

MARINE  
PILOTS

GUS NORWOOD, FORMER ADMINISTRATOR, ALASKA POWER ADMINISTRATION

FRED SLOAN, BIA - ANEC

FLOYD J. GENTY, PRESIDENT ARCA

ROBERT A. HICKMAN, SECRETARY - TREASURER ARCA

BOTH % GOLDEN VALLEY ELECTRIC ASSOCIATION, INC

758 ILLINOIS

FRESNO 94701

BOARD OF MARINE PILOTS

4-8-80  
CC  
NTS

Key to References

- (Y) - (yellow cover) - State of Alaska Sunset Review, 1979. Prepared by the Division of Occupational Licensing
- (B) - (blue cover) - Division of Legislative Audit Performance Review
- (W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequisite to the State Exam. Redundant.

- (Y) - p 5, last paragraph; p 6, first paragraph
- (B) - p 5, paragraph 4; p 7
- (W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

*Handwritten notes:* "Do not include..."

2. Increase the biennial license fees to \$300 (presently \$200) and the application fee to \$50 (presently \$10).

- (Y) - p 3; p 11, paragraphs 2 and 3
- (B) - p 25
- (W) - page 16; page 18

3. ~~Repeal~~ <sup>Sen.</sup> Sec. 08.62.040 (2) (4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the Alaska Transportation Commission, which already has a rate structure within it.

- (Y) - p 7, last paragraph; p 8
- (B) - p 6; p 7, last paragraph; p 12
- (W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

*Handwritten notes:* "add + ... and delete of specific regulations"

4. The Board of Marine Pilots should be continued for four more years.

- (Y) - p 1
- (B) - p 7, paragraph 2
- (W) - p 2, paragraph 3; p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."

- (Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a(3) - repeal vessels in section.

- (a) The board shall:
  - (3) Keep a register of licensed pilots, [vessels], operators, agents, and managers *not boats*

(Y) - This is a suggestion by OL and Elaine Garrett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

7. Members of the Board may be appointed to serve no more than two ~~full~~ terms.

*Handwritten:* consecutive

*Handwritten:* 4 years 08.62.020

*Handwritten:* 1st member 1, 2, 3 + 4 yrs.

*Handwritten:* Exclude

*Handwritten:* OK

*Handwritten:* OK

*Handwritten:* necessary ok. I know how the kind work.

Alaska Standards of Practice ~~seems to be~~ ~~no C found~~

forget now

7. Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

8. In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

\* Pilot present  
- 4 hours  
- services used  
- that would  
- cost.

see AOM letter & bring up  
at next meeting.

Walter Stone +  
O.L.

~~P3 #1, 1 - replace one member  
from up ~~in~~ - 07 expand the  
1 tanker member board by one member.~~

Change membership of  
board

BOARD OF MARINE PILOTS

1. Section 08.62.040(4) should be amended to read:

The Board shall:

*OK* ~~(4)~~ regulate pilotage fees and consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), justifying the setting of these fees.

*The cost of audits required by regulation to carry out this section shall be the responsibility of the board.*

OR

The Board shall:

~~(4)~~ regulate pilotage fees and develop specific regulations to substantiate these fees.

~~(a)~~ the Board shall establish regulations for input by marine pilots, industry, and public in the setting of these fees.

2. AS 08.62.040 (a) (3) Repeal [vessels] [operators] and [managers] in section.

(a) The Board shall:

OK  
(3) Keep a register of licensed pilots and agents. Evidently, vessels with over 1600 gross tons of cargo, or those vessels which carry dangerous cargo (chemicals, etc.) must give 24-hour notice to the Coast Guard before their arrival to the Captain of the particular port. (Registry, etc.)

Operators and managers are not proper terms.

3. Agents who represent ships subject to the state pilotage Act shall pay a biennial registration fee of \$100.00.

OK  
The agents are not paying any registration fee at this time and by doing so they would be more likely to register. There is evidently a large number of agents who are not registered at this time and this suggestion could help alleviate this problem. The pilots are required to pay a fee so the agents should also. This would also give the general fund more monies which might allow more than one meeting a year by the Board of Marine Pilots.

BOARD OF MARINE PILOTS

For the Committee's information see attached letter from the Department of Transportation, State of Washington, regarding the procedures in establishing their pilotage fees.



STATE OF  
WASHINGTON

Dixy Lee Ray  
Governor

DEPARTMENT OF TRANSPORTATION

Washington State Ferries, Seattle Ferry Terminal  
Seattle, Washington 98104 206/464-7800

BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett  
Department of Commerce & Economic  
Development  
Division of Occupational Licensing  
Pouch D  
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

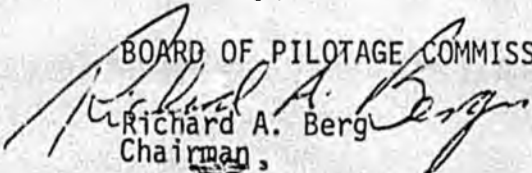
Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

Please let us know if we can be of further assistance.

Sincerely,

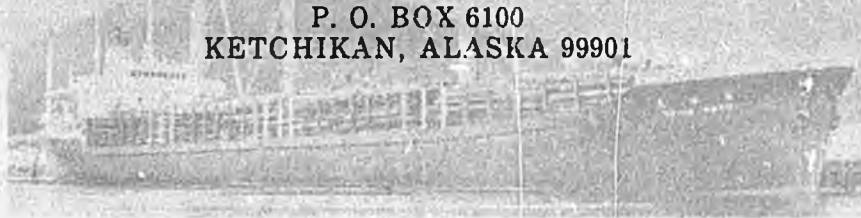
BOARD OF PILOTAGE COMMISSIONERS

  
Richard A. Berg  
Chairman

RAB: ht  
enc.

*Chris*  
**Southeastern Alaska Pilots' Association**

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

SOUTHEASTERN ALASKA PILOTS' ASSOCIATION  
Testimony (Teleconference)  
Senate Commerce Committee  
December 10, 1979

Good afternoon Mr. Chairman. My name is Eugene Richards and I am a marine pilot living in Ketchikan. I represent the Southeastern Alaska Pilots' Association as their Association president.

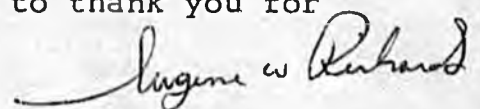
Our Association recommends that the Board of Marine Pilots be retained. We firmly believe that the State should not relinquish any further jurisdiction of our state waters to the Federal Government.

Furthermore, the Commandant of the U.S. Coast Guard has already stated his policy regarding state pilotage in his letter to Captain Pat Neely, President of the American Pilot Association. The complete letter was forwarded previously to your audit board.

I would like to quote one paragraph as follows:

"The first issue is with respect to the position of the Coast Guard on state pilot organizations. On this issue I would like to set the record straight, once and for all. The Coast Guard has no intent or desire to supplant or replace the state pilots organizations with a federal pilot scheme. State pilots have played and will continue to play a major role in United States pilotage."

This concludes my testimony and I wish to thank you for this opportunity.



Capt. Eugene W. Richards  
President

EWR/cjp

AMERICAN INSTITUTE OF MERCHANT SHIPPING

Testimony Before

ALASKA HOUSE COMMERCE COMMITTEE

SUNSET HEARINGS ON ALASKA BOARD OF MARINE PILOTS

January 30, 1980

By D. J. Paul, Jr.

West Coast Fleet Manager

Exxon Co., USA

My name is Dan Paul, West Coast Fleet Manager, Exxon Co., USA. Today I represent the American Institute of Merchant Shipping (AIMS), a national trade association comprised of 28 companies who own, operate or charter the majority of United States flag tankers, liquefied gas carriers and other bulk carriers, aggregating nine (9) million deadweight tons.

AIMS acts as a voice for many activities in our industry, one of which pertains to marine pilotage. Within AIMS' structure we have a number of committees that interface with U.S. delegations participating in deliberations with the Intergovernmental Maritime Consultative Organization (IMCO). IMCO's main objective is to facilitate cooperation among governments on technical matters affecting international shipping, in order to achieve the highest practicable standards of maritime safety and navigation.

Our Pilotage Committee philosophy embodies this concept as we are concerned with qualifications, training and licensing; the master-pilot relationship and other matters which follow the objective of maritime pilotage which, as I think you will agree, is the enhancement of safety.

AIMS' National Pilotage committee and its subcommittees include among its membership a substantial percentage of the users of pilotage services rendered by Alaska State Pilots. I would like to thank you for the opportunity to express AIMS' views regarding the Alaska Board of Marine Pilots.

AIMS concurs with the Division of Legislative Audit's report that the Board of Marine pilots should continue to regulate and license Marine pilots for the State of Alaska. The report highlighted several key issues which AIMS agrees deserve the legislature's attention. I would like to focus your attention on a few of the more important of these in my testimony today.

#### Licensing State Pilots

AIMS is dedicated to the establishment and maintenance of high levels of pilotage performance and believes that this can best be achieved through the development and acceptance of universally applicable standards which should be established by a

national pilotage authority.

Under the U.S. Constitution, pilotage legislation falls within the purview of the Federal Government as part of its authority to regulate commerce. However, the first Congress delegated to the states the right to control pilotage for vessels "until further provision is made by Congress." Congress has since exempted U.S. Flag vessels operating under enrollment from state pilotage and returned them to Federal control.

The U.S. Coast Guard is charged with the responsibility to insure that federally licensed pilots possess the requisite knowledge and skills and is the logical choice to play the lead role in establishing proper uniform standards for pilotage, both state and federal. When these standards are developed, they can provide guidelines for the coast Guard as well as state and local authorities in establishing necessary training and certification programs. Until this long range goal can be accomplished, AIMS urges the State of Alaska to establish active liaison with the U.S. Coast Guard to accomplish the following:

- 1) Continue to require federal pilotage endorsements as a prerequisite to state pilotage.
- 2) Eliminate those state license examination requirements which duplicate federal pilotage examinations.
- 3) Seek active U.S. Coast Guard liaison on the Board of Marine Pilots.

#### Pilot Recertification

AIMS agrees with the state that recertification procedures are required to insure that pilot qualification is maintained. However, the recertification procedures are too vague to assure that the intent of the regulation is met. AIMS would be happy to assist the Board in developing realistic recertification procedures which insure pilot competency in each port area. In this regard, I understand that the USCG will, in the near future, initiate new procedures for recertification of federal pilots. We would encourage the Board's thorough evaluation of these procedures.

### Pilot Discipline

Implicit in the authority to certify a pilot is the responsibility and authority to investigate casualties and take disciplinary action. Alaska has recognized this responsibility by allowing the Board to take action against a pilot who "is incompetent in the performance of his pilotage duties" or "is guilty of misconduct during the course of his employment." However, AIMS agrees with the Legislative Audit report that these terms are too vague and need to be clarified and suggests seeking the advice of the Coast Guard, the pilots and the industry in doing so. We also agree that provisions should be made for revocation or suspension of a state license if corresponding action is taken against the pilot's federal license by the USCG.

### Regulation of Fees

The Board is currently directed by statute to regulate pilotage fees. Because of the monopoly situation created by state pilot associations with respect to Foreign Flag Vessels and U.S. Flag Vessels under registry, AIMS agrees with the Legislative Audit report that it is in the public interest for the Board to continue this responsibility. AIMS is pleased with the Board's increased interest and more active involvement in regulating fees, because we believe the Board provides a proper forum for public debate of the complex issues involved in establishing fair and equitable rates. In fact, we believe that active involvement of the Board in establishing pilot tariffs is the only viable mechanism currently available to the pilots and industry to debate the issues and would strongly object to any reduction in the Board's involvement.

As evidence of the Board's responsiveness to this need, it recently adopted standards for the review of pilotage rate proposals. AIMS commends the Board for moving in this direction, but proposes once again that the more detailed standards which AIMS recommended to the Board in December would provide a more suitable framework within which to fully consider the pertinent issues associated with changes

in pilotage rates. These issues include, among others, individual pilot income, workload, time off, benefits, travel and standby time, expenses and equitable distribution of costs to users by pilotage ground and vessel size.

As a matter of good business practice, AIMS strongly recommends that state pilot associations be required to have their financial records audited annually by a certified public accountant. This will also insure that consistent records are available when required for consideration of a rate increase.

#### Board Administration

AIMS supports the Legislative Audit report's recommendation that the Board prepare a procedures manual to govern its activities and to improve its efficiency.

#### Board Composition

Since the start up of the trans-Alaska Pipeline System, the tanker industry has become a significant user of Alaskan State Pilotage. Because of the increased importance of this industry as a user group and because of the significant contribution it could make to the Board through its resources and experience, AIMS recommends that the tanker industry be represented on the Board.

#### Regulation of Enrolled Vessels

As stated earlier in my testimony, regulation of enrolled vessels was returned to federal control sometime ago by Congress. However, in 1977 Alaska enacted a statute which established certain pilotage requirements for enrolled tankers. The Legislative Audit report points out in Section III.2 on Page 20 that the state has no jurisdiction over these vessels because of federal law. AIMS shares this view and strongly recommends that the legislature take steps to repeal those sections of the statute (AS 08.62) as required to conform to federal law. As I indicated earlier, the vessels affected by this statute are already required to be under federal pilotage, and it is AIMS' view that the welfare of the State would not be compromised by this action.

In closing, let me thank you again for permitting me to express AIMS' views on these issues. I will be happy to try to answer any question you may have.

## Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

January 28, 1980

T E S T I M O N Y

Good morning Mr. Chairman, members of the committee. I am Harley Clough and I live in Juneau. I am an active pilot and am President of the Southeast Alaska Pilots Association. I am here to testify in support of retaining the Board of Marine Pilots, essentially in its' present form. In reading and studying the Performance Review of the Board of Marine Pilots, I feel the Division of Legislative Audit has failed to grasp and understand the state pilotage system and I have several comments on this subject.

The report states the State Pilot exam duplicates the C.G. exam and recommends eliminating the state exam. Here, the legislative audit has completely missed the mark. I will agree there are some duplications which perhaps should be changed but the exams do not duplicate each other. The state exam concentrates on the daily gut work of a pilot; his detailed knowledge of Alaskan waters and his ability to maneuver large ships in and out of ports under Alaskan conditions. These things are not learned from a book and are the foundation of a pilot's job.

The Coast Guard exam is an academic exercise based on texts and federal government publications. You could purchase this information in any city in the country, and if the CG would permit, take and pass the Coast Guard test without ever seeing Alaska. There is no way an applicant can pass the oral and written state pilot exam without really knowing the Alaskan ports and really knowing how to handle ships. For Alaskan Pilotage, a far better argument would be to eliminate the CG exam and expand the State Pilot test.

Throughout this report, legislative audit has attributed the Coast Guard with a capability and an expertise they do not possess. In Alaskan pilotage, we are concerned in a through knowledge of Alaskan waters and with mainly handling of large ships. The Coast Guard has no large ships and have little experience in this area. Similarly, military rotation and other policies severely limit the sea-going experience of any CG officer in Alaskan waters. The degree of practical experience of the Coast Guard in Alaskan pilotage matters is almost non-existent. Believe me, the State Board of Marine Pilots is a far more experienced and competent regulatory body to supervise Alaskan pilotage matters than the United State Coast Guard.

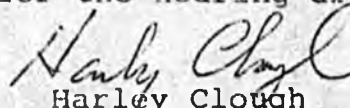
Also, as a long time Alaskan resident, I strongly object to any suggestion which invites a federal regulatory agency to assume an interest in state affairs.

The legislative audit report states the Board of Marine Pilots takes little interest in tariff matters and has been a rubber stamp for previously arranged pilot-industry agreements. This simply is not true. I have appeared before the Board on a number of occasions to discuss tariff matters. The Board has always taken a high degree of interest in the tariff. Several years ago the Commissioner of Commerce suggested the pilots and agents get together and work out a preliminary tariff for the Board. This duplicated a long established precedent used in Washington state. This was done on only one occasion and the Board has subsequently rejected this procedure. In Southeast Alaska 98% of pilot tariffs are paid by foreign ship owners. The U.S. agents have been diligent in protecting the foreign interests. There have been no tariff give-aways. Indeed, I have been often dismayed at the length the Board and the State have gone to secure and protect these foreign business interests.

On Page 41 of the Performance Report there is a ship owners and agents comment which states "We have no control of a pilot, we hire through an Association". Now this comment would appear to be a legitimate criticism of the Pilotage system and I'm sure that the legislative audit specifically included it in the report for this reason. A casual reader of the report might also agree that their critical remark has merit. However, he would be wrong to do so - completely and absolutely dead wrong. A state licensed pilot is not supposed to be under control of the ship owner. A pilot's main responsibility is for the safety of the ship - not financial interest of a Greek owner of a Liberian ship sailing with a Chinese captain and mixed nationality crew. A pilots first responsibility is to protect the lives and property of Alaskans and the Alaskan environment - not adhere to some oil company's shipping schedules. This is what the state pilotage system is all about.

In conclusion, Mr. Chairman, I want to commend the Board of Marine Pilots to the committee. The Board has done a good job during the ten years of its existance. Board members have put in many hours of work without remuneration. The Board has cost the state virtually nothing to operate during the period. Indeed, much of legislative audit criticism is directly due to the lack of necessary funds for the Board to conduct its business. Again, I say the Board has done a good job for the State, for the citizens of Alaska, and for the marine industry.

I appreciate the opportunity to testify before this committee and I want to thank the committee and its staff for the hearing arrangements they have provided.



Harley Clough  
President  
Southeast Alaska Pilots

A  
I  
M  
S

# AMERICAN INSTITUTE OF MERCHANT SHIPPING

1625 K Street, N.W., Suite 1000, Washington, D.C. 20006

Telephone 202/783-6440

Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley  
Chairman, Senate Commerce Committee  
State of Alaska  
State Capitol  
Pouch V - Mail Stop 3100  
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the Hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

### Licensing State Pilots

1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

*No action is requested. This requirement is included under 12 AAC 56.030(2).*

2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

*It is recommended that language be added to AS 08.62.-040(2) permitting elimination of examination requirements*

3. Seek active USCG liaison with the Board of Marine Pilots.

*It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.*

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

*This subject should be included in the scope of the previously recommended Committee's work.*

2. Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

*AIMS proposes Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.*

Regulation of Fees

1. Provide more detailed criteria for evaluating pilot-age rate changes.

*Section 08.62.040(4) should be amended to require that*

*individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.*

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

*In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.*

#### Board Composition

1. Provide for tanker industry representation on the Board.

*It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.*

#### Regulation of Enrolled Vessels

1. Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

*AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.*

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employee, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,



Mark R. Johnson  
Assistant to the Director  
of Marine Affairs

/for/ Daniel J. Paul, Jr.

cc: Honorable Fred Brown  
✓Honorable Arliss Sturgulewski  
Honorable Tim Kelley  
Honorable Frank R. Ferguson  
Honorable Terry Stimson  
Honorable Joyce Munson  
Honorable Hugh Malone  
Honorable Alvin Osterback  
Honorable Robert Bettisworth  
Honorable Richard Halford  
Honorable Richard Randolph  
Commissioner Charles Webber, Chairman, Board of Marine  
Pilots

TESTIMONY FOR SUNSET LEGISLATION  
ON STATE PILOT BOARD

The term pilot can be described in a couple of different ways.

The federally or Coast Guard licensed pilot is subject to the selection and control of the shipowner. The Coast Guard license can be obtained by getting between 5 and 20 observation trips and then sitting for an examination. This by law qualifies any person to pilot enrolled vessels with no demonstration of abilities.

Secondly, the term pilot means a State licensed pilot who is not subject to the selection and control of the shipowner. To obtain a license in the State of Alaska one is required to make 20 dockings and 20 undockings under the supervision of State licensed pilots, with no more than 5 dockings and undockings with any one pilot. The applicant must also take a written examination that is made up by professional pilots. Also the applicant must already have the Coast Guard pilotage endorsement and a 500 ton Masters License before applying for the State endorsement.

It is obvious that the State of Alaska has a much more effective means of licensing than the Coast Guard in that the State requires a demonstration of abilities.

However, some of the companies with the largest investments in ships and docks seemed to think that both the federal and State requirements are not adequate.

For example, in order to dock a ship at the Drift River terminal, each pilot must be observed several times by the shoreside personnel while he

is actually docking the ship. Then a letter must be submitted to the Cook Inlet Pipeline Marine Committee and they must make the final approval.

Also before a pilot can handle the LNG ships into the Phillips dock at Nikiski he must comply with the following requirements as set up by Phillips and Marathon:

1. Removed any tonnage limitation from his pilotage endorsements
2. Completed the Association training program and has been approved by the Association Board of Directors to handle all tonnages at the T.A.P.S. terminal at Valdez.
3. Been approved by the Cook Inlet Pipeline Company Marine Committee to dock and undock vessels at the Drift River platform.
4. Operated in Cook Inlet under ice conditions for at least 2 winters previously.
5. Made at least 3 observer trips to and from the LNG dock at Nikiski in Cook Inlet on the LNG vessels, two of which shall have been under heavy ice conditions.
6. Been approved by the Association Board of Directors to pilot the LNG vessels.

Southwest Alaska Pilots Association agrees that the requirements by both the Coast Guard and State are not adequate. Before we turn a pilot loose in Valdez he first has to become a proficient pilot in the remainder of the territory that the Southwest Alaska Pilots Association cover. This in itself is a tremendous recommendation based on performance. Also we require that each pilot, at our expense, attends the ship handling school in Grenoble, France.

So within the piloting community there are pilots and professional pilots. The companies with the largest investments in ships and docks insist upon letting only the most experienced of the professional pilots

handle their investments during the most critical part of the ships operation.

The Southwest Alaska Pilots Association recognizes the need for higher professional standards and we are presently re-evaluating our training program to increase these standards. We recognized this as a fact of life because the only thing we have marketable is a service, and if that service is not totally professional then we no longer have anything to offer. Because customarily pilots do not work under contracts and at any time the companies or agents can stop using our service.

If the State of Alaska decides to eliminate the State Pilot Board, they relinquish all regulatory control over the quality of pilots that handle the largest ships in the United States within Alaskan waters. Southwest Alaska Pilots Association believes there is a need for even higher standards within the State framework, but with the State Pilot Board, the mechanism for increasing these standards is there.

Also if there is no compulsory pilotage within the State framework, then the shipowner has the right of selection and control over his employees in the performance of their duties. Future employment will be dependant upon how well the employee satisfies the demands of his employer. However with the State compulsory pilotage system the shipowner draws their pilot from a pool of pilots and therefore each pilot can operate to serve the States superior interest and is relatively insulated from the demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

Let me ask the State of Alaska whether they would like a voice in choosing which pilots shall handle the ships plying the environmentally sensitive waters of this great state.

There is no doubt that the State Pilot Board is absolutely necessary to ensure the highest degree of professionalism among pilots.

JAMES HURD PRESIDENT S.W. AK. PILOTS ASSN

P. O. Box 1171  
Juneau, Alaska 99802  
December 20, 1979

T E S T I M O N Y

Sunset Hearing - Marine Pilot Board

Mr. Chairman, I am Harley Clough and live in Juneau, Alaska. I am an active pilot member of the Southeastern Alaska Pilots' Association.

I have several comments concerning the legislative audit performance review of the Board of Marine Pilots. The report states the State Pilot exam duplicates the C.G. exam and recommends eliminating the state exam. Here, the legislative audit has completely missed the mark. I will agree there are some duplications which perhaps should be changed but the exams do not duplicate each other. The state exam concentrates on the daily gut work of a pilot; his detailed knowledge of Alaskan waters and his ability to maneuver large ships in and out of ports under Alaskan conditions. These things are not learned from a book and are the foundation of a pilot's job.

The Coast Guard exam is entirely an academic exercise based on texts and federal government publications. You could purchase this information in any city in the country, and if the CG would permit, take and pass the Coast Guard test without ever seeing Alaska. There is no way an applicant can pass the oral and written state pilot exam without really knowing the Alaskan ports and really knowing how to handle ships. For Alaskan Pilotage, a far better argument would be to eliminate the CG exam and expand the State Pilot test.

Throughout this report, legislative audit has attributed the Coast Guard with a capability and an expertise they do not possess. In Alaskan pilotage, we are concerned in a thorough knowledge of Alaskan waters and with mainly handling of large ships. The Coast Guard has no large ships and have no practical experience in this area. Similarly, military rotation and other policies severely limit the sea-going experience of any CG officer in Alaska waters. The degree of practical experience of the Coast Guard in Alaskan pilotage matters is almost non-existent. Believe me, the State Board of Marine Pilots is a far more experienced and competent regulatory body to supervise Alaskan pilotage matters than the United States Coast Guard.

Also, as a long time Alaska resident, I strongly object to any suggestion which invites a federal regulatory agency to assume an interest in state affairs. Although the Coast Guard

Testimony - Marine Pilot Board  
December 20, 1979  
Page 2

may need the knowledge and experience of the Board of Marine Pilots on occasion; the Board of Marine Pilots has little need for the advise of the CG on piloting matters.

The legislative audit report states the Board of Marine Pilots takes little interest in tariff matters and has been a rubber stamp for previously arranged pilot-industry agreements. This simply is not true. I have appeared before the Board on a number of occasions to discuss tariff matters. The Board has always taken a high degree of interest in the tariff. Several years ago the Commissioner of Commerce suggested the pilots and agents get together and work out a preliminary tariff for the Board. This duplicated a long established precedent used in Washington state. This was done on only one occasion and the Board has subsequently rejected this procedure now. In Southeast Alaska 98% of pilot tariffs are paid by foreign ship owners. The U.S. agents of these owners have been very deligent in protecting the foreign interests. There have been no tariff give-aways. Indeed, I have been often been dismayed at the length the Board and the State have gone to secure and protect these foreign business interests.

I appreciate the opportunity to testify before this committee and I want to thank the committee and its staff for the extensive hearing arrangements they have provided.

Thank You.

  
Capt. A. Harley Clough

AHC/cjp  
CC: Senate Commerce / House Commerce

CHARTER MEMBERS:  
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## ASSOCIATION OF ALASKA MARINE PILOTS

LICENSED MASTER MARINER PILOTS FOR ALASKAN PORTS

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RADIO CALL LETTERS: 8SB-WKD34 AND VHF-KTE21

15 December 1979

Mr. Christian Basler  
Administrative Assistant  
Senate Commerce Committee  
1016 West Sixth Ave., Suite 201  
Anchorage, AK 99501

Dear Mr. Basler:

Thank you for your letter of 7 December 1979 with enclosed copy of the "Performance Review of the Board of Marine Pilots" and the opportunity to submit comment.

I am in agreement with recommendations submitted and also with the majority opinions generated by questionnaires to pilots, agents, and board members.

Discontinuance of the board and its functions, I strongly feel will be destructive to the State Pilotage System in Alaska. The State Pilotage System has been found a very necessary adjunct to the maritime commerce of the coastal States. The history of development and accomplishments of these systems has been well documented by the American Pilots Association. Problems cited giving rise to this audit I believe are "growing pains" no doubt somewhat similar to those encountered by like organizations in the lower forty eight.

In my opinion this Review has generated the necessary attention of those concerned to an element of the State's commercial maturation having growing import.

Thank you again for your reply.

Sincerely yours,

  
Roger W. Swett

address;

453 Klickitat Drive  
La Conner, WA 98257

MARINE PILOTS REPORT:  
TOUR SHIPS

By Ron E. Whitcraft  
Legislative Assistant  
to the  
Interim Committee on Transportation

September 22, 1978

## 1. Introduction

It is a very well known fact that one of the main industries of Southeast and Southcentral Alaskan port cities is tourism. It was, therefore, the desire of the Interim Committee on Transportation to look into the problems of bringing the big tour ships into Alaskan ports. Tourism is an ever increasing industry in Alaska and it was brought to the Committee's attention that the pilots, who bring the tour ships into port, have legitimate problems.

## 2. Southeastern Alaskan Pilots Association

The Committee pursued the problems by going to the Southeastern Alaskan Pilots Association. The Pilots Association is located in Ketchikan and assigns duty to its licensed pilot members. A member is assigned to each of the tour ships while it is in Alaskan waters and must safely take the tour ship into and out of Alaskan ports of call. The Committee did all of its interviewing and research while tour ships were in port at Juneau.

With hopes of getting a cross reference of views, the Committee recorded five of the pilots and has entered those interviews in this report. Several problems, pointed out by the pilots, were reoccurring during the interviews and a couple of other problems were brought out.

## 3. Pilots Problems Summary

Problems that were discussed often were problems relating to docking facilities. Most of the pilots in this report felt many of the docking facilities in Southeast Alaska are not strong enough to handle the large

tour ships. Particularly mentioned was the tour ship docking facility at Skagway. The pilots, who discussed the Skagway dock, said that dock was not only weak but also in a bad structural state.

The Alaska Steamship dock was mentioned as a problem because of its shallow docking area. It was discussed that this dock is in an excellent location at Juneau's downtown. As things are currently, only two or three of the tour ships can dock there. There were at least ten tour ships going into Juneau this summer.

It was brought out that often times there are too many fishing boats tying up to the docking facilities. Pilots said maneuverability was cut way down in docking the ships and sometimes there was no mooring area at all.

A problem that came up was that areas that should be lighted, by the Coast Guard, were in fact not lighted. This problem creates a hazard and, unless the pilot is a veteran of Southeast waters, could be a serious problem to the tour ship.

A need for more powerful tugs for the large tour ships was discussed in this report. Pilots felt much in-port time was lost just getting the ship into place at the docks. Some tour ships have a short tie-up time. It was realized, at the same time, that this problem is of a private enterprise nature.

A definite grievance was entered into this report over the large number of fishing vessels in the corridors of tour ships. It was explicit that the

tour ships must travel in a corridor and has little maneuverability. It was felt that these fishing vessels must be made aware of the tour ship corridor.

One other priority problem that stemmed from this inquiry was that the National Oceanic and Atmospheric Administration is not making available much of the needed charting information for Alaskan waters. The tour ships are larger vessels than those vessels utilized by the Alaskan Marine Highway System. The pilots need to know where they can take the tour ships.

#### 4. Interviews With Pilots

The following are the interviews with pilots who bring tour ships into Alaskan waters. These pilots, once again, are members of the Southeastern Alaskan Pilots Association.

INTERVIEW WITH PILOT FROM THE UNIVERSE

Ron Whitcraft:

Are there any problems that you see, any complaints that you see right now, that pilots are enduring to bring these tour ships into Alaska? Is there anything that can be upgraded or something that can be looked at?

Pilot:

I don't have any complaints but there are some factors that can be upgraded, particularly the conditions of the docks. One example would be to request to bring the Rotterdam into the dock in Juneau, and the size of the ship, the dock is not suitable for that size ship unless improvements or extensions are made on it. We have a similar problem in Skagway that's being resolved, hopefully tomorrow. But we're out to take the Fairsea into the dock in Skagway next year. Prior to doing this we wrote to the port captain and advised him that the condition of the dock is deteriorating, particular at the south end and in case of adverse winds, if any strain was put on the dock we wouldn't be able to check the ships motion. There are other moorings there such as the one over ashore, but the longshoremen won't handle lines off the dock, and so it means that we have to get the ship into the dock before you can actually run these lines. So it's after the fact and they really didn't help you under adverse conditions. Another factor that we reported to them is the fact that we don't have adequate size tugs up there. As a matter of fact the tugs we're using here are doing the job and they're the same tugs we used in Skagway last year and we got by. It would be preferable to have a little bit more horsepower if we could, but you have to use what's available and we can't expect a company that has large tugs to just assign one to that area. Not enough traffic to warrant it. So we try to do the best we can with what we have available. Another condition of Skagway is the fact that they load container ships up there for White Pass and they're changing those over to barges here shortly. So there will always be a barge at the dock. These things we can live with if we can improve the dock structure itself, the mooring facilities. What we had proposed to do was bring an additional tug from Juneau up to Skagway. We have two small tugs there. Captain \_\_\_\_\_ who is a port captain will be in Skagway tomorrow and Captain \_\_\_\_\_ will be on a ship that is due in there, the Pacific Princess. They plan to discuss. Here in Juneau we have a situation where there's a shoal up at the head of the old Alaska Steam Dock. Some of the larger ships are restricted from mooring there because of the shoal at the head of the dock. Also they're restricted because of small boat traffic. The cold storage has got to survive too. You can't expect them to stop fishing. This is something that we can live with, but it would be helpful if they could do some dredging and make that dock more

useful. Ketchikan, it seems like there's a movement away from Ketchikan as far as tour ships are concerned and I think it's basically because of the lack of tourist attractions compared to Glacier Bay and what you have to offer here in Juneau. Everyone seems to be going to the seven day schedule so they have to eliminate something. And the tendency has been to eliminate Ketchikan, I think.

Ron Whitcraft: How's Sitka?

Pilot: Sitka, of course, is strictly an anchorage. We have no dock. We can anchor three ships there in suitable anchorage at a time and we have another inner-anchorage which is a little marginal under adverse weather conditions. It can be used as long as conditions are good. So there hasn't been too much of a serious problem there. As far as the tour ships are concerned they might not appreciate it too much to have a longer trip with us. As far as we're concerned, I don't see any problems.

Ron Whitcraft: How about Wrangell and Petersburg?

Pilot: Wrangell has a dock there for the ships we're taking in. It's a new dock. It has a little current action there but this we can live with. It's a little bit better oriented than the dock that we used to use. There was some comment about the Rotterdam going into Wrangell. But the thought there was that they would just go to anchor. The Rotterdam was mentioned to replace the Prinsendam. I think this is probably two years off.

Ron Whitcraft: How about bringing the ships up the Inside Passage? Are you having any problems with the passageway through the channels? Any problems with markers at all or anything like that?

Pilot: Well, we're usually able to resolve those with the Coast Guard. We've asked for a few aids here and there. And generally, within reasonable time, we get the cooperation. They always have a budgeting problem. We can ask for something they'd like to give us, but it takes a while for them to get the money in their budget in order to do this. That's the case with Snow Pass. We asked for a buoy down there. They were trying to put it in their budget and this year they found it in their budget. It's supposed to go in sometime this week or next week. So they've been quite cooperative. You asked me about Petersburg. We really don't have too many ships of this size that go into Petersburg. We used to take vessels through Wrangell Narrows which were comparable to the size of the ferries. The possibility of large tour ships calling at Petersburg is probably rather remote. We had one situation come up this year that we'd like to try and resolve with the navy. In past years on the Fourth of July the navy has come in with destroyer type vessels up here and they're always able to moor at the government facilities here or Ketchikan. This year was quite a change in that they

sent relatively large ships up here. We had an ammunition ship anchor in Ketchikan and an oiler anchored here in Juneau. It's rather restricted swinging room. It worked out here all right, in Juneau, moving around a little bit. And in Ketchikan we had to anchor two vessels in an area that we normally put one. The thought was, and I discussed it with the Coast Guard, that possibly if we were to contact the navy and point out to them that a smaller vessel...we want the navy to come. We're not trying to drive them out. But if they were to send smaller vessels it would probably be less interruptions to commercial trade of tourism.

Ron Whitcraft: Were there two ships more in Juneau's harbor this weekend? Or was it just that navy ship?

Pilot: There was the Veendam I believe at that time. But we have anchored two ships here in Juneau but when you anchor two large ships in Juneau they really get tight. What people don't stop and think about is not just the length of the ship involved but you have to put out enough chain so that you have adequate support to hold the vessel. So we put out considerable chain and they have quite a swinging radius. Actually, those are some of the reasons we're bored with...handle the ship under those conditions. But anytime we can eliminate a problem before it arises we like to do that too.

Ron Whitcraft: I know you have a designated corridor you follow when the tour ships come into the Inside Passage. Do you have any problems with fishermen getting into that corridor and dodging them when necessary?

Pilot: I think what you probably have reference to is the gill netters. They're more of a problem than any other type fishing vessel. We from time to time have crossing situations with fishing vessels when we're even in the wide channels. But where the critical situations arise is south of Haines it's a very narrow channel. And when Fish and Game opened this area for gill netting, it's very difficult to get some of these ships through that narrow passage, also an area where they're doing extensive gill net fishing. This year has been relatively easy because there hasn't been too much fishing in that area. The area they're fishing in has been off to the side of the channel. But later as the seasons open up then possibly they'll be fishing... The main thing as far as we're concerned is we have to slow down and when you slow down you lose a certain amount of maneuverability. Particularly some of these large ships like the Veendam, the Fairsea, they won't hardly turn unless you're going six to eight knots. You have to have enough speed to get the action on the rudders. But this year, as I say, we haven't had much problem with the gill netting because of the nature of the openings. They haven't been in the areas where we've had to transit.

Ron Whitcraft: Any other situations that have occurred that you would like to present?

Pilot: One thing that we try to do at any pertinent facility, and this would include places like the pulp mill, or Metlekatla, the lumber mill, we try to obtain adequate charting data there that we can safely moor the ships there. Since I was formally with...an agency that's responsible for charting, has been able to get their assistance in providing this data to us in a timely manner. Either that or surveys at Skagway, we've asked for surveys at Ketchikan, Wrangell, and I'm in the process now of probably requesting a survey at Ketchikan pulp mill. There seems to be a shoaling there and some of the ships are starting to rest on the bottom when they're loading on the side. This is federal program that can be used to the benefit of the state for improved navigation. And some one keeps putting this information in they'll respond to it. If we don't get any input we don't respond to it. They have their other programs which are maybe a five year program or something like that or maybe high priority. They routinely work on whatever's highest priority. So if we don't say anything about inadequate charts in our harbor we don't get anything out of it. But so far anytime I've asked for anything I've been able to get it. We have now adequate charting information of Glacier Bay and Tracy Arm, Endicott Arm. Those surveys, not so much Glacier Bay, but Tracy Arm and Endicott Arm, were done primarily at the request of the Southeast Alaska Pilots Association.

Ron Whitcraft: What are you proposing here?

Pilot: I'm saying that sometimes it's better for the Southeast Alaska Pilots requesting surveys, it would have more emphasis if it came from your office or something like that. I'm thinking about this problem here locally, this shoal at the end of the dock. I've already discussed it on the telephone with them and they said they expected to have a ship here later this summer, probably late September, that could be assigned to that, if desirable. I talked to one of the city engineers and they seemed to be interested in getting the information. But it all depends on how much emphasis.

Ron Whitcraft: This is with the NOAA?

Pilot: Right. I'm requesting a survey down at Ward Cove and you probably could request this for the same time. But I have to bear in mind that they have other things that may be higher priority. And they may or may not succeed in getting it done. So I think probably that's one area that you could assist all the maritime industry

here. We have at Metlekatla requests for taking larger and larger ships into there. Of course the dock is only so long and we can extend the bow beyond it if there wasn't a shoal there, but that would be a shoal. The more information we have, give us more information about what size ship we can bring in there.

Ron Whitcraft: You don't have information on that?

Pilot: Not too good information. We have some that we obtained from their prior survey. And even a survey might not solve the problem. It may say that there's something there and then it's up to the corps of engineers or industry to dredge it out. There's an awful lot of dredging done up here in Alaska. One other problem we have which is not related to your tour ships, is violation of state pilot laws. Some of these, particularly the smaller fishing vessels that come in, of course they are not always too knowledgeable to what the requirements are. So the Department of Commerce does have an investigation team. When there is a violation they follow up on it.

Ron Whitcraft: There is a set of regulations for all those fishing ships out there right?

Pilot: Any foreign vessel...there are certain exceptions in Southeast Alaska. Chatham Straights of course is an exception and also the pilot stations are exceptions. They go through the pilot stations and request a pilot, then they're not in violation. But they take a devious route and go into pilot waters without a pilot, then they are in violation. We've had two of those situations occur just recently.

Ron Whitcraft: What do you do to them when you catch them violating?

Pilot: We don't do anything. It's up to the Department of Commerce, the Occupational Licensing Division. They follow it up.

Ron Whitcraft: How do they check that? How do they check to see if the pilot's on there or not?

Pilot: First of all, they're supposed to be flying a pilot flag. We see them and call them on the radio, they're supposed to maintain a radio. If they don't answer the radio then you board it and find out whether they do have a pilot on board. We have a list of all the state pilots. So you could go through that list of pilots and contact each one of them. Kind of a roundabout way of doing it. But most of those pilots from that list either belong to Southeastern Alaska Pilots or Southwestern Alaska Pilots Association. Of course the associations know whether or not any of these people are aboard. There are a few free lance pilots. The list that we used to have gave their license limitations. In other words told what portions they were licensed to work in.

I think that pretty well covers it. I think it's important maritime industry get as much as they can from federal charting agencies. You don't tell them what we need and they don't know.

Ron Whitcraft: Thank you very much for your time.

INTERVIEW WITH PILOT FROM THE PACIFIC PRINCESS

- Ron Whitcraft: Are there any particular problems in bringing these ships, first of all, into Southeast that bother you?
- Pilot: No. I can't truthfully think of anything right now. During the ten years I've been here I've noticed quite an improvement generally, I'd say particularly in Juneau. I think perhaps there's been a little closer surveillance by the Coast Guard. None of this is in the form of criticism. As you know, as the years go by the ships have a tendency to get a little bit larger. I guess at some point they'll reach a point above which they can grow any bigger. Some of these harbors are limited in their capability of the size of the ship, for instance Juneau harbor. If you put a couple of these over 600 feet in here you have a little bit of a problem. This occasionally happens. That's just a simple reality that we have to face.
- Ron Whitcraft: How about the docking facilities throughout Southeast? Are you noticing any problems with them? I understand Skagway has got a problem up there. How do you feel about that?
- Pilot: There again, in past years, we have had occasions where we've had to stick a rather large cruise ship behind the Klondike or the Canadian bore vessels. This is a touchy maneuver in certain weather conditions. I would think maybe that the White Pass and the Yukon dock could stand a little bit of repair, particularly in the southern end. I'm sure a surveyor could assess that. The simple business of getting over some good stern lines in a heavy southerly wind is bound to occur and eventually become a real problem. Recently, I believe, one of the cruise ships destined for Skagway had to cancel that call because of severe weather a couple of weeks ago.
- Ron Whitcraft: By severe weather you mean the winds?
- Pilot: Yes, southerly winds on docking prevented the Royal Viking Sky from calling there about two or three weeks ago. Actually, this may be something that no one could have any control over.
- Ron Whitcraft: That's what I wanted to know. Is that fault with the docks?
- Pilot: That's questionable, but the fact is that had they managed to get alongside, they might have been in some jeopardy while they were there during the visit, had the winds increased. I'm concerned about adequate

Pacific Princess - Continued

mooring facilities for large vessels, 20,000 tons and over.

Ron Whitcraft: How big is the Pacific Princess?

Pilot: She's about 21,000 tons. I think we have about four ships that size coming here. I believe there's talk of perhaps a larger one next year.

Ron Whitcraft: This is in Skagway?

Pilot: Yes. That is something that perhaps something could be done about. We can't enlarge, say, the harbor of Juneau. That's pretty well established. Maybe just by scheduling we can avoid having two of the larger vessels at anchor at once. Sitka is an anchorage program there. I think there's nothing you can really do about that, unless Sitka decides to build one, berthing facility for cruise ships.

Ron Whitcraft: By anchorage program, does that mean that they cannot dock? They have to anchor out away from Sitka?

Pilot: All cruise ships anchor there. That's kind of accepted as part of the visit to Sitka. But it's worthy of thought. Are the cruise ships here to stay, and if so would it be worthwhile to consider a berthing facility in Sitka?

Ron Whitcraft: What about the current ferry terminal they have there? Is it just not deep enough to pull one in there? It's not strong enough to dock up next to it?

Pilot: It wouldn't be adequate for the size cruise ships. Furthermore, it's not quite that accessible to the city and most of the cruise ships are on limited time. It's get in there, get the people ashore, let them visit a few hours, and move on, and it'll always be that way. So the facility has to be pretty close to the area they're going to visit. I believe that might rule out, among other things, it's not accessible to the open ocean very well.

Ron Whitcraft: How about lighting situations, lighted passes, all the way up here?

Pilot: Navigation aids. I have no criticism. I think they're pretty well serviced and pretty ideally located really.

Ron Whitcraft: I had a complaint by one of the pilots several weeks ago on the fact that there are a lot of fishermen in the path of the tour ships. That is the fishermen could essentially go where he wants to go but the tour ship could only go

Pacific Princess - Continued

so far and that's it.

Pilot:

I'm afraid this is a reality that I feel we have to live with. The fishermen are involved in earning the livelihood and I think it's a rare occasion when they deliberately create a hazard. That would be my feeling. The waterways in Southeast Alaska have fishermen in them like the fields have farmers. So I'm not sure I'm able to really contribute anything. I'm happy to be a part of it. It's an interesting business and I'm glad to see you at least checking into the realities that we have to contend with, from my point of view. I think the relationship with the shipmasters and the companies and the pilots has been very good. As you can see I'm pretty comfortable here. That's about really all I can think of.

Ron Whitcraft:

Very good. I appreciate it.

INTERVIEW WITH PILOTS FROM THE ISLAND PRINCESS

- Pilot 1: Well, they could build a bunch of new docks that are stronger, but I don't think the state could afford that. We'd like to see stronger docks with the bigger ships coming all the time. Maybe a little bit more rapport with the fishing associations, or communications. We have trouble with the fishermen. They obstruct the main ship channels continually. Of course, this is a Fish and Game problem but perhaps through your good officers we might somehow be able to exclude from the fishing waters safe passage for these vessels without constantly having to worry about it. There is plenty of water in Southeast Alaska for all the fishermen. I should think that they'd find some way to be able to have a free fareway of which we could go with these large commercial vessels without being obstructed. I think that's only fair. This is particularly a bad place because fishing is so heavy. The fishermen present quite a strong and vocal political problem. They can fish almost anywhere in the waters yet we can't go anywhere with these ships. That's what it boils down to. We're very restricted.
- Pilot 2: As far as facilities in the state are concerned, I think I'll mention that we get by, but most of the facilities are really marginal.
- Ron Whitcraft: How about the depths of this particular harbor coming in here (Juneau)?
- Pilot 2: The depth at the head of the other dock (Alaska Steamship Dock), and the size of the dock itself, the only ship we take in there is the Sun Princess because we only run our lines on that dock and not over at the cold storage dock, so that's the biggest ship we get in there. At a low minus tide the bow of that ship will touch the bottom at the head of that dock. That's really not much of a problem, we can't take anything bigger in there.
- Pilot 1: See, actually most of the facilities in Southeast are privately owned. This is a city dock. There really aren't any state docks as such as there are in so many of the other states where they operate state port authorities. There just isn't anything here. The state doesn't operate. It's all private.
- Pilot 2: It would appear to be private enterprise to better the facilities, make the docks stronger, larger. We could use some bigger tug boats, stronger tug boats. That's all a matter of the dollar.

Island Princess - Continued

Pilot 1: Business is so seasonal. I'm sure you're aware of the problem with the shipping industry in Southeast, that it is very seasonal. Until, I suppose, you develop a year round economy in this type of business, there's really not much we can do. And unfortunately, I do not see a twelve month situation developing here for quite a long time. If it was, then we'd have a lot to talk about.

Pilot 2: You could probably help tourism by building some better facilities. This new ramp that they've put up here (at Alaska Steamship Dock) is a step in the right direction. Things like that make the tourists feel like they're welcome here. You keep them coming and it's a profit not only for the steamship companies, but for the state as well, longshoremen and everybody else.

Pilot 1: It seems to me this tourist business here, certainly in Southeast, is quite a large business, although seasonal. But it seems to be encouraged only on a local level. I don't, as an individual, see the state really participating in trying to improve facilities. Anything that's done seems to be on a local level in Sitka, Skagway, Juneau or Ketchikan. It just seems to be a community activity. We really don't see too much encouragement or assistance from the state.

Pilot 2: What we're talking about is like in Wrangell a little high school band composed of about twelve people come down every time a ship comes in there and the band plays on the dock. The people that come from the tour ships, the paying customers, feel like they really want us to come. Shows a little flair for a little town and all the townspeople are doing it for nothing just to encourage the ships to come. It's that sort of thing that means the most to the paying passengers.

Pilot 1: We're only repeating comments that we have heard from passengers and so forth.

Ron Whitcraft: Thank you very much for your time.

INTERVIEW WITH PILOT FROM THE SUN PRINCESS

Pilot: I'm just summertime. I'm not up here full year. Of course most of the things we complain about is when you're bringing a tour ship in alongside a dock there's usually, during the fishing season, too many fishing boats tied up abreast and it makes it difficult for a ship this size to get in. Here at this dock (Alaska Steamship Dock), especially when you've got this ebb tide, it's real difficult. And there's a shoal spot right up at the head of the dock that ought to be thinned out a little bit and made a little deeper.

Ron Whitcraft: How about the docking facilities throughout Southeast?

Pilot: Well, everybody on the dock is waiting for the ship to knock something down. So there would be more ships tied up alongside the dock if people weren't so hard pressed to get people to repair the docks for them. Just like Skagway, now that's getting to be in real sad shape and a lot of the ships won't come in. When we came into Skagway on the Fourth of July, Frank H. Brown was in there and he said he would move ahead but the wind was blowing and the ship won't move it in, so the second ship behind him can't tie up because the dock is so rotten. He said he would move, but he never moved. Of course those ships are going to be laid up in March so they don't care what the tour ships do. And I think a lot of the ships, with the condition the docks are getting in, will soon bypass Skagway. Sitka, of course there's all anchorage, so there's no problem there. They've made arrangements there so they can anchor up three ships. Seven or eight years ago they were talking about putting a dock in there in Jamestown. I don't know whatever happened to that. So, as I say, Sitka is strictly anchorage.

The fellows that are up here year round would know more about other conditions that have to do with a yearly basis than I would. I'm strictly on the passenger ships, the tour ships, and I really can't give you a lot of information.

Ron Whitcraft: Any problems coming up through the channels?

Pilot: No, not as far as I'm concerned. But I've been coming up here for 33 years and all these places could use a few more lights, but that comes under Coast Guard. You sit down and argue with them and it seems to work out more where the ferrys want a light, they'll put a light for the ferry but they won't put it for the other ships.

Sun Princess - Continued

Ron Whitcraft: How about the other docks down south - Wrangell, Petersburg, Ketchikan?

Pilot: Of course Montgomery's Dock is getting old. They have the new dock off the Stikine, and they rebuilt a nice new dock in Ketchikan so that's a step in the right direction. It used to be just a hunk of empty pilings. Now that's utilized. Petersburg, nobody ever goes in there. Once in a while a smaller ship used to go in there, but outside of that, it's just a little too touch and go with the current and the dock in Petersburg. So, Petersburg, you might as well forget that, except the egg boats that are coming up here. So you just got Skagway, Juneau, Wrangell and Ketchikan and that's it.

Ron Whitcraft: How about Haines?

Pilot: Well, that dock is not too hot a shape either in the town itself. You can go up to Lutak Inlet and that's a good solid dock but it's not a dock for passengers when you've got logs dumped all over the place. Last time I was in there it should have been fixed up. A lot of passengers wouldn't go ashore because of the condition on the face of the dock itself.

It seems like everybody is out for the buck. Juneau used to give a lot of information. They'd come down and meet the ships when they'd come in. Right now they just get the ships in and get them in the stores and get them out. Ketchikan is no better. The ships want to keep the passengers aboard and the merchants want to get them ashore.

There's really not the room for the passenger ships here. Everybody keeps crowding in and crowding in. Just like this little ramp up ahead here now...it makes it touch...if you've got three fishing boats - wide back out there, why it's pretty hard. You've got a mechanical favor. And it seems like, with this environmental stuff coming on, every town is out to get the ship everyday. You've gotta blow tubes once in a while or some of them, just when they maneuver, put out smoke and before the guy can get to the next port he's got a fine on him. It's not very cooperative to those guys when they're trying to bring in money and the state, the city and business themselves that want the money are the first ones to fine them.

Ron Whitcraft: Do you think there should be more lights along your routes?

Sun Princess - Continued

Pilot: Well, there are places where there are shoal spots that should have a buoy on it.

Ron Whitcraft: Can you think of anyplace in particular?

Pilot: Well, there's one they're trying to get one on coming out of Snow Pass. It's only got four and a half fathoms and it should have a buoy on it. And there's other places where there's beacons, like coming out of Sitka. That light could be more powerful and Cape Edgecombe, that's an ocean-going light and yet you've gotta be right on top of it to see it. And now the ships are coming up seaward and going into Sitka, they could have a little brighter light there.

Ron Whitcraft: What would the one at Cape Edgecombe take?

Pilot: Well, I think it's only got a visibility of about nine miles - and that's on a clear night with a clear atmosphere. You get four miles off it sometimes and you have to look through glasses to find it. And there's another one down there in Dixon entrance and Port Cornwallis and even Cape Chacon which is the main light down there. That power should be increased. I'm not saying it should be like Guard Island which is also an aerial beacon, and even then they cut that down. But there's places where they can have intensive lights for poor visibility without a problem. A lot of these ships come up here with radar on. Of course they've got their electronic experts on there that can fix it. But there's others that don't. And you've got a mixed crew on there with nationalities. On some we have a problem with language barriers. So we have to watch ourselves, too, and not get ourselves in a bind because if something does happen, the Coast Guard's on our necks. We're the only branch in the United States that's under military rule you might say. If the Coast Guard doesn't get you the income tax will. So we have to be careful. Once they suspend your license or take it away you can't work anywhere. We have to watch everything. A lot of things that you have no control over. You could make a squawk about it but until you know the right channels to go through it doesn't do you a bit of good. Unless you can get a whole bunch of guys and get a lot of money to go up and start doing some lobbying, you don't get much satisfaction anyway. You just get the old runaround and nothing's ever done. And maybe in a month, maybe two months, maybe the next year, this thing you've squawked about happens and it costs a lot more than the deal you wanted to put in there or get fixed or something like that.

Sun Princess - Continued

A lot of the lights that we used to go by with Alaska Steam have disappeared and the lights have gone up for the ferrys' use. And you can't blame them because they are there every week or maybe every couple of days. So I could see where they could want lights. But there are places where they've taken them off where they would still come in handy. I don't see why they don't just increase the power of some of these lights so we could see.

Ron Whitcraft: Have you noticed lights gone in just recent years or has it been several years ago?

Pilot: It seems like, as things go, a period of years. A new regime will come in the Coast Guard and he's gonna make marks for himself, so some guy will make improvements and some guy will change things around. Like a lot of times they change lights so they'll all flash in six seconds. Well, if you miss one you might think the second light is the first one. And that's very confusing. Before you'd have one that would flash two and a half seconds, and maybe the next one would be four seconds, and maybe the next would be six seconds, and maybe you might have three in a row of six seconds. You have to keep up. It doesn't pay to be away too long. You can notice changes.

Ron Whitcraft: Thank you very much for your time.

CAPTAIN DONALD OLDOW  
COMMITTEE TESTIMONY ON SUNSET  
REVIEW OF THE BOARD OF MARINE PILOTS

Mr. Chairman and ladies and gentlemen of the committee, I wish to thank you for allowing me to testify in favor of retaining the Alaska Board of Marine Pilots. My name is Donald Oldow, representing the Board of Marine Pilots as the Southwest Alaska pilot member.

You are no doubt aware that the purpose of the Board of Marine Pilots is to provide for the maintenance of an efficient and competent pilot service on all the inside waters of the State of Alaska to assure protection of shipping and the safety of human life and property. The Board is also charged with the responsibility to adopt regulations; establish qualifications, examine and issue licenses to qualified pilots; take disciplinary action against negligent or incompetent pilots; and regulate pilotage fees.

I would like to briefly review the somewhat complex subject of "pilotage". All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. It is probably the oldest regulated profession. Our Colonial Legislatures had pilotage laws in effect prior to our becoming a nation. The first Congress in 1789 quickly passed an Act that left pilotage under state control.

Pilotage remained exclusively a public service under state control until 1871 when Congress acted to provide for federal licensing of pilots of steam vessels engaged in the coastwise or interior commerce of the country. At that time steam engines were considered inherently dangerous and many laws were being passed to protect the public from this new threat. Since many state laws exempted ships engaged in strictly coastwise or interior commerce from the requirements of taking aboard a public pilot, Congress felt there was a need to insure that these new and dangerous steam vessels should employ someone familiar

with the waters being navigated.

This created a different category of pilot - a federally licensed pilot. So now, in the United States, the term "pilot" is used to describe two different sets of relationships.

The first, or original, "pilot" is the state licensed publicly regulated pilot who is not subject to the selection and control of the shipowner and whose terms and conditions of service are established by statute and not subject to negotiation. The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court cases applying principles of maritime law.

The other "pilot" is the federally licensed employee of the ship who is subject to the selection and control of the shipowner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

Simply stated the state licensed pilot is exercising a public function on publicly regulated terms and conditions and the federally licensed pilot is acting in a private capacity on privately agreed terms and conditions.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot.

The federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the right to exercise control over his employees in the performance of their duties. The terms and conditions of employment are privately agreed to with the shipowner. The prospects of future employment are dependent upon how well the employee satisfies the demands placed upon him by his employer.

In contrast, compulsory pilotage is the creation of law, not of contract, and the pilot is not the employee, servant or agent of the shipowner, the ship or the master. He is placed aboard by the state with the conditions of his

service fixed by law. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation. He sees his duty and obligation as being owed to local political authority and the public, rather than to the shipowner in the role of an employer. His fee is set by law and he can receive no increase in fee for accepting greater risks nor be penalized with a lesser fee for taking precautions in conflict with the owner's interests. His future employment does not depend upon satisfying the demands of the shipowner to maintain schedule or move the vessel with unacceptable margins of safety. He is free to exercise independent professional judgement as to the acceptability of the risks. The public nature of his role leads him to place a higher priority on the protection of life, property and the environment than the master who has to consider all decisions in the light of the owners commercial interest. The compulsory pilot's autonomy and independence are the single most important safeguard that exists in the shipping world.

This, then, is the decision that the legislature of the State of Alaska must make at this time. Whether to control pilotage in the State or return that control to the Federal Government and federally licensed pilots. In light of the large amount of oil tanker traffic and large foreign fishing and trading fleets operating in or near the waters of this state, I believe the best interests of the public and the State of Alaska are much better served by choosing, examining, licensing and otherwise controlling those persons who will be responsible to the State for the protection of the safety of those vessels, the public and the environment from the consequences of marine casualties.

With these thoughts in mind, I would like to turn briefly to the recommendation of the Division of Legislative Audit to delete the requirement of a written examination as a condition for obtaining a pilot's license. As one who assists in the preparation of the state licensing exam, I must respectfully

disagree with the statement that there is a duplication of the material that is on the federal pilot's exam, and that the state exams are out of date. The degree to which the state and federal exams overlap is not excessive and the state exams are not out of date, in fact they are being revised continually and examinations for fourteen new ports have been compiled within the past year and one-half to keep up with the ever changing patterns of shipping in the various ports of Alaska. The state examinations are more pilot orientated than the federal exams and deal with information that a practicing pilot should know and use while performing his duties. I believe maintaining the written examination is very important and necessary towards preserving the higher standards of state licensed pilots.

All state licensed pilots of my acquaintance state without reservation that qualifications and standards should, if possible, be increased rather than decreased to preserve the quality of state pilotage.

In conclusion, I would ask the committee to recommend the retention of the Alaska Board of Marine Pilots. Further, I would urge you to recommend that the high professional qualifications and standards be maintained to insure the safety of shipping in Alaska. Thank you.

JAMES F. PETERSEN

ATTORNEY & COUNSELLOR AT LAW  
319 SEWARD STREET  
JUNEAU, ALASKA 99801

MASTER FILE COPY  
HOUSE COMMERCE COMMITTEE

DAVID V. GEORGE, ASSOCIATE

(907) 586-3530

February 4, 1980

Mr. Allan Blume  
Administrative Assistant  
House Commerce Committee  
The Honorable Fred Brown, Chairman  
Pouch V  
Juneau, AK 99811

RE: Marine Pilots Board Sunset Hearing

Dear Allen:

As we discussed after the meeting above-referenced was adjourned, I would like to submit a formal letter with some additional comments regarding the Legislative Audit recommendations for the Marine Pilot Board. These primarily emphasize the fact that, with the duties and obligations imposed upon the Board by both statute and voluntarily assumed by regulation, two meetings per year appear to be insufficient to accomplish those responsibilities and adequately rectify some of the misgivings which have, of late, been focused on the Board.

At the hearing of January 30, 1980, I specifically made reference to the problems that the Board will have in adopting regulations in accordance with the A.P.A., due to the notice requirements of the A.P.A. and the infrequent meetings of the Board of Marine Pilots. Similar restriction upon the Board's practical ability to exercise revocation and licensing censures exists because of the infrequency of Board meetings and/or an insufficient budget. In order that the Board retain its quasi-judicial function, it must, of course, remain impartial throughout the investigation process and the presentation of evidence. Consequently, when an incident is referred to the Board for investigation, it is necessary that, the Division of Occupational Licensing conduct that investigation, then under the A.P.A., the formal papers of Accusation would be filed through the Attorney General's Office and a hearing date would be set. If the full Board is to hear the revocation case, after due notice to the parties, it becomes obvious that the Board,

Mr. Allan Blume  
February 4, 1980  
Page 2

though having previously scheduled a one-day meeting, could end up sitting around listening to evidence for three or four days, depending upon how long the hearing takes. This is not practical in light of the limited number of Board meetings and the other substantial business which the Board must conduct. Consequently, it would seem that the most efficient way to handle this problem would be to allocate additional funds to the Board so that it might appoint independent hearing officers, who would conduct the actual hearing, write a proposed decision, and then submit the proposed decision for adoption, modification or rejection. Of course, the proposed decision would have to be served on all parties, and all parties would be present at the time the Board considers the proposed decision to make comments one way or the other. Notwithstanding the fact that all parties would be there, due to the pre-existence of a proposed decision, the matter would be greatly expedited and specific answers could be posed to the questions of the Board. However, with the limited funds which are now available, such a procedure does not seem feasible as a matter of course.

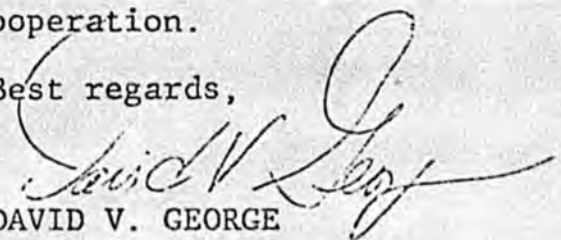
This very procedure has recently been employed by the Board in aid of its resolution of current tariff disputes. Governor Jay Hammond appointed Dick Edwards of Anchorage, an attorney, to act as hearing officer in the tariff rate dispute. Mr. Edwards will be holding a hearing sometime later this month, at which both the pilots and industry representatives will present evidence on what they feel are appropriate tariffs under the guidelines of the Marine Pilots Board statutes. Mr. Edwards will then write a proposed decision and the matter will be submitted to the Board for ultimate action. I anticipate that at that time, with the parties having previously received the proposed decision from the hearing officer, they will also attend and make their comments before the Board. Indeed, this is the most common manner in which serious evidentiary problems are handled by other boards and commissions.

Consequently, I would merely like to reinforce my testimony at the hearing, that the Board is looking at a substantial disability, considering its lack of funds and semi-annual meeting schedule. I would like this letter to be included

Mr. Allan Blume  
February 4, 1980  
Page 3

in the record of the House and Senate Commerce Committee  
hearings on the sunset review of the Board of Marine Pilots.  
I thank you so much for your cooperation.

Best regards,

  
DAVID V. GEORGE  
Member, Board of Marine Pilots

DVG/law

cc: Anne Griggs  
Division of Occupational Licensing



# Alaska State Legislature

## House of Representatives

### Committee on Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

February 20, 1980

David V. George, Associate  
JAMES F. PETERSEN  
Attorney & Counsellor at Law  
319 Seward Street  
Juneau, Alaska 99801

Dear Mr. George:

Thank you for your letter of February 4, 1980. Your letter will be included in the record of the House Commerce Committee hearings on the "Sunset" review of the Board of Marine pilots.

I shall also forward a copy to the Senate Commerce Committee.

Cordially,

A handwritten signature in dark ink, appearing to be "BA", written over a horizontal line.

Bob Aaron  
Administrative Assistant  
House Commerce Committee

BA:kfw

# SOUTHWEST ALASKA PILOTS ASSOCIATION

P. O. Box 977

Telephone (907) 235-8783 Cable: Hornerpilot

Homer, Alaska 99603

CAPTAIN EDWARD MURPHY

COMMITTEE TESTIMONY ON SUNSET

REVIEW OF THE BOARD OF MARINE PILOTS

NOVEMBER 28, 1979 - DECEMBER 10, 1979

Mr. Chairman and ladies and gentlemen of the committee, thank you for this opportunity to testify in favor of retaining the Alaska Board of Marine Pilots. My name is Edward Murphy and I am appearing today as a representative and spokesman from the Southwest Alaska Pilots Association. Southwest Pilots is one of the two associations of state and federally licensed marine pilots in Alaska and provides state pilots to shipping from Cape Spencer north.

I would like to acknowledge the assistance of Captain George Quick and the American Pilots Association in the preparation of this testimony.

Before getting into the details of the report by the division of legislative audit, I would first like to describe the pilotage scene as it exists today for the benefit of those committee members who may not be familiar with the subject.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping. We may not be the oldest profession but we are certainly the oldest regulated profession. The colonial legislatures had pilotage laws in effect prior to our becoming a nation. The first congress assembled after the adoption of the Constitution in 1789 realized that the delegation of the right to regulate interstate and foreign commerce granted to the federal government by the Constitution would interfere with pilotage systems and regulations in place in the various states and quickly passed an act that left pilotage under state control.

The state laws generally provided for a system of regulated public pilots who con-

ducted to and from the sea and whose terms and conditions of service were established by law. Pilotage remained exclusively a public service under state control until 1871 when congress acted to provide for the federal licensing of pilots on steam vessels engaged in coastwise or interior commerce of the country. At that time steam vessels were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the industrial revolution. Since many states exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, congress felt that there was a need to insure that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new act of congress by creating a different category of federally licensed pilots who were employees of the ship and who often were actually the master or other officer acting as pilot by virtue of additional endorsement on his license has caused confusion in defining the term pilot and in defining the role and function of a pilot.

The term pilot in the United States is used to describe two entirely different sets of relationships:

1) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the ship owner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

2) It can refer to the state licensed publically regulated pilot who is not subject to the control and selection of the ship owner and whose terms and conditions of service are established by statute and not subject to negotiation. The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court cases applying principles of maritime law.

In simple terms, the federally licensed pilot is acting in a private capacity on privately agreed terms and conditions, and the state licensed pilot is exercising a public function on publically regulated terms and conditions.

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a voluntary pilot and referring to the pilot exercising a public function as a compulsory pilot.

In the voluntary pilot situation the employment contract is by mutual agreement between the ship owner and the employee pilot, even though the ship owner is naturally compelled to select his employee from among a class, i.e. federally licensed pilots. In the compulsory pilot situation the pilot is forced on the ship owner by compulsion of law and under terms and conditions established by law. The concept of compulsory pilotage excludes any right of the ship owner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary.

The state licensed pilot is regulated by state statutes creating compulsory pilotage. His state license is both a certificate of competency and a franchise as a public servant requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties, and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law. The purpose is to protect the safety of shipping by

assuring a complement of pilots will be available when needed at designated locations (pilot stations) and placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.

As part of their franchise as a public service it is compulsory for the pilot to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services as all times, to go to any ship needing his service without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

Compulsory pilotage is a creation of law, not a contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the ship owner or the vessel he pilots. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation. He sees his duty and obligation as being owed to local political authority and to the public, rather than to the ship owner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demand and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast the federally licensed pilot is a common law employee of the ship owner serving in a private capacity. The ship owner has the right of selection and the right to exercise control over his employees in the performance of their duties. The terms and conditions of employment are privately agreed to with the ship owner. The prospects of future employment are dependent on how well the employee satisfies the demands placed on him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a

dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are largely exempt from the protection of state compulsory pilotage laws. Many of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

So, compulsory state pilotage operating under the authority of the state Board of Marine Pilots functions to protect and insulate independent decision making affecting the safety of ships from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not belong to the ship, i.e. free of the ship owner's interest and control.

I think the committee and the legislature will agree that these are compelling reasons for maintaining state licensed public pilots under the control of the Alaska Board of Marine Pilots.

I would like to turn now to report conclusions and recommendations made by the Division of Legislative Audit. The division recommended that the Board discontinue the requirement of a state administered examination because the state examination duplicates examinations given by the U.S. Coast Guard. This recommendation is misinformed and ill-advised. The state administered examination for an Alaska pilot's license is not duplicative and goes far beyond the Coast Guard written examination. Because the Coast Guard personnel who administer pilotage examinations have little, if any, local experience the written examination is necessarily taken from navigation publications and coast pilots. The state examination, on the other hand, contains questions of a practical and relevant nature which pilots operating in a particular area should be expected to know. The value of the state's examination is unquestioned among practicing state licensed pilots and it should be retained. The division's comment on the state examination being out of date does have relevance. However, in the past year the examinations for Southwest Alaska have been completely renewed and rewritten.

The division also recommended that the Board of Marine Pilots take a more active

role in regulating pilotage tariffs. Southwest Pilots would agree with the recommendation that the Board take a more active role, although we have no specific recommendations to make as to what that role should be. There is a pressing need for published guidelines to be followed by the pilot associations when they request a rate increase.

The other recommendations made by the division concerning the Board's lack of efficiency in processing requests for information, disciplinary action against pilots, and generally conducting it's affairs in a businesslike manner certainly hit the mark.

We believe that the Board's problems are largely the result of insufficient support from the Division of Occupational Licensing and the Attorney General's office. We are also convinced that two meetings a year are not enough to properly conduct the business of the Board. If the Board met quarterly and received proper support from the various state agencies it's efficiency would realize a quantum jump.

In conclusion, I would urge the committee to recommend the retention of the Alaska Board of Marine Pilots in it's present form. State pilotage in Alaska's waters is absolutely essential as any examination of the excellent safety record of shipping piloted by state licensed pilots will prove. That safety record is largely the result of the stringent professional standards which Alaska demands of it's pilots. Standards which are maintained and overseen by the Board of Marine Pilots. Thank you.

*Christian Basler*  
*Work Copy*

**STATE OF ALASKA**



**ROUGH DRAFT**

**CONFIDENTIAL**



**DIVISION OF LEGISLATIVE AUDIT**  
Juneau, Alaska

A PERFORMANCE REVIEW  
OF THE  
BOARD OF MARINE PILOTS

June 15, 1979

**ROUGH DRAFT**

A PERFORMANCE REVIEW  
OF THE  
BOARD OF MARINE PILOTS

June 15, 1979

**ROUGH DRAFT**

Commissioner of the Department  
of Commerce and Economic  
Development

Charles Webber

Deputy Commissioner of the  
Department of Commerce and  
Economic Development

Bertram Wagnon

Members of the  
Board of Marine Pilots

Chairperson  
Member  
Member  
Member  
Member  
Member  
Member

*Comm. & Econ. Development*  
Charles Webber  
Captain Donald Oldow  
Captain Jack Maroni  
Charles Stover  
Marvin Taylor  
David Culbertson  
Kenneth Peavyhouse

STATE OF ALASKA

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

**THE LEGISLATURE**

FINANCE DIVISION  
POUCH WF—STATE CAPITOL

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

June 30, 1979

Members of the  
Legislative Budget and Audit Committee:

In accordance with the intent of Titles 24 and 44 of the  
Alaska Statutes, the attached report is submitted for your  
review.

A PERFORMANCE REVIEW  
OF THE  
BOARD OF MARINE PILOTS

June 15, 1979



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE AND SCOPE OF THE REVIEW

### Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an audit of the Board of Marine Pilots was conducted to review Board activities and accomplishments to determine if a public need for the Board exists, and if so, to determine if the Board has operated in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Marine Pilots should be reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981, for the purpose of concluding its affairs.

### Scope

The major areas reviewed were the Board's operations and its licensing, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

- (1) Applicable statutes and Board regulations;
- (2) interviews with the Board members and questionnaires sent to the Board members;
- (3) tests of records and documents of the Board and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development;
- (4) interviews with OL employees;
- (5) complaints filed with OL and the Attorney General's Office;
- (6) questionnaires sent to the marine pilots currently licensed by the Board and to shipper's agents;
- (7) interviews and correspondence with a national pilots association and local pilot associations; and
- (8) interviews with personnel from the U.S. Coast Guard.

ORGANIZATION AND FUNCTION

Responsibility for the regulation of marine pilotage is shared by the federal government and state governments. The federal government, through the U.S. Coast Guard (CG), regulates pilotage on enrolled vessels, while the individual states are given the right, in the United States Code, to regulate pilotage on registered vessels. Enrolled vessels are vessels registered in the United States and engaged in commerce between American ports; registered vessels are those vessels engaged in foreign trade. The individual states have the right to regulate pilotage on vessels engaged in foreign trade.

The Alaska Board of Marine Pilots was created under Alaska Statute 08.62 to carry out the State of Alaska's responsibility of regulating pilotage on registered vessels. The Statute became effective in 1970.

*Copy*

The Board is made up of seven members - two marine pilots, two agents or managers of vessels, two public members and the Commissioner of the Department of Commerce and Economic Development. Per the Statutes (08.62), the purposes of the Board of Marine Pilots are to license qualified pilots; to take disciplinary action against negligent or incompetent pilots; and to regulate pilotage fees.

*7 members*

Once a marine pilot has received a license from the Board, he is authorized to pilot registered vessels within the established boundaries of inside waters of the state. The inside waters are defined by regulations as all of South-eastern Alaska, Prince William Sound, Cook Inlet and Resurrection Bay. Alaska Statute 08.62 requires registered vessels to carry State licensed pilots when inside these boundaries. It is the pilot's job to direct a vessel safely through the inside waters and dock and undock the vessel.

①  
*Alaska just  
more strict.*  
1) Tides  
2) Weather  
3) Ecology  
4) Vessel length  
Ships

To obtain an unlimited pilot's license an applicant must first obtain both a pilot's license and a master's license issued by the U. S. Coast Guard. In addition, he must perform ten to twenty dockings and undockings and pass written and oral examinations administered by the Board.

The Board also issues limited pilot's licenses and channel pilot's licenses. The holders of limited pilot's licenses may pilot vessels of 2,000 gross tons or less. Channel pilots may pilot vessels in main ship channels only, and can perform dockings and undockings under the direct supervision of pilots holding unlimited pilot's licenses. Proof of dockings and undockings is not required to obtain these two classes of licenses. Applicants for any of the three licenses

can obtain temporary licenses by meeting all the licensure requirements and taking a temporary license examination. A second examination is required for permanent licensure.

To obtain license renewal, a pilot must show that he has worked at least two months in each area for which he holds a license. The two months' time must have been worked within four years prior to the renewal date. License renewal is required biennially.

The Board is assisted in performing its licensing and other administrative functions by staff support from the Division of Occupational Licensing (OL). OL processes applications, maintains files, answers correspondence dealing with the Board and provides other administrative support as needed by the Board. In addition, OL investigates any complaints or accident reports involving marine pilots.

③ Another function of the Board is regulating fees for pilotage services. Any increases of the fees charged by pilots for their services must be approved by the Board.

There are currently 45 State licensed marine pilots. The majority of the pilots belong to a pilot's association. There are two associations - the Southeast Pilot's Association and the Southwest Pilot's Association. These associations act as dispatching and billing agencies for their pilot members.

*Price Fixing*

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our review of the Board of Marine Pilots. The final policy decisions affecting the operation of the Board are not within the scope of this review - they require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and recommendations presented in this report in reaching their decisions.

Report Conclusion

In our opinion, the Board of Marine Pilots should continue to regulate and license the marine pilotage profession. The regulation and licensing of marine pilots by a State agency is necessary to assure the protection of shipping, human life and property, and the environment from potential dangers caused by registered vessels sailing in Alaskan waters. } (f)

During our review we noted that at least one alternative to maintaining the State Board of Marine Pilots exists:

< strict

Under the Port and Tanker Safety Act of 1978, passed by the U.S. Congress in 1978, the Coast Guard has the authority to assume a state's pilotage responsibilities if the state relinquishes that right.

The personnel of the Seventeenth Coast Guard District feel that this is not a viable alternative in Alaska because it would place too heavy a burden on their present resources.

The legislative oversight committees should carefully consider the impact of relinquishing State jurisdictional authority to a federal agency.

We recommend the following changes be implemented if the Board of Marine Pilots is reestablished:

Alaska

NO!

① The Board should discontinue the requirement of a State-administered examination because the State examination duplicates examinations required for obtaining U.S. Coast Guard-issued officer's and pilot's licenses. (1)

② The requirements for license renewal should be reviewed by the Board members to determine if they are necessary and reasonable or if they are restrictive and should be changed.

③ The Board should establish criteria and describe terms to be used by the pilot associations and the shipping industry in proposing and opposing tariff increase requests. Also, \*

tariff

Look into this!

procedures prescribing the manner in which tariff increase hearings should be conducted should be established.

- ④ Statutes or regulations which define licensing violations and also give pilots an indication of what their professional responsibilities are should be promulgated by the Board.

Finally, the Board and the State agencies which provide support services to it, OL and the Attorney General's office, should coordinate their efforts so that the Board can better achieve its purposes.

*Both need improvement.*

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations No. 1 through No. 4 are addressed to the Board of Marine Pilots, No. 5 is addressed to both the Board and the agencies which provide support services to the Board, and No. 6 and No. 7 are addressed to the Division of Occupational Licensing (OL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development, October 30, 1978".

*Get from  
Elane  
Garnett!*

Recommendation No. 1

The Board of Marine Pilots should recommend statutory and regulatory changes to delete the requirement of a written examination as a condition for obtaining a pilot's license.

Alaska Statute 08.62.100(3) requires an applicant for a State-issued pilot's license to pass written and oral examinations given by the Board.

During our review of the Board of Marine Pilot's examination function, we noted two problem areas. The first problem area involves the administering of the examinations.

Portions of the Board's examinations and answer keys are out-of-date. Each time an examination is given, the Board informally checks the examinations over and makes corrections accordingly. However, it would be easy to miss a change that should be made using this procedure. Another problem we noted was that if an applicant had to be reexamined for some reason (i.e. either because the applicant failed an examination, or he applied and was tested for a temporary license first and then a permanent license), in many cases he was given the same examination both times.

A pilot applying for a State pilot's license for an area or port for which an examination is not made up is automatically granted a license for that area on the basis of his Coast Guard endorsement for the area without being tested. This points out an inconsistency in the importance placed on the examinations by the Board members.

The Board's oral examinations are not administered in compliance with the regulations. The regulations require an applicant to be tested by oral examination in the following subjects: knowledge of local harbor conditions and regulations; signals; and rules of the road. However, the oral examinations administered by the Board have been limited to questions about the applicants' safety records and seagoing backgrounds.

The second problem area we noted was the duplication of test material on the State and Coast Guard pilot's examinations. To obtain a Coast Guard pilot's license, which is required for State licensure, a pilot must pass an examination administered by the Coast Guard.

The material tested on the State Board's examination can be divided into three categories: 1) questions about the pilot's knowledge of the conditions of the geographical areas he is being tested for; 2) questions about the pilot's knowledge of navigation, ship handling, rules of the road, etc; and 3) questions about the State Marine Pilotage Act and the relationship between a master and pilot.

The Coast Guard pilot's examination consists of filling in blank chartlets (to show depth of water, landmarks, aids to navigation, danger areas, etc.) and answering local knowledge questions for each chartlet area (there are 45 chartlets for Southeast Alaska and 37 for the Southwest area). By these two means, the Coast Guard examination covers local knowledge extensively.

It is true that the local knowledge questions are asked in different forms on the State examination, however the questions on both examinations cover identical material.

The Coast Guard pilot's examination does not test the examinee on general navigation, ship handling or rules of the road. However, by the time a person has obtained a master's license issued by the Coast Guard, he has passed a number of tests which cover these subjects extensively. As an applicant for State pilotage must possess a master's license, he has been tested thoroughly on general navigation, ship handling and rules of the road.

The Coast Guard examination does not cover the subjects listed under number 3 above - the State Marine Pilotage Act and the relationship between the master and pilot. Per the Board's regulations, the Board may test examinees on these subjects.

However, in the recent past, the Board has chosen not to administer tests on these subjects.

We feel that because the State's pilot examination largely duplicates the Coast Guard examination the State exam serves little useful purpose. The usefulness of the State examination is further eroded by the first three problems noted above.

We therefore recommend that the Board of Marine Pilots drop its written examination and instead license State pilots on the basis of the other State licensing requirements. The

other licensing requirements combined with the various examinations administered by the Coast Guard are more than adequate to assure the public that a pilot is qualified to perform pilotage duties.

Recommendation No. 2

The Board of Marine Pilots should recommend regulatory changes to make the license renewal requirements less restrictive and vague.

The regulation which sets down the requirements for the renewal of a State pilot's license is vague and restrictive. Alaska Administrative Code (AAC) 12.56.080 requires applicants for the biennial renewal of their State pilots' licenses to submit proof of having worked at least two months in each area for which they are requesting renewal. The two months must have been worked in a licensed deck officer capacity during the four years prior to the date of renewal of the license. (Note: for the purposes of licensing the Board divides Alaska into two areas, Southeast and Southwest).

The regulation is vague in that the terms and phrases used are not defined. For example, "two months" can mean 60 days or 60 days less week-ends or one trip a week for eight weeks. "Licensed deck officer capacity" can mean any position from third mate to pilot. The regulation states the pilot must have worked "in the area for which he was licensed during the last biennial period." A person licensed for all of southeastern or southwestern Alaska could spend two months in only one of many ports in the area and still fulfill the "in the area" requirement.

The regulation is restrictive in that a pilot holding pilotage in both Southeastern and Southwestern Alaska faces a hardship in trying to make arrangements for two months worth of trips in both areas.

Of the persons who responded to the questionnaire we sent to the licensed marine pilots (see Appendix E), 69 per cent were of the opinion that the renewal requirements are too restrictive.

The intended purpose of the two-month requirement is to provide reasonable assurance that a pilot remains current in his knowledge of the areas he is licensed to pilot in. However, the requirement does not accomplish this purpose since a pilot could conceivably fulfill his two-month requirement by working out of one port in an area, thus obtaining no recent experience in all the other ports in the area.

We feel the Board of Marine Pilots should review AAC 12.56.080 to determine if less restrictive alternatives exist. We encourage the Board to solicit help from the pilotage profession and the shipping industry in exploring alternatives. Regulatory revisions should also be made to define terms used.

Recommendation No. 3

The Board of Marine Pilots should take a more active role in regulating pilotage tariffs.

③ Tariffs

⑤\*

Alaska Statute 08.62.040(a) (4) states that the Board of Marine Pilots "...shall regulate pilotage fees". Until just recently, it has been Board policy to direct the two pilots' associations within the state to negotiate a tariff increase with representatives from the shipping industry. The rate agreed upon by the two parties was then automatically approved by the Board. As a result, the Board in the past has not analyzed or studied the tariff increase requests to determine the need for an increase and the impact of a tariff increase on commerce.

After repeated warnings by the Attorney General's Office that the Board was not fulfilling its statutory responsibility, the Board has decided to become more actively involved in regulating the tariffs. We encourage this action by the Board. However, some further changes to the Board's method of regulating tariffs should be made.

Presently, the Board has no criteria on which requests for tariff increases are to be based. Also, the Board has not set down procedures describing how hearings for tariff increases should be conducted. Because of the lack of any criteria and procedures for the granting of tariff increases, the Board members and representatives from the shipping industry and the pilots associations have a difficult time communicating about what is being requested and why.

We recommend that the Board of Marine Pilots establish criteria to provide a basis for the pilots and shipping industry to follow when a tariff increase is being requested. The criteria should serve as a guide for the Board members in determining whether or not a tariff increase should be approved. The criteria should also list terms and definitions of the terms to be used by the pilot and industry groups in presenting their requests and rebuttals. An example of the terms that should be defined is "time in work status".

The Board should also establish procedures for how the tariff hearings should be conducted. Included in the procedures should be directions for the method and timing of notices of tariff increases to interested parties. The procedures should describe the proper conduct during the Board proceedings of those Board members who have a direct financial interest in a tariff increase. The procedures should also give directions to the parties involved, the pilot groups and the shippers, as to the documentation and information that will be required and the format and timing of proposals and rebuttals.

Recommendation No. 4

The Board of Marine Pilots, in conjunction with the Attorney General's Office, should promulgate statutes or regulations which define license violations.

Alaska Statute 08.62.150(a) outlines license violations which are grounds for the denial, revocation or suspension of a State-issued marine pilot's license. The statute allows the Board to take action against a marine pilot who "is incompetent in the performance of his pilotage duties" or "is guilty of misconduct during the course of his employment".

Nowhere in the Marine Pilotage Act or the regulations are "incompetent" and "misconduct" defined. These terms are too vague to give a marine pilot an indication of what his professional responsibilities as a marine pilot are.

In addition to these shortcomings, neither the statutes nor the regulations make express provisions to allow the Board to suspend or revoke the State-issued license of a pilot whose Coast Guard license has been suspended or revoked. Instead, since Administrative Code sections 12.56.030(2), 040 (b)(2) and 050(2), state that a pilot must possess a valid Coast Guard pilot's license in order to be licensed as a State pilot, it is implied that the suspension or revocation of a pilot's Coast Guard license makes his State license invalid.

We recommend that a provision be added to Alaska Statute 08.62.150(a) to allow the Board to revoke or suspend a license based on the revocation or suspension of a Coast Guard pilot's license. This would speed up disciplinary proceedings since the State would not have to prove that a pilot was negligent or incompetent in his pilotage duties.

We further recommend that the statutes or regulations be amended to define ambiguous terms such as incompetent and misconduct.

Recommendation No. 5

The Board should establish formal procedures to conduct its business more effectively and promote better communication with supporting agencies.

During our review of the Board of Marine Pilots, we noted several problems which hinder the effectiveness of the Board. Those problems are as follows:

- 1) Complaints were made to us by representatives from the shipping industry, Coast Guard personnel and members of the pilotage profession about the

Board's failure to investigate complaints and accidents involving pilotage and its failure to take disciplinary action against negligent pilots.

- 2) We also received complaints from persons interested in State pilotage that the Board and/or the Division of Occupational Licensing is not responsive to requests for information.
- 3) It takes the Board as long as two or more years to implement changes.
- 4) In interviewing Coast Guard personnel, we found that there is little cooperation or communication between the Board and the U.S. Coast Guard. As a result, matters which require the concurrent attention of both entities take longer than necessary to resolve.

The slowness of the Board and its failure to make changes can be attributed to two factors:

- a) The Board only meets twice a year - it is difficult to implement changes and take action on problems when six months elapse between discussions of the changes.
- b) The Division of Occupational Licensing and the Department of Law (Attorney General's Office) have failed to follow through on requests for assistance and information made by the Board.

As a result of the above problems, the effectiveness of the Board is impaired because it is losing credibility with the persons it is attempting to regulate. The Board needs to take steps to improve its image among the marine pilotage profession and the other groups involved with pilotage.

We recommend that the Board of Marine Pilots and the two agencies which support it, the Division of Occupational Licensing and the Attorney General's Office, take steps to efficiently and effectively take action on issues facing the Board, so that the Board can achieve its purposes. We urge all entities involved to be more diligent in following up on the requests and needs of the Board.

Following are recommendations for some specific actions the Board and supporting agencies could take:

1. The Board members and the licensing examiner for the Board should work up a procedures manual to be used by the Board members and the examiner. Many misunderstandings between the licensing examiner

and the Board members can be cleared up this way. In addition, a procedures manual would provide continuity between licensing examiners - this would help alleviate the problems caused by the rapid turnover of license examiners. An example of the type of information that should be included in a procedures manual is the procedure for the approval of the Board's minutes.

2. It is a usual practice of the Division of Occupational Licensing to request opinions from the Attorney General's Office in writing. We approve of this practice and urge both the Division of Occupational Licensing and the Attorney General's Office to follow up on the Board's requests for legal advice as efficiently as possible. Responses to requests for assistance should be communicated to the Board members timely enough so that they can use the information during Board meetings.
3. The Board should consider requesting the Coast Guard to appoint one of its personnel to act as a liaison between the Board and the Coast Guard. This person could possibly act in an advisory capacity to the Board and attend the Board meetings in order to provide a means of communication between the two entities.
4. The problem of slow or nonexistent investigations of accidents and complaints and resultant disciplinary actions is recurrent among all the occupational licensing boards (as we explained in the performance audit of OL). The investigations unit within OL says that they do not have the manpower to give priority to cases, such as most marine pilot cases, which are not "life-threatening". Hopefully, now that the three investigator positions within the unit have been filled, this problem will be alleviated.

Two recommendations for further decreasing the amount of time it takes to investigate complaints and take disciplinary actions are:

- a) The Board should maintain a register of vessels, operators, agents and managers of vessels subject to the Marine Pilotage Act as required by Alaska Statute 08.62.040(a) (3). The investigations unit personnel feel this register would be useful in doing their investigations of marine pilots cases.
- b) Disciplinary actions should be taken by the Board as soon as information needed is available. Disciplinary action is still pending on a marine accident which occurred in 1976. No

action had been taken on the case until February of 1979 because the investigations unit was waiting for the Coast Guard's final decision on an appeal filed by the licensee after the initial determination was handed down. Action could have been taken against the pilot's State license after the Coast Guard's initial determination was made.

Recommendation No. 6

The Board of Marine Pilots should establish formal goals, objectives and quantifiable measures which should be included in the OL's budget document.

Objectives describe what an agency or Board is seeking to accomplish during a specific year. Well formulated objectives are capable of measurement and should include numerical targets so that actual accomplishments can be compared with stated targets. Without goals and objectives, the Board's performance cannot be adequately evaluated and analyzed.

OL establishes its own budget goals and objectives. The budget documents do not include any goals or measures for individual boards. Without each Board's goals and measures being identified or measured, both the Governor's Office and the Legislature cannot evaluate a Board's performance (see the OL Performance Audit Report).

Recommendation No. 7

The Division of Occupational Licensing should collect, record and maintain for five year periods, files and statistics of the licensing and testing of applicants and the related workload of the licensing examiner.

The Division needs relevant facts and statistics for evaluating the performance of its personnel and Board activity. Many past records have not been collected and maintained, such as:

1. Number of marine pilots licensed in past years;
2. records of those applicants failing the examination;
3. numbers of applicants denied the chance to take the examination due to lack of qualifications;
4. number of complaints and criticisms about the performance of the Board and its staff;

5. correspondence workload of license examiners; and
6. number of persons requesting applications.

It is to the advantage of the Division to keep these records in order to support its budget request, evaluate its personnel and keep the Board informed as to its progress. Also, feedback from the Board and the public should be encouraged to determine whether staff performance is adequate.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analysis of Board activities relates to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission or program has operated in the public interest.
  1. The Board of Marine Pilots has operated in the public interest by promulgating regulations which help assure that a State-licensed marine pilot has the experience, knowledge and skill required for safe pilotage. The qualifications required for licensure as a State pilot exceed the requirements for a Coast Guard issued pilot's license as follows:
    - a. Applicant must possess a Coast Guard issued master's license;
    - b. applicant must document having completed 10 to 20 dockings and undockings under the supervision of a State licensed pilot; and
    - c. applicant must be at least 25 years old.

We inquired of the pilotage profession, the shipping industry and the Coast Guard about whether or not they felt the additional requirements are necessary to assure a pilot's competency. All three groups were in favor of the extra requirements - their general consensus was that the extra requirements promote marine safety.

However, the differences between the requirements for a Coast Guard pilot's license and a State pilot's license indicate one of two problems exist.

- a. Either the additional requirements for obtaining a State license are unnecessary, because the Coast Guard requirements are sufficient to assure that a pilot is competent; or
- b. those persons who possess only a Federal pilot's license, and thus are licensed

to pilot enrolled vessels, have not been required to sufficiently demonstrate their ability to perform pilotage competently.

2. 18 per cent of the pilots licensed either did not possess or did not provide documentation that they possessed the qualifications necessary for licensure. Also, three out of 45 (or six per cent) of the licensees who received license renewals for 1979-1980, were renewed even though they did not provide documentation of the two-month requirement.
3. The Board is directed by statute to regulate pilotage tariffs. Because of the monopoly situation that is created by the two pilots associations, it is in the best interests of the public that the Board regulate the tariffs.

In the past, the Board has not taken an active role in setting the tariffs. It has given its "rubber-stamp" approval to the tariff increases negotiated between the pilot's associations and the shipping industry (see Recommendation No. 3).

4. The Board is protecting the public by providing a mechanism to help assure the protection of shipping, human lives and property and the environment from the dangers posed by foreign vessels in Alaskan waters.

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

1. Because the Governor's Office has not kept Board member appointments current, one of the Board's public member positions was unfilled for 14 months. Another Board member's term was lapsed for 16 months before he was reappointed.
2. The other public member on the Board, although his appointment was current, has attended only 50 per cent of the meetings. Thus, the Board has been operating with only five of its seven members.

3. The Division of Occupational Licensing has not provided the Board with adequate investigative services. Because of this, many complaints made to the Board have gone uninvestigated or, if an investigation was done, it was not timely (see Recommendation No. 5).
4. Because of the high turnover of licensing examiners within the Division of Occupational Licensing, the administrative services to the Board have lacked continuity. We received complaints in response to the questionnaires we sent out that the service provided by OL was either very slow or non-existent.

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

1. During the 1979 Legislative session, a bill was passed that increased the maximum fine payable by violators of the statute which required pilots aboard registered vessels from \$1,000 to \$5,000. This is in the public's best interest because it should have more of a deterrent effect on potential violators than the \$1,000 maximum penalty did.
2. In 1977, a section was added to the statutes which required any oil tankers, whether registered or enrolled, to either pick up a State-licensed pilot or carry a federally-licensed pilot during its entire voyage. It is in the public's best interest to take extra precautions to regulate oil tankers. However, the Board has endeavored to regulate enrolled vessels, in spite of the fact that the State has no jurisdiction over these vessels because of federal laws.
3. In 1976, two public members were added to the Board of Marine Pilots by statutory amendment.
4. In 1978, a change was made to the Administrative Code (AAC 12.56.060(c)) which made the process of obtaining an extension of route easier. We believe this was a sensible change made by the Board, because it eliminated redundant paperwork.
5. Also in 1978, another section was added to the Administrative Code (AAC 12.56.080(b)(3)) which gave the Board the authority to restrict a pilot from piloting in a certain area if he

has not worked in that area for two biennial periods. The restriction remains in effect until the Board determines that the pilot has sufficient knowledge and experience to resume pilotage in that area. Testimony against the regulation was received by the Board from several marine pilots. Their major complaint against the regulation was that it would cause the independent pilots to lose one of the two areas (southeast and southwest) they had previously been licensed for, thus benefiting the associations since competition would be lessened (see Recommendation No. 2).

- IV. 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, and availability of service which it has provided.
1. The public is invited, by notices in the four major newspapers throughout the State, to the Board's meetings. However, in many cases, the notices are not published timely enough to allow a person interested in attending a meeting time to prepare for the meeting.
  2. At each of the last three meetings of the Board, there have been at least four persons, other than the Board members or support staff, in attendance at the meetings.
  3. From the responses to the questionnaires we sent to the licensed pilots and the agents and in talking to other persons such as representatives from the pilots' associations, we heard a number of complaints about the service provided by the Board. For example, requests had been made for copies of Board minutes and notification of changes in statutes and regulations. However, no response was received from the Board or the Division of Occupational Licensing.
- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
1. Until the January, 1979, the pilots' associations and the shipping industry were very involved in the Board's decision making, since they negotiated the tariff increases before they were approved by the Board. Input from

the associations and the shippers will still be welcome; however, in the future, the Board plans to take a more active role in approving tariff increases (see Recommendation No. 3).

2. As stated in Criteria IV, number 1, the public is invited to the Board of Marine Pilots meetings to give input about Board business.
3. The public also has a chance to give input about proposed regulations, since proposed regulations have to be published in the newspapers before they can become effective. In the public notices, the public is invited to make testimony on the proposed regulations.
4. One area where the public is not given notice of impending changes is with the tariff increases. Proposed tariff increases are not published in newspapers.

VI. 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 the ombudsman have been processed and resolved.

1. Per Number 3 under Criteria II and Recommendation No. 5, the Division of Occupational Licensing has not provided the Board with efficient investigative services on complaints made involving marine pilots. As a result, the Board has been criticized by the U.S. Coast Guard, the shipping industry and other licensed pilots because it does not properly police the State marine pilots. Since the complaints have been made repeatedly, they apparently have not been efficiently processed and resolved.

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

1. Based on the requirements for licensure as a State marine pilot, the applicants should be qualified to pilot vessels in the inside waters of Alaska.
2. As stated in Number 2 under Criteria I, 18 per cent of the licensees either did not possess or did not show documentation of

possessing all of the qualifications required for licensure. Also, six per cent of the persons whose licenses were renewed, had not submitted documentation of having fulfilled the two-month requirement.

VIII. 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.

1. Applicants for a State pilot's license must by regulation be at least 25 years old. Age restrictions such as this have been found by the Alaska Legislature to be illegal and unnecessary.

IX. 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.

1. See Recommendations No. 1 through No. 7.

APPENDIXES

APPENDIX A

BOARD OF MARINE PILOTS  
REVENUES COMPARED WITH EXPENDITURES  
 Fiscal Year 1978  
 (UNAUDITED)

Revenues (see Schedule 1 and Note 1)	\$ 6,451
<u>Expenditures</u> (see Note 2)	<u>16,988</u>
Excess of Expenditures over Revenues	<u><u>\$ (10,537)</u></u>

*- increase -*

Schedule 1  
 Types of Revenue

<u>Revenues</u>	<u>Amount</u>	<u>Time of Collection</u>
Application and Examination Fee	\$ 10	With submittal of application
Temporary License Fee	\$ 50	With submittal of application
License Fee	\$200	Biennially

Note 1

Most of the revenues collected by this Board are comprised of license renewal fees. These fees (\$200) are collected once every two years, which causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, the revenue figure reported above is an average of the revenues collected in fiscal years 1977 and 1978, in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures includes those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for the efforts of other departments, such as the Department of Law, in assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

<u>Licensed Marine Pilots</u>	<u>As of May 1, 1979</u>
Number of pilots living in-State	31
Number of pilots living in other states	<u>16</u>
Total - Licensed Pilots	<u>47</u>
Number of pilots licensed to pilot in Southeastern Alaska	20
Number of pilots licensed to pilot in Southwestern Alaska	18
Number of pilots holding licenses for both areas	<u>9</u>
Total - Licensed Pilots	<u>47</u>
<u>Number of Board Meetings</u>	
Number of Board meetings in calendar years 1976-1978	6
Number of Board meetings in calendar year 1979 (as of May 1, 1979)	2
Average number of Board meetings per calendar year	2

Note 1

Statistics on the number of exams given by the Board have not been kept, and therefore are not available.

APPENDIX C

SCHEDULE OF AVERAGE PILOTS' INCOMES

1978 Income of a member of the Southeast Pilot's Association	\$ 58,518 <sup>1</sup>
Average annual income of a member of the Southwest Pilot's Association	120,713 <sup>2</sup>
Average annual income for a member of the Puget Sound Pilots' Association	76,000 <sup>3</sup>

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Note 1

This figure was taken from a tariff increase request proposal submitted to the Board by the Southeast Pilots' Association in September, 1978. The tariff increase request proposed that the Southeast tariffs be increased enough, over a two-year period, to bring the members' salaries up to \$93,041 annually.

Note 2

This figure came from a staff report prepared for the Board of Marine Pilots by a tariff analyst employed by the Department of Law. The report was prepared to study the Southwest Pilots' Association's tariff increase proposal, which estimated average earnings at \$95,000 annually.

Note 3

This figure was taken from a supplement to the staff report prepared by the Department of Law, as described in 2 above.

APPENDIX D

QUESTIONNAIRE SENT TO BOARD MEMBERS  
(see Note 1)

1. What do you believe to be the goals and objectives of the Board of Marine Pilots?

Responses

*To provide for the maintenance of efficient and competent pilot service on all the waters of the State of Alaska to assure the protection of shipping, commerce and the environment and the safety of human life and property.*

*State regulation of pilotage.*

*Mediating between pilots and shippers.*

*Making, giving and grading exams.*

2. Do you feel the Board is achieving its goals as you perceive them in question number 1? Please explain how the goals and objectives are or are not being achieved.

Responses

*The goals are being met by regulating the qualifications and licensing of Marine Pilots.*

*The goals are being met by requesting the investigation of violations of the Marine Pilot statutes and regulations.*

*The goals are being met by regulating pilotage fees.*

*The Board moves too slowly on most matters. One of the items on the 1-30-79 agenda was at least 18 months old.*

3. Do you feel more emphasis should be placed on some goals and less on others? Please explain.

Responses

*All the goals are being adequately pursued except the investigation of violations, which if not improved, could lead to the erosion of credibility concerning the Marine Pilot Statute, harm to commerce and the marine environment of Alaska.*

*More emphasis should be put on safety.*

*The Board should be more efficient.*

4. Do you feel that the absence of State regulations for marine pilots would be detrimental to the public's best interests? Please specify your reasons.

Responses

Yes! High standards for Marine Pilots must be maintained to protect the orderly marine commerce of the State whether it be freight, seafoods, forest products or crude oil as well as protection of the marine environment from pollution from tanker or other vessels navigational accidents.

Yes. It would be a jungle without regulation!

Yes. The U.S. Coast Guard regulations do not cover vessels under registry. Without State regulations there would be no pilotage requirements for foreign vessels.

Yes. The Coast Guard could cover things but it would be in the State's best interest to have some control in the intra-state coastal commerce.

5. Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license? Please explain.

Responses

No. Qualifications for a State license require proof of shiphandling capability in addition to a Coast Guard pilot's license which does not require other than observation of the area or route.

The skills are largely the same, however some of the State regulations are more specific.

Not sure on exactness, but they are similar.

6. Why is it necessary for the State Board of Marine Pilots to require an examination for a State marine pilot's license in addition to the examination required for a Coast Guard marine pilot's license?

Responses

Questions of a nature more pertinent to actual piloting of a vessel in an area are asked in a State examination in addition to those pertaining to the physical features of the area as are generally asked in a Coast Guard examination. The questions are asked by practicing marine pilots while the U.S. Coast Guard and its personnel are not versed in piloting vessels.

6. (Cont'd.)

*The State exam concentrates more on local ports and conditions.*

*The State exam has more details that need to be known on it.*

7. Do you think the State requirements for licensure as a marine pilot - i.e. requirement for a master's license, number of required dockings, and examination requirements - are reasonable? Too restrictive? Too loose? Please discuss your answer.

Responses

*Reasonable, any less restrictive and it would lead to erosion of the high professional standards required by marine pilots in the state of Alaska to protect its rich resources and the environment as well as commerce and safety of human life. These higher professional standards are needed in this State due to the more harsh and extreme conditions under which all commerce must operate in comparison to other areas.*

*Too restrictive - the Coast Guard license should be sufficient so far as written examinations are concerned. Ten dockings and undockings under AAC 12.56.030(5) (A) are more than necessary - three dockings and undockings should be sufficient. Twenty dockings and undockings under AAC 12.56.030(5)(B) could be made less restrictive. Perhaps some of the dockings and undockings could be supervised by individuals holding only a Coast Guard pilot's license for the area.*

*The requirements are reasonable.*

8. Do you think continuing education or reexamination should be required for the renewal of a State marine pilot's license? Please discuss your answer.

Responses

*Continuing education is always necessary and it is required by marine pilots in this State by submitting proof of experience or having worked in an area for license renewal. Experience is the best teacher in pilotage. Most pilot groups, in addition to on-the-job training for junior pilots, have programs for additional training including super tanker training at Grenoble, France and the simulators in New York.*

*No. The problem of discontinuing the license of an incompetent pilot exists, but the problem is not simple. The Coast Guard faces the same problem and there is no need for the State to duplicate their activities. The Coast Guard has more staff and budget to do this.*

*Yes. Some as any licensed pilot needs to have up-dated knowledge.*

9. Alaska Statute 08.62.040(a)(4) states that the Board of Marine Pilots shall regulate pilotage fees. Why do you think setting the tariffs should be a Board function?

Responses

*So that rates will be sufficient to support and attract highly qualified and competent marine pilots of a sufficient number to provide adequate marine pilotage services to all areas of the State where required by industry and commerce.*

*The basic function in rate regulation is to establish fair and equal rates. The State tariff should help control the "monopoly" situation created by the pilots' associations.*

*The Board is composed of the two groups who are directly concerned with tariffs - ships' agents and pilots.*

10. Is the staff of Occupational Licensing and/or other State agencies adequate to handle the administrative and enforcement needs of the Board? What staff support services are provided adequately? Inadequately?

Responses

*The staff of Occupational licensing should be adequate to handle the administrative needs of the Board. Personnel turnover and continual "new" people have made administration rather chaotic at times but hopefully that is being resolved. The enforcement of violations has been very poor due to lack of investigative officers and some cases slow down when the cases are finally passed on to the Attorney General's office.*

*We need continuity - there is too much turnover of the staff.*

*Reasonably adequate.*

*The support services are adequately provided, but the investigative services are inadequate.*

11. Are there any statutes or regulations that you believe are too obsolete, vague, unduly restrictive and/or inadequate to allow the Board to carry out its purposes? Please cite specific statutes and their weaknesses.

Responses

*Any statutes or regulations that are in this category, I believe, are being reviewed and changed by the Board.*

11. (Cont'd.)

AAC 12.56.030(5)(A) and (B) - dockings and undockings must be supervised by a State licensed pilot should be changed so that a pilot holding only a Coast Guard license can also do the supervising. AAC 12.56.030(5)(C) which requires the applicant to have done his dockings within two years prior to the date of application should be deleted - it is covered adequately by Coast Guard requirements.

AAC 12.56.030(6) - requirement for a physical exam should be deleted. It also is adequately covered by Coast Guard requirements.

AAC 12.56.030(7) - requirement that applicant be at least 25 years old should also be deleted. It may be unconstitutional.

The same requirements should be deleted from AAC 12.50.040 and 050.

12. What changes could be made to the Board which would improve its service to the public?

Responses

*I believe the Board is adequate to serve and protect the public if it gets proper assistance in upholding the statutes and regulations.*

*The public members have not been active.*

*The Board needs to take faster action on its decisions.*

13. Please add any other comments or suggestions that you believe would enable us to better evaluate the public need for the Board. Thank you for your cooperation!

Responses

*If the Board of Marine Pilots is abolished the State Pilotage Statutes would be meaningless and the effect would be chaotic on the commerce of the State of Alaska. Foreign vessels would come and go as they please having no concern for the environment and the safety of life and property within the State and answerable to no State agency. The high standards of qualification for marine pilots would erode if not governed and their rates regulated by the Board.*

Note 1

At the time this questionnaire was mailed to the Board members there were six members on the Board. Of the six questionnaires we sent out, we received four responses. The responses are summarized above.

APPENDIX E

QUESTIONNAIRE SENT TO THE  
LICENSED MARINE PILOTS

The following questionnaire was sent to the licensed marine pilots. For each question on the questionnaire, we have indicated the percentage of yes or no responses. We have also included examples of typical written comments for each question as compiled from the questionnaires (see also Note 1).

		<u>Percent of Response:</u>		
		<i>(See Note 1)</i>		
		<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
1.	<u>Do you feel that the absence of the State Board of Marine Pilots would be detrimental to the public's best interests?</u> <u>Please discuss.</u>	92	8	0
	- <i>The Board is needed to assure that only qualified pilots are licensed.</i>			
	- <i>The Board is needed to protect Alaskan waters from the risks posed by foreign vessels.</i>			
2.	<u>Do you believe the Board of Marine Pilots is operating in the public's best interests?</u> <u>If no, please explain.</u>	92	8	0
	- <i>Licensing pilots and investigating accidents is in the public's best interests.</i>			
3.	<u>How would you classify the present Board requirements for determining that an applicant has acquired the skill and knowledge necessary to function as a marine pilot (i.e. requirements for a Coast Guard master's and pilot's license, number of dockings required, and the examination requirements)?</u>			
	a. <u>too restrictive</u>	19		
	b. <u>reasonable</u>	69		4
	c. <u>not restrictive enough</u>	8		
	<u>Please discuss the reasons for your answer.</u>			
	- <i>The exam should be done away with because the Coast Guard exam is sufficient.</i>			

Percent of Responses  
(See Note 1)  
Yes   No   No Opinion

3. (Cont'd.)

- *The docking requirements are good - they require a pilot to demonstrate practical ship-handling experience.*
- *Dockings requirement is too restrictive because of a lack of ships in an area.*

4. Do you feel the Board has permitted all qualified applicants to obtain licensure as a marine pilot?

69   27   4

Please explain:

- *The Board has simply followed the letter of the laws in licensing.*
- *Applicants unwilling to play the political game have been discriminated against.*

5. Do you feel it is necessary for the Board to require applicants for a State marine pilot's license to take a State examination in addition to the examination required for a Coast Guard license?

77   23   0

Why or why not?

- *The State exam goes into more detail about local knowledge and shiphandling than the Coast Guard exam does - the exam should be kept.*
- *The State exam is an unnecessary duplication of the Coast Guard exam.*

6. In your opinion, is the State examination required for licensure as a marine pilot a fair and reasonable test of the skills and knowledge an applicant should possess in order to function as a marine pilot?

77   23   0

Please comment.

- *The exam is somewhat out-dated regarding lights, radio call signs, etc.*

7. Do you have any suggestions for improving the exam or exam procedures? Not applicable
- *The exam should be done away with - applicants should be licensed on the basis of their Coast Guard exams.*
  - *The exam questions should be updated.*

8. Do you feel the procedure for obtaining an extension of route is reasonable? 69   23   8

Can you think of any improvements that could be made to the present system of obtaining an extension of route?

- *The exams for extensions of route should only cover local knowledge applicable to the route being applied for.*

9. AAC 12.56.080(b) requires a pilot to have worked in a licensed deck officer capacity for two months in the area in which he was licensed during the last biennial period in order to get a State pilot's license renewed. The two months must have been worked within the last two biennial periods.

Do you think this requirement is:

- |                                  |    |
|----------------------------------|----|
| a. <u>too restrictive</u>        | 69 |
| b. <u>reasonable</u>             | 23 |
| c. <u>not restrictive enough</u> | 8  |

Please explain further.

- *The requirement is much too restrictive. A pilot may not be able to find sufficient work in an area to meet the requirement.*
- *A pilot should stay familiar with an area. Frequency trips are important.*
- *One orientation trip into an area should be sufficient to keep a pilot familiar with an area.*

Percent of Responses  
Yes No No Opinion

9. (Cont'd.)

- *The terms "area" and "licensed deck officer capacity" are too hard to define.*

10. Do you think continuing education or re-examination should be required for the renewal of a marine pilot's license?

23 77 0

Why or why not?

- *Reexamination should not be necessary as a pilot should keep himself knowledgeable in the areas for which he is licensed.*
- *Everytime a pilot goes aboard a ship he is continuing his education.*

11. Do you believe it should be the Board of Marine Pilots' job to regulate the tariffs marine pilots can charge for their services?

88 8 4

Why or why not?

- *By regulating tariffs, the Board eliminates competition.*
- *If the Board didn't set the rates, one of two things would happen: a) pilots would charge unreasonable rates, or b) the shipowners would work pilots against each other, causing rivalry and chaos.*

12. Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license?

38 58 4

Please explain.

- *To obtain a State pilot's license, a pilot must demonstrate his shiphandling, local knowledge and practical navigation experience, whereas a pilot could get a Coast Guard license without ever having handled a ship.*



Note 1

Number of questionnaires sent to State licensed Marine Pilots	<u>54</u>
Number of Marine Pilots who responded	<u>26</u>
Response Rate.	<u>48%</u>

APPENDIX F

QUESTIONNAIRE SENT TO AGENTS

The following questionnaire was sent to nine shipper's agents who represent ship owners within the State of Alaska. Six of the agents responded (response rate of 67 per cent). For each question on the questionnaire we have indicated the number of yes or no responses. We have also shown the most typical written comments for each question as compiled from the questionnaires.

		<u>Number of Responses</u>		
		<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
1.	<u>In your opinion, are marine pilots necessary to assure the safety of human life and property on board vessels within the inside waters of Alaska?</u>	6	0	0
	<u>Please explain.</u>			
	- <i>A vessel takes aboard a pilot to gain the benefit of his personal knowledge and experience as it relates to local waters and their hazards.</i>			
2.	<u>Do you think it is necessary for the State to regulate pilotage of those vessels which come under State jurisdiction?</u>	5	1	0
	<u>Please explain.</u>			
	- <i>The State should regulate pilotage aboard registered vessels because the Coast Guard doesn't regulate registered vessels, and they should be regulated by someone.</i>			
3.	<u>If the State Pilotage Act was repealed, would those shippers previously subject to the State Act continue to employ marine pilots?</u>	5	1	0
	<u>Why or why not?</u>			
	- <i>A majority of foreign vessels would continue to employ pilots. Whether a U.S. vessel under registry would employ a pilot would depend on the experience and local knowledge of the vessel's master.</i>			

Number of Responses  
Yes No No Opinion

- |    |    |   |   |   |   |
|----|----|---|---|---|---|
| 4. | a) | <u>Do you think the State Board of Marine Pilots should be setting the tariffs marine pilots charge for their services?</u>   | 4 | 2 | 0 |
|    | b) | <u>Do you think marine pilotage fees should be decided upon by the shipper (or agent) and the marine pilot, leaving the Board of Marine Pilots out of the decision?</u>   | 2 | 4 | 0 |
|    | c) | <u>Please explain your answers to the above questions.</u>  |   |   |   |
|    | -  | <i>The Board should regulate tariffs because there appears to be a monopoly operation of pilotage in Alaska, which must be regulated by a government agency.</i>  |   |   |   |
|    | -  | <i>The time spent by the Board in analyzing tariff increases has not been adequate.</i>   |   |   |   |
|    | -  | <i>Each district should set its own tariff fees based on the difficulty factors of the area.</i>  |   |   |   |
| 5. | a) | <u>In your opinion, is the present system of negotiating tariff increases (i.e. setting up an industry-pilot association negotiating team which then makes its recommendation to the Board) an adequate system?</u> | 4 | 2 | 0 |
|    | b) | <u>Do you have any suggestions for improving the system?</u>  |   |   |   |
|    | -  | <i>Let the pilots and industry negotiate tariff increases but keep the State out of it.</i>   |   |   |   |
|    | -  | <i>The present system is the only fair approach.</i>  |   |   |   |

6. Do you find that employing pilots through a pilots' association is an advantage or a disadvantage to your business?

a. advantage	2	
b. disadvantage	1	1
c. both	2	

Please explain.

- *We prefer to have the same pilot handle our vessels because he is completely familiar with the vessels' handling characteristics.*
- *We do not have control of a pilot hired through an association.*
- *An association provides an efficient dispatching service.*
- *Because of the associations, competition is non-existent.*
- *The associations have too much control over future potential pilot applicants.*
- *Independent pilots have little input into rate and other regulatory matters.*

7. Are there any other comments you would like to make about the Board or its activities? Thank you for your cooperation in filling out this questionnaire!

- *There is no enforcement or investigation of accidents or violations.*
- *In general, the Board has failed to take an active part in the pilotage problem.*

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SEP 20 1979

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LEGISLATIVE  
AUDIT

Sept. 24, 1979

State of Alaska  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Gentlemen:

The following is my response to the Legislative Audit's preliminary report, "A Performance Review of the Board of Marine Pilots - June 15, 1979".

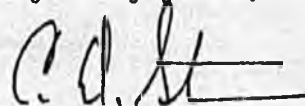
In general, I agree with the report conclusion: The board should continue to regulate and license the marine pilotage profession.

I disagree with the recommendation to discontinue the requirement for State - administered examinations. I think testing rules of the road is a duplication of Coast Guard testing and should be discontinued. I think the number of examination questions should be reduced to cover certain items usually not covered by the Coast Guard exams. I think the oral examinations should be continued.

I do not particularly disagree with the other recommendations.

I think the docking and undocking requirements by state law are too restrictive and should be changed somewhat. This is one important point and I feel that the audit report touched too lightly on this subject. This matter deserves further investigation by the audit division.

Very truly yours,

  
Charles D. Stover  
Board Member

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

Letter obtaining info  
from Am. Pilot Association.

George A. Quick  
President  
Ass. of Maryland Pilots

# ASSOCIATION OF MARYLAND PILOTS

1316 SOUTH BAYLIS STREET

BALTIMORE, MARYLAND 21224

TELEPHONE  
342-6013

TELEPHONE  
276-1337

October 26, 1979

To The Trustees and Members of the American Pilot Association

Re: The Role and Function of a Pilot

The enclosed paper was presented at a recent symposium held in Washington D.C. in September of 1979.

Since it represents a departure from commonly held views, some explanation of the circumstances and reasons for the position taken in the paper should be offered.

Pilotage is coming under greater scrutiny by the political institutions than at any previous time. On the Congressional level we've had recent moves to place licensing under Coast Guard control, and a current GAO report to Congress recommends such action. On the State level we have Sunset Laws in many states that cause the compulsory pilotage laws to self-destruct periodically and place the burden on the pilot to prove that his continued existence and state protection serve the public interest. On the International level we have IMCO considering international standards on the training, qualification and operational procedures for pilots; and the International Association of Ports and Harbours defining the role and function of the pilot.

With the emphasis in government today on the creation of a society completely free of risk, we can expect continued scrutiny and examination of the pilot's role in protecting the safety of the ship, the public and the environment from the consequences of marine casualties.

If we must stand in the glare of the public spotlight periodically and undergo a political "physical exam" we should make it clear that we exist to serve the public interest, that we are aware of our public responsibilities and that we are deserving of the protection of the State.

Acceptance of shipping management's definition of the role and function of the pilot as "a servant of the vessel" who "advises the master" places us in the untenable position of justifying our protected status under State laws on the basis of satisfying the

Re: The Role and Function of a Pilot  
Page 2

private interests of the shipowner. If our official position before the public in a political forum, such as Congress or a State Legislature, is as the advisor and servant of the ship filling a purely private interest need of the owner to expedite the ship's schedule for commercial reasons, we will have little claim to public protection. Unless our public role is emphasized to a greater degree there is a very good possibility that the public, i.e. the political institutions, will see our disputes with an antagonistic shipping management as purely a labor/management struggle. When the issues of sunset review, pilotage rates, regulatory boards and other matters affecting pilots arise we must be prepared to show that the public has a stake in protecting the pilot from the domination and control of shipping management. Past experience has shown that shipping management invariably attempts to exploit any weakness or failing on our part to denigrate the role and function of the pilot in order to gain the upper hand in rates, regulation, licensing or control over our profession.

Acceptance of a definition of a pilot in terms that characterize him as a servant who advises the master creates a very weak and misleading public image that does not reflect the actual situation on the bridge of a ship. In order for a pilot who has the conn to be described as an "advisor" requires construing the term in a manner quite different from its commonly understood meaning. It conjures up a picture in the average layman's mind of a master actually maneuvering his vessel with a pilot sitting in the background and available for comment or consultation on local conditions. This is the image frequently offered by the opposition when pilotage rates or regulations are being discussed and the image creates an obstacle to the recognition of our true worth.

There has been a reluctance in the past to assert ourselves on the issue of the pilot's role and function. This has probably been due, in part, to a hope that the advisor designation might offer some protection from liability after a casualty. It is clear from reviewing the court cases dealing with pilot liability that it makes little difference whether the pilot contends that he is in control of the navigation or merely serving as an advisor, if a casualty occurs because of his negligent actions, be they orders or advise, he is liable for the damages.

It would seem that there is no benefit in accepting management's characterization of our role and function aboard ship. We should develop our own view of the part we play in the industry and the interests we serve and protect, and that position should be readily

Re: The Role and Function of a Pilot  
Page 3

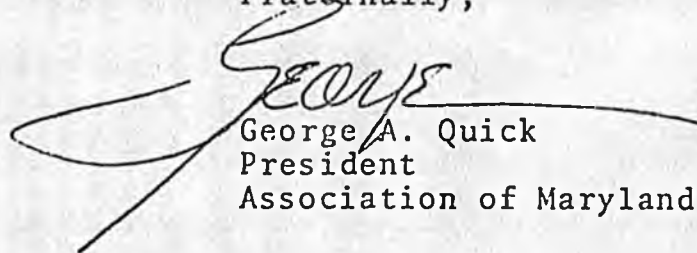
understandable to the layman and justifiable to the political establishment.

The paper and recommendations attached represent a personal viewpoint and policy based on the experience in Maryland--- other pilots with different experiences may hold different viewpoints.

As a trustee of the American Pilot Association I would like the views expressed to serve as a starting point for discussion between us leading to the development of a national policy on pilotage matters. If we don't take the initiative in defining our own goals and role, we may find the AIMS position paper prevailing by default.

I would greatly appreciate your comments.

Fraternally,

A handwritten signature in cursive script, appearing to read "George A. Quick", with a long horizontal flourish extending to the right.

George A. Quick  
President  
Association of Maryland Pilots

NATIONAL ACADEMY OF SCIENCES

SYMPOSIUM ON PILOTING AND VESSEL TRAFFIC SYSTEMS

SEPTEMBER 12-13, 1979

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PILOTAGE

---

by George A. Quick, President  
Association of Maryland Pilots

## PILOTAGE

by George A. Quick

I've been given 40 minutes and the promise that I was free to express my views on maritime pilotage in the United States with emphasis on problem areas and possible solutions. Since it is my belief that one of the major problems is a lack of understanding of the role and function of a pilot, even among many pilots, I am going to seize this opportunity to discuss pilotage as an institution from my viewpoint.<sup>1</sup> Knowing that my views won't be shared by everyone, I've attached references or annotations to explain or support the basis of my beliefs.

Before we can get into the finer points that require discussion, I should first describe the pilotage scene as it exists in the United States today for the benefit of those in the audience who aren't familiar with the subject.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping.<sup>2</sup> We may not be the oldest profession

but we are certainly the oldest regulated profession.<sup>3</sup> The Colonial Legislatures had pilotage laws in effect prior to our becoming a nation.<sup>4</sup> The first Congress assembled after the adoption of the Constitution in 1789 realized that the delegation of the right to regulate interstate and foreign commerce granted to the Federal Government by the Constitution would interfere with the pilotage systems and regulations in place in the various states and quickly passed an Act that left pilotage under state control.<sup>5</sup>

The state laws generally provided for a system of regulated public pilots who conducted ocean-going ships to and from the sea and whose terms and conditions of service were established by law.<sup>6</sup> Pilotage remained exclusively a public service under state control until 1871 when Congress acted to provide for the federal licensing of pilots on steam vessels engaged in the coastwise or interior commerce of the country.<sup>7</sup> At that time steam engines were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the Industrial Revolution. Since many state laws exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, Congress felt there was a need to insure

that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new Act of Congress by creating a different category of federally licensed "pilots" who were employees of the ship and who often were actually the master or other officer acting as "pilot" by virtue of an additional endorsement on his license has caused confusion in defining the term "pilot" and in defining the role and function of a pilot.

The term "pilot" in the United States is used to describe two entirely different sets of relationships:

1.) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the shipowner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

2.) It can refer to the state licensed publicly regulated pilot who is not subject to the selection and control of the shipowner and whose terms and conditions of service are established by statute and not subject to negotiation.<sup>8</sup> The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court

cases applying principles of maritime law.

In simple terms, the federally licensed "pilot" is acting in a private capacity on privately agreed terms and conditions, and the state licensed "pilot" is exercising a public function on publicly regulated terms and conditions.<sup>9</sup>

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a "voluntary" pilot and referring to the pilot exercising a public function as a "compulsory" pilot although the distinction still becomes blurred in some contexts.<sup>10</sup>

In a sense the coastwise seagoing vessel is compelled under the 1871 statute to employ a federally licensed pilot in the same manner as it is compelled to employ a specified complement of licensed officers and engineers or certified seamen, but that is not the type of compulsion referred to in the distinction between "voluntary" and "compulsory" pilotage. In the "voluntary pilot" situation the employment contract is by mutual agreement between the shipowner and the employee pilot, even though the shipowner is naturally compelled to select his employee from among a class i.e. federally licensed pilots. In the "compulsory pilot" situation the pilot is forced

on the shipowner by compulsion of law and under terms and conditions established by law. The concept of "compulsory pilotage" excludes any right of the shipowner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

The British and Canadian practice is to avoid the confusion by legally defining a "pilot" in the following terms:

"'pilot' means any person not belonging to the ship who has the conduct there"

Canada, Pilotage Act, Sec. 2(i),  
(1971)

Great Britain, Merchant Shipping  
Act of 1894, sec. 742, amended  
by Pilotage Act of 1913.

Under their definition employees of the ship who navigate the vessel in pilotage waters are not considered to be, nor licensed as, pilots.

Under British and Canadian practice an employee comparable to our federally licensed pilot would be granted a pilotage certificate, as distinguished from a license, exempting the vessel on which he serves from the obligation of taking on board a licensed public pilot. The pilotage certificate is issued

for a one year period on the basis of relatively limited experience, probably obtained only on the ship employing the certificate holder, and is restricted to the ship named on the certificate.

The issuance of a license as pilot is limited to those who undertake piloting as a distinct profession, with substantially higher standards similar to our state licensing procedures, and whose terms and conditions of employment are the subject of public regulation.

It seems to me that this avoids the unhappy situation where no distinction is made between the professional pilot with broad experience exercising a public responsibility and the company employee with relatively limited experience who works for the shipowner in a private capacity.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary if we are to progress further in our discussion of the pilotage scene.

The state licensed pilot is regulated by state statutes creating "compulsory" pilotage. His state license is both a certificate of competency and a

franchise as a public service requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law.<sup>11</sup> The purpose is to protect the safety of shipping by assuring a complement of pilots will be available when needed at designated locations (pilot stations) and by placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.<sup>12</sup>

As part of their franchise as a public service it is compulsory for the pilots to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services at all times, to go to any ship needing his services without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

In order to comply with his obligations under a compulsory pilotage statute, the individual pilot has to devote a considerable part of his early years to education and training to develop professional expertise,<sup>13</sup> he has to invest his capital in his share of pilot station vessels, launches, offices, shore stations, communications equipment, automobiles and all the other equipment and facilities needed to maintain and operate an essential service to shipping within his pilotage district, he has

to be responsible for and employ on his pilot station vessels a considerable work force of masters, watch officers, engineers, launch operators, seamen and stewards, as well as an office staff of dispatchers, drivers and administrative personnel needed to operate a pilotage system at a major port. He undertakes these obligations on speculation as to the future needs of shipping at the port he serves and with no guarantees or contractual obligations from the shipping industry to protect his investment or future income.

Compulsory pilotage is the creation of law, not of contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the shipowner or the vessel he pilots. The shipowner is not personally liable for the acts or negligence of the public pilot,<sup>14</sup> although the ship is liable "in rem" under American law. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation.<sup>15</sup> He sees his duty and obligation as being owed to local political authority and the public, rather

than to the shipowner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast the federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the right to exercise control over his employees in the performance of their duties.<sup>16</sup> The terms and conditions of employment are privately agreed to with the shipowner. The prospects of future employment are dependent upon how well the employee satisfies the demands placed upon him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are exempt from the protection of state compulsory pilotage laws. The majority of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

The 1971 collision of the ARIZONA STANDARD and OREGON STANDARD under the Golden Gate Bridge in San Francisco is a good illustration of the consequences of exempting coastwise tankers from state compulsory pilotage laws. Both tankers were under the sole control of masters attempting to perform as pilots on the basis of a Coast Guard endorsement, and under pressure to move their ships in spite of the unacceptable visibility and limited experience they possessed. The resulting oil pollution and national publicity was one of the driving forces behind the Coast Guard's move to establish Vessel Traffic Systems. As an alternative to a massive effort to install expensive and sophisticated electronic systems of doubtful effectiveness, wouldn't it have been wiser to consider efforts to insure the competency of personnel handling ships by increasing the amount of experience and recency of service requirements for licensing; and if the vessel is large enough or carrying oil or hazardous cargoes, so as to present a threat to the environment or the public, her movement be under compulsory pilotage so as to insulate the pilot from

commercial pressures? Both the legislatures of California and Washington attempted to do just that, as a response to the threat of oil pollution in their waters, by attempting to pass state legislation placing large oil tankers in coastwise trade under state compulsory pilotage laws. Both attempts failed, the Washington effort going all the way to the U.S. Supreme Court, because of pre-emption of the field by the Congressional Act of 1871, which places exclusive regulation in the Coast Guard.

I've spent a fair amount of time discussing the contrasting roles of the federal and state licensed pilots, and I am afraid this may create the erroneous impression that federal licensed employee pilots are a major factor in the piloting of large ocean-going ships. They are not. Their employment is limited to a very small number of sea-going ships engaged in the coastwise trade. To put the situation in numerical perspective there are about 1200 compulsory pilots nationwide and there are probably less than 50 federally licensed employee pilots working regularly, primarily employed on coastwise tankers of the major oil companies. The vast majority, probably well over 95%, of ocean-going ships moving on the inland waterways are under the control of state licensed public pilots operating in a compulsory pilotage

system.

I believe there is not sufficient understanding or appreciation of the concepts underlying compulsory pilotage and how it functions to protect and insulate independent decision making effecting the safety of the ship from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not "belong to the ship," i.e. free of the shipowner's interest and control.

Although compulsory pilots hold licenses issued by the state, they also hold federal pilot licenses as that is generally one of the first steps in beginning a career as a professional pilot. I have experience in serving in both the "voluntary" private employee pilot and the "compulsory" public pilot capacities. Keeping the foregoing in mind, I would like to express my views on some aspects of piloting.

#### THE COMPULSORY PILOT AND MASTER RELATIONSHIP

The personal relationship between the master and the pilot is invariably a friendly one, based on mutual respect and a common heritage as professional seamen regardless of nationality. They both have the same goal, a safe and expeditious transit of the ship over the pilotage route. Their interests seldom conflict and I doubt if either gives much thought to the finer points of their legal relationship.<sup>17</sup>

Custom, history and tradition dictate the practical working arrangement worldwide as shipping is international in character and the relationship has to be uniform and standardized regardless of the flag the ship flies or the differences in nationality of the pilot, the master and the crew. The relationship is not a subject matter for discussion between them, it is known and understood from long experience and cannot vary from ship to ship because the pilot, the master or shipping management would personally prefer some other relationship.<sup>18</sup> To permit any variation would cause great confusion as to the role and function of both the master and pilot, and the rights and obligations each owes the other.

The law governing the relationship reflects general shipboard practice and can be found in the works of legal text writers and the court decisions that define the duties and obligations.<sup>19</sup> They are the result of centuries of maritime history and tradition that have developed the basic principles.<sup>20</sup>

The first and most important legal principle is that the compulsory pilot is not the employee, servant, or agent of the shipowner, the ship, or the master. He is placed aboard by the state with the conditions of his service fixed by

law. The shipowner or master has no right of selection or control over him. The compulsory pilotage statute insulates him from the commercial interests of the shipowner and protects him from coercion. His fee is set by law and he can receive no increase in fee for accepting greater risks nor be penalized with a lesser fee for taking precautions in conflict with the owner's interests. His future employment does not depend upon satisfying the demands of the shipowner to maintain schedule or move the vessel with unacceptable margins of safety. He is free to exercise independent professional judgement as to the acceptability of the risks. The public nature of his role leads him to place a higher priority on the protection of life, property and the environment than the master who has to consider all decisions in the light of the owners commercial interest. The compulsory pilot's autonomy and independence are, I believe, the single most important safeguard that exists in the shipping world.

Unfortunately most of the management people we deal with on a day to day basis generally do not have a background that includes shipboard experience and they don't fully understand the pressures and responsibilities placed on the master and how the master/pilot relationship functions as a buffer against

shoreside management pressure. The usual shore personnel we encounter have a strong background in traffic, terminal operations, stevedoring, freight solicitation or other related job categories that have a heavy emphasis on cost effectiveness, competitive advantage, and maintenance of schedule. These attitudes unfortunately impact on the master and he may rightly believe that his future employment may depend upon how well he handles the conflicting demands of ship safety and the shipowner's commercial interest. In a recent survey of ship masters, 40% indicated that maintaining schedule was the prime criterion in judging their job performance, and 50% indicated that there was strong pressure to meet schedules even under poor conditions.<sup>21</sup> It is not unusual to have an apprehensive master faced with a risk he sees as unacceptable to seek shelter from his owners under the compulsory pilot's cloak of insulation by indicating diplomatically that it would be appreciated if the pilot accepted the responsibility for the decision not to attempt the transit under the existing conditions. It is clear that, considering the exposure to risk that large ocean-going ships are subjected to in confined pilotage waters, the casualty rate would be far higher if it were not for the freedom of compulsory pilots to exercise their own best judgement without fear of management retaliation.

The second principle is that the pilots pay a price for the independence and insulation from shipowner

control that they derive from compulsory pilotage statutes.

If the control over navigation is taken away from the shipowner and the master and placed in the hands of the compulsory pilot under operation of law, with no right of selection and control, the shipowner and master are released from personal liability for the acts of the pilot - as he is not their employee or servant.<sup>22</sup> The pilot stands alone and a leading text on Admiralty law states it rather succinctly:

"He so far is in charge of the ship that his errors expose him to appalling consequences....If he injures the vessel which employs him he is liable for the damages. If through her he injures other property, he is liable for that as well, and if the vessel employing him is by his act exposed to liability to the other vessel, he is liable over to her."

Robinson on Admiralty, p. 697

The potential personal exposure to liability that the pilot has when he assumes responsibility for a multi-million dollar ship is for all practical purposes uninsurable as the premiums would approach or possibly exceed the pilotage charges. If he attempted to have the cost of insurance included in the pilotage tariff it would be met with strong shipowner opposition as the owner's basic insurance already covers the owner for the acts of the pilot, and if the pilotage charges also included the cost of liability insurance, the owner would in effect be required to pay for the same

coverage twice. If he attempted to negotiate an exculpatory contract or indemnification agreement with the shipowner, as is common with voluntary pilots acting as docking masters, it would probably fail as his relationship with the shipowner is not a contractual one subject to negotiated terms.<sup>23</sup> The end result is that the compulsory pilot steps on the bridge of a ship and takes charge with a horrendous uninsured personal liability hanging over his head. Management frequently belittles that risk by claiming the owner's recourse against the pilot is financially unreal, as the pilot does not have the resources to pay for the damages he could incur. That makes little difference to the pilot, he is liable for all he owns and faces the possibility of bankruptcy if harm comes to the ship through his error. The fact that pilots are not sued more frequently and placed in bankruptcy is an act of compassion on the part of Admiralty lawyers and insurance companies.

The potential liability has always colored the pilot's attitude. He will not share responsibility or become involved in navigation by committee. He will demand having effective and absolute control over the ship, if there is any intentional or substantial interference by the master with his control he will probably consider himself displaced and leave the bridge

so there will be no question of who was in charge when the casualty occurs. It should be remembered that the relationship of the pilot to the ship is that of a stranger and in the event of a casualty it may be difficult for the pilot to prove the actual circumstances, be it intentional interference, delay in carrying out orders or error on the part of the ship's personnel. The compulsory pilot has far more than action against his license and a suspension at risk when he takes charge of a ship.

The third principle is that the pilot does not serve in an advisory capacity.

The "Report of the Royal Commission on Pilotage"<sup>24</sup> contains a detailed analysis of the British and Canadian statutory definition of the term:

"'pilot' means any person not belonging to a ship who has the conduct thereof."

The Royal Commission decided that to conduct means:

"to have charge and control of navigation; in other words, of the movement of the vessel," and "Similarly, if anyone is merely used as an advisor and not entrusted with the navigation of the ship, he is not the pilot of that ship."<sup>25</sup>

The Royal Commission, after reviewing the actual practices followed aboard ship concluded:

"The pilot does not act as an advisor to the Master but actually navigates the ship. In point of fact the Master is then, to a certain extent, an advisor to the pilot when he points out the peculiarities of the ship. ....This factual situation which corresponds to the legal definition of 'pilot' is, in fact, the only realistic solution because, if pilots were used merely as advisors, navigation would be very hazardous and, at times, it would be impossible to proceed safely..... The first course a ship is committed to is frequently the last. If bad judgement has been used, the result is inevitable and swift.... ....The legislation of most countries recognize the realistic situation that there is not time for advice, consultation and deliberation between the pilot and Master and that the pilot must navigate the vessel himself. How this situation is covered in legislation is a question of semantics,..."<sup>26</sup>

The authoritative legal text "Corpus Juris Secundum" states the law as derived from the American Court decisions to be:

"Generally, while exercising his functions, a pilot is in sole control of the navigation of the ship and his orders must be obeyed as in effect orders of the master. While a pilot who is in charge of a vessel supersedes the master in so far as the navigation of the vessel is concerned, the master does not surrender his vessel to the pilot and the pilot is not the master; the master is still in command of the vessel, notwithstanding the presence of a pilot. There are occasions when the master may and should interfere and even displace the pilot. Thus, the master may properly displace an obviously incompetent or intoxicated pilot, and the circumstances may be such

as to require the master to displace a compulsory pilot because of incompetency or physical incapacity. If, however, the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot, but not blindly. In order to be justified in displacing a pilot, the master should be sure that the pilot is for some reason incompetent, and the master or other officer is not bound to interfere with, or to displace, the pilot, if the pilot is not making an obvious mistake, or danger from his acts is not imminent. The view has been expressed that, even where the master deems a compulsory pilot incompetent, the master is not under an absolute duty to displace the pilot."<sup>27</sup>

The American court decisions have dealt in broad terms with the relationship between the master and the pilot, and the right or duty of the master to displace a pilot.<sup>28</sup> But, they have not explored the finer points of the division of control between the master and the pilot to the same extent as the British courts. Prior to 1913, British law held both the owner and the ship free of all liability for acts of compulsory pilots, so many cases arose determining the role and duties of a pilot and whether the action causing the damage was properly within the duty of the master or the pilot. Since limitation was only granted on the basis of sole fault of the pilot, the cases generally attempted to include the master's lack of vigilance as contributing to the accident

so as to avoid the injured party being forced to look only to the pilot. For a discussion of the problem see THE CHINA, 7 Wall. (U.S.) 67, (1868.) Due to the International nature of maritime law and pilotage, and in the absence of American cases holding to the contrary, the British decisions are applicable to the division of control between the master and the pilot on ships engaged in foreign trade in United States' waters, the compulsory pilot situation.

G.K. Geen, the author of "The Law of Pilotage" includes in his excellent work a review of the British case law on the division of control between the master and pilot.<sup>29</sup> He has concluded:

"The attitude of the courts to the master-pilot relationship is based on precedents created more than a century ago, the guiding principle of which has been throughout that the paramount danger to a ship under pilotage is that created by a 'divided authority.' Attention was drawn to this danger on innumerable occasions, but was perhaps put most succinctly by Dr. Lushington in the case of THE PEERLESS in 1860:-

'There may be occasions on which the master of a ship is justified in interfering with the pilot in charge but they are very rare. If we encourage such interfering, we should have a double authority on board, a divisum imperium, the parent of all confusion, from which many accidents and much mischief would probably ensue. If

the pilot is intoxicated, or is steering a course to the certain destruction of the vessel, the master no doubt may interfere and ought to interfere, but it is only in urgent cases.'

It would appear, however, from what has been deduced so far, that the legal relationship between the master and the pilot is based on principles which are contradictory:-

- (i) that division of authority is inimical to the safety of navigation.
- (ii) that the pilot, by definition, has the conduct of the ship.
- (iii) that the master, by definition, has command or charge of the ship, a definition which specifically excludes the pilot.

In order to reconcile these apparent inconsistencies it becomes necessary to:-

- (i) differentiate between the expressions 'to conduct a ship' and 'to be in command of a ship'; and
- (ii) draw up a code of procedure for vessels under pilotage based upon legal decisions, which defines the respective duties of the master and the pilot.

With regard to the first of these requirements it is evident that confusion as to the difference in meaning between these two terms is not confined to the layman. The words of Bargreave Deane, J., for example, in the case of THE NORD would indicate that he considered the two expressions to be synonymous when he said:- 'I think the word 'conducted' means that the pilot is in charge...he is in command.' The Canadian Royal Commission,

however, drew a very careful distinction between the two expressions thus:-

'To conduct a ship' must not be confused with being 'in command of a ship.' The first expression refers to an action, to a personal service being performed; the second to a power. The question whether a pilot has control of navigation is a question of fact and not of law. The fact that a pilot has been given control of the ship for navigational purposes does not mean that the pilot has superseded the Master. The Master is, and remains, in command; he is the authority aboard. He may, and does, delegate part of his authority to subordinates and to outside assistants whom he employs to navigate his ship, i.e., pilots. A delegation of power is not an abandonment of authority, but one way of exercising authority.'

With regard to the second requirement, having established that both the pilot and the master have active roles to play, it becomes essential that the duties of both should be clearly defined in order to minimise the dangers which are inherent in the 'divided authority' situation."

G.K. Geen then goes on to analyze and cite British cases pertaining to the general duties of the master and pilot,<sup>30</sup> the legal meaning of interference,<sup>31</sup> keeping a lookout,<sup>32</sup> observance of collision regulations, sound signals, private sound signals,<sup>33</sup> whether to proceed,<sup>34</sup> anchoring, speed,<sup>35</sup> and the use of radar.<sup>36</sup>

From his analysis it is apparent that the British and American law respecting the role and function of a

compulsory pilot are consistent.

He is to be placed in navigational control of the ship and give all orders effecting the navigation of the ship, i.e. rudder orders, courses, speed, anchoring, weighing anchor, whistle signals, and the like. He is entitled to the cooperation of the master and crew and they are to see that his orders are carried out and are not to interfere with his control of the navigation unless the pilot is manifestly incapacitated, incompetent, or placing the ship in clear and imminent danger.

In the "voluntary" pilot situation where the pilot's status is one of an employee the law states that the vessel shall "be under the control and direction of pilots" licensed by the Coast Guard. (The Act of 1871, now found in 46 USC §364). On the surface it would appear he has nearly the same role to play in navigating the ship as a compulsory pilot, but his employee status and relationship with the master interfere with his insistence on effect control. After all, the employee pilot thinks, he and the master are employed by the same shipowner and answerable to the same licensing authority, the Coast Guard. Rightly or wrongly, he feels the master is a fellow employee in a supervisory capacity with the right to interfere with or control his actions and the right to overrule his decisions. The employee has to accept interference and control cheerfully or risk loss of

employment or being banned or refused by that company's ships in the future. There is a tendency to be reluctantly seduced or coerced into situations that wouldn't be tolerated on ships under compulsory pilotage - where the pilot's responsibilities are clear and his role is protected.

THE COMPULSORY PILOT AND MANAGEMENT RELATIONSHIP

On a policy making level, our contacts are limited to national trade associations representing companies that own and operate ships and local trade associations that purportedly represent the shipowner's interests, but in actual fact are representing local port business interests, i.e. stevedoring, terminal operations, warehousing, freight forwarding, ship agencies. etc.

It appears to us that the trade associations see their role as limited to an adversary one. the national association being primarily interested in fostering legislation or governmental regulatory policies that favor their shipowner members and the local associations focusing on competitive costs that may enhance their local businesses. The unfortunate result is that much of the dialogue between representatives of industry and pilots occur over the issues of control

over or cost of pilotage services in an antagonistic climate. The lack of a forum to discuss mutual problems and concerns on a co-operative basis leads to many misunderstandings. The differing perceptions of the role and function of a pilot further compounds the problem.

The pilot sees his role as one of serving a mixture of both private and public interests. His role in expediting the movement of the ship to make schedules, avoiding lost shoreside labor commitments, carrying the optimum cargo capacity through the available channel depths, and protecting the safety of the ship he is aboard are basically serving private industry needs. His role in maintaining a compulsory pilotage system as a public service with public responsibilities has already been discussed.

Not unnaturally, industry representatives place greater emphasis on the private role of the pilot in discussions and tend to perceive the pilot as a quasi-employee of the ship serving a private interest objective. This view leads to a developing trend to speak of the pilot as "a servant of the ship" who functions as "an advisor to the master," and "utilizing" the pilot in

a "team effort" in the navigation of the ship. Such terminology re-enforces the perception of the pilot as serving private needs at the expense of his public responsibilities. The terms convey an impression of the pilot's role and function that is not found in maritime law or in actual shipboard practice.

Our concern over attempts to depict the pilot as an "advisor" to the master is twofold--the first and obvious one is that any attempt to discount our real responsibilities will diminish our standing in the maritime community and weaken our claim to adequate remuneration for our training and responsibilities. Secondly, and of more importance to the public, if the pilot's role can be downgraded to an "advisor" to the team, what happens to his right and duty to refuse to move a ship when the circumstances are unsafe due to inadequate keel clearance, reduced visibility, deficient equipment or crew or any other reasons?

It should be borne in mind that about 80% of the ocean-going ships transiting our inland waters are foreign flag with masters and officers licensed by foreign nations.<sup>37</sup>The control over their conduct and license rests abroad in the governments of Liberia, Panama, Singapore, Korea, Russia, Poland, Turkey, Cyprus and other traditional maritime nations. The only American presence aboard with a sense of obligation

and responsibility to the local community and its political institution is the pilot. When a vessel is under pilotage it may be appropriate for the master to represent the shipowner's private commercial interest and give them high priority. Efforts by shipping management to also claim the pilot's primary loyalty as well should be resisted as inconsistent with his public role. Compulsory pilotage should provide a system of checks and balances between the pilot and the master, between public and private responsibilities, between local and foreign allegiances, that should not be blurred by loose language in discussions of the pilot's role and function.

Another area of potential problems in pilotage, and pilot/management relations, arises from past efforts of management to bring local state pilot licensing under federal, i.e. Coast Guard, control.

Our concern is that the present Coast Guard licensing system is one of "voluntary" pilotage with the pilot in an employee relationship to the shipowner. Federal legislation bringing pilots on ships engaged in foreign trade under the same Coast Guard licensing procedures as "voluntary" pilots on coastwise ships could pre-empt the right of states to license and regulate pilots in a compulsory pilotage system. It could result in pilots on all vessels being reduced to the category

of employee "voluntary" pilots with right of selection and terms and conditions of employment being subject to negotiation with performance, i.e. a higher priority on the owner's economic interests, being a factor. The United States would then become the only major maritime nation without a true compulsory pilotage system where the selection, control, terms and conditions governing pilotage shifts from the state to the shipowner.

Since our investment in pilot stations, our livelihoods, our pensions, our standards of training and professionalism, and the orderly administration of a pilotage system depend upon stability in state regulation; we are disturbed by past efforts of management to upset that stability.

There is a need for a constructive dialogue with shipping management, and it should begin with a discussion of the basic issue of the role and function of the pilot and his traditional status in the maritime community.

#### LICENSING, TRAINING AND QUALIFICATIONS OF PILOTS

There are three basic routes for becoming a compulsory state licensed pilot:

1.) Straight apprenticeship where the candidate serves his entire time on pilot station vessels and as an apprentice pilot on ships transiting the pilotage district and receives instruction in basic nautical skills and piloting under senior pilots. It is generally a process requiring 5 to 10 years of increasing responsibility before reaching senior pilot status.

2.) Service as a master or employee pilot on inland vessels, such as tugs or river craft, followed by selection and training as a pilot on ocean-going ships for a period of time.

3.) Service as a master or deck officer on ocean-going ships, followed by selection and training as a pilot for a period of time.

Each geographical area seems to have a preference toward one or the other methods of selection and training. Some areas combine methods. The preference is the result of opinion on the best way to learn the peculiarities of the local area and is probably also colored somewhat by the background of the pilots in the area who believe that the best future pilots are those cast in their own image. My state association requires a college degree, preferably a maritime academy education followed by service at sea as an officer, and after selection for training a period of 4 to 6

years of apprenticeship depending on license and experience on entry.

Our selection process includes an eye exam whose standards for uncorrected vision are higher than the Coast Guard permits with the aid of glasses, and an extensive physical exam with any abnormality of any nature or tendency to obesity not being a cause for rejection, it is automatic rejection. Selection includes an interview by a committee of 15 senior pilots with emphasis on control under pressure, motivation, and quality of past experience and performance. Selection is generally based on a combination of age and license held with only those who have raised their license and sought advancement as quickly as possible being considered. Our goal is to recruit the hard driving, aggressive, ambitious young officer who is already on the fast track of advancement in the industry. About one out every 20 candidates interviewed is accepted.

Each method of training has one thing in common, heavy emphasis on "hands on" experience under the guidance and observation of a senior pilot on all types of vessels under a wide variety of conditions and with incremental steps in size of vessel and responsibilities assumed. Federal pilot licensing

by the Coast Guard is accomplished either before entering training or in the early stages of training and is not given much weight as an indication of competency. We require far more observation, training and experience than possession of a Coast Guard license would indicate before we consider an individual pilot qualified to serve without restrictions.

Actual training and licensing consists of intensive exposure to the pilotage environment. The apprentice is scheduled for about 100 hours a week on duty with approximately 50 hours a week on the bridge of ships. He's lucky if he sleeps two nights a week in his own bed, and the divorce rate among married apprentices is high. The routine is purposely exhausting to serve both as a training method and a test of motivation and commitment. After a very short indoctrination the apprentice is expected to actually do the piloting with a senior pilot offering guidance, instructing, and observing how the apprentice handles various situations and stepping in if the apprentice seems to be headed for trouble. The senior pilots compare opinions on the performance of the apprentice and their collective opinion determines if the apprentice is continued in the training program and eventually licensed. If his performance is unacceptable he can be dropped at the sole discretion of the officers

of the association without the need to show cause or offer explanation. If he is licensed it is on the basis of his having actually performed satisfactorily as a pilot under a wide variety of conditions for a number of years under senior pilot observation.

In marked contrast are the Coast Guard federal licensing requirements. Licensing is based on a written examination that the candidate is qualified to "sit for" after a relatively limited number of trips over the route as an observer without provision for "hands on" experience and evaluation by a qualified pilot.

I believe the differing approaches to selection, training and licensing leads to differing views between the state authorities and the Coast Guard on the handling of pilot discipline and accountability.

It appears to us that the Coast Guard approach is to issue a federal license as pilot on the basis of very scanty experience and training with the knowledge that the license holder can only work under his federal license in an employee category and they expect or hope that his employer will act responsibly to screen or determine the actual competency of the newly employed pilot. In the event an employee pilot proves by virtue of a casualty that he is actually incompetent,

the Coast Guard attempts to spur him to greater effort or remove him from the system by suspension or revocation proceedings against his license. It seems to us the emphasis to screen out incompetent personnel occurs after the fact, when it should occur before the fact in more stringent standards on experience and training required for initial licensing.

In our state system licensing is based on observable and proven competency under actual conditions. Every pilot licensed by the State of Maryland has proven without question that he is a competent professional pilot. If a casualty occurs it is the result of "competent error" by a well trained and qualified expert who for some reason couldn't cope with an extraordinary situation. "Incompetent error" caused by lack of training, skills or experience rarely occurs. Under our system, state pilotage authorities are slow to penalize competent error as most cases involve professional judgement and there is a proper reluctance to substitute the local authorities' judgement for the judgement of a competent professional who was on the scene and performing under unknowable pressures.

Of course, if a casualty occurs because of wilful misconduct or inattention to duty, penalties will

follow. But if the casualty results in spite of the pilot's conscientious best efforts penalties will probably not be imposed. Adding a minor additional burden in the form of a suspension will have little effect on the attitude of a pilot already burdened with the fear of financial liability and possible bankruptcy, and looking forward with dread to years of litigation on the issue of fault in the courts. Months will be devoted to analyzing the actions he was forced to take in minutes or seconds.

Competent pilots can, and do, occasionally become incompetent pilots due to physical deterioration or infirmities, alcoholism or other causes. In that event they are, quite frankly, coerced into accepting a disability or retirement pension, hopefully before rather than after a casualty, and their removal from the system should be considered a legitimate cost of a pilotage system.

For the reasons discussed, the statistics on actions taken against pilots by state authorities are not impressive in the Coast Guard's view. As with most professional groups we have an aversion to public executions, and we are ever mindful that actions finding minor fault against a pilot that result in minor penalties can prejudice lawsuits between

shipowners and companies involving many millions. For these reasons I would suggest that compiling a public record of disciplinary actions against pilots is not high on our list of priorities, and the public record is deceptive with more pilots being removed from the system than the record would indicate.

While state standards generally are far higher than the federal pilot standards administered by the Coast Guard, the Coast Guard standards are nevertheless important, as they constitute a minimum standard for state licensing and the only standard for federal licensed "voluntary" pilots on coastwise ships.

The present Coast Guard standards are far too low in terms of experience over the route and recency of service required to obtain and maintain a pilot license, if the license is to be taken at face value as qualifying the holder as a professional pilot of any ship under any conditions. The problem stems from the Coast Guard being required to license under one uniform national regulation "pilots" on Great Lakes vessels; the vessels employed in the vast inland river transportation system; tugs and inland vessels navigating bays, sounds and harbors of the country; masters and officers acting in a collateral role as pilots of their own coastwise ships; and pilots boarding

ocean-going vessels solely to perform pilotage services. The standards applicable for permitting a member of the vessel's permanent complement to navigate his own vessel, where he has an intimate knowledge of the characteristics of the vessel and her crew, are not the standards that should be applied to the professional pilot who boards as a stranger and has to be qualified to take charge of any vessel under any conditions.

Unfortunately, the Coast Guard's licensing procedures don't recognize this distinction, and licensing requirements are set low enough and broad enough to encompass all categories under the same regulation. Because of this least common denominator principle, possession of a Coast Guard pilot license endorsement really says very little about the holder's experience or training.

Compulsory state pilots nationwide are extremely reluctant to have the Coast Guard sit in judgement on their actions. Since the Ports and Waterways Safety Act greatly expanded their role the Coast Guard has been brought into far greater contact with pilots and other ship's personnel, and the demands on their personnel resources have forced the Coast Guard to place greater and larger responsibilities on lower

ranks and enlisted ratings, many of them with very little practical experience and few, if any of them, with merchant ship experience. The net result is that Coast Guard personnel have lost credibility in the industry as competent maritime professionals. The generally held feeling is how can personnel without the education, training and experience of ocean-going merchant ship officers and pilots regulate an industry effectively and knowledgeably? What forms the basis of their judgements and decisions?

There is an understandable resentment of these inexperienced people with vast authority having control over the license of a professional pilot who has decades of education, training and experience in his field. It is universally believed that the appropriateness of sanctions against his license for professional errors will be more a matter of chance than justice.

RECOMMENDATIONS

1. COAST GUARD - LICENSING STANDARDS

Consideration should be given to adopting the British and Canadian practice of distinguishing between a master or other officers employed aboard a ship with collateral duties as pilot of that ship and the professional pilot who boards solely to provide pilotage services over a specific route. This could be accomplished by retaining the term first class pilot for the former and designating the latter as senior pilot. The present Coast Guard written examination for issuance of a pilot license is adequate, but the standards of experience and recency of service requirements should be substantially increased.

In order to qualify and sit for a license as senior pilot the applicant should have instruction and experience obtained by actually acting as pilot under the supervision of a qualified pilot. The number hours of such instruction and experience should depend upon the license the applicant holds. I would suggest the following schedule is not unreasonable:

Master/Chief Officer..	1,000 hours
Second Officer.....	1,500 hours
Third Officer.....	2,000 hours
Unlicensed.....	3,000 hours

At least 25% of the hours should be during the hours of darkness.

The experience should include at least 50 round trips over each route for which licensing is sought with at least 25% of the trips occurring during the hours of darkness.

Initial licensing should be limited to vessels of restricted length overall, possibly 600-650 feet L.O.A. On successful completion of at least 1000 hours as pilot of vessels restricted to that length the limitation should be increased to vessels of possibly 750-800 feet in L.O.A. After successful completion of an additional 2000 hours as pilot of vessels limited to this category an unlimited license should be issued.

These standards are below the established practice in my State, and I do not believe them to be too high for a professional pilot. Of course, local conditions, particularly in ports with low traffic volume, may make attainment of these standards impractical. But, they should be considered as the general goal for licensing of professional pilots at major ports with high traffic density.

Vessel length should be the basis for limitation of licenses rather than gross tonnage as length is an immutable indicator of the actual physical size of the ship, while gross tonnage is a measure of the internal volume of the ship and astute naval architects can vary the gross tonnage of vessels of identical dimension with uncanny ability.

2. COAST GUARD - RECENCY OF SERVICE REQUIREMENT

In order to maintain the validity of any class of pilot license, the holder should have recent experience over the pilotage route. If the pilot has not made a trip over the route within the past year he should be required to qualify by making at least one trip over the route as an observer before being permitted to act as pilot in charge of the navigation of a ship. The provision could be self-regulated with a substantial fine if violations come to light after a casualty or from spot checks. Of course, this again has to be a general goal and might only be practical at ports with a reasonable volume of traffic.

3. PERMITTING STATE ACTION ON OIL OR HAZARDOUS CARGO

The law placing exclusive jurisdiction in

the Coast Guard for the licensing of pilots on sea-going coastwise ships found in 46 USC § 364 should be amended to permit states to have concurrent jurisdiction over the licensing of pilots on this category of ship if they are carrying oil or hazardous cargoes that threaten the environment. This would permit the states to protect themselves against the actions of company employee federal pilots who can be coerced into imprudent action, by placing these ships under the protection of state regulated compulsory pilotage.

4. PERIODIC TRAINING

The industry and pilots should arrange for periodic training, not in shiphandling skills that pilots practice daily, but in the areas of understanding the role and function of a pilot, environmental awareness, the impact of new regulations or Colregs, pilotage law, new developments in equipment, etc. Such training requires the support of management to agree to pilotage charges that are needed to maintain a facility and provide for additional pilot complement needed to allow for training time.

5. MASTER-PILOT RELATIONSHIP

The master-pilot relationship on the bridge of a ship underway in pilotage waters is rarely, if ever, the subject of discussion or dispute between the master and the pilot. It seems to arise only in discussions with management ashore in the context of pilot remuneration or who has the responsibility for action, the master or the pilot?

On the bridge the master and the pilot each feel responsible for the safety of the ship. There is undoubtedly some element of ambiguity in their feelings about who will be held responsible if a casualty occurs. I wonder if the interests of safety are not best served by leaving it that way? There is sufficient grief for both if a casualty occurs, and I question if it is in the public interest to define their respective duties so precisely as to relieve either from the necessity of eternal vigilance.

It may be in the public interest to assure safety by spelling out in law or regulation that neither has the sole authority to order the vessel to undertake a passage or continue a passage without the concurrence of the other. As a

practical matter, this is what normally occurs. But with the industry attempting to redefine the role of the pilot as advisory, it might be wise to assure that checks and balances remain in place. If conditions are unacceptable and the margin of safety is questionable, both the master and the pilot should have the right to veto the decision of the other to attempt or continue a passage, and a passage should only be attempted when both have agreed that it is safe and reasonable to do so.

We should avoid discussions or rhetoric from management about ultimate responsibility or authority. Each is ultimately responsible for his own actions to different authorities and with differing consequences. What we should be concerned with is concurrent responsibility and concurrent opinion as to the acceptability of contemplated actions.

6. NATIONAL ACCREDITATION BOARD

If it is felt that an effort should be made to improve the standards of pilotage service on ocean-going vessels entering the inland waters of the United States, consideration should be given to the establishment of a

National Accreditation Board, possibly with representatives such as management, maritime labor, pilots, insurance companies, admiralty attorneys, environmentalists, and the Coast Guard.

The Board could continually review, and when necessary increase, the standards for accreditation as a pilot in any locality on the basis of local conditions. This would recognize that it is difficult to apply a general uniform high standard nationwide, but would allow for the highest practical standards for any locality, and permit increasing those standards periodically, possibly on a "phased in" or scheduled basis.

The standards could include:

- 1.) Selection and qualifications for entry into training.
- 2.) Training standards and experience for initial license.
- 3.) Appropriate limitations on initial licensing and provision for appropriate incremental increases in the limits imposed until unlimited status is attained.

4.) Recency of service requirements and provisions for requalification after an absence from active piloting.

5.) Provision for periodic training courses to expose pilots to new developments in regulations, laws or equipment.

Failure to attain or loss of accreditation could result in sanctions being imposed, i.e. lack of support or opposition to increases or revisions in pilotage rates at hearings before state legislatures or regulatory bodies; or support of the National Board for state action that impose acceptable standards.

Suspension or revocation of accreditation for an individual pilot might follow a casualty in which it can be shown he was incompetent or negligent. The Board might utilize a hearing examiner to determine the facts with the Coast Guard findings of facts being made a part of the record. On the basis of all the evidence, including the opinions of other pilots on the standard of care required under the circumstances, the hearing examiner could submit a recommendation to the Board. If the Board suspends or revokes the accreditation of an

individual pilot and the state regulatory agency or pilot association permits him to act as pilot during the suspension, the association could lose its accreditation with appropriate sanctions being imposed.

Individual state regulatory agencies could make accreditation a prerequisite for acting as pilot on a state license, and would then in effect be adopting the actions of the National Board as their own actions.

While the Coast Guard may be a proper participant in a National Accreditation Board, along with other interests that have a degree of professional expertise, under no circumstances should the Coast Guard be permitted to have sole licensing authority with the power to determine fault after a casualty.

There is a serious conflict of interest between the licensing authority and the various other roles the Coast Guard performs. The Coast Guard maintains and services the aids to navigation that, unfortunately, are sometimes improperly or negligently maintained or serviced in a manner contributing to a vessel casualty. The pilot

is then in the unhappy position of having the Coast Guard proceeding against his license to prove it was the pilot's sole fault and not the fault of the Coast Guard. The Coast Guard has a strong financial interest in succeeding against the pilot for if they fail, the Coast Guard could be held liable for the damages sustained by the ship due to the defective aid to navigation. (see UNIVERSE TANKSHIPS v. U.S., 336 F. Supp. 282 (1972))

The Coast Guard is operating vessels that have collisions with vessels under the control of compulsory pilots. (see the USCG WHITE ALDER and S.S. HELENA collision in the Mississippi River on 7 December 1968 with the loss of 17 lives; and the USCG CUYAHOGA and M.V. SANTA CRUZ collision in the Chesapeake Bay on 20 October 1978 with the loss of 11 lives.) The appearance of a conflict of interest in the Coast Guard sitting in judgement on the cause of collisions to which they are a party, with the right to determine negligence on the part of the pilot that could effect the outcome of substantial lawsuits against the Coast Guard for their own negligence, gives us great concern.

The Coast Guard is operating Vessel Traffic Systems in which they can order vessels to comply with their instructions or issue advice that a pilot can only ignore at his peril. Into the traditional master-pilot relationship a new element has been introduced. The decision making process on the bridge now has to include the unseen, but vocal, disembodied presence of the Coast Guard represented by a junior officer or enlisted rating with little experience but an active participant by virtue of a radio link and the legal authority of the Coast Guard to command compliance with their instructions. When casualties occur in which the Coast Guard VTS personnel may be at fault, the Coast Guard will have a strong self interest in placing the blame elsewhere, probably on the pilot, to avoid the consequences and lawsuits resulting from their own possible negligence.

7. OPERATIONAL PROCEDURES

Operational procedures should not be discussed under the same heading as training and qualifications of pilots, as found in the U.S. proposal to IMCO. The latter refer to the capability of the pilot as an individual, the former refer to interaction with ship's

personnel over whom the pilot has no operational control, indeed, they are strangers to him. Experience has shown us that the best interests of safety are served by the pilot being cooperative with the master and bridge personnel, but he should rely on them as little as possible. If the circumstances permit he should personally assure himself that every order he gives is followed out as given. He should check every course, every rudder order, every engine order on the telegraph and the response of the engines on the tachometer. If the master or bridge personnel wish to maintain a track line, independently determine the ship's position, check all orders given, etc., the pilot will welcome the monitoring and support effort as a back-up to his efforts and as a check against error. But this should not be considered as, or described as "team effort" navigation. The pilot will not find this type of operational procedure in effect on the average ship, he has no right to insist upon it, and should not be held accountable for the failure of the ship's personnel to follow the mandate of either the British or U.S. regulations requiring it. If he does find it, and depends upon it, it loses

its purpose as an independent check. Any requirement placing such duties on ship's personnel should not properly be included in discussions of training and qualifications of pilots as it implies that the pilot might be justified in relying on ship's personnel or might be responsible for the inactions of ship's personnel and both conclusions are clearly erroneous.

REFERENCE NOTES AND ANNOTATIONS

- (1) 1.1 In a case where a shipowner stubbornly refused to acknowledge the effect of pilotage laws, a federal court judge was moved to comment:

"To be sure, state compulsory pilotage is not a body of law familiar to most legal practitioners, much less one at the forefront of public attention. Yet it is not a particularly difficult body of law. Indeed, unlike the state of flux that characterizes many areas of contemporary law, pilotage law is remarkably straightforward and firmly established."

Jackson v. Marine Exploration Co. Inc., 583 F.2d 1350 (1978)

- (2) 2.1 In a case discussing state pilotage laws the Supreme Court of Oregon stated:

"It appears from the report to Parliament that some form of control over pilotage had existed in England and other European countries since about the 14th century.

In the United States, Massachusetts adopted laws regulating pilotage as early as 1783. Some of the other states adopted regulatory laws shortly after Congress, in 1789, specifically provided that the states should exercise control over most of the forms of pilotage."

Powell v. State, 355 P.2d 227 (1960)

- 2:2 In a British decision the court stated:

"This doctrine of compulsory pilotage is an enacted doctrine no doubt. It was not enacted for the protection only of ships; it was enacted for the protection of ports; of commercial ports in particular because if a vessel is wrecked and lost and sunk near to the entrance, or within the entrance of a commercial port, she is not only lost herself, but she is a great danger and obstruction to the port and to other vessels, and would interfere with the commercial business of the port."

The Charlton, 8 Asp. M.L.C. 29 at p. 29 (1895)

- 2.3 In a general discussion of the law of pilotage a leading legal encyclopedia states:

"The various states of this country possessing harbors have enacted laws requiring vessels approaching their ports, with certain exceptions, to take on board pilots duly licensed under the local law, or in case of refusal, to pay pilotage fees, as if the service had been received and rendered, to the qualified pilot who first tenders his services....."

The purpose of these laws is to insure at all times a due supply of men well qualified by skill, knowledge, and experience to protect vessels entering ports and harbors from the dangers of navigation, by holding out to such men sufficient inducements to prepare themselves for the discharge of their duties and to pursue a business attended with so much of peril and hardship."

70 Am Jur 2d, Shipping, §61

- (3) 3.1 "The profession or employment of pilot has existed from the earliest times, and laws have been enacted in every nation engaged in commerce regulating and protecting pilots. Such laws are to be classed under the head of maritime law, pilotage being a subordinate but highly useful branch thereof; and statutory provisions with relation thereto are entitled to a liberal construction in order to give full efficiency to laws especially designed to promote the interest of commerce, and to protect the lives and property of the citizens engaged in it."

70 Am Jur 2d, Shipping, §54

- (4) 4.1 An early Supreme Court decision commented:

"When the government of the Union was brought into existence it found a system for the regulations of its pilots in full force in every state."

Gibbons v. Ogden, 9 Wheat, 207

- (5) 5.1 In one of the first Supreme Court decisions on the effect of the commerce clause of the Constitution it was found:

"The act of 1789 contains a clear and authoritative declaration by the first congress that the nature of this subject is such that until congress should find it necessary to exert its powers, it should be left to the legislation of the states; that it is local and not national; that it is likely to be the best provided for, not by one system or plan of regulations, but by as many as the legislative discretion of the several states should deem applicable to the local peculiarities of the ports within their limits."

Cooley v. Board of Wardens, 12 HOW (US) 299, 13 L.Ed. 996

- 5.2 In discussing the constitutionality of state pilotage the general law has been stated as:

"When the Constitution of the United States was adopted, each state had its own regulations of pilotage, and instead of superseding these in the exercise of its supreme power over the subject, Congress has provided that all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose until further legislative provision shall be made by Congress. It has been stated that this statute adopts the existing state systems, giving them the same validity as if their respective provisions had been specially enacted by Congress, and it leaves to the several states and territories of the United States the power to legislate in the future upon this subject, and to prescribe rules for the licensing and government of pilots, the collection of their fees, and such other incidental matters as the nature of their services in the particular localities may require. The statute was passed in recognition of the propriety of local action in respect of pilotage because of the local necessities of navigation, and it operates not as a congressional grant of power to the states, but as a mere legislative recognition of their

concurrent authority to regulate pilotage until Congress shall act. In general, state pilotage laws have not been superseded by the passage of the various federal statutes regulating shipping, even though these contain certain provisions relating to pilots. However, it should be noted that the Ports and Waterways Safety Act of 1972 provides, inter alia, that the Secretary of the Department in which the Coast Guard is operating (presently the Secretary of Transportation) may require pilots on self-propelled vessels engaged in the foreign trade in areas and under circumstances where a pilot is not otherwise required by state law to be on board, until the state having jurisdiction of an area involved establishes the requirement for a pilot in that area or under the circumstances involved."

70 Am Jur 2d, Shipping, §56

- 5.3 The Act of Aug. 7, 1789 is now contained in 46 USC §211:

"Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for the purpose."

- (6) 6.1 The Federal Court for the Southern District of Florida stated:

"Since the organization of the state government no less than 25 acts have been passed upon this subject, and by a large majority of these local boards have been given full and complete powers to make rules and regulations, establish rates and change the same, as deemed best; and under them full power in regard to compensation has been claimed and exercised. In no case has the right to fix rates been held to be separate from the question of compulsory pilotage, nor has either question been passed upon or treated separately."

The Chase, 14 F. 857 (1882)

- (7) 7.1 The Act of Feb. 28, 1871 is now contained in 46 USC §364:

"...and every coastwise sea-going steam-vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats (Commandant of the Coast Guard or Commissioner of Customs)."

- (8) 8.1 In a case concerning a suit against a pilot for damages a shipowner had to pay due to the acts of the pilot it was said:

"A licensed pilot, enjoying the emoluments of compulsory pilotage, is quite in a different class from an ordinary employee. He assumes to have a skill and a knowledge in respect to navigation in the particular waters over which his license extends superior to and more to be trusted than that of the master, and from the moment he begins his duty he takes command and supersedes the master in respect to the navigation. His remuneration is fixed by law, and is proportionate to his responsibility, and his liability for neglect or want of skill must be in a similar proportion."

Guy v. Donald, 157 F. 530 (1907)

- (9) 9.1 "In some jurisdictions, on a consideration of pertinent statutes, a pilot has been regarded as a public officer, that is to say, as a state officer, whose office is created by the legislature in the exercise of the police power for the general welfare. In other jurisdictions the view has been taken that a pilot is not a public officer. In any event the office of a pilot is so far public as to be subject to regulations.

The rights, privileges, and powers which are vested by law in a pilot are franchises."

70 C.J.S. Pilots, §1(b)

- 9.2 "The liabilities and rights as between the pilot and the vessel are determined by the sort of pilot the man is. The federally licensed pilot is ordinarily an employee of the coasting ship and the rights and liabilities between him and the owner are those applicable to a member of her ship's company.

The state pilot is usually paid on a fee basis and he has the owner's liability in personam, and also a lien on the ship, for his fees.

The local pilot is entitled to the fees which the state statutes give him. They may be considerable. The federal pilot is usually a salaried man."

Robinson on Admiralty, p. 694

- 9.3 "Since 1805 Louisiana pilots have been State officers whose work has been controlled by the State.

Thus in Louisiana, as elsewhere, it seems to have been accepted at an early date that in pilotage, unlike other occupations, competition for appointment, for the opportunity to serve particular ships and for fees, adversely affects the public interest in pilotage."

Kotch v. Pilot Comm'rs., 330 US 560 (1947)

- 9.4 In discussing the justification of compulsory pilotage the Royal Commission commented:

"From the service point of view, pilotage has been defined as the ultimate means to enhance safe and speedy transit of ships through confined waters. It is a public service in the full sense of the word when it is controlled, maintained or provided primarily to serve the superior interests of the State; it is a private service when its main purpose is to serve private needs, but safety remains the principal aim in both cases: in the former, "safety or navigation" through Canadian waterways; in the latter, "safety of the ship", including safety of privately owned port installations."

Canada, Report of Royal Commission on Pilotage, Part 1, p 473 (1968)

(10) 10.1

"The coastwise steamer pilot is ordinarily one of the ship's officers. He is not "compulsory" in the sense that the state pilot has been held to be in several cases where the status of the state pilot has been fought over. In these the owner seeks to establish that he was "compulsory" and insists that as he was "compulsory" there is no respondeat superior and the ship owner is not personally liable. The courts have agreed with the conclusion once the "compulsory" character is found."

Robinson on Admiralty, p. 702

(11) 11.1

"If the pilot charges seem heavy the pilot's responsibilities are great, and it must also be recalled that his job is often one of great hazard. Come wind come weather he boards incoming ships at sea and he leaves outgoing vessels outside the shelter of harbors. And he does both by small boats."

Robinson on Admiralty, P. 695

(12) 12.1

In considering the status of pilots in a landmark decision, the U.S. Supreme Court stated:

"Studies of the long history of pilotage reveal that it is a unique institution and must be judged as such. In order to avoid invisible hazards vessels approaching and leaving ports must be conducted from and to open waters by persons intimately familiar with the local waters. The pilot's job generally requires that he go outside the harbor's entrance in a small boat to meet incoming ships, board them and direct their course from open water to the port. The same service is performed for vessels leaving the port. Pilots are thus indispensable cogs in the transportation system of every maritime economy. Their work prevents traffic congestion and accidents which would impair navigation in and to the ports. It affects the safety of lives and cargo, the cost and time expended in port calls, and, in some measure, the competitive attractiveness of particular ports. Thus, for the same reasons that governments of most maritime communities have subsidized, regulated, or have themselves operated docks and other harbor facilities and sought to improve the approaches to their ports, they have closely regulated and often operated their ports' pilotage systems.

The object of the entire pilotage law, as we have pointed out, is to secure for the State and others interested the safest and most efficiently operated pilotage system practicable."

Kotch v. Pilot Comm'rs., 330 US 557 (1947)

- 12.2 In a case where the ship struck a dike a federal court stated:

"The purpose of requiring a vessel to take a pilot is to have her in charge of a competent person, familiar with particular waters. When on board he is temporarily in charge of her whole navigation, including the duty of determining her course and speed, and the time, place, and manner of anchoring her. The master is not entirely absolved of responsibility when a pilot is in charge, but before he is justified in displacing him he should be sure that the pilot is for some reason incompetent.....the navigation of the ship was primarily in charge of the pilot, and, while the master had the right, if he deemed him incompetent and circumstances warranted it, to displace him, he was not under the absolute duty to do so, but was entitled to exercise his sound discretion. Whether he should have displaced him, on the facts shown, was not a matter of law for the court, but was a question to be determined by the jury on all the facts and circumstances of the case."

Dampskibsselskabet Atalanta A/S et al v. U.S.  
31 F. 2d 962 (1929)

- 12.3 In a case where a ship attempted a transit without a pilot and a casualty resulted, the federal court found:

"There are very few published decisions on the question of whether a local pilot is necessary to complete the proper manning of a vessel when she leaves port. This is probably because pilotage is so universally customary and so generally compulsory at all ports of any importance throughout the world that very few vessels enter or leave a harbor without taking a pilot. The rule announced by the text-writers and supported by some earlier decisions, in substance, is this: Where pilotage is customary at a port, a pilot is available, and the nature of the navigation requires one, it is a breach of the warranty of seaworthiness if a pilot is not taken..... The rule is supported by sound reason. A pilot is employed because he is presumed to have

knowledge of the tides and currents and their effects upon the ship and of all other dangers affecting the safety of the vessel due to local conditions. The master, however competent he might be to navigate his ship in the open waters of the ocean, would not be expected to have this knowledge. It is apparent that it would be as hazardous for a ship to attempt to follow a dangerous channel to sea without a competent hand on the tiller as it would be if the steering gear was defective."

The Framlington Court 69 F2d 304 (1934)

12.4 "A study of foreign pilotage legislation will show that compulsory pilotage in many countries exists broadly for one of the following reasons:

- (i) for the protection of life and property... on board ships, and of harbour entrances and port installations. In such cases it is a statutory offence not to take a pilot and in some cases it is such an offence to interfere with the pilot, as for example in certain parts of Germany.
- (ii) for the financial support of the pilotage service, as for example in Holland."

The Law of Pilotage p. 32

(13) 13.1 In a suit against a pilot for damages sustained by the ship he was piloting, the federal court found:

"He was charged with the safety of the vessel, and bound to use due diligence and care and reasonable skill in the exercise of his important functions. He is answerable if the vessel suffered damage through his negligence or want of skill while she was under his control..... The skill required of a pilot is the ordinary care of an expert in his profession. When in charge of navigation, he supersedes the master, and is liable for negligence."

The Dora Allison 213 F. 646 (1914)

- (14) 14.1 In a case where the ship struck a bridge the federal court commented on the pilot-shipowner relationship as follows:

"There is no dispute that the ship's use of the pilot in our pending case was compulsory. It is well settled that the owner of a vessel is not liable, personally, for the negligence of a compulsory pilot because the element of compulsion eliminates the 'respondeat superior nexus' which would normally serve as a basis for imputing a pilot's negligence to the ship owner.

However, it has also been held, since the Supreme Court's decision in *The China*, 7 Wall (U.S.) 67 that, notwithstanding personal non-liability of the ship owner in such a case, the ship itself remains liable 'in rem' for damages arising out of a collision due to the pilot's negligence-even though the use of the pilot is compulsory.

*Harrison v. Hughes*, 125 F. 860, citing *The China* and its progeny, succinctly states its rule and the theory upon which it is based:

' . . . It is admitted that, at common law, no action can be maintained against the owner of a vessel, for the fault of a compulsorily taken pilot, as, in such case, the pilot is in no sense the agent or servant of the owner; but, although the same doctrine holds in England, both at common law and in admiralty, a different view of the liability of the ship is taken in admiralty cases in this country.

. . . The theory of the admiralty law in this country in such cases, is that the collision impressed upon the wrongdoing vessel a maritime lien, which the vessel carries with it into whosoever hands it may come. The vessel is treated, according to this theory, as the guilty thing. It is the res, to which fault is imputable, and which is held to respond in damages. The responsibility of the owners, as owners, and the law of agency, as applicable to the employment of a pilot, do not come into consideration.'"

- (15) 15.1 In an early Supreme Court case testing the validity of compulsory pilotage laws the court stated:

"Like other laws they are framed to meet the most usual cases, 'quae frequentius accidant'; they rest upon the propriety of securing lives and property exposed to the perils of a dangerous navigation, by taking on board a person peculiarly skilled to encounter or avoid them; upon the policy of discouraging the commanders of vessels from refusing to receive such persons on board at the proper times and places; and upon the expediency, and even intrinsic justice, of not suffering those who have incurred labor, and expense, and danger, to place themselves in a position to render important service generally necessary, to go unrewarded because the master of a particular vessel either rashly refuses their proffered assistance, or, contrary to the general experience does not need it."

Cooley v. Board of Wardens, 12 How. (U.S.) 299, 13 L Ed. 996 (1851)

- (16) 16.1 In a case involving a "voluntary" pilot the federal court stated:

"The pilot was placed in charge of the Seekonk by the master and not by the law. and the rights and obligations of the parties must be determined by reference to the relation thus established."

Los Angeles v. Standard Transp. Co., 32 F. 2d 990 (1929)

- (17) 17.1 In an excellent legal opinion prepared by a Coast Guard legal officer it states:

"Because of this delicate balance between the authority of the master and the liability of the owner, the case law dealing with the relationship between the master and the pilot is often confusing and sometimes appears contradictory. As a general rule, it may be stated that it is discretionary with the master whether to remove the pilot. The

master has the same power to remove the pilot that he has to remove any subordinate officer and this power becomes a duty to interfere in a case of the pilots intoxication or manifest incapacity, in cases of danger unforeseen by the pilot, or in cases of great necessity. The China, 74 U.S. (7 How.) 53, 19 L. Ed. 67 (1868) But the pilot is more than a mere subordinate to the master and, while on his pilotage grounds, is a temporary master, for the time being in command of the navigation of the ship and his orders must be obeyed in all manners connected with her navigation. The Oregon, 158 US 186, 39 L Ed. 948; Ralli v. Troope, 157 U.S. 386, 39 L. Ed. 742; Cooley v. Board of Wardens, 53 U.S. (12 How.) 299, 13 L. Ed. 996 (1851) He is, in a sense, a master pro hac vice and gives all orders and directions as to speed, course, stopping, and other matters regarding vessel navigation. Guy v. Donald, 157 F. 527, although a master may relieve a pilot, he does so at his peril and with regard to certain matters within the peculiar province of the pilot he must not interfere unless the master sees that the pilot is plainly misgoverning the situation. Union Shipping and Trading Company v. U.S., 127 F. 2d 771 (2nd Circuit 1942). The exercise of the masters power to relieve the pilot rests within his sound discretion and is determined by the factual situation. U.S. v. Westervelt, 135 F. Supp. 596 (SDNY 1956) Further, the master, in waters unfamiliar to him, is entitled to rely on the knowledge and skill of a pilot and is not bound to overrule him. The master should not substitute his judgment for that of the pilot except in cases of clear and obvious danger. Waterman Steamship Company v. U. S. 304 F. Supp. 401 (W.D. Washington 1969); Barbey Packing Corp. v. Stavros, 169 F.Supp. 897 (O. Oregon 1959) It has been repeatedly held that a ships officer is not negligent in failing to intervene unless the pilot is doing something obviously dangerous. Park Steamship Co. v. City Services Oil Co., 188 F. 2d 804 (2nd Circuit)(1951).

This principle is particularly well settled and of long standing with regard to matters based on the special knowledge of the pilot regarding local conditions. The pilot has sole direction of the vessel in those respects where his local knowledge is presumably required such as the course, speed, and maneuvering of the vessel. Baron Parke in The Christina, 7 Moore, Privy Concil 160, 172 (1850) cited in

Union Shipping and Trading Company v. U. S. Supra at 1775). In some cases, the masters "power" to relieve the pilot has been severely circumscribed and it has been stated that the master has no right to interfere with the pilot without ample justification, the navigation of the ship being taken out of the hands of the master and transferred to the pilot. The Oregon, 158 U.S. 186 39 L. Ed. (1943).

It is thus apparent that the popular misconception that a pilot is a "mere advisor" to the master is without substantial foundation in the law. While the master is still the master and in overall command of the ship, and does have the power to relieve the pilot, he may do so only at the substantial peril of exposing himself and the owner of the vessel to far ranging liability. For purposes of administering the Ports and Waterways Safety Act, it is readily apparent that the pilot is indeed in control of the operation and navigation of a vessel both in practice and under admiralty law. It is significant to note, that while a master has been found negligent in many cases for acting improperly to relieve a pilot, for acting improperly after relieving a pilot, or for failure to relieve a pilot, pilots themselves have been held almost universally accountable for their own improper actions. Attempts to relieve themselves of liability by alleging that they were not actually in control and that the sole responsibility for the navigation of the vessel rested with the master have been of no avail."

U. S. Coast Guard Legal Memorandum, P. E. Versaw,  
13th Coast Guard District Legal Officer, 13 April, 1977

- (18) 18.1 In a rare state court case involving maritime law the New York Supreme Court wrote the following excellent description of the duties of the pilot and master:

"Where a compulsory pilot is in charge of a ship, the master being required to permit him to navigate it, if the master observes that the pilot is incompetent or physically incapable, then it is the duty of the master to refuse to permit the pilot to act. But if no such reasons are present, then the master is justified in relying upon the pilot, but not blindly. Under the circumstances of this case, if a situation arose

where the master, exercising that reasonable vigilance which the master of a ship should exercise, observed, or should have observed, that the pilot was so navigating the vessel that she was going, or was likely to go, into danger, and there was in the exercise of reasonable care and vigilance an opportunity for the master to intervene so as to save the ship from danger, the master should have acted accordingly. Of course, where danger is suddenly sensed, too late for action by the master, the master's failure to act cannot be charged against the ship. Whether a particular situation calls for action rests in sound judgment, for on some occasions to interfere might be more dangerous than noninterference, or there might be justifiable expectation that the pilot, through his own capacity and superior skill and knowledge, would be able to draw the ship away from the danger zone. These are questions of fact for a jury."

Hinman v. Moran, 268 N.Y.S. 410 (1934)

- 18.2 "Generally speaking, the pilot supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. He becomes the master pro hac vice, and should give all directions as to speed, course, stopping and reversing, anchoring, towing, and the like."

70 Am Jur 2d, Shipping, § 191

- (19) 19:1 The Supreme Court in discussing the pilots role in maritime commerce stated:

"Now, a pilot, so far as respects the navigation of the vessel in that part of the voyage which is his pilotage-ground, is the temporary master charged with the safety of the vessel and cargo, and of the lives of those on board, and intrusted with the command of the crew. He is not only one of the persons engaged in navigation, but he occupies a most important and responsible place among those thus engaged."

Cooley v. Board of Wardens, 12 HOW (US) 299 13 L Ed. 996 (1851)

- 19.2 In a later Supreme Court decision the role of the pilot was affirmed:

"To the pilot, therefore, temporarily belongs the whole conduct of the navigation of the ship, including the duty of determining her course and speed, and the time, place and manner of anchoring her....But the master still has the duty of seeing to the safety of the ship, and to the proper stowage of the cargo. For instance, the duty to keep a good lookout rests upon the master and crew."

Ralli v. Troop, 157 US 386, 15 S. Ct. 657 (1894)

- 19.3 In a case involving the role of the pilot the Supreme Court of Washington commented:

"A pilot while in charge of a ship supersedes the master, in so far as the navigation of the vessel is concerned, but the master is at all times in command, and may and should advise with the pilot, and can displace him in case of intoxication or manifest incompetence. Any power of command exercised by the pilot is limited to the navigation of the ship.... 'While exercising his functions a pilot is in sole control of the navigation of the ship, and his orders must be obeyed as in effect orders of the master. But the master is still in command of the vessel, as distinguished from its navigation, and may properly displace an obviously incompetent or intoxicated pilot, although he is not bound to do so unless the pilot is making an obvious mistake.' ...As to the relative duties of the pilot and the master, it is the law that the pilot does not assume command of the ship. 'No ship is large enough for two captains.' Hughes on Admiralty (2d Ed.) p.36. The pilot becomes navigating officer, and the master should not interfere unless it is plain that the pilot is reckless or incompetent; but the pilot is not in command in the sense that he supersedes the master.... 'In one respect the decisions in relation to pilots run counter to common law ideas on the subject of agency. It is a principle of the law of agency that the foundation of the master's responsibility for the acts of his agent is the right of selection and control. Yet the American courts hold that a vessel is responsible to third parties for unjuries arising from the negligence of the pilot, though he came on board against the will of the master under a state statute of compulsory pilotage... 'The reason why the vessel is held liable is that

admiralty looks on the vessel itself as a responsible thing, and that under the ancient laws relating to pilots the responsibility was one which attached to the vessel itself, irrespective of ownership, it being thought unjust to require injured third parties to look beyond the offending thing to questions of ownership or control."

Grays Harbor v. The Brimanger, 18 P. 2d 29 (1933)

19.4 A leading authority on Admiralty law wrote:

"The pilot when he takes over his duties aboard the vessel supersedes the master, for the time being, in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. The master is not wholly absolved from his duties while the pilot is on board and may advise with him and even displace him in case he is intoxicated or manifestly incompetent. The master is still in command of the vessel, except so far as her navigation is concerned, and is bound to see that there is a sufficient watch on deck and that the men are attentive to their duties.

The master has the same power to displace the pilot that he has to remove any insubordinate officer of the vessel. He may exercise it or not, according to his discretion."

The Law of Seaman, 3rd Edition, §532, Martin J. Norris, The Lawyers Co-Operative Publishing Co.

(20) 20.1 Judge Lerner Hand discussed the history of the role of the pilot:

"It is of course true that a master does not surrender his ship to a pilot and that there remain occasions when he must interfere and even displace him. The first case, so far as we know, came up in England in 1847, soon after the compulsory pilotage act was passed. The Gipsy King, 2 W. Robinson 537. It chanced to concern the proper catting of an anchor on a vessel in charge of a pilot, and Dr. Lushington, in excusing the owner because the catting was the pilot's spoke as follows (p. 547): 'It is, I apprehend,

an established principle of law that the mode, the time, and place of bringing a vessel to an anchor, is within the peculiar province of the pilot who is in charge.' Only three years later the Privy Council, speaking through Baron Parke (The Christiana, 7 Moore P.C. 160, 172), said of a compulsory pilot: 'It was his sole duty to select the proper anchorage-place, the mode of anchoring and preparing to anchor.' And still earlier on the same page: 'The Pilot has, unquestionably, the sole direction of the vessel in those respects where his local knowledge is presumably required; the direction, the course, the manoeuvres of the vessel, when sailing, belong to him.' In 1857 Dr. Lushington in The Argo, Swabey, 462, announced the limitation upon this which is generally accepted and which the Supreme Court recognized obiter in The China; and again in somewhat truncated form in The Oregon. It was this: 'a master has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapacity, or in cases of danger which the pilot does not foresee, or in cases of great necessity.' He said further. 'The navigation of the ship is taken out of the hands of the master and transferred to the pilot.'

Union Shipping v. U.S., 127 F. 2d 775 (1942)

- 20.2 In a suit against the pilot brought by a shipowner for damages sustained when his vessel struck a dock while attempting to berth, a Federal court discussed the duties of the pilot and master in the following terms:

"Having found that the pilot placed the vessel in such a position as to constitute an immediate threat of danger both to herself and to the Barbey Dock, and having determined that the subsequent harm done was a result of the pilot's action, does this of itself fasten liability upon the pilot and absolve the vessel? It is settled law that the fact that a pilot was on board the vessel does not release the ship's master from his duties. The master still remains in command of his vessel and retains the authority to control the actions of the pilot to assure the safety of his ship and to avoid any imminent danger.... The courts have held that the master not only retained the power, but had the duty to interfere in all cases of necessity or danger and to displace the pilot.... The earlier cases,

in speaking of the master removing the pilot, were concerned only with situations where it appeared the pilot was intoxicated or manifestly incompetent.... Later cases have appeared to hold the master to a higher degree of responsibility than the earlier courts contemplated....The master's duty to relieve the pilot rests within the master's sound discretion, and can only be viewed in light of the surrounding factual situation....In light of the obvious confusion that would exist on a vessel if, on his slightest whim, the master would countermand the pilot's order, the master to insure the safety of his command should exercise his power to remove the pilot discriminately. The master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or where danger is apparent and avoidable."

Barbey Packing v. The Stavros, 169 F. Supp. 901 (1959)

- 20.3 In speaking of the problems for the master under established pilotage law a leading Admiralty authority stated:

"The relation of pilot and master is an unhappy one for the master. He must see that the pilot's orders are carried out. If he does not check the pilot he forfeits his owner's 'compulsory pilot' defenses. But if he interferes so far that it can be said that he removes the pilot he exposes his owner to whatever liability there would be, in the circumstances, if no pilot were on board."

Robinson on Admiralty, p. 696

- (21) 21.1 In discussing human factors and their impact on ship casualties Mr. W. O. Gray of Exxon Corporation stated:

"High Level of Calculated Risk - Calculated risk is defined for this report as knowing acceptance of risk in operational situations to meet personal or corporate priorities. The acceptance of risk was found by the Panel to be a significant causal factor in merchant marine casualties.

The in-depth survey provided several instances where risk taking contributed to a casualty or near-casualty. For instance, when asked to select among 12 criteria used by companies for grading a captain's performance, 40% of those responding to the question

indicated that making schedules was the prime criterion. When asked how companies feel about meeting schedules in poor conditions, 50% of those responding said that there was strong pressure to meet schedules. Almost all of those responding reported sailing on a ship that they personally knew to be unseaworthy.

Perhaps the most revealing disclosure from the interviews was that of a company that in 1969 dropped a safety program that offered a good bonus to tugs and crews with the least accident claims, because the program resulted in decreased productivity and a slowdown in task completion."

Oil Companies International Marine Forum, Safe Navigation Symposium, Session 2, Paper No. 3, Human Factors by W. O. Gray. Presented at Washington, D. C. 17 - 18 January, 1978

- (22) 22.1 In another Supreme Court decision relating to the role of the pilot it was held:

"The liability of the owner at common law for the act of a pilot on his vessel is well stated by Mr. Justice Story in his Treatise on Agency, 2d ed. § 456a: 'The master of a ship, and the owner also, is liable for any injury done by the negligence of the crew employed in the ship. The same doctrine will apply to the case of a pilot employed by the master or owner, by whose negligence any injury happens to a third person or his property; as, for example by a collision with another ship, occasioned by his negligence. And it will make no difference in the case that the pilot, if any is employed, is required to be a licensed pilot; provided the master is at liberty to take a pilot, or not, at his pleasure; for in such a case the master acts voluntarily, although he is necessarily required to select from a particular class. On the other hand, if it is compulsive upon the master to take a pilot, and a fortiori, if he is bound to do so under a penalty, then, and in such case, neither he nor the owner will be liable for injuries occasioned by the negligence of the pilot; for in such a case the pilot cannot be deemed properly the servant of the master or the owner, but is forced upon them, and the maxim, 'Qui facit per alium facit

per se, does not apply.'

The answer to the second question must therefore be that in an action at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily."

Homer Ramsdell v. La Compagnie Generale Transatlantique,  
182 US 1161 (1901)

- 22.2 In a recent case where the ship struck a dry dock the court absolved the master and crew in the following language:

"We also uphold the District Court's finding that 'the Captain and crew of the Hong Kong Clipper were not guilty of any negligence contributing proximately to the collision,' since the ship was under the sole command of Pilot Jenkins throughout the period with which we are concerned here."

Latex Construction Co. v. Jacksonville Shipyards, Inc.,  
442 F. 2d 452 (1971)

- (23) 23.1 In a case involving damages caused by the acts of a "voluntary" pilot a federal court held:

"The first question is whether Aultman was a noncompulsory pilot. If so, he was in much the same position as one of the ship's officers. Under the ordinary rules of respondeat superior, the shipowner would be responsible for Aultman's actions. If, on the other hand, the district court had concluded that pilotage was compulsory, the respondeat superior nexus would have been broken, and APL would not be personally liable for the results of the pilot's negligence.... Because of the voluntary nature of the pilotage, and the availability of trip insurance at a nominal cost, the provisions of the tariff of the Port of Long Beach exculpating the pilot and his employers from liability are valid and enforceable."

U.S. v. S.S. President Van Buren, 490 F. 2d 506, 509 (1974)

- 23.2 In discussing the effect of exculpatory agreements a legal authority on the subject has written:

"The pilot associations in Oregon (which has voluntary pilotage only, i.e., either the master or the owner of the vessel is privileged to pilot the vessel and need not hire a pilot), have adopted an ingenious system which has been sanctioned, insofar as it is legally permissible to do so, by the Oregon State Legislature. The system adopted is on the theory that state pilotage rates must directly reflect the cost to the pilots of doing business; consequently, if they must pay rather high premiums to procure adequate insurance to protect themselves against a high degree of liability, the pilotage rates would necessarily have to be increased. Since all vessel owners carry P & I insurance on their vessels, which insurance protects the vessel owner with respect to negligence of the pilot aboard it, if the pilots likewise carry liability insurance, the vessel owner is paying for his liability coverage twice-first in connection with the P & I premium and second in paying an increment in the pilotage fee to reflect the cost of liability insurance for the pilot."

Law of Tug, Tow and Pilotage, p. 484

- 23.3 "Aside from moral considerations which should preclude a shipowner from attempting to disavow a contract freely entered into by which he consents to accepting as his own employe a harbor pilot who is 'loaned' to him, there are highly persuasive economic reasons why ship-owners should, in their own enlightened self-interest, concede the validity of pilotage clauses and proceed with caution in attempting to have them declared invalid or inapplicable.

For example:

(1) It must be remembered that literally every ship being piloted has already procured P & I insurance insuring the liability of its owner to third parties for negligent acts of its master, crew and pilots. If the 'loaned employe' status of the harbor pilot is to be ignored, then the tug company, both with respect to its assisting tugs and its 'loaned' harbor pilot, must procure insurance in an amount equal to the full value of the largest vessel handled and her cargo. The cost of such insurance necessarily must be included in the ship assistance rates charged, in which case vessel

owners will be paying twice for insurance against the same risks."

(24) Canada, Report of the Royal Commission on Pilotage, Part 1, p. 22

(25) 25.1 Ibid, p. 23 and 24

25.2 A legal reference defines "conduct" as follows:

"Conduct (verb): A regulation having statutory force which provides that a ship is to be conducted by a pilot does not mean that she is to be navigated under his advice; it means that she must be conducted by him, and that makes pilotage compulsory"

Words and Phrases Legally Defined, Second Edition, Saunders

(26) Canada, Report of the Royal Commission on Pilotage, p. 30 and 31

(27) 70 C.J.S., Pilots § 14

(28) 28.1 In a case where the master and officers left the bridge to the pilot to retire and the only ship's personnel on watch were unlicensed seaman assisting the pilot the Supreme Court stated:

"Nor are we satisfied with the conduct of the master in leaving the pilot in sole charge of the vessel. While the pilot doubtless supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation, the master is not wholly absolved from his duties while the pilot is on board, and may advise with him, and even displace him in case he is intoxicated or manifestly incompetent. He is still in command of the vessel, except so far as her navigation is concerned, and bound to see that there is a sufficient watch on deck, and the men are attentive to their duties. The Iona, R. 1. P.C. 426.

In The Batavier, 1 Spinks, 378, 383, it was said by Dr. Lushington: 'There are many cases in which I should hold that, notwithstanding the pilot has charge, it is the duty of the master to prevent accidents, and not to abandon the vessel entirely to the pilot; but that there are certain duties he has to discharge (notwithstanding there is a pilot on board) for the benefit of the owners.' In an official report made by a maritime commission in 1874, the Elder Brethren of Trinity House are said to have expressed the opinion 'that in well-conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel, but

that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken.' Marsden on Collisions."

The Oregon, 158 US 194 (1894)

(28) 28.2

"The rule stated in the case of Homer Ramsdell Co. v. Com. Gen. Trans., to the effect that in actions at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily, does not exempt the shipowner from liability where negligence of the vessel's master proximately contributed to the injury complained of in such an action....We are of opinion that the evidence mentioned tended to prove conduct of the pilot, known to the master, giving rise to a case of danger or great necessity, calling for the intervention of the master. A master of a vessel is not without fault in acquiescing in conduct of a pilot which involves apparent and avoidable danger, whether such danger is to the vessel upon which the pilot is, or to another vessel, or persons or property thereon or on shore...as to whether the negligence shown was exclusively that of the pilot, and as to whether negligence of the master proximately contributed to the injury, should have been submitted to the jury under appropriate instructions."

Jure v. United Fruit Co., 6 F. 2d 7 (1925)

28.3

"The responsibility for the safety of the ship rests upon the master. The pilot, because of his superior knowledge of the depth of water and location of the channel, has charge of the navigation of the vessel, but even then the master is not absolved from his duties, but may advise the pilot, and even displace him in case of manifest incompetency....We recognize the rule contended for by defendant that the master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or as expressed in the Jure Case, where danger is apparent and avoidable. But we think a proper case for the master's assertion of

authority for the safety of his ship presents itself where it is obvious or apparent that danger from some cause is imminent, though the particular cause of danger may not be appreciated."

Charente S. S. Co. v. U.S., 12 F. 2d 413 (1926)

28.4 "The master is not merely entitled but bound to point out to the compulsory pilot that he may be mistaken in an opinion he has formed (The Tactician (1907) P. 244). He is also entitled, in order to avoid immediate peril, to take the navigation out of the hands of the pilot, but if he does so he must be prepared to show justification...'...if the master sees fit to take the navigation out of the hands of the pilot and countermands his orders, he must satisfy the court that he was justified in so doing, and that the action which he took was at all events more calculated to avoid a collision than the manoeuvre which he countermanded.'"

British, Tower Field v. Dock Board, L1.L. Rep. 233, p. 259 (1950)

(29) The Law of Pilotage, Chapter Seven, Division of Control Between Master and Pilot, p. 58

(30) 30.1

GENERAL DUTIES

Per Baron Parke in The Christiana (1850), 13 E.R. 841 P.C.

"The duties of the master and the pilot in many respects are clearly defined. Although the pilot has charge of the ship, the owners are most clearly responsible to third persons for the sufficiencies of the ship and her equipments, the competency of the master and crew, and their obedience to the orders of the pilot in everything that concerns his duty, and under ordinary circumstances we think that his commands are to be implicitly obeyed. To him belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one only."

Per Brett, L.J. in The Guy Mannering (1882), 4 Asp. M.L.C. 553:

"The duty of a pilot in England is too well known and too universally applied to require any enactment

with regard to it at all. It is to regulate the navigation of the ship, and to conduct it so far as the course of the ship is concerned. He has no other power on board the ship; he has no power over the discipline of the ship, he has no power over the cargo on board; he has no power with regard to the various matters which are necessary to enable him to perform his duty; he cannot place a man on the look-out, or regulate the place at which the look-out man shall be on board the ship. He has nothing to do but to control the navigation."

Per Lord Alverstone, C.J. in The Tactician (1907), 10 Asp.

M.L.C. 534:

"I think the cardinal principle to be borne in mind in these cases...is that the pilot is in sole charge of the ship, and that all directions as to speed, course, stopping and reversing and everything of that kind are for the pilot...But side by side with that principle is the other principle that the pilot is entitled to the fullest assistance of a competent crew, of a competent look out, and a well-found ship."

Per Bargreave Deane, J. in The Ape (1914), 12 Asp. M.L.C. 487:

"I have to...lay down what I think is the true principle as to the duty of ship's officers and crew towards the pilot, and...unless the man is incompetent in the sense of being ill or the worse for drink, or something of that sort which justifies force majeure, the officers of the vessel have no right to take control of the navigation out of the hands of the pilot, yet he is entitled to every assistance which can be rendered to him by those on board the ship."

Sir Samuel Evans said in The Umsinga (1912), 12 Asp. M.L.C. 1

"It is easy to conceive cases in which...a master must be on the bridge before it can be rightly said that all the assistance which the law requires to be given to the pilot by the master and the crew is given, and in which his absence might be evidence of negligence or default...But, in my opinion, it cannot be held as a matter of law, or as an inflexible rule of good navigation that the master must be there, or that his absence amounts to default for which his owners are liable, when he provides a competent officer, or where there are no special circumstances of difficulty, or no special matters within his knowledge of which he ought to be ready to inform the pilot...'It is beside the question to inquire whether the master, if on the bridge, might...have caused the pilot to avoid

the collision. If he is not there, and is not bound by the law, or by the rules of good navigation to be there, the court cannot surmise what he would have done if he was there."

Ibid, p. 61

(31) 31.1

INTERFERENCE

Dr. Lushington defined "interference" as follows:

"I should never go to the length of saying that the mere suggesting to the pilot on the part of the master to take in this sail, or otherwise to keep as near the South Sand light, and vice versa, or to bring the ship up, was interfering, in the legal acceptation of the term, with the duties of the pilot; illegal interference is of a different description. If, for example, in this case the boatswain had called out to the men below to starboard the helm, or if the master had called out to port the helm, it would be interference; but it would not be interference to consult the pilot, or to suggest to him the measures pursued were not proper, or that other measures would in all probability be attended with greater success.

The Lochlibo, 166 E.R. 978 (1850)

Thus, in the case of The Oakfield where the pilot gave, at the suggestion of the master, an improper order which brought about a collision with a vessel at anchor, it was held that the master's intervention did not transfer the responsibility of the pilot to the master. The Judge justified his decision as follows:

'There is a conflict as to how this order to starboard came to be given, but the pilot admits that the words proceeded from his lips. To excuse himself he says he was merely carrying out the captain's order, and that it was not his order at all. I cannot accept that explanation. I feel convinced that the true solution of the case is, that when the Duchess of Albany was first seen there was no doubt as to whether she was or was not at anchor, that the captain very likely did strongly express an opinion that it would be safe and proper to starboard and go across her bows, that the pilot adopted that view and gave the order which brought about the collision.'

The Oakfield, 5 Asp. M.L.C. 575 (1886)

Ibid, p. 62

(32) 32.1

LOOKOUT

"In circumstances which called for the greatest care and fullest assistance he (the pilot) was left to his own observation. It is obvious from his own explanation that he was not fully aware of the position and intentions of both these vessels at the time of the collision. It may be (though I am not satisfied on this point) that he ought to have been aware, but a pilot's duty is that of controlling the navigation of the ship and his attention must at times be concentrated on some particular fact. He is entitled to have the assistance of a look-out and timely reports of material incidents."

The Alexander Shukoff, 15 Asp. M.L.C. 122 (1920)

32.2 "In the same case Lord Molton said:

'The defendants say that the pilot ought to have found these things for himself and that therefore, they are excused for having omitted to report them to him. Now it must be remembered that the pilot has many things to think of, especially where...he is leaving port in company with other vessels and new incidents may at any moment arise. He needs, therefore, to be in a position of feeling that he can give his whole attention to his duties of management secure that all relevant occurrences will be duly reported to him.'

32.3 "...He must have been from his own observation, perfectly aware of the torpedo-boat and her movements at all material times. Under these circumstances it is not easy to see how, even if there had been an omission on the part of the lookout...to report the torpedo-boat, this omission could have contributed to the accident, as the pilot was throughout in full possession of all the facts himself."

The Kamouraska, (H.L.) 2Ll.L Rep. 125, 299 at p.300(1920)

The Law of Pilotage, p. 64

(33) 33.1

COLLISION REGULATIONS

"I have said on many occasions...that a master, has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapability, or in cases of danger which the pilot does not foresee, or in cases of great necessity. The master of the Argo says 'It is not my province to take notice of the ship, or on what shore she is navigating. She may be taken here or there, while she is in charge of the pilot, without my knowing the cause; there may be reason under water why the pilot does it. All my duty is, to take care that all the pilot's orders are promptly and properly obeyed'; and I think he says so rightly."

The Argo, 166 E.R. 1217 (1859)

(34) 34.1

WHETHER TO PROCEED

"Thus in a case where the court had to decide upon the wisdom of taking a vessel through the Downs in bad weather, the Judge said:

'...It would be very dangerous to hold, that there can be any divided authority in the ship with reference to the same subject, and whether the ship was to anchor or to proceed was a matter which we think belonged exclusively to the pilot to decide.'"

Pollock V. M'Alpin, 13 E.R. 945 (1851)

34.2

"Similarly, in the case of The Oakfield, which was involved in a collision with a vessel at anchor in the River Mersey in poor visibility, Sir James Hannen said:

'I think if there was such a state of obscurity owing to fog as would give rise to a plain prospect of danger, the master could in those circumstances throw the whole responsibility on the pilot if he ordered the vessel to get underway. But in this case it is said that the circumstances did not give rise to such a plain prospect of danger, for although the weather was admittedly foggy, yet vessels might be

seen at such a distance as that, then it is a question for the pilot to determine whether it was wise to weigh anchor, and the master would be relieved from responsibility. The pilot knows all the local dangers and knows as it were by instinct where he may go and where he may not go. It is therefore obvious that the master would leave it to the pilot to judge whether it would be safe to proceed in such a state of weather."

The Oakfield, 5 Asp. M.L.C. 575 (1886)

The Law of Pilotage, p. 66

(35) 35.1

SPEED

"It would appear from reported cases that the speed at which a vessel should proceed is within the province of the pilot. In The Maria, for example, Dr. Lushington said:

'...it would be a most dangerous doctrine to hold, except under most extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation...If no order was given to ease the steamer, the fault was in the pilot, not in the master.'

The Maria, 166 E.R. 508 (1839)

The Law of Pilotage, p. 68

(36) 36.1

USE OF RADAR

Quoting from the Canadian Royal Commission:

"With the aid of various electronic instruments, the pilot is now provided with means which are constantly being improved to 'see' when visual means fail but this electronic 'sight' has its limitations, and the images and information provided differ from what is seen by the naked eye. Therefore, to take advantage of these technical developments, pilots must acquire the necessary knowledge and skill to understand and use these instruments. The strange images that

appear on the radar screen should be as familiar to the pilot as the land features in time of clear visibility and such local knowledge must form part of the qualifications of pilots today."

Ibid, p. 69

(37) 37.1 Port of Baltimore Vessel Traffic, 1978, attached

Source: Baltimore Maritime Exchange Monthly Reports

Total Arrivals	4,295	Chile	25
U. S.	831	Finland	25
Foreign Flag	3,464	Iran	20
Liberia	568	Taiwan	20
Greece	364	South Korea	20
W. Germany	328	Peru	19
United Kingdom	292	Turkey	19
Norway	233	Iceland	18
U.S.S.R.	156	Philippines	16
Denmark	135	Cyprus	15
Japan	130	Egypt	15
Panama	118	Indonesia	14
Italy	100	Kuwait	13
Sweden	94	Ecuador	10
Singapore	82	Pakistan	10
Netherlands	78	Honduras	9
France	73	Canada	7
Spain	63	Israel	7
Poland	56	Algeria	5
Yugoslavia	46	Bangladesh	4
Brazil	45	Portugal	4
Argentina	39	Switzerland	4
India	34	Netherlands Antilles	3
Colombia	31	Libya	2
Venezuela	30	Malaysia	2
South Africa	26	Austria	1
Belgium	25	Nigeria	1

Prepared by the Great Lakes Commission

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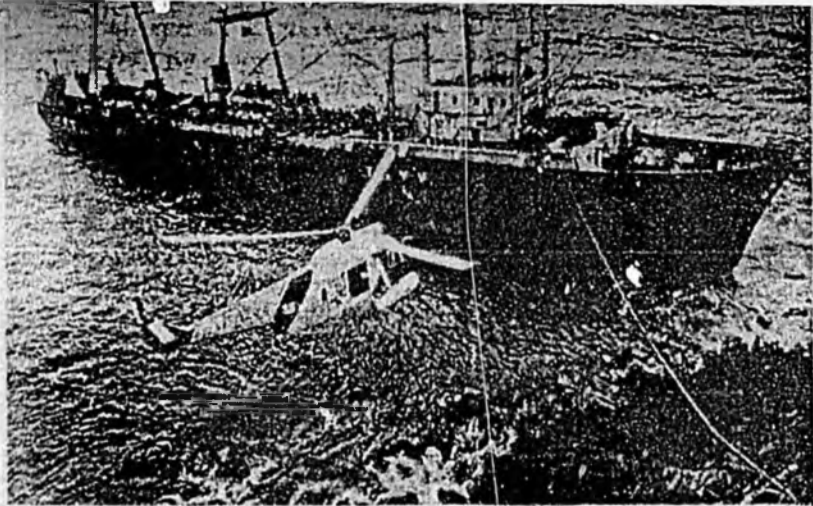
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Corpus Juris Secundum  
cited as C.J.S.

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.



Associated Press Wirephoto

The bow of the Japanese ship Ryuyo Maru No. 2 is hard aground on St. Paul Island in the Pribilof Islands, since the fisheries factory vessel hit the rocks on Friday. Some 100,000 gallons of diesel oil has spilled from her ruptured fuel tanks into the Bering Sea. This Coast Guard photo was taken from atop cliffs on the island.

# State queries why ship had no licensed pilot

By **BILL WILSON**  
Daily News reporter

There was no licensed pilot aboard the Ryuyo Maru No. 2 Friday night when a Japanese fishing vessel crashed into the wildlife-rich rocks of St. Paul Island and began spilling oil, state and federal officials said Wednesday.

The absence of a such a pilot may have been a violation of state law.

Alaska law requires state-licensed pilots be at the helm when large vessels ply so-called "inland waterways." Generally the pilots board vessels as they approach Alaska waters.

Whether or not the seas surrounding the Pribilof Islands are among those requiring an Alaskan pilot is presently being investigated by the Alaska Department of Commerce.

The Ryuyo's captain was at the helm Friday night when the 324-foot Japanese bottomfishing



vessel ran aground, according to Sally Towers, a U.S. government monitor aboard the craft. Towers boarded the Ryuyo in Japan to keep an eye on harvest logs, and was being taken to St. Paul so she could visit an ailing member of her family in Seattle at the time of the grounding.

One source within the commerce department said the penalties following a finding that a pilot was needed, "would be very, very heavy," but declined to say how big they might be.

While state law specifically identifies certain territory requiring a licensed pilot — such as the inside passage in Southeastern and much of Cook Inlet — it addresses much of the

water surrounding Alaska in rather vague terms, according to marine attorneys. Hence the uncertainty over the Ryuyo.

The piloting of the vessel is also part of the U.S. Coast Guard's investigation, according to Lt. Cmdr. Mike Macie, the local Marine Safety Officer, who declined to elaborate.

Meanwhile, the mop-up effort continued into the night Wednesday in the face of worsening weather. Although the 35-knot winds and 20-foot waves that have helped evaporate the 60,000 to 100,000 gallons of diesel fuel that spewed from the ill-fated vessel's tanks, they hamper speedy collection of remaining oil. The weather forecast for St. Paul calls for 60-knot winds and 30-foot waves today and tomorrow.

About 2 miles of beach are now covered with varying amounts of oil, officials say.

The oil has killed dozens of waterfowl and possibly is responsible for the death of a handful of seal pups, but overall, damage to the St. Paul ecosystem appears to be relatively light — at least so far, according to Coast Guard officials.

However, Salt Lagoon, a stopping point for thousands of migrating ducks and other water birds, is suffering from the spill as the tide deposits more and more diesel.

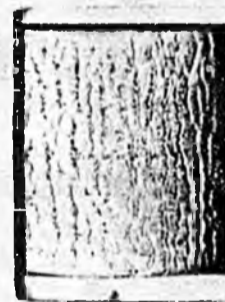
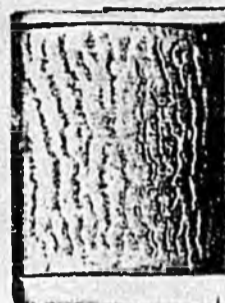
The lagoon, near the village of St. Paul, is fed by a narrow channel. The 80 cleanup workers on the scene are building a sandbag dam across the lagoon in an effort to keep the sheen away. A boom designed to block the flow of the oil was in place Wednesday. It had broken loose earlier in the cleanup effort.

While the current bird population of the lagoon is small, Coast Guard spill experts say a

See Back Page, STATE QUERIES

*Anchorage News*

15 Nov 1979



# State queries ship's lack of licensed pilot

Continued

wave of migrating Elder ducks is expected soon. Much of the cleanup activity is presently centered around collecting oil-poisoned crustaceans so they may not be eaten by birds.

The creatures upon which the Eiders and other birds feed include small shrimp-like animals.

"Our problem now is that several food species are being affected adversely," said Macle. "In other words, they are being killed."

The cleanup crew faces lethal ammonia gas which is thought to have escaped from the vessel's refrigeration system. Also, a deadly hydrogen and sulfur mix is sometimes created when ammonia blends with organic matter, says the Coast Guard. Whether or not that has happened was not known Wednesday as much of the freezing equipment was underwater and could not be reached.

Macle said the oil remaining in the Ryuyo will be removed via three-inch vents on deck, a process he says requires "lots of muscle power and lots of patience."

Macle, who visited St. Paul over the weekend to watch the

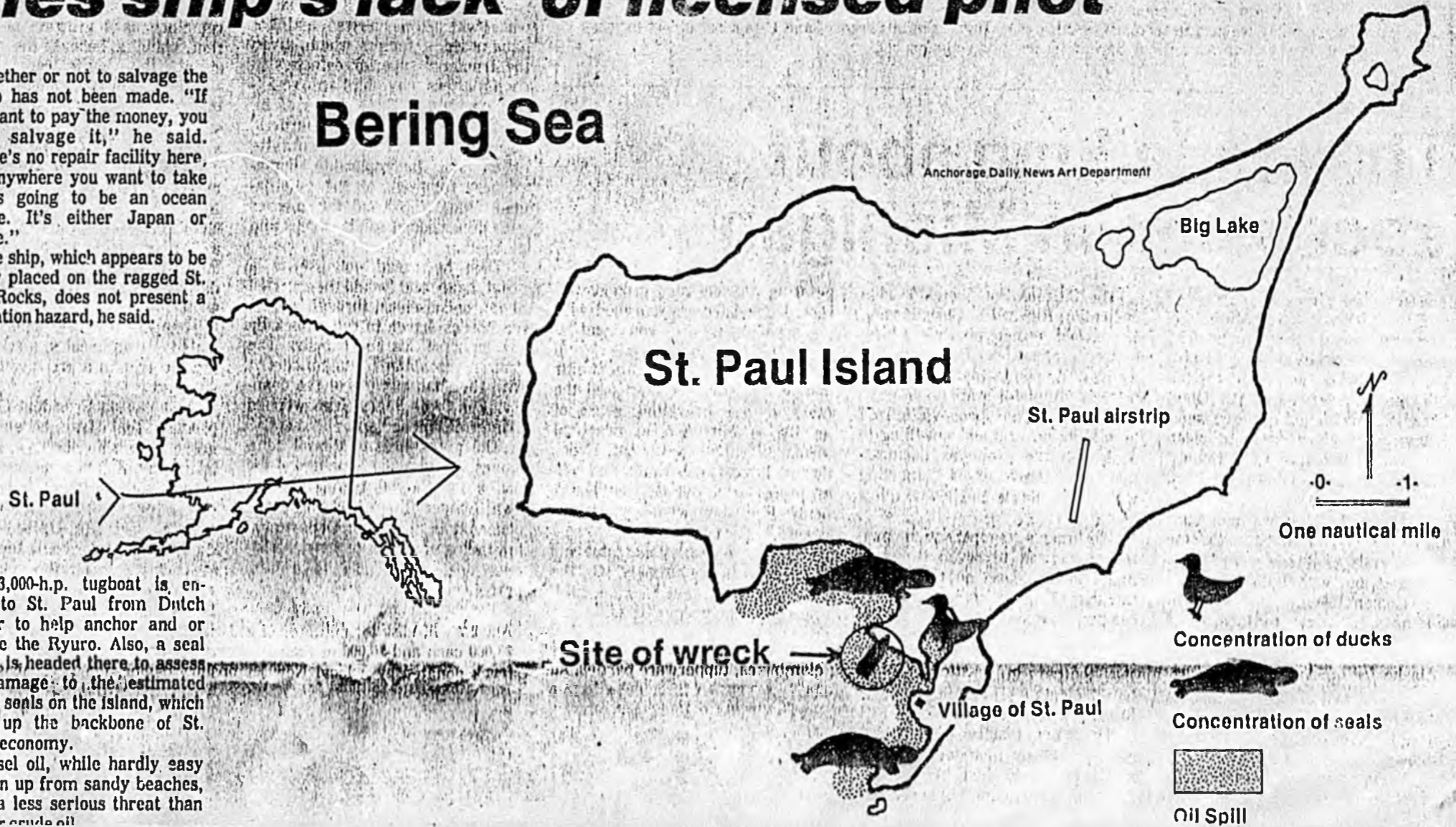
of whether or not to salvage the Ryuyo has not been made. "If you want to pay the money, you could salvage it," he said. "There's no repair facility here, and anywhere you want to take it, it's going to be an ocean voyage. It's either Japan or Seattle."

The ship, which appears to be solidly placed on the ragged St. Paul Rocks, does not present a navigation hazard, he said.

A 3,000-h.p. tugboat is en route to St. Paul from Dutch Harbor to help anchor and or remove the Ryuyo. Also, a seal expert is headed there to assess the damage to the estimated 100,000 seals on the island, which make up the backbone of St. Paul's economy.

Diesel oil, while hardly easy to clean up from sandy beaches, poses a less serious threat than heavier crude oil.

## Bering Sea





*mailed 21 Dec 1979*  
*file copy*

# Alaska State Legislature

## Senate

### Committee on Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

FOR FURTHER INFORMATION CONTACT:

Senator Brad Bradley, Chairman  
Senate Commerce Committee  
1016 West Sixth Avenue, Suite 201  
Anchorage, AK 99501  
(907) 278-1581/1582

#### PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 1:00 p.m. (Alaska Standard Time) on Monday, December 10, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Marine Pilots. The hearing is open to the public and will be held in Anchorage at 1016 West Sixth Avenue, Suite 201. The hearing will also be teleconferenced to Fairbanks, Soldotna, Ketchikan and Juneau.

Fairbanks will hold its hearing at the Legislative Information Office, 101 College Road, Building F, Room 252, Fairbanks.

The Soldotna hearing will be held at the Legislative Information Office, Cordova Building, Spur Highway, Soldotna.

The hearings in Juneau and Ketchikan will begin at 3:00 p.m. (Pacific Standard Time). Juneau will hold its hearing in Room 124 of the Capitol Building, Juneau. The Ketchikan hearing will be held at the Legislative Information Office, 415 Main Street, Room 301, Ketchikan.

A copy of the performance review of the Board of Marine Pilots is available for public use at the local Legislative Information Offices.

For further information, please contact the Senate Commerce Committee at 1016 West Sixth Avenue, Suite 201, Anchorage, AK 99501, telephone: 278-1581 or 278-1582.

Rooster

MARINE PILOTS

November 1, 1979

AA 0066	Bradley, John R.	PO Box 1273	Homer	AK	99603
AA 0036	Brastad, Erling	10505 15th N.W.	Seattle	WA	98177
AA 0013	Bugler, Franklin	4901 30th St. N.E.	Tacoma	WA	98422
AA 0057	Bullard, William	PO Box 7132	Ketchikan	AK	99901
AA 0062	Christy, Timothy	PO Box 552	Homer	AK	99603
AA 0031	Clark, John E.	13528 91 Pl. N.E.	Kirkland	WA	98033
AA 0035	Clough, A. Harley	PO Box 1171	Juneau	AK	99807
AA 0010	Collar, Oliver K.	2580 Nathaniel Court	Anchorage	AK	99503
AA 0070	Collins, Dale O.	PO Box 5997	Ketchikan	AK	99901
AA 0059	Cray, John J.	PO Box 6100	Ketchikan	AK	99901
AA 0042	Creasey, E. H.	740 Maple St.	Edmonds	WA	98020
AA 0041	Cunningham, John T.	PO Box 568	Homer	AK	99603
AA 0054	Davis, Veymond	PO Box 807	Douglas	AK	99824
AA 0068	Elde, Kaare Per	6413 Colgate Drive	Anchorage	AK	99504
AA 0050	Elaensohn, Harold K.	PO Box 6100	Ketchikan	AK	99901
AA 0007	Falconer, Charles P.	4650 Blank Road	Sebastopol	CA	95472
AA 0065	Gavin, Michael T.	8020 240th S.W.	Edmonds	WA	98020
AA 0069	Handricks, Robert L.	Box 977	Homer	AK	99603
AA 0049	Hodgman, James A.	PO Box 6100	Ketchikan	AK	99901
AA 0043	Hofstad, Richard T.	505 7th Ave., Box 66	Seward	AK	99664
AA 0047	Hurd, James M.	PO Box 678	Homer	AK	99603
AA 0074	Johnson, Arthur L.	2408 2nd Ave.	Ketchikan	AK	99901
AA 0037	Johnson, Robert C.	4111 S.W. Frontenac	Seattle	WA	98136
AA 0027	Johnson, Robert M.	605 Tower Road	Ketchikan	AK	99901
AA 0002	Johnson, William L.	PO Drawer A	Lk. Havasu Cy	AZ	86403
AA 0032	Jorgensen, F. Baker	50 Porto Bello Drive	San Rafael	CA	94901
AA 0006	Maroni, Jack	PO Box 6100	Ketchikan	AK	99901
AA 0033	McReynolds, George	PO Box 7544	Ketchikan	AK	99901
AA 0055	Mitchell, William W.	1304 Millar St.	Ketchikan	AK	99901
AA 0051	Murphy, William E.	PO Box 597	Homer	AK	99603
AA 0072	O'Hara, Michael J.	PO Box 1443	Palmer	AK	99645
AA 0012	Oldow, Donald J.	PO Box 881	Seward	AK	99664
AA 0014	Payne, Harold	PO Box 70	Greeland	WA	98249
AA 0040	Pedersen, Theodore	Bear Cove, Box 113	Homer	AK	99603
AA 0061	Petke, Lyle R.	Rt. 1, Box 393-A	Ketchikan	AK	99901
AA 0017	Recser, Maynard L.	Box 492	Petersburg	AK	99833
AA 0039	Richards, Eugene	PO Box 8324	Ketchikan	AK	99901
AA 0052	Robinson, Gerald B.	344 Beverly Garden Dr.	Metairie	LA	70011
AA 0019	Rosenquest, Bill R.	19353 2nd Ave. N.E.	Seattle	WA	98177
AA 0022	Sande, James W.	910 Jackson St.	Ketchikan	AK	99901
AA 0071	Schubert, Walter L.	3701 Eureka #44B	Anchorage	AK	99503
AA 0030	Shelton, William M.	175 Lucas Park Dr.	San Rafael	CA	94903
AA 0025	Smith, Robert W.	PO Box 542	Juneau	AK	99801
AA 0005	Starkweather, Dan D.	2712 Second Ave.	Ketchikan	AK	99901
AA 0044	Subcleff, Andrew C.	PO Box 1471	Homer	AK	99603
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AA 0008	Thornton, Donald A.	9014 45th S.W., Apt. 28	Seattle	WA	98136
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Board of Marine Pilots

10/18/79

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Seattle, Washington 98199

Telephone: (206) 282-3702

BOARD OF MARINE PILOTS

(AS 08.62.010; 2 pilots and 2 agents and 2 public members or managers appointed by the governor and confirmed by the legislature; 4-year term.)

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles D. Stover P. O. Box 2019 Anchorage, Alaska 99510		76/06/17	80/06/01
Captain Donald J. Oldow P. O. Box 881 Seward, Alaska 99664		76/11/05	80/06/01
Mr. Jack Maroni P. O. Box 6100 Ketchikan, Alaska 99901		75/10/07	79/06/01
Mr. Marvin Taylor P. O. Box 436 Skagway, Alaska 99840		75/10/07	79/06/01
<del>Mr. David Culbertson 801-42 Airport Heights Road Anchorage, Alaska 99504</del>	New: David George R.R. #5 Box 5575-A Juneau, AK 99803	76/10/29	80/06/01
Mr. Kenneth E. Peavyhouse P. O. Box 628 Valdez, Alaska 99686 (Public)		79/01/00	83/06/01

Commissioner *Chamman* *Weber*  
Commerce and Economic Development  
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**Southeast Stevedoring Corp.**  
**P.O. Box 81080**  
**Ketchikan, Ak. 99901**



FROM: DANIEL J. PAUL

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AMERICAN INSTITUTE OF MERCHANT SHIPPING  
1625 K Street, N.W., Suite 1000, Washington, D.C. 20006  
Telephone 202/783-6443  
Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley  
Chairman, Senate Commerce Committee  
State of Alaska  
State Capitol  
Pouch-V Mail Stop 3100  
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

- 1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

*No action is requested. This requirement is included under 12 AAC 56.030(2).*

- 2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

*It is recommended that language be added to AS 08.62.040(2) permitting elimination of examination requirements*

1 of 5

3. Seek active USCG liaison with the Board of Marine Pilots.

*It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.*

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

*This subject should be included in the scope of the previously recommended Committee's work.*

- ② Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

*AIMS proposes Section 08.62.160 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.*

Regulation of Fees

1. Provide more detailed criteria for evaluating pilot-age rate changes.

*Section 08.62.040(4) should be amended to require that*

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.090(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

#### Board Composition

- ① Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

#### Regulation of Enrolled Vessels

- ① Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employec, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,



Mark R. Johnson  
Assitant to the Director  
of Marine Affairs

/for/ Daniel J. Paul, Jr.

4 of 5