

Board of  
Marine  
Pilots  
Regulations

APR 13 1992

M E M O R A N D U M

TO: Alaska Board of Marine Pilots  
VIA FAX 465-2974

FROM: Alaska Marine Pilots

RE: Proposed Regulations 12 AAC 56.021(b) and (c)

DATE: April 10, 1992

This memorandum presents the view of Alaska Marine Pilots ("AMP") respecting proposed regulations 12 AAC 56.021(b) and (c).

SUMMARY

Proposed regulation .021(b) is a redraft of the existing language. After it was put out for public comment and thereafter adopted by the Board at its January 1992 meeting, this subsection was redrafted by the Office of the Attorney General ("AG"). According to Mr. Amendola, the redrafting was not supposed to change the regulation in any substantive way. However, without questioning the AG's intent, AMP contends that the change is substantive and substantial. AMP asks the Board either to adopt the subsection in its original form or put it out for public comment again.

Proposed regulation .021(c) was first adopted by the Board at its Fall 1991 meeting, put out for public comment, and adopted unchanged at the Board's January 1992 meeting. The AG has indicated it will recommend to the lieutenant governor that the regulation as written is contrary to law and therefore unenforceable, and consequently should not be approved by the lieutenant governor. AMP strongly urges the Board not to change this subsection, and by this memorandum urges the AG to reconsider its position and approve the subsection as written.

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SUBSECTION .021(b)

As originally adopted, .012(b) read: "Each exemption, addition, or endorsement to a marine pilot license must be identified on the license." As rewritten by the AG's office, it reads:

(b) An exemption to a license for a pilotage region will be identified on the license for the parts of the region that the licensee is determined by the board as not qualified to pilot or the pilot does not seek licensure. An endorsement for an extended route will be identified on the license if the board issues an endorsement under this chapter.

The words "or the pilot does not seek licensure" is a significant substantive change in the regulation as adopted by the Board. AMP can see no justification in the statute or any regulation adopted by the Board for adding these words to the regulation.

The reason this is significant is that implies that pilots may make an election not to seek licensure in all of a region. AMP strongly urges the Board to adopt a policy that a pilot must have full federal and state pilotage in order to obtain an unlimited pilot's license under AS 08.62.100. There is no doubt that the Board has the authority to impose this requirement.

(AMP is aware that the statute no longer refers to anything called an "unlimited license." However, for the sake of discussion, AMP refers to the license contemplated by AS 08.62.100 as an "unlimited" license, distinguished from the deputy marine pilot license contemplated by AS 08.62.097.)

Furthermore, AMP urges the Board to impose a requirement that deputy marine pilots holding less than full state and federal licensure for a region make reasonable progress toward full licensure. In other words, the requirement should be that a deputy marine pilot will obtain the unlimited license within a reasonable time, or lose his deputy license.

The policy objective here is to ensure that each pilot eventually becomes fully licensed in his or her region, and therefore is able to provide pilotage services to all vessels in all ports of the region, at all times of the year, day or

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night. The state's interests are not served by permitting a pilot to become licensed in one or two high-volume, high-profit ports in a region, to the exclusion of the other lower-volume, lower-profit ports. If the state permits that kind of "cherry picking," pilots and pilot groups will have a strong economic incentive to work and compete only in the profitable ports. In fact, it will become an economic imperative to do so. It will become economically impossible to provide service to remote, unprofitable ports and still stay in business.

For this reason, the words "or the pilot does not seek licensure" should not be included in the regulation. Clearly, this phrase represents a significant substantive change from the regulation that was put out for public comment and then adopted by the Board in January. The Board must either insist that the regulation be written as originally adopted, or must put this new version out for full public comment. In AMP's view, the Board cannot legally adopt this substantive change without going through the entire process.

#### SUBSECTION .021(c)

This is what has become known as the "cross-regionalization" issue. Some pilots and industry representatives are strenuously urging the Board to adopt a regulation that will permit pilots to cross regional lines freely. AMP strongly urges the Board to resist this pressure, and to maintain the tough regional restrictions contemplated by the legislature in HB 194.

The current language of 12 AAC 56.012(c) was suggested by AMP and thereafter adopted by the Board at its Fall 1991 meeting. It was put out for public comment, then adopted unchanged at the Board's January 1992 meeting:

(c) A pilot may not be licensed in more than one region at a time unless the board determines that the members of the organization or organizations of that region do not have a sufficient number of qualified members to provide the kind of pilotage in the region that will assure the protection of shipping, the safety of human life and property, and the protection of the marine environment.

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The need for this regulation arises from AS 08.62.080(b), which provides:

A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interests of the state to license pilots for parts of more than one pilotage region.

The regulation proposed by AMP and adopted by the Board was intended to define what constitutes "the best interests of the state."

The AG has indicated it will disapprove this section if the Board does not withdraw it. The AG's reasons are set out in a memo of March 20 from Mr. Amendola to Assistant AG Deborah E. Behr, and a subsequent memo dated March 20 from Ms. Behr to the Board. The bottom line is that the AG views this language as "anti-competitive" and therefore prohibited by AS 08.62.040(d). Subsection .040(d) provides that the Board may not adopt a regulation "resulting in anti-competitive practices that, if the board were subject to AS 45.50.562--45.50.596, would violate AS 45.50.562--45.50.596."

AMP respectfully contends that the AG is wrong in its determination that the current language of 12 AAC 56.021(c) is anti-competitive. AMP's threshold problem with the AG's position is that there is no discussion whatsoever in their legal memoranda to the Board explaining why the language would violate AS 45.50.562 -- .596. We can find no indication that the current language does violate any anti-trust provision of Alaska law. Without any discussion by the AG in its memoranda, it is impossible to determine where the violation might lie.

In AMP's opinion, the AG's memos gloss over the express language of AS 08.62.080(b). As written, the statutory presumption is that pilots shall not pilot in more than one region at a time UNLESS an exception must be made to serve the state's best interests. In other words, the presumption is in favor of the restriction, not in favor of the exception. The AG seems to be reading it the other way around: Mr. Amendola and Ms. Behr seem to be arguing that pilots should be able to pilot in more than one region at a time UNLESS they cannot demonstrate an ability to do so safely. This improperly reverses the language of the statute.

There is nothing in the regulation or the underlying statute that prevents a pilot from competing in any region in which he chooses to compete. However, it is undeniable that AS

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08.62.080(b) creates a heavy presumption against allowing them to compete in two or more regions at the same time. The legislature obviously balanced the state's interest in unfettered competition against its interest in promoting local expertise. It enacted Section .080(b), together with mechanism for creating smaller pilotage regions, for the purpose of making sure that pilots do not spread themselves too thin. This is a safety-promotion measure well within the legislature's police powers.

The existing language of 12 AAC 56.021(c) is not "anti-competitive" except in the most literal sense -- that is, in the sense that the entire statute is "anti-competitive" because it does not permit unfettered and unregulated marine piloting. In that sense, the entire statutory scheme is "anti-competitive": no one can pilot without a license, and that very fact means that piloting is not purely competitive. Under the current scheme, a pilot is also restricted in where he can work, with whom he can work, and how much he can charge. It follows that the mere regulation of pilots cannot be construed as inherently "anti-competitive." If it were, the entire statute would have to be thrown out. In the context of AS 08.62.040(d), the term "anti-competitive" has to mean something more than "regulated" or "restricted."

AMP remains convinced that the regulation must define what constitutes the state's interest in deciding whether a pilot can pilot in more than one region at a time. It is not the interests of pilots or of industry that are to be considered, but the interests of the state alone. What are the state's interests? The statute spells it out at AS 08.62.040(a): safe and efficient pilotage service to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment. These are the state's only interests in piloting, and the entire statutory and regulatory scheme is aimed at furthering these specific enumerated interests.

As long as these specific state interests are being adequately served by the pilots who are already working exclusively in a region, then Subsection .080(b) makes it clear that there is no justification for permitting a pilot from another region to work in both regions at the same time.

Put another way, as long as the state's interests are being adequately served in a region by the pilots working exclusively in that region, then Subsection .080(b) expresses the state's overriding interest in preventing pilots from other

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regions from diluting their expertise by trying to work in two regions simultaneously.

Put yet another way, as long as the state's interests are being adequately served in a region by the pilots working exclusively in that region, then permitting pilots from other regions to work in that region serves only their own economic interests and the economic interests of industry, to the detriment of the state's interest in promoting safety by restricting pilots to one region at a time.

With all that in mind, we must disagree with the AG's office in its suggestion that the state's interest in this matter is only to make sure that pilots pass some tests and maintain their currency. Quoting from Ms. Behr's March 20 memo:

The board may consider adopting more frequent examinations, enhanced continuing education requirements, or local experience requirements for pilots licensed in two or more regions.

If that were the legislature's intent, they never would have enacted Subsection .080(b). What the AG's office proposes is no change from the prior statutory and regulatory scheme, which placed no limitation on where a pilot could work, so long as he passed the proper tests. A basic rule of statutory construction is that the legislature is never presumed to have enacted a law without a reason. If the effect of a new law is to change existing law, it must be presumed that the change was intended.

In this case, the prior law consisted of a statute that did not even mention pilotage regions, and a regulation (existing 12 AAC 56.021(a)) that divided the state into two "licensing areas." There was no restriction on any pilot who wanted to work in both "licensing areas" as long as he passed the tests required by the board.

Contrast the old statute with the new legislation. The new legislation included a statement of policy setting forth a legislative finding that

in order to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels on the inland and coastal waters of and adjacent to the state.

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HB 194, Sec. 1(b)(1) (emphasis added). Without doubt, the legislature was interested in encouraging "extensive local knowledge." The statement of policy goes on to say that the legislature found that

it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions . . . .

HB 194, Sec. 1(b)(5). The statute itself directs the Board to adopt regulations establishing pilotage regions, and provides that the Board may adopt regulations establishing standards for permitting a pilot to work in more than one region at a time. AS 08.62.040(a)(4)(A) and .040(b)(4). Finally, the new legislation establishes a strong presumption against allowing pilots to work in more than one region at a time. AS 8.62.080(b).

These are substantial changes from the law as it existed prior to the passage of HB 194. The Board and the AG must look at the presumption against "cross-regionalization" as a significant change in the law that was intended by the legislature.

In adopting the current language, AMP believes that the Board has properly exercised the broad authority conferred upon it by the legislature. AMP questions the authority of the AG's office to interfere in this exercise of authority, where the legislature clearly intended that the collective expertise of the Board was to be given great weight. On what is essentially a safety issue, the AG appears to have substituted its determination of what constitutes the state's best interests for that of the Board.

From AMP's perspective, the real issue here is defining what is meant in Subsection .080(b) by "the best interests of the state." We remain convinced that the board must look to the rest of the statute to define those interests, and as mentioned above, the statute defines those interests in terms of protection of shipping, of human life and property, and of the marine environment. If one reads Subsection .080(b) as raising a strong presumption against "cross-regionalization" (and AMP insists it must be read that way), then it necessarily follows that cross-regionalization will not be allowed so long as the pilots already working exclusively in a region are meeting those interests.

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In discussing how best to serve the state's interests in marine piloting, the Board cannot lose sight of economic realities. Alaska will only have a corps of experienced professional marine pilots if pilots have reasonable assurance of job security and of compensation comparable to others in their profession. This is every bit as much of a safety issue as drawing charts and passing tests. Alaska cannot afford regulatory policies that drive the best marine pilots to other areas of the country or out of the profession altogether.

If the board permits multi-regional licensing in the name of competition (rather than in the name of safety), the overall quality of piloting will suffer in several ways. Pilots who are stretching themselves to work in two regions at a time will experience dilution of their local knowledge and expertise. Unrestricted competition will result in cherry-picking, with the accompanying loss of coverage in unprofitable outports. Eventually, the best and most experienced pilots will go elsewhere rather than bear the risks of inadequate compensation and uncertain employment security.

The AG's proposal would permit granting licenses for more than one region without any finding by the Board that the state's interest is being served by doing so. In effect, the AG's proposal would eviscerate AS 8.62.080(b) by substituting a scheme allowing pilots to get licensed in more than one region at a time without an independent determination by the Board that the state's best interests compelled it. As noted above, that is no change from prior law.

In order to satisfy the mandate of AS 08.62.080(b), every applicant for a license to pilot in all or part of a second region should be required to demonstrate to the Board that the state's best interests will be served thereby. That determination cannot be made by a blanket licensing scheme, but must be made on a case-by-case basis considering all the circumstances, and must be made solely on the basis of the state's interest in safe piloting, not the economic interests of the individual pilot or industry. The current language of .021(c) provides a yardstick for this determination that is itself grounded in the statute.

The AG's suggestion ignores another issue -- perhaps the central issue -- that has been brought to the Board's attention, but which the Board has so far been unwilling or unable to face head-on. It is the issue of "cherry picking," and it arises in these two related areas: whether pilots can pilot in more than one region at a time, and whether the board

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should recognized pilot organizations that cannot serve all or substantially all of a region.

The problem of "cherry picking" is this: In a region, the revenue from piloting in the high-volume ports essentially subsidizes the low-volume remote ports. For instance, in the Western Region, AMP can only service outports such as Chignik, Lost Harbor, Cold Bay, and the Aleutians at reasonable rates because of the revenues generated by the high volume of traffic in ports like Dutch Harbor. If an individual pilot or a small pilot group is permitted to skim off the cream by working exclusively in Dutch Harbor and offering to do the piloting work there for less, then AMP will inevitably be forced either to abandon the outports and compete head-to-head in Dutch Harbor, or compete head-to-head in Dutch Harbor and raise the rates for the outports to a prohibitive level.

The state's interests are very much at stake in this matter, because if individual pilots or small pilot groups are allowed to "cherry pick" in the name of promoting competition, then larger pilot groups that are trying in good faith to serve an entire region will not be able to continue doing so. Why would any pilot or pilot group continue to serve the unprofitable outports if the only way to survive is to restrict themselves to competing in the high-money ports or trades? Clearly, the state's interests are not served if service to the outports either disappears or becomes prohibitively expensive.

In trying to promote competition, the central flaw in the AG's reasoning is that marine piloting is a free-market enterprise. That is incorrect. Marine piloting, and the state's interest in marine piloting, is more like a public utility or the post office: the public interest demands that piloting, like postal service, be maintained even in remote, low-volume areas where it is not profitable or even self-sustaining. In the interests of safety, the state should be doing everything it can to ensure that regional pilot groups will continue to serve the outports, even though they are not profitable. The state should NOT be doing anything to force pilots to abandon the outports.

The fact is that marine piloting is carefully regulated in the public interest. Unlike lawyers, doctors, hairdressers, and real estate agents, all of whom are also licensed by the state, marine pilots cannot decide unilaterally where they will work, and with whom, and for how much. Instead, the state has decided to restrict them to certain regions of the state, to regulate how much they can charge, and to require that they

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become members of regional pilot organizations that must accept for membership anyone with a pilot's license. The AG's apparent assumption that marine piloting should be treated like a truly "competitive" profession is simply indefensible.

In order for the state's interests to be properly served, the state must ensure that professional pilots organizations that are making a good faith effort to provide full coverage to the entire region are NOT driven out of business. The members of these organizations MUST be permitted to make a reasonable living at least equal to professional pilots in the rest of the country, and they must have reasonable job security. The state's interests in having a solid corp of competent professional marine pilots with sound local knowledge is not furthered by encouraging a system under which remote locations cannot get pilots, good pilots are driven elsewhere for decent pay and job security, and piloting services in the busiest ports go to the lowest bidder in a cutthroat market. It is neither good nor responsible public policy. We aren't talking about cabbages here; we're talking about marine safety. Marine pilots are the equivalents of air traffic controllers, not grocers.

#### RECOGNITION OF MARINE PILOT ORGANIZATIONS

AMP supports the following policies for recognition of marine pilot organizations and the training and licensing of pilots:

1. In order to receive an unlimited license, a pilot must have full federal and state coverage for the entire region. AMP believes there should be a reasonable time in which to move from partial coverage as a deputy pilot to full coverage as an unlimited pilot, but also believe that a time limit must be established for doing that. In other words, "up or out." This would affect regulation .021(b), which implies that a pilot can elect indefinitely not to get fully licensed in the region. As noted above, AMP urges the Board to go back to the original formulation of .021(b).
2. In order to be recognized as a regional organization, a one-pilot organization must agree to provide pilotage services in the region for at least six months of the year. An organization with two or more members must provide pilotage services for the entire year.

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3. No pilot organization, regardless of its size, may refuse a request for pilot services anywhere in the region, unless there is no competent pilot then available from the organization. In other words, if a competent pilot is available, that pilot must render requested services. "Competent" means physically and mentally competent and licensed for the particular area. An organization's refusal to perform pilotage services when competent to render them should be grounds for terminating the organization's recognition.

These measures are intended to preclude seasonal and geographic cherry-picking, and AMP believes they are reasonable requirements in furthering the statutory objectives of the act.

Respectfully submitted,

ALASKA MARINE PILOTS

cc: Gary Amendola  
Office of the Attorney General  
State of Alaska  
(via fax)

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# MEMORANDUM

State of Alaska

Department of Law

TO Bob Watt, Chair  
Board of Marine Pilots  
Div. of Occ. Licensing  
Dept. of Commerce  
and Economic Development

DATE March 20, 1992  
FILE NO 993-92-0041  
TEL NO 465-3600  
SUBJECT Board of Marine Pilot  
regulations  
(12 AAC 56)

*Deborah E. Behr*  
FROM Deborah E. Behr  
Assistant Attorney General  
and Regulations Attorney

I have reviewed the regulations of the Board of Marine Pilots on pilotage regions, maximum tariffs, and the recognition of marine pilot organizations. I made several amendments for clarity and to conform to the drafting manual. The regulations, with the amendments, are retyped and are available for your board's consideration and reoption.

I wish to alert the board to one subsection that has significant legal concerns. The issue concerns proposed 12 AAC 56.021(c). That proposed regulation, as adopted by the board, states as follows:

(c) A pilot may not be licensed in more than one region at a time unless the board determines that the members of the organization or organizations of that region do not have a sufficient number of qualified members to provide the kind of pilotage in the region that will assure the protection of shipping, the safety of human life and property, and the protection of the marine and coastal environment.

The proposed regulation cites AS 08.62.040 and AS 08.62.080 as authority.

AS 08.62.040(b) (4) allows the Board of Marine Pilots to:

. . . by regulation, make any other provision for proper and safe pilotage upon the inland and coastal water of and adjacent to the state and for the efficient administration of this chapter, including establishing

(4) standards under which a pilot may receive a license or an endorsement to a license to pilot vessels in more than one pilotage region.

AS 08.62.080(b), though, restricts the authority of the board to issue licenses for more than one region, as follows:

(b) A pilot may not be licensed in more than one pilotage region at one time, unless the board determines that it is in the best interests of the state to license pilots for parts of more than one pilotage region.

(Emphasis added.)

Also, AS 08.62.040(d) further defines the board's ability to adopt regulations on piloting in more than one region as follows:

(d) Notwithstanding the exemption from AS 45.50.562 -- 45.50.596 granted to pilot organizations under AS 45.50.572(a), the board may not adopt a regulation . . . resulting in anti-competitive activities that, if the board were subject to AS 45.50.562 -- 45.50.596, would violate AS 45.50.562 -- 45.50.596.

(Emphasis added.)

Although on the surface these statutes may seem diametrically opposed, we believe that a court would likely read them in para materia, or together as one statutory scheme. This is especially likely because all of these sections were passed in the same bill in 1991 (SCS CSHB 194(L&C).) See ch. 89, SLA 1991.

Therefore, we believe that the court would interpret these statutes to allow the board to establish exclusive pilotage regions to encourage safe piloting, if the exclusive regions did not result in anticompetitive activities. This could be accomplished by the board allowing a pilot to demonstrate to the board that he or she can safely pilot in a second region and has current knowledge of local conditions essential for safe piloting for licensure in that second region. By adopting such a system, the board would be furthering the purposes of the Marine Pilotage Act to provide for safe and efficient pilotage while at the same time not running contrary to the anticompetitive prohibitions of AS 08.62.040(d).

This interpretation is consistent with testimony at legislative committee meetings, when HB 194 was debated last year. A major goal of the legislation appears to have been to ensure safe piloting in Alaska waters. Testimony frequently focused on the need for a marine pilot to have current and accurate information on local conditions. Persons testifying generally stressed that it was difficult for a pilot to maintain competency if the pilot was

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expected to cover two or more large geographic regions. Testimony also was presented to urge the legislature not to take away from the board the power to license a pilot in more than one region, if the pilot was qualified to pilot safely in a second region. See House Labor and Commerce Standing Committee Minutes, April 2, 1991; House Judiciary Standing Committee Minutes, April 18, 1991.

The proposed regulation has difficulties because it appears to automatically preclude an otherwise qualified pilot from being licensed in a second region unless there are insufficient numbers of qualified pilots already licensed in the second region. The regulation on its face appears anticompetitive. If safety is the primary goal of the board, it could be accomplished without a blanket restriction, by having the pilot demonstrate to the board his or her competency to pilot in that second region.

The board has the expertise to develop the appropriate standards to license a pilot in a second region. The board may consider adopting more frequent examinations, enhanced continuing education requirements, or local experience requirements for pilots licensed in two or more regions.

In conclusion, we would recommend that the board withdraw proposed 12 AAC 56.021(c) at this time, to allow the board to refine the language of that provision in accordance with the advice in this memorandum. If the board does not do so, it will be disapproved by the Department of Law.

If you or any board member have any questions, please do not hesitate to contact me or Gary Amendola.

DEB:cl

cc: Hon Glenn Olds, Commissioner  
Ann Boudreaux, Director  
Division of Occupational Licensing  
Department of Commerce & Economic Development

Gary Amendola  
Assistant Attorney General, Juneau

## MEMORANDUM

State of Alaska

Department of Law

TO: Deborah E. Behr  
Assistant Attorney General  
Legislation/Regulations Attorney

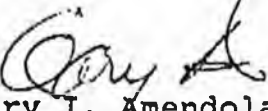
DATE: March 4, 1992

FILE NO: 993-92-0041

TEL NO: 465-2398

SUBJECT: Marine Pilot Regulations

FROM:

  
Gary I. Amendola  
Assistant Attorney General  
Commercial Section-Juneau

I have reviewed the attached regulations of the Board of Marine Pilots (the board) and find them to be ready for your final review prior to filing with Lieutenant Governor Coghill. The regulations deal with three important areas of marine pilotage, i.e., regions, tariffs, and recognition of pilot organizations. These regulations are required by the amendments to the Alaska Marine Pilotage Act (AS 08.56) effective July 1, 1991. 1/

As these regulations developed, I expressed some concern about proposed 12 AAC 56.021(c) and 12 AAC 56.310(c)(9). Those concerns are as follows:

**Proposed 12 AAC 56.021(c)**

Proposed 12 AAC 56.021(c) states that "[a] pilot may not be licensed in more than one region at a time unless the board determines that the members of the organization or organizations of that region do not have a sufficient number of qualified members to provide the kind of pilotage in the region that will assure the protection of shipping, the safety of human life and property, and the protection of the marine and coastal environment".

The authority for the adoption of this regulation is AS 08.62.040(b)(4) (the board may, by regulation, establish standards under which a marine pilot may receive a license to pilot in more than one region) and AS 08.62.080(b) (a marine pilot may not be licensed in more than one region at any given time unless the board determines it is in the best interests of the state to do so). Thus, it is within the discretion of the board (i.e., the board is

1/ The tariff and recognition regulations were supposed to be adopted by January 1, 1992. Secs. 32 and 33, 1991 SLA Ch. 89. In addition, based on the recognition regulations, pilot organizations must be recognized before July 1, 1992 in order to continue to provide pilotage services. Therefore, I urge review of this project as soon as possible.

Deborah E. Behr

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not required) to adopt regulations that would allow for licensure in more than one region. AS 08.62.040(b)(4). When the board exercises its discretion, it must do so on the basis of what is in the best interests of the State of Alaska, AS 08.62.080(b), and must be mindful to avoid the adoption of regulations that will result in allowing for anti-competitive activities. AS 08.62.040(d). 2/

It is clear that neither the legislature nor the board may any longer rely on unsubstantiated findings to justify the enactment of a statute or the adoption of a regulation. The courts will look for the substance upon which such decisions are made; courts no longer accept at face value a litany of legislative findings to support an otherwise invalid enactment.

My concern with proposed 12 AAC 56.021(c) is that its practical effect will be to prohibit licensure in more than one region without there being a basis for the prohibition. I was present during much of the legislative process leading up to the enactment of the 1991 amendments. It is clear that the legislature intended the standards by which such licensure would be allowed to be stringent. I think it equally clear that the legislature did not intend dual licensure to be prohibited, but only carefully limited by the board in order to protect the state's interest in safe and efficient pilotage.

Why do I think proposed 12 AAC 56.021(c) will, in effect, prohibit licensure in more than one region? In order to allow dual licensure, the board must first determine there is a need based on the lack of qualified pilots in a particular region. 3/ Besides the fact that the bases for making such a determination appear very

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2/ Enclosed in this file are letters from attorneys representing two different pilot organizations. Not surprisingly, one claims that proposed 12 AAC 56.021(c) is valid and the other claims it is not.

The attorney claiming that it is valid suggests that AS 08.62.040(d) is invalid, especially if it were to be the basis for finding proposed 12 AAC 56.021(c) to be invalid. I disagree. There are a number of rules of statutory construction by which I think AS 08.62.040(d) would be, and should be found to be a valid exercise of the legislature's authority over state pilotage. Thus, it is properly a factor that we should consider in determining whether proposed 12 AAC 56.021(c) is a valid exercise of the board's discretionary authority.

3/ Indeed, during a transition in the Southcentral and Western Regions, licensure in both on a very limited basis will be allowed for Southcentral licensees only. See proposed 12 AAC 56.022.

subjective and lack objective standards by which to measure that need, the period of time between when such a determination may be made and the necessary marine pilots may be so licensed to take care of the need will likely exceed the time in which the need exists.

Unless there is an existing pool of pilots that have the capability to pilot in more than one region, there is no ability to respond in the event the board determines the need. Being licensed in an area requires local knowledge, experience, and recency of piloting in the area, all of which take time to acquire. How then may pilots respond to a need for pilots in another area. On a short-term basis, it appears that under proposed 12 AAC 56.021(c) they can not do so. In the long-term, adding pilots in the area for which there is a need will cure the need. Thus, proposed 12 AAC 56.021(c) appears to be a prohibition that indeed may frustrate the legislative intent to, at least on a limited basis, allow for licensure in more than one region. 4/

In short, I think the regulation should be disapproved.

**Proposed 12 AAC 56.310(c)(9)**

Proposed 12 AAC 56.310(c)(9) requires that a pilot organization seeking recognition by the board under AS 08.62.175 must have provisions in its articles of incorporation, bylaws, or operating rules that, among other things, require the organization to "at all times, maintain an efficient, fair, and nondiscriminatory dispatch system that enables the organization to provide prompt dispatch of pilots to the entire region given the size of the membership, and retain the records of those dispatches". The version of the regulation that went out to public comment did not contain the words "given the size of the membership". In response to my expressed concern that the earlier version might conflict with AS 08.62.175, the board added that language to the regulation before adoption.

Legislative discussion about pilot organizations was dominated by a concern to allow for more than one pilot organization in any particular region. There was also a fair amount of discussion about allowing very small pilot organizations to operate in the regions. Indeed, the idea of a one person pilot organization was considered. A large part of that legislative discussion and concern was expressed in AS 08.62.175(d)(3)(B), which in substantial part is very similar to what is now proposed

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4/ For the most part, discussions by both the legislature and the board about licensure in more than one region had to do with cruise ships that go from the Southeast Region into the Southcentral Region.

Deborah E. Behr

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12 AAC 56.310(c)(9). It expressed what I think is pretty clear intent -- small pilot organizations were to be permitted so long as they faithfully served state pilotage to the best of their ability given the size of its membership.

Although an attorney representing one pilot organization disagrees, I think that proposed 12 AAC 56.310(c)(9), as amended, is within the authority of the board to adopt.

I urge speedy action of this project. I will talk with you further about that as this project progresses.

GIA/jp

CHAPTER 56.  
BOARD OF MARINE PILOTS

The article listing for Chapter 56 is amended to read:

## Article

1. Licensing Requirements (12 AAC 56.011 -- 12 AAC 56.080)
2. Compulsory Pilotage Waters (12 AAC 56.090 -- 12 AAC 56.120)
3. Tariffs[RATES] (12 AAC 56.200 -- 12 AAC 56.240) [(12 AAC 56.130 -- 12 AAC 56.158)]
4. Recognition of Pilot Organizations  
(12 AAC 56.300 -- 12 AAC 56.320)
5. Training and Continuing Education Programs (Reserved)
6. Very Large Crude Carriers (12 AAC 56.500 -- 12 AAC 56.510)
7. General Provisions (12 AAC 56.930 -- 12 AAC 56.990)

Publisher: Please note redesignation of articles

12 AAC 56.021 is repealed and readopted to read:

12 AAC 56.021. PILOTAGE REGIONS. (a) Pilotage regions for which a marine pilot license may be issued are as follows:

(1) Southeastern Alaska -- covering the compulsory pilotage waters of Alaska commencing at the southern border with Canada, then west to and north on 141 degrees west longitude;

(2) Southcentral Alaska -- covering the compulsory pilotage waters of Alaska commencing at the western boundary of the Southeastern Alaska pilotage region, then generally west to 156 degrees west longitude;

(3) Western Alaska -- covering the compulsory pilotage waters of Alaska commencing at the western boundary of the Southcentral pilotage region, then west, north, and east to the northern border with Canada.

(b) An exemption to a license for a pilotage region will be identified on the license for the parts of the region that the licensee is determined by the board as not qualified to pilot or the pilot does not seek licensure. An endorsement for an

extended route will be identified on the license if the board issues an endorsement under this chapter.

(c) A pilot may not be licensed in more than one region at a time unless the board determines that the members of the marine pilot organization or organizations of that region recognized by the board under AS 08.62.175 do not have a sufficient number of qualified members to provide the kind of pilotage in the region that will assure the protection of shipping, the safety of human life and property, and the protection of the marine environment. (Eff. 3/30/88, Register 97; am / / , Register )

Authority: AS 08.62.040

AS 08.62.080

12 AAC 56 is amended by adding a new section to read:

12 AAC 56.022. TRANSITION. (a) In order to ensure that the creation of pilotage regions does not inadvertently prevent the provision of safe and efficient pilotage in any region as a result of changes to 12 AAC 56.021, the board will allow an otherwise qualified Southcentral Alaska region pilot to retain a license to pilot large container vessels in the Western Alaska region until the earlier of the following:

(1) The board determines that a Western Alaska pilotage organization has a sufficient number of qualified members to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment in the Western Alaska region; or

(2) June 30, 1994.

(b) If, by June 30, 1994, the board has not determined that the situation described in (a)(1) of this section exists, a licensee described in (a) of this section may apply to the board to retain a license authorized under this section until a time specified by the board. (Eff. / / , Register )

Authority: AS 08.62.040

### ARTICLE 3. Tariffs [RATES]

#### Section

- 130. Repealed [GENERAL RULE FOR DETERMINING RATES]
- 140. Repealed [CONSENT TO RATE DEVIATION]
- 150. Repealed [RATE ADJUSTMENT]
- 152. Repealed [NOTICE OF AUDIT]
- 154. Repealed [STANDARDS FOR RATE ADJUSTMENT]
- 156. Repealed [MODIFICATIONS]
- 158. Repealed [EFFECTIVE DATE]
- 200. Maximum Tariff
- 210. Tariffs for Southeastern Alaska region
- 220. Tariffs for Southcentral Alaska region
- 230. Tariffs for Western Alaska region

12 AAC 56.130 -- 12 AAC 56.158 are repealed:

12 AAC 56.130 -- 12 AAC 56.158. Repealed / / .

12 AAC 56 is amended by adding new sections to read:

12 AAC 56.200. MAXIMUM TARIFF. The setting of a maximum tariff is based on the following considerations:

- (1) the cost of mobilization and demobilization of the pilot;
- (2) the cost of transportation expenses of the pilot;
- (3) actual time spent by the pilot on board a vessel;
- (4) an assessment of the risk of the pilot involved in accomplishing a particular vessel movement, whether the risk is because of the environment, the weather, the season, the port, or other vessel traffic;

(5) compensation for overtime for time worked by the pilot over eight consecutive hours;

(6) reasonable administrative and office expenses of the pilot or pilot organization;

(7) personal or organizational costs incurred by the pilot or pilot organization because of training, continuing education, insurance and license requirements, and the one-time assessment established under sec. 34, ch. 89, SLA 1991;

(8) the cost of living or inflationary increases in the cost of providing pilotage services by the pilot or pilot organization; and

(9) nonreimbursable expenses of the pilot that the board finds are reasonable and necessary to provide pilotage services. (Eff. / / , Register )

Authority: AS 08.62.040

AS 08.62.045

12 AAC 56.210. TARIFF FOR THE SOUTHEASTERN ALASKA

REGION. (a) The tariff published and charged by a pilot, or a pilot organization on behalf of its members, for the provision of pilotage services in the Southeastern Alaska region may not exceed the charges established in this section.

(b) For all vessels, except passenger vessels,

(1) port charges (one way) may not exceed the following:

Ketchikan . . . . .	\$821
Metlakatla . . . . .	821
Klawock . . . . .	1,001
Ward Cove . . . . .	821

Wrangell . . . . .	894
Shoemaker Bay . . . . .	894
Petersburg . . . . .	894
Duncan Canal . . . . .	1,109
Sitka . . . . .	821
Juneau . . . . .	821
Juneau Oil Docks . . . . .	959
Haines, Chilkoot . . . . .	959
Haines, Lutak . . . . .	959
Skagway . . . . .	959
Skagway Ore Dock . . . . .	1,109
Yakutat Bay . . . . .	900
Hydaburg . . . . .	1,001
Kake . . . . .	1,001
Hoonah . . . . .	1,001
Hobart Bay . . . . .	1,001
Long Island . . . . .	1,001
Dora Bay . . . . .	1,001
Hawk Inlet . . . . .	1,001
Green Cove . . . . .	1,001
Unlisted Ports . . . . .	900

(2) entry, transit, and departure for each of the following areas constitutes a single event that may not exceed a charge of \$234:

(A) Wrangell Narrows;

(B) Sergius and Whitestone Narrows, including transit through both on the same day in the same direction;

(C) Tlevak Narrows;

(D) Boca de Finas and San Christoval Channels, including transit through both locations on the same day in the same direction;

(3) overtime may not exceed a charge of \$75 per hour or portion of an hour when one pilot exceeds eight continuous hours on duty; on transits anticipated to be over eight continuous hours, two pilots are required, and the charge for a second pilot may not exceed 50 percent of the applicable charge for the first pilot;

(4) charges for anchoring or waiting for a berth may not exceed \$266; anchoring or laying to for loading cargo or discharging cargo is considered as a regular port charge, and all other applicable charges may be assessed as if the vessel was moored.

(c) For all passenger vessels,

(1) port charges (one way) may not exceed the following:

- (A) Ketchikan . . . . . \$821
- (B) Wrangell . . . . . 894
- (C) Petersburg . . . . . 894
- (D) Sitka . . . . . 821
- (E) Juneau . . . . . 821
- (F) Haines, Chilkoot . . . . . 959
- (G) Haines, Lutak . . . . . 959
- (H) Skagway . . . . . 959

(2) entry, transit, and departure for each of the following areas constitutes a single event that may not exceed the charge indicated below:

- (A) Glacier Bay . . . . . \$2,345
- (B) Tracy Arm . . . . . 1,170
- (C) Endicott Arm . . . . . 1,170
- (D) Misty Fjords . . . . . 1,170
- (E) Sergius and Whitestone, including transit through both locations on the same day in the same direction . . . . . 234
- (F) Wrangell Narrows . . . . . 234
- (G) Tlevak Narrows and Tlevak Strait, including transit through both on the same day in the same direction . . . . . 234
- (H) Boca de Finas and San Christoval, transit through both on the same day in the same direction . . . . . 234

(3) additional charges based on the number of passengers may not exceed a mileage rate of 8.51 mills times the actual number of passenger berths on board for sale times the number of miles transited in the inside waters of the Southeastern Alaska region, excluding miles transited in the areas identified in (2)(A)--(D) of this subsection; the actual number of berths for sale used in setting the charge may be not less than 200, but may not exceed 1,000 berths;

(4) the charge for anchoring or waiting for a berth may not exceed \$266; anchoring or laying to for loading passengers or discharging passengers is

considered as a regular port charge, and all charges may be assessed as if the vessel was moored.

(d) All vessels with a draft in excess of 32 feet may be charged at the rate not to exceed \$21.72 per foot or portion of a foot. This charge may be computed separately for each entry into or departure from a port or area identified in (c)(2)(A)--(D) of this section;

(e) The charge based on tonnage and draft may be calculated using a tonnage unit system that has a rate not to exceed \$2.49 per unit for all units in excess of 163 units. This charge may be computed separately for each entry into or departure from a port or area identified in (c)(2)(A)--(D) of this section. Tonnage units are calculated as follows:

**overall length x extreme breadth x depth**

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**10,000**

For the purpose of determining a tonnage unit

- (1) overall length is the distance between the forward and after extremities of the vessel;
- (2) extreme breadth is the maximum breadth to the outside of the shell plating of the vessel;
- (3) depth is the vertical distance of amidships from the top of the keel plate to the uppermost continuous deck fore and aft and which extends to the sides of the vessel; the continuity of a deck shall not be considered to be affected by the existence of tonnage opening, engine space or a step in the deck; and
- (4) all measurements shall be in feet and inches.

(f) The charge for a dock to dock commercial movement of a vessel within a harbor may not exceed one-half the regular port charges. A charge for moving a vessel from dock to dock, dock to anchorage, anchorage to anchorage, or anchorage to dock for bunkering or other non-commercial reasons, within a harbor, may not exceed \$320 per movement. A dock to dock shift of a vessel constitutes two separate movements for charging purposes.

(g) The charge for docking and undocking a vessel in the absence of the use of the vessel's own propulsion system and a stern-to docking of that vessel may not exceed a 50 percent increase over the regular charge for the movement.

(h) In the event of an emergency involving the safety of the vessel, crew or passengers, a charge may not be assessed by the pilot, except for transportation and per diem incurred for the pilot to respond to the emergency.

(i) A pilot may charge for the actual cost of travel expenses, including airplane and ferry fares, cab fares, telegrams, telephone calls, and other expenses pertaining to vessel's business, plus the per diem rate allowed for tax purposes by the United States Internal Revenue Service for meals and lodging for 1992 tax year. The per diem rate shall be distributed 60 percent to hotel, 20 percent to dinner, 10 percent to lunch, and 10 percent to breakfast, rounded to the nearest dollar, but in no instance may the rate exceed the total per diem rate. If adequate meals and rooms are not furnished to the pilot when on ship, an additional charge may be assessed by the pilot in accordance with the distribution of per diem rate as described in this subsection.

(j) Additional charges may be assessed for the services of a pilot, as follows:

(1) when, due to weather and transportation difficulties, a pilot is required to leave in advance to ensure meeting a vessel upon its arrival or departure, or the pilot is delayed returning from a piloting assignment, that additional time may be charged at a rate not to exceed \$75 per hour up to a maximum of \$600 per day for each day a pilot is in transit or on standby; this charge need not include hours spent in an actual work day in which piloting duties were performed;

(2) the charge for detention time on board ship when no other charges accrue during the day may be at the rate not to exceed \$75 per hour per pilot up to a maximum of \$600 per pilot per day; a pilot carried to sea may be paid the same rate for each day the pilot is detained, plus the pilot may charge for first class transportation back to Ketchikan and per diem;

(3) the charge for trip cancellation may not exceed \$266, plus transportation and per diem charges in accordance with (i) of this section;

(4) an out-of-area charge, in lieu of charges for detention and travel time, may not exceed one and one-half times the maximum detention rate set in paragraph (2) of this subsection; this paragraph is not applicable within 100 miles of the Southeast Alaska region;

(5) when an agent, owner, or master of a vessel do not correct an estimated time of arrival and notify the pilot within four hours of the last time of arrival given, compensation not to exceed \$75 per hour or \$600 per day may be charged until actual arrival of the vessel at a pilot station;

(6) when sailing time of a vessel is set by an agent, owner, or master of a vessel, any delay over one hour from the set time may be charged at the rate not to exceed \$75 per hour or portion of an hour and may not exceed \$600 per day; if a pilot is detained for one hour or less, no detention charge may be assessed; if a

pilot is detained for more than one hour, detention may be charged for the first hour and succeeding hours in accordance with paragraph (?) of this subsection.

(7) when an agent, owner or master of a vessel requests a pilot to stay on board a vessel on a continuous basis while the vessel is docked or anchored at a port or anchorage, the charge may not exceed \$533 per day.

(k) For purposes of this section, travel, standby, and work days begin and end at midnight. Each charge accruing at any point within a midnight to midnight time period may be assessed.

(l) The maximum tariff for the Southeastern Alaska region established in this section is repealed January 1, 1993. (Eff. / / , Register )

Authority: AS 08.62.040  
AS 08.62.045

12 AAC 56.220. TARIFF FOR SOUTHCENTRAL ALASKA REGION. (a)

The tariff published and charged by a pilot, or a pilot organization on behalf of its members, for the provision of pilotage services in the Southcentral Alaska region may not exceed the charges established in this section.

(b) For all vessels in Cook Inlet, port charges (one way) may not exceed the following:

Homer Pilot Station to Port Anchorage . . . . .	\$1,063
Homer Pilot Station to Nikiski . . . . .	796
Homer Pilot Station to Drift River . . . . .	796
Homer Pilot Station to North Foreland, Point Possession, or Tyonek . . . . .	937
Anchorage to Drift River (North of	

Kalgin Island) . . . . .	796
Anchorage to Drift River (South of Kalgin Island) . . . . .	1,063
Anchorage to Nikisko . . . . .	700
Nikiski to Drift River (North of Kalgin Island) . . . . .	631
Nikiski to Drift River (South of Kalgin Island) . . . . .	796
Homer Pilot Station to K isitsna Bay . . . . .	642
Homer Pilot Station to Homer . . . . .	625
Homer Pilot Station to Port Chatham . . . . .	1,125

(c) For all Southcentral Alaska ports, except Cook Inlet, port charges (one way) may not exceed the following:

Valdez . . . . .	1,716
Cordova . . . . .	703
Whittier . . . . .	703
Ocean Entrances of Prince William Sound to Designated State Pilot Stations for Valdez, Whittier and Cordova . . . . .	1,012
Ocean Entrances of Prince William Sound to Knowles Head Anchorage . . . . .	675
Knowles Head Anchorage to Valdez or Whittier Pilot Station . . . . .	675
Seward . . . . .	703
Kodiak -- City Harbor . . . . .	703

Kodiak -- Womens Bay . . . . . 703

Icy Bay . . . . . 810

(d) Charges for unlisted ports may be negotiated between the pilot and the agent, owner, or master of the vessel according to risk of the movement and time required.

(e) A tonnage surcharge may be charged for a vessel with a tonnage in excess of 14,000 gross tons. The tonnage surcharge per gross ton may not exceed the following:

Vessel tonnage	Cook Inlet	Remainder of Southcentral Alaska Region
first 50,000 gross tons	\$ .03	\$ .027
gross tonnage in excess of 50,000	\$ .015	\$ .0135

(f) The applicable charge in this section apply whether piloting is to or from sea or to or from the location a pilot boards or disembarks.

(g) The charge for standing by to pilot, or traveling to or from distant pilot stations or pick-up points and not actually piloting, may not exceed \$67.50 per hour up to a maximum of \$810, except that the charge for Cook Inlet may not exceed \$75 per hour up to a maximum of \$900.

(h) The charge for a pilot's travel expenses, including airplane and ferry fares, cab fares, telegrams, telephone calls, and all other expenses pertaining to vessel's business may not exceed actual costs, plus the per diem rate allowed for tax purposes by the United States Internal Revenue Service for meals and lodging for 1992 tax year. The per diem rate shall be distributed 60 percent to hotel, 20 percent to dinner, 10 percent to lunch, and 10 percent to breakfast, rounded to the nearest

dollar, but in no instance may the rate exceed the total per diem rate. If adequate meals and rooms are not furnished to the pilot when on ship, an additional charge may be assessed by the pilot in accordance with the distribution of per diem rate as described in this subsection.

(i) For the purposes of this section, travel, standby, and work days begin and end at midnight. Each charge accruing at any point within a midnight to midnight time period may be assessed.

(j) When a pilot exceeds eight continuous hours on duty without a six hour rest period or presence of a relief pilot while transiting compulsory pilotage waters, overtime may be charged at a rate not to exceed \$101 per hour or portion of hour worked, except that the charge for services in Cook Inlet may not exceed \$112 per hour or portion of an hour worked.

(k) The charge for moving a vessel from dock to harbor or harbor anchorage, from harbor or harbor anchorage to dock, or from one anchorage within a harbor to another anchorage within the same harbor, may not exceed \$337 per movement, except that the charge for services in Cook Inlet may not exceed \$375 per movement. A dock to dock movement of a vessel constitutes two separate movements for charging purposes.

(l) Anchoring or laying to for loading cargo or discharging cargo may be assessed a regular port charge and all other applicable charges may be assessed as if the vessel was moored.

(m) The charge for moving a vessel alongside a dock or mooring to position tanks, holds, manifolds, loading arms, towers, or hoses may not exceed \$337 per movement, except that charges for these services for vessels in Cook Inlet may not exceed \$375 per movement.

(n) The charge for the movement of a vessel in the absence of the vessel's own propulsion system, even though assisted by tugboats, may not exceed twice the charge under this section for each movement.

(o) The charge for docking or undocking vessels over 2,000 gross tons without the use of an available tugboat at Seward, Whittier, Valdez, Cordova, Kodiak, or Women's Bay may not exceed \$405 per movement, except that the charge at Anchorage may not exceed \$450 per movement.

(p) The charge for a pilot being carried to sea and detained on board, or for off duty detention on board, or for being off duty standby on board at the request of the master, may not exceed \$540 per day, or portion of a day, except that the charges for these services in Cook Inlet may not exceed \$600 per day or a portion of a day. If the pilot disembarks at a location other than the pilot station from which the pilot was dispatched, first class return transportation and per diem may be additionally charged.

(q) The charge for watch time on the bridge rendered by the pilot, at the master's request, while a vessel is anchored, moored, or underway may not exceed \$67 per hour or portion of an hour, except that the charges for this service in Cook Inlet may not exceed \$75 per hour or portion of an hour. Overtime charges may apply in accordance with (j) of this section.

(r) The charge for the use of a pilot's VHF transceiver on vessels that do not have a VHF transceiver in proper working order according to the provisions of 33 U.S.C. 1201 -- 1208 (Vessel Bridge-to-Bridge Radiotelephone Act), may not exceed \$13 per day or portion of a day, except that the charge for this service in Cook Inlet may not exceed \$15 per day or portion of a day.

(s) The charge for a second pilot, when used, may not exceed 50 percent of the applicable charge for the first pilot. All other applicable charges under this section may apply. The expenses of the second pilot may be charged to the same extent as the expenses of the first pilot.

(t) The charge for the services of a mooringmaster may be negotiated between the pilot and the agent, owner, or master of the vessel.

(u) An agent, owner, or master of a vessel shall advise a pilot of a vessel movement at least 36 hours before the movement in order to provide sufficient time for the pilot to arrive at the vessel by the available means of transportation. An agent, owner, or master of a vessel shall again advise the pilot of a vessel movement at least 24 hours before the movement. A pilot will be considered unavailable for service only if the timely notice under this subsection is given and a pilot does not show up at the vessel to render service. If shorter notice is given than required under this subsection and a pilot is not able to reach the vessel to render pilot services, the vessel or the vessel's owner may be charged for the transportation costs incurred by the pilot in attempting to reach the vessel and the pilotage charge and all other charges that would have been incurred had the pilot reached the vessel and provided pilotage services.

(v) When the time of movement is set by the agent, owner, or master of a vessel, the charge for any delay over two hours from the time set may not exceed \$67 per hour or a portion of an hour, except that the charge for delay in Cook Inlet may not exceed \$75 per hour or a portion of an hour. The total charge may not exceed \$810 per day, except that total charge delay in Cook Inlet may not exceed \$900 per day. If the pilot is detained for two hours or less, no charge may be assessed. If the pilot is detained for more than two hours, the pilot may charge for

the first two hours detained, as well as other hours detained according to this subsection.

(w) The maximum tariff for the Southcentral Alaska region established in this section is repealed January 1, 1993. (Eff. / / , Register )

Authority: AS 08.62.040  
AS 08.62.045

12 AAC 56.230. TARIFF FOR WESTERN ALASKA REGION. (a) The tariff published and charged by a pilot or a pilot organization on behalf of its members for the provision of pilotage services in the Western Alaska region may not exceed the charges established in this section.

(b) The maximum port charges (one way) may not exceed the following:

Cold Bay . . . . .	\$914
King Cove . . . . .	810
Dutch Harbor, Unalaska Bay,	
Iliuliuk Harbor, Captain's Bay . . . . .	844
Adak . . . . .	914
Kivalina . . . . .	1,270

(c) Unlisted port charges may be negotiated between the pilot and the agent, owner or master of the vessel according to risk of the movement and time required.

(d) A tonnage surcharge may be charged for a vessel with a tonnage in excess of 14,000 gross tons. The tonnage surcharge per gross ton may not exceed the following:

Vessel Tonnage	Western Alaska Region
first 50,000 gross tons	\$.027
gross tonnage in excess of \$50,000	.0135

(e) All applicable charges in this section may be assessed whether piloting is to or from sea, or to or from a pilot boarding or disembarking point.

(f) The charge for standing by to pilot, or traveling to or from distant pilot stations and not actually piloting, may not exceed \$67 per hour. Travel time shall commence when the pilot leaves for dispatch, or after piloting, when the pilot begins travel to return to the dispatch station. Standby and travel time may accumulate up to a maximum of 12 hours per day.

(g) A pilot may charge the actual cost for that pilot's travel expenses including plane and ferry fares, cab fares, telegrams, telephone calls, and all other expenses pertaining to vessel's business, plus per diem allowed for tax purposes by the United States Internal Revenue Service for meals and lodging for 1992 tax year. The per diem rate shall be distributed 60 percent to hotel, 20 percent to dinner, 10 percent to lunch, and 10 percent to breakfast, rounded to the nearest dollar, but in no event may it exceed the total per diem rate. If adequate meals and lodging are not furnished to the pilot when on ship, an additional charge may be assessed by the pilot in accordance with the distribution of the per diem rate as described in this subsection.

(h) For the purposes of this section, travel, standby, and work days begin and end at midnight. Each charge accruing at any point within a midnight to midnight time period may be assessed.

(i) When a pilot exceeds eight continuous hours on duty without a six-hour rest period or presence of a relief pilot while transiting compulsory pilotage waters,

overtime may be charged at a rate not to exceed \$101 per hour or portion of an hour worked.

(j) The charge for moving a vessel from dock to harbor or harbor anchorage, from harbor or harbor anchorage to dock, from anchorage within a harbor to another anchorage within the same harbor, may not exceed \$337 per movement.

(k) The charge for anchoring or laying to for loading cargo or discharging cargo, or anchoring for any other purpose may be assessed a regular port charge and all other applicable charges may be assessed as if the vessel was moored.

(l) The charge for moving a vessel alongside a dock or mooring to position tanks, cargo holds, manifolds, loading arms, towers, or hoses may not exceed \$337 per movement.

(m) The charge for the movement of a vessel in the absence of the vessel's own propulsion system, even if assisted by tugboats, may not exceed twice the charge under this section for each movement.

(n) The charge for docking or undocking a vessel over 2,000 gross tons without the use of an available tugboat at the ports of Dutch Harbor or Captains Bay may not exceed \$405 per movement.

(o) The charge for a pilot being carried to sea on board and detained, or for off-duty detention on board, or for being off-duty standing by on board at the request of the master, may not exceed \$540 per day or portion of a day. If the pilot disembarks at a location other than the pilot station from which the pilot was dispatched, the pilot may charge for first class return transportation and per diem.

(p) The charge for watch time on the bridge rendered by the pilot, at the master's request, while vessel is anchored, moored, or underway may not exceed

\$67 per hour or portion of an hour. Overtime charges apply, in accordance with (i) of this section.

(q) The charge for a second pilot, when used, may not exceed 50 percent of the applicable charge for the first pilot. All other applicable charges under this section may be assessed. The expenses of the second pilot may be charged to the same extent as the expenses of the first pilot.

(r) The charge for the services of a mooringmaster may be negotiated between the pilot and the agent, owner, or master of the vessel.

(s) An agent, owner, or master of a vessel shall inform a pilot of a vessel movement at least 24 hours before the movement in order to provide sufficient time for the pilot to arrive at the vessel by the available means of transportation. A pilot will be considered unavailable for service only if the 24-hour notice required by this subsection is given and a pilot does not show up at the vessel to render service. If shorter notice is given than required under this subsection and the pilot is unable to reach the vessel to render pilot services, the vessel or the vessel's owner may be charged for the transportation costs incurred by the pilot in attempting to reach the vessel and for the pilotage charge and all other charges that would have been incurred had the pilot reached the vessel and provided pilotage services.

(t) When the time of movement is set by the agent, owner, or master of a vessel, the charge for any delay over two hours from the time set may not exceed \$67 per hour or portion of an hour. The total charge may not exceed \$810 per day. If the pilot is detained for two hours or less, no charge may be assessed. If the pilot is detained for more than two hours, the pilot may charge for the first two hours detained as well as other hours detained according to this subsection.

(u) In addition to any other charges for vessel movement established in this section, a surcharge based on vessel length may be charged. The surcharge is a percentage of total pilotage charges assessed under this section not to exceed the following:

Vessel Length Overall	Surcharge
Less than 450 feet . . . . .	0 percent
450-500 feet . . . . .	5 percent
501-550 feet . . . . .	15 percent
551-600 feet . . . . .	25 percent
Over 600 feet . . . . .	40 percent

(v) The maximum tariff for the Western Alaska region established in the section is repealed January 1, 1993. (Eff. / / , Register )

Authority: AS 08.62.040  
 AS 08.62.045

12 AAC 56 is amended by adding a new sections to read:

**ARTICLE 4 RECOGNITION OF PILOT ORGANIZATIONS**

**Section 1**

- 300. Standard for recognition
- 310. Qualification for recognition
- 320. Suspension or revocation of recognition

12 AAC 56.300. STANDARD FOR RECOGNITION. In order for a pilot organization to be recognized by the board in a pilotage region or regions, the organization must demonstrate to the board's satisfaction the organization's ability to

promote a safe, reliable, and efficient pilotage system in that region or regions considering the size of the organization. (Eff. / / , Register )

Authority: AS 08.62.040

AS 08.62.175

12 AAC 56.310. QUALIFICATIONS FOR RECOGNITION. (a) A pilot organization seeking recognition by the board must comply with the minimum qualifications in AS 08.62.175 and of this section.

(b) A pilot organization seeking recognition must provide the board with a list of its members, including pilots, deputy pilots, and trainees.

(c) The articles, bylaws, or rules of a pilot organization seeking recognition by the board must include provisions that require the organization to

(1) comply with all applicable federal, state, and local laws;

(2) treat both its members and applicants for membership in a uniform, nondiscriminatory, and otherwise lawful manner;

(3) conduct its business activities in a nondiscriminatory and otherwise lawful manner;

(4) cooperate and assist the board by

(A) maintaining a system that enables the organization to obtain necessary information from members on a timely basis and to respond to directives issued by government agencies having jurisdiction over pilotage;

(B) maintaining a process for responding to inquiries and requests of the board or its marine pilot coordinator;

(C) cooperating, and requiring its members to cooperate with investigations and audits by or on behalf of the board;

(D) acknowledging the authority of the board for cause and after notice and hearing to suspend or revoke the recognition of the organization;

(E) bringing to the attention of the department any credible information regarding a member of the organization that may require the board to act under AS 08.62.150 -- 08.62.155;

(F) maintain a relationship with other pilot organizations that furthers the purposes of AS 08.62 (the Alaska Marine Pilotage Act); and

(G) identifying an agent of the organization for the service of process in the state;

(5) maintain in-house procedures for the handling of disciplinary actions and grievances within the organization; the procedures must, at a minimum, provide a member with the right to due process and a fair hearing;

(6) adopt and revise a tariff in accordance with AS 08.62.045 and this chapter;

(7) ensure fair and equal access to the experience necessary to obtain or upgrade a pilot's license under AS 08.62 and this chapter;

(8) maintain fair procedures for the conduct of its internal organizational business;

(9) maintain an efficient, equitable, and nondiscriminatory dispatch system at all times that enables the organization to provide prompt dispatch of pilots to the entire region given the size of the membership of the organization and retain the records of those dispatches for audit by the board; and

(10) comply with a written request from the master or owner of a vessel, or that person's representative, showing cause to not dispatch a particular

member to pilot to a particular vessel and maintain in-house procedures to provide a member with the right to due process and a fair hearing to contest that action;

(d) A pilot organization seeking recognition must demonstrate to the board that

(1) the organization and its members will conduct or participate in a board approved continuing education program;

(2) the organization and its members will participate in a board approved random drug or alcohol testing program;

(3) the organization and its members will conduct or participate in a board approved training program;

(4) the organization has a bookkeeping and accounting system that enables the organization to prepare and retain accurate and detailed financial records of the activities of the organization; and

(5) the organization has a equitable system for the allocation of its members' income earned from piloting services covered by this chapter. (Eff. / / , Register )

Authority: AS 08.62.040

AS 08.62.045

12 AAC 56.320. SUSPENSION OR REVOCATION OF RECOGNITION.

In addition to imposing a civil fine under AS 08.62.155(b), the board may suspend or revoke the recognition of a pilot organization that fails to comply with that organization's articles, bylaws, or rules in such a manner that it fails to comply with the statutory or regulatory standards for recognition. (Eff. / / , Register )

Authority: AS 08.62.040  
AS 08.62.175

12 AAC 56.990 is amended by adding new paragraphs to read:

(10) "board" means the Board of Marine Pilots;

(11) "department" means the Department of Commerce and  
Economic Development;

(12) "laying to" means the temporary interruption of a vessel's transit  
for some special purpose that stops, but does not anchor or moor, the vessel;

(13) "movement" means the act or process of changing the place,  
position, or posture of a vessel;

(14) "on duty" means on the navigating bridge of the vessel, having  
control of the vessel, or assisting the master or navigating officer;

(15) "standing by" means the time during which a pilot is dispatched  
to a vessel and is waiting to go on duty to perform pilotage service; stand by time  
may be accumulated on board the vessel or on shore if the vessel's owner, master,  
or agent has scheduled a pilot to be available for pilotage duty. (Eff. 6/11/71,  
Register 38; am 6/19/74, Register 50; am 5/12/78, Register 66; am 7/24/83,  
Register 87; am 12/26/86, Register 100; am 8/29/87, Register 103; am 7/26/90,  
Register 115; am / / , Register )

Authority: AS 08.62.040  
AS 08.62.160

3

Attorneys representing the various pilot associations in the state, ships' agents, ship insurers, and the Department of Law met with Division of Policy staff and the President of the American Pilots' Association, Captain Pat Neely, in Juneau in late September to draft a new State Pilotage Act.

Copies of the draft report and legislation were released to the Board of Marine Pilots, staff from relevant state agencies, pilot groups, and other interested parties in October for review. Comments received as a result of the review process are appended to this report<sup>3</sup>. The study authors presented the report and comments from reviewers to the Board of Marine Pilots at its November meeting in Anchorage.

Legislation to amend the existing State Pilotage Act is expected to be introduced during the First Session of the Seventeenth Legislature, which begins January 20, 1991.

### C. STUDY OUTLINE

Section 2 of the study presents a historical review of state pilotage to provide a background for the issues raised in the report. The existing Alaska legal framework is then discussed and compared with marine pilotage law in other states in Section 3. Section 4 outlines the status of Alaska marine pilotage in general and in the various regions of the state. The following two sections detail information and opinions on the issues raised in Captain Murphy's letter which were solicited from pilots and ships' agents. Section 7 contains the study's conclusions and recommendations for state action.

## 2. HISTORICAL BACKGROUND

Alaska's marine pilotage system must be considered within a larger framework of maritime law and tradition. Maritime communities throughout the world have long recognized the dangers of unregulated traffic in local waterways. Provisions for mandatory piloting—that is, the requirement that ships have or take on board persons familiar with local conditions when transversing local waters—date from Roman law. The Florida statute on piloting clearly states the rationale for such provisions:

The Legislature recognizes that the waters, harbors and ports of the state are important resources, and it is deemed necessary in the interests of public health, safety and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state.<sup>4</sup>

Concern about unregulated pilotage for local waters first surfaced in this country in colonial times. According to an authoritative history of American marine pilotage published by the American Pilot's Association:

the early pilotage records of the the colonies cover only sketchy accounts of the beginnings of the profession in America, and much has been lost or destroyed. Such

scant records as exist seem to indicate a pattern of pilotage development progressing through stages of pure individual initiative, to periods of severe competitive practices resulting in a struggle for predominance and eventually government regulation.<sup>5</sup>

Colonies gradually gained control over pilotage to the extent that, as an early U.S. Supreme Court decision commented:

When the government of the union was brought into existence it found a system for the regulation of its pilots in full force in every state.<sup>6</sup>

This state system was left virtually intact by a 1789 provision in federal statutes:

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 states, respectively, wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.<sup>7</sup>

States continued to exercise sole authority over piloting until 1871 when Congress enacted provisions that significantly reduced the scope of state control by requiring that:

...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 underway, except on the high seas, be under the control of pilots licensed by the inspectors of steamboats.<sup>8</sup>

This act effectively established a dual piloting system in the United States: the historical state system and a new federal system. Generally speaking, vessels engaged in foreign trade (vessels sailing under register<sup>9</sup> and foreign-flagged vessels) are under the authority of the states while American vessels engaged in domestic trade are under federal authority. One exception to this general division of responsibility is Great Lakes traffic, which is under the exclusive regulatory control of the federal government through the Coast Guard. The exemption from state law of Great Lakes vessels was made pursuant to an international treaty with Canada which provides for piloting by persons having either U.S. Coast Guard or Canadian licensure.

The dual system of piloting has resulted in a dual system of pilots: federal pilots, often employees of the ship; and state pilots, who generally act as independent agents or as officials of the state which licenses them. In Alaska, shipping companies may meet compulsory pilotage regulations either by obtaining the services of an independent pilot or by employing a state-licensed pilot to service company ships exclusively. According to the American Pilots' Association (APA), Alaska is one of the few maritime states in which a state pilot need not be independent of a vessel or its owner.<sup>10</sup>

*Summary:* The public service nature of local pilotage has been long recognized. By tradition and statute, government has the authority to protect life, property and the environment by insisting that ships operating in coastal waters carry pilots familiar with local conditions. The current system in the United States splits responsibilities for pilotage between the federal government and the maritime states. While the federal government exercises control over vessels engaged in domestic trade, the individual states appear to have unlimited authority to impose pilotage standards and to require compulsory pilotage for foreign ships and ships sailing under register within the waters of the state.

### 3. COMPARISON OF ALASKA STATUTES WITH THOSE OF OTHER STATES

During the course of U.S. history, a very large body of state law has developed around the marine pilotage profession.<sup>11</sup> In several of the older states, marine pilotage practices, laws, regulations, and traditions have more than 200 years of development and refinement behind them. Currently, all 24 maritime states have established mechanisms for controlling the licensing of pilots, setting rates, and providing general oversight of the state pilotage system.

Many states have recently amended their pilotage laws, partly because of statutory sunset provisions, but also in response to increasing litigation and a heightened awareness of the importance of state pilotage brought about by the *Exxon Valdez* disaster.

The Alaska State Pilotage Act (AS 08.62) was first enacted in 1970 and has been amended only slightly over the past 20 years. The original bill exempted all "vessels and tow boats of United States registry...engaged exclusively on the rivers of Alaska or in the coastwise trade on the west coast of the United States"<sup>12</sup> from compulsory state pilotage. This section was amended in 1972 to exclude only those vessels of less than 300 gross tons. The 1973 legislature amended the act to give the Marine Pilot Board the authority to reexamine persons whose license had lapsed for less than two years if "the Board has reason to believe that the person applying for reinstatement of a license is incapable or incompetent to carry out the duties of a licensed marine pilot."<sup>13</sup> Section 08.62.185 of the Act was added in 1977, requiring that:

any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, when navigating in state waters beyond Alaska pilot stations either (1) employ a pilot licensed by the state under this chapter; or (2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.<sup>14</sup>

Several other amendments dealt with the Marine Pilot Board. A public member was added in 1976 legislation while board members were limited to two consecutive terms in 1980. The Board was added to Alaska's sunset statute in 1985 and was extended to June 30, 1991 under this statute during the 1987 legislative session.

Compared with other states, Alaska's Marine Pilotage statute appears quite sparse. It contains only three articles—addressing the Board of Marine Pilots, Licensing and General Provisions—and delegates broad rule-making responsibility to the Board. Such a practice is common in Alaska, where statutory language is often limited in favor of regulatory authority, which is presumed to provide more flexibility as conditions change. Thus, items which other states place in statute are left to the discretion of the Board. Alaska's statutory and regulatory scheme differs from many states in one other significant respect. Pilotage in many maritime states centers around particular ports and, as described below, some states have elected to regulate pilotage through local port commissions. Even where pilotage is under the supervision of statewide boards, licenses are generally given for specific ports. Pilot services are generally organized through separate associations serving particular ports. In Alaska, geography and shipping patterns dictate regional rather than port licensing. This, in turn, has led to regional associations, which seek to provide pilotage services over a large geographic area. This feature of Alaskan pilotage, which is unique among the maritime states, suggests that wholesale adoption of regulatory practices of other states may not always be appropriate. However, common features of state pilotage need to be addressed in statute either directly or by explicitly delegating regulatory authority to the Board. These common features of the states' pilotage systems are discussed below.

#### A. SYSTEM OF REGULATION

Twenty-one states, including Alaska, have established pilot boards charged with promulgating and enforcing pilotage regulations. Only three states—Connecticut, New Hampshire and Hawaii—regulate directly without going through a board.

Boards are of two general types: a statewide board, having authority over all compulsory pilotage waters in the state and local port boards or commissions whose authority is limited to a specific area. Alaska's Board of Marine Pilots is statewide in scope. In general, boards having statewide authority are relatively recent, local boards having been the common practice historically. Unique among the states, California's state board (which is actually the oldest pilot board in the country) oversees only the San Francisco Bay area, leaving other state ports to local control.

Pilot boards may be housed in a state agency or created independent of agency oversight. Nineteen states, including Alaska, place their boards in an executive department, most commonly in the agency having responsibility for professional licensing. Alaska's Marine Pilot Board is housed in the Division of Occupational Licensing, Department of Commerce and Economic Development. All such boards exercise statewide authority. Twelve states have established boards outside of any state agency. Of the states with independent boards, seven have boards established for each local port.

Most statewide boards are comprised of representatives of the pilot profession, the marine industry, and the general public. Alaska's board:

consists of two pilots licensed under [Chapter 62, Alaska Statutes] who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members...and the commissioner [of the Department of Commerce and Economic Development] or the commissioner's designee.<sup>15</sup>

In those states where local port commissions are used in lieu of a state-wide board, membership patterns are less standard, but the majority of members are specified to be "seafaring men" or persons skilled and experienced in maritime affairs.

### B. LICENSING

Because the essence of state piloting is knowledge of local waters and conditions, all states require training for person's wishing to become licensed. States have, in general, established two routes for qualifying for a state pilot license: apprenticeship or deputy pilot programs. In states opting for apprenticeship, local pilot associations usually select and train the apprentices according to association criteria. After the applicant has completed the apprenticeship to the satisfaction of association members, they present him/her to the state for examination. Entry into an apprenticeship program often requires little or no previous experience and the duration of the training is fairly long. In states with deputy pilot programs, the deputy pilot meets entry-level requirements established by the state and performs limited duties under an entry-level license. The deputy pilot progresses to higher levels of licensing by meeting experience standards which are set and examined by the board or state licensing official. Training periods for deputy pilots are generally considerably shorter than for apprenticeship pilots, based on the more extensive prior experience required of deputy pilots. Alaska's system follows the deputy pilot form, although that term is not used in the statute.

State pilot licenses can be considered both a certificate of competency and a franchise to perform a public service, requiring the licensee to:

assume public obligations in maintaining pilot stations and operating a pilotage system...[the state pilot] sees his duty and obligation as being owed to local political authority and the public, rather than to the shipowner.<sup>16</sup>

Some states have recognized this public purpose function by "appointing" as well as licensing the pilot. Virginia statute requires that:

If the Board finds the applicant qualified to act as a branch pilot it shall issue him a license, and he shall thereupon become a state officer, to be known as a branch pilot and shall hold the office for one year next ensuing.<sup>17</sup>

Alaska is unique in its treatment of licensing as an individual right rather than a franchise. Alaska's statute states that "a person is *entitled* (emphasis added) to a

license"<sup>18</sup> if s/he meets the criteria outlined. In virtually all other states, the license is granted at the discretion of the Board or other licensing authority. Commonly-used language in other states allows the Board (or other licensing authority) "to choose and appoint" pilots or to "grant commissions"<sup>19</sup> to act as pilots. As will be discussed at greater length elsewhere, the Alaskan emphasis on right rather than franchise is, in the opinion of the study staff, a primary cause of current tensions in the state's regulatory scheme.

Pilot licenses must be renewed at periodic intervals, ranging from one to five years. Alaska requires biennial renewal. No state at present requires continuing education or training as a condition for renewal, although the State of Washington has recently amended its pilot statute by requiring that:

The Board shall establish additional training requirements, including a program of continuing education, developed after consultation with pilot organizations.<sup>20</sup>

Some states do require a physical examination prior to renewal or reissuance of a license. If a pilot has allowed a license to lapse, most states, including Alaska, require either re-examination or certification that the pilot has completed a certain number of familiarization trips in the waters for which a license is requested.

Thirteen state statutes either specify the number of pilots to be licensed or clearly delegate to the pilot board(s) the responsibility for setting the number of state licensed pilots. Two other states have statutory language which implies that the board(s) may limit the number of licenses issued. In effect, however, in those states without statutory provision for limiting the number of pilots but with mandated apprenticeship programs, the number of licenses is limited *de facto* since pilot associations must recommend an apprentice for licensing. Alaska appears to be the only state without either a statutory limitation or a limitation through apprenticeship provisions. Thus, a recent Florida pilot study concludes that "Only Alaska issues licenses to anyone who qualifies and passes the examination."<sup>21</sup>

### C. PILOT DISCIPLINE

All maritime states have instituted procedures for disciplining pilots. Where statewide boards or local commissions are used, this power generally has been delegated to such bodies. All states allow for suspension or revocation of a pilot's license for cause, generally incompetence, repeated negligence, or habitual substance abuse. A long-standing problem in pilot discipline has resulted from the dual pilotage system referenced above. Almost all states, including Alaska, require that a pilot hold an appropriate federal pilot license as a condition of state licensing. Thus, most state pilots hold both a state and federal license and may operate under either license, depending on the type of vessel being piloted. Since each license is issued under a different authority, this situation results in several anomalies. First, where a federal license is a precondition of state licensing, "when a state sees fit to discipline a pilot,

perhaps even revoking his/her license, the federal license is untouched and remains valid."<sup>22</sup>

Thus, a person found negligent or incompetent may still be allowed to operate in local waters on vessels subject to Coast Guard rather than state regulation even after the state has taken action against the individual.

Second, in those few states where a federal license is not required for state licensure, a pilot may still hold both. If disciplinary action is taken against an individual when operating under his/her federal license, the state cannot revoke its license even though the pilot has been proved incompetent. The Pilotage Study Group commissioned by the U.S. Coast Guard has recommended federal legislation to address the first problem. Individual states are moving to correct the second by giving state licensing authorities the power to act against a person who has been found incompetent by a federal authority.

In addition to the ultimate penalty of revocation, some state statutes institute a graduated system of penalties, beginning with reprimand or a fine. Washington State has recently amended its marine pilot act to grant the Board the ability to prescribe "disciplinary or corrective action, including training and treatment, that will be taken."<sup>23</sup> Alaska's statute in this respect would appear to be a model. The Board has an impressive array of discipline options, including peer review and imposing "professional education requirements until a satisfactory degree of skill has been attained in those aspects of professional practice determined by the board to need improvement."<sup>24</sup>

Pilots' due process rights are recognized in all state statutes by requiring a formal hearing before a license is revoked. Several states, however, including Alaska, allow the board or other licensing authority to summarily suspend a license for a specified period or before a formal hearing in cases of clear danger to public health or safety. A few state statutes spell out specific timelines for holding hearings and rendering decisions concerning the discipline of a pilot.

#### *D. PILOTAGE RATES*

Of the states with pilot boards, fourteen charge the board with setting pilotage rates. Four states set rates by statute. Rates in the six remaining states are set by various persons or bodies. Alaska's statute is rather cumbersome in this regard. It gives the board the authority to "adopt regulations under the Administrative Procedures Act...establishing standards by which pilotage fees may be established."<sup>25</sup>

#### *E. PILOT LIABILITY*

Until recently, it was rare for pilots to be sued and have damages assessed against them for two reasons. First, given the comparatively large amount of damages claimed in most marine accidents, assessing damages against the limited resources of a state pilot was not considered worth the expense of litigation. Second, under traditional

maritime law, a vessel (vessel owner) is liable for the negligence of a pilot. Therefore, it is not in the interests of vessel owners to obtain a finding of negligence on the part of a pilot. This traditional liability situation, however, is changing. Pilots are being sued with increasing frequency.

If pilots are held to be personally liable, the effect on the industry would be crippling. No pilot can obtain insurance against losses which could potentially amount to millions of dollars. Also, since ships are already insured against damages, requiring a pilot to carry similar insurance would merely increase transportation costs.

To address these problems, several states have moved to limit pilot liability in statute. California statute clearly states that "when a pilot goes aboard a vessel, the pilot becomes a servant of the vessel and its owner and operator."<sup>26</sup> South Carolina and Washington limit liability to \$5,000 in statute. Oregon has addressed the problem in a more complicated manner: it allows for pilots to purchase insurance on a 'trip' basis:

in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between pilots and the vessel, its master, owners, agents or operators, insuring the pilots and the organization of pilots to which they belong against all claims or demands, arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified [in statute].<sup>27</sup>

Alaska statute does not speak to pilot liability.

#### *F. PILOT ASSOCIATIONS*

Pilot associations are the traditional way in which pilots organize themselves to fulfill their duties. Pilots must be on call at all times to handle traffic into and out of pilotage waters. They must meet ships at pilot stations to offer services. They must be prepared to handle all types of ships in all conditions. Individually, pilots cannot offer the range and scope of services required. Therefore, associations of pilots have formed since the early years of compulsory pilotage in this country. Pilot associations offer centralized dispatch and clearance services. They either own or make arrangements for pilot boats to carry pilots to and from ships. Through their members, they can offer 24 hour per day, year-round services. Together, the members provide the skills necessary to deal with all types of situations.

Associations also have traditionally taken the responsibility for training new pilots and for evaluating existing pilots. Both activities serve important functions in maintaining and upgrading pilot skills.

States have long recognized that pilotage lends itself to association among pilots, which is the reason behind state control over pilotage rates. However, few states have recognized associations formally. Without some form of state recognition, the

traditional association has been challenged on antitrust grounds. Some states have sought to protect associations from such challenges. Florida, Hawaii, Louisiana, and North Carolina all explicitly recognize pilot associations.

Although pilot associations are recognized as improving the efficiency of the compulsory pilotage system, they have been accused of abusing their power by limiting entry into the profession in an arbitrary and capricious manner. Hawaii went through a particularly troubling experience with pilot associations and recently amended its pilotage law to state:

Pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs the pilot's duties.<sup>28</sup>

Alaska statute does not recognize pilot associations, although associations do operate in two of the three regions of the state, as described in Section 4.

Table 1 (pages 10a-10f) outlines the provisions of each state's pilotage statute in some detail.

**Summary:** Although Alaska's statute on marine pilotage is considerably shorter than most other maritime states, it does address many common concerns. It has, for example, placed state pilotage under the direction of a statewide board, composed of both industry and public membership—a practice common to most states. Alaska's statute speaks to licensing and discipline of pilots, two major issues in professional certification and control. With respect to discipline, Alaska's statute is among the most comprehensive in the country, giving the Board a wide range of options not only to discipline but to improve the performance of pilots who have experienced difficulties.

There are, however, weaknesses and gaps in current statute. As mentioned above, Alaska law is written from the perspective of individual rights rather than public franchise. This emphasis is unique among the maritime states. Another potential weakness is that the Alaska Marine Pilotage Statute sets out only basic duties and responsibilities but delegates broad regulatory powers to the Board of Marine Pilots. In recent years, the Attorney General and others have questioned the existing Act, maintaining that current language does not give the Board authority to set rates and establish specific licensing requirements. As a result, the Board has not reviewed the pilotage rate schedule for several years. More important, weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.

In addition to questionable Board authority to regulate marine pilotage, the Act fails to mention several areas of growing concern. In particular, it does not address pilot liability or pilot associations. As outlined in the following section, these are areas of increasing contention in Alaska.

#### 4. CURRENT STATUS OF MARINE PILOTAGE IN ALASKA

Compared to the long history of maritime law and regulation in the United States, Alaska's oversight of marine pilotage is quite recent, dating only from 1970. However, in the 20-year period since the passage of the first Marine Pilotage Act, state pilotage has undergone tremendous changes.

In 1970, piloting in the state was provided by a handful of local pilots operating in Southeast Alaska and organized in a tightly-knit pilot association. The association assumed the responsibility for maintaining standards among existing pilots and for training new pilots as needed. As Prudhoe Bay oil shipments began in Southcentral Alaska, a new group of pilots emerged and organized in response to an amendment to the Alaska statute requiring pilots on all tankers. Again, the association for this region assumed continuing education and training responsibilities.

This system of virtually self-regulated pilotage appears to have worked well until the explosion of cruise ship traffic in Southeast and the emergence of the domestic bottomfish industry in the Aleutian Chain. These two events occasioned a rapid increase in the demand for pilot services and strained the capacity of existing pilot groups to train and absorb new members. As relatively large numbers of pilots, often from out-of-state, entered the system the profession turned to the State Marine Pilot Board to establish entry standards and to exercise greater control over the industry. However, Alaska's statute, while originally intended to give the State Board flexibility—through broad regulatory powers—to deal with changing situations, was unequal to the task. The Department of Law increasingly questioned Board authority under the statute to develop standards, set pilotage rates, and to exercise overall control.

The erosion of the state board's ability to promulgate and enforce regulations for the industry took place at a time when newer pilots began to question the internal operations and politics of the traditional pilot associations. Impatient with what they perceived to be "old boy networks", preserving the income and prestige of long-term pilots, newer and younger pilots turned to the courts. Successive legal challenges raised the specter of group and individual liability for actions taken in the course of training, disciplining, or dispatching of pilots and pilot trainees. Self-regulation of the profession through associations, which had served the state well in the early years, could no longer be relied upon.

The growth in demand for pilot services brought about by the rapid increase in shipping opened opportunities for disgruntled pilots to break with existing associations and to operate independently or to form new groups. For the first time in Alaska's marine pilotage history, competition between pilots and pilot groups entered

29 \* Sec. 9. AS 08.62.080 is amended by adding new subsections to read:  
30 (b) A pilot may not be licensed in more than one pilotage region at one  
time, unless the  
31 board determines that it is in the best interests of the state to license  
pilots for parts of more than  
1 one pilotage region.