and up to the Canadian arctic border. Compulsory marine pilotage is the preventative system and tool that should be employed to protect the arctic from inherent risks associated with commercial shipping. AMP believes the state should implement compulsory pilotage in the Arctic Ocean and stands ready to help the administration implement a system of pilotage.

[6:06:00 PM](#)

Implementing and developing a system of pilotage will not be easy. The system must be unconventional because area is unconventional. The system works best when industry and pilots cooperate and communicate; that is not the case right now. He quoted Mr. Finlayson saying, "Pilots increase the risk in this theatre of operations." Considering how far apart industry and pilots are, he is unsure how to meet in the middle. Safety is an issue that compulsory pilots cannot compromise on.

[6:08:45 PM](#)

AMP believes that having a mechanism in place to protect life, property and the marine environment, without compromise, is a system that will benefit everyone. He noted this issue is about more than ice; many issues will have to be mitigated.

SENATOR THOMAS asked what it would take for existing pilots to get up to speed and receive the required certifications.

MR. GARAY said it took him 15 years; there is no shortcut.

SENATOR THOMAS said he assumes current pilots and masters have some training already and asked if a reevaluation would be needed to determine what they need to become accredited.

MR. GARAY that everyone is wrestling with what new accreditation and licensing standards need to be put in place for ice conditions. He cannot say how long that will take. Ships are going to show up next summer and absent any safety net in place, the state risks a lot.

[6:11:51 PM](#)

SENATOR MENARD asked Alaska has a current pilot shortage.

MR. GARAY replied, "not yet."

SENATOR MENARD asked if enough highly licensed pilots could help.

MR. GARAY replied that the process will be gradual. He envisions posting one or two pilots in the arctic to act as a scout, to participate in the "epicenters of activity" as exploration moves forward. This is already done in Western Alaska including in Bristol Bay and Kodiak. For example, a pilot could be on board the tanker that is going into arctic waters this summer - for entry and exit and accommodating the whale hunt. That pilot would get familiar with the other vessels and masters.

[6:14:03 PM](#)

He noted that Canadian ice advisors are highly skilled but most are retired and will leave soon; training more pilots takes time. Sending a pilot up now will create a blueprint of the needs. Trying to put something in place after everything is up and running is not going to happen. He reiterated that the system will need to be unconventional.

[6:16:52 PM](#)

CHAIR OLSON commented that all Alaskan's want to see successful development that is responsible and all options for operations in the Arctic Ocean.

[6:17:20 PM](#)

CHAIR OLSON, seeing no further business to come before the committee, adjourned the meeting at 6:17 p.m.