

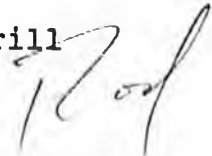
Marine

Pilotage

Act

Rod; Harlan called w/ the following info
& request: Anytime hearings on
Marine Pilots Eusebio is being heard
please inform Joe Merrill who represents
the Southwest Marine Pilots @ 786-4865.

X

TO: Dr. Joe Merrill
FROM: Rod Mourant 
RE: SB 218 - Marine Pilots

The work session is scheduled for monday at 8AM but we are still unsure of Labor & Commerce hearing. Could be Wed 5/8 or Fri 5/10. Depends on what happens to bill in Transportation. We will try to keep you advised.

April 6, 1991

Drue -

RE: Marine Pilotage

This is the latest in marine pilotage. Joseph W. Homer is an independent pilot who objects to regional dispatch exclusivity and the regional licensing provisions. He is seeking court action which would void SB 218 and HB 194.

Rod

- ① have legal do a memo explaining this suit in layman's English
- ② what are the legal implications?
 - ⓐ the ~~scheme~~ regional provisions are subject to question?

February 21, 1991

Drue -

MARINE PILOTS...

Spoke with Ray in Jones' office. They will decide by tomorrow afternoon whether or not they are going to introduce legislation. They are leaning in the direction of doing nothing.

Gov's Office will also make a decision on their course of action today or tomorrow.

Had an interesting conversation with Tony Thyne, lobbyist for Holland America Line. They oppose the board setting pilotage rates, delineating exclusive territories for association dispatch only and the setting of pilot personal liability at such a low level.

OK

Red

Ray Gillespie
463-3375

Members of the Alaska Steamship Operators Association

Alaska Maritime Agencies
North Star Terminal and Stevedore Company
Southeast Stevedoring
Northwest Cruise Ship Association
Sealand Services
Pacific Merchant Shipping Association

ROGER GALT

BP CARRIAGE

Cheri:

First of all, Marine Pilot Stuff.

Jeff Pierce called and gave the following information:

- 1) He is the highest paid pilot in their organization and last year he made \$190,000.00 working 10 months.
- 2) According to Pierce, the average pilot in the U.S. makes between \$140-150,000.00 working 5.5 months.
- 3) His association was not asked to "open their books," but under the new regulations, its mandatory. The other thing is that tariffs are regulations. If the regs pass and when the associations open up their books the State finds out that false information was given in support of the tariffs, the State can change the regs.
- 4) SWAPA just received a letter from BP saying they are giving SWAPA a 9.7% increase in piloting charges. SWAPA did not solicit an increase.

These questions came in response to Larry Gallowags' following comments:

- 1) A Valdez pilot made \$500,000.00 last year.
- 2) SWAPA refused to open their books to him.
- 3) The maximum tariff proposals are, in his opinion, too high.
- 4) He did not run the idea of a "Blue Ribbon Panel" by anyone, that it was 'his decision alone.'

Additionally, Tuckerman was very surprised at the creating of a "Blue Ribbon Panel."

GEOFF

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT I

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



HOME

P.O. BOX 5723
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

TESTIMONY MARINE PILOTAGE ACT HOUSE BILL 194

The legislatures of all coastal States have, by statute, created boards or commissions to govern the operation of pilots of their respective states; for the appointment and licensing of such pilots; and, frequently, for the fixing of rates for pilots. Such boards and commissions are administrative agencies and, as such, are creatures of statute. The jurisdiction and authority which they assert must be found within the four corners of the statutes under which they were created.

House Bill 194 gives our Board of Marine Pilots this jurisdiction and authority.

It has been almost twenty years since any major changes were made regarding piloting in Alaska. Since introducing this bill, I have been told by some people, "things are fine....if it isn't broken, don't fix it." While I don't feel our pilotage regulations are "broken," I do feel they can use some much needed maintenance.

Pilots play an important, integral part, of transportation in Alaska. Pilots are taken on board at a particular place for the purpose of conducting a ship through inside coastal waters, or from or into a port. It is their "local knowledge" that ensures the safe passage of vessels through our waters.

This bill is a product of compromise. I have met with several representatives from the shipping industry, pilot board members, pilots and pilot organizations. I have taken into consideration all of their comments and requests and incorporated those constructive suggestions into this bill.

The Law of Tug, Tow and Pilotage gives a history of everything you could ever want to know about piloting. It gives a history of the pilotage industry and cites court cases that back-up the need for a strong Pilot Board. Giving the board the statutory power to enforce and regulate its pilots will serve in the best interest of Alaska.

Thank you.

Board of Marine Pilots

The Senate Labor & Commerce Committee will be introducing an Act relating to Marine Pilots, the board and organizations today.

This legislation was prompted by the OMB study of marine piloting in Alaska, the Oil Spill Commission's recommendations and the affirmative vote by the Board of Marine Pilots on this proposed legislation.

There are two other pieces of legislation dealing with marine pilotage. HB 162 introduced by the governor deals with the boards sunset date. HB 194 introduced by Rep Cheri Davis addresses the entire Marine Pilotage Act.

**SECTIONAL ANALYSIS
WITH COMMENTS FROM
VARIOUS ORGANIZATIONS**

Section 1, page 1: No problem except with Alaska Maritime, which argues semantics.

Section 2, page 2 Line 9 AS 08.62.010. CREATION AND MEMBERSHIP OF BOARD.

Will replace the commissioner of Commerce, or his designate, with the pilot coordinator.

Should now be "ok" with all parties.

Section 3, page 2, Line 18 AS 08.62.020. APPOINTMENT AND TERM OF OFFICE.

No changes.

Ok with all parties.

Section 4, page 2, Line 25 AS 08.62.030. MEETINGS.

Increases number of regular meetings from one to four.

Merrill: "The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

No problem with all other parties.

Section 5, page 2, Line 30 AS 08.62.040. POWERS AND DUTIES.

Left basically as is with one big exception. The regions were taken out of statute and left up to the board to determine. The other area of concern to others was (5) establish pilotage tariffs for each marine pilotage region, and charges for training and other purposes. However, by giving the board broader powers and the addition of the pilot coordinator, there is going to have to be some sort of income, besides the raising of pilot license fees, to cover their costs.

Merrill: Doesn't agree with training tariff.

Ak. Maritime: Doesn't totally agree with training tariff.

Holland America: Doesn't disagree totally.

Section 6, page 4, Line 14 AS 08.62.050 MARINE PILOT COORDINATOR.

Will be hired by the Department, after approval by the board.

No problems.

Section 7, page 4, Line 20 AS 08.62.080 LICENSE REQUIREMENT.

Does not allow for a pilot to be licensed in more than one region.

Merrill: Not until regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

N. Star Maritime: As long as their ability, expertise and currency as required by regulation can be demonstrated, pilots should be able to be licensed in more than one region.

Ak. Maritime: Individuals that are qualified under the State training and trip-frequency guidelines should be forced to abandon one cartel for another.

Section 8 and 9, page 4 Lines 27 and 31 AS 08.62.090 and .090(a), NEW SECTION.

Apply for an exam 60 days before the actual exam.

No problem.

Section 10, page 5, Line 2 AS 08.62.100 QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE.

Gives requirements for Deputy Marine Pilot (typo in title, excluded DEPUTY).

No problems, except for clarifications because of typos in Bill Draft.

Section 11, page 5, Line 30 AS 08.62.115 QUALIFICATIONS FOR MARINE PILOT LICENSE.

Lines 6 through 23 will be deleted and left up to the Board to specify. A new section, "TRAINING," will be added to direct the board to set training standards.

No problems.

Section 12, page 6, Line 24, AS 08.62.120 RENEWAL OF LICENSES.

Sets up guidelines for renewal of pilot licenses.

No problem.

Section 13, page 7, Line 10 AS 08.62.130 LAPSED LICENSES.

Establishes guidelines for activating a lapsed license.

No problems.

Section 14, page 7, Line 18 AS 08.62.150(a) Disciplinary sanctions.

Gives reasons for the board to take disciplinary actions against a pilot.

No problems.

Section 15, page 7, Line 31 AS 08.62.160 MANDATORY EMPLOYMENT OF LICENSED PILOTS.

Mandatory pilotage in the water of or adjacent to, to the extent permitted by federal law. It used to say INSIDE COASTAL WATERS OF ALASKA.

Holland America: This would expand mandatory pilotage in the State.

AK Maritime: Needs more info.

N. Star Maritime: Leave as in current statute.

Section 16, page 8, Line 5 AS 08.62.165 LIABILITY.

Addresses pilot liability, et all.

Holland America: Way too limited.

Section 17, page 8, Line 27 AS 08.62.170 PILOT'S LIEN FOR COMPENSATION.

Vessel owners and masters are jointly and severally liable for the compensation of a pilot.

Alaska Maritime: Objects because it makes the agent liable for pilot compensation....but it doesn't.

Section 18, page 9, Line 2 AS 08.62.175 REGIONAL ORGANIZATIONS OF MARINE PILOTS.

Franchising.

Merrill: No.

Ak.. Maritime: No

Holland America: No

N. Star Maritime: No

ISS (Elwood): No

Section 19, page 9, Line 23 AS 08.62.180 EXEMPTIONS.

Self Explanatory.

Section 20, page 10, Line 8 AS 08.62.187 REGISTRATION OF AGENTS REQUIRED

Self Explanatory.

Section 21, page 10, Line 12 AS 08.62.190 PENALTY

Penalty for not employing a licensed pilot.

Alaska Maritime: Language change.

Section 22, page 10, Line 22 AS 08.62.201 SHORT TITLE.

Section 23, page 10, Line 25 AS 39.25.120(c)

Adds Marine Pilot Coordinator to a new section.

Section 24, page 10, Line 27 AS 45.50.572(a) DEALS WITH ANTI-TRUST.

Section 25, page 11, Line 3 TRANSITION; APPOINTMENTS TO THE BOARD OF MARINE PILOTS.

Section 26, page 11, Line 13 TRANSITION; MARINE PILOT LICENSE.

Section 27, page 11, Line 27 Repealing some statutes (book keeping)

Section 28, page 11, Line 28 Effective dates.*

Section 29, page 11, Line 29 Effective dates.*

* Effective dates are delayed to allow for the pilots to choose which region they wish to be licensed in.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

February 21, 1991

SUBJECT: Sectional Summary of Work Order 7LS0571; An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations

TO: Representative Cheri Davis

FROM: George Utermohle, *GU*
Legislative Counsel

This memorandum is a sectional summary of Work Order 7LS0571.

A sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill sets out the findings of the legislature in regard to marine pilots and the Board of Marine Pilots.

Section 2 of the bill repeals and reenacts AS 08.62.010 relating to the creation and membership of the Board of Marine Pilots. Most significantly the section removes the commissioner of commerce and economic development from the board and replaces the commissioner with a public member.

Section 3 of the bill amends AS 08.62.020 in order to conform to the changes made in the membership of the Board of Marine Pilots by sec. 2 of the bill.

Section 4 of the bill amends AS 08.62.030 by requiring the Board of Marine Pilots to hold at least four meetings each year and by allowing special meetings to be called by the chair of the board or a majority of the membership of the board.

Section 5 of the bill repeals and reenacts AS 08.62.040 relating to the powers and duties of the Board of Marine Pilots.

Section 6 of the bill adds a new section to AS 08.62 providing that the Department of Commerce and Economic Development, after consultation with the Board of

Representative Cheri Davis

February 21, 1991

Page 2

Marine Pilots, may employ a marine pilot coordinator to administer and enforce AS 08.62.

Section 7 of the bill repeals and reenacts AS 08.62.080 relating to the requirement for pilot licenses, limits on pilot licenses, and expiration date of pilot licenses.

Sections 8 and 9 of the bill amend AS 08.62.090 by adding requirements that a person must apply to take an examination administered by the Board of Marine Pilots at least 60 days before the scheduled date of the examination and that the board establish and publish the dates for future examinations.

Section 10 of the bill repeals and reenacts AS 08.62.100 relating to the qualifications for a marine pilot license. The most significant change from prior requirements for licensure is the addition of substantial requirements for specific experience.

Section 11 of the bill amends AS 08.62 by adding a new section establishing the qualifications for a deputy marine pilot license.

Section 12 of the bill repeals and reenacts AS 08.62.120 relating to the requirements for renewal of marine pilot and deputy marine pilot licenses.

Section 13 of the bill repeals and reenacts AS 08.62.130 relating to requirements for the reinstatement of lapsed marine pilot and deputy marine pilot licenses.

Section 14 of the bill amends AS 08.62.150(a) relating to grounds for imposition of disciplinary actions on marine pilots and deputy marine pilots.

Section 15 of the bill amends AS 08.62.160 relating to the mandatory employment of marine pilots by extending the mandatory pilotage requirement to the high seas adjacent to the state, to the extent permitted by federal law.

Section 16 of the bill adds a new section to AS 08.62 relating to the liability of marine pilots, marine pilot organizations, vessels, their cargo, owners and operators of vessels, and owners and operators of pilot boats for damage or loss resulting from or related to the provision of pilotage services.

Section 17 of the bill repeals and reenacts AS 08.62.170 relating to the pilot's lien for compensation for pilotage services.

Section 18 of the bill adds a new section to AS 08.62 relating to the creation of regional marine pilot organizations and the recognition by the Board of Marine Pilots of one marine pilot organization for each marine pilotage region.

Section 19 of the bill amends AS 08.62.180 relating to those vessels exempt from the mandatory pilotage requirements under AS 08.62 by further limiting the exemption for Canadian vessels to those Canadian vessels that are built in Canada and manned by Canadian crews.

Section 20 of the bill makes technical changes to AS 08.62.187 in order to conform to changes made to AS 08.62.040, by sec. 5 of the bill.

Section 21 of the bill amends AS 08.62.190 by increasing the criminal penalties for violating provisions of AS 08.62.

Section 22 of the bill amends AS 08.62 by adding a new section providing that AS 08.62 may be cited as the Alaska Marine Pilotage Act.

Section 23 of the bill amends AS 39.25.120(c) by providing that the marine pilot coordinator, authorized by AS 08.62.050 as added by sec. 6 of this bill, shall be in the exempt state service.

Section 24 of the bill amends AS 45.50.572(a) by adding licensed marine pilot organizations to the list of organizations that are exempt from certain provisions of AS 45.50 relating to monopolies and restraint of trade.

Section 25 of the bill provides for the transition of the membership of the Board of Marine Pilots from its current structure to the structure proposed by the bill.

Section 26 of the bill provides for transition from the current marine pilot licensing requirements to those proposed by the bill. The licensing requirements proposed by the bill would apply to new marine pilots as soon as the requirements take effect, but current marine pilot licensees would have until January 1, 1995 to satisfy the new requirements.

Section 27 of the bill repeals AS 08.62.155 and 08.62.200(2) which are no longer needed.

Section 28 of the bill provides that those provisions of the bill not related to the licensure of marine pilots and deputy marine pilots take effect on July 1, 1991.

Section 29 of the bill provides that those provisions of the bill relating to licensure of marine pilots and deputy marine pilots take effect on January 1, 1992.

SENATE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; extending the termination date of the Board of Marine Pilots; and providing
3 for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. POLICY, FINDINGS, AND INTENT. (a) It is the policy of the state to prevent the
6 loss of lives and property, and to protect the marine environment of the state by requiring compulsory
7 pilotage in certain water of and adjacent to the state.

8 (b) The legislature finds that

9 (1) in order to assure the protection of lives and property and the marine environment
10 of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels
11 in certain water of and adjacent to the state;

12 (2) it is necessary to give the Board of Marine Pilots broad statutory authority, including
13 the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training
14 and licensing of marine pilots;

1 (3) marine pilots operating independently of the shipping industry have provided and will
2 continue to provide essential services to the people of the state;

3 (4) marine pilots further the public interest by providing safe pilotage in the water of the
4 state;

5 (5) in the past, pilot organizations have provided, and in the future will continue to
6 provide, important services on behalf of marine pilots; these pilot organizations have furthered the policy
7 of protecting lives and property and the marine environment in the water of the state.

8 (c) It is the intent of the legislature that the Board of Marine Pilots work with

9 (1) marine pilots to ensure that safe pilotage is maintained in the state;

10 (2) pilot organizations in a cooperative effort to enhance the policy of protecting lives
11 and property and the marine environment in the water of the state.

12 * Sec. 2. AS 08.03.010(c)(12) is amended to read:

13 (12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1995 [1991];

14 * Sec. 3. AS 08.62.020 is repealed and reenacted to read:

15 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
16 the members of the board under AS 08.01.020.

17 * Sec. 4. AS 08.62.030 is amended to read:

18 Sec. 08.62.030. MEETINGS. The board shall hold at least three regularly scheduled
19 meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special
20 meetings at the call of the chair or at the request of a majority of the members of the board
21 [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

22 * Sec. 5. AS 08.62.040 is amended to read:

23 Sec. 08.62.040. POWERS [AND DUTIES]. (a) The board may [SHALL]

24 (1) provide for the maintenance of efficient and competent pilotage [PILOT]
25 service on all water [WATERS] covered by this chapter to assure the protection of shipping,
26 [AND] the safety of human life and property, and the protection of the marine environment;

27 (2) consistent with the law, adopt regulations, subject to the Administrative
28 Procedure Act (AS 44.62), establishing the qualifications of and required training for pilots and
29 providing for the examination of pilots and the issuance of original or renewal pilot licenses to
30 qualified persons;

31 (3) keep a register of licensed pilots [,] and agents;

- 1 (4) adopt regulations establishing
2 (A) pilotage regions in the state;
3 (B) the criteria by which pilotage tariffs are established;
4 (C) the criteria related to a training and investigation fee to be
5 remitted to the board; and
6 (D) pilotage tariffs for each pilotage region [UNDER THE
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS
- 8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS
- 9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED
- 10 TO APPLY THE STANDARDS IN THE REGULATIONS];
- 11 (5) make available, upon request, copies of this chapter and the regulations
- 12 adopted under this chapter;
- 13 (6) review and approve the bylaws and the operating rules of pilot
14 organizations;
- 15 (7) audit a pilot organization or an individual pilot as considered necessary
16 by the board; and
- 17 (8) review and approve training programs conducted by pilot organizations
18 [IT].
- 19 (b) The board may, by regulation, make any other provision for proper and safe pilotage
- 20 upon the water [WATERS] covered by this chapter and for the efficient administration of this
- 21 chapter, including establishing
- 22 (1) different licensing criteria in pilotage regions if justified by regional
23 differences in piloting;
- 24 (2) a mandatory random drug and alcohol testing program for pilots licensed
25 under this chapter; and
- 26 (3) criteria for trainee selection and for training programs conducted by pilot
27 organizations.
- 28 * Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:
- 29 (c) For good cause, the board may require a pilot licensed under this chapter to submit
- 30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a
- 31 pilot.

1 * Sec. 7. AS 08.62 is amended by adding a new section to article 1 to read:

2 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department, with the approval
3 of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and
4 enforce the provisions of this chapter. The coordinator may not be an active member of a pilot
5 organization in the state and may not work as a pilot while employed as the coordinator, except
6 to the extent required by official duties. The coordinator is in the partially exempt service under
7 AS 39.25.120.

8 * Sec. 8. AS 08.62.080 is amended by adding new subsections to read:

9 (b) A pilot may not be licensed in more than one pilotage region at one time.

10 (c) The board shall establish dates for license examinations and shall provide public
11 notice of the dates for license examinations.

12 * Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

13 (c) In order to be eligible to take the next scheduled examination, a person shall file the
14 application with the board at least 60 days before the date of the examination.

15 * Sec. 10. AS 08.62.100 is repealed and reenacted to read:

16 Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot
17 license to a person if the person is a citizen of the United States, passes the examinations given
18 by the board, qualifies under regulations adopted by the board, and meets the qualifications in
19 (b) - (d) of this section.

20 (b) In addition to the qualifications in (a) of this section, an applicant may not receive
21 a license under this section unless the applicant provides documentation to the board of the
22 following service:

23 (1) one year of service as a master of ocean or coastwise vessels while holding
24 a license as the master of ocean steam or motor vessels of any gross tons;

25 (2) two years of service as a master of freight on a towing vessel while holding
26 a license as the master of freight and towing vessels of not less than 1,600 gross tons;

27 (3) two years of service as a chief officer on ocean or coastwise vessels of not
28 less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels
29 of any gross tons;

30 (4) two years of service as commanding officer of United States government
31 vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam

1 or motor vessels of any gross tons; or

2 (5) three years of experience as a member of an organized professional pilots
3 association during which the candidate was actively engaged in piloting while holding a
4 minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

5 (c) An applicant for a license under this section shall possess an endorsement of first
6 class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions
7 for the pilotage region for which the applicant seeks to be licensed.

8 (d) The board may impose other entry level qualifications for a license for a particular
9 pilotage region.

10 (e) In this section, "years of service" is determined in a manner consistent with the
11 regulatory standards of the United States Coast Guard relating to years of service.

12 * Sec. 11. AS 08.62.120 is repealed and reenacted to read:

13 Sec. 08.62.120. RENEWAL. (a) Licenses issued under this chapter expire on
14 December 31 of each even-numbered year. In addition to complying with the requirements of
15 AS 08.01.100, in order to renew a license a pilot shall

16 (1) submit a renewal application on a form provided by the board;

17 (2) meet the minimum qualifications set out in AS 08.62.100 and the regulations
18 adopted by the board under AS 08.62.100;

19 (3) on a form approved by the board, provide evidence of a satisfactory physical
20 examination by a licensed physician within 60 days before the date of renewal; and

21 (4) comply with (b) of this section.

22 (b) A licensed pilot who has not piloted in the region for which the pilot is licensed for
23 at least 60 days during the two years before applying for renewal may not have the license
24 renewed until the pilot completes the number of familiarization trips required by the board in the
25 pilotage region for which the license will be renewed.

26 * Sec. 12. AS 08.62.130 is repealed and reenacted to read:

27 Sec. 08.62.130. LAPSED LICENSE. The board shall reinstate a lapsed license if, in
28 addition to complying with the requirements of AS 08.01.100(a) - (c) and AS 08.62.120, the pilot
29 takes and passes a written and oral examination if the license has been lapsed one year or more.

30 * Sec. 13. AS 08.62.150(a) is amended to read:

31 (a) The board may impose a disciplinary sanction on a person licensed under this chapter

1 when the board finds that the person

2 (1) is incompetent in the performance of pilotage duties;

3 (2) is chemically impaired [HABITUALLY INTOXICATED];

4 (3) illegally uses or sells narcotic or hallucinogenic drugs;

5 (4) makes a false statement to obtain a license;

6 (5) violates a provision of this chapter or a regulation adopted under it;

7 (6) is guilty of misconduct during the course of employment; [OR]

8 (7) has had the person's United States Coast Guard pilot license conditioned,

9 suspended, or revoked; or

10 (8) charges, collects, or receives an amount for pilotage services that is

11 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF

12 FEDERAL LICENSURE AS A PILOT].

13 * Sec. 14. AS 08.62.155 is repealed and reenacted to read:

14 Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action
15 under AS 08.01.075.

16 * Sec. 15. AS 08.62.160 is amended to read:

17 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
18 subject to this chapter navigating certain water of or adjacent to the state [THE INSIDE
19 COASTAL WATERS OF ALASKA] as determined by the board in regulation shall employ a
20 pilot holding a valid license under this chapter. A vessel in the mandatory pilotage water of
21 the state shall be under the direction and control of a pilot licensed under this chapter
22 during movement of the vessel, unless the pilot is removed by the master for cause.

23 * Sec. 16. AS 08.62 is amended by adding a new section to read:

24 Sec. 08.62.165. LIMITATION OF LIABILITY. (a) A pilot licensed under this chapter
25 is not liable for damages in excess of \$5,000 per incident for damages or loss occurring as a
26 result of the error, omission, fault, or neglect of the pilot in performing pilotage services, except
27 that the limitation does not apply in a case where the pilot is either grossly negligent or guilty
28 of wilful misconduct.

29 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator
30 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,
31 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,

1 or other property on the ground that

2 (1) the vessel was piloted by a pilot licensed under this chapter, or

3 (2) the damage or loss occurred as a result of the error, omission, fault, or neglect
4 of a pilot licensed under this chapter.

5 (c) An organization of pilots is not liable for claims arising from acts or omissions of a
6 pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot
7 is not liable, directly or as a member of an organization of pilots, for claims arising from acts
8 or omissions of another pilot or organization of pilots that relate, directly or indirectly, to pilotage
9 of a vessel. This subsection does not apply to acts or omissions relating to the ownership or
10 operation of pilot boats or the transportation of pilots to and from a vessel to be piloted.

11 * Sec. 17. AS 08.62 is amended by adding a new section to read:

12 Sec. 08.62.175. PILOT ORGANIZATIONS. Marine pilots may organize themselves into
13 organizations, to the extent that the organizations are permitted under state and federal law.

14 * Sec. 18. AS 08.62.190 is amended to read:

15 Sec. 08.62.190. PENALTIES [PENALTY]. (a) A master or owner of a vessel required
16 by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available,
17 unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a
18 misdemeanor and, upon conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor
19 more than \$15,000 for the first offense and not less than \$10,000 nor more than \$30,000 for
20 the second offense [\$5,000].

21 (b) A person who violates any other provision of this chapter or a regulation adopted
22 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
23 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

24 * Sec. 19. AS 08.62 is amended by adding a new section to read:

25 Sec. 08.62.990. SHORT TITLE. This chapter may be cited as the Alaska Marine
26 Pilotage Act.

27 * Sec. 20. AS 39.25.120(c) is amended by adding a new paragraph to read:

28 (21) marine pilot coordinator of the Board of Marine Pilots.

29 * Sec. 21. AS 45.50.572(a) is amended to read:

30 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
31 agricultural, [OR] horticultural, or marine pilot organizations created for the purpose of mutual

1 help, and not conducted for profit, or forbid or restrain members of those organizations from
2 lawfully carrying out the legitimate objectives of them; nor are these organizations or members
3 illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 -
4 45.50.596.

5 * Sec. 22. TRANSITION; MARINE PILOT LICENSE. (a) A marine pilot license issued under
6 AS 08.62.100 before the effective date of this Act shall be valid for the period for which the license was
7 issued and may be renewed until December 31, 1994, without examination upon payment of the marine
8 pilot license fee.

9 (b) A person may not hold a marine pilot license after December 31, 1994, without satisfying
10 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

11 (c) Notwithstanding AS 08.62.080(b), added by sec. 8 of this Act, a marine pilot license issued
12 under AS 08.62.100 before the effective date of this Act, and for subsequent renewals of the license,
13 entitles the licensee to pilot vessels in any marine pilotage region in the state until December 31, 1994.

14 (d) Notwithstanding (a) - (c) of this section, a person licensed under this chapter who applies
15 for a change, amendment, or an endorsement for the person's license must qualify for the change,
16 amendment, or endorsement under AS 08.62 as amended by this Act and implementing regulations
17 adopted by the Board of Marine Pilots.

18 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE C.DAVIS

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating independently of the shipping industry have provided and will
8 continue to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in certain waters
12 of and adjacent to the state is necessary in order to prevent the loss of life and property and to protect
13 the marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

1 persons are responsible for navigating vessels in and adjacent to water of the state;

2 (6) the Board of Marine Pilots must have broad authority to regulate marine pilots,
3 including authority to establish marine pilotage regions, tariffs, and training and licensing criteria for
4 marine pilots;

5 (7) marine pilot organizations have provided, and will continue to provide, important
6 service to the public and to protect lives and property and the marine environment;

7 (8) marine pilot organizations should share in the responsibility for maintaining safe and
8 reliable marine pilotage systems established by the Board of Marine Pilots.

9 * Sec. 2. AS 08.62.020 is amended to read:

10 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
11 the pilot, [AND] agent or manager, and public members of the board, subject to confirmation
12 by a majority of the members of the legislature in joint session, for terms of four years [,] or
13 until their successors are appointed. A person, with the exception of the commissioner or the
14 commissioner's designee, may not be appointed to the board for more than two consecutive
15 terms.

16 * Sec. 3. AS 08.62.030 is amended to read:

17 Sec. 08.62.030. MEETINGS. The board shall hold at least four [A] regular meetings
18 each year [ANNUAL MEETING]. The board may hold special meetings at the call of the chair
19 or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR
20 APPROVAL OF THE GOVERNOR].

21 * Sec. 4. AS 08.62.040 is repealed and reenacted to read:

22 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

23 (1) provide for

24 (A) the examination of applicants for marine pilot and deputy marine pilot
25 licenses; and

26 (B) issuance and renewal of marine pilot and deputy marine pilot licenses
27 for each pilotage region;

28 (2) place qualifications or limitations on marine pilot and deputy marine pilot
29 licenses based on the characteristics of a marine pilotage region in which the licensee will operate
30 and the experience and training of the licensee;

31 (3) recognize regional marine pilot organizations to promote, administer, and

- 1 manage an efficient, reliable, and safe pilotage system within each marine pilotage region;
- 2 (4) keep a register of licensed marine pilots, licensed deputy marine pilots, and
- 3 agents;
- 4 (5) establish pilotage tariffs for each marine pilotage region, and charges for
- 5 training and other purposes;
- 6 (6) establish a mandatory random drug and alcohol testing program for persons
- 7 licensed under this chapter;
- 8 (7) establish standards for training of marine pilots and deputy marine pilots and
- 9 review training programs conducted by regional marine pilot organizations and approve the
- 10 training program if the board finds that the program is consistent with standards established by
- 11 the board;
- 12 (8) make available, upon request, copies of this chapter and the regulations
- 13 adopted under this chapter;
- 14 (9) review the articles, bylaws, and operating rules of regional marine pilot
- 15 organizations recognized by the board and approve the articles, bylaws, and rules, if the board
- 16 finds that they are consistent with this chapter, regulations adopted under this chapter, and other
- 17 applicable law;
- 18 (10) audit regional marine pilot organizations recognized by the board for
- 19 compliance with applicable law; and
- 20 (11) impose disciplinary sanctions under AS 08.01.075 on persons licensed under
- 21 this chapter;
- 22 (12) establish by regulation marine pilotage regions.

23 (b) The board may, by regulation, make other provisions for proper and safe pilotage

24 upon the waters covered by this chapter and for the efficient administration of this chapter.

25 (c) The board may, for good cause, require a person licensed under this chapter or an

26 applicant for a license issued under this chapter to submit to a physical or mental examination

27 to determine the person's fitness to perform the duties of a marine pilot.

28 * Sec. 5. AS 08.62 is amended by adding a new section to article 1 to read:

29 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department may, after

30 consultation with the board, employ a marine pilot coordinator approved by the board to

31 administer and enforce this chapter. The coordinator may not be an active member of a regional

1 marine pilot organization in the state and may not serve as a marine pilot except as necessary to
2 perform the duties of marine pilot coordinator.

3 * Sec. 6. AS 08.62.080 is repealed and reenacted to read:

4 Sec. 08.62.080. LICENSE REQUIREMENT. (a) A person may not pilot a vessel
5 subject to this chapter unless the person is licensed under this chapter to pilot a vessel of that
6 type or size within that marine pilotage region.

7 (b) Notwithstanding AS 08.01.100(a), marine pilot and deputy marine pilot licenses
8 expire on December 31 of each even-numbered year.

9 * Sec. 7. AS 08.62.090(a) is amended to read:

10 (a) A person who desires to be licensed under this chapter shall apply in writing to the
11 department. A person must apply to take an examination at least 60 days before the
12 scheduled date of an examination in order to take the examination on that date.

13 * Sec. 8. AS 08.62.090 is amended by adding a new subsection to read:

14 (c) The board shall establish and publish dates for future examinations.

15 * Sec. 9. AS 08.62.100 is repealed and reenacted to read:

16 Sec. 08.62.100. QUALIFICATIONS FOR A MARINE PILOT LICENSE. The board
17 shall issue a marine pilot license for a marine pilotage region to a person who

- 18 (1) is a citizen of the United States;
19 (2) passes written and oral examinations that may be required by the board;
20 (3) successfully completes a training program that has been approved by the
21 board.

22 * Sec. 10. AS 08.62 is amended by adding new sections to read:

23 Sec. 08.62.113. QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE. (a)

24 The board shall issue a deputy marine pilot license for a marine pilotage region to a person who

- 25 (1) is a citizen of the United States;
26 (2) passes the written and oral examinations that may be required by the board;
27 (3) has completed training requirements established by the board; and
28 (4) satisfies (b) and (c) of this section.

29 (b) A person who applies for a deputy marine pilot license under this chapter shall
30 provide proof satisfactory to the board of the following experience:

- 31 (1) one year of sea service as a master on ocean or coastwise vessels while holding

1 a license as master of ocean steam or motor vessels of any gross tons;

2 (2) two years of sea service as a master on vessels or tug and tow of not less than
3 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600
4 gross tons;

5 (3) two years of sea service as a chief officer on ocean or coastwise vessels of not
6 less than 1,600 gross tons while holding a license as master of ocean steam or motor vessels of
7 any gross tons;

8 (4) two years of sea service as commanding officer of United States commissioned
9 vessels of not less than 1,600 gross tons while holding a license as master of ocean steam or
10 motor vessels of any gross tons; or

11 (5) three years of experience as a member of a professional pilot's organization,
12 during which the person actively engaged in piloting while holding at least a license as a master
13 of freight or towing vessel of not more than 1,600 gross tons.

14 (c) A person who applies for a deputy marine pilot license under this section shall
15 possess an endorsement of first class pilotage on the person's United States Coast Guard license
16 without tonnage restrictions for the pilotage region for which the person seeks the deputy marine
17 pilot license.

18 (d) A person licensed as a deputy marine pilot under this section may, except as
19 otherwise provided by the board, pilot vessels of 20,000 gross tons or less in a marine pilotage
20 region for which the license is issued.

21 (e) In this section, "sea service" has the meaning given to the term by the United States
22 Coast Guard under 46 C.F.R. 10.

23 Sec. 08.62.117. TRAINING PROGRAMS. (a) The board shall establish standards for
24 training programs for a marine pilot license. The standards may include requirements for

25 (1) supervised familiarization and training trips on vessels subject to this chapter,

26 (2) supervised dockings, undockings, and tug assisted maneuvers;

27 (3) special training or experience necessary to qualify for a marine pilot license

28 for a particular marine pilotage region;

29 (4) completion of the training program within a specified period;

30 (5) other training or experience that the board considers appropriate.

31 (b) The board shall establish standards for training programs for a deputy marine pilot

1 license, as the board may consider appropriate.

2 (c) A person who supervises the training of persons who are seeking a license under this
3 chapter shall

4 (1) hold a marine pilot license issued under AS 08.62.100;

5 (2) receive prior authorization from the board to supervise the training of those
6 persons;

7 (3) maintain a written log and evaluation on a form provided by the board of the
8 training and progress of the person being supervised.

9 * Sec. 11. AS 08.62.120 is repealed and reenacted to read:

10 Sec. 08.62.120. RENEWAL OF LICENSES. (a) In order to renew a marine pilot license,
11 a person who is licensed under AS 08.62.100 shall

12 (1) submit an application for renewal of the license on a form provided by the
13 board;

14 (2) submit proof of continued qualification under AS 08.62.100 to receive a
15 marine pilot license;

16 (3) provide evidence of satisfactory completion of a physical examination by a
17 licensed physician within 60 days before the date of renewal of the license;

18 (4) submit proof satisfactory to the board that the person

19 (A) has engaged in piloting vessels subject to this chapter during at least
20 60 days in the licensing period immediately preceding the licensing period for which
21 renewal is sought; or

22 (B) completed the minimum number of familiarization trips required by the
23 board for renewal of a marine pilot license for a marine pilotage region for which the
24 license is to be renewed.

25 (b) The board shall establish criteria for the renewal of deputy marine pilot licenses.

26 * Sec. 12. AS 08.62.130 is repealed and reenacted to read:

27 Sec. 08.62.130. LAPSED LICENSES. (a) The board shall reinstate a lapsed marine
28 pilot license if the former licensee satisfies the requirements of AS 08.62.100 and completes two
29 familiarization trips under the supervision of a licensed marine pilot approved by the board for
30 each year that the license has been lapsed to each major port and waterway, defined by the board,
31 in the pilotage region for which the license is to be reissued and, if the license has been lapsed

1 for a year or more, passes an examination administered by the board.

2 (b) The board shall establish criteria for reinstatement of a lapsed deputy marine pilot
3 license.

4 * Sec. 13. AS 08.62.150(a) is amended to read:

5 (a) The board may impose a disciplinary sanction on a person licensed under this chapter
6 when the board finds that the person

7 (1) is incompetent in the performance of pilotage duties;

8 (2) is [HABITUALLY] intoxicated during the performance of pilotage duties
9 due to alcohol;

10 (3) illegally uses or sells narcotic or hallucinogenic drugs;

11 (4) makes a false statement to obtain a license;

12 (5) violates a provision of this chapter or a regulation adopted under this chapter
13 [IT];

14 (6) is guilty of misconduct during the course of employment; [OR]

15 (7) charges, collects, or receives an amount for marine pilot services that is
16 different from the tariff established by the board; or

17 (8) has suffered revocation of federal licensure as a pilot.

18 * Sec. 14. AS 08.62.160 is amended to read:

19 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
20 subject to this chapter navigating the water of or adjacent to, to the extent permitted by
21 federal law, the state [INSIDE COASTAL WATERS OF ALASKA] as determined by
22 regulation shall employ a marine pilot holding a valid license under this chapter.

23 * Sec. 15. AS 08.62 is amended by adding a new section to read:

24 Sec. 08.62.165. LIABILITY. (a) A person who is licensed under this chapter is not
25 liable in excess of \$5,000 for damage or loss occurring as a consequence of the person's error,
26 fault, omission, or neglect in performing services for which a license is required under this
27 chapter. The limitation of liability under this subsection does not apply if the person's error,
28 fault, omission, or neglect is wilful.

29 (1) This section does not limit the liability of a vessel, its cargo, the owner of the vessel,
30 or the operator of the vessel for damage or loss caused by the vessel because the vessel was
31 piloted by a person licensed under this chapter or the damage or loss was a consequence of the

1 error, fault, omission, or neglect of a person licensed under this chapter while the person was
2 piloting the vessel.

3 (c) A regional organization of marine pilots recognized by the board under this chapter
4 is not liable for damage or loss arising from the error, fault, omission, or neglect of the
5 organization or a member of the organization who is licensed under this chapter that is, directly
6 or indirectly, related to the pilotage of a vessel.

7 (d) A person licensed under this chapter is not liable, directly or indirectly or as a
8 member of a regional organization of marine pilots recognized by the board under this chapter,
9 for loss or damage arising from the error, fault, omission, or neglect of another marine pilot or
10 the regional organization of marine pilots relating to pilotage of a vessel.

11 (e) This section does not limit the liability of the owner or operator of a pilot boat for
12 loss or damage arising from the ownership or operation of a pilot boat or the transportation of
13 marine pilots to and from vessels.

14 * Sec. 16. AS 08.62.170 is repealed and reenacted to read:

15 Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, the owner of the
16 vessel, and the master of the vessel are jointly and severally liable for the compensation of a
17 person licensed under this chapter who is employed as a marine pilot on the vessel. A person
18 licensed under this chapter has a lien on the vessel and the vessel's tackle, apparel, and furniture
19 for compensation for marine pilot services.

20 * Sec. 17. AS 08.62 is amended by adding a new section to read:

21 Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the
22 extent permitted under federal and state law, persons licensed under this chapter may form an
23 organization of marine pilots for each marine pilotage region.

24 (b) The board may recognize one organization of marine pilots within each marine
25 pilotage region.

26 (c) An organization of marine pilots recognized by the board shall promote a safe and
27 reliable system of marine pilotage for the region in which the organization is established,
28 including dispatching and training of marine pilots and deputy marine pilots and other functions
29 that the organization may assume. The articles, bylaws, and rules of each organization of marine
30 pilots recognized by the board are subject to approval by the board on the basis of

31 (1) uniform and nondiscriminatory application of the articles, bylaws, and rules

- 1 to marine pilots and deputy marine pilots licensed under this chapter;
- 2 (2) compliance with applicable laws; and
- 3 (3) effectiveness in
- 4 (A) promoting an efficient, reliable, and professional marine pilotage
- 5 system in the region;
- 6 (B) maintaining a sufficient number of qualified pilots to serve the needs
- 7 of vessels visiting the region;
- 8 (C) maintaining a training program for marine pilots and deputy marine
- 9 pilots that is approved by the board.

10 * Sec. 18. AS 08.62.180 is amended to read:

11 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

12 (1) coastwise vessels exempt from state pilot laws by federal law [VESSELS

13 UNDER ENROLLMENT, EXCEPT AS PROVIDED IN AS 08.62.185];

14 (2) fishing vessels registered in the United States or in British Columbia, Canada;

15 (3) vessels propelled by machinery and not more than 65 feet in length over deck,

16 except tugboats and towboats propelled by steam;

17 (4) vessels of United States registry of less than 300 gross tons and tow boats of

18 United States registry and vessels owned by the State of Alaska, engaged exclusively

19 (A) on the rivers of Alaska, or

20 (B) in the coastwise trade on the west coast of the United States including

21 Alaska, Hawaii, and British Columbia, Canada;

22 (5) vessels of Canada, built in Canada and manned by Canadian citizens

23 including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska,

24 if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and

25 those of United States registry; and

26 (6) pleasure craft.

27 * Sec. 19. AS 08.62.187 is amended to read:

28 Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as

29 an agent of a vessel subject to this chapter unless the person's name appears on the register of

30 agents kept by the board under AS 08.62.040(a) [AS 08.62.040(a)(3)].

31 * Sec. 20. AS 08.62.190 is amended to read:

1 Sec. 08.62.190. PENALTY. (a) A master or owner of a vessel required by this chapter
2 to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils
3 or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon
4 conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000 for
5 the first offense and not less than \$10,000 nor more than \$30,000 for each subsequent
6 offense [\$5,000].

7 (b) A person who violates any other provision of this chapter or a regulation adopted
8 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
9 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

10 * Sec. 21. AS 08.62 is amended by adding a new section to read:

11 Sec. 08.62.201. SHORT TITLE. This chapter may be cited as the Alaska Marine Pilotage
12 Act.

13 * Sec. 22. AS 39.25.120(c) is amended by adding a new paragraph to read:

14 (21) marine pilot coordinator of the Board of Marine Pilots.

15 * Sec. 23. AS 45.50.572(a) is amended to read:

16 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
17 agricultural, [OR] horticultural, or licensed marine pilot organizations created for the purpose
18 of mutual help, and not conducted for profit, or forbid or restrain members of those organizations
19 from lawfully carrying out the legitimate objectives of them; nor are these organizations or
20 members illegal combinations or conspiracies in restraint of trade under the provisions of
21 AS 45.50.562 - 45.50.596.

22 * Sec. 24. TRANSITION; MARINE PILOT LICENSE. (a) Marine pilot licenses issued under
23 AS 08.62.100 before the effective date of sec. 9 of this Act shall be valid for the period for which the
24 licenses were issued and may be renewed until December 31, 1994, without examination upon payment
25 of the marine pilot license fee.

26 (b) A person who has applied for or made a substantial effort toward qualifying for, as
27 determined by the Board of Marine Pilots, a marine pilot license under AS 08.62.100 before the effective
28 date of sec. 9 of this Act, may receive a marine pilot license under the requirements for licensure as they
29 existed before the effective date of sec. 9 of this Act and may renew the license until December 31,
30 1994, without examination upon payment of the marine pilot license fee.

31 (c) A person may not hold a marine pilot license after December 31, 1994, without satisfying

1 the requirements of AS 08.62.100, as amended by sec. 9 of this Act.

2 (d) Notwithstanding AS 08.62.080(a), as amended by sec. 6 of this Act, a marine pilot license
3 issued under AS 08.62.100 before the effective date of sec. 9 of this Act or under (b) of this section, and
4 for subsequent renewals of the license, entitles the licensee to pilot vessels in any marine pilotage region
5 in the state until December 31, 1994.

6 * Sec. 25. AS 08.62.155 is repealed.

7 * Sec. 26. Sections 1 - 5, 13 - 23, and 25 of this Act take effect July 1, 1991.

8 * Sec. 27. Sections 6 - 12 and 24 of this Act take effect January 1, 1992.



7-LS0571A ✓
Uermohle
2/21/91

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE C.DAVIS

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 ^{IN} * Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating independently of the shipping industry have provided and will
8 continue to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in certain waters
12 of and adjacent to the state is necessary in order to prevent the loss of life and property and to protect
13 the marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

1 persons are responsible for navigating vessels in and adjacent to water of the state;

2 (6) the Board of Marine Pilots must have broad authority to regulate marine pilots,
3 including authority to establish marine pilotage regions, tariffs, and training and licensing criteria for
4 marine pilots;

5 (7) marine pilot organizations have provided, and will continue to provide, important
6 service to the public and to protect lives and property and the marine environment;

7 (8) marine pilot organizations should share in the responsibility for maintaining safe and
8 reliable marine pilotage systems established by the Board of Marine Pilots.

9 * Sec. 2. AS 08.62.010 is repealed and reenacted to read:

10 *Comp'd 7/25/16* Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. (a) The Board of
11 *DL* Marine Pilots is created in the Department of Commerce and Economic Development. The board
12 consists of seven members.

13 (b) Three members of the board shall be pilots licensed under AS 08.62.100 who have
14 been actively engaged in piloting on vessels subject to this chapter; not more than one pilot
15 member may be from each marine pilotage region. Two members of the board shall be agents
16 or managers of vessels subject to this chapter. Two members of the board shall be public
17 members. All members of the board shall be residents of the state.

18 * Sec. 3. AS 08.62.020 is amended to read:

19 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
20 the [PILOT AND AGENT OR MANAGER] members of the board, subject to confirmation by
21 a majority of the members of the legislature in joint session, for terms of four years [,] or until
22 their successors are appointed. A person [, WITH THE EXCEPTION OF THE
23 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE,] may not be appointed to the
24 board for more than two consecutive terms.

25 * Sec. 4. AS 08.62.030 is amended to read:

26 Sec. 08.62.030. MEETINGS. The board shall hold at least four [A] regular meetings
27 each year [ANNUAL MEETING]. The board may hold special meetings at the call of the chair
28 or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR
29 APPROVAL OF THE GOVERNOR].

30 * Sec. 5. AS 08.62.040 is repealed and reenacted:

31 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

- 1 (1) provide for
- 2 (A) the examination of applicants for marine pilot and deputy marine pilot
- 3 licenses;
- 4 (B) issuance and renewal of marine pilot and deputy marine pilot licenses
- 5 for each pilotage region; and
- 6 (C) transfer of marine pilot and deputy marine pilot licenses between
- 7 marine pilotage regions;
- 8 (2) place qualifications or limitations on marine pilot and deputy marine pilot
- 9 licenses based on the characteristics of the marine pilotage region in which the licensee will
- 10 operate and the experience and training of the licensee;
- 11 (3) recognize regional marine pilot organizations to promote, administer, and
- 12 manage an efficient, reliable, and safe pilotage system within each marine pilotage region;
- 13 (4) keep a register of licensed marine pilots, licensed deputy marine pilots, marine
- 14 pilot trainees, and agents;
- 15 (5) establish pilotage tariffs for each marine pilotage region, and charges for
- 16 training and other purposes;
- 17 (6) establish a mandatory random drug and alcohol testing program for persons
- 18 licensed under this chapter;
- 19 BOARD CONTROLS (7) establish standards for training of marine pilots, deputy marine pilots, and
- 20 marine pilot trainees and review training programs conducted by regional marine pilot
- 21 organizations and approve the training program if the program is consistent with standards
- 22 established by the board;
- 23 (8) make available, upon request, copies of this chapter and the regulations
- 24 adopted under this chapter;
- 25 BOARD CONTROLS (9) review the articles, bylaws, and operating rules of regional marine pilot
- 26 organizations and approve the articles, bylaws, and rules, if they are consistent with this chapter,
- 27 regulations adopted under this chapter, and other applicable law;
- 28 (10) audit regional marine pilot organizations for compliance with applicable law;
- 29 and { INDIVIDUAL PILOTS IF NOT REGIONAL CONTROL }
- 30 (11) impose disciplinary sanctions under AS 08.01.075 on persons licensed under
- 31 this chapter.

1 (b) The board may, by regulation, make other provisions for proper and safe pilotage
2 upon the waters covered by this chapter and for the efficient administration of this chapter.

3 (c) The board may, for good cause, require a person licensed under this chapter or an
4 applicant for a license issued under this chapter to submit to a physical or mental examination
5 to determine the person's fitness to perform the duties of a marine pilot.

6 (d) The board shall establish the following marine pilotage regions:

7 (1) Southeastern Alaska marine pilotage region, consisting of the water of the
8 state and adjacent high seas from Dixon Entrance to Yakutat;

9 (2) Southwestern Alaska marine pilotage region, consisting of the water of the
10 state and the adjacent high seas from Icy Bay to Demarcation Point, including Dutch Harbor and
11 Captain's Bay; and

12 (3) Aleutian Island marine pilotage region, consisting of the water of the state and
13 the adjacent high seas of the Aleutian Islands and Alaska Peninsula.

14 * Sec. 6. AS 08.62 is amended by adding a new section to article 1 to read:

15 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department may, after
16 consultation with the board, employ a marine pilot coordinator to administer and enforce this
17 chapter. The coordinator may not be an active member of a regional marine pilot organization
18 in the state and may not serve as a marine pilot except as necessary to perform the duties of
19 marine pilot coordinator.

20 * Sec. 7. AS 08.62.080 is repealed and reenacted to read:

21 Sec. 08.62.080. LICENSE REQUIREMENT. (a) A person may not pilot a vessel
22 subject to this chapter unless the person is licensed under this chapter to pilot a vessel of that
23 type or size within that marine pilotage region.

24 (b) A person may not be licensed for more than one marine pilotage region at one time.

25 (c) Notwithstanding AS 08.01.100(a), marine pilot and deputy marine pilot licenses
26 expire on December 31 of each even-numbered year.

27 * Sec. 8. AS 08.62.090(a) is amended to read:

28 (a) A person who desires to be licensed under this chapter shall apply in writing to the
29 department. A person must apply to take an examination at least 60 days before the
30 scheduled date of an examination in order to take the examination on that date.

31 * Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

1 (c) The board shall establish and publish dates for future examinations.

2 * Sec. 10. AS 08.62.100 is repealed and reenacted to read:

3 Sec. 08.62.100. QUALIFICATIONS FOR ^{DEPUTY} MARINE PILOT LICENSE. (a) The board X
4 shall issue a marine pilot license for a marine pilotage region to a person who

- 5 (1) is a citizen of the United States;
- 6 (2) passes the written and oral examinations that may be required by the board;
- 7 (3) has completed training requirements established by the board; and
- 8 (4) satisfies (b) and (c) of this section.

9 (b) A person who applies for a marine ^{DEPUTY} pilot license under this chapter shall provide proof X
10 satisfactory to the board of the following experience:

11 (1) one year of sea service as a master on ocean or coastwise vessels while holding
12 a license as master of ocean steam or motor vessels of any gross tons;

13 (2) two years of sea service as a master on vessels or tug and tow of not less than
14 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600
15 gross tons;

16 (3) two years of sea service as a chief officer on ocean or coastwise vessels of not
17 less than 1,600 gross tons while holding a license as master of ocean steam or motor vessels of
18 any gross tons;

19 (4) two years of sea service as commanding officer of United States commissioned
20 vessels of not less than 1,600 gross tons while holding a license as master of ocean steam or
21 motor vessels of any gross tons; or

22 (5) three years of experience as a member of a professional pilot's organization,
23 during which the person actively engaged in piloting while holding at least a license as a master
24 of freight or towing vessel of not more than 1,600 gross tons.

25 (c) A person who applies for a marine pilot license under this section shall possess an
26 endorsement of first class pilotage on the person's United States Coast Guard license without
27 tonnage restrictions for the pilotage region for which the person seeks the marine pilot license.

28 (d) In this section, "one year of sea service" means 365 days of ^{AS DEMAND BY CL} ~~standing watch~~ ^{AT SEA UNDER WAY}
29 seagoing vessel; and "day" means eight hours on watch during a 24 hour period.

30 * Sec. 11. AS 08.62 is amended by adding a new section to read:

31 Sec. 08.62.115. QUALIFICATIONS FOR ^{DEPUTY} MARINE PILOT LICENSE. (a) X

1 The board shall issue a deputy marine pilot license for a marine pilotage region to a person who X
 2 (1) is a citizen of the United States;
 3 (2) passes written and oral examinations ^{DUPLICATE} that may be required by the board;
 4 (3) successfully completes a training program as a ~~marine pilot trainee~~, during a X
 5 period of at least six months and not more than three years ^{AS DEFINED BY BOARD} that includes

6 (A) a minimum of 100 documented familiarization and training trips on
 7 vessels subject to this chapter including at least 50 dockings and 50 undockings under the
 8 supervision of a licensed marine pilot performed by the applicant at significant docks
 9 within the region as specified by the board;

10 (B) a course in ship handling at a simulator approved by the board; and

11 (C) additional training requirements that may be required by the board,
 12 including requirements for tug assisted dockings and undockings.

13 (b) A person licensed as a ^{DUPLICATE} deputy marine pilot under this section may, except as X
 14 otherwise provided by the board, pilot vessels of 20,000 gross tons or less in the marine pilotage
 15 region for which the license is issued.

16 (c) A marine pilot who supervises a marine pilot trainee on familiarization and training
 17 trips shall

18 ~~DELETED~~ (1) have at least five years of experience as a licensed marine pilot in the marine
 19 pilotage region; and

20 (2) be authorized by the board to supervise marine pilot trainees.

21 (d) A marine pilot who supervises the training of marine pilot trainees shall maintain a
 22 written report and evaluation of each trip, docking, and undocking completed by the marine pilot
 23 trainee.

24 * Sec. 12. AS 08.62.120 is repealed and reenacted to read:

25 Sec. 08.62.120. RENEWAL OF LICENSES. (a) In order to renew a marine pilot license,
 26 a person who is licensed under AS 08.62.100 shall

27 (1) submit an application for renewal of the license on a form provided by the
 28 board;

29 (2) submit proof of continued qualification under AS 08.62.100 to receive a
 30 marine pilot license;

31 (3) provide evidence of satisfactory completion of a physical examination by a

8 DELETE
 12 SECTION OF TRAINING CONSTRAINT

- 1 licensed physician within 60 days before the date of renewal of the license;
- 2 (4) submit proof satisfactory to the board that the person
- 3 (A) has engaged in piloting vessels subject to this chapter during at least
- 4 60 days in the licensing period immediately preceding the licensing period for which
- 5 renewal is sought; or
- 6 (B) completed the minimum number of familiarization trips required by the
- 7 board for renewal of a marine pilot license for the marine pilotage region for which the
- 8 license is to be renewed.
- 9 (b) The board shall establish criteria for the renewal of deputy marine pilot licenses.

10 * Sec. 13. AS 08.62.130 is repealed and reenacted to read:

11 Sec. 08.62.130. LAPSED LICENSES. (a) The board shall reinstate a lapsed marine

12 pilot license if the former licensee satisfies the requirements of AS 08.62.100 and completes two

13 trips for each year that the license has been lapsed to each major port and waterway, defined by

14 the board, in the pilotage region for which the license is to be reissued and, if the license has

15 been lapsed for a year or more, passes an examination administered by the board.

16 (b) The board shall establish criteria for reinstatement of a lapsed deputy marine pilot

17 license.

18 * Sec. 14. AS 08.62.150(a) is amended to read:

19 (a) The board may impose a disciplinary sanction on a person licensed under this chapter

20 when the board finds that the person

- 21 (1) is incompetent in the performance of pilotage duties;
- 22 (2) is ^{habitually} intoxicated ^{due to} due to alcohol or narcotic or hallucinogenic drugs;
- 23 (3) illegally uses or sells narcotic or hallucinogenic drugs;
- 24 (4) makes a false statement to obtain a license;
- 25 (5) violates a provision of this chapter or a regulation adopted under this chapter
- 26 [IT];
- 27 (6) is guilty of misconduct during the course of employment; [OR]
- 28 (7) charges, collects, or receives an amount for marine pilot services that is
- 29 different from the tariff established by the board; or

30 (8) has suffered revocation of federal licensure as a pilot.

31 * Sec. 15. AS 08.62.160 is amended to read:

1 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
2 subject to this chapter navigating the water of or adjacent to, to the extent permitted by
3 federal law, the state [INSIDE COASTAL WATERS OF ALASKA] as determined by
4 regulation shall employ a marine pilot holding a valid license under this chapter.

5 * Sec. 16. AS 08.62 is amended by adding a new section to read:

6 Sec. 08.62.165. LIABILITY. (a) A person who is licensed under this chapter is not
7 liable in excess of \$5,000 for damage or loss occurring as a consequence of the person's error,
8 fault, omission, or neglect in performing services for which a license is required under this
9 chapter. The limitation of liability under this subsection does not apply if the person's error,
10 fault, omission, or neglect is wilful.

11 (b) This section does not limit the liability of a vessel, its cargo, the owner of the vessel,
12 or the operator of the vessel for damage or loss caused by the vessel because the vessel was
13 piloted by a person licensed under this chapter or the damage or loss was a consequence of the
14 error, fault, omission, or neglect of a person licensed under this chapter while the person was
15 piloting the vessel.

16 (c) A regional organization of marine pilots recognized by the board under this chapter
17 is not liable for damage or loss arising from the error, fault, omission, or neglect of the
18 organization or a member of the organization who is licensed under this chapter that is, directly
19 or indirectly, related to the pilotage of a vessel.

20 (d) A person licensed under this chapter is not liable, directly or indirectly or as a
21 member of a regional organization of marine pilots recognized by the board under this chapter,
22 for loss or damage arising from the error, fault, omission, or neglect of another marine pilot or
23 the regional organization of marine pilots relating to pilotage of a vessel.

24 (e) This section does not limit the liability of the owner or operator of a pilot boat for
25 loss or damage arising from the ownership or operation of a pilot boat or the transportation of
26 marine pilots to and from vessels.

27 * Sec. 17. AS 08.62.170 is repealed and reenacted to read:

28 Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, the owner of the
29 vessel, and the master of the vessel are jointly and severally liable for the compensation of a
30 person licensed under this chapter who is employed as a marine pilot on the vessel. A person
31 licensed under this chapter has a lien on the vessel and the vessel's tackle, apparel, and furniture

1 for compensation for marine pilot services.

2 * Sec. 18. AS 08.62 is amended by adding a new section to read:

3 Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the
4 extent permitted under federal and state law, persons licensed under this chapter may form an
5 organization of marine pilots for each marine pilotage region.

6 ~~OPT~~ (b) The board shall recognize one organization of marine pilots within each marine
7 pilotage region.

8 (c) Each organization of marine pilots shall promote a safe and reliable system of marine
9 pilotage for the region in which the organization is established, including dispatching and training
10 of marine pilots, deputy marine pilots, and trainee pilots and other functions that the organization
11 may assume. The articles, bylaws, and rules of each organization of marine pilots recognized
12 by the board are subject to approval by the board on the basis of

13 (1) uniform and nondiscriminatory application of the articles, bylaws, and rules
14 to marine pilots and deputy marine pilots licensed under this chapter and marine pilot trainees;

15 (2) compliance with applicable laws; and

16 (3) effectiveness in

17 (A) promoting an efficient, reliable, and professional marine pilotage
18 system in the region;

19 (B) maintaining a sufficient number of qualified pilots to serve the needs
20 of vessels visiting the region;

21 (C) maintaining a training program for marine pilots, deputy marine pilots,
22 and marine pilot trainees that is approved by the board.

23 * Sec. 19. AS 08.62.180 is amended to read:

24 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

25 (1) vessels under enrollment, except as provided in AS 08.62.185;

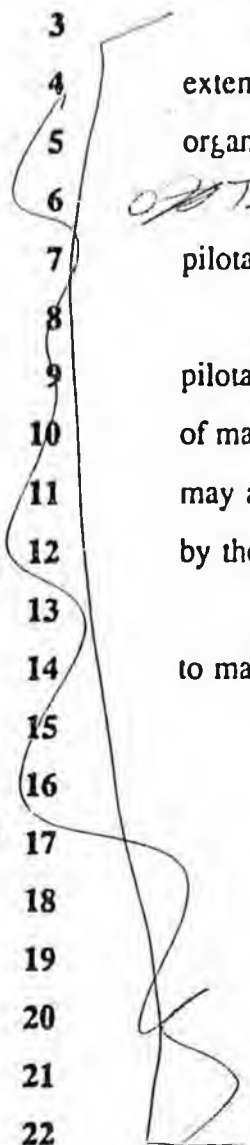
26 (2) fishing vessels registered in the United States or in British Columbia, Canada;

27 (3) vessels propelled by machinery and not more than 65 feet in length over deck,
28 except tugboats and towboats propelled by steam;

29 (4) vessels of United States registry of less than 300 gross tons and tow boats of
30 United States registry and vessels owned by the State of Alaska, engaged exclusively

31 (A) on the rivers of Alaska, or

DRAWN IN/OUT



1 (B) in the coastwise trade on the west coast of the United States including
2 Alaska, Hawaii, and British Columbia, Canada;

3 (5) vessels of Canada, built in Canada and manned by Canadian citizens
4 including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska,
5 if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and
6 those of United States registry; and

7 (6) pleasure craft.

8 * Sec. 20. AS 08.62.187 is amended to read:

9 Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as
10 an agent of a vessel subject to this chapter unless the person's name appears on the register of
11 agents kept by the board under AS 08.62.040(a) [AS 08.62.040(a)(3)].

12 * Sec. 21. AS 08.62.190 is amended to read:

13 Sec. 08.62.190. PENALTY. (a) A master or owner of a vessel required by this chapter
14 to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils
15 or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon
16 conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000 for
17 the first offense and not less than \$10,000 nor more than \$30,000 for each subsequent
18 offense [\$5,000].

19 (b) A person who violates any other provision of this chapter or a regulation adopted
20 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
21 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

22 * Sec. 22. AS 08.62 is amended by adding a new section to read:

23 Sec. 08.62.201. SHORT TITLE. This chapter may be cited as the Alaska Marine Pilotage
24 Act.

25 * Sec. 23. AS 39.25.120(c) is amended by adding a new paragraph to read:

26 (21) marine pilot coordinator of the Board of Marine Pilots.

27 * Sec. 24. AS 45.50.572(a) is amended to read:

28 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
29 agricultural, [OR] horticultural, or licensed marine pilot organizations created for the purpose
30 of mutual help, and not conducted for profit, or forbid or restrain members of those organizations
31 from lawfully carrying out the legitimate objectives of them; nor are these organizations or

1 members illegal combinations or conspiracies in restraint of trade under the provisions of
2 AS 45.50.562 - 45.50.596.

3 * Sec. 25. TRANSITION; APPOINTMENTS TO THE BOARD OF MARINE PILOTS. (a) Persons
4 who are serving on the Board of Marine Pilots, other than the commissioner of commerce and economic
5 development, on the effective date of sec. 2 of this Act shall continue to serve for the term to which they
6 were appointed.

7 (b) The governor shall appoint a public member to fill the position formerly occupied by the
8 commissioner of commerce and economic development on the Board of Marine Pilots. The appointment
9 made under this subsection shall be made for an initial term of one, two, three, or four years as
10 determined by the governor.

11 (c) Persons shall be appointed to the Board of Marine Pilots after the effective date of sec. 2 of
12 this Act in accordance with the qualifications set out in AS 08.62.010, as amended by sec. 2 of this Act.

13 * Sec. 26. TRANSITION; MARINE PILOT LICENSE. (a) Marine pilot licenses issued under
14 AS 08.62.100 before the effective date of sec. 10 of this Act shall be valid for the period for which the
15 licenses were issued and may be renewed until December 31, 1994, without examination upon payment
16 of the marine pilot license fee.

17 (b) A person who has applied for or made a substantial effort toward qualifying for, as
18 determined by the Board of Marine Pilots, a marine pilot license under AS 08.62.100 before the effective
19 date of sec. 10 of this Act, may receive a marine pilot license under the requirements for licensure as
20 they existed before the effective date of sec. 10 of this Act and may renew the license until December
21 31, 1994, without examination upon payment of the marine pilot license fee.

22 (c) A person may not hold a marine pilot license after December 31, 1994, without satisfying
23 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

24 (d) A marine pilot license issued under AS 08.62.100 before the effective date of sec. 10 of this
25 Act or under (b) of this section, and for subsequent renewals of the license, entitles the licensee to pilot
26 vessels in any marine pilotage region in the state until December 31, 1994.

27 * Sec. 27. AS 08.62.155 and 08.62.200(2) are repealed.

28 * Sec. 28. Sections 1 - 6, 14 - 25, and 27 of this Act take effect July 1, 1991.

29 * Sec. 29. Sections 7 - 13 and 26 of this Act take effect January 1, 1992.

C. Davis Draft

7-LS0571A ✓
Utermohle
2/21/91

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE C. DAVIS

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating independently of the shipping industry have provided and will
8 continue to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in certain waters
12 of and adjacent to the state is necessary in order to prevent the loss of life and property and to protect
13 the marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

1 persons are responsible for navigating vessels in and adjacent to water of the state;

2 (6) the Board of Marine Pilots must have broad authority to regulate marine pilots,
3 including authority to establish marine pilotage regions, tariffs, and training and licensing criteria for
4 marine pilots;

5 (7) marine pilot organizations have provided, and will continue to provide, important
6 service to the public and to protect lives and property and the marine environment;

7 (8) marine pilot organizations should share in the responsibility for maintaining safe and
8 reliable marine pilotage systems established by the Board of Marine Pilots.

9 * Sec. 2. AS 08.62.010 is repealed and reenacted to read:

10 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. (a) The Board of
11 Marine Pilots is created in the Department of Commerce and Economic Development. The board
12 consists of seven members.

13 (b) Three members of the board shall be pilots licensed under AS 08.62.100 who have
14 been actively engaged in piloting on vessels subject to this chapter; not more than one pilot
15 member may be from each marine pilotage region. Two members of the board shall be agents
16 or managers of vessels subject to this chapter. Two members of the board shall be public
17 members. All members of the board shall be residents of the state.

18 * Sec. 3. AS 08.62.020 is amended to read:

19 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
20 the [PILOT AND AGENT OR MANAGER] members of the board, subject to confirmation by
21 a majority of the members of the legislature in joint session, for terms of four years [,] or until
22 their successors are appointed. A person [, WITH THE EXCEPTION OF THE
23 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE,] may not be appointed to the
24 board for more than two consecutive terms.

25 * Sec. 4. AS 08.62.030 is amended to read:

26 Sec. 08.62.030. MEETINGS. The board shall hold at least four [A] regular meetings
27 each year [ANNUAL MEETING]. The board may hold special meetings at the call of the chair
28 or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR
29 APPROVAL OF THE GOVERNOR].

30 * Sec. 5. AS 08.62.040 is repealed and reenacted:

31 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

- 1 (1) provide for
- 2 (A) the examination of applicants for marine pilot and deputy marine pilot
- 3 licenses;
- 4 (B) issuance and renewal of marine pilot and deputy marine pilot licenses
- 5 for each pilotage region; and
- 6 (C) transfer of marine pilot and deputy marine pilot licenses between
- 7 marine pilotage regions;
- 8 (2) place qualifications or limitations on marine pilot and deputy marine pilot
- 9 licenses based on the characteristics of the marine pilotage region in which the licensee will
- 10 operate and the experience and training of the licensee;
- 11 (3) recognize regional marine pilot organizations to promote, administer, and
- 12 manage an efficient, reliable, and safe pilotage system within each marine pilotage region;
- 13 (4) keep a register of licensed marine pilots, licensed deputy marine pilots, marine
- 14 pilot trainees, and agents;
- 15 (5) establish pilotage tariffs for each marine pilotage region, (and charges for
- 16 training and other purposes;)
- 17 (6) establish a mandatory random drug and alcohol testing program for persons
- 18 licensed under this chapter;
- 19 (7) establish standards for training of marine pilots, deputy marine pilots, and
- 20 marine pilot trainees and review training programs conducted by regional marine pilot
- 21 organizations and approve the training program if the program is consistent with standards
- 22 established by the board;
- 23 (8) make available, upon request, copies of this chapter and the regulations
- 24 adopted under this chapter;
- 25 (9) review the articles, bylaws, and operating rules of regional marine pilot
- 26 organizations and approve the articles, bylaws, and rules, if they are consistent with this chapter,
- 27 regulations adopted under this chapter, and other applicable law;
- 28 (10) audit regional marine pilot organizations for compliance with applicable law;
- 29 and
- 30 (11) impose disciplinary sanctions under AS 08.01.075 on persons licensed under
- 31 this chapter.

1 (b) The board may, by regulation, make other provisions for proper and safe pilotage
2 upon the waters covered by this chapter and for the efficient administration of this chapter.

3 (c) The board may, for good cause, require a person licensed under this chapter or an
4 applicant for a license issued under this chapter to submit to a physical or mental examination
5 to determine the person's fitness to perform the duties of a marine pilot.

6 (d) The board shall establish the following marine pilotage regions:

7 (1) Southeastern Alaska marine pilotage region, consisting of the water of the
8 state and adjacent high seas from Dixon Entrance to Yakutat;

9 (2) Southwestern Alaska marine pilotage region, consisting of the water of the
10 state and the adjacent high seas from Icy Bay to Demarcation Point, including Dutch Harbor and
11 Captain's Bay; and

12 (3) Aleutian Island marine pilotage region, consisting of the water of the state and
13 the adjacent high seas of the Aleutian Islands and Alaska Peninsula.

14 * Sec. 6. AS 08.62 is amended by adding a new section to article 1 to read:

15 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department may, after
16 consultation with the board, employ a marine pilot coordinator to administer and enforce this
17 chapter. The coordinator may not be an active member of a regional marine pilot organization
18 in the state and may not serve as a marine pilot except as necessary to perform the duties of
19 marine pilot coordinator.

20 * Sec. 7. AS 08.62.080 is repealed and reenacted to read:

21 Sec. 08.62.080. LICENSE REQUIREMENT. (a) A person may not pilot a vessel
22 subject to this chapter unless the person is licensed under this chapter to pilot a vessel of that
23 type or size within that marine pilotage region.

24 (b) A person may not be licensed for more than one marine pilotage region at one time.

25 (c) Notwithstanding AS 08.01.100(a), marine pilot and deputy marine pilot licenses
26 expire on December 31 of each even-numbered year.

27 * Sec. 8. AS 08.62.090(a) is amended to read:

28 (a) A person who desires to be licensed under this chapter shall apply in writing to the
29 department. A person must apply to take an examination at least 60 days before the
30 scheduled date of an examination in order to take the examination on that date.

31 * Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

1 (c) The board shall establish and publish dates for future examinations.

2 * Sec. 10. AS 08.62.100 is repealed and reenacted to read:

3 Sec. 08.62.100. QUALIFICATIONS FOR MARINE PILOT LICENSE. (a) The board
4 shall issue a marine pilot license for a marine pilotage region to a person who

5 (1) is a citizen of the United States;

6 (2) passes the written and oral examinations that may be required by the board;

7 (3) has completed training requirements established by the board; and

8 (4) satisfies (b) and (c) of this section.

9 (b) A person who applies for a marine pilot license under this chapter shall provide proof
10 satisfactory to the board of the following experience:

11 (1) one year of sea service as a master on ocean or coastwise vessels while holding
12 a license as master of ocean steam or motor vessels of any gross tons;

13 (2) two years of sea service as a master on vessels or tug and tow of not less than
14 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600
15 gross tons;

16 (3) two years of sea service as a chief officer on ocean or coastwise vessels of not
17 less than 1,600 gross tons while holding a license as master of ocean steam or motor vessels of
18 any gross tons;

19 (4) two years of sea service as commanding officer of United States commissioned
20 vessels of not less than 1,600 gross tons while holding a license as master of ocean steam or
21 motor vessels of any gross tons; or

22 (5) three years of experience as a member of a professional pilot's organization,
23 during which the person actively engaged in piloting while holding at least a license as a master
24 of freight or towing vessel of not more than 1,600 gross tons.

25 (c) A person who applies for a marine pilot license under this section shall possess an
26 endorsement of first class pilotage on the person's United States Coast Guard license without
27 tonnage restrictions for the pilotage region for which the person seeks the marine pilot license.

28 (d) In this section, "one year of sea service" means 365 days of standing watch on a
29 seagoing vessel; and "day" means eight hours on watch during a 24 hour period.

30 * Sec. 11. AS 08.62 is amended by adding a new section to read:

31 Sec. 08.62.115. QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE. (a)

1 The board shall issue a deputy marine pilot license for a marine pilotage region to a person who

2 (1) is a citizen of the United States;

3 (2) passes written and oral examinations that may be required by the board;

4 (3) successfully completes a training program as a marine pilot trainee, during a
5 period of at least ~~30~~ months and not more than three years, that includes

6 (A) a minimum of 100 documented familiarization and training trips on
7 vessels subject to this chapter including at least 50 dockings and 50 undockings under the
8 supervision of a licensed marine pilot performed by the applicant at significant docks
9 within the region as specified by the board;

10 (B) a course in ship handling at a simulator approved by the board; and

11 (C) additional training requirements that may be required by the board,
12 including requirements for tug assisted dockings and undockings.

13 (b) A person licensed as a deputy marine pilot under this section may, except as
14 otherwise provided by the board, pilot vessels of 20,000 gross tons or less in the marine pilotage
15 region for which the license is issued.

16 (c) A marine pilot who supervises a marine pilot trainee on familiarization and training
17 trips shall

18 (1) have at least ~~five~~ years of experience as a licensed marine pilot in the marine
19 pilotage region; and

20 (2) be authorized by the board to supervise marine pilot trainees.

21 (d) A marine pilot who supervises the training of marine pilot trainees shall maintain a
22 written report and evaluation of each trip, docking, and undocking completed by the marine pilot
23 trainee.

24 * Sec. 12. AS 08.62.120 is repealed and reenacted to read:

25 Sec. 08.62.120. RENEWAL OF LICENSES. (a) In order to renew a marine pilot license,
26 a person who is licensed under AS 08.62.100 shall

27 (1) submit an application for renewal of the license on a form provided by the
28 board;

29 (2) submit proof of continued qualification under AS 08.62.100 to receive a
30 marine pilot license;

31 (3) provide evidence of satisfactory completion of a physical examination by a

1 licensed physician within 60 days before the date of renewal of the license;

2 (4) submit proof satisfactory to the board that the person

3 (A) has engaged in piloting vessels subject to this chapter during at least
4 60 days in the licensing period immediately preceding the licensing period for which
5 renewal is sought; or

6 (B) completed the minimum number of familiarization trips required by the
7 board for renewal of a marine pilot license for the marine pilotage region for which the
8 license is to be renewed.

9 (b) The board shall establish criteria for the renewal of deputy marine pilot licenses.

10 * Sec. 13. AS 08.62.130 is repealed and reenacted to read:

11 Sec. 08.62.130. LAPSED LICENSES. (a) The board shall reinstate a lapsed marine
12 pilot license if the former licensee satisfies the requirements of AS 08.62.100 and completes two
13 trips for each year that the license has been lapsed to each major port and waterway, defined by
14 the board, in the pilotage region for which the license is to be reissued and, if the license has
15 been lapsed for a year or more, passes an examination administered by the board.

16 (b) The board shall establish criteria for reinstatement of a lapsed deputy marine pilot
17 license.

18 * Sec. 14. AS 08.62.150(a) is amended to read:

19 (a) The board may impose a disciplinary sanction on a person licensed under this chapter
20 when the board finds that the person

21 (1) is incompetent in the performance of pilotage duties;

22 (2) is habitually intoxicated due to alcohol or narcotic or hallucinogenic drugs;

23 (3) illegally uses or sells narcotic or hallucinogenic drugs;

24 (4) makes a false statement to obtain a license;

25 (5) violates a provision of this chapter or a regulation adopted under this chapter

26 [IT];

27 (6) is guilty of misconduct during the course of employment; [OR]

28 (7) charges, collects, or receives an amount for marine pilot services that is
29 different from the tariff established by the board; or

30 (8) has suffered revocation of federal licensure as a pilot.

31 * Sec. 15. AS 08.62.160 is amended to read:

1 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
2 subject to this chapter navigating the water of or adjacent to, to the extent permitted by
3 federal law, the state [INSIDE COASTAL WATERS OF ALASKA] as determined by
4 regulation shall employ a marine pilot holding a valid license under this chapter.

5 * Sec. 16. AS 08.62 is amended by adding a new section to read:

6 Sec. 08.62.165. LIABILITY. (a) A person who is licensed under this chapter is not
7 liable in excess of \$5,000 for damage or loss occurring as a consequence of the person's error,
8 fault, omission, or neglect in performing services for which a license is required under this
9 chapter. The limitation of liability under this subsection does not apply if the person's error,
10 fault, omission, or neglect is wilful.

11 (b) This section does not limit the liability of a vessel, its cargo, the owner of the vessel,
12 or the operator of the vessel for damage or loss caused by the vessel because the vessel was
13 piloted by a person licensed under this chapter or the damage or loss was a consequence of the
14 error, fault, omission, or neglect of a person licensed under this chapter while the person was
15 piloting the vessel.

16 (c) A regional organization of marine pilots recognized by the board under this chapter
17 is not liable for damage or loss arising from the error, fault, omission, or neglect of the
18 organization or a member of the organization who is licensed under this chapter that is, directly
19 or indirectly, related to the pilotage of a vessel.

20 (d) A person licensed under this chapter is not liable, directly or indirectly or as a
21 member of a regional organization of marine pilots recognized by the board under this chapter,
22 for loss or damage arising from the error, fault, omission, or neglect of another marine pilot or
23 the regional organization of marine pilots relating to pilotage of a vessel.

24 (e) This section does not limit the liability of the owner or operator of a pilot boat for
25 loss or damage arising from the ownership or operation of a pilot boat or the transportation of
26 marine pilots to and from vessels.

27 * Sec. 17. AS 08.62.170 is repealed and reenacted to read:

28 Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, the owner of the
29 vessel, and the master of the vessel are jointly and severally liable for the compensation of a
30 person licensed under this chapter who is employed as a marine pilot on the vessel. A person
31 licensed under this chapter has a lien on the vessel and the vessel's tackle, apparel, and furniture

1 for compensation for marine pilot services.

2 * Sec. 18. AS 08.62 is amended by adding a new section to read:

3 Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the
4 extent permitted under federal and state law, persons licensed under this chapter may form an
5 organization of marine pilots for each marine pilotage region.

6 ~~(b) The board shall recognize one organization of marine pilots within each marine~~
7 ~~pilotage region.~~

8 (c) Each organization of marine pilots shall promote a safe and reliable system of marine
9 pilotage for the region in which the organization is established, including dispatching and training
10 of marine pilots, deputy marine pilots, and trainee pilots and other functions that the organization
11 may assume. The articles, bylaws, and rules of each organization of marine pilots recognized
12 by the board are subject to approval by the board on the basis of

13 (1) uniform and nondiscriminatory application of the articles, bylaws, and rules
14 to marine pilots and deputy marine pilots licensed under this chapter and marine pilot trainees;

15 (2) compliance with applicable laws; and

16 (3) effectiveness in

17 (A) promoting an efficient, reliable, and professional marine pilotage
18 system in the region;

19 (B) maintaining a sufficient number of qualified pilots to serve the needs
20 of vessels visiting the region;

21 (C) maintaining a training program for marine pilots, deputy marine pilots,
22 and marine pilot trainees that is approved by the board.

23 * Sec. 19. AS 08.62.180 is amended to read:

24 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

25 (1) vessels under enrollment, except as provided in AS 08.62.185;

26 (2) fishing vessels registered in the United States or in British Columbia, Canada;

27 (3) vessels propelled by machinery and not more than 65 feet in length over deck,
28 except tugboats and towboats propelled by steam;

29 (4) vessels of United States registry of less than 300 gross tons and tow boats of
30 United States registry and vessels owned by the State of Alaska, engaged exclusively

31 (A) on the rivers of Alaska, or

1 (B) in the coastwise trade on the west coast of the United States including
2 Alaska, Hawaii, and British Columbia, Canada;

3 (5) vessels of Canada, built in Canada and manned by Canadian citizens
4 including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska,
5 if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and
6 those of United States registry; and

7 (6) pleasure craft.

8 * Sec. 20. AS 08.62.187 is amended to read:

9 Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as
10 an agent of a vessel subject to this chapter unless the person's name appears on the register of
11 agents kept by the board under AS 08.62.040(a) [AS 08.62.040(a)(3)].

12 * Sec. 21. AS 08.62.190 is amended to read:

13 Sec. 08.62.190. PENALTY. (a) A master or owner of a vessel required by this chapter
14 to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils
15 or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon
16 conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000 for
17 the first offense and not less than \$10,000 nor more than \$30,000 for each subsequent
18 offense [\$5,000].

19 (b) A person who violates any other provision of this chapter or a regulation adopted
20 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
21 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

22 * Sec. 22. AS 08.62 is amended by adding a new section to read:

23 Sec. 08.62.201. SHORT TITLE. This chapter may be cited as the Alaska Marine Pilotage
24 Act.

25 * Sec. 23. AS 39.25.120(c) is amended by adding a new paragraph to read:

26 (21) marine pilot coordinator of the Board of Marine Pilots.

27 * Sec. 24. AS 45.50.572(a) is amended to read:

28 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
29 agricultural, [OR] horticultural, or licensed marine pilot organizations created for the purpose
30 of mutual help, and not conducted for profit, or forbid or restrain members of those organizations
31 from lawfully carrying out the legitimate objectives of them; nor are these organizations or

1 members illegal combinations or conspiracies in restraint of trade under the provisions of
2 AS 45.50.562 - 45.50.596.

3 * Sec. 25. TRANSITION; APPOINTMENTS TO THE BOARD OF MARINE PILOTS. (a) Persons
4 who are serving on the Board of Marine Pilots, other than the commissioner of commerce and economic
5 development, on the effective date of sec. 2 of this Act shall continue to serve for the term to which they
6 were appointed.

7 (b) The governor shall appoint a public member to fill the position formerly occupied by the
8 commissioner of commerce and economic development on the Board of Marine Pilots. The appointment
9 made under this subsection shall be made for an initial term of one, two, three, or four years as
10 determined by the governor.

11 (c) Persons shall be appointed to the Board of Marine Pilots after the effective date of sec. 2 of
12 this Act in accordance with the qualifications set out in AS 08.62.010, as amended by sec. 2 of this Act.

13 * Sec. 26. TRANSITION; MARINE PILOT LICENSE. (a) Marine pilot licenses issued under
14 AS 08.62.100 before the effective date of sec. 10 of this Act shall be valid for the period for which the
15 licenses were issued and may be renewed until December 31, 1994, without examination upon payment
16 of the marine pilot license fee.

17 (b) A person who has applied for or made a substantial effort toward qualifying for, as
18 determined by the Board of Marine Pilots, a marine pilot license under AS 08.62.100 before the effective
19 date of sec. 10 of this Act, may receive a marine pilot license under the requirements for licensure as
20 they existed before the effective date of sec. 10 of this Act and may renew the license until December
21 31, 1994, without examination upon payment of the marine pilot license fee.

22 (c) A person may not hold a marine pilot license after December 31, 1994, without satisfying
23 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

24 (d) A marine pilot license issued under AS 08.62.100 before the effective date of sec. 10 of this
25 Act or under (b) of this section, and for subsequent renewals of the license, entitles the licensee to pilot
26 vessels in any marine pilotage region in the state until December 31, 1994.

27 * Sec. 27. AS 08.62.155 and 08.62.200(2) are repealed.

28 * Sec. 28. Sections 1 - 6, 14 - 25, and 27 of this Act take effect July 1, 1991.

29 * Sec. 29. Sections 7 - 13 and 26 of this Act take effect January 1, 1992.

7-LS0571A
Utermohle
2/15/91

P
whats
1/1/91

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE C.DAVIS

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating independently of the shipping industry have provided and will
8 continue to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in certain waters
12 of and adjacent to the state is necessary in order to prevent the loss of life and property and to protect
13 the marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

7-LS0571A
Utermobile
2/15/91

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE C.DAVIS

Introduced:
Referred:

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * ^{IN} Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating independently of the shipping industry have provided and will
8 continue to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in certain waters
12 of and adjacent to the state is necessary in order to prevent the loss of life and property and to protect
13 the marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

1 persons are responsible for navigating vessels in and adjacent to water of the state;

2 (6) the Board of Marine Pilots must have broad authority to regulate marine pilots,
3 including authority to establish marine pilotage regions, tariffs, and training and licensing criteria for
4 marine pilots;

5 (7) marine pilot organizations have provided, and will continue to provide, important
6 service to the public and to protect lives and property and the marine environment;

7 (8) marine pilot organizations should share in the responsibility for maintaining safe and
8 reliable marine pilotage systems established by the Board of Marine Pilots.

9 * Sec. 2. AS 08.62.010 is repealed and reenacted to read:

10 Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. (a) The Board of
11 Marine Pilots is created in the Department of Commerce and Economic Development. The board
12 consists of seven members.

13 (b) Three members of the board shall be pilots licensed under AS 08.62.100 who have
14 been actively engaged in piloting on vessels subject to this chapter; not more than one pilot
15 member may be from each marine pilotage region. Two members of the board shall be agents
16 or managers of vessels subject to this chapter. Two members of the board shall be public
17 members. All members of the board shall be residents of the state.

18 * Sec. 3. AS 08.62.020 is amended to read:

19 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
20 the [PILOT AND AGENT OR MANAGER] members of the board, subject to confirmation by
21 a majority of the members of the legislature in joint session, for terms of four years [,] or until
22 their successors are appointed. A person [, WITH THE EXCEPTION OF THE
23 COMMISSIONER OR THE COMMISSIONER'S DESIGNEE,] may not be appointed to the
24 board for more than two consecutive terms.

25 * Sec. 4. AS 08.62.030 is amended to read:

26 Sec. 08.62.030. MEETINGS. The board shall hold at least four [A] regular meetings
27 each year [ANNUAL MEETING]. The board may hold special meetings at the call of the chair
28 or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR
29 APPROVAL OF THE GOVERNOR].

30 * Sec. 5. AS 08.62.040 is repealed and reenacted:

31 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

- 1 (1) provide for
- 2 (A) the examination of applicants for marine pilot and deputy marine pilot
- 3 licenses;
- 4 (B) issuance and renewal of marine pilot and deputy marine pilot licenses
- 5 for each pilotage region; and
- 6 (C) transfer of marine pilot and deputy marine pilot licenses between
- 7 marine pilotage regions;
- 8 (2) place qualifications or limitations on marine pilot and deputy marine pilot
- 9 licenses based on the characteristics of the marine pilotage region in which the licensee will
- 10 operate and the experience and training of the licensee;
- 11 (3) recognize regional marine pilot organizations to promote, administer, and
- 12 manage an efficient, reliable, and safe pilotage system within each marine pilotage region;
- 13 (4) keep a register of licensed marine pilots, licensed deputy marine pilots, marine
- 14 pilot trainees, and agents;
- 15 (5) establish pilotage tariffs for each marine pilotage region, and charges for
- 16 training and other purposes;
- 17 (6) establish a mandatory random drug and alcohol testing program for persons
- 18 licensed under this chapter;
- 19 *BOARD CONTROLS* (7) establish standards for training of marine pilots, deputy marine pilots, and
- 20 marine pilot trainees and review training programs conducted by regional marine pilot
- 21 organizations and approve the training program if the program is consistent with standards
- 22 established by the board;
- 23 (8) make available, upon request, copies of this chapter and the regulations
- 24 adopted under this chapter;
- 25 *BOARD CONTROLS* (9) review the articles, bylaws, and operating rules of regional marine pilot
- 26 organizations and approve the articles, bylaws, and rules, if they are consistent with this chapter,
- 27 regulations adopted under this chapter, and other applicable law;
- 28 (10) audit regional marine pilot organizations, and persons licensed under this
- 29 chapter whose pilot fees are not collected by a regional marine pilot organization, for compliance
- 30 with applicable law; and *{ INDIVIDUAL PILOTS IF NOT REGIONAL CONTROL }*
- 31 (11) impose disciplinary sanctions under AS 08.01.075 on persons licensed under

1 this chapter.

2 (b) The board may, by regulation, make other provisions for proper and safe pilotage upon
3 the waters covered by this chapter and for the efficient administration of this chapter.

4 (c) The board may, for good cause, require a person licensed under this chapter or an
5 applicant for a license issued under this chapter to submit to a physical or mental examination
6 to determine the person's fitness to perform the duties of a marine pilot.

7 (d) The board shall establish the following marine pilotage regions:

8 (1) Southeastern Alaska marine pilotage region, including the water of the state
9 and adjacent high seas from Dixon Entrance to Cape Suckling;

10 (2) Aleutian Island/Alaska Peninsula marine pilotage region, including the water
11 of the state and the adjacent high seas from the southernmost point of the entrance to Kamishak
12 Bay on the southern shore of the Alaska Peninsula, then along the southern and northern shores
13 of the Alaska Peninsula, and then to Cape Newenham on the north shore of Bristol Bay and
14 including the Kodiak Island archipelago, the Aleutian Islands, and Bristol Bay; and

15 (3) Southcentral/Western/Arctic marine pilotage region, including the water of the
16 state and the adjacent high seas outside of the other marine pilotage regions described in this
17 subsection.

18 * Sec. 6. AS 08.62 is amended by adding a new section to article 1 to read:

19 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department may, after
20 consultation with the board, employ a marine pilot coordinator to administer and enforce this
21 chapter. The coordinator may not be an active member of a regional marine pilot organization
22 in the state and may not serve as a marine pilot except as necessary to perform the duties of
23 marine pilot coordinator.

24 * Sec. 7. AS 08.62.080 is repealed and reenacted to read:

25 Sec. 08.62.080. LICENSE REQUIREMENT. (a) A person may not pilot a vessel
26 *OUT* subject to this chapter unless the person is licensed under this chapter to pilot a vessel of that
27 type or size within that marine pilotage region.

28 (b) A person may not be licensed for more than one marine pilotage region at one time.

29 (c) Notwithstanding AS 08.01.100(a), marine pilot and deputy marine pilot licenses
30 expire on December 31 of each even-numbered year.

31 * Sec. 8. AS 08.62.090(a) is amended to read:

12 - 1
7-10-15
7-15-15
Regions
in statute

1 (a) A person who desires to be licensed under this chapter shall apply in writing to the
2 department. A person must apply to take an examination at least 60 days before the
3 scheduled date of an examination in order to take the examination on that date.

4 * Sec. 9. AS 08.62.090 is amended by adding a new subsection to read:

5 (c) The board shall establish and publish dates for future examinations.

6 * Sec. 10. AS 08.62.100 is repealed and reenacted to read:

7 Sec. 08.62.100. QUALIFICATIONS FOR MARINE PILOT LICENSE. (a) The board
8 shall issue a marine pilot license for a marine pilotage region to a person who

9 (1) is a citizen of the United States;

10 (2) passes the written and oral examinations that may be required by the board;

11 (3) has completed training requirements established by the board; and

12 (4) satisfies (b) and (c) of this section.

13 (b) A person who applies for a marine pilot license under this chapter shall provide proof
14 satisfactory to the board of the following experience:

15 (1) one year of sea service as a master on ocean or coastwise vessels while holding
16 a license as master of ocean steam or motor vessels of any gross tons;

17 (2) two years of sea service as a master on vessels or tug and tow of not less than
18 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600
19 gross tons;

20 (3) two years of sea service as a chief officer on ocean or coastwise vessels of not
21 less than 1,600 gross tons while holding a license as master of ocean steam or motor vessels of
22 any gross tons;

23 (4) two years of sea service as commanding officer of United States commissioned
24 vessels of not less than 1,600 gross tons while holding a license as master of ocean steam or
25 motor vessels of any gross tons; or

26 (5) three years of experience as a member of a professional pilot's organization,
27 during which the person actively engaged in piloting while holding at least a license as a master
28 of freight or towing vessel of not more than 1,600 gross tons.

29 (c) A person who applies for a marine pilot license under this section shall possess an
30 endorsement of first class pilotage on the person's United States Coast Guard license without
31 tonnage restrictions for the pilotage region for which the person seeks the marine pilot license.

1 (d) In this section, "one year of sea service" means 365 days of standing watch on a
2 seagoing vessel; and "day" means eight hours on watch during a 24 hour period.

3 * Sec. 11. AS 08.62 is amended by adding a new section to read:

4 Sec. 08.62.115. QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE. (a)

5 The board shall issue a deputy marine pilot license for a marine pilotage region to a person who

6 (1) is a citizen of the United States;

7 (2) passes written and oral examinations that may be required by the board;

8 (3) successfully completes a training program as a marine pilot trainee, during a
9 period of at least six months and not more than three years, that includes

10 (A) a minimum of 100 documented familiarization and training trips on
11 vessels subject to this chapter including at least 50 dockings and 50 undockings under the
12 supervision of a licensed marine pilot performed by the applicant at significant docks
13 within the region as specified by the board;

14 (B) a course in ship handling at a simulator approved by the board; and

15 (C) additional training requirements that may be required by the board,
16 including requirements for tug assisted dockings and undockings.

17 (b) A person licensed as a deputy marine pilot under this section may, except as
18 otherwise provided by the board, pilot vessels of 20,000 gross tons or less in the marine pilotage
19 region for which the license is issued.

20 (c) A marine pilot who supervises a marine pilot trainee on familiarization and training
21 trips shall

22 (1) have at least five years of experience as a licensed marine pilot in the marine
23 pilotage region; and

24 (2) be authorized by the board to supervise marine pilot trainees.

25 (d) A marine pilot who supervises the training of marine pilot trainees shall maintain a
26 written report and evaluation of each trip, docking, and undocking completed by the marine pilot
27 trainee.

28 * Sec. 12. AS 08.62.120 is repealed and reenacted to read:

29 Sec. 08.62.120. RENEWAL OF LICENSES. (a) In order to renew a marine pilot license,
30 a person who is licensed under AS 08.62.100 shall

31 (1) submit an application for renewal of the license on a form provided by the

1 board;

2 (2) submit proof of continued qualification under AS 08.62.100 to receive a
3 marine pilot license;

4 (3) provide evidence of satisfactory completion of a physical examination by a
5 licensed physician within 60 days before the date of renewal of the license;

6 (4) submit proof satisfactory to the board that the person

7 (A) has engaged in piloting vessels subject to this chapter during at least
8 60 days in the licensing period immediately preceding the licensing period for which
9 renewal is sought; or

10 (B) completed the minimum number of familiarization trips required by the
11 board for renewal of a marine pilot license for the marine pilotage region for which the
12 license is to be renewed.

13 (b) The board shall establish criteria for the renewal of deputy marine pilot licenses.

14 * Sec. 13. AS 08.62.130 is repealed and reenacted to read:

15 Sec. 08.62.130. LAPSED LICENSES. (a) The board shall reinstate a lapsed marine
16 pilot license if the former licensee satisfies the requirements of AS 08.62.100 and completes two
17 trips for each year that the license has been lapsed to each major port and waterway, defined by
18 the board, in the pilotage region for which the license is to be reissued and, if the license has
19 been lapsed for a year or more, passes an examination administered by the board.

20 (b) The board shall establish criteria for reinstatement of a lapsed deputy marine pilot
21 license.

22 * Sec. 14. AS 08.62.150(a) is amended to read:

23 (a) The board may impose a disciplinary sanction on a person licensed under this chapter
24 when the board finds that the person

25 (1) is incompetent in the performance of pilotage duties;

26 (2) is habitually intoxicated due to alcohol or narcotic or hallucinogenic drugs;

27 (3) illegally uses or sells narcotic or hallucinogenic drugs;

28 (4) makes a false statement to obtain a license;

29 (5) violates a provision of this chapter or a regulation adopted under this chapter

30 [IT];

31 (6) is guilty of misconduct during the course of employment; [OR]

1 (7) charges, collects, or receives an amount for marine pilot services that is
2 different from the tariff established by the board; or

3 (8) has suffered revocation of federal licensure as a pilot.

4 * Sec. 15. AS 08.62.160 is amended to read:

5 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
6 subject to this chapter navigating the water of or adjacent to, to the extent permitted by
7 federal law, the state [INSIDE COASTAL WATERS OF ALASKA] as determined by
8 regulation shall employ a marine pilot holding a valid license under this chapter.

9 * Sec. 16. AS 08.62 is amended by adding a new section to read:

10 Sec. 08.62.165. LIABILITY. (a) A person who is licensed under this chapter is not
11 liable in excess of \$5,000 for damage or loss occurring as a consequence of the person's error,
12 fault, omission, or neglect in performing services for which a license is required under this
13 chapter. The limitation of liability under this subsection does not apply if the person's error,
14 fault, omission, or neglect is wilful.

15 (b) This section does not limit the liability of a vessel, its cargo, the owner of the vessel,
16 or the operator of the vessel for damage or loss caused by the vessel because the vessel was
17 piloted by a person licensed under this chapter or the damage or loss was a consequence of the
18 error, fault, omission, or neglect of a person licensed under this chapter while the person was
19 piloting the vessel.

20 (c) A regional organization of marine pilots recognized by the board under this chapter
21 is not liable for damage or loss arising from the error, fault, omission, or neglect of the
22 organization or a member of the organization who is licensed under this chapter that is, directly
23 or indirectly, related to the pilotage of a vessel.

24 (d) A person licensed under this chapter is not liable, directly or indirectly or as a
25 member of a regional organization of marine pilots recognized by the board under this chapter,
26 for loss or damage arising from the error, fault, omission, or neglect of another marine pilot or
27 the regional organization of marine pilots relating to pilotage of a vessel.

28 (e) This section does not limit the liability of the owner or operator of a pilot boat for
29 loss or damage arising from the ownership or operation of a pilot boat or the transportation of
30 marine pilots to and from vessels.

31 * Sec. 17. AS 08.62.170 is repealed and reenacted to read:

1 Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, the owner of the
2 vessel, and the master of the vessel are jointly and severally liable for the compensation of a
3 person licensed under this chapter who is employed as a marine pilot on the vessel. A person
4 licensed under this chapter has a lien on the vessel and the vessel's tackle, apparel, and furniture
5 for compensation for marine pilot services.

6 * Sec. 18. AS 08.62 is amended by adding a new section to read:

7 Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the
8 extent permitted under federal and state law, persons licensed under this chapter may form an
9 organization of marine pilots for each marine pilotage region.

10 (b) The board shall recognize one organization of marine pilots within each marine
11 pilotage region.

12 (c) Each organization of marine pilots shall promote a safe and reliable system of marine
13 pilotage for the region in which the organization is established, including dispatching and training
14 of marine pilots, deputy marine pilots, and trainee pilots and other functions that the organization
15 may assume. The articles, bylaws, and rules of each organization of marine pilots recognized
16 by the board are subject to approval by the board on the basis of

17 (1) uniform and nondiscriminatory application of the articles, bylaws, and rules
18 to marine pilots and deputy marine pilots licensed under this chapter and marine pilot trainees;

19 (2) compliance with applicable laws; and

20 (3) effectiveness in

21 (A) promoting an efficient, reliable, and professional marine pilotage
22 system in the region;

23 (B) maintaining a sufficient number of qualified pilots to serve the needs
24 of vessels visiting the region;

25 (C) maintaining a training program for marine pilots, deputy marine pilots,
26 and marine pilot trainees that is approved by the board.

27 * Sec. 19. AS 08.62.180 is amended to read:

28 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

29 (1) vessels under enrollment, except as provided in AS 08.62.185;

30 (2) fishing vessels registered in the United States or in British Columbia, Canada;

31 (3) vessels propelled by machinery and not more than 65 feet in length over deck,

1 except tugboats and towboats propelled by steam;

2 (4) vessels of United States registry of less than 300 gross tons and tow boats of
3 United States registry and vessels owned by the State of Alaska, engaged exclusively

4 (A) on the rivers of Alaska, or

5 (B) in the coastwise trade on the west coast of the United States including
6 Alaska, Hawaii, and British Columbia, Canada;

7 (5) vessels of Canada, built in Canada and manned by Canadian citizens
8 including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska,
9 if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and
10 those of United States registry; and

11 (6) pleasure craft.

12 * Sec. 20. AS 08.62.187 is amended to read:

13 Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as
14 an agent of a vessel subject to this chapter unless the person's name appears on the register of
15 agents kept by the board under AS 08.62.040(a) [AS 08.62.040(a)(3)].

16 * Sec. 21. AS 08.62.190 is amended to read:

17 Sec. 08.62.190. PENALTY. (a) A master or owner of a vessel required by this chapter
18 to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils
19 or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon
20 conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000 for
21 the first offense and not less than \$10,000 nor more than \$30,000 for each subsequent
22 offense [\$5,000].

23 (b) A person who violates any other provision of this chapter or a regulation adopted
24 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
25 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

26 * Sec. 22. AS 08.62 is amended by adding a new section to read:

27 Sec. 08.62.201. SHORT TITLE. This chapter may be cited as the Alaska Marine Pilotage
28 Act.

29 * Sec. 23. AS 39.25.120(c) is amended by adding a new paragraph to read:

30 (21) marine pilot coordinator of the Board of Marine Pilots.

31 * Sec. 24. AS 45.50.572(a) is amended to read:

1 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
2 agricultural, [OR] horticultural, or licensed marine pilot organizations created for the purpose
3 of mutual help, and not conducted for profit, or forbid or restrain members of those organizations
4 from lawfully carrying out the legitimate objectives of them; nor are these organizations or
5 members illegal combinations or conspiracies in restraint of trade under the provisions of
6 AS 45.50.562 - 45.50.596.

7 * Sec. 25. TRANSITION; APPOINTMENTS TO THE BOARD OF MARINE PILOTS. (a) Persons
8 who are serving on the Board of Marine Pilots, other than the commissioner of commerce and economic
9 development, on the effective date of sec. 2 of this Act shall continue to serve for the term to which they
10 were appointed.

11 (b) The governor shall appoint a public member to fill the position formerly occupied by the
12 commissioner of commerce and economic development on the Board of Marine Pilots. The appointment
13 made under this subsection shall be made for an initial term of one, two, three, or four years as
14 determined by the governor.

15 (c) Persons shall be appointed to the Board of Marine Pilots after the effective date of sec. 2 of
16 this Act in accordance with the qualifications set out in AS 08.62.010, as amended by sec. 2 of this Act.

17 * Sec. 26. TRANSITION; MARINE PILOT LICENSE. (a) Marine pilot licenses issued under
18 AS 08.62.100 before the effective date of sec. 10 of this Act shall be valid for the period for which the
19 licenses were issued and may be renewed until December 31, 1994, without examination upon payment
20 of the marine pilot license fee.

21 (b) A person who has applied for or made a substantial effort toward qualifying for, as
22 determined by the Board of Marine Pilots, a marine pilot license under AS 08.62.100 before the effective
23 date of sec. 10 of this Act, may receive a marine pilot license under the requirements for licensure as
24 they existed before the effective date of sec. 10 of this Act and may renew the license until December
25 31, 1994, without examination upon payment of the marine pilot license fee.

26 (c) A person may not hold a marine pilot license after December 31, 1994, without satisfying
27 the requirements of AS 08.62.100, as amended by sec. 10 of this Act.

28 (d) A marine pilot license issued under AS 08.62.100 before the effective date of sec. 10 of this
29 Act or under (b) of this section, and for subsequent renewals of the license, entitles the licensee to pilot
30 vessels in any marine pilotage region in the state until December 31, 1994.

31 * Sec. 27. AS 08.62.155 and 08.62.200(2) are repealed.

- 1 * Sec. 28. Sections 1 - 6, 14 - 25, and 27 of this Act take effect July 1, 1991.
- 2 * Sec. 29. Sections 7 - 13 and 26 of this Act take effect January 1, 1992.

AMENDOLA

N/O GRANDFATHER

N/O TRANSITION FROM

ASST PILOT TO PILOT

For an Act entitled: "An Act relating to Marine Pilots and providing for an effective date."

* **Section 1.** AS 08.03.010(c)(12) is amended to read:

(12) Board of Marine Pilots (AS 08.62.010) -- June 30, _____ [1991];

* **Sec. 2.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.005. INTENT. (a) The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds 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 in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training and licensing of marine pilots.

(b) The legislature recognizes that marine pilots operating independently of the shipping industry have provided and will continue to provide essential services to the people of the State of Alaska. Marine pilots further the public interest by providing safe pilotage in the pilotage waters of

the State of Alaska. It is the intention of the legislature that the board work with marine pilots to ensure that safe pilotage is maintained in the State of Alaska.

(c) The legislature also recognizes that in the past pilot organizations have provided, and in the future will continue to provide important services on behalf of marine pilots. By doing so, these pilot organizations have furthered the policy of protecting lives and property and the marine environment in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with pilot organizations in a cooperative effort to enhance that policy.

* Sec. 3. AS 08.62.020 is repealed and reenacted to read:

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the members of the board in accordance with AS 08.01.020. No member may be appointed to the board for more than two consecutive terms.

* Sec. 4. AS 08.62.030 is amended to read:

Sec. 08.62.030. MEETINGS. The board shall hold at least three regularly scheduled meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

* Sec. 5. AS 08.62.040 is amended to read:

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall have the authority to

(1) provide for the maintenance of efficient and competent pilotage [PILOT] service on all waters covered by this chapter in order to assure the protection of shipping, [AND] the safety of human life and property, and the protection of the marine environment;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of and required training for pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots[,] and agents;

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region [ADOPT REGULATIONS UNDER THE ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED TO APPLY THE STANDARDS IN THE REGULATIONS];

(5) make available, upon request, copies of this chapter and the regulations adopted under it;

(6) review and approve the bylaws and the operating rules of pilot associations; and

(7) audit a pilot association or an individual pilot as considered necessary by the board;

(8) review and approve training programs conducted by pilot organizations.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter, including establishing different licensing criteria in pilotage regions if justified by regional differences in piloting, establishing a mandatory random drug and alcohol testing program for marine pilots, and adopting criteria for trainee selection and for training programs conducted by pilot organizations.

(c) For good cause, the board may require a marine pilot to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a marine pilot.

* Sec. 6. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.045. MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and enforce the provisions of this chapter. The coordinator may not be an active member of an Alaska pilot organization and may not work as a pilot while employed as the coordinator, except to the extent required by official duties. The coordinator is a member of the partially exempt service under AS 39.25.120.

* Sec. 7. AS 08.62.080 is amended to read:

Sec. 08.62.080. LICENSE REQUIREMENTS. (a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter.

(b) A pilot may not be licensed at any one time in more than one of the pilotage regions established by the board.

(c) The board shall establish dates for license examinations and shall provide public notice of such dates.

* Sec. 8. AS 08.62.090 is amended to read:

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information [AND BE MADE] on a form prescribed by the board.

(c) In order to be eligible to take the next scheduled examination, a person must file the application with the board at least 60 days before the date of the examination.

* Sec. 9. AS 08.62.100 is repealed and reenacted to read:

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS. (a) The board will issue a deputy pilot's license to a person if he or she is a citizen of the United States, passes the examinations given by the board, qualifies in accordance with regulations adopted by the board, and meets the qualifications in (b) - (d) of this section.

(b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board

of the following service:

(1) One year of service as a master of ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels any gross tons; or

(2) Two years of service as a master of freight on a towing vessel while holding a license as the master of freight and towing vessels not less than 1,600 gross tons; or

(3) Two years of service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels any gross tons; or

(4) Two years of service as commanding officer of United States government vessels of not less than 1,⁶000 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

(5) Three years of experience as a member of an organized professional pilots association, during which period the candidate was actively engaged in piloting while holding a minimum license as a master freight or towing vessel not more than 1600 gross tons.

(c) An applicant must also possess an endorsement of first class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions for the pilotage region for which the applicant seeks to be licensed.

(d) In accordance with its authority under AS 08.62.040, the board may impose other entry level qualifications for a

particular pilotage region.

(e) In (a) of this section, "years of service" is determined in accordance with the regulatory standards of the United States Coast Guard relating to years of service.

* **Sec. 10.** AS 08.62.120 is repealed and reenacted to read:

Sec. 08.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. In addition to complying with the requirements of AS 08.01.100, in order to renew a license a pilot must

(1) submit a renewal application on a form provided by the board;

(2) meet the minimum qualifications set out in AS 08.62.100 and the board's implementing regulations;

(3) on a form approved by the board, provide evidence of a satisfactory physical examination by a licensed medical doctor within 60 days before the date of renewal; and

(4) comply with (b) of this section.

(b) A licensed marine pilot who has not piloted in the region in which the pilot is licensed for at least 60 days during the two years prior to a request for renewal may not have the license renewed until the pilot takes the number of familiarization trips required by the board in the pilotage region for which the license will be renewed.

* **Sec. 11.** AS 08.62.130 is repealed and reenacted to read:

Sec. 08.62.130. LAPSED LICENSE. The board will reinstate a lapsed license if, in addition to complying with

the requirements of AS 08.01.100 (a)-(c), the pilot

(1) makes at least two trips for each year that the license has been lapsed to each major port and waterway in the pilotage region covered by the license; and

(2) takes and passes a written and oral examination if the license has been lapsed one year or more.

* Sec. 12. AS 08.62.150 is amended to read:

Sec. 08.62.150. ENFORCEMENT AUTHORITY [DENIAL, REVOCATION OR SUSPENSION]. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the person

(1) is incompetent in the performance of pilotage duties;

(2) is chemically impaired [HABITUALLY INTOXICATED];

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it;

(6) is guilty of misconduct during the course of employment; [OR]

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT] :or

(8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff

established by the board.

(b) [Repealed, sec. 4, ch. 60, SLA 1987.]

* **Sec. 13.** AS 08.62.155 is repealed and reenacted to read:

Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

* **Sec. 14.** AS 08.62.160 is amended to read:

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating certain [THE INSIDE COASTAL] waters in, around, and adjacent to the State of Alaska as determined by the board in regulation shall employ a pilot holding a valid license under this chapter. A vessel in the mandatory pilotage waters of the State of Alaska must be under the direction and control of a state licensed pilot during any movement of the vessel, unless the pilot is removed by the master for cause.

* **Sec. 15.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.165. ALLOCATION OF LIABILITY. (a) A pilot licensed by the State of Alaska is not liable for damages in excess of \$5,000.00 per incident for damages or loss occurring as a result of the pilot's error, omission, fault, or neglect in performing pilotage services, except that such limitation does not apply in cases where the pilot is either grossly negligent or guilty of wilful misconduct.

(b) Nothing in this section exempts the vessel, its cargo, its owner or its operator from liability for damage or loss occasioned by that vessel to another person or other

property on the ground that (1) the vessel was piloted by a pilot licensed by the State of Alaska, or (2) the damage or loss occurred as a result of that pilot's error, omission, fault, or neglect.

(c) An organization of pilots is not liable for any claims arising from acts or omissions of a pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. The limitation in this subsection does not apply to acts or omissions relating to the ownership or operation of pilot boats or the transportation of pilots to and from the vessel to be piloted.

* **Sec. 16.** AS 08.62 is amended by adding a new section to read:

Sec. 08.62.175. PILOT ORGANIZATIONS. Marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

* **Sec. 17.** AS 08.62.190 is amended to read:

Sec. 08.62.190. PENALTIES. (a) A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than

\$5,000 [\$1,000] nor more than \$15,000 [\$5,000] for the first offense and not less than \$10,000 nor more than \$30,000 for the second offense.

(b) A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

* Sec. 18. AS 08.62.200 is amended to read:

Sec. 08.62.200. DEFINITIONS. In this chapter

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under AS 08.62.180;[.]

(5) "chemically impaired" means . . .

* Sec. 19. AS 08.62 is amended by adding a new section to read:

AS. 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

* Sec. 20. AS 39.25.120(c)(9) is amended by adding a new paragraph to read:

(M) Board of Marine Pilots,

* Sec. 21. AS 45.50.572(a) is amended to read:

(a) AS 45.50.562--45.50.596 do not forbid the existence or operation of labor, agricultural, [or] horticultural or

marine pilot organizations created for the purposes of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562--45.50.596.

* **Sec. 22. TRANSITION.**

Sec. 1. A pilot licensed under AS 08.62 on the effective date of this Act will remain licensed under this chapter until required for the second time to renew his or her license in accordance with section 9 of this Act. Upon renewal, each pilot must then qualify for the license in accordance with the criteria in this Act and any implementing regulations. In addition, after the effective date of this Act, any pilot applying for a change in, an amendment to, or an endorsement for his or her license must qualify in accordance with the criteria in this Act and any implementing regulations.

* **Sec. 23. EFFECTIVE DATE.** This Act takes effect
_____, 1991.

LEGISLATOR'S COPY

If you have any modifications, please contact the assigned staff immediately.

LEGISLATIVE RESEARCH AGENCY
RESEARCH REQUEST FORM

91.128
Request #

Senator Drue Pearce
Requested for (Legislator)

State Regulations of Marine

Rod Mourant (3844)
Staff Phone Number

Pilots

ASSIGNMENT

01/28/91 11:00 a.m.
Date/Time Initials

Carol R. Vandor 01/29/91
Staff (3991) Date

SUBJECT DESCRIPTION

See attached.

Rod.
If it's not in the report - have Research do a quick + dirty on state licensing -
1 who/how many restrict #'s
2 who requires apprenticeships?
3 Fed licenses?

LRG
#3 RESEARCH
1/28/91
D&B

PURPOSE:

Background Info/Pertinent Files?

ANTICIPATED COMPLETION DATE: February 15, 1991

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

TO: Gordon S. Harrison, Director
Legislative Research Agency

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: January 28, 1991

RE: Marine Pilotage Act

I placed an order today for a research project that Senator Pearce would like completed ASAP. I referenced the enclosed article and offered to forward a copy.

The questions she would like answered by the study are:

1. Which states restrict the number of marine pilot licenses issued and at what level, respectively, are they limited?
what is maximum number issued?
2. Which states require an apprenticeship before issuing a marine pilot's license to an individual?
3. Which states require an individual to hold a federal marine pilot's license prior to issuing the individual a state license?

Thanks in advance for the speedy service!

ENCLOSURE

RECEIVED
JAN 29 1991

Legislative Research Agency

Pilotage—State or Federal

IN A PREVIOUS COLUMN, the terms 'State' and 'Federal (CG)' pilot were used. Mariners of many other countries embark State pilots in the USA without really knowing the legal basis of the pilot's authority nor without any awareness that an approaching US ship may not have a separate pilot aboard. This column will attempt to explain the differences, provide some background to the present situation and highlight some current problems.

Basically, a Federal pilot is one who is licensed by the US Coast Guard (CG) to pilot US ships in a specific area and who is acting under the authority of that licence. A State pilot, who will, in almost all cases, concurrently hold Federal pilotage, is licensed by a State to pilot foreign ships upon that State's waters.

In many instances, the required Federal pilot is the master or one of the ship's mates who also hold the appropriate pilotage endorsement. The State pilot, however, is not a member of the crew, but a 'servant of the vessel,' engaged to advise the master about the waters to be transited. In actual practice, as most mariners around the world know, the pilot assumes the conn (while legally cloaked as 'adviser!'). Occasionally, the term 'docking pilot' will be heard. This does not necessarily mean that person holds any pilotage endorsement, but refers to the master of the assisting tug(s) who comes aboard the ship to control his tug(s) and perform the berthing/unberthing.

The First Congress (1789) recognised that the individual States would be better qualified to know the conditions of their ports and channels. Thus, the authority and basis for State regulation of pilots was established, in the words of the present statute: 'Except as otherwise provided . . . pilots in the bays, rivers, harbors and ports of the United States shall be regulated only in conformity with the laws of the States' [46 USC 8501(a)]. This not only meant that States would license pilots, but that they could determine where and when their pilots were required to be employed. States where a pilot is required are referred to as compulsory pilotage. Some States do not require a pilot to be employed (non-compulsory), but a pilotage fee must still be paid. Most masters, having to pay the pilotage fee anyway, will usually opt for the pilot.

Federal pilotage

In the mid-1800s, Congress inadvertently threatened the State pilotage system, enacting two separate laws intended to provide greater safety in the operation of steamships by requiring Federal licensing of masters, mates, engineers and pilots. The situation was corrected by further legislation which effectively established the concept of Federal pilotage. The present statute requires that ' . . . a coastwise sea-going vessel shall be under the direction and control of a pilot licensed (by the CG) if the vessel is: not sailing on register (i.e., foreign trade); underway; not on the high seas; and, propelled by machinery and subject to inspection' [46 USC 8502 (a)].

The effect of this law was to allow US-flag ships in

domestic trade to utilise CG-licensed pilots; US-flag ships in foreign trade and all foreign ships continued to be piloted by State-licensed pilots. Even many US mariners do not understand that the law thus *requires* pilots on subject vessels on *all* navigable waters of the US, including territorial seas. Practically speaking, it would be nearly impossible to comply with the law literally—i.e., pilotage endorsements for all waters—and the CG has long recognised that ' . . . there are many large portions of our coastline where there are no navigational risks to vessels proceeding along the coast within territorial seas. In view of this, the CG has a long history of only licensing individuals as pilots for a portion of the navigable waters of the US, primarily harbor areas, high traffic areas, rivers and the Great Lakes.' (FR, V. 53, N.108, p.20655)

It is interesting to note, in view of the brouhaha over pilotage in the *Exxon Valdez* casualty, that Congress intended to exempt parts of Prince William Sound from Federal pilotage requirements. As per 46 USC 8502(g), 'the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed' by the CG.

Licensing of State pilots

As one might expect, the various procedures employed by the different States for licensing their pilots are as varied as their waters and conditions are unique. Some States restrict the number of State licences issued. Applicant entry varies from a four year apprenticeship (with no prior seagoing experience) to a competitive examination while holding a second mate's licence (with one year's sea time as second mate) to two years' experience as master on large ships and 50 round trips on the waters applied for.

Some States require a Federal licence as a prerequisite—others only require this licence after completion of training. Virtually all States require State-licensed pilots to progress through 'steps' in tonnage/length/draft of ships handled to ensure adequate experience is gained; often, part of this is under the supervision of a senior, more experienced pilot. Some State pilot associations further require simulator training.

State pilotage laws, including licensing, are administered by a State pilot commission or board. Typically, this body will include one or two serving pilots, thus ensuring that the applicants, examinations and continuing qualifications of State-licensed pilots benefit from the 'real world' experience of State pilots who really know what skills the job requires.

CG licensing procedures

While the CG is the present government agency charged with the authority to examine for and issue Federal pilotage licences/endorsements, their execution is a mixed bag. Qualification is simpler than for State licences—a specified number of qualifying round-trips (r/t) on certain-size vessels gains entrance to the examination. No actual shiphandling experience need be demonstrated, the CG apparently 'assuming'

that observation of same is adequate. The dichotomy here is that 'pilotage' is composed of 'local knowledge' and 'shiphandling,' yet the CG requirements seemingly confuse the two—local knowledge is generally gained independently of vessel size; shiphandling is a function of ship size, but ability cannot be determined solely in the examination room.

The trip requirements vary with the licence held and position on board. In some CG Districts (CGD), holding an unlimited master's licence gains qualification in six r/t—in other CGDs, one must hold the same licence and be serving as master to qualify in 12 r/t! No prior licence must be held for an original pilot (only) licence, but three years on deck is required and, usually, the initial number of r/t required are much greater (up to 20 or more). Once the original endorsement or original pilot licence is obtained, the r/t requirements for 'extension of route' (additional pilotage) are lessened.

The initial exam is comprehensive (piloting, chart navigation, weather, shiphandling, pollution, etc.)—subsequent exams for extension of route usually only cover local knowledge, chart sketch, aids to navigation and a rules of the road section. The thoroughness and expediency by which r/t are evaluated, the exam graded and the content of the exam, itself, also vary widely, depending on the CG personnel in the Regional Examination Center (REC). As the CG is first a military organisation, the 'generalist' idea prevails, and the service rotates personnel through a variety of billets to diversify their experience.

Applicants for pilotage and other licences are seldom comforted by the thought that their livelihood is merely a step on the promotion ladder for CG personnel, rather than being judged by a professional mariner. Theoretically, one benefit to this scheme is preventing too much familiarity with the maritime community which might lead to less than scrupulous practices in issuance of licences and seamen's papers—it hasn't always prevented abuses, however.

Except as noted above (non-compulsory pilotage), there are few exemptions to pilotage in the USA. Generally, only US ships under 1,600 grt (self-certified) and foreign ships under 300 grt are exempt from pilotage. Recent regulations have added an additional exemption for vessels towing tank barges totalling not more than 10,000 grt. In these vessels, as well as vessels up to 1,600 grt, the master (or mate) is a 'self-certified' pilot. 'Self-certified' pilots must have four r/t (up to 1,600 grt) or 12 r/t (tank barges to 10,000 grt), with a quarter of the required trips made at night. No exam is required.

There are some troubling aspects to the 'self-certified' pilotage. Small vessels *do* get into collisions with much larger vessels and a 10,000 grt barge loaded with toxic chemicals is not something to be 'exempted'! Without a 'recency of service' requirement, the requisite four/12 r/t could have been made at any time in the past. No vessel size is stipulated—it could legally be an outboard-equipped skiff! With the CG trying to justify authority over State pilots, it is interesting to note that these exemptions are granted, apparently without similar concern.

Increasingly, in recent years, a conflict has developed between the CG and State pilots. Basically,

the CG desires to exert direct control over the actions of State pilots (no attempt will be made here to address how CG control of State pilots might contravene the 'sense of Congress' that States should control their own pilots!). The CG may also, rightfully, be concerned about the lack of any pilot aboard a foreign vessel in 'non-compulsory' areas. Although not unlikely, most masters would think twice about the consequences of this act, especially on a first call! In any case, the CG already has authority to require a Federal pilot in any area where a State does not—i.e., non-compulsory areas [46 USC 8503(a)].

The scenario concerning the CG, which is not rare, would see a State pilot, acting on that licence, involved in a casualty. The State could suspend the pilot's licence, but he would still be free to pilot on the authority of his *Federal* licence. The reverse is also true, although in States where a State licence is predicated upon possession of a Federal licence, revocation and/or suspension (R&S) of the latter would automatically result in R&S of the former. The CG has taken action against State pilots by indirect means—i.e., violations of the Federal Boat Safety Act of 1971 (negligence), Ports and Waterways Safety-Act of 1972 (pollution), etc.

Other than the 'normal' bureaucratic urge to expand jurisdiction, the CG seems to feel that State boards and associations may be lax in policing their own ranks. Perhaps, on occasion, this is so—but is CG control the best way to remedy this problem? Like other professional associations (physicians, lawyers, etc.), State pilots may be reluctant in policing their own due to the unspoken fear of being in the same position themselves at a later time (there, but for the grace of God, go II). It is also very true that State pilots, are fully aware of the difficulties of the job, more so than the CG, and are thus reluctant to respond to well-intentioned, but uninformed pressure.

Some States/associations have apparently been lax in responding to some deficiencies. Certainly, when one pilot has had four or five casualties, some action is warranted. This, of course, is where the CG would wish to impose their heavy-handed punishment of R&S, which is somewhat misleadingly referred to as 'remedial.' Is this the proper course? The CG apparently feels that putting a pilot (or other mariner) on the beach is going to improve his or her skills. This is wrong-headed thinking! The State pilots are in a much better position to impose (truly) 'remedial' measures—and many *have* done so—such as simulator courses, renewed supervision or other additional training.

If State pilot boards/associations are reluctant to impose discipline or require additional training, how can the problem be resolved? One proposal is that a separate pilot certification board, perhaps affiliated with the American Pilots Association (APA), could be empowered to review all accidents involving State pilots. This board would have the authority to impose appropriate remedial measures, where necessary, revoking or suspending State licences, when required. Much the same as with medical board certification, such a board could also certify pilots to minimum standards and would go a long way toward removing the only criticism by the CG of the State pilot system. □

WORK ORDER REQUEST FORM

W.O. [17] LS-1220

KEYWORDS: MARINE PILOTS ASSIGNED: Utermohle

MARINE TRANSPORTATION

VESSELS

REQUEST FOR: Research/OP TAKEN BY: Barnes

SUBJECT: Capt. Joseph Homer v SE AK Pilots

REQUESTED FOR: SC SL&C BY: Rod Mourant PHONE: 465-3844

DELIVER TO: Sen. Pearce, Cap 101

INSTRUCTIONS: Opinion relating to Captain Joseph W. Homer v Southeastern Alaska Pilots, et. al. See attached.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
	AUTHORIZED TO CONFER WITH _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <u> X </u> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING
IN <u>04/15/91</u> DUE _____	_____
TYPED: Draft _____ Date _____	_____
Final _____ Date _____	
PROOFED _____ DELIVERED _____	Request for DRAFT

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Ellason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

TO: Tam Cook, Director
Division of Legal Services

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

A handwritten signature in black ink, appearing to read "Rod".

DATE: April 14, 1991

RE: Captain Joseph W. Homer vs Southeastern AK Pilots, et al

Tam, Senator Pearce requested that you please have staff review this suit and explain its meaning and implications in common english.

What are the legal implications? How does it affect current marine pilotage regulation and procedure? Specifically, how does it affect the concept of regional pilotage in Alaska?

As you know, there are currently two pieces of legislation dealing with marine pilotage making their way through the legislature. How are their provisions affected?

Thank you.

Attachment

RICHARD D. PENNINGTON & ASSOCIATES, P.C.
920 W. 6th Ave.
Anchorage, Alaska 99501
(907) 277-1130

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE STATE OF ALASKA

CAPTAIN JOSEPH W. HOMER)

Plaintiff,)

vs.)

SOUTHEASTERN ALASKA PILOTS)
ASSOCIATION; STATE OF ALASKA BOARD OF)
MARINE PILOTS; PAUL M. TAYLOR;)
RUSSELL SELL; CAPTAIN MICHAEL O'HARA;)
WILLIAM C. LORCH; MARK FOSTER; RANDELL)
BURNS; CAPTAIN ARNT ANTONSEN; CAPTAIN)
JOHN MARCUS BALDRY; CAPTAIN WILLIAM)
BULLARD; CAPTAIN A. HARLEY CLOUGH;)
CAPTAIN DALE O. COLLINS; CAPTAIN EDWARD)
J. CREASEY; CAPTAIN ARCHIE GENE DIMENT;)
CAPTAIN ROGER S. DUNN; CAPTAIN HAROLD K.)
ELSENHORN; CAPTAIN JAMES HODGMAN;)
CAPTAIN COLIN EDWARD JONES; CAPTAIN)
JACK MARONI; CAPTAIN ROBERT K.)
NERUP; CAPTAIN LYLE R. PETKE; CAPTAIN)
GEORGE R. PORTER; CAPTAIN JAMES P.)
RANDALL; ROBERT W. SMITH; CAPTAIN)
MICHAEL SPENCE; CAPTAIN WILLIAM R. SWAN;)
CAPTAIN LESLIE A. TAYLOR; CAPTAIN)
VERNON H. WYATT,)

Defendants.)

Case No. _____)

COMPLAINT AND JURY DEMAND

COMES NOW plaintiff, Captain Joseph W. Homer, by and
through his attorneys, RICHARD D. PENNINGTON & ASSOCIATES, P.C.,

and for his complaint against defendants, alleges, avers and states as follows:

I. JURISDICTION AND VENUE

1. Plaintiff Captain Joseph W. Homer brings this civil action seeking treble damages and injunctive relief for injuries and threatened and continuing injuries to his business, property and trade caused by defendants' monopolistic practices, unreasonable restraints of trade and other violations of the Sherman and Clayton Acts, and the Federal Trade Commissions Act, including 15 USC §§ 15 and 26, 15 USC §§ 1, 2, 13 and 18, and 15 USC 45. The Court has ancillary jurisdiction over the state law claims in this matter. Finally, relief is sought pursuant to the Federal Civil Rights Act, 42 U.S.C. 1983 for Due Process, Equal Protection and Privileges and Immunities violations.

2. The defendant, State of Alaska Board of Marine Pilots (The Board and its members are collectively referred to as the "Board."), maintains its principal office, transacts business and is found within the District of Alaska.

3. The defendants Paul M. Taylor, Russell Sell, Captain Michael O'Hara, William C. Lorch, Mark Foster, Randell Burns, and Captain Harold Elsensohn are members of the State of Alaska Board of Marine Pilots. At all times referred to in this Complaint, they acted in both their official capacity and as private individuals. They maintain their offices, reside, transact business and are found within the District of Alaska.

4. The defendant, Southeastern Alaska Pilots Association (hereinafter referred to as the "Association"), maintains its principal office, transacts business and is found within the District of Alaska.

5. The defendants, Captain Arnt I. Antonsen, Captain John Marcus Baldry, Captain William Bullard, Captain A. Harley Clough, Captain Dale O. Collins, Captain Edward J. Creasey, Captain Archie Gene Diment, Captain Roger S. Dunn, Captain Harold K. Elsensohn, Captain James Hodgman, Captain Colin Edward Jones, Captain Jack Maroni, Captain Robert K. Nerup, Captain Lyle R. Petke, Captain George R. Porter, Captain James P. Randall, Captain Robert W. Smith, Captain Michael Spence, Captain William R. Swan, Captain Leslie A. Taylor, and Captain Vernon H. Wyatt maintain their principal offices, transact business, and are found within the District of Alaska.

6. The Court has jurisdiction under 15 USC §§ 15 and 26, 15 U.S.C. §§ 1,2, 13, and 18, 15 U.S.C. 45 and 42 U.S.C. 1983.

II. DEFENDANTS

7. The State of Alaska Board of Marine Pilots is made a defendant herein. The Board is organized and exists pursuant to Chapter 106 of the 1970 Session Laws of Alaska as amended (Alaska Statutes §§ 08.62.010 et. seq. The Board is comprised of two marine pilots licensed under Chapter 106 of the 1970 Session Laws of Alaska, as amended, who have been actively engaged in piloting on vessels subject to that chapter, two agents or managers of

vessels which are subject to that chapter, two public members in accordance with Alaska Statute 08.62.010, and the Commissioner of the Department of the Commerce and Economic Development or his designee.

8. Defendants Paul M. Taylor, Russell Sell, Captain Michael J. O'Hara, William C. Lorch, Mark Foster, and Captain Harold Elsensohn are members of the Alaska Board of Marine Pilots, and they performed actions on behalf of the State of Alaska Board of Marine Pilots under the color of law.

9. The Association is a group of pilots associated together to fix prices, restrict competition, establish service areas, share profits, and provide central dispatching facilities to its members. The Association maintains its principal office in Ketchikan, Alaska.

10. Defendants, Captain Arnt I. Antonsen, Captain John Marcus Baldry, Captain William Bullard, Captain A. Harley Clough, Captain Dale O. Collins, Captain Edward J. Creasey, Captain Archie Gene Diment, Captain Roger S. Dunn, Captain Harold K. Elsensohn, Captain James Hodgman, Captain Colin Edward Jones, Captain Jack Maroni, Captain Robert K. Nerup, Captain Lyle R. Petke, Captain George R. Porter, Captain James P. Randall, Captain Robert W. Smith, Captain Michael Spence, Captain William R. Swan, Captain Leslie A. Taylor, Captain Vernon H. Wyatt (hereinafter referred to as the "Pilots") are members of the Association and they are

responsible for the creation, maintenance, and enforcement of the policies and practices of the Association.

III. CO-CONSPIRATORS

11. Various other persons and at least one (1) other pilot association not made defendants herein have participated as co-conspirators with the defendants in the violations hereinafter alleged and have performed acts and have made statements in furtherance thereof.

IV. PLAINTIFF CAPTAIN JOSEPH W. HOMER

12. Plaintiff Captain Joseph W. Homer is an independent Marine Pilot who transacts business and is found within the District of Alaska. Plaintiff Captain Joseph W. Homer maintains a residence in the State of Rhode Island. Presently, he possesses an Alaska limited license to pilot ships of not more than 20,000 gross tons upon the waters in and surrounding Dutch Harbor, Alaska, Yakutat, Alaska, and Southeast Alaska, and has been a contract pilot in Southeastern Alaska for the Association.

13. The plaintiff Captain Joseph W. Homer, in addition to his limited Alaska license, also possesses the following licenses:

Master of Freight and Towing Vessels of Not More Than 1,000 Gross Tons Upon Oceans; Chief Mate of Freight and Towing Vessels of Not More Than 1,500 Gross Tons Upon Oceans; Radar Observer Unlimited (Expires April 1991); First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon New London Harbor; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon Thames River New London to Allyn Point; First Class Pilot of Steam or Motor

Vessels of any Gross Tons Upon Block Island Sound From Orient Point to Block Island; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon East Long Island Sound From Stratford Shoal to the Race; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon Western Long Island Sound From Execution Rocks to Stratford Shoal; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon Port Jefferson and Bridgeport Harbors; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon East River From the Battery to the 59th Street Bridge; First Class Pilot of Steam or Motor Vessels of any Gross Tons Upon East River From the 59th Street Bridge to Execution Rocks; Hempstead Harbor.

V. CREATION OF THE MONOPOLY

14. Derendant Pilots are in the business of being marine pilots. Marine pilots in the State of Alaska are licensed by the U.S. Coast Guard and the State of Alaska to pilot marine vessels in the territorial waters of the State of Alaska. Marine pilots are the only persons who are licensed and authorized by the State of Alaska to pilot marine vessels in the territorial waters of the State of Alaska. Marine pilots are hired by the owners of marine vessels to pilot ships in the State's territorial waters.

15. In carrying on their business, it is the practice of defendant Pilots to pilot marine vessels within and without the territorial jurisdiction of the State of Alaska and/or upon navigable rivers and streams thereof. The marine vessels have originated in ports outside of Alaska, and are in commerce between the several states and between the United States and foreign nations. Goods contained in these vessels have been transported from the port of origin to land at docks, wharfs, and other

receiving instrumentalities, on or in the vicinity of land, for sale and delivery to persons residing within the State of Alaska, and thereby, the defendant Pilots have been engaged in commerce between the several states and territories of the United States and in commerce between the United States and foreign nations.

16. The defendant Pilots have organized a trade association or organization known as the Southeastern Alaska Pilots Association. The Association is composed of approximately 21 marine pilots, who but for their membership in the Association, would compete with one another for business in the Southeastern Alaska pilot market. Each of the pilots operates his business according to his own desires, uncontrolled by anyone, save and except the determination and control of the Association.

17. Membership in the Association is limited to 21 marine pilots. To join the Association, a pilot must pay fees of up to Sixty Thousand Dollars (\$60,000.00) and must await a vacancy created by the expulsion, death, or retirement of a member of the Association, or creation of a new membership position by a two-thirds vote of the membership. Filling of vacancies is arbitrary and done at the whim of the members of the Association.

18. During the peak shipping season, the Association hires "contract pilots" to perform piloting services which cannot be performed by the members of the Association. Such "contract pilots" serve at the whim of the Association and its members. "Contract pilots" are not eligible for membership except as set

forth in the preceding paragraph. "Contract pilots" are required to pay a certain percentage of their piloting fees to the Association in exchange for being permitted to work in Southeastern Alaska. The net income from the "contract pilots" is distributed as profits to the other pilots of the Association on the basis as is set out in the Bylaws of the Association.

19. The Association was created to allow its members to fix prices, restrict competition, establish service areas, share profits, private central dispatching facilities to its members, and to give its members economic power against owners of marine vessels and against other marine pilots.

20. The Association has entered into agreement with at least one other similar association for the purpose of delineating service areas. There is an agreement among the associations that they will not compete with each other within their particular service areas. Accordingly, there is insignificant competition to the Southeastern Alaska Pilots Association in Southeast Alaska.

21. Since the creation of the Association up to the present time, all of the defendant Pilots and the defendant Association have been and continue to be engaged in an illegal conspiracy and restraint of trade in interstate marine commerce in violation of the Sherman Anti-Trust Act of Section 1, 15 USC 1, and in violation of the Alaska Monopolies and Restraint of Trade Act, A.S. 45.50.562 et. seq., and the Alaska Unfair Trade Practices and Consumer Protection Act, A.S. 45.50.471, which conspiracy has had

as its intent and purpose the elimination from competition of the plaintiff Captain Joseph W. Homer as well as other marine pilots who are not members of the Association within the geographical areas involved. Said conspiracy was entered into for the purpose of restraining and/or monopolizing such trade in the aforesaid geographical areas and to diminish or prevent marine pilots who are not members of the Association from working in that geographical area. Defendant Pilots and defendant Association have been and continue to attempt to monopolize, and to monopolize marine piloting in the geographical area involved. Said conspiracy to restrain trade is a violation per se of Section 1 of the Sherman Anti-Trust Act, and said conspiracy to monopolize, attempts to monopolize or monopolization are violations of Section 2 of the Sherman Anti-Trust Act. The conspiracy is also a violation of the Alaska Monopolies and Restraint of Trade Act.

22. At its incipency the arrangements and practices of the Southeast Pilots Association were such that could develop into a violation of Section 1 of the Sherman Act. Such practices and arrangements are in violation of Section 5 of the Federal Trades Commission Act, 42 U.S.C. §45 (a) (1).

23. It was part of said combination and conspiracy and the object and purpose thereof to accomplish the following, among other things, to wit:

A. To arbitrarily, unlawfully, unreasonably and knowingly raise, fix, control, set, stabilize and affect the price

of marine piloting services shipped in interstate commerce as aforesaid, into the State of Alaska.

B. To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress, and eliminate competition between and among the defendant Pilots in interstate commerce as aforesaid, in the State of Alaska.

C. To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress, and eliminate competition from competitors and prospective competitors of the defendant Pilots in interstate commerce as aforesaid, in the State of Alaska.

D. To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress, and eliminate competition from any source of marine pilots in interstate commerce, as aforesaid, in the State of Alaska.

E. To establish and maintain unreasonably high, excessive, monopolistic and noncompetitive prices in interstate commerce, as aforesaid, in the State of Alaska.

24. As part of said unlawful combination and conspiracy in pursuance thereof, and in furtherance thereof, and to effectuate its subject and purpose, the said defendant Pilots and defendant Association did:

A. Discourage and prevent competent independent marine pilots including the plaintiff Captain Joseph W. Homer from working as marine pilots in Southeastern Alaska.

B. Obtained high, arbitrary and unreasonable rates for marine piloting service in Southeastern Alaska.

C. Held meetings at various times under the guise of so-called "official" meetings at which time defendant pilots made plans for the furtherance of their conspiracy.

D. Create and maintain a monopoly of marine piloting services in interstate commerce in the State of Alaska.

E. Refuse to deal or do business with any person not a member of or controlled by the Association.

F. Induced vessel agents not to do business with, or lessen their business with non-members of the Association.

G. Sought and obtained administrative controls and restrictions against non-members of the Association through governmental agencies.

H. And other acts not specified herein but which will be discovered during the course of discovery.

25. The Association controls the market for pilot services in Southeastern Alaska. The Association has the market power to set, raise, and maintain prices ("tariffs") for pilot services in Southeastern Alaska. The Association fixes prices and enforces the fixed prices through its Articles, Bylaws, and Operating Rules. The Association prices are "published" as "tariffs" by the State of Alaska Board of Marine Pilots. The State of Alaska Board does not have statutory authority to set, approve, or enforce prices.

26. Ship owners, ship masters, and ship agents refuse to hire pilots in Southeastern Alaska who do not belong to the Association for fear that the Association will retaliate against them. Pilots who do not belong to the Association are unable to obtain work in Southeastern Alaska, unless they serve as "contract pilots" to the Association.

27. The Association allocates virtually all work in the Southeastern pilot market among its members. The Association operates a "dispatch" service to supply pilots to ships in Southeast Alaskan waters. The purpose of the dispatch service is to limit competition for piloting services and to fix prices for these services. "Dispatch" services are available only to members of the Association or to "contract pilots" hired by the Association.

VI. REGULATORY SCHEME FOR THE LICENSING OF MARINE PILOTS

28. There are approximately 90 marine pilots licensed to pilot marine vessels in the territorial waters of the State of Alaska. Marine pilots are responsible for docking and undocking marine vessels in the ports and harbors of the State of Alaska.

29. The Board is the State's licensing authority for marine pilots in the State of Alaska. The Board is responsible for establishing the qualification of pilots and providing for examination of pilots and the issuance of original or renewal of pilot licenses to qualified persons.

30. For those vessels that require a pilot, it is unlawful for that vessel to navigate in the coastal waters of Alaska without a pilot holding a valid license from the Board.

31. The Board consists of seven members appointed to four year terms by the Governor of Alaska. Two of the members must be pilots licensed by the Board who have been actively engaged in piloting on vessels requiring a pilot. One such pilot board member is Southeastern Pilot Association member, defendant Captain Harold K. Elsensohn. Two members must be agents or managers of vessels subject to Chapter 62 of the Alaska Statutes. Two members of the Board must be public members in accordance with AS 08.01.025. The final member of the Board is the Commissioner of the Department of Commerce and Economic Development. All members of the Board must be residents of the State of Alaska.

32. Pursuant to the terms of Section 2 of Chapter 106 of the 1970 Session Laws of Alaska, as amended, the Board may promulgate regulations establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses. The laws of Alaska are silent as to the form or content of any such regulating and practices. The laws of Alaska do not state a policy favoring the creation of monopolistic practices.

33. In 1971, as amended in 1986, the Board promulgated regulations and practices creating four classes of licenses for marine pilots: (1) temporary licenses, (2) channel pilots

licenses, (3) limited pilots licenses and (4) unlimited pilot's licenses. A temporary license may be issued to a person applying for unlimited, limited, or channel pilots license. A channel pilots license is a license to pilot in mainship channels only. A channel pilot may perform docking and undocking only under the direct supervision of a pilot holding an unlimited pilot's license. A limited pilots license is a license to pilot vessels up to a certain size vessel. There are two (2) categories of limited license: step one (1), vessels of not more than 20,000 gross tons, and step two (2), vessels of not more than 40,000 gross tons. An unlimited pilot's license is a license to pilot any vessel. Plaintiff Captain Joseph W. Homer presently holds a limited pilots licenses for vessels of not more than 20,000 gross tons upon the waters in and surrounding Dutch Harbor, Alaska, Southeast Alaska, and Yakutat, Alaska, as more fully set out in paragraph 13 herein.

34. In 1971, as amended in 1986, the Board had promulgated regulations and practices specifying the qualifications for an unlimited pilot's license. Among the regulations and practices, it is the requirement that an applicant for an unlimited pilot's license conduct a specified number of dockings and undockings under the supervision of a holder of an unlimited pilot's license. Specifically 12 AAC 56.045 states:

(a) A pilot with a step one limited license wishing to increase the license to a step two license shall

(1) apply on a form provided by the Department of Commerce and Economic

Development, not less than one year after the date the step one license was issued;

(2) submit evidence of 20 vessel movements while serving as a licensed State of Alaska pilot, at least 10 of which must have been on vessels in excess of 10,000 gross tons; and

(3) submit evidence of having performed five dockings and five undockings of vessels in excess of 10,000 gross tons.

(b) A pilot with a step two license wishing to increase the license to an unlimited license shall

(1) apply on a form provided by the Department of Commerce and Economic Development, not less than one year after the date the step two limited license was issued;

(2) submit evidence of 20 vessel movements while serving as a step two licensed State of Alaska pilot, at least 10 of which must have been on vessels in excess of 20,000 gross tons; and

(3) submit evidence of having performed five dockings and five undockings of vessels in excess of 20,000 gross tons.

(c) A pilot with either step limited license who subsequently satisfies the requirement of 12 AAC 56.030 for an unlimited license, may apply for an unlimited license. This application shall comply with the requirements of 12 AAC 56.025(a)(1), (3) and (4). (Eff. 12/14/86, Reg. 100; am 8/29/87, Reg. 103)

Specifically, 12 AAC 56.030 states:

(a) An unlimited pilot license will only be granted to a licensed master who has extensive

local knowledge with a wide range of experience handling a variety of ship types and sizes.

(b) An applicant for an unlimited pilot license shall have practical knowledge of the navigation of vessels and of the conditions of navigation in the waters for which applying, which will be determined by oral and written examination before the board from topics listed in 12 AAC 56.070(b) and (c).

(c) An applicant for an unlimited pilot license shall comply with 12 AAC 56.025 and shall submit evidence that the applicant

(1) has been a Coast Guard licensed master or pilot on the waters for which the applicant is applying for a minimum of one year; and

(2) has executed a minimum of 10 dockings and 10 undockings under the supervision of a state licensed pilot, at least half of which must have been on vessels requiring an Alaska license pilot and at least half of which must have been on vessels in excess of 20,000 gross tons. (Eff. 6/11/71, Reg. 38; am 6/1/72, Reg. 42; am 12/14/86, Reg. 100)

35. All of the unlimited pilots who are qualified to supervise an applicant's dockings and undockings pursuant to the terms of the regulations and practices set forth in the preceding paragraph, in Southeast Alaska, are members of defendant Southeastern Alaska Pilots Association or the Southwestern Alaska Pilot Association (SWAPA). Thus, before an applicant can receive an unlimited pilot's license, he must either conduct the specified number of dockings and undockings under the supervision of a member of the Southeastern Alaska Pilots Association or the Southwestern

Alaska Pilot Association (SWAPA), or work as a pilot aboard ships of more than 20,000 tons and self certify the dockings. Lack of an unlimited license in conjunction with the Association's monopolistic dispatching practices narrows and restricts the number of such ships available for such work.

36. In addition to the required dockings and undockings, the Board must make a determination as to whether an applicant is qualified to receive a pilot's license. The Board has no objective criteria for determining the qualifications of a pilot. The decision of the Board concerning a pilot's qualifications are arbitrary and capricious.

37. In practice, when a pilot applies for a new license or to upgrade a license, the application is referred to the pilot member of the Board from the geographical area which pertains to the license being sought for approval or disapproval. That is, a license application from Southeast Alaska is referred to Captain Harold K. Elsensohn, a member of the defendant Association for his approval or disapproval of that particular applicant. Applications for licenses in Southcentral or Southwestern Alaska are referred to the pilot member who belongs to the Southwestern Pilots Association. It is the Board's practice to unquestioningly follow the recommendation of the pilot board member, thereby acquiescing in the Association's monopolistic scheme of practice.

VII. REGULATORY SCHEME FOR THE FIXING
OF FEES PAID TO MARINE PILOTS

38. In 1971, the Board promulgated regulations and practices fixing prices to be charged by Alaska marine pilots. Specifically, 12 AAC 56.130 provides:

12 AAC 56.130. General Rule for Determining Rates. If no rate for an area has been established, the rate mutually agreed upon by the parties will be used until a rate is established by the Board.

Specifically, 12 AAC 56.140 states:

12 AAC 56.140. Consent to Rate Deviation. If parties to a piloting contract are dissatisfied with the rates established for an area, the parties may agree to a higher rate. This rate mutually agreed must be submitted to the Board for approval. No deviation from the published rate may be used until approved by the Board.

The Board does not have authority to set rates for marine piloting services.

39. In keeping with the above mentioned regulations and practices, the Board has published rates which may be charged by marine pilots to pilot marine vessels in the territorial waters of the State of Alaska.

VIII. INJURY TO PLAINTIFF CAPTAIN JOSEPH W. HOMER

40. Plaintiff Captain Joseph W. Homer applied for an unlimited pilot's license pursuant to the aforementioned statutes and regulations and practices. The Board denied his application because plaintiff Captain Joseph W. Homer failed to meet the

requirements of 12 AAC 56.030, which was set out previously in this Complaint concerning supervised dockings and undockings.

41. The reason that plaintiff Captain Joseph W. Homer has been unable to get the specified number of dockings and undockings is because he has been blocked and prevented from working as a pilot on the appropriate size vessels. Additionally, defendant Pilots and defendant Association, including Southwestern Alaska Pilot Association, have refused to supervise the required dockings and undockings. All marine pilots who hold an unlimited pilot's license for Southeastern Alaska, the only people qualified to supervise the dockings and undockings in Southeastern Alaska, are members of defendant Association. There are no qualified marine pilots who are not members of the Association or tied to the Association as contract pilots and friends who could supervise the dockings and undockings.

42. Refusal of the defendant Pilots and the defendant Association to supervise plaintiff Captain Joseph W. Homer's dockings and undockings is in furtherance of the aforementioned conspiracy to restrain trade between the several states and between the United States and foreign nations. The refusal of the defendant Pilots and the defendant Association is in furtherance with the defendant Pilots and defendant Association's monopolization and attempted monopolization of marine pilot services within the State of Alaska.

43. Plaintiff Captain Joseph W. Homer has asked the defendant Board to modify the regulations and practices such that the defendant Pilots and defendant Association will not be able to determine and choose which marine pilots will receive required dockings and undockings necessary to obtain an unlimited pilot's license. The Board has refused plaintiff Captain Joseph W. Homer's request, primarily as a result of the urging of the pilot board members. Moreover, defendant Pilots and defendant Association in furtherance of their conspiracy to restrain trade in violation of the Sherman Act, petitioned, lobbied and took actions to cause the Board to reject plaintiff Captain Joseph W. Homer's request to modify the regulations and practices such that the defendant pilots and defendant Association could control the entry of unlimited pilots into their area of operation.

44. Defendants' actions have prevented plaintiff Captain Joseph W. Homer from obtaining an unlimited pilot licenses.

45. The Defendants have fixed prices for marine piloting services in the State of Alaska. As a result of the fixing of prices, the plaintiff Captain Joseph W. Homer has not been allowed to compete with the Defendant pilots.

46. The foregoing acts were intentionally and maliciously done with the expressed purpose of destroying the business and good will of plaintiff Captain Joseph W. Homer and eliminating plaintiff Captain Joseph W. Homer as a competitor.

47. Said acts of defendants constitute unreasonable restraints upon interstate trade and commerce and have crippled the business of plaintiff Captain Joseph W. Homer by depriving him of the license needed to pilot marine vessels into and out of the State of Alaska, by preventing him from entering into contracts with ship owners, and in these and other various respects, have caused plaintiff Captain Joseph W. Homer serious damage and loss.

48. As a direct result of defendants' unlawful actions, plaintiff Captain Joseph W. Homer has lost profits from piloting vessels in an amount exceeding \$200,000.00 which will be proved at the time of trial.

49. Under the Anti-Trust Laws of the United States and the State of Alaska, plaintiff Captain Joseph W. Homer is entitled to recover his reasonable attorney's fees and three times the amount of said damages.

50. Unless the defendants are prevented from continuing to carry out the acts, plans, schemes and conspiracy referred to above, plaintiff Captain Joseph W. Homer's business and goodwill will be destroyed or will continue to at least be seriously and irreparably injured and damaged.

51. The aforesaid mentioned acts of defendants have caused and are continuing to cause immediate and irreparable harm and damage to plaintiff Captain Joseph W. Homer for which there is no adequate remedy at law.

IX. INTERFERENCE WITH PROSPECTIVE
BUSINESS OPPORTUNITIES

52. During the Spring and Summer of 1990, the plaintiff Captain Joseph W. Homer sought to enter into contracts whereby he would provide marine piloting services to ship owners, ship masters, and ship agents who do business in Southeastern Alaska.

53. The defendants Association and Pilots were aware of the efforts made by the plaintiff Captain Joseph W. Homer to enter into the contracts to provide marine piloting services.

54. Defendants Association and Pilots intentionally and improperly interfered with the plaintiff Captain Joseph W. Homer's prospective contractual relationships. The interference consisted of inducing or otherwise causing these ship owners, ship masters, and ship agents not to enter into or continuing the prospective relationship and by preventing plaintiff Captain Joseph W. Homer from acquiring or continuing the prospective relationship.

55. Plaintiff Captain Joseph W. Homer suffered pecuniary harm because of the loss of the benefits of the aforementioned relationships.

56. The interference by the defendants Association and Pilots were made possible by the monopolistic practices of the defendant Association and the unfair trade practices of the defendants Association and Pilots. The interference was the direct result of the monopoly created by the defendants Association and Pilots.

57. The defendants Association and Pilots contacted ship owners, ship masters, and ship agents with whom plaintiff Captain Joseph W. Homer was negotiating to provide marine piloting services and disparaged the quality of the services to be provided by the plaintiff Captain Joseph W. Homer. The defendants implied that the services to be provided by plaintiff Captain Joseph W. Homer were not of suitable quality, and that the plaintiff Captain Joseph W. Homer would not be able to provide the marine piloting services. These statements were false and they were not privileged.

58. The statements were intended to cause plaintiff Captain Joseph W. Homer pecuniary loss, and they did in fact cause the plaintiff Captain Joseph W. Homer pecuniary loss.

FIRST CLAIM FOR RELIEF

VIOLATION OF SECTION 1 OF THE SHERMAN ACT BY ASSOCIATION

59. All prior allegations are re-alleged.

60. Pursuant to the result of the creation of the monopoly described above, defendants Association and Pilots entered into a contract, combination or conspiracy in restraint of trade and commerce of marine piloting services which constitutes a violation of Section One of the Sherman Act.

61. As a direct result of the defendants' unlawful actions and violations of Section 1 of the Sherman Act, plaintiff Captain Joseph W. Homer has sustained damages and lost profits from piloting vessels in an amount exceeding \$200,000.00, which amount will be proved at the time of trial.

62. Under the anti-trust laws of the United States, plaintiff Captain Joseph W. Homer is entitled to recover his reasonable attorneys' fees and three fold of the amount of damages and lost profits.

SECOND CLAIM FOR RELIEF

VIOLATION OF SECTION 2 OF THE SHERMAN ACT BY ASSOCIATION

63. All prior allegations are re-alleged.

64. Pursuant to the result of the creation of the monopoly described above, defendant Association and Pilots entered into a contract, combination, or conspiracy in restraint of trade and commerce of marine piloting services, which constitutes a violation of Section 2 of the Sherman Act.

65. As a direct result of defendants' unlawful actions in violation of Section 2 of the Sherman Act, plaintiff Captain Joseph W. Homer has sustained damages and lost profits from piloting vessels in an amount exceeding \$200,000.00 which amount will be proved at the time of trial.

66. Under the Anti-Trust Laws of the United States, plaintiff Captain Joseph W. Homer is entitled to recover his reasonable attorney's fees and three-fold the amount of his damages and lost profits.

THIRD CLAIM FOR RELIEF

VIOLATION OF FEDERAL TRADE COMMISSIONS ACT

67. All prior allegations are re-alleged.

68. Pursuant to a creation of a monopoly described above, defendants Association and Pilots entered into a contract, combination, or conspiracy in restraint of trade and commerce of marine piloting services, which constitutes a violation of the Federal Trade Commission Act.

69. As a direct result of defendants' unlawful actions and violations of the Federal Trade Commission Act, plaintiff Captain Joseph W. Homer has sustained damages and lost profits from piloting vessels in an amount exceeding \$200,000.00, which amount will be proved at the time of trial.

FOURTH CLAIM FOR RELIEF

VIOLATION OF ALASKA MONOPOLIES AND RESTRAINT OF TRADE ACT BY ASSOCIATION

70. All prior allegations are re-alleged.

71. Pursuant to the creation of the monopoly described above, defendants Association and Pilots entered into a contract, combination, or conspiracy in restraint of trade and commerce of marine piloting services, which constitutes a violation of the Alaska Monopolies and Restraint of Trade Act. A.S. 45.50.562 et seq.

72. As a direct result of defendants' unlawful actions in violation of the Alaska Monopolies and Restraint of Trade Act, plaintiff Captain Joseph W. Homer has sustained damages and lost profits from piloting vessels in an amount exceeding \$200,000.00, which amount will be proved at the time of trial.

FIFTH CLAIM FOR RELIEF

INJUNCTIVE RELIEF FOR MONOPOLISTIC
PRACTICES AGAINST ASSOCIATION

73. All prior allegations are re-alleged.

74. Unless the defendants are prevented from continuing to carry out the acts, plans, schemes and conspiracy referred to in the preceding claims for relief, plaintiff Captain Joseph W. Homer's business and goodwill will be destroyed or will continue to at least be seriously and irreparably injured and damaged.

75. The aforesaid mentioned acts of defendants have caused and are continuing to cause immediate and irreparable harm and damage to plaintiff Captain Joseph W. Homer for which there is no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

VIOLATION OF ALASKA UNFAIR TRADE
PRACTICES AND CONSUMER PROTECTION
ACT BY ASSOCIATION

76. All prior allegations are re-alleged.

77. Defendants Association and Pilots have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, including but not limited to, disparaging the services of the plaintiff Captain Joseph W. Homer by false or misleading representations of fact; making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; engaging in other conduct creating a likelihood of confusion or of misunderstanding, and which mislead, deceived, or damaged plaintiff

Captain Joseph W. Homer in connection with the sale or advertisement of services; using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowing concealing, suppressing, or omitting a material fact with intent that other rely upon the concealment, suppression, or omission in connection with the sale or advertisement of services; representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve.

78. As a direct result of the defendants' unlawful actions in violation of the Alaska Unfair Trade Practices and Consumer Protection Act, plaintiff Captain Joseph W. Homer has sustained damages and lost profits in piloting vessels in an amount exceeding \$200,000.00, which amount will be proved at the time of trial.

SEVENTH CLAIM FOR RELIEF

INJUNCTIVE RELIEF FOR UNFAIR TRADE PRACTICES AGAINST ASSOCIATION

79. All prior allegations are re-alleged.

80. Unless the defendants are prevented from continuing to carry out the unfair methods of competition and unfair or deceptive acts or practices in the conduct of the trade or commerce, as described above, plaintiff Captain Joseph W. Homer's business and "good will" will be destroyed or will continue to at least be seriously and irreparably damaged.

81. The aforesaid mentioned acts of defendants have caused, and are continuing to cause, immediate and irreparable harm

and damage to plaintiff Captain Joseph W. Homer for which there is no adequate remedy at law.

EIGHTH CLAIM FOR RELIEF

VIOLATION OF FEDERAL ANTI-TRUST
LAWS BY BOARD

82. All prior allegations are re-alleged.

83. The regulations and practices promulgated by the defendant Board are in furtherance of said contract, combination, and conspiracy in restraint of trade and, hence, is in violation of the Sherman and Clayton Anti-Trust Acts. Accordingly, said regulations and practices are null and void.

84. But for the existence of the said unlawful regulations and practices, plaintiff Captain Joseph W. Homer would be entitled to receive an unlimited pilot's license.

NINTH CLAIM FOR RELIEF

VIOLATION OF FEDERAL INTERSTATE
COMMERCE CLAUSE

85. All prior allegations are re-alleged.

86. The aforesaid mentioned regulations and practices of defendant Board unduly burden commerce between the several states and territories of the United States, and commerce between the United States and foreign nations. The said regulations and practices are in violation of the United States Constitution, Article 1, Section 8, Clause 3 which specifically grants to Congress the power to regulate commerce. Accordingly, said regulations and practices are null and void.

87. But for the existence of the aforesaid mentioned regulations and practices, plaintiff Captain Joseph W. Homer would be entitled to receive an unlimited pilot's licenses.

88. Plaintiff Captain Joseph W. Homer is entitled to relief pursuant to 42 U.S.C. 1983.

TENTH CLAIM FOR RELIEF

VIOLATION OF DUE PROCESS AND EQUAL PROTECTION

89. All prior allegations are re-alleged.

90. The aforesaid mentioned regulations and practices of the defendant Board deprived the plaintiff Captain Joseph W. Homer of his rights to due process and equal protection pursuant to Section 1 of the 14th Amendment to the Constitution of the United States of America.

91. Plaintiff Captain Joseph W. Homer is entitled to relief pursuant to 42 U.S.C. 1983 for the violation of the aforesaid due process and equal protection rights.

ELEVENTH CLAIM FOR RELIEF

VIOLATION OF FEDERAL PRIVILEGES AND IMMUNITIES

92. All prior allegations are re-alleged.

93. The aforesaid mentioned regulations and practices of the defendant Board deprived the plaintiff Captain Joseph W. Homer of the privileges and immunities of such that should be enjoyed by a citizen of the State of Alaska. Said regulations and practices are in violation of the Constitution of the United States, Article IV, Section 2, clause 1, which specifically states that the

citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

94. But for the existence of the aforesaid mentioned regulations and practices, plaintiff Captain Joseph W. Homer would be entitled to receive a limited pilot's license.

95. Plaintiff Captain Joseph W. Homer is entitled to relief pursuant to 42 U.S.C. 1983 because of the denial of privileges and immunities by the State of Alaska board of Marine Pilots and its members.

TWELFTH CLAIM FOR RELIEF

VIOLATION OF ALASKA EQUAL PROTECTION

96. All prior allegations are re-alleged.

97. The aforesaid mentioned regulations and practices of defendant Board denied the plaintiff Captain Joseph W. Homer to natural right to life, liberty, pursuit of happiness, and the enjoyment of the rewards of his industry. The aforesaid mentioned regulations and practices of defendant Board deny plaintiff Captain Joseph W. Homer of equal rights, opportunities, and protection under the law. The said regulations and practices are in violation of the Constitution of the State of Alaska, Article I, Section 1. Accordingly, said regulations are null and void.

98. But for the existence of the aforesaid mentioned regulations, plaintiff Captain Joseph W. Homer would be entitled to receive unlimited pilot's licenses.

THIRTEENTH CLAIM FOR RELIEF

VIOLATION OF ALASKA DUE PROCESS

99. All prior allegations are re-alleged.

100. The aforesaid mentioned regulations of the defendant Board deprive the plaintiff Captain Joseph W. Homer of liberty, or property, without due process of law. The aforesaid mentioned regulations and practices of defendant Board deprive the plaintiff Captain Joseph W. Homer of fair and just treatment in the course of legislative and executive investigations.

101. Said regulations and practices are in violation of the Constitution of the State of Alaska, Article I, Section 7, which provides that no person shall be deprived of life, liberty, or property without due process of law, and that the right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

102. But for the existence of the aforesaid mentioned regulations and practices, plaintiff Captain Joseph W. Homer would be entitled to receive unlimited pilot's licenses.

FOURTEENTH CLAIM FOR RELIEF

VIOLATION OF ALASKA STATUTES BY THE BOARD

103. All prior allegations are re-alleged.

104. The regulations and practices of the State of Alaska Board of Marine Pilots are contrary to public policy expressed by the Statutes of the State of Alaska.

105. But for the existence of the aforesaid regulations and practices, plaintiff Captain Joseph W. Homer would be entitled to receive an unlimited pilot's license.

FIFTEENTH CLAIM FOR RELIEF

INJUNCTIVE RELIEF AGAINST BOARD

106. All prior allegations are re-alleged.

107. Unless the defendant Board is prevented from continuing to carry out the violation of the plaintiff Captain Joseph W. Homer's rights under the Constitutions of the United States and State of Alaska, the plaintiff Captain Joseph W. Homer's business and "good will" will be destroyed or will continue to at least be seriously and irreparably injured and damaged.

108. The aforesaid mentioned acts of defendant Board have caused and are continuing to cause immediate and irreparable harm and damage to plaintiff Captain Joseph W. Homer for which there is no adequate remedy at law.

SIXTEENTH CLAIM FOR RELIEF

INTERFERENCE WITH PROSPECTIVE CONTRACTUAL
RELATIONSHIPS BY THE ASSOCIATION

109. All prior allegations are re-alleged.

110. The defendants Association and Pilots intentionally and improperly interfered with the plaintiff Captain Joseph W. Homer's prospective contractual relationships with ship owners, ship masters, and ship agents.

111. The interference consisted of inducing or otherwise causing the ship owners, ship masters, and ship agents not to enter

into or continue a prospective relationship with the plaintiff Captain Joseph W. Homer or preventing the ship owners, ship masters, and ship agents from acquiring or continuing a prospective relationship.

112. Plaintiff Captain Joseph W. Homer suffered pecuniary harm because of the loss of benefits of the relationship.

SEVENTEENTH CLAIM FOR RELIEF

DISPARAGEMENT

113. All prior allegations are re-alleged.

114. The defendants Association and Pilots made false statements to ship owners, ship masters, and ship agents implying that the plaintiff Captain Joseph W. Homer was not qualified to act as a marine pilot within the State of Alaska. These statements were false.

115. The publication of these statements were not privileged.

116. The statements were made with the intent to cause plaintiff Captain Joseph W. Homer pecuniary harm, and they did in fact cause the plaintiff Captain Joseph W. Homer pecuniary harm.

WHEREFORE, the plaintiff Captain Joseph W. Homer prays:
For relief under the First Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of Section 1 of the

Sherman Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for three-fold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Second Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of Section 2 of the Sherman Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers,

directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for three-fold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Third Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of the Federal Trade Commission Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Fourth Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of Alaska Monopolies and Restraint of Trade Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Fifth Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy

and unreasonable restraint of trade and commerce of marine piloting services the among several states in violation of the Sherman Act and Clayton Anti-trust Acts and the Alaska Monopolies and Restraint of Trade Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. That this Court issue an injunction ordering defendants Pilots and Association to supervise plaintiff Captain Joseph W. Homer for the required dockings and undockings which plaintiff Captain Joseph W. Homer needs to obtain his unlimited pilot's license;

4. That this Court issue an injunction restraining perpetually the defendants from petitioning, lobbying, and taking actions to cause the defendant Board to promulgate regulations and practices in furtherance of defendant Pilots' and Association's conspiracy to restrain trade in violation of the Sherman Act;

5. That this Court award plaintiff Captain Joseph W. Homer his costs and attorney's fees;

6. That this court award plaintiff Captain Joseph W. Homer such other and further relief as this Court deems just and equitable under the premises.

For relief under the Sixth Claim:

1. That this Court adjudge and decree that defendants Association and Pilots have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, including but not limited to, disparaging the services of the plaintiff Captain Joseph W. Homer by false or misleading representations of fact; making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; engaging in other conduct creating a likelihood of confusion or of misunderstanding, and which mislead, deceived, or damaged the plaintiff Captain Joseph W. Homer in connection with the sale or advertisement of services; using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowing concealing, suppressing, or omitting a material fact with intent that other rely upon the concealment, suppression, or omission in connection with the sale or advertisement of services; representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve;

2. For damages in an amount exceeding \$200,000.00, which amount will be proven at the time of trial, together with reasonable attorney's fees and all costs and disbursements of this action.

3. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Seventh Claim:

1. That this Court adjudge and decree that defendants Association and Pilots have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, including but not limited to, disparaging the services of the plaintiff Captain Joseph W. Homer by false or misleading representations of fact; making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; engaging in other conduct creating a likelihood of confusion or of misunderstanding, and which mislead, deceived, or damaged the plaintiff Captain Joseph W. Homer in connection with the sale or advertisement of services; using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowing concealing, suppressing, or omitting a material fact with intent that other rely upon the concealment, suppression, or omission in connection with the sale or advertisement of services; representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve;

2. That this Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees, and persons acting for or in their

behalf in continuing in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce;

3. That this Court award plaintiff Captain Joseph W. Homer his costs and attorney's fees;

4. That this Court award plaintiff Captain Joseph W. Homer such other and further relief as this Court may deem just and equitable under the premises.

For relief under the Eighth Claim:

1. That this Court declare that the regulations and practices promulgated by the defendant Board is in furtherance of a contract, combination and conspiracy in restraint of trade and, hence, is in violation of the Sherman & Clayton Anti-Trust Acts;

2. For a declaration by this Court that the regulations and practices promulgated by the defendant Board are null and void;

3. That this Court order said contract and conspiracy to be canceled and terminated;

4. That the Court issue an injunction restraining perpetually the defendant Board, their successors, assignees, officers, directors, agents, and employees and persons acting for or in their behalf from continuing the affects of such contract or conspiracy;

5. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendant Board for three-fold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

6. That the Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Ninth Claim:

1. That this Court declare that the regulations and practices of the defendant Board unduly burden commerce between the several states and the territories of the United States, and commerce between the United States and foreign nations; that the Court further declare said regulations and practices are in violation of the Constitution of the United States, Article I, Section 8, clause 3, which specifically grants to Congress the power to regulate commerce;

2. That the Court order that said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assignees, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of such violations;

4. That the Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable.

For relief under the Tenth Claim:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph

W. Homer his rights to due process and equal protection pursuant to Section 1 of the 14th Amendment to the Constitution of the United States of America;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Eleventh Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deprive the plaintiff Captain Joseph W. Homer of the privileges and immunities that should be enjoyed by the citizen of the State of Alaska.

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers,

directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Twelfth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights to due process and equal protection pursuant to the Constitution of the State of Alaska, Article I, Section 1; .

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Thirteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights to due process and equal protection pursuant to the Constitution of the State of Alaska, Article I, Section 7;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Fourteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the Board violate the public policy as expressed in the Alaska Statutes.

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers,

directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Fifteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights pursuant to Constitutions of the United States of America and State of Alaska;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the defendant Board, its members and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, from continuing, maintaining or renewing the aforesaid combination, conspiracy or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having

similar purpose or effects and from adopting, ratifying or following any practice, plan, program or devise having similar purposes or effects.

5. That this Court issue an injunction requiring defendant Board to cancel its regulations under 12 AAC 56.030 requiring that an applicant for an unlimited pilot's license obtain a specified number of supervised dockings and undockings, the purpose and effect of this regulation is the suppression or elimination of competition among marine pilots;

6. That this Court issue an injunction requiring defendant Board to notify all Board license holders, the general public, all Alaska cities, boroughs and state officials, and all other interested parties that it has canceled and rescinded the requirements appearing in 12 AAC 56.030 concerning the docking and undocking requirements as a qualification for an unlimited pilot's license, and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competition between marine pilots;

7. That the Court issue an injunction requiring defendant Board issue plaintiff Captain Joseph W. Homer an unlimited pilot's license for the waters in and surrounding Southeastern Alaska;

8. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

9. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Sixteenth Claim for Relief:

1. That this Court adjudge and decree that the defendants Association and Pilots have interfered with the prospective contractual relationships between the plaintiff Captain Joseph W. Homer and ship owners, ship masters, and ship agents;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assigns, officers, directors, agents, employees, and persons acting for or on their behalf from continuing such interference;

3. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages to be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief as this Court may deem just and equitable under the premises.

For the Seventeenth Claim of Relief:

1. That this Court adjudge and decree that the defendants Association and Pilots have disparaged the marine piloting services provided by the plaintiff Captain Joseph W. Homer with the intent to cause plaintiff Captain Joseph W. Homer pecuniary harm;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assigns, officers, directors, agents, employees, and persons acting for or on their behalf from continuing such interference;

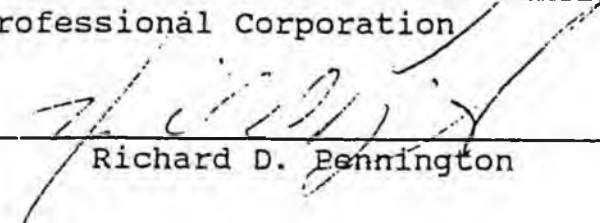
3. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages to be set by the jury, together with reasonable attorney's fees and costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief as this Court may deem just and equitable under the premises.

A JURY IS DEMANDED ON ALL ISSUES SO TRIALABLE.

DATED this 30th day of Aug, 1990.

RICHARD D. PENNINGTON & ASSOCIATES
A Professional Corporation

By 
Richard D. Pennington

ALASKA BOARD OF MARINE PILOTS

Tentative Agenda
April 3-4, 1991

State Office Building
Ninth Floor Conference Room
Juneau, Alaska

Tuesday, April 2, 1991

9:00 a.m. Written Examinations
Initial Licensure, SW-1; SE-2
Extension of Route, SW- ; SE-

Wednesday, April 3

<u>TIME</u>	<u>TOPIC</u>	<u>LEAD PERSON</u>
1. 8:30 a.m.	Oral Examinations (Executive Session)	Mr. Paul Taylor, Chair
2. 10:00 a.m.	Call to Order/Roll Call	Mr. Taylor
3. 10:05 a.m.	Review Minutes of December 17, 1990 Meeting	Mr. Taylor
4. 10:15 a.m.	Examination Results - April 2, 1991 a. Initial Licensure b. Extension of Route	Captains O'Hara & Elsensohn
5. 10:30 a.m.	Report on Temporary License Exam on January 22, 1991	Mr. Taylor
6. 10:45 a.m.	Add Permanent Extension of Route (Temporary Extension Issued on January 22, 1991) 1. Southeast a. Petrich, Kurt b. Winter, Robert 2. Southwest a. Tillion, Vince b. Eliassen, Eric c. Scally, Harry d. Hawker, Mark	Captains O'Hara & Elsensohn
7. 11:00 a.m.	License Upgrades (Approved by Mail) a. Jacobsen, Harry J. b. Antonsen, Hans	Captains O'Hara & Elsensohn

ALASKA BOARD OF MARINE PILOTS
Tentative Agenda
April 3-4, 1991
Page 2

- | | | | |
|-----|------------|--|----------------|
| 8. | 11:10 a.m. | Proposed Regulations - Cominco/Red Dog Pilot Station | Mr. Taylor |
| 9. | 12:00 noon | Recess for Lunch | |
| 10. | 1:00 p.m. | Discussion of Tariff Rates
a. Red Dog Mine area
b. Hobart Bay
c. Input from Attorney General's Office on Tariffs. | Mr. Taylor |
| 11. | 1:45 p.m. | Discussion of Examination and Trip Requirements for Red Dog Mine Area | Captain O'Hara |
| 12. | 2:15 p.m. | Discussion of Proposed Legislation Rewriting the Marine Pilotage Act | Mr. Taylor |
| 13. | 4:30 p.m. | Recess | |

Thursday, April 4, 1991

- | | | | |
|-----|------------|---|------------|
| 14. | 9:00 a.m. | Call to Order/Roll Call | Mr. Taylor |
| 15. | 9:05 a.m. | Investigative Report (Executive Session) | DOL Staff |
| 16. | 9:45 a.m. | Reconsideration of Applications
a. Joe Homer, Upgrade
b. Terry Bennett, Upgrade
c. William Bullard, VLCC Endorsement
d. Will Petrich, Renewal of Lapsed License | Mr. Taylor |
| 17. | 10:30 a.m. | Discussion of Renewal Procedures | Mr. Taylor |
| 18. | 11:00 a.m. | Public Comment | Mr. Taylor |
| 19. | 12:00 noon | Recess for Lunch | |
| 20. | 1:00 p.m. | Discussion of the Continuation of Temporary Licensing | Mr. Taylor |
| 21. | 1:30 p.m. | Private Vessel Navigation Systems | Mr. Taylor |
| 22. | 2:00 p.m. | Schedule Next Exam and Meeting Dates | Mr. Taylor |
| 23. | 2:30 p.m. | Adjourn | Mr. Taylor |

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**
DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX D
JUNEAU, ALASKA 99611-0800
PHONE: (907) 466-2634

April 8, 1991

The Honorable Cheri Davis
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Davis:

The Board of Marine Pilots is pleased to support House Bill 194. The board appreciates your efforts and shares your concerns about the seriousness of enacting a modern pilotage law for the State of Alaska.

If there is any way that the Board of Marine Pilots can be of any assistance to you in this fight, please call upon me.

Very truly yours,



M. Paul Taylor, P.E., Chairman
BOARD OF MARINE PILOTS

MPT/lvs5199t
4891a

HB 194 (not "cs" language)

(2) Marine pilots, **operating independently of the shipping industry**, have provided and will continue to provide essential service to the state;

(3) Recognize regional marine pilot organizations to promote, administer, and manage an efficient, reliable, and safe pilotage system within each marine pilotage region;

(5) **Establish pilotage tariffs** for each marine pilotage region, and charges for training and other purposes;

(7) Establish standards for training of marine pilots and deputy marine pilots and review training programs conducted by regional marine pilot organizations and approve the training program if the board finds that the program is consistent with standards established by the board.

(10) audit regional marine pilot organizations recognized by the board for compliance with applicable law;

(Page 3, Line 31) ...The coordinator may not be **an active** member of a regional marine pilot organization...

(Page 4, Line 1) ...in the state and may not serve as a marine pilot except as necessary to perform the duties of marine pilot coordinator.

Holland America's Proposal

(2) Marine pilots have provided and will continue to provided essential service to the state;

(3) Recognize regional marine pilot organizations to promote, administer, and manage an efficient, reliable, and safe pilotage system within each marine pilotage region **subject to control by the board and to the obligations imposed upon such marine pilot organization by this chapter.**

(5) Establish charges for training, licensing and other purposes, **which charges are to be paid by persons licensed under this chapter.**

(7) Establish standards for training of marine pilots and deputy marine pilots and review training programs conducted by regional marine pilot organizations **and other persons or entities authorized by the board to provide training programs** and approve the training program if the board finds that the program is consistent with standards established by the board.

(10) audit regional marine pilot organizations recognized by the board for compliance with applicable law **and revoke its recognition of any marine pilot organization that is not in compliance with applicable law;**

...The coordinator may not be a member of a regional marine pilot organization...

...in the state **nor be entitled, directly or indirectly, to share in the revenues derived by any marine pilot organization in the state** except as necessary to perform the duties of marine pilot coordinator.

(Page 4, Lines 21 -)

(4) In the case of a person seeking to renew a license, meets such additional training and examination requirements as may be imposed by the board for the renewal of marine pilot licenses;

(5) Who has either held a marine pilot license or a deputy marine pilot license for at least three full years prior to the date on which the person is issued a marine pilot license;

(6) Posses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the marine pilot license;

(7) Provides evidence of satisfactory completion of a physical examination by a licensed physician within 60 days before the date of issuance of the license;

(Page 5, Line 17) ...pilotage region for which the person seeks the deputy marine pilot license.

...pilotage region for which the person seeks the deputy marine pilot license. A person who applies for a deputy marine pilot license under this section shall provide evidence of satisfactory completion of a physical examination by a licensed physician within 60 days before the date of issuance of the license.

(Page 7, Lines 15-16) (7) charges, collects, or receives an amount for marine pilot services that is different from the tariff established by the board;

Delete.

(Page 7, Line 25) ...not liable in excess of \$5,000.00.

...not liable in excess of \$250,000.00.

(Page 7, Line 28) ...or neglect is wilful.

...or neglect is wilful or constitutes gross negligence or results from an act or omission that would entitle the board to impose disciplinary sanctions on the person pursuant to subsections (2), (3), (4) or (5) of AS 08.62.150(a) (This reference deals with board disciplinary sanctions.)

(Page 8, Lines 5-6) ...or neglect of the organization or a member of the organization who is licensed...

...or neglect of the member of the organization who is licensed...

(Page 8, Lines 9-10) ...of another marine pilot or **the regional organization of marine pilots** relating to pilotage of a vessel.

(Page 8, Line 24) ...(b) the board may recognize one organization of marine pilots within each marine pilotage region.

(Page 8, Line 29) ...that the organization may assume. The articles, bylaws, and rules of each organization of marine pilots recognized by the board are subject to approval by the board on the basis of...

(Page 10, Lines 15-21) Dealing with Anti-trust.

...of another marine pilot relating to pilotage of a vessel.

(b) the board may recognize one or **more organizations** of marine pilots within each marine pilotage region.

...that the organization may assume. **Marine pilot organizations recognized by the board shall be required to offer marine pilotage services to all vessel owners and operators in a uniform and non-discriminatory manner. Marine pilot organizations recognized by the board shall not be permitted to deny membership to any person licensed under this chapter on the basis of that person having either previously withdrawn from the organization or having been a member of another marine pilot organization, whether or not that other marine pilot organization was one recognized by the board. Marine pilot organizations recognized by the board shall be required to offer persons who are not members of the organization the opportunity to participate in board required training programs conducted by the organization on the same basis as organization members upon payment of a training fee no greater than the fee charged members. A person shall not be required to be a member of a marine pilot organization in order to obtain a license under this chapter or provide pilotage services in the state.**

Delete.



TELECOPY MESSAGE

DATE: March 6, 1991

TO: Mr. Rod R. Mourant
Office of Senator Drue Pearce
907 463 5352

COPY TO: Bob Berto
Cruise Line Agencies of Alaska
907 225 8254

COPY TO: Arie van Noort
836-0338

PAGES TO FOLLOW: 15

FROM: Dan Grausz
Vice President and General Counsel
Holland America Line-Westours Inc.
300 Elliott Ave. West
Seattle, Washington 98119
(206) 286-3490

RESPONSE TELECOPY NUMBERS: (206) 284-8332 (Direct)

MESSAGE:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT SUE LUNDGREN AT
(206) 286-3491.

300 Elliott Ave. West
Seattle, WA 98119
206-281-3535
Telex: 160864 HALW SEA
FAX: 206-281-2687 or 206-281-7110



Holland America Line Westours Inc.

March 6, 1991

VIA TELECOPIER - 907 463 5352

Mr. Rod R. Mourant
Office of Senator Drue Pearce
P.O. Box V
Juneau, Alaska 99811

Re: Pilotage Legislation

Dear Mr. Mourant:

Tony Thein has suggested that I provide you with the latest draft of pilotage legislation which we have put together. As Tony has probably already mentioned to you, the only reason we have prepared draft legislation is to provide an alternative to the legislation now being advanced by various pilotage groups in Alaska. For reasons explained more fully below, we believe that the legislation being promoted by these pilots will have unwarranted adverse impacts upon the shipping industry in Alaska.

We have no problem whatsoever supporting the idea that pilots should have adequate training for their jobs. In fact, we believe this is essential and have long felt that the requirements of Alaska law were inadequate in this regard. Consequently, we fully support legislation that will increase the quality of pilots operating in Alaska.

Where we take issue with certain pilots is their apparent desire to use the shield of government in order to gain what is essentially monopoly power. The efforts to achieve a monopoly are in three separate areas:

1. Pilot independence: The pilots that have been advancing the legislation which we oppose are seeking to prohibit shipping companies from employing pilots directly. They claim that an employee cannot have the necessary independence. We find it very hard to understand why pilots are different from any other profession in this regard. For example, there is no requirement that businesses use only independent doctors, engineers, architects or any other licensed professional. Utilizing the rationale of the pilots, one could argue that businesses should never be allowed to employ anyone who is required to exercise independent judgment. The absurdity of that proposition is obvious. The fact of the matter is that businesses routinely employ people who need and are expected to exercise independent judgment and who, in fact, do so.

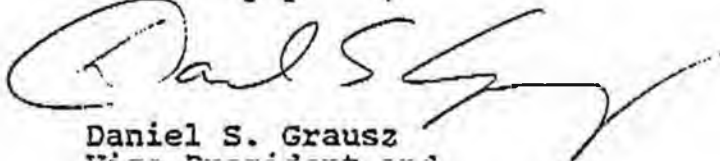
Mr. Rod R. Mourant
March 6, 1991
Page 2
VIA TELECOPIER

2. Established Rates: For reasons which we cannot explain, the pilots somehow seem to feel that they are unable to negotiate rates directly with the shipping companies. Instead, they need to have the State negotiate on their behalf. We fail to understand why pilots are such a special group of people that the market place and the laws of supply and demand cannot be allowed to operate in the normal course. The State of Alaska regulates many professions. The primary reason for regulation is to protect the general public from unqualified professionals. In this case, it seems that the pilots are seeking to protect themselves from the general public.
3. Pilot Organizations: Although the legislation being pushed by the pilots purports to be a safety bill, one of the real purposes underlying it is an attempt to legitimize and immunize marine pilot organizations. The legislation that we are opposing essentially allows these marine pilot organizations to act as a quasi-governmental entity. Effectively, it will require shippers to deal exclusively with these organizations.

Having controlled prices and created a monopoly, the pilots proposing the legislation also seek to limit their liability as well as the liability of the marine pilot organizations. We find it very hard to understand why, on the one hand, safety is a primary concern while, on the other hand, the concern is one that only the shipping companies are being required to pay for.

This cover letter obviously only summarizes some of the major issues. There are many other differences between the legislation being advanced by the pilots and the draft that we have prepared. I would be more than willing to discuss this further with you at your convenience. My direct telephone is (206) 286-3490.

Sincerely yours,



Daniel S. Grausz
Vice President and
General Counsel

DSG/scl
Enclosure

cc: Arie van Noort (by fax)
Tony Thein
Bob Berto (by fax)

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE

Introduced:

Referred:

A BILL
FOR AN ACT ENTITLED

"For an Act entitled: "An Act relating to Marine Pilots and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.32.010(c)(12) is amended to read:

(12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1995 [1991];

* Sec. 2. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.005. INTENT. The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds that in order to assure the protection of lives and property and the marine environment of the sta , licensed

marine pilots having extensive local knowledge are required to pilot certain vessels in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish criteria for the training and licensing of marine pilots.

* Sec. 3. AS 08.62.030 is amended to read:

Sec. 08.62.030. MEETINGS. The board shall hold at least four regularly scheduled meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

* Sec. 4. AS 08.62.040 is repealed and reenacted to read:

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall have the authority to

(1) provide for

(A) the examination of applicants for marine pilot and deputy marine pilot licenses; and

(B) the issuance and renewal of marine pilot and deputy marine pilot licenses for each pilotage region;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), placing qualifications or limitations on marine pilot and deputy marine pilot licenses based on the characteristics of a marine pilotage region in which the licensee will operate and experience and the

training of the licensee;

(3) keep a register of licensed pilots and licensed deputy marine pilots;

(4) adopt regulations subject to the Administrative Procedure Act (AS 44.62) establishing training, investigation and licensing fees to be remitted to the board;

(5) adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing marine pilotage regions;

(6) establish a mandatory random drug and alcohol testing program for persons licensed under this chapter;

(7) establish standards for training of marine pilots and deputy marine pilots and review training programs;

(8) impose disciplinary sanctions under AS 08.01.075 on persons licensed under this chapter; and

(9) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation adopted under the Administrative Procedure Act (AS 44.62), make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter.

(c) For good cause, the board may require a person licensed under this chapter or an applicant for a license issued under this chapter to submit to a physical or mental examination to determine the person's fitness to perform the duties of a marine pilot or deputy marine pilot.

* Sec. 5. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.045. MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to make recommendations to the board so as to assist the board in the administration and enforcement of the provisions of this chapter. The coordinator may not work as a pilot while employed as the coordinator, except to the extent required by official duties. While employed as the coordinator, the coordinator may not, directly or indirectly, receive, become entitled to or share pilotage fees earned by others working as pilots.

* Sec. 6. AS 08.62.090 is repealed and reenacted to read:

AS 08.62.090. LICENSING PROCEDURES. (a) An application for an original, renewal or reinstated license under this chapter must be made in writing to the board on a form prescribed by the board, must include all information specified by the board of the form and must be accompanied by the licensing fee.

(b) The board shall establish dates for license examinations and shall provide public notice of such dates. The board shall require license examinations for applicants for original licenses and for applicants seeking to reinstate a license that has been lapsed for in excess of one year. The board may require license examinations for applicants for renewal licenses. License examinations may be written and/or oral. In order to be eligible to take the next scheduled examination, a person must file the license application with the board at least 60 days before the date of the examination.

* Sec. 7. AS 08.62.100 is repealed and reenacted to read:

Sec. 08.62.100. QUALIFICATIONS. (a) The board shall issue an original pilot's license to a person for one or more pilotage regions if he or she

(1) is a citizen of the United States;

(2) passes the examination given by the board;

(3) qualifies in accordance with the regulations adopted by the board including those regulations that are specific to the pilotage region or regions for which the applicant seeks to be licensed;

(4) successfully completes a training program that has been approved by the board; and

(5) on a form approved by the board, provides evidence of a satisfactory physical examination by a licensed medical doctor conducted within 60 days before the date of application; and

(6) possesses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the license.

(b) The board shall issue an original deputy marine pilot license to a person for one or more pilotage regions if he or she

(1) is a citizen of the United States;

(2) passes the examination given by the board;

(3) qualifies in accordance with the regulations adopted by the board including those regulations that are

specific to the pilotage region or regions for which the applicant seeks to be licensed;

(4) successfully completes a training program that has been approved by the board;

(5) on a form approved by the board, provides evidence of a satisfactory physical examination by a licensed medical doctor conducted within 60 days before the date of application;

(6) possesses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the license; and

(7) provides proof satisfactory to the board of the following experience

(A) one year of sea service as a master on ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels of any gross tons; or

(B) two years of sea service as a master of freight on a towing vessel while holding a license as the master of freight and towing vessels of not less than 1,600 gross tons; or

(C) two years of sea service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as a master of ocean steam or motor vessels of any gross tons; or

(D) two years of sea service as a commanding officer of United States government vessels of not less than

1,600 gross tons and holding a license as the master of ocean steam or motor vessels of any gross tons; or

(E) three years of experience during which the candidate was actively engaged in piloting while holding a minimum license as a master of freight or towing vessel of not more than 1,600 gross tons.

(c) In this section, "sea service" has the meaning given to the term by the United States Coast Guard under 46 C.F.R. 10.

(d) A person licensed as a deputy marine pilot under this section may, except as otherwise provided by the board, pilot vessels of 20,000 gross tons or less in the marine pilotage region or regions for which the license is issued.

* Sec. 8. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.117. TRAINING PROGRAMS. (a) The board shall establish standards for training programs for marine pilot and deputy marine pilot licenses. The standards shall include requirements for

(1) supervised familiarization and training trips on vessels subject to this chapter;

(2) supervised dockings, undockings, and tug assisted maneuvers;

(3) special training or experience necessary to qualify for a license for a particular pilotage region;

(4) completion of the training program within a specified period; and

(5) other training or experience that the board considers appropriate.

(b) A person who supervises the training of persons who are seeking a license under this chapter shall

(1) hold a marine pilot license issued under AS 08.62.100(a);

(2) receive prior authorization from the board to supervise the training of those persons; and

(3) maintain a written log and evaluation on a form provided by the board of the training and progress of the person being supervised.

* Sec. 9. AS 08.62.120 is repealed and reenacted to read:

Sec. 08.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. Applications for renewal must be filed with the board during the 90-day period prior to license expiration. Licenses that are not renewed will be deemed to have lapsed. In order to renew a license, an applicant for renewal must

(1) as of the time of application for renewal, satisfy the requirements of AS 08.62.100 to the same extent as would be the case were the applicant applying for an original license rather than a renewal license;

(2) satisfy such other requirements as are provided in regulations promulgated by the board for the renewal of pilot licenses or deputy pilot licenses, as applicable; and

(3) submit proof satisfactory to the board that the applicant

(A) has engaged in piloting vessels subject to

this chapter in each pilotage region for which renewal is sought during at least 60 days within the two year period immediately preceding the date of application for renewal; or

(B) completed, during the time period specified by the board in its regulations, the minimum number of familiarization trips required by the board's regulations in each pilotage region for which the license is to be renewed.

* Sec. 10. AS 08.62.130 is repealed and reenacted to read:

Sec. 08.62.130. LAPSED LICENSE. In order to reinstate a lapsed license, an applicant for reinstatement must

(1) as of the time of application for reinstatement, satisfy the requirements of AS 08.62.100 to the same extent as would be the case were the applicant applying for an original license rather than a reinstated license;

(2) satisfy such other requirements as are provided in regulations promulgated by the board for the reinstatement of lapsed pilot or deputy pilot licenses, as applicable;

(3) submit proof satisfactory to the board that the applicant has completed two trips for each year that the license has been lapsed to each major port and waterway, defined by the board, in the pilotage region for which the license is to be reinstated; and

(4) take and pass the board's examination for reinstatement of licenses if the license has been lapsed one year or more.

* Sec. 11. AS 08.62.150(a) is amended to read:

Sec. 08.62.150. ENFORCEMENT AUTHORITY [DENIAL, REVOCATION OR SUSPENSION]. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the person

(1) is incompetent in the performance of pilotage duties;

(2) is intoxicated during the performance of pilotage duties due to alcohol [HABITUALLY INTOXICATED];

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it;

(6) is guilty of misconduct during the course of employment; or

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT].

* Sec. 12. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.165. ALLOCATION OF LIABILITY. (a) A person licensed under this chapter is not liable for damages or loss occurring as a result of the person's error, omission, fault or neglect in the actual performance of pilotage services on board a vessel, except that

(1) such limitation does not apply in cases where the person is either grossly negligent or guilty of willful

misconduct;

(2) such limitation does not apply to limit the liability of the person to the owner or operator of the vessel on which the pilotage services were performed in cases where the person is either negligent or guilty of willful misconduct; and

(3) such limitation shall not limit the authority of the board under this chapter to impose appropriate disciplinary sanctions on the person as a result of such error, omission, fault or neglect.

(b) This section does not limit the liability of a vessel, its cargo, the owner of the vessel or the operator of the vessel for damage or loss caused by the vessel because the vessel was piloted by a person licensed under this chapter or the damage or loss was a consequence of the error, fault, omission or neglect of a person licensed under this chapter while the person was piloting the vessel.

(c) A person licensed under this chapter is not liable for loss or damage arising from the error, fault, omission or neglect in the actual performance of pilotage services on board a vessel of another person licensed under this chapter.

* Sec. 13. AS 08.62.190 is amended to read:

Sec. 08.61.190. PENALTIES. (a) A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000

[\$5,000] for the first offense and not less than \$10,000 nor more than \$30,000 for subsequent offenses.

(b) A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine or not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

* Sec. 14. AS 08.62 is amended by adding a new section to read:

AS 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

* Sec. 15. AS 39.25.120(c)(9) is amended by adding a new paragraph to read:

(M) Board of Marine Pilots:

* Sec. 16. AS 39.25.120(c) is amended by adding a new paragraph to read:

(21) marine pilot coordinator of the Board of Marine Pilots.

* Sec. 17. TRANSITION. (a) Pilot licenses issued under AS 08.62.100 as in effect before the effective date of this Act shall be valid for the period for which the licenses were issued but in no event beyond December 31, 1994. If any such license would expire prior to December 31, 1994, it shall be renewed by the board for the period from the date of expiration until December 31, 1994 if the applicant pays the required renewal fee and would otherwise qualify for renewal under the requirements of AS 08.62 as in effect prior to the effective date of this Act including the regulations promulgated thereunder.

(b) Pilot licenses issued or renewed pursuant to (a) of this section entitle the licensee to pilot vessels in any pilotage region in the state during the period to which the license relates.

(c) No person may be issued a pilot license for any period subsequent to December 31, 1994 who has not met the requirements of AS 08.62.090 and AS 08.62.100 as set forth in sections 6 and 7 of this Act.

* Sec. 18. EFFECTIVE DATE. This Act takes effect January 1, 1992.

91-B/PILOTZ.LEG

3/6/91

JAN 31 1991

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802-1217
Phone: (907)463-2205
Staff Symbol: m

16637
January 30, 1991

Senator Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pearce:

Thank you for your letter of January 21, 1991, which forwarded the report "Improving Alaska's Marine Pilotage System."

I would certainly like to extend an offer to share information about incidents and accidents, to assist each other with investigations and to coordinate mutual interest items as recommended in the report. A formal accord is not necessary. We now enjoy an excellent relationship with the Alaska State Troopers and we have mutually assisted each other's agencies in the EXXON VALDEZ grounding and the FRANK H. BROWN grounding in Wrangell Narrows a year ago. In the past we had worked with the Division of Occupational Licensing on these matters. I do suggest that the Coast Guard be included on any formal Pilot Review Board that may be developed as part of your new legislation.

Marine Pilot Review Boards that I am familiar with have normally been formally constituted to review marine accidents and incidents and have contained pilots, port authority personnel, ship's agents and Coast Guard advisors. It probably would be helpful if the accident reporting and review process were formalized in your state legislation or regulations. Also, the Pilot Review Board with the Marine Coordinator as the lead person, should be the body empowered to enforce discipline and impose sanctions on the pilots for infractions of the rules or negligence in the performance of their duties. The Coast Guard is willing to participate in these types of accident review boards in an advisory capacity.

The report you provided also states that the entry-level requirements for state licenses are low and that the training and qualification program may be inadequate. The report recommends increased standards in both of these areas. We certainly would not quarrel with these assessments and would support concrete measures to increase the professionalism of state pilots. We would be pleased to participate in any working group that would be formed to articulate increased state standards.

16637
January 30, 1991

Certain items such as physical examinations and substance abuse testing are now covered in federal regulations, however, the implementation of random drug testing is held up in a court case. This matter has been the subject of some correspondence between the Coast Guard and one of the pilot associations. In the event of a serious marine casualty the Coast Guard has the authority to require drug testing, but the application of the theory of post accident testing in remote areas of Alaska still needs some work. Perhaps a joint task force could devise some precise wording of a state statute or regulation which would give us a workable solution for Alaska state pilots.

I appreciate your letter and the opportunity to comment on the report. If we may assist you in any way in drafting standards or participating in Pilot Review Boards or advising on federal standards please do not hesitate to contact me at (907) 463 2210. I will be in Anchorage the week of February 4th, but when I return I will contact your office to discuss these matters in more detail.

Sincerely,



D. E. BODRON
Captain, U.S. Coast Guard
Chief, Marine Safety Division
By direction of the District Commander

HB 194 - Marine Pilots

<u>Interested Party</u>	<u>What Got</u>
Shipping Companies	<ol style="list-style-type: none">1. Break up of pilot monopoly2. Pricing flexibility
Pilots	<ol style="list-style-type: none">1. Protection/recognition of organizations2. Means to compete
State	<ol style="list-style-type: none">1. Higher professional standards2. A say in how organizations operate3. Free market philosophy
Pilot board	<ol style="list-style-type: none">1. Clearer statement of authority & responsibility

No one got all that they wanted, but everyone got most important.

Encourage signature 7/5.

Joe Merrill, ph. 3568

Marine Piloting Bill

Interested Party

What Got

Shipping

1. Break up of pilot monopolies
2. Pricing flexibility

Pilots

1. Protection / recognition of organization
2. Means to comp

State

1. Higher profession standards
2. A say in how organizations operate
3. Free market philosophy

Pilot Board

1. Clearer statement of authority + responsibility

no one got all wanted, but everyone got most important

Encourage signature 7/5

Joe Merrill, Phn 3568



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DR. JOE MERRILL Fax: 248-2567

Attn: _____ Phone: _____

Transmitted by: ROD MOURANT Date: 5-3-91

Re: _____

Comments: _____

Number of Pages: 2 Including Cover Sheet.



RESPONSE TO DRAFT MARINE PILOTING ACT

The proposed bill represents a rather unusual combination of strengthening the Board while at the same time weakening it by dictating many details of matters the Board should deal with. On balance the negative aspects seem to outweigh the positive which leads to the conclusion that the proposal needs much more work before beginning its journey through the legislative process.

There are too many conflicts in the proposal between improvements to the pilotage industry and purely self-serving pilot interests.

Positive aspects are:

1. Clarification of the powers of the Board. For example, the language in the present Act leaves some doubt as to the Board's power to set tariffs compared to the power to merely determine criteria as to how the tariffs should be set. The proposal clarifies the ambiguity and states clearly that the Board can set rates.

2. The proposal clarifies the issue of pilot organizations and anti-trust law.

3. The proposal deals directly with the issue of limiting a pilot's monetary liability for damages resulting from accidents.

4. The proposal deals with the cross-over liability between individual pilot actions and his or her organization and other pilots in the organization.

The four items above should be part of any new, or changes to the existing, statute.

Specific sections that create problems:

Unfortunately the proposal consists mostly of matters that are self-serving for existing pilot organizations and create many barriers to entry to the profession and anti-competitive, or monopolistic, features. Some of these features stem from the nature of the profession, but most are more evidently designed as self-protection measures from a pilot perspective.

References to the specific parts of the proposal will show why the above generalizations are valid and demonstrate why the proposal needs a lot of work before being submitted for consideration by the legislature.

SECTION 1(2)

Serves no purpose other than to imply that pilots working directly for shipping companies don't provide an essential service to the state. Further, the statement implies that it is the independent relationship that provides the service instead of the qualifications of the pilot that are based upon the license.

SECTION 2(6)

The pilot members of the Board should be pilots who are actively engaged in piloting and not merely those who have been active.

The Board is presently balanced by an equal number of representatives from the public, the industry, and pilots. While it would be nice to have a pilot from a third region (really an organization) such a change would create an imbalance in pilot representation that should be countered by adding a third member from the public and industry.

What the proposed change really amounts to is an acknowledgment that the pilot members have unduely represented their organization and not profession. There may be other ways (than increasing the size of the Board) to address this issue. Alternatives should be explored.

SECTION 4

The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

SECTION 5(5)

We disagree with the idea that the tariff should include a charge to the ships in order to provide a training fund for either prospective or licensed pilots. We feel the creation of such a fund would be the source of many disputes. If the Board had power to create such a fund it would create a subsidy to a profession that would be both unique to regulated professions and unduely increase costs to the shipping industry.

Other parts of this section represent such a change to the industry that the general topic of regionalization recognition of pilot organizations must be commented upon in total and not in paragraph number.

The previous administration's study on marine piloting emphasized the desirability of improving two aspects of the industry. These were, (1) increasing the standards and training for entry into the profession, and (2) a greater emphasis on local knowledge as a licensing and practicing criteria.

The recommended solution to these two aspects included the suggestion that licensing areas, or regions, should be limited. The criteria for delineating the regions should be in part based upon the general nature of shipping (tankers, tour ships, fishing, hulk

carriers, etc...), variety of piloting tasks (channel riding, docking, anchoring, etc...), transportation costs and time, and variety and number of harbors and ports, etc...

The study also acknowledged that piloting is provided most effectively through centralized dispatching and billing organizations of pilots. Further, piloting is a skill learned through apprenticing because of the need for hands-on experience. Consequently, the organizations play a major role in training and if the training is valid it must be designed around some uniform standards.

Notwithstanding the essential role that pilot organizations have and the natural tendency for traditional organizational boundaries to define pilotage regions, it is not an improvement in the law to simply put such things in legislative concrete.

Another important part of the state's study dealt with barriers of entry into the profession and creating monopolies for the pilot organizations. Some pilot testimony during the hearings on the study focused on the "evils" of competition in the piloting industry. Little was heard about the "evils" of monopoly.

The proposal does not recognize nor deal with the need to eliminate barriers to entry into the profession. In fact, the proposal erects additional barriers under the guise of Board-approved training programs. The approved programs are done through the pilot organizations, administered by pilots with five years of piloting experience who are also approved by the Board. These requirements are coupled with the proposed license requirement that allows a trainee to have only a small number of supervised rides by one approved pilot.

What the combination of these provisions means, in fact, is that no new groups of pilots can start-up or grow. Such a result creates an environment rich for the "evils" of monopoly to develop.

Without going into lengthy discourse on the specifics of the above, I'll say that it is an area that I'd like the opportunity to discuss with you in person.

Additionally the regions created by Section 5(11)(d) need a lot of refinement with the exception of Southeastern Alaska.

SECTION 7(a)

This section limiting licenses to one region is not practical until the regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

SECTIONS 10, 11. QUALIFICATIONS FOR LICENSE

These two sections need additional work to make them articulate together, and internally consistent.

It appears that Sec. 10 contains the requirements for what may be termed a "full" or ^{"unlimited"} ~~limited~~ license whereas Sec. 11 seems meant to be a "lesser" or "limited" license- ie. vessels not exceeding 20,000 gross tons. Further, it is confusing whether or not each class of license has separate pre-requisites or if each class has separate (with some overlap) pre-requisites.

For example, the Sec 10 license requires a variety of sea-going experience as well as unspecified training to be specified by the Board.

On the other hand the Sec 11 Deputy license requires very specific training but evidently no specific sea-going experience.

The full license is based upon a Coast Guard endorsement of 1,600 gross tons but evidently has no tonnage restrictions on the state license. The deputy license has no Coast Guard tonnage specifications but is limited to 20,000 gross tons for the state license.

(5)

It also appears that the deputy license requires familiarization rides and supervised dockings while the "full" license does not. Or, does Sec. 10(3) refer to the training program in Sec. 11(3)? Does the sea-going experience of Sec. 10(6) also, in some way, cover Sec 11 licenses?

In short the proposal leaves more questions unanswered than answered regarding licensing. As it is written the proposal serves no useful purpose other than to make a deputy "lesser" license almost impossible to get for someone trying to get into the profession.

SECTION 12(2)

To what part of AS 08.62.100 is the term "continued qualification" referring?

SECTION 12(4)(6)

Again, the deputy license is treated differently than the "full" license by not specifying the conditions (or possibility) of renewal.

SECTION 13(6)

See comment above reference to Section 12.(4)(6).

SECTION 16(2)

This should clarify that the limit is \$5,000 per accident and not \$5,000 per claimant.

SECTION 18

It appears that the conceptual goal of Section 18 material is worthwhile. Pilot organizations do promote operational efficiency and have a great responsibility for training. However, the content of Sec. 18 again leaves many unanswered questions. Some of these are:

- a. How many pilots are required to form an organization? It would seem the answer is two.
- b. Does a pilot have to work through an organization?

- c. Is an established organization required to let any pilot join?
- d. If more than one organization operates in a region, which one is the "cost center" upon which the regional tariff is imposed?
- e. Is an organization required to accept all applicants for training?
- f. Can an organization function in more than one region?
- g. If two organizations exist in the same region, by which criteria does the Board "recognize" one?
- h. Can a trainee get approved training in a non-recognized organization?

SUMMARY

Based upon the above brief discussion of source of intent, language, and unresolved matters in the draft proposal, it seems reasonable to conclude that much work remains to be done before a piece of workable legislation can be presented. A lot of the problems seem to be a result of the legislation trying to incorporate details better left to the Board. However, the desire to legislate Board members reflects a lack of confidence in the Board.

The legislation would probably be improved if it were restricted to:

1. Continuing the Board
2. Powers of the Board
3. Pilot liability and anti-trust issues

It seems that the alternative to the three things above is for the legislation to be redone in detail- almost as a substitute for regulations and the Board to be given fairly limited powers.

I hope I have the opportunity to discuss in greater detail the concerns I have briefly discussed above. I would be happy to come to Juneau to meet with you.

(7)

I appreciate your interest and concern with marine piloting, and I appreciate your follow-up with me.

Joseph S. Merrill *Jm*
For Alaska Marine Pilots Dispatch Service
In Anchorage:

786-4865 day
243-2395 evening
248-2567 FAX

P.O. Box 220926
Anchorage, AK 99522

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

January 14, 1991

Mr. Gary I. Amendola
Assistant Attorney General
State of Alaska
Post Office Box K
Juneau, Alaska 99811

Dea. Gary:

The Southeastern Alaska Pilots' Association wrote the Board of Marine Pilots on July 30, 1990, regarding tariff violations by Windstar Sail Cruises, Capt. Bennett and Capt. Homer, and asked for an investigation.

Robert A. Harrington responded to our request for an investigation in a letter dated September 7, 1990. He stated "There are several legal considerations which must be qualified before this division can reach a proper determination concerning our enforcement jurisdiction." We then wrote Mr. Harrington in November asking him to advise us on the status of the investigation. In a letter dated December 12, 1990, Mr. Harrington again stated the Attorney General's office still has this matter under advisement, and will not initiate an investigation until an "appropriate time after approval is authorized by the Attorney General's office." Mr. Harrington's letter arrived in our office on December 17, 1990, when you and I were in Anchorage attending a Pilot Board meeting.

During the meeting I asked you to please address the issue of the tariff. You stated "According to regulations, those providing pilotage services must abide by published tariffs. The tariff may not be cut, ut may be raised by agreement of the parties."

The Southeastern Alaska Pilots' Association respectfully requests your office stand by your statement on December 17, 1990, and direct Mr. Harrington, the State Investigator, to investigate the alleged tariff violation by Windstar Sail Cruises, Capt. Bennett, and Capt. Homer.

The Southeastern Alaska Pilots' Association met with Holland America Line on January 7, 1990. Holland America is an affiliate company of Windstar Sail Cruises. We were advised by Capt. Cornelis Deelstr of Holland America's decision not to use our pilotage services. We asked Capt. Deelstr the reason for the change. He stated his company wanted to try something different while they had an opportunity to do so. With recommended changes being made to revise the Alaska Pilotage Act, his company wanted to try something different before the Alaska Pilotage Act is revised. He went on to state there were

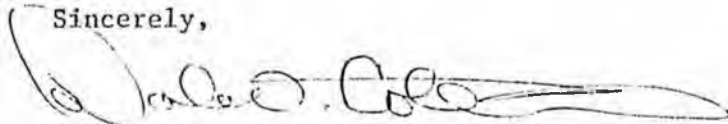
Gary I. Amendola
January 14, 1991
Page 2

considerable cost savings to his company. We asked how this could be as the tariff states the price to be followed. He told Capt. Maroni and myself Windstar Sail Cruises is an affiliate company and they made a similar move last summer and nothing came of it. We asked if he could give us an approximate cost savings to his company. He stated 25%.

Holland America Line Westour Inc. is following the lead of Windstar Sail Cruises. We believe this is largely due to the State of Alaska's inaction on our alleged claim of tariff violation last summer, and the attempt being made to revise the State Pilotage Act.

Windstar Sail Cruises and Holland America Line Westours Inc. pilotage arrangements in Alaska need to be investigated immediately. The Southeastern Alaska Pilots' Association is being placed in a difficult position by the State's inaction. The State has to investigate these alleged violations or be prepared to compensate our association for the losses we are incurring by adhering to the State tariff.

Sincerely,



Dale O. Collins
President

DOC:bjj

copy

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

December 26, 1990

Mr. Mike O'Hara
P.O. Box 1443
Palmer, AK 99645

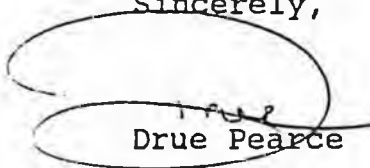
Dear Mike:

Thank you so much for allowing me to accompany you aboard the ARCO Anchorage. It was my first time aboard a tanker and I was fascinated! In fact, I raved about the trip to so many people at the spill exercise and since I returned to Anchorage you may get more calls asking for the opportunity.

While I wasn't able to attend the Monday marine pilot's meeting, I have asked for the minutes and look forward to hearing what you decided in terms of introducing a bill. I stand ready to work with you and look forward to bringing all the interested parties to the table.

I hope you enjoyed your time in California. Have a happy new year. Thanks again for a great trip.

Sincerely,


Drue Pearce

DP:ss

I don't leave for Juneau until Jan. 15 - if you have a chance to call before then, I'd like to hear your impressions of the meeting last Friday.

SUMMARY OF THE OFFICE OF MANAGEMENT AND BUDGET
REPORT ON IMPROVING ALASKA MARINE PILOTAGE SYSTEM

BY

DALE O. COLLINS

In response to concerns about public and environmental safety in the maritime trade, Governor Cowper directed a study of Alaska's Marine Pilotage System and to make specific recommendations to strengthen the State Marine Pilotage Act.

The current system in the United States splits responsibility for pilotage between the federal government and the maritime states. The federal government exercises control over vessels engaged in domestic trade. Individual states have the authority to require compulsory pilotage for foreign ships and for United States flag ships on foreign voyages operating within the waters of the state.

Alaska's current pilotage statute has significant weaknesses and gaps in current statute. Alaska's statute is unique among the maritime states, treats licensing as an individual right rather than as a franchise to perform a public service. This emphasis on rights has embroiled the Board of Marine Pilots in controversies with individual pilots, diverting time and attention away from larger issues facing state pilotage. In recent years, various Assistant Attorney Generals and other have questioned the existing act, maintaining that current language does not give the board specific authority to set rates and establish regional

licensing requirements. 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.

For the first ten years after the passage of the State Pilotage Act in 1970, the Marine Pilotage System in Alaska virtually ran itself. Pilots voluntarily organized themselves into two associations, SEAPA and SWAPA, to serve the Southeast and Southwest regions of Alaska. The associations were responsible for hiring, training and dispatching pilots and collecting fees from shippers. Challenged by pilots new to the system, traditional association control over pilot training and discipline has been eroded by legal actions and fears of potential liability.

The Alaska Marine Pilot Act - originally designed to give the board the flexibility to respond to new conditions, has not provided the board the clear authority it needs to deal with the current situation. The Department of Law increasingly questioned Board authority under the statute to develop standards, set pilotage rates, and to exercise overall control.

The state has a compelling interest in maintaining a system of compulsory pilotage for state waters. To secure this interest, the report proposes an explicit social contract between Alaska's marine pilots and state government. In return for limiting pilot liability and protecting pilot

organizations from anti-trust litigation, the state should require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

Specific recommendations for strengthening the State Pilotage Act and improving pilotage regulation in the state are summarized below:

The Marine Pilotage Act should be amended to include an opening statement of intent; extensive entry-level requirements; additional pilotage regions; exclusive licensing by region; standards for progressive licensing, including a formalized deputy pilot program; check-ride system for fully-licensed pilots conducted by senior pilots; recency criteria to maintain endorsements for specific waters and ports; random substance abuse testing; complete annual physical exam; continuing education between license renewals; full-time marine pilot co-ordinator to investigate marine accidents; review training programs and participate in license examinations; complaints concerning pilotage service should be directed to the state board or marine co-ordinator; establish an accord with the United States Coast Guard to share information about accidents, incidents, and conduct joint investigations. The state should not place a specific limit on the number of licenses at this time, however, a determination over a period of time should be made relative to the information on ship movements, whether there is a shortage or an overage of pilots to meet the

demands of shipping. Necessary steps to relieve the situation may include requesting legislative authority to limit the number of licenses. The state should consider accident investigation and other state administrative costs in setting pilotage rates and pilot license fees. A review by the board should be made and license fees should be increased substantially to reflect costs of administering state pilotage. Board meetings should be scheduled at least three times a year, the board be increased to include representation from the Aleutian region of the state. Pilot organizations should be recognized by state law and chartered to provide state approved training for deputy pilots. Pilot organizations should have their Bylaws and Operating Rules approved by the board. The board should be authorized in statute to establish an enforceable tariff schedule.

All pilot organizations should be required by law to submit copies of their annual audits to the state board; pilot liability should be limited in statute to a specific dollar amount; tariff schedule should be reviewed by the board and adjusted where necessary, and consider special rates for unique circumstances; authority to include a training fee in the tariff schedule to provide partial support for training, and continuing education programs.

The summary of the Office of Management and Budget Report on improving Alaska Marine Pilotage System is offered only to give a brief overview and a complete review of the report is

recommended. Ms. Madden and Mr. Pierce have presented the State of Alaska with an excellent report to study while considering the Proposed Amended Pilotage Act that Southwest Alaska Pilots Association and Southeastern Alaska Pilots Association have submitted to the legislature for enactment during this session.

This Amended Pilotage Act will assure the citizens of Alaska that public interest will be a first priority with pilots and not a secondary consideration after the shipowners interests have been served.

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

Board of Marine Pilots

December 16, 1990

Gentlemen:

Based on the premise that the State has a compelling interest in maintaining a compulsory pilotage system for its coastal waters, the S.E. Alaska Pilots Association recommends the Board of Marine Pilots adopt the recommendations noted in the study compiled by Ms. Madden and Mr. Pierce on improving Alaska's marine pilotage system. We concur with their findings with the exception of limiting the number of licenses and recognizing one pilot association per region. To regulate pilotage in the state of Alaska and not recognize the need to complete the regulatory process will only compound the problems to date. The Board must consider the control they have now and the recommended control being considered, and in vision the complete pilotage act being formulated.

With one association within each region the State would be assured of the following: 24 hour a day service, 365 days a year. All ships would be assured a pilot is available upon request. A highly qualified pilot would board each vessel as a truly independent pilot with the State's interest concerning safety a top priority. Economic pressures would not influence the pilot's decisions. A pilot with current recency trips to all ports and waterways in the region would be provided. A pilot with a wide variety of experience on all ships transiting the region, in all weather conditions would be dispatched.

The above list could be expanded upon and is submitted only as a partial example.

With more than one group of pilots in a region the State could be subjected to the following: No one group providing year round service or even 24 hour a day service. That any one group would assure the State or industry they would have a pilot available at all times upon request. Will the pilot be truly independent if he only worked for a small segment of the industry? Pilots might consider using one tug instead of two to save money and gain an economic advantage over another pilot, or use no tugs! Push their speed in fog, or gillnetter areas, and close glaciers to unsafe distances to gain further advantages. Will the pilot have the necessary recency trips on all waterways and ports in his region if he worked for one or two shipping companies? The S.E. Pilots Association has reviewed the two approaches and has concluded one association per pilot region is by far the best system.

Board of Marine Pilots
December 16, 1990 Page two

If one pilot association per pilot region is accepted, the association would then allow the State to review and revise our Article's of Association, bylaws and operating rules to assure equal opportunity and access to all State licensed pilots for our region.

The S.E. Alaska Pilots Association is proud of its service to the State of Alaska and industry for the past twenty years, and has a good safety record, and has always provided pilots in a timely and efficient manner. We have been the only pilot association in our region and have trained every pilot with a State license for S.E. Alaska to date, including Captain Homer and Captain Bennett, and we stand ready to complete their training upon request by the State, or by mutual agreement.

We do not know of any shipping companies or agents in our area that have not had the service we recommended in this letter. This system is not new to our area as it has been working for the past twenty years. We do know shipping companies will hire novice pilots if there is a cost saving to them. Seasoned Alaska Marine Highway Captains were contracted by the S.E. Alaska Pilots Association to pilot cruise ships through Wrangell Narrows and Peril Straights to assist our association in meeting the high standards we require of ourselves and industry should demand. We were told by one cruise ship company, after several transits, our pilotage service would not be required and their reasons given were the high costs of services in Alaska and they needed to cut costs wherever possible. We were asked if we could meet or beat the other pilotage bid being offered and we offered to meet the non-tariff cost such as pilot boats, travel and per diem. Our offer was declined and we were told this was strictly a business decision. This is a good example of seasoned pilots being passed over for a bargain. We ask this Board to restore common sense to our State pilotage system and our association will continue to do our part by providing highly trained and seasoned marine pilots to meet the requirements of industry and the State of Alaska.

Thank you for your attention and consideration to these recommendations.

Sincerely,



Captain Dale O. Collins
President

INTERNATIONAL ORGANIZATION



ROBERT J. LOWEN
International President
F. ELWOOD KYBER
International Secretary-Treasurer
GEORGE A. QUICK
Vice President

OF
**MASTERS
MATES &
PILOTS**

J. ALFRED ELLIS JR.
East Coast Regional Representative
DONALD L. HOFFMAN
Gulf Coast Regional Representative
REX POLLITT
West Coast Regional Representative
EMIL R. BOWERMAN
Panama Canal Regional Representative

December 7, 1990

Ms. Marilou Madden and Mr. Brad Pierce
State of Alaska, Office of the Governor
Office of Management and Budget
Division of Policy
P.O. Box AD
Juneau, Alaska 99811-0164

Dear Ms. Madden and Mr. Pierce:

It has been suggested that I follow up my letter of November 15, 1990, to you with factual examples of problems that have developed in other ports where laws or regulations have failed to require a unified pilots association or limit the number of licenses.

In the port of San Juan, pilots were licensed under the common laws of Puerto Rico but were not required to maintain service through an association. The licensed pilots worked independently with 12 pilots maintaining and operating nine pilot boats, either independently or individually, as co-owner with another pilot. Work was divided by watch system and whatever fees that were earned by pilots during their duty period belonged to them individually.

If two pilots were on duty and more than two ships required pilots at the same time, a frequent occurrence at a cruise ship port, ships were forced to wait or proceed without a pilot. Duty pilots would not call in other pilots to handle peak traffic loads; without pooling of fees through an association, it would reduce the earnings of the duty pilots. The ships that proceeded without pilots were billed by the duty pilots creating a source of unearned income.

The boats that could be maintained from the revenues earned by individual pilots were substandard and incapable of all weather operation. Even under moderate sea conditions, pilots refused to go outside the harbor and board ships at the designated pilot boarding area prior to reaching a harbor entrance channel. In many cases, ships transited the approach channel without pilots and were boarded or disembarked by pilots





Ms. Madden and Mr. Pierce
December 7, 1990
Page Two

only in the sheltered waters of the harbor. Without an association there was no central dispatch system. Duty pilots carried beepers and it was the task of ships agents to try to find the pilot when their services were needed. Not infrequently a pilot could not be located and ships proceeded without them.

The above combination of factors - a failure to pool revenues, substandard equipment, the lack of a central dispatch system with work rules ensuring the availability of pilots, resulted in a situation where about half the ships calling in San Juan were not provided pilotage service as required by laws and regulation.

An effective and reliable pilots system ceased to exist in San Juan. Without an association to provide for the administration of the service with seaworthy equipment, dispatching with effective work rules that assured the availability of pilots, the pooling of revenues and expenses that eliminated the personal advantage of working shorthanded and funded the needs of the service on a collective basis, the system failed. It fell into a state of anarchy with each pilot operating as he saw fit.

There was no consensus among the licensed pilots that an association was desirable. They cherished their autonomy and independence and distrusted the other pilots. The industry and the government were frustrated in trying to deal with the situation, as there was no representative authorized to speak for the pilots as a group. Any dialogue was only an expression of individual opinion almost certain to be opposed by others.

The problem came to a head when a pilot was not available to board a ship outside the harbor entrance and the ship attempted the approach unassisted. It grounded on one side of the channel and swung around to block the entire entrance to the San Juan harbor, the second largest passenger ship port in the world. It remained aground for several days trapping a number of large cruise ships with thousands of passengers aboard in the harbor, as well as shutting out several cruise ships with passengers to discharge and new passengers waiting on the dock in San Juan. It stopped all cargo operations that Puerto Rico's Island economy depends upon. The worst potential consequence was that a tanker carrying fuel to the electric generating plant supplying the city of San Juan was shut out. The city of San Juan was only hours away from a black out with the National Guard



Ms. Madden and Mr. Pierce
December 7, 1990
Page Two

on standby to prevent rioting and looting when the entrance channel was cleared.

The Governor of Puerto Rico appointed a special committee of port authority, shipping industry, and pilot representatives to address the problem and rewrite the regulations governing pilots.

It was apparent from the beginning that the problem lay with the lack of a unified pilot association to administer the routine operation of the pilot service in an effective manner, and the lack of a regulatory board composed of industry and pilots to establish policy and have oversight over the association as well as perform the usual regulatory functions of rate setting, licensing, discipline, etc.

I participated in drafting some of the regulations that were finally adopted. They addressed the issues discussed above and are in the initial stages of being implemented. Due to aspects of the regulatory and administrative system that are unique to Puerto Rico, they contain provisions that may be inappropriate for other jurisdictions. If you have not obtained copies in your review of pilotage in other states, I can send them to you.

Unfortunately, the situation in Puerto Rico reached crisis proportions before any effective intervention occurred. The circumstances that created the crisis are not unique to Puerto Rico. Where it is not compulsory to work through an association, there is always the possibility that strong personal differences among pilots can lead to a fracture in the association structure. Where the option is not available, personal differences get resolved and eventually are forgotten with no lasting damage.

In recent years we have had associations split by dissident pilots in Washington, Oregon, Hawaii and two ports in Florida. The results have been very disruptive to the maintenance of an orderly pilotage service and have lead to abuses cutting safety standards, illegal rebates and kickbacks, piloting by unlicensed personnel, etc.

After a great deal of time, effort, and pressure, the situation in Washington and Florida has returned to normal. The situation in Hawaii and Oregon is still unresolved with the potential to worsen.



Ms. Madden and Mr. Pierce
December 7, 1990
Page Two

I would urge you at this time to address the issues of administering the pilotage service through an association and providing for a compliment of licensed pilots that is in balance with the needs of maritime commerce.

To enact appropriate laws and regulations at this time, when the situation is stable and under control, is relatively easy. After the problems develop, finding a solution is much more difficult. You will then be dealing in an emotionally charged atmosphere with license holders claiming property rights in their licenses that cannot be amended, vested economic interest cannot associate personal animosities that have developed from competition, individuals seeking personal advantage amidst the confusion, lawsuits challenging the boards authority, etc.

I wish you well in your efforts and if I can be of any assistance please contact me.

Very truly yours,

George A. Quick
Vice President - Pilots

GAQ:kae

#3

SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

Tel: (907) 235-8783
Fax: (907) 235-6119

December 5, 1990

Alaska Board of Marine Pilots
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

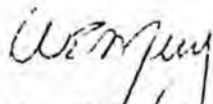
Dear Board Members:

Enclosed for your consideration is SWAPA's proposal for draft legislation to rewrite Alaska's Marine Pilotage Act.

We believe the language of our rewrite, if adopted, will address and solve the problems identified by the pilotage study group and does not threaten the license or status of those currently holding a state pilot license. At the same time it serves the public interest by protecting the pilotage system from competitive pressures fostered by shipping companies and agents and it provides the organizational structure to administer an efficient and highly trained pilotage service throughout the state. Finally, our draft recommends language which clearly establishes the primary duty of pilots to the state, its citizens and the environment.

Thank you for this opportunity to comment. I look forward to the meeting on December 17.

Sincerely yours,



Capt. W.E. Murphy
President

enc.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

DEC 10 1990

Div.

ALASKA MARINE PILOTS ACT
(As Recommended by Southwest Alaska Pilots Association)

11/30/90

Sec. 08.62.005. INTENT. (a) The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds 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 in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training and licensing of marine pilots.

(b) The legislature recognizes that marine pilots operating independently of the shipping industry have provided and will continue to provide essential services to the people of the State of Alaska. Marine pilots further the public interest by providing safe pilotage in the pilotage waters of the State of Alaska. It is the intention of this legislature that the board work with marine pilots to ensure that safe pilotage is maintained in the State of Alaska.

(c) The legislature also recognizes that in the past pilot organizations have provided, and in the future will continue to provide important services on behalf of marine pilots. By doing so, these pilot organizations have furthered the policy of protecting lives and property and the marine environment in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with pilot organizations in a cooperative effort to enhance that policy.

(d) The Legislature declares that the first and paramount duty of marine pilots licensed by the State of Alaska is to the state, acting through its Board of Marine Pilots, for the public safety, and the safety of the marine environment.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

DEC 10 1990

DIV.

LICENSING

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. The board shall consist of one state licensed marine pilot from each pilotage region who is actively engaged in, and for at least the past five years was actively engaged in, piloting vessels subject to this chapter, two agents or managers of vessels subject to this chapter, each being from a different pilotage region, and two public members from different pilotage regions who qualify under AS 08.01.025. All members of the board must be residents of the state.

Sec. 08.62.020 APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the members of the board in accordance with AS 08.01.020. No member may be appointed to the board for more than two consecutive terms.

Sec. 08.62.030 MEETINGS. The board shall hold at least three regularly scheduled meetings each year. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board.

Sec. 08.62.040. POWERS AND DUTIES. (a) The Board shall have the authority to

(1) provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter in order to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment.

(2) consistent with the law, adopt regulations, subject to the Administrative Procedures Act (AS 44.62) establishing the qualifications of and required training for pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licenses pilots and agents;

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region;

DEC 10 1990

(5) make available, upon request, copies of this chapter and the regulations adopted under it;

(6) review and approve the bylaws and the operating rules of pilot associations;

(7) audit a pilot association or any pilot whose pilot fees are not collected by an association for compliance with state law as considered necessary by the board; and

(8) review and approve training programs conducted by pilot organizations.

(b) The board shall make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter, including establishing different licensing criteria for different pilotage regions if justified by regional differences in piloting, establishing a mandatory random drug and alcohol testing program for marine pilots, and adopting criteria for trainee selection and for training programs conducted by pilot organizations.

(c) For good cause, the board may require a marine pilot to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a marine pilot.

Sec. 08.62.045 MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and enforce the provisions of this chapter. The coordinator may not be an active member of an Alaska pilot organization and may not work as a pilot while employed as the coordinator, except to the extent required by official duties. The coordinator is a member of the partially exempt service under AS 39.25.120. (If this provision is accepted, AS 39.25.120 will also have to be amended.)

Sec. 08.62.080 LICENSE REQUIREMENTS. (a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter.

(b) Except as provided in (c) of this section, a pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(c) The board may issue an endorsement to a licensed pilot for specific ports outside of the pilotage region for which the pilot is licensed. This endorsement and any renewals thereof shall be issued only to those pilots who are licensed for ports outside of their pilotage region on the effective date of this legislation. Renewal of endorsements shall be in accordance with Sec. 08.62.120.

(d) The board shall establish dates for license examinations and shall provide public notice of such dates.

Sec. 08.62.090 APPLICATION. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board.

(c) In order to be eligible to take the next scheduled examination, a person must file the application with the board at least 60 days before the date of the examination.

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS. (a) The board will issue a license to a person if he or she is a citizen of the United States, passes the examinations given by the board, completes the training requirements, qualifies in accordance with regulations adopted by the board, and meets the qualifications in (b) - (d) of this section.

(b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board of the following service:

(1) One year of service as a master of ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels any gross tons; or

(2) Two years of service as a master on vessels or tug and tow of not less than 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600 gross tons;

(3) Two years service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as the mater of ocean steam or motor vessels any gross tons; or

(4) Two years service as commanding officer of United States government vessels of not less than 1,600 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons.

(5) Three years of experience as a member of an organized professional pilots association, during which period the candidate was actively engaged in piloting while holding a minimum license as a master freight or towing vessel not more than 1600 gross tons.

Sec. 08.62.105 LIMITATION OF LICENSES. The board shall regulate and limit the number of pilots to be licensed under this chapter, such number of pilots to be regulated and limited to the number found by the board to be required to render efficient and competent pilotage service.

Sec. 08.62.115 APPLICANT SCREENING. (a) If more applications are received than requested, the board will select the most qualified applicant, depending on:

- (1) documented sea time;
- (2) time spent serving as master;
- (3) formal maritime training;
- (4) experience in the waters for which applying;
- (5) previous piloting experience.

(b) The selected applicants will be given a written examination on shiphandling, local knowledge and other subjects considered appropriate by the Board, which must be passed with a grade of at least 75 percent.

(c) A deputy pilot license will be issued to the successful candidate.

(d) The deputy pilot license will be good for two years, and is not renewable.

DEPARTMENT OF
& SUBCOMMITTEE
DEC 10 1990

Sec. 08.62.117 TRAINING. (a) The deputy pilot will be sent to an association of a region for training. The deputy pilot shall complete a minimum of one hundred familiarization/training trips on ships requiring pilots. These trips must include at least 50 dockings and 50 undockings performed by the trainee, divided among the major docks of the district named in the regulations. These dockings and undockings must be tug assisted in Southeast. An evaluation sheet will be submitted to the board of Marine Pilots by the supervising pilot for each observer trip and docking and undocking by the trainee. The supervising pilot must have at least five years' experience as an unlimited licensed pilot in that pilotage district.

(b) Successfully complete a class in shiphandling at a simulator approved by the board.

(c) Upon successful completion of the required observer trips, and dockings and undockings, and shiphandling simulator class, the deputy pilot will be eligible to take an examination for a "limited pilot license, not over 20,000 gross tons". This training period may not exceed two years or less than six months.

Sec. 08.62.119. PILOT REGIONS. (a) Due to the vastness of the pilotage districts, and because state pilotage requires a high degree of local knowledge and proficiency, it is deemed in the public interest that a pilot can be licensed for only one region. The regions in Alaska shall be defined as follows:

(1) "Southeastern Alaska Pilotage Region" shall include all waters of Alaska from Dixon Entrance to Yakutat.

(2) "Southwestern Alaska Pilotage Region" shall include all waters of Alaska from Icy Bay to Demarcation Point, including Dutch Harbor and Captain's Bay.

(3) "Aleutian Island Pilotage Region" shall include all waters of the Aleutian Islands and Alaska Peninsula.

Sec. 03.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. In order to renew a license, a pilot must

(1) submit a renewal application on a form provided by the

STATE OF ALASKA
DEPARTMENT OF
& T
DEC 10 1990

(2) meet the minimum qualifications set out in AS 08.62.100 and the board's implementing regulations;

(3) provide evidence of a satisfactory physical examination within 90 days of the date of renewal; and

(4) comply with (b) of this section.

(b) A licensed marine pilot who has not piloted in Alaska during the two years prior to a request for renewal may not have the license renewed until the pilot takes the number of familiarization trips required by the board in the pilotage region for which the license will be renewed.

Sec. 08.62.130. LAPSED LICENSE. The board will reinstate a lapsed license if, in addition to complying with the requirements of AS 08.01.100 (a)-(c), the pilot

(1) makes at least two trips for each year that the license has been lapsed to each major port and waterway in the pilotage region covered by the license;

(2) takes and passes a written and oral examination if the license has been lapsed five years or more; and

(3) complies with all other criteria established by the board.

Sec. 08.62.140. FEES. The department shall set fees under AS 08.01.065 for applications, licenses, and agent registrations.

Sec. 08.62.150 ENFORCEMENT AUTHORITY. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the person

(1) is incompetent in the performance of pilotage duties;

(2) is chemically impaired;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it;

- (6) is guilty of misconduct during the course of employment;
- (7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked; or
- (8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff established by the board.

AS 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

AS 08.62.160 MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating certain waters in, around, and adjacent to the State of Alaska as determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

AS 62.165 ALLOCATION OF LIABILITY. (a) A pilot licensed by the State of Alaska is not liable for damages in excess of \$5,000.00 for damages or loss occurring as a result of the pilot's error, omission, fault, or neglect in performing pilotage services, except that such limitation does not apply in cases where the pilot is either grossly negligent or guilty of wilful misconduct.

(b) Nothing in this section exempts the vessel, its owner or its operator from liability for damage or loss occasioned by that vessel to another person or other property on the ground that (1) the vessel was piloted by a pilot licensed by the State of Alaska, or (2) the damage or loss occurred as a result of that pilot's error, omission, fault, or neglect.

(c) An organization of pilots is not liable for any claims arising from acts or omissions of a pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. The limitation in this

subsection does not apply to acts or omissions relating to the ownership or operation of pilot boats or the transportation of pilots to and from the vessel to be piloted.

AS 08.62.170. PILOT'S LIEN. Each vessel, its tackle, apparel and furniture and other owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, the vessel's tackle, apparel and furniture for the pilot's compensation.

AS 08.62.175. PILOT ORGANIZATIONS. (a) Marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

(b) The Board of Marine Pilots is authorized to recognize certain pilot associations as exclusive representatives of pilots for the various pilot regions, with control over dispatching, training and the collection of fees for all pilots in that region. The articles of association, bylaws and working rules of such associations are subject to approval by the Board of Marine Pilots for compliance with appropriate law and must contain a plan for the efficient maintenance of a reliable and professional pilotage system for the particular region.

AS 08.62.180. EXEMPTIONS. This chapter does not apply to

- (1) vessel under enrollment, except as provided in AS 08.62.185;
- (2) fishing vessels registered in the United States or in British Columbia, Canada;
- (3) vessels propelled by machinery and not more than 65 feet in length over deck, except tug boats and tow boats propelled by steam;
- (4) vessels of the United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively
 - (A) on the rivers of Alaska, or

(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and

(6) pleasure craft.

Sec. 08.62.185 CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. (a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot states 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.

(b) the pilot required in (a) of this section shall control the vessel during all docking operations.

Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as an agent of a vessel subject to this chapter unless the person's name appears on the register of agents kept under AS 08.62.040(a)(3).

Sec. 08.62.190. PENALTIES. (a) A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$5,000 nor more than \$15,000 for the first offense and not less than \$10,000 nor more than \$30,000 for the second offense.

(b) A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 nor more than \$5,000.

Sec. 08.62.200. DEFINITIONS. In this chapter

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under AS 08.62.180.

AS 08.62.210 SHORT TITLE. This act may be cited as the Alaska Marine Pilotage Act.

TRANSITION. Sec. 1. The membership of the board as it exists on the effective date of this Act shall continue to conduct the affairs of the board in accordance with this Act until such time as the membership of the board is appointed in accordance with sections 2 and 3 of this Act, provided that the membership of the board is appointed in accordance with sections 2 and 3 of this Act on or before _____, 1991.

Sec. 2. A pilot licensed under AS 08.62 on the effective date of this Act will remain licensed under this chapter until required for the second time to renew his or her license in accordance with section 9 of this Act. Upon renewal, each pilot must then qualify for the license in accordance with the criteria in this Act and any implementing regulations. In addition, after the effective date of this Act, any pilot applying for a change in, an amendment to, or an endorsement for his or her license must qualify in accordance with the criteria in this Act and any implementing regulations.

EFFECTIVE DATE. This Act takes effect _____, 1991.

Antitrust Protection. With the change to Section 08.62.175 allowing marine pilots to form a pilot association, Sec. 45.50.572 (a) should be amended to read as follows:

AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural or marine pilot organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50 562-45.50.596.

STATE OF ALASKA
DEPARTMENT OF REVENUE
& ECONOMIC DEVELOPMENT

DEC 10 1990

DIV. OF REVENUE

Dunn
Oct. 29, 1990
312 Pine St. Box H
Ketchikan, Ak. 99901

Ms. Marilou Madden
Mr. Brad Pierce
State of Alaska
Office of Management and Budget
Division of Policy
Box AD
Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

After reviewing the draft legislation amending the Alaska State Marine Pilotage Act sent by Mr. Amendola, I wanted to take this opportunity to comment. Before doing so, however, I want to compliment you both on your thorough and well thought-out examination of the present pilotage statutes. For persons such as yourselves, who are not directly involved in pilotage, I feel that you are to be commended for identifying a number of problem areas and offering - for the most part - appropriate remedial wording to correct, or at least minimize, a number of the deficiencies which you found. As a working pilot on the waters of Southeastern Alaska, I wish to add my voice to those of my cohorts who have expressed their thoughts to you already. For the most part I would concur with the sentiments expressed by Capts. Eisensohn and Hodgmen. If I cover some of the same territory they did, it only emphasizes the fact that I agree with their assessment that some changes are still necessary so as to come

to grins with the problems we face. Simple, effective, and unequivocal language is necessary to produce the best possible legislation. I am confident that this is your aim as well.

My specific recommendations for desirable changes are:

1) In Section 5 - AS 08.62.040 (4) Do not grant exceptions to the stated tariff schedule. This only creates administrative and legal loopholes which unnecessarily complicate things for everyone concerned.

2) In Section 5 - AS 08.62.040 (6), (7), and (8), make all provisions regarding By-law reviews, audits, and training applicable to groups and independent pilots in addition to pilot associations.

3) In Section 5 AS 08.62.040 (8)(c), what is GOOD CAUSE with respect to the Board requiring a pilot to submit to a physical or mental examination?

4) In Section 6 AS 08.62.045 - MARINE PILOT COORDINATOR - I concur with Captain Hodgman that the Department, SUBJECT TO THE GUIDANCE AND OVERSIGHT OF THE BOARD (Wording changed from "with the approval of the Board") is authorized to hire a Marine Pilot Coordinator, etc. Care must be taken to insure that the Board has the authority to take appropriate action -on its own- when the coordinator is not fulfilling his responsibilities in a satisfactory manner.

5) In Section 9 Section 08.62.100 - ENTRY LEVEL QUALIFICATIONS (h): It is my feeling that-the enumerated requirements as

stated (1-5) should be changed to something like the following:

(1) In addition to the qualifications in (e) of this section, an applicant must provide documentation of the following:

(1) An applicant must (A) Hold, at a minimum, a currently valid License as Master of Vessels of 1600 Tons or more,

AND (B) Have at a minimum, 6 years of marine discharges as a licensed deck officer (or 20 years cumulative service aboard Government or Military Vessels such as the Coast Guard, Navy, NOAA, Corps of Engineers, etc.)

(2) IN ADDITION TO the above, the applicant must meet at least 1 of the following requirements, or an equivalent combination of more than 1 (Time to be calculated in the same manner as for Coast Guard License upgrading, etc.)

(A) Two years' service as Master of Local Coastwise, or Ocean-going vessels

(B) 300 Days working as a pilot in a recognized pilotage area
(Under present wording, pilotage experience elsewhere is not even mentioned.)

(C) 2 Years as a Deck Officer on Vessels of 1600 Tons or more in Alaskan waters

(C) 2 Years as a Deck Officer on Ocean-going or Coastwise vessels while holding an unlimited Ocean (or Great Lakes) Chief Mate or Master's License

6) In Section 10 Section 08.60.100 RENEWAL (e)(2) Make it possible to "Grandfather" those already working as pilots who may not presently meet all the minimum qualifications enumerated in 08.60.100 and the implementing regulations (Another reason for changing them along the lines suggested in 5). In this I concur

with Capt. Elsensohn.

7) In Section 08.62.120 RENEWAL (b) Specify a minimum number of days (60) of active piloting required during the 2 years preceding the request for renewal so as to avoid a lapse.

8) In Section 08.62.160 MANDATORY EMPLOYMENT OF PILOTS - I concur with Capt. Hodgman that wording should be inserted to the effect that a pilot so employed will be "on duty at all times when underway on the waters covered by this section."

9) In Section 08.62.180 EXEMPTIONS (5) - I concur with Capt. Elsensohn that there should be wording to the effect that "Vessels of Canada, including CANADIAN BUILT AND DOCUMENTED cruise ships engaged in frequent trade between B.C. and Alaska, etc." are exempt from pilotage. (This is to preclude any possibility of cruise lines possibly using Canada as a flag of convenience so as to avoid having to utilize Alaska pilots.)

10) In Section 08.62.190 PENALTIES a) Omit the following language "When a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot." This, again, opens the door to abuse by creating unnecessary exceptions. Also increase the fine to a realistic figure for example, not less than \$5000 nor more than \$10000.

In b), likewise increase the fines to appropriately realistic higher figures.

11) Finally with respect to training, it is my opinion that the

new wording should incorporate enough flexibility within them so that pilot associations continue to have sufficient leeway so as to allow them to both train new pilots and take in new members according to their own internal criteria, so long as these criteria reasonably adhere to the guidelines set forth and are equitably administered by the associations.

In closing, I wish to thank you for taking the time to become aware of my concerns. Our continued success is dependent upon keeping pace with changing realities. Your efforts have contributed significantly to achieving this objective.

Sincere Best Wishes

Capt. Roger S. Dunn

Capt. Roger S. Dunn

S. E. Alaska Pilot

Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

October 22, 1990

Marilou Madden and Brad Pierce
State of Alaska
Office of the Governor
Office of Management and Budget
Division of Policy
P.O. Box AD
Juneau, Alaska 99811-0199

Dear Marilou and Brad:

Before getting into my comments on the proposed legislation to modify the Marine Pilot Act, I must tell you that I believe you did an excellent job in coming up with facts in your study of pilotage. For two people to start with no knowledge about an industry, and be able to present such an understanding of it in so short a time, is amazing to me. Congratulations.

As a member of the Alaska State Board of Marine Pilots for the last three years, I can state clearly that a most important consideration in the new statute and regulations must be the elimination of exceptions. I hope the state ends up with documents that have no exceptions, in order that the Board of Marine Pilots is not always facing a lawsuit. The exceptions in the regulations have made my service on the board very frustrating.

Comments--

Sec. 08.62.740 - Powers and Duties.

Page 4, No. 4 - Delete the words "provided that the board may adopt different tariffs within a region if justified."

By having the above words in, you are creating an exception.

Page 5, No. 7 - Change to read "audit a pilot association, pilot group, or independent pilot as considered necessary by the board."

If we are to have pilot groups that are owned by one person or company, and independent pilots that work through no group, they should all be subject to state inspection.

Page 5, No. 8 - Change to read "Direct training programs to be conducted by pilot organizations."

The state must direct the training programs in order to have them state programs. Associations can not have their own training programs.

Sec. 08.62.080 - License Requirements.

Page 6, (b) & (c) Because these two create an exception they cancel each other and equal nothing. Please rewrite as follows:

(b) "A pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(1) Those pilots who, on the effective date of this act, have more than one region on their license will be grandfathered, but must meet the requirement for each region at renewal time."

This will eliminate the exception.

Sec. 08.62.100 - Entry Level Qualifications.

Page 7, (b) (2) Change to read "master of freight or towing vessel.

Page 8, (b) (5) - What does this mean? It could be construed to mean a charter fishing boat, sightseeing boat or pleasure boat. Whatever it is, it needs to be clearly defined. This is the kind of wording that gets the Pilot Board into trouble.

Page 8, Add (6) "All time to be counted as the U.S. Coast Guard counts time."

That means that only working time counts, which makes the time meaningful.

Sec. 08.62.120 - Renewal.

Page 8, (a)(2) This item would be acceptable only if all present licenses were grandfathered. As you know, one of the reasons for all of this work of re-writing the Pilotage Act is that Alaska has such a low requirement for entry level of experience. There are many Alaska pilots at this time that do not meet the criteria set forth in this act. This act must be an instrument to improve pilotage in Alaska, not eliminate some pilots that are working here now.

Page 9 (b) Change to read "A licensed pilot who has not piloted in the region covered by his/her license at least sixty (60) days during the two years prior to - - - - -"

Sec. 08.62.160 - Mandatory Employment of Licensed Pilots.

Page 11 Add sentence - "The State licensed pilot will be on duty at all times the vessel is underway, while on the waters covered by this chapter."

Sec. 08.62.175 - Pilot Organizations.

This section as written says nothing. The only reason that I can see for the proposed "Sec. 08.62.040-(a)(6) review and approve the bylaws and the operating rules of pilot association" should be that the state would recognize pilot associations in such a manner that they would be protected from anti-trust suits. This is the section that should sanction associations as long as their bylaws and operating rules are approved by the state.

Sec. 08.61.180 - Exemptions.

Page 13 (5), Change to Read - "Vessels of Canada, including Canadian built cruise ships under the Canadian flag, engaged in frequent trade between -----"

Sec. 08.62.190 - Penalties.

Page 14, (a), Remove the words "when a pilot is available". This is another exception that needs to be removed. The section gives the vessel the right to proceed if the perils or hazards of sea prevent a pilot from reaching her, that is all that is appropriate. It is up to the board to see that there are an adequate number of pilots for the trade.

Also, the fine in this section needs to be raised to an amount that the state will be willing to enforce. In the past, pilots have reported sighting foreign vessels in Alaska waters without pilots, but the state has done nothing about them.

Sec. 19 - Transition.


Page 15, Sec. 2 - This section magnifies the problem raised by Sec. 08.62.120, (a)(2). Many of the presently licensed pilots in Alaska do not have the background that meets the requirements. Unless they are grandfathered, they will not be able to renew.

Marilou Madden and Brad Pierce
October 22, 1990
Page 4

One very important item is not approached in Sec. 08.62.040. The section should set the criteria to be used by the board in determining the tariff for a pilotage district. Because the State of Alaska must compete with other areas for qualified applicants to become pilots, I suggest that the state establish a desired income for pilots equal to that of other Pacific Northwest pilots. The income should compare to that of the Columbia River Pilots, Columbia River Bar Pilots, Port Angeles Pilots, Grays Harbor Pilots, or Coos Bay Pilots. Perhaps an average of all of those association would be appropriate.

Thank you for your consideration of the above items.

Respectfully,


Capt. H. K. Elsensohn

Oct 30, 1990

ATTN:

May Lou Madden
Brad Pierce

Following seven pages are
comments from Capt. Stuart Mosk.
We have discussed these on the
telephone.

Looking forward to seeing you
in Anchorage!

Bob Boyd

FAX # 619-423-0667

To: AMP
From: Stuart

If I were writing to Marilou Madden to respond to the advisory group's study and the proposed changes to the Alaska Statutes, I would say something like the following. I would also send copies to SEAPA and SWAPA.

Dear -----

Thank you for sending the copy of the Alaska Marine Pilotage Study. I was very pleased with the extent of the research and background material and the obvious care the analysts took to objectively study marine pilotage issues in the state of Alaska and to compare them to the situation in other states and how problems were resolved there.

Before commenting on the proposed changes to the Alaska statutes published by the Attorney General's office, I'd first like to make some observations on the material in the study itself. In reading the study it seems that all pilots and those associated with the shipping industry agree that the first obligation of pilots is "to protect lives, property and the environment of the state". The question then of how to achieve this goal becomes the dividing issue among all the concerned parties.

In the study there is one section devoted to the investigation of competition among pilots. Competition, both within and between associations--along with the topic of pilot qualifications--is the foundation of the problems within the pilotage service in Alaska.

As mentioned in the study competition does bring increased responsiveness to industry needs. However, responsiveness cannot be measured simply in terms of cost efficiency. For example, the two dissident pilots that broke away from SEAPA are surely providing a very cost efficient service to their employers. The pilots are happy because they have no overhead to speak of in their operation so a large percentage of the tariff collected goes to the pilots. The shipowners are happy because they have unrestricted availability of their pilots with, I suppose, low travel and per diem expenses.

But pilotage is a service. By not being part of a group these two pilots are not able to provide pilotage to other ships requiring pilots, such as those that arrive in the winter, or those that call on a random basis. The cost of providing a full pilotage service in southeastern Alaska falls on those willing to provide it, whether it is as profitable as the company work or not. In addition, an association of two pilots cannot meet the state mandate of providing an adequate training program. Pilots working on only one class of ship cannot train others to become fully

qualified pilots capable of working on all types of ships under all conditions.

There is a difference between serving as a pilot and serving as what amounts to a company employee.

The other aspect to consider in this situation is that the breakaway pilots were given extensive training by the other pilots in the SEAPA group. Without the opportunity to obtain a license and upgrade it provided by SEAPA, these two pilots would not have been able to form their own group. It seems as though the study recommends that all pilots be trained by the associations, meaning all independent pilots must come from their former associates.

This example also brings into focus the assertion that company pilots are unduly under the influence of the company, at the expense of safety. Two breakaway pilots are not nearly as able to resist company pressure as an association. If the two pilots lose their contract, they are quite restricted in their opportunities for further employment as pilots.

This situation is not, however, comparable to what SWAPA asserts about AMP. In the Western region it is SWAPA (which accounts for perhaps 20% of the pilotage service in the area) providing the threat of competition to an established organization. If SWAPA were not in the Western region, obviously, it would not be possible for a company to pressure AMP.

The pilotage situation in the Western region is unique in Alaska. It is only there that two pilot groups are working in the same area. That is, in southeast Alaska SWAPA does not compete for business, and in the remainder of the state SEAPA does not compete with other associations for work. It is only in AMP's primary revenue center (Dutch Harbor) that two associations are working.

Beside the issue of competition, the other important concern facing the state of Alaska is the qualifications of pilots, and the state's "certification of competency" in granting a pilot's license. It appears that the study and resulting proposals are trying to say that the state will grant a license as pilot--that indicates competency--but that the new pilot will not be truly competent until he has trained through an approved association training program.

The study notes vastly different opinions on the topic of trainee qualifications. On one hand are those that state that pilots must have "extensive sea experience on large vessels" in order to be an unlimited pilot, while elsewhere in the study (Attachment B) it is noted that through the apprentice system of pilot training as practiced primarily on the east coast no sea experience is required at all. Both routes lead to competent pilots.

Since the state will be approving rigorous training programs provided by the associations then the need for increasing the entry level requirements of pilots is not as great as it might appear. The issue is not so much the qualifications of trainees before they become pilots, but how well qualified and capable they are to serve as pilots once they have completed their training and examination.

Perhaps the state should consider the concept of licensing as a discretionary power and not an individual right. Another possibility is that the granting of a license is conditional upon completing an approved association training course.

The heart of the study is the explicit social contract established between the state and the pilots. As noted by Mr. Kirchner and Mr. Cloudy, the pilots will become instrumentalities of the state, serving in a quasi-public capacity. The benefits that will accrue to the state include the training provided by the pilot associations, the power to charter associations and regulate them through approval or disapproval of bylaws (and thus the selection of potential trainees), and the oversight of pilots' financial statements.

In effect, then, the state has modified its approach of administering by enforcing regulations authorized by statute into a system whereby a third level is established. Under this system the state will now regulate the bylaws of the pilot associations, making them subject to Board of Marine Pilot regulation, which is subject to Alaska Statute. This system should provide the flexibility necessary to meet the divergent pilotage needs in the various parts of the state.

To the pilots' benefit the state will limit by statute their liability for accidents and help to protect them from anti-trust litigation.

What the study has not recommended and the proposed changes to the statutes do not accomplish is to stabilize the pilotage industry in Alaska. I do not believe it is in the state's best interest at this time to limit the number of pilots. What I do believe will best serve the state of Alaska, the shipping industry and the pilots themselves is to limit the number of pilot associations (and in this an independent pilot working for only one company could be considered an "association").

In Alaska, three pilotage areas are sufficient, each one served by only one association that is responsible for training and dispatching pilots, collecting tariffs and operating under their respective bylaws as approved by the state.

To expand upon the limited entry to the fishing industry analogy mentioned in the study, it is possible to consider

the entire fishing industry as similar to pilotage in Alaska. To limit competition for a finite resource the state has instituted limited entry. But instead of seeing this as limiting the total number of permits it is necessary to look at limited entry as requiring fishermen to belong to an association of fishermen in a specific geographical region, say the Bristol Bay District, or the Chignik District. Fishermen from one district cannot fish in another district.

Within each district there are regulations determined on a local basis, depending on the conditions and requirements of that area, giving the state very good control over the fishing in each district. As conditions change so do the regulations. The situation could easily be the same for pilots. The state sets policy by statute and regulation and then tailors more specific regulations for each pilotage area through the approval of association bylaws.

This way, situations unique to each area can be dealt with regionally instead of statewide. For example, southwest and western Alaska have no need for channel licenses, yet southeast does. Southeast and western Alaska have no need for VLCC requirements, but southwest does. Why have statewide regulation when regional regulation is so much more flexible? In this system, if a problem develops the pilot coordinator, in conjunction with the Board, can deal with only one group--the association for the area--instead of an assortment of pilots and associations, giving the state better control over the pilotage industry.

The other benefit of this system is that it eliminates competition, or the threat of competition from pilotage. No longer would pilots be unwilling to give dockings or other training to pilots for fear that they would break away and form competing groups. Pilots of one association could not be threatened by owners with replacement by another association. Restraint of trade and entry to association issues could be dealt with in the bylaws that are approved by the state.

As the study states "State pilot licenses can be considered both a certificate of competency and a franchise to perform a public service...". The dictionary (Webster's), as well as business practice, define a franchise as "the right or license granted to an individual or group to market a company's goods or services in a particular territory; the territory involved in such a right". Along with the duties and obligations conferred with the pilot's license should come the territorial benefits of the concept of franchise.

By its very nature a franchise involves exclusion and the state, through statute, should accept this. By becoming chartered (charter: "a grant, or guarantee of rights, franchises or privileges from the sovereign power of a state...; a special immunity, privilege or exemption").

associations should also become franchised. As Mr. Cloudy states in Attachment C, "The State must realize that competition is not the goal of marine pilot regulation and that, to the extent monopoly promotes the goals of marine pilotage (e.g., safety and a reasonable return for professional effort expended), such should be recognized and accepted as legal and appropriate."

I don't know about other boards in Alaska, but I once had a real estate salesmans's license in Colorado. As one of the conditions for licensure every salesman had to be employed, or maybe under the supervision (I don't remember the wording), of a real estate broker. I don't see why Alaska couldn't require a pilot (salesman) to work under the authority of an association (broker) and its bylaws.

In addition to comments on the study and its recommendations, the proposals put forth by the Attorney General's office also merit comment.

Sec. 08.62.010

The clause in this section requiring pilot members of the board to have 5 years of active service as pilots is an unfair burden on the members of Alaska Marine Pilots. Many of the members of this group have only three years service. I recommend either changing the requirement to pilots of record as of 1-1-88, to begin the 5 year rule in 1993, or to eliminate the service requirement. Also, as written, this regulation does nothing to prohibit a member of SWAPA from representing the western Alaska region, thereby giving them two pilot members on the board.

If the state is going to require board members to be residents of Alaska, it must define resident for purposes of this regulation. Many of the pilots in the western area do not live in the Aleutians, nor do many of the contract pilots working in southeast Alaska live in Alaska. The work schedules in these areas require months of duty at a time, with corresponding periods of vacation time, allowing these pilots more flexibility in their choice of residence. Some provision must be made to allow for this pool of expertise and experience to be part of the decision making process in Alaska state pilotage.

Sec. 08.62.040 (a) (4)

I'm not sure what the purpose of the clause "...provided that the board may adopt different tariffs within a region if justified" is. Does this mean that the tariff will be set by class of vessel? Without further clarification, I would eliminate this clause.

Sec. 08.62.040 (a) (5)

In the implementation of any body of regulation there are

always going to be interpretations and standard operating procedures used. In the past the board has used SOP's that had the effect of becoming regulations. I think this is unavoidable, but the existence of these procedures should be clearly stated in the statutes. Paragraph (5) seems to be an appropriate place to insert this notice.

Sec. 08.62.040 (a)(6)

This paragraph requires the approval of the board for the bylaws of each association. It does not provide for an appeal process for bylaws that are not approved. The clause should not only provide for an appeal, but it should also require re-approval at specified time intervals, or whenever changes are made. The question of the bylaws of pilots outside the associations is not addressed. If the state allows pilots to work outside the association system, it is in effect creating two classes of pilots: those in the associations that must adhere to the "social contract" and those outside of the associations that don't.

Sec. 08.62.080 (c)

This clause negates the whole attempt at resolving the competition issue in Alaskan pilotage. Paragraph (b) standing alone, would be much better. Areas or ports near the boundaries of two areas should be made part of both areas. These special areas should be limited to Yakutat, Chignik and Alitak.

Because of past practices in the westward area causing the inability of AMP pilots to increase the tonnage limits on their licenses, there must be a transition period in that area during which SWAPA pilots would be allowed to work in Dutch Harbor. The pilots allowed to work there should be limited to those showing a certain amount of recent pilotage in the area. There should be no blanket grandfathering of all pilots with western Alaska coverage.

At this point it must be emphasized that adoption of paragraph (b) does not regulate a certain class of pilots out of work. The pilots most effected by this change, those in SWAPA who have been willing to work in Dutch Harbor, will still have an ample amount of work to do in their primary region of southwest Alaska.

Sec. 08.62.100 (a)

As mentioned in the marine pilotage study, maybe Alaska should adopt a "discretionary" policy toward granting licenses. This would help to alleviate the problem of "regulation by exception" that is plaguing Alaskan pilotage.

Sec. 08.62.100 (b)

In this section I would add to paragraph 5 the clause "while holding master of 1,600 gross ton license".

I would also add a paragraph (6) two years of active service as a pilot in another pilot association.

I would add a seventh paragraph stating that a combination of the above service would be acceptable.

An eighth paragraph would provide for a mechanism for those candidates not meeting the above requirements to enter a pilot training program. This could include increased training at the association level, similar to the apprentice pilot program as used on the east coast.

Sec. 08.62.120 (a) (2)

This paragraph must be rewritten. A pilot currently working in Alaska who has not met these new standards will have no opportunity to obtain more sea time without quitting piloting for a time. The inclusion of a new paragraph (6) in 08.62.100 (b) would resolve this problem. Otherwise, grandfathering will be necessary.

Sec. 08.62.120 (b)

The definition and purpose of the familiarization trips mentioned in this paragraph must be stated explicitly. As it reads, the paragraph implies that these trips are described elsewhere.

Sec. 08.62.150 (a) (B)

Currently, there is an inequity in the state tariffs. In the outport areas it can be less expensive for a ship to make a harbor shift for \$250.00 rather than to pay a standby day of \$600.00. This must be addressed before changing this clause from its current wording.

Sec. 08.62.175

A better wording of this clause might be to include the phrase "independent contractor" after the word associations. This would give statutory authority to the fact that pilots are independent within their associations for liability purposes.

The TRANSITION paragraph allows two renewals to meet the new requirements. As stated under the comments on Sec. 08.62.120 (a) (2), a currently working pilot will not have the opportunity to gain more sea experience without leaving the piloting business.

MAJOR ISSUES IN NEW LEGISLATION

1. REQUIRED PILOTAGE

A. Existing Law: AS 08.62.160 requires vessels navigating the "inside coastal waters of Alaska as determined by regulation" to employ a licensed pilot.

B. Board's Proposal: Section 14 of the Board's bill (pg. 9) would amend AS 08.62.160 to require pilots for vessels navigating "certain waters in, around and adjacent to the State of Alaska as determined by the board..."

C. Pilots' Proposal: Section 15 of the Pilots' bill (pg. 8) would amend AS 08.62.160 to require pilots for vessels navigating the "water of or adjacent to, to the extent permitted by federal law, the state as determined by regulation..."

COMMENTS: Either of the proposals would expand mandatory pilotage in the State. The Pilots' Proposal, however, appears to be the ultimate make work bill for pilots by requiring pilots in all Alaska waters, even in places where there is no good reason to have pilots (open seas).

2. PILOT ORGANIZATIONS

A. Existing Law: has no references to marine pilot organizations.

B. Board's Proposal: Section 16 (pg. 10) adds AS 08.62.175 to permit pilots to form themselves into pilot organizations. Section 5 (pgs. 2-4) amends AS 08.62.040 by adding paragraphs (6), (7) and (8) which give the Board power to review and approve organization bylaws and operating rules, audit the organizations and review and approve organization training programs. Section 15 (pgs. 9-10) adds AS 08.62.165(c) to provide that these organizations are not liable for the acts or omissions of their members nor are the members liable for the acts or omissions of the organization or the other members. Section 20 (pgs. 11-12) amends AS 45.50.572(a) by attempting to extend state antitrust immunity to these organizations.

C. Pilots' Proposal: Section 18 (pg. 9) adds AS 08.62.175 permitting pilots to form organizations. It goes on, however, to permit only ONE organization within each region. It further goes on to give the organization control over significant aspects of pilotage (dispatching, training and "other functions that the organization may assume"). Finally, it attempts to significantly circumscribe the power of the Board to review the articles, bylaws and rules of the organization by specifying narrow criteria to be applied by the Board in its review.

Section 5 (pgs. 2-4) repeals and reenacts AS 08.62.040 to give the Board various rights and obligations as to the organizations: (i) paragraph 3 requires the Board to recognize the organizations; (ii) paragraph 7 makes it clear that the training programs will be the

exclusive province of the organizations; (iii) paragraph 9 gives the Board power to review and approve articles, bylaws and rules of organizations but requires that they be approved if they meet the narrow criteria described above; and (iv) paragraph 10 gives the Board the power to audit the organizations. Section 16 (pg. 8) essentially follows the Board's approach regarding liability for acts or omissions. Section 24 (pgs. 10-11) covers the antitrust immunity for extends it only to "licensed" marine pilot organizations.

COMMENTS: The obvious purposes of the Pilots' Proposal are: (1) to put Alaska Coastwise Pilots out of business (that is the pilots organization that has just been formed to compete with Southeast Pilots Association (SEPA)); (2) to gain monopolistic powers for these organizations over the pilotage industry thereby effectively making it impossible for any pilot to exist outside of these organizations (somewhat ironic given the stated need in the legislative intent for pilot independence); and (3) to effectively allow these organizations to operate as a quasi-governmental entity with all the privileges that allows but without any of the oversight normally extending to governmental agencies. It would effectively put the shipping industry at the mercy of these organizations since no pilot could hope to work in Alaska unless they belonged to the organizations. The true power these organizations will have needs also to be understood within the context of the next item discussed; that being the fact that the pilot organizations will hold 3 of the 7 seats on the Board.

C. PILOT BOARD CONTROL

A. Existing Law: AS 08.62.010 provides for a 7-person Board to consist of 2 pilots, 2 representatives of the shipping industry, 2 public members and the Commissioner or his/her designee.

B. Board's Proposal: No change.

C. Pilots' Proposal: Section 2 (pg. 2) amends AS 08.62.010 to retain the 7-person Board but requires that it consist of 3 pilots, 2 shipping industry representatives and 2 members of the public.

COMMENTS: The proposal speaks for itself. The pilots seek to expand their power on the Board from 2/7ths to 3/7ths. Under existing law, they need to find 2 other members to agree with their positions. Under their proposal, they need to only find one.

D. PILOT RATES

A. Existing Law: AS 08.62.040(4) gives the Board the power to adopt regulations under the Administrative Procedure Act establishing standards by which pilotage fees may be established.

B. Board's Proposal: Section 2 (pg. 1) adds AS 08.62.005(a) in which it states that there is need to give the Board of Marine Pilots authority to establish pilotage tariffs. Section 5 (pg. 3) amends AS 08.62.040(a)(4) to give the Board authority to set pilotage tariffs.

Section 12 (pgs. 8-9) amends AS 08.62.150(8) to give the Board the power to discipline a pilot that charges, collects or receive an amount for pilotage services which is below tariff.

C. Pilots' Proposal: It is similar to the Board's Proposal except that the proposed AS 08.62.040(5) (pg. 3) seems to also put the Board into the business of approving training charges. It is not clear as to whether these are charges imposed on the pilots or to be passed through to the shipping industry.

COMMENTS: Existing law has been interpreted to preclude the Board from actually establishing tariffs. There is no good reason why pilots need to have their fees set by government. There is nothing about the pilot industry which suggests that the free market system cannot adequately address the problem of determining how much pilots should be paid. Government controlled pricing becomes appropriate when it is the government trying to restrain private industry from utilizing monopolistic power to price gouge (e.g., regulation of utilities). What we have here is a situation where the pilots are trying to use the government in order to gain more from the shipping industry than they could obtain through direct dealings. In other words, this is not a case of the government protecting the public from a monopoly; it is a group of people trying to form a monopoly by getting the government to protect them from the public. The mistake of this approach is only compounded when one appreciates that under the Pilots' Proposal, the Board setting the rates will, in all likelihood, be controlled by the pilots.

E. PILOT LIABILITY

A. Existing Law: no limitation on pilot liability for errors or omissions.

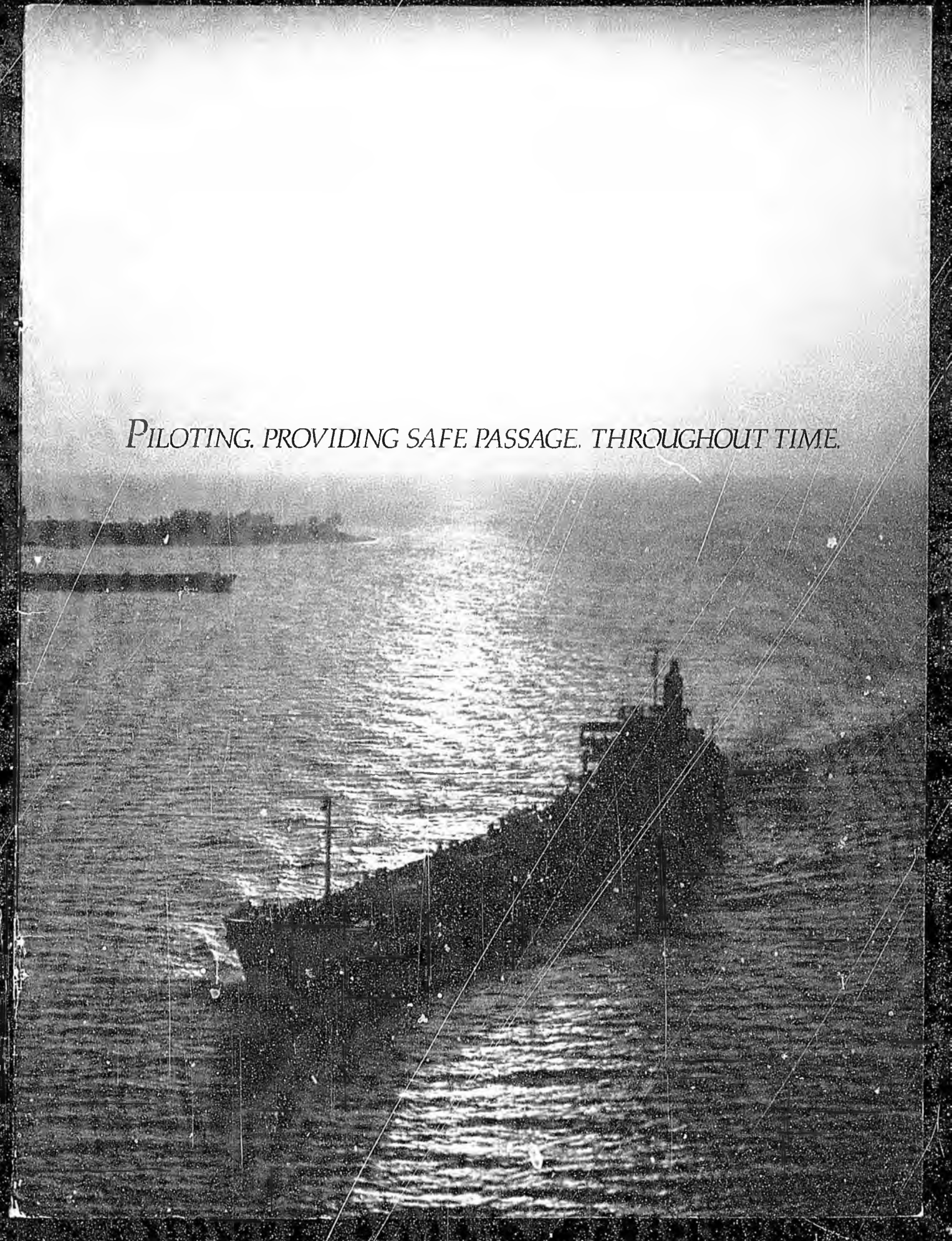
B. Board's Proposal: Section 15 (pgs. 9-10) adds AS 08.62.165 to limit individual pilot liability to \$5,000 per incident (except in cases of gross negligence or wilful misconduct) while at the same time making it clear that the vessel and its owner are fully liable. Finally, pilot organizations are not liable for the acts or omissions of their members nor are members of organizations liable for the acts or omissions of other members or of the organization.

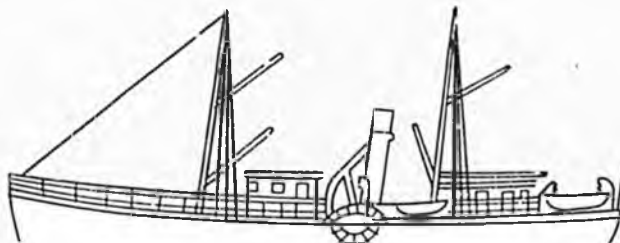
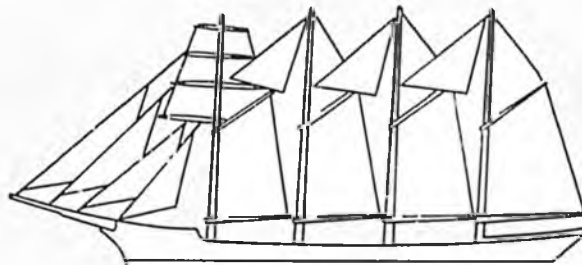
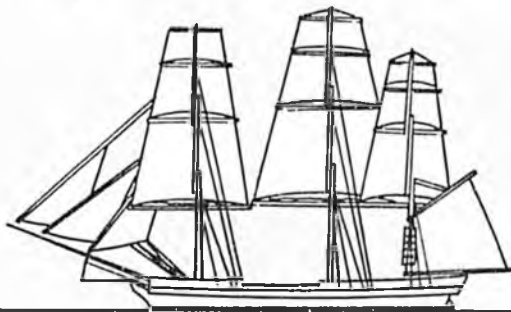
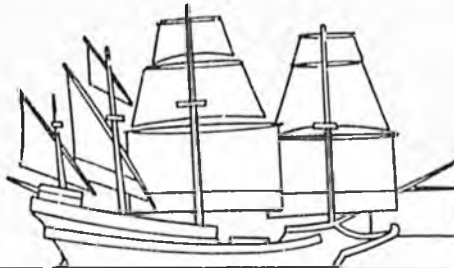
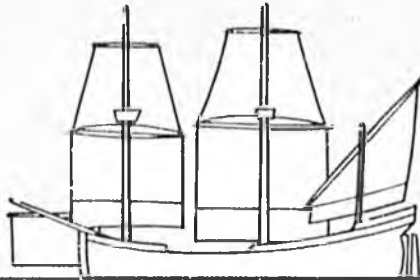
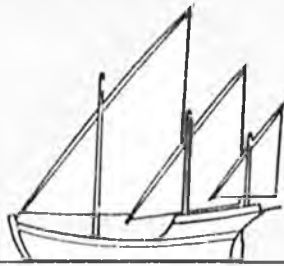
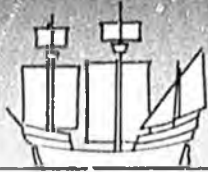
C. Pilots' Proposal: Section 16 (pg. 8) adds AS 08.62.165 which essentially tracks the Board's proposal except that it limits pilot liability to \$5,000 even in cases of gross negligence.

COMMENTS: This provision essentially brings us full circle. The required use of pilots is expanded; rates are arbitrarily controlled; the organizations gain monopoly power; and the pilots take control of the Board of Marine Pilots. Having done all this to force the shipping industry to accept the pilots on their terms, this last provision now makes it clear that the pilots have all the rights but none of the liabilities.

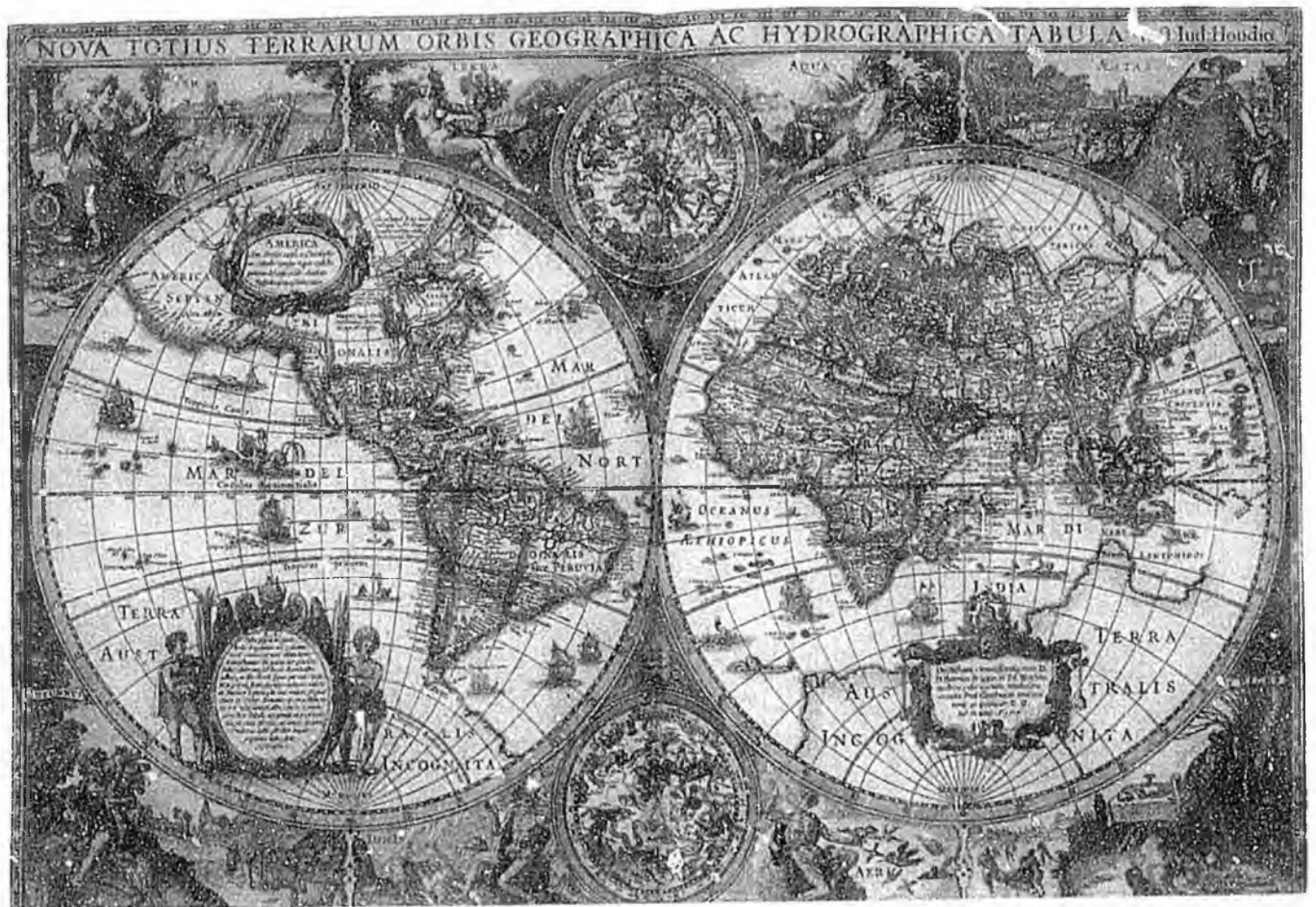
91-B/PILOTS.LEG - 2/21/91

PILOTING. PROVIDING SAFE PASSAGE. THROUGHOUT TIME.





THE HISTORY OF PILOTING



From the earliest records of civilization, man traveled the waters and relied upon the expertise of pilots to assure safe passage both when nearing and leaving the seacoast.

In the Holy Bible (27, *Ezekiel*) and in the writings of Homer and Virgil, there are references to pilots and the roles they played in assisting vessels that navigated close to shore.

Thus, from the cradles of civilization, the profession of piloting remains relatively unchanged. Today, pilots offer the same critical judgement and unsurpassed familiarity with land, sea, and the ever-changing elements, as they have since the dawn of history.

Early explorers realized the need for pilots and frequently engaged them in their travels. Both Marco Polo and Vasco da Gama used the services of Arabic pilots. These pilots exhibited superior navigational knowledge and used exceptionally sophisticated equipment, such as the *al kamal*, precursor of the octant and sextant, for determining a ship's latitude.

Seafarers in different parts of the world exhibited very specialized skills. The Mediterranean seafarers, for instance, most notably the Genoese and Venetian, were influential because of their navigational skills. Early maps of the waters in the New World reflected an Italian and Jewish-Majorcan influence.

When Christopher Columbus first landed at tiny Conception (or at Watling Islands), after crossing the then unknown western region of the Atlantic Ocean, he had Juan de la Cosa on board as his chief pilot. This same pilot also accompanied Columbus on his second voyage this time also acting as chief cartographer. Also aboard this voyage was Juan Ponce de Leon, who twenty years later in his search for



the Fountain of Youth, sighted the mainland of Florida on March 27, 1513.

The Spaniards explored both the Atlantic and Gulf coasts of Florida and had on board one of the very first pilots, identified as Anton de Alaminos, who not only offered extensive coastal experience, but also discovered the Gulf Stream.

Because current local knowledge was so crucial to the safe navigation of ships through reefs, bars, channels, and shifting sands these "*pilotos*" or pilots eventually specialized in handling vessels just in the confined waters of the ports.

By 1500, the Spanish maritime influence was felt everywhere from Spain to the Caribbean. The first seat of local government and the most important regional port was Santo Domingo, la Hispanola. Later Havana, Cuba became the center of Spanish regional government. San Juan, Puerto Rico followed as an important center too.

During that period, ships of the Spanish fleet serviced the areas under their control. They made stops from St. Augustine to St. Helena Sound (once known as *Rio Dulce*) and employed local pilots to guide their ships.

Even in the early years, American seaports used pilots. In fact, along the Mississippi River lived one of the world's most famous pilots—Samuel L. Clemens, better known as Mark Twain (1835-1910). He took his pen-name to demonstrate his devotion to the time he spent on riverboats. By the "mark twain" represented the twelve feet or two fathom mark used by pilots in sounding shallows for the minimum depth considered safe for most river craft of that period.

About the Word "Pilot..."

Interesting to note, that the English word "*pilot*" is purported to have originated from the Dutch words "*pil*" and "*lood*." "*Pil*" means pile or pole and "*lood*" means lead. Today, the Dutch word for pilot is simply "*loods*." According to the Dutch, a pilot is one who uses a lead suspended from a line or pole to ascertain the water's depth. Even in today's more advanced system of piloting, the sounding lead remains an essential tool for those vessels not equipped with fathometers or other electronic navigational equipment.

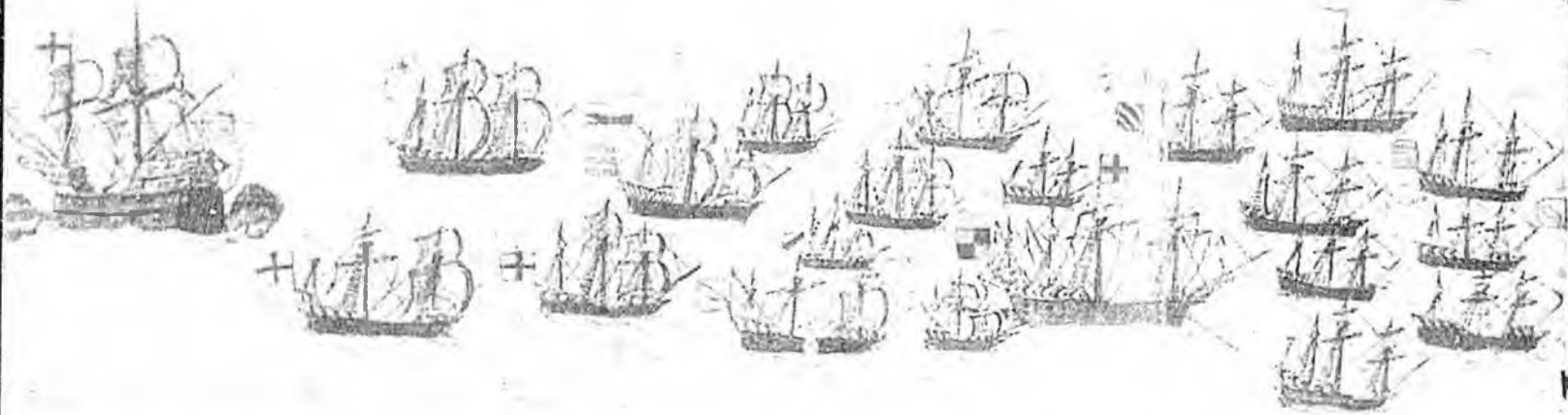
Actually, the Spanish used the word "*piloto*" long before the 1500s. At that time, pilots were responsible for navigation both on the high seas and near the coast. The name for these all-around high seas pilots was "*pilotos de altura*" and "*pilotaje*" was their profession.

Piloting During the Spanish Rule. 1507-1819.

Spain, a major political power with one of the largest fleets in the world, was the first country to pass and enforce navigational regulations.

Laws regarding the employment of local pilots in the Florida "Presidios" (the name given to Spanish citadels) were generally known and accepted throughout the colonies. Slight modifications were dictated by the individual ports.

Beginning in 1507, most of the regulations were left to the authority of the "Casa de Contratacion" (the Oceanographic/Geographic Institute). Any modifications were created and enforced through the "Cedulas Reales" (or royal edicts).



These first maritime regulations, which later applied in Florida, were compiled from a book of laws entitled "Consulado del Mar" and explained the duties of the local pilots.

In February of 1522, the "Ordenanzas de Carlos V" (Ordinances of Charles V of Spain), also known as "de Sevilla," described the requirements of local pilots with special emphasis on those pilots engaged in piloting from the sea to the developing maritime centers upriver. For the most part, these ordinances were applied in all river ports.

In Father Escobedo's epic poem, "La Florida," many pilots are mentioned. According to the poem, one pilot distinguished himself as the "expert and famous pilot who enjoyed the full confidence of the King." This pilot, Gines Pinzon, was the very pilot who, in 1587, led the voyage from Havana, then the center of trade, to St. Augustine, Florida and sailed with 12 terrified Franciscan Friars, including the poet Father Escobedo. A year later, in 1588, Pinzon again was the pilot, for a vessel commanded by Capt. Vincente Gonzalez, traveling from St. Augustine to the coast of Virginia.

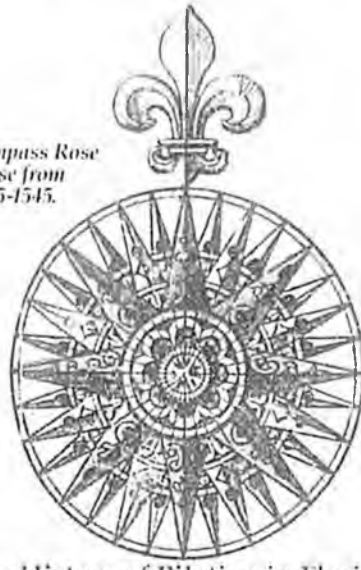
Based on these early epics, Spanish pilots were skilled navigators and mariners and possessed in-depth knowledge of the waters in and around Florida.

Despite the fact that the Dutch are frequently credited with having originated modern day harbor piloting in 1749, records of these early expeditions indicate the Spanish and Portuguese were using local "pilotos" hundreds of years before the Dutch. In fact, by 1460, the Nautical School of Sagres at Cape San Vicente existed and trained both navigators and pilots. In 1508, the position of "Piloto Mayor" was established in Seville.

In June 1586, Sir Francis Drake and his fleet joined St. Augustine, Florida, but he dared not enter because of his lack of local knowledge of the harbor. He anchored outside the bar and later, after acquiring the necessary marine knowledge, entered the waters, attacked the fort and occupied the town.

He wanted to conquer the towns surrounding the St. Johns River and St. Helena Sound, but without the assistance of a local pilot, he was forced to abandon his plans, thereby sparing those settlements his cruel plundering and looting.

Compass Rose
in use from
1345-1545.



The History of Piloting in Florida.

Between 1608 and 1620, the Spanish explorers completed their coastal survey of the east and west coasts of Florida and prepared the first reliable "mapas" (or charts) of coastal Florida.

These charts, many of which were prepared in part by "Piloto" Diego Gonzalez, allowed other navigators to travel the waters with some safety.

On one of the earliest maps of Florida, an area of Maimi, now known as Lake Okeechobee, had the same sounding name as Miami. It was called Maimi River and Maimi Bay (also called Bocas de Miguel de Mora) but unlike today's pronunciation, Miami was pronounced My-me, following the Calusa Indians' pronunciation.

Events surrounding 1513:

Bartolome Diaz sailed around Cape of Good Hope	1498
Ferdinand & Isabella of Spain sponsored the voyage of Christopher Columbus to the New World	1492
Vasco de Gama sailed to Calicut, India	1498
The Casa de Contratacion, Seville, was founded for administrative purposes. A geographic and cartographic branch was added for the teaching of pilots	1501
The position of "Piloto Mayor" was created and Amerigo Vesputci was the first, followed by Juan Diaz Solis and Sebastian Cabot	1496
America's east coast explored from Los Martires (the area now known as Key West) to Cape Fear	1492
Juan Ponce de Leon explored the coast of Florida	1513
Michelangelo begins "Moses" part of tomb of Julius II	1513

Events surrounding 1507:

Nostradamus, Fr. astrologer, born	1503
Columbus returns from his last voyage	1500
Christopher Columbus died (born c. 1451)	1506
Maximilian I assumes title of emperor without being crowned	1508

LEFT: Early maps of Florida.







By the end of the 17th century, several forts were built close to the seacoast to provide greater defense of the region and the growing lumber industry. Forts were established in Tampa, Pensacola and Apalachicola. Local pilots were engaged to help ships navigate the coast with maximum safety.

In 1698, the first map of Pensacola was prepared.

About this time, Pensacola became the busiest coastal region in Florida, functioning much like a modern-day port. A bustling trading area, Pensacola was often counted on as an important defense of the Florida coast.

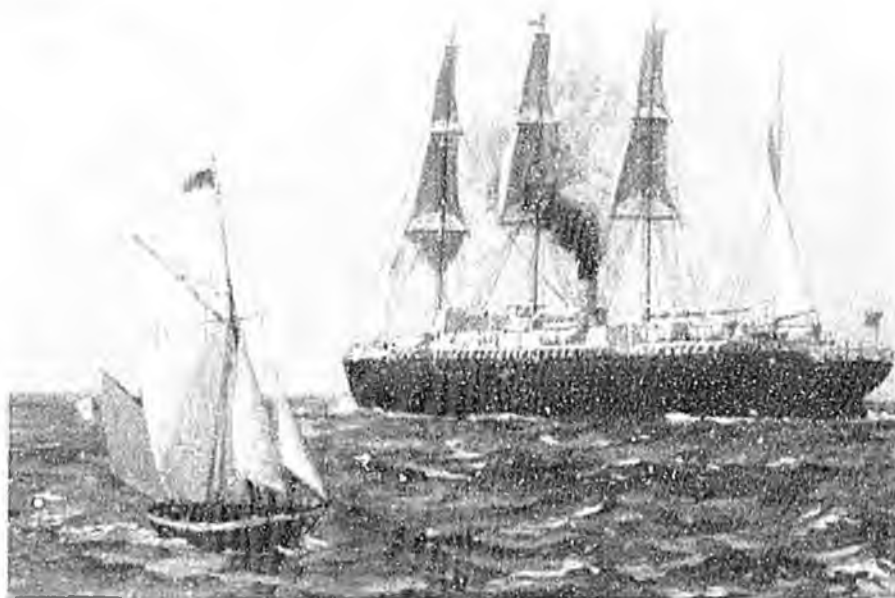
in 1763, Florida was transferred to British rule for a period of 20 years (until just after the American Revolutionary War). Florida pilots, for this short period of time, came under British pilotage laws.

In 1771, the "Recopilacion de las Leyes de Indias" (recompiling of the Laws of the Indies) was published in Madrid. It regulated piloting and navigation. Later these laws were also applied to Florida when the colony was returned to Spanish rule in 1783.

Between 1781 and 1810 Spain suffered tremendous defeats at sea and met with great political uprisings in America. This led to the independence of most of Spain's colonies. Ultimately, in 1818, Andrew Jackson led a United States invasion of the area and Spain ceded Florida to the United States in 1819.

By 1822, Florida became a territory, established a governor and legislative council. Seventeen years later, in 1839, the legislative board began licensing pilots.

Between 1837 and 1838 the American "Mosquito Fleet" was formed. This was a fleet of small, shallow draft ships that were manned by the U.S. Navy to maintain communications among the military outposts along the perimeter of the Everglades, to penetrate the swamps and develop the art of riverine warfare.



LEFT: Pilot boat returning from station.

Events surrounding 1522:

Magellan begins voyage around the world
Charles V crowned Holy Roman Emperor at Aix la Chapelle

Luther finishes translation of New Testament. Wittenberg printer, Hans Lufft, produces 100,000 copies over next 40 years.

Events surrounding 1586:

Dominican Friars, led by Luis Cancer, landed in Tampa Bay to preach the gospel

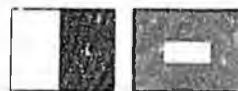
San Augustin founded

English Royal Navy gets graduated pay according to rank

Sir Francis Drake attacks Vigo and Santo Domingo Antwerp loses its importance as international port to Rotterdam and Amsterdam

Pope Sixtus V promises financial aid to send Spanish Armada against England

Henry III, King of France, assassinated
Henry IV becomes King of France



"Riverine warfare," a means to reach adversaries, extended naval power to restricted coastal and inland waters. It enabled the Mosquito Fleet to travel across Florida's extensive river system of interior waterways, through coastal areas with deep bays leading to populated areas, and into east swamplands, which served as a refuge as well as a base of operations for enemy camps.

Florida's first comprehensive statute regarding Pilot Commissioners, pilots and pilotage dates back to August 3rd, 1868, when Chapter 1670 (the precursor of the present Chapter 310) was approved. Pilot associations, after 1868, were finally formed to unify pilot efforts, coordinate the safety of vessels and to stabilize pilot service.

Before pilot associations were formed, piloting was a highly competitive and often dangerous mad race to the sea. The need to maximize the safety of life, ship and property, as well as the need to preserve the natural environment, has never changed through the centuries. The Florida State Pilots' Association has, since its very beginnings, focused on those very objectives.

Before regulation, the competition among pilots was fierce, even comical at times. A law required each pilot boat to carry a light of prescribed brightness. But to display this light betrayed the boat's location to rivals. So each night, pilots would diligently light the lantern. Then, they pulled the light up under a bucket where it couldn't be seen. Their behavior was forgivable. After all, they were fighting for their livelihood. They obeyed the law by carrying a lit lantern. But, according to the pilots, the law didn't state that the light had to be visible!

Until 1872 ships paid "offshore pilotage." This meant that if a pilot "spoke a ship" and boarded beyond the arc of visibility of the port's outermost and highest navigational aid, he was paid an additional sum which equaled one-fourth the customary rate. Gradually offshore pilotage was abandoned in favor of the bar pilot system in which pilots are engaged at the harbor entrance.

The evolution of pilot regulation was three fold. First, the licensing of the pilots. Second, the expansion of government regulation as needed.



And third, the development of the pilot associations.

Today, more than ever, protecting Florida's natural resources, including its waters, harbors and ports, is crucial to the preservation of its residents' property, safety, and environment.

Piloting in Florida.

Among Florida's many distinctive features, are its 1146 miles of coastline, with 472 miles fronting the Atlantic Ocean and 674 miles along the Gulf of Mexico.



LEFT: Pilot heading out to board vessel.

ABOVE: Passenger vessel approaching her berth.

Florida's seemingly endless coastline is served by 15 seaports: Fernandina, Jacksonville, Port Canaveral, Fort Pierce, West Palm Beach, Port Everglades, Miami, Key West, Boca Grande, Tampa, Port Manatee, St. Petersburg, Port St. Joe, Panama City and Pensacola.

The pilots of all Florida ports have the following things in common.

1. They all operate under Florida law (Chapter 310 ES, and its amendments).
2. They all are controlled, regulated and governed by the Board of Pilot Commissioners and the Department of Professional Regulation under Florida State law.
3. Each pilot group has a special interest in the growth and development of its own port.

Any distinctive problems pecu-

liar to certain ports have been met by legislative changes targeted to resolve these specific problems. On the whole, however, there remains a remarkable uniformity in the law affecting the 15 ports.



Surrounding 1608-1620

*Galileo invents proportional compass
Portuguese navigator Luis Vaz de Torres sails between New Guinea and Australia*

1606

Founding of Jamestown, Va., 1st English settlement on American mainland

1607

*Dutch scientist Johann Lippershey invents telescope
Galileo constructs astronomical telescope*

1608

Henry Hudson, English navigator, was abandoned by his crew and, along with his son, was set adrift and perished

1611

John Smith "A Map of Virginia"

1612

English colonists in Virginia destroy French settlement at Port Royal, Nova Scotia

1613

Francis Bacon created Lord Chancellor

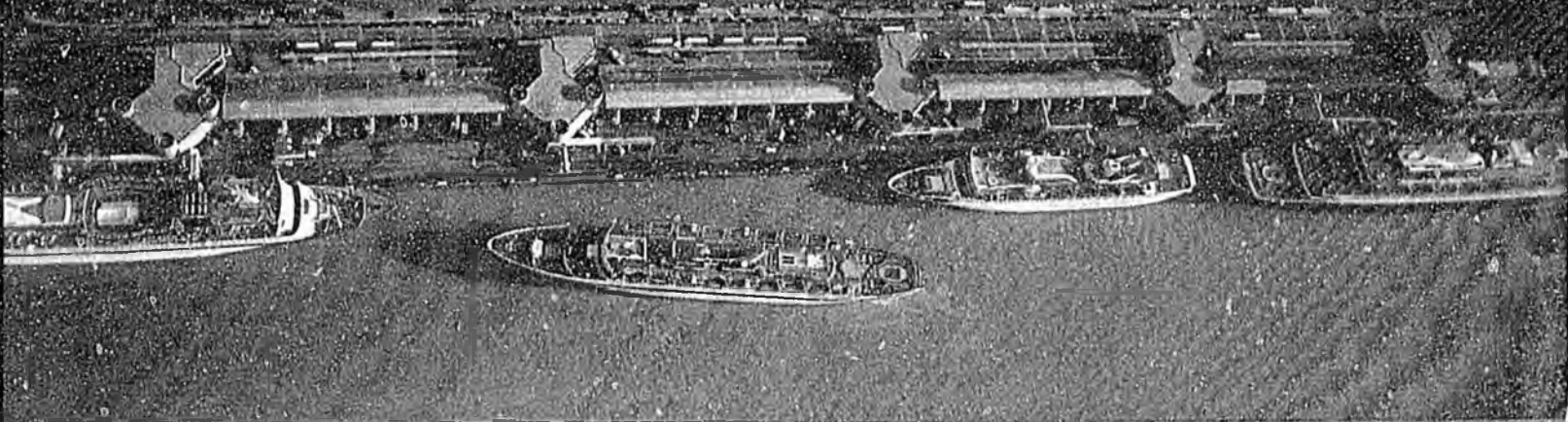
1618

Pilgrims land at New Plymouth, Mass. under Miles Standish

1620

Dutch West India Company founded New Amsterdam, in the present New York

1624

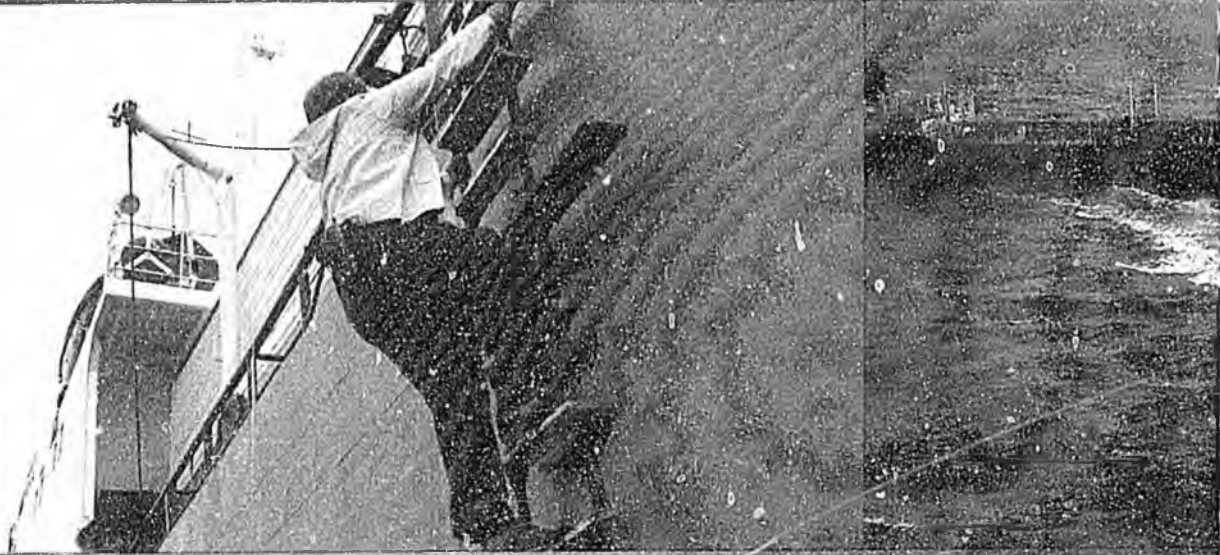
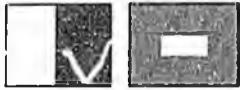


*ABOVE: Docking
between two vessels.*

*LEFT: Pilot boarding
a freighter at sea.*

*RIGHT: Pilot boat
returning
to station.*

*BELOW: Vessel
approaching port
in foul weather.*



Economic Importance of Ports.

A close look at Florida's seaports today reveals their enormous economic impact, broad ecological responsibility and the wide scope of cargo and cruise transportation. In a recent one-year period, over 15,000 cargo and cruise ship arrivals were recorded at



Florida's ports, transporting over 75 million tons of cargo and almost 3 million passengers.

All but a small percentage of all the tonnage handled in these ports is served by Florida State pilots. In addition, Florida pilots are responsible for the safe delivery of cargo and the smooth arrival and effortless departure of large numbers of cruise passengers.

Keeping Florida's numerous cargo and cruise ships running trouble free in the ports helps generate over 56 million dollars in state revenue with over 19 billion dollars in international trade to over 130 countries around the world. Because of the combined efforts of pilots, legislators and environmentalists, Florida's ports rank among the highest in the country for environmental concern.

This includes the smallest ports, like Boca Grande, as well as some of the largest, from Jacksonville, the nation's number one port for auto imports, and Port Everglades, Florida's largest port in petroleum products, to Miami, the world's largest port in cruise passengers,

handling nearly 3 million a year.

Tampa, the largest port in the state in tonnage, handles its 780 million dollars in imports and exports with the same attentive care as its 100,000 plus passengers.

All totaled, Florida's 15 pilot-manned seaports provide over 129,000 jobs. More important, however, is that every call for pilot assistance from every vessel, must be answered. Day or night. Fair weather or foul.

The Florida State pilots meet the perils of the sea around the clock, preserving and protecting each vessel, each port's natural environment, as well as the property and lives of the general populace.



ABOVE: "Iug's all fast."

The pilot's responsibility is enormous. That's why it takes many years of study and training to become a fully licensed pilot.

There's too much at stake to allow less than a fully trained person to navigate a ship into and out of port. The impending risk to life, cargo, ship and seaport function is too great to leave to anyone less than a state pilot operating under the strictest legislative ordinances. Insurance companies agree that vessels operating without a pilot may even be considered unseaworthy.

Events between 1781 and 1819

England takes possession of Florida

Bernardo de Galvez recaptures from British, what is now known as the entire U.S. Southeast, from Baton Rouge to Florida and the Bahamas. This offensive ended with the recapture of Pensacola in May of 1781.

Spain regains Florida

First 10 amendments to U.S. Constitution ratified (Bill of Rights)

Louis XVI and Queen Marie Antoinette were executed

Holy Roman Empire declares war on France

U.S. Navy established

Napoleon appointed commander-in-chief, Italy

Napoleon proclaimed emperor & crowned
12th amendment to U.S. Constitution

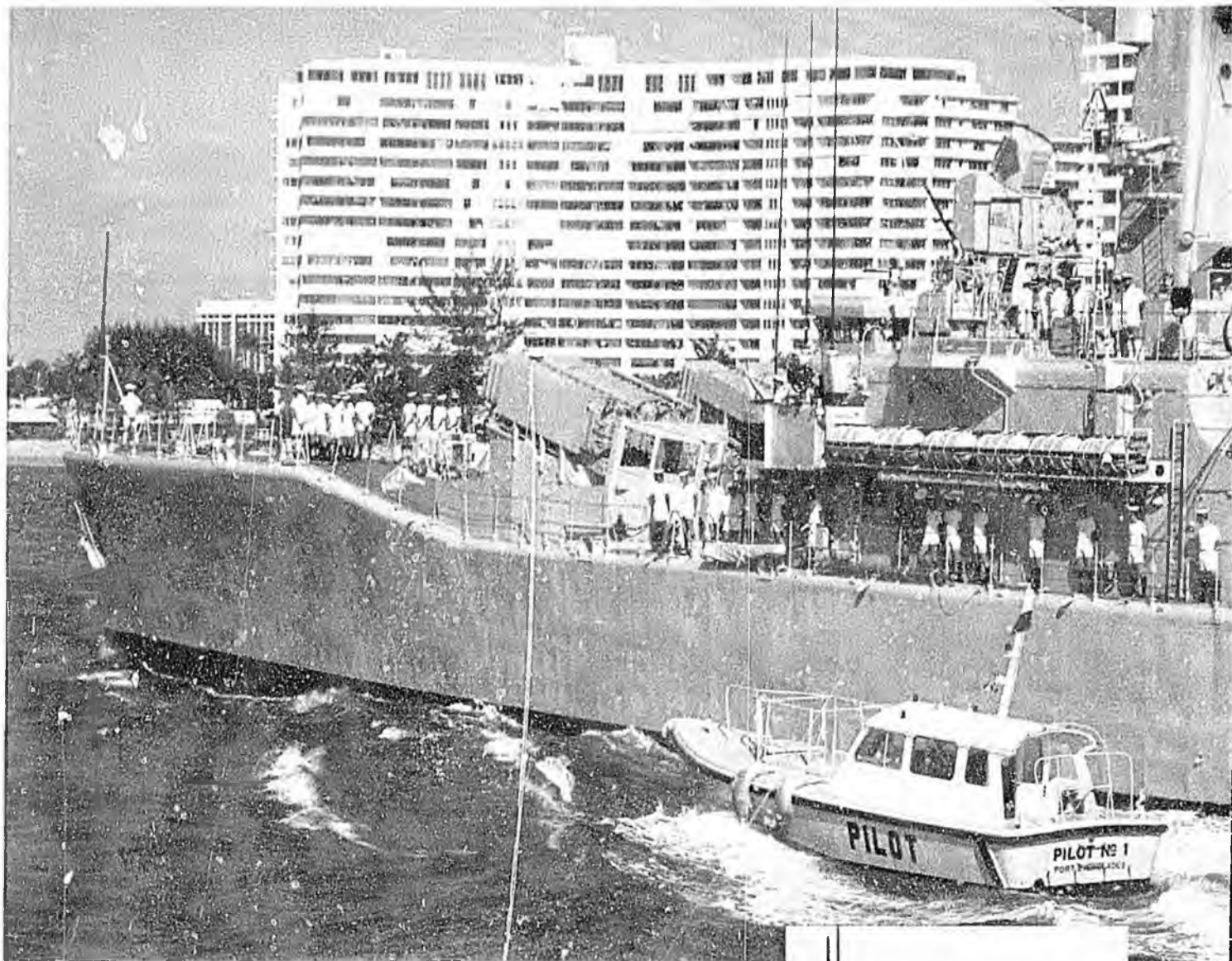
U.S. declares war on Britain
Louisiana becomes state of U.S.

Events surrounding 1774

Boston Assembly demands rights of colonies, threatens secession

Boston Tea Party

American Revolution — Paul Revere's ride

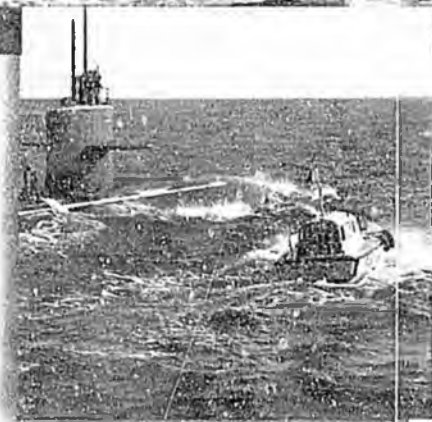


The Making of a Pilot in Florida.

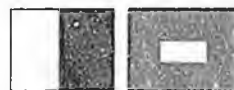
The training program specified under Florida State Law (see appendices) is rigorous, thorough, and purposefully demanding. By the time a candidate becomes a full pilot he has proved his competence again and again.

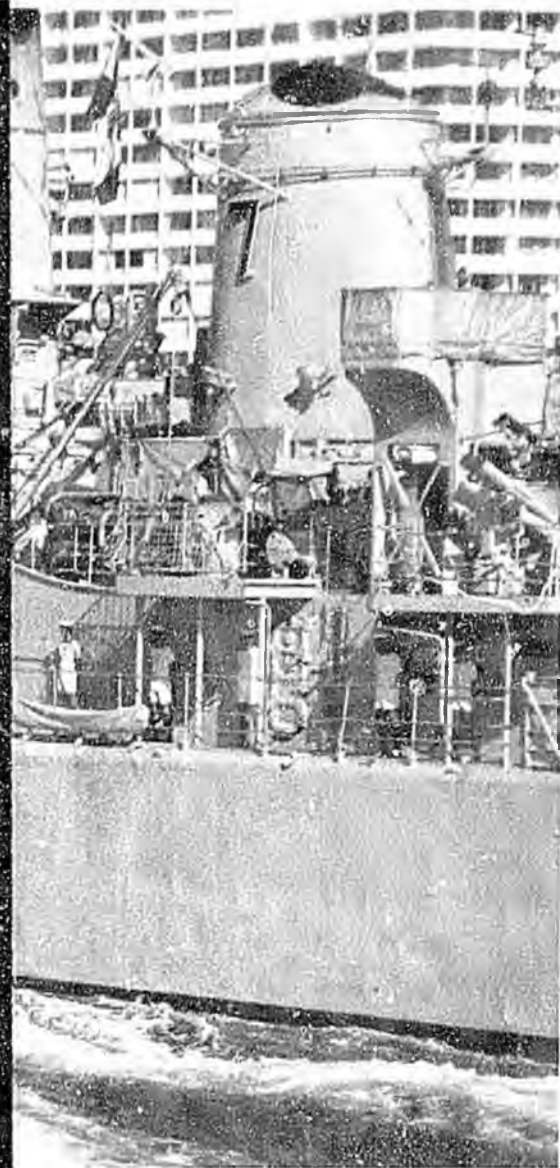
A typical Florida state pilot has actively served in a leadership position with the merchant service as a ship's officer or captain. To attain those positions, he has had either to attend a four-year maritime college or work a minimum of six years "up

through the hawse pipe" to become the lowest deck officer rating. After a minimum of two years and having run the gamut of responsibility and on-the-job training as a Junior Officer, he is eligible "to sit" for the U.S. Coast Guard's examination for Second Officer. Although, he now has the minimum requirements to make application for the Florida State Pilots' Examination, given by the state of Florida, many go on to become Chief Officers and Shipmasters before they consider themselves ready to take on the mantle of responsibility required of a pilot.



Pilot boarding a submarine.





ABOVE: Inbound
"Man of War"

As you can see, only the most seasoned ships' officers are eligible to take the highly competitive exams, and only candidates with the highest scores are selected.

Although many candidates were drawn to the sea because of their sense of adventure, they soon realize that what is needed to be a full pilot is intelligence, experience, sound navigational skill and nautical know-how, excellent health, endless determination, and the command ability to quickly assess a dangerous situation and take timely and accurate action.

The Role of Pilots.

Because the special demands of piloting require instantaneous and correct assessment in the face of ever-changing conditions, every pilot must rely on navigational experience and keen judgement.

Pilots must have at their fingertips a complete background of extensive nautical knowledge. They must apply tides, currents, and wind effect with the basic dimensions of piloting to precisely calculate speed, drift, set, position, depth, height, and maneuvering characteristic.

Special Master Judge John Upchurch, before a Senate Economic, Community and Consumer Affairs Committee stated, "I came away with the impression that our state is blessed with a group of highly professional, highly trained and highly qualified harbor pilots. Our system seems to be working very well in practice. We have an excellent safety record, and I think this is something that we should work to preserve and protect."

Pilots are painfully aware that one slight miscalculation could cause millions of dollars in damage. With massive tankers, giant ocean liners and today's huge container vessels, there are no "small mistakes."

Employing the services of a pilot will not completely eliminate all casualty, but risk is markedly minimized if one is on board.

Pilots today use many sophisticated instruments to utilize fully existing conditions of tide. Tidal prediction tables and real time measurement systems accurately determine oceanographic parameters to give a ship owner maximum revenue draft and to improve a seaport's competitive advantage.

As early as 1789, when our country just established its new government, the first legislation regarding piloting was adopted. It delegated authority over all matters concerning to piloting to the states.

The French Revolution starts
The first U.S. Congress meets in New York
First steam-driven cotton factory in Manchester

1789

Events surrounding 1872:

Franco-Prussian War

1870

Treaty of Washington settles differences between Britain and U.S.

1871

Edison perfects the "duplex" telegraph

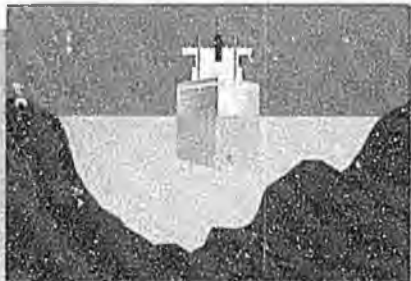
1872

E.A. Edison and J.S. Swan independently devise the first practical electric lights

1880

In addition to navigating ships safely through Florida waters, pilots also contribute both time and effort in protecting Florida's fragile environment, encouraging the need of quality education, enhancing seaport marketability, and supporting a myriad of public service projects. A Florida pilot is assumed to be not only a total professional, but also an involved member of the community.

During World War II, the Navy in the northern area of Key West, created a mine field to protect an anchorage for convoy ships. They set mines, then surrounded them with netting, leaving only 2 channels to pass into the anchorage. Because the pilots were the only ones who knew exactly where the mines were, only they could safely guide ships in and out. On several occasions, enemy submarines tried and failed to enter. The numerous ships remained safe from harm.



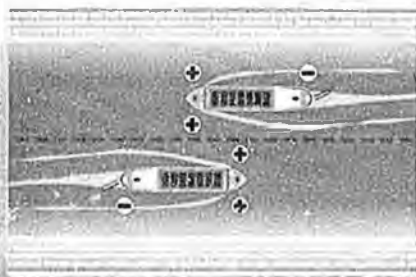
While the shipmaster's allegiance is to owner and company, the pilot represents the people of Florida and must remain beyond the ship owner's ability to influence risk.

"They do not want to hear about all the storms you encountered at sea. They just want to know if you brought the ship in safely." — Anonymous

Pilots have always rendered invaluable service both in peace and during war. For instance, under Admiral Emory Land's advice, pilots were considered so important during World War II, that all pilots who entered the naval reserves were automatically promoted to "Lieutenant Commanders" by the U.S. Navy.

LEFT: Illustration of Bottom Effect.

RIGHT: Passing in narrow channels. Bow, Bank, and Prop Effects.



How Pilotage Rates are Fixed in Florida.

Because pilotage regulations are uniquely complex and require a great deal of particular knowledge, Florida, like other states, has created a special governing body (the Board of Pilot Commissioners), just to analyze and regulate pilotage.

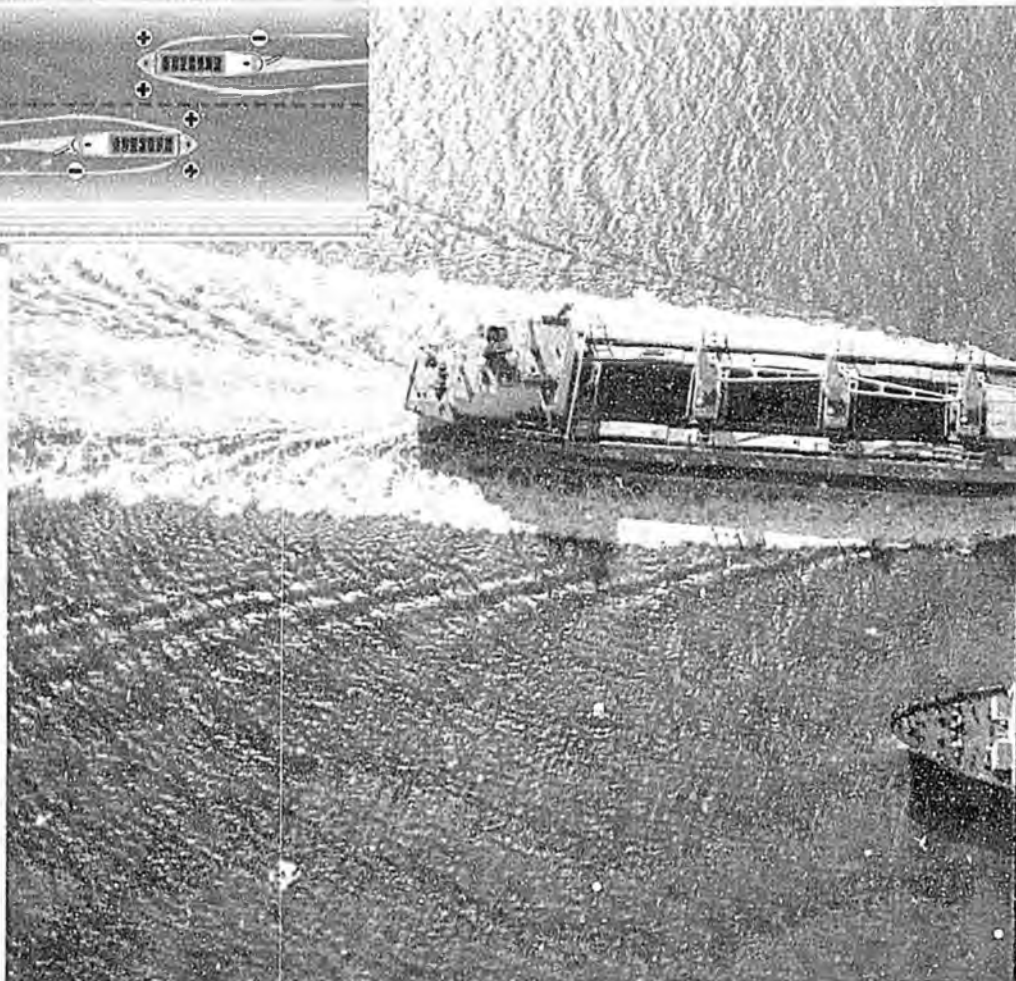
Whenever rates are adjusted, a Rate Hearing Board is appointed and a hearing is held in the port where the rate is to be modified. This Board considers optimum pilot number to adequately service the



The High Demands of Piloting.

A closer look at Florida's piloting legislation, namely Ch. 310 FS, clearly reveals how Florida's laws focus on the protection of public interest. For instance, Ch. 310.001 reads:

"The legislation recognizes that the waters, harbors and ports of the state are important resources, and it is deemed necessary in the interest of public health, safety, and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state in order that such resources, the environment, life and property may be protected to the fullest extent possible. To that end, it is the legislative intent to regulate pilots, piloting and pilotage to the full extent of any congressional grant of authority, except as limited in this chapter."



needs of a particular port versus equitable compensation to determine appropriate pilotage rates for that port.

Because all sectors are equally represented on a rate hearing board

(one pilot, one representative of industry, and three consumer representatives), it is reasonable to assume that neither the pilot nor industry are dissatisfied with the objectivity of the Board of Commissioners' rate setting.

On August 20th, 1821, in Pensacola, Florida, Major General, Andrew Jackson, Governor of Florida, issued an ordinance on piloting and pilotage.

It established a Board of Commissioners, namely the "Commissioners of Pilotage," appointed by the Governor to establish fees, investigate and analyze all complaints filed against pilots, and to make certain that anyone acting as a pilot had passed certain examinations and had been approved by the Governor.

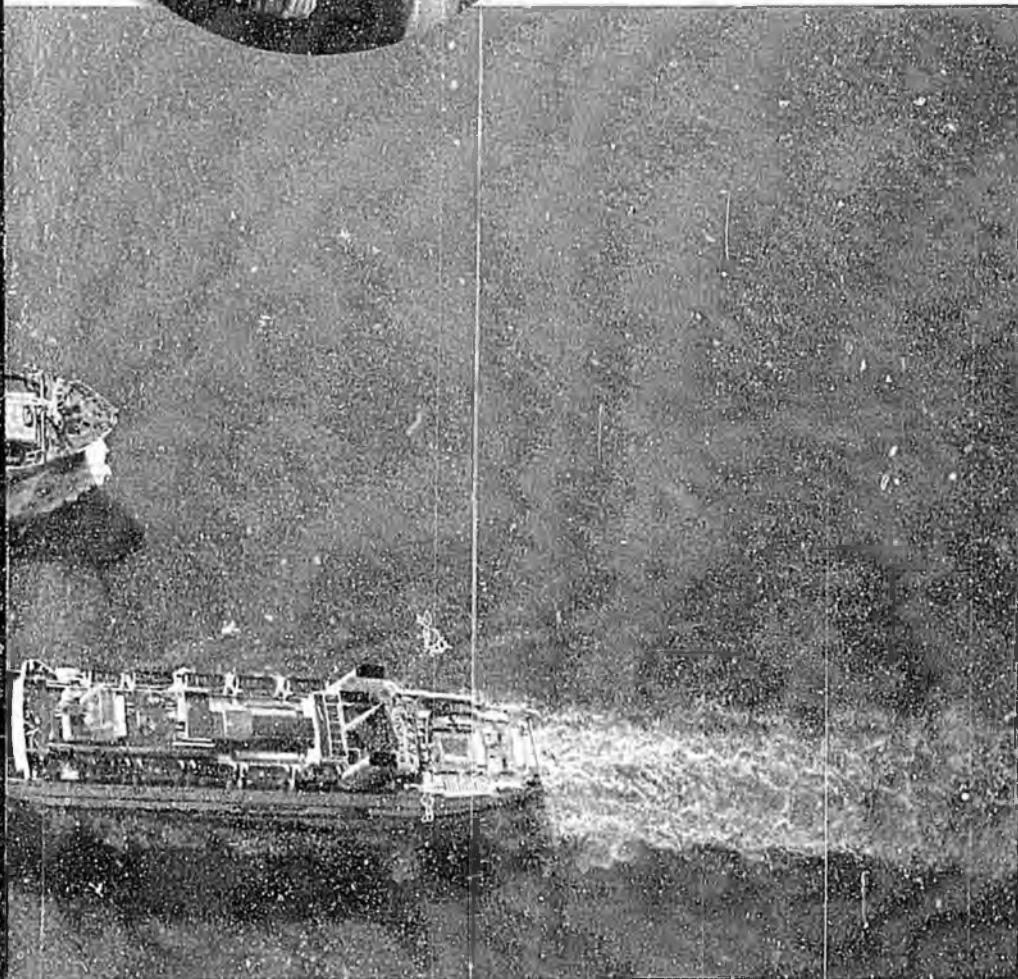
LEFT: Pilot coming vessel.

BELOW: Starboard to starboard passing.



**SIGNIFICANT DATES IN DECADES
1940-1986.**

World War II begins	1939
Penicillin successfully used in the treatment of chronic diseases	1943
World War II ends	1945
First atomic bomb detonated in New Mexico	1945
First hydrogen bomb (U.S.) exploded at Eniwetok Atoll, Pacific, Nov. 6th	1952
Eisenhower inaugurated as President of U.S.	1953
Dr. Jonas E. Salk (U.S.) developed antipolio serum	1954
U.S.S.R. launches 1st earth satellites: Sputnik I and II	1957
First U.S. satellite launched from Cape Canaveral (Explorer I)	1958
Alaska becomes 49th state	1958



The Importance of Legislative Regulation.

Pilot boards have provided an invaluable service to ship-owners, property owners and environments in every port, both in Florida and across the country—at no expense to the taxpayer. Boards of Pilot Commissioners have functioned satisfactorily under the law for nearly 200 years. Obviously, this system has passed the test of time.

An issue that has been discussed since the first pilot laws were enacted is deregulation and its effect on the safety of our ports and the results of a conflict of interest between a vessel owner's economic needs and a pilot's judgement of acceptable risk.

If pilots are forced to compete with each other, it is possible that a pilot will compromise safety considerations in order to accommodate the financial interest of the shipowner. And in so doing, he will try to establish a competitive edge over another pilot.

In a recent legislative presentation, Captain George Quick, President of Masters, Mates and Pilots; Pilot Division, best summed up the reasons to keep legislation as it now stands. He stated: "It is fundamental to an effective compulsory pilotage system that the selection, control, and compensation of the pilot be non-negotiable and beyond the shipowner's ability to influence or the essential independent judgement of the pilot will be compromised in his assessment of what risks are acceptable."

He continued, "The pilot's independent judgement and decision making on issues affecting the safety of ship movements should not be compromised by pressures from shoreside business managers. To give the shipping industry the right to negotiate with pilots gives them the ability to control the pilots' actions at the expense of the state's interest in maritime safety."

Eugene E. Sweeney, Vice-President

of Hvide Shipping, Inc., in addition to being a consumer of piloting services, came to the same conclusion when he testified before Judge John J. Upchurch, Special Master for the Florida Senate, Sunset Review of Chapter 310, Florida's Pilotage Statutes, on September 20, 1985, in Miami, Florida.

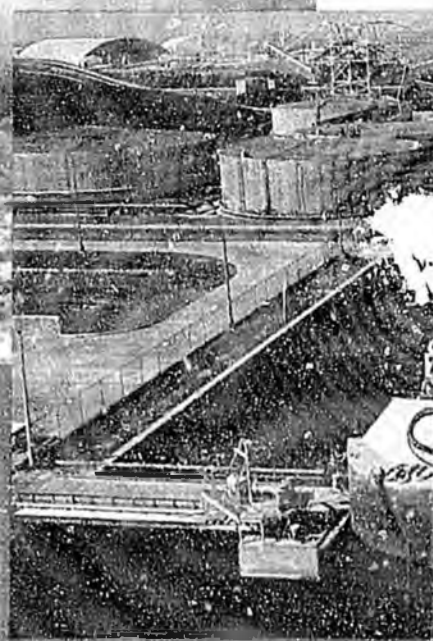
An excerpt of Vice President Sweeney's testimony included this comment "The concept of a state pilot excludes any right of the shipowner and pilot to mutually agree on the terms of their relationship. The right as to selection and control are not properly the subject of negotiation. They are established by the state to serve the state's superior interest."

It is clear that keeping legislation regarding piloting as it now stands, eliminates the temptation to forfeit safety because of profit. Current law, then by its very nature, assures the integrity of the pilots and the safety of our harbors.



ABOVE: Preserving the ecological balance of Florida.

RIGHT: Tugs docking a barge.



20th Century Milestones in Florida Piloting

Between 1880 and 1970, Statutes remained essentially intact with minor changes. In 1975, Florida was the first state to centralize the regulation of pilots within the state.

1978 ushered in the First Sunset Review of Piloting Statutes, followed by a Second and Third Sunset Review in the '80s. These statutory alterations, along with new implementations of changes in the rules, revised Chapter 310 and brought modifications in the composition of the Board, upgrades in pilot requirements including more extensive examinations, and changes in rate making procedures. Even the law mandating the maximum number of pilots in each port was modified to allow the Board to set pilot number by supply and demand.

The Future of Piloting.

Despite the advances of technology, the growing concern for ecology and the ever-increasing economic development of the cruise and shipping industries, the preservation of Florida's navig-

able waters still relies strongly on the experience, skill and expertise of pilots, as well as upon the statutes and regulations of the State of Florida governing them.

"I want to meet my pilot face to face before I cross the bar." — Alfred, Lord Tennyson (1809-1892)



ABOVE: Pilot directing tugs.

From man's beginnings at sea, mariners around the world recognized the need for pilots. They realized the necessity of regulation and the need for enforcement.

Those same objectives are as applicable today as they were hundreds of years ago. It is interesting that in a world that constantly changes, some things remain constant. Like the importance of preserving the environment, providing safe passage and protecting life and property.

By continuing a close legislative watch on all matters pertaining to piloting, we can rest assured that our waters, harbors and ports will continue to remain safe from harm—not just for us, but for future generations to come.

"Familiarity with danger makes a brave man braver, but less daring. Thus with seamen: he who goes the oftenest around Cape Horn goes the most circumspectly." — Herman Melville (1819-1891)

Fidel Castro assumes total power as Prime Minister of Cuba

Berlin Wall constructed

President John F. Kennedy assassinated

Richard M. Nixon inaugurated as 37th U.S. President

U.S. Army and Navy intervened in Vietnam War

U.S. Apollo 11 and 13 crews become 3rd and 4th groups to explore the moon's surface

Gerard R. Ford becomes 39th President of U.S.

Jimmy Carter inaugurated as 40th U.S. President

Ronald Reagan becomes 41st U.S. President

Reagan wins 2nd term in office



"The History of Piloting" commissioned by the FLORIDA STATE PILOTS ASSOCIATION, INC.
"Serving the Ports of Florida Since 1868"

*Special recognition and gratitude to
Captain Dario Pedraja y Ochoa
for his tireless efforts in steering this historical record
and to*

*Captain Jorge Navarro Custin
Captain William A. Arata
Captain John R. Gonzales
for their technical assistance and support in this endeavor*

Grateful appreciation to Florida Historical Museum and Peabody Museum

FLORIDA PORTS SERVED BY FLORIDA STATE PILOTS

BOCA GRANDE
Boca Grande Pilots Association

CAPE CANAVERAL
Canaveral Pilots Association

FERNANDINA BEACH
Cumberland Sound Pilots

FORT LAUDERDALE
Port Everglades Pilots Association

FORT PIERCE
Fort Pierce Bar Pilots Association

JACKSONVILLE
St. John's Bar Pilots Association

KEY WEST
Key West Bar Pilots Association

MIAMI
Biscayne Bay Pilots Association

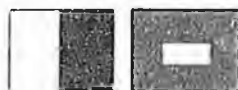
PALM BEACH
Palm Beach Bar Pilots Association

PANAMA CITY
Panama City Pilots Association

PENSACOLA
Pensacola Bar & Harbor Pilots Inc.

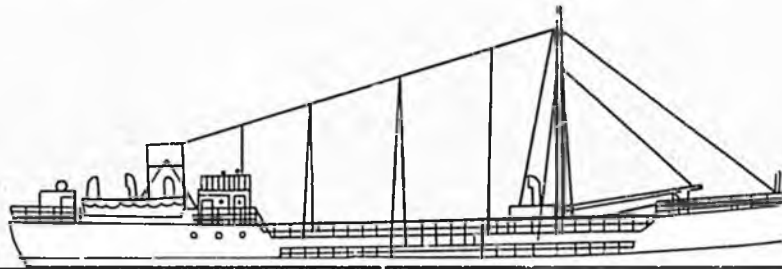
PORT ST. JOE
Port St. Joe Pilots Association

TAMPA
Tampa Bay Pilots Association
Tampa Tri-County Pilots Association





Photograph Courtesy of Col. Dave Eades, Apollo 7



THE LAW OF TUG, TOW, AND PILOTAGE

BY ALEX L. PARKS

Member of the Oregon State Bar
and the Bars of the United States District Court, District of Oregon;
Court of Appeals, Ninth Circuit; Court of Appeals, District of Columbia;
United States Supreme Court;
Member of the Maritime Law Association of the United States; Associate
Member of the Association of Average Adjusters of the United States;
Adjunct Professor (Admiralty), Willamette University College of Law

SECOND EDITION

Associate Authors

BRIAN M. WALTHAM and JONATHAN LUX
Ince & Co., Solicitors
London, England

JOHN R. CUNNINGHAM
Macrae, Montgomery & Cunningham, Barristers & Solicitors
Vancouver, Canada

DEREK R. HENTZE
Senior Legal Officer, Brambles Industries Limited
Sydney, Australia

T. J. BROADMORE
Chapman Tripp, Barristers & Solicitors
Wellington, New Zealand

LONDON
CHAPMAN AND HALL

must be deemed surplusage, or, at best, an attempt to clarify what may have been deemed an ambiguity in the 1933 Act. Under no circumstances, may it be construed to modify or repeal the 1933 amendment.

In *Ralph E. Havens*, 1964 A.M.C. 1759, 335 F.2d 185, the court commented on *Ace Waterways* and noted that the present Coast Guard interpretation of Section 361, as evidenced in its regulations implementing that section and others relating to inspection of vessels "seemed at odds with Judge Holtzoff's thesis in *Ace Waterways*."

About the best guess that can be made is that the phrase "this Act" was meant to be "this Title," meaning Title 52, Revised Statutes. See, in this connection, *Bryant v. Rucker*, 1953 A.M.C. 833, 111 F.Supp. 309. Unless this interpretation is made, 46 U.S.C.A. 215 (a part of Title 52 but not a part of Chapter 14) would apply only to "steam" vessels and not at all to the many motor-propelled ships which today ply our waters.

The subject of Federal versus state jurisdiction over pilotage came before the U.S. Supreme Court again in *Ray v. Atlantic Richfield Co. et al.*, 1978 A.M.C. 527, 435 U.S. 151 (1978). That case involved a clash between the Federal Ports and Waterways Safety Act of 1972 (PWSA), 33 U.S.C.A. 1221 *et seq.* and 46 U.S.C.A. 391a on the one hand, and the Washington Tanker Law, RCW 88.16.170 on the other. The PWSA in essence authorized the Secretary of the Department of Transportation to establish and operate vessel traffic services and systems for ports subject to congested traffic as well as to require ships to comply with the systems and to have the equipment necessary to do so. Exercising this authority, the Secretary, through his delegate, the Coast Guard, issued navigation safety regulations and promulgated general rules, communication rules, vessel movement reporting requirements, a traffic separation system, special rules for ship movements in Rosario Strait of Puget Sound, descriptions and coordinates of separation zones and traffic lanes, etc. The Washington Tanker Law had three operative provisions: (1) a requirement that every oil tanker of 50,000 deadweight tons or larger employ a pilot licensed by the State of Washington while navigating Puget Sound and adjacent waters; (2) a requirement that every oil tanker of from 40,000 to 125,000 deadweight tons either possess certain safety features or

utilize tug escorts while operating in Puget Sound; and (3) a size limitation, barring tankers in excess of 125,000 deadweight tons from the Sound.

The District Court held that under the Supremacy Clause of the Constitution the state Tanker Law was wholly invalid. The Supreme Court affirmed in part, reversed in part and remanded.

The Supreme Court agreed that the requirement of the state law compelling the employment of a state-licensed pilot was invalid insofar as it applied to enrolled and licensed vessels but held that the state was free to require registered tankers in excess of 50,000 DWT to take on a state-licensed pilot. The Supreme Court likewise agreed that the design requirements, *standing alone*, were invalid in light of the PWSA and its regulatory implementations but upheld the alternative requirement of tug escorts. Finally, the Court struck down the size limitation contained in the state law. Justices Marshall, Brennan and Rehnquist concurred in part but felt that the size limitation was valid. Justices Stevens and Powell concurred in part but felt that the tug escort provision was invalid.

For other decisions involving the distinction between Federal jurisdiction over enrolled and licensed vessels and state jurisdiction over registered vessels, see *People v. MacDonald*, 1972 A.M.C. 2090 (NYM); *Blair v. Blue Spruce*, 1970 A.M.C. 1298, 315 F.Supp. 555 (D.Mass.); *Soriano v. U.S.*, 1974 A.M.C. 283, 494 F.2d 681 (CA-9); *Ohrn v. R.I. St. Pilotage Comm.*, 1975 A.M.C. 327 (St., R.I.); and *Jackson v. Marine Explorations Co., Inc.* (1979), *supra*. *Jackson* contains a scholarly exposition of the history and ramifications of the Federal-state dichotomy in the inimitable style so characteristic of Chief Judge John R. Brown of the Fifth Circuit.

Summary

In summary, the status of Federal versus state regulation of pilotage may be stated as follows:

1. All coastwise seagoing vessels (i.e., all vessels not under register) when navigating within the jurisdiction of the United States must be under the direction of a pilot licensed by the United States Coast Guard.

2. All vessels other than those engaged in the coastwise trade (i.e., vessels sailing under register and "public vessels") are subject to the licensing regulations of the state whose waters they are plying.

having given a bond in conformity with an applicable by-law may limit his liability for "neglect or want of skill" to a maximum of £100. Similar provisions exist under the laws and regulations of the Commonwealth Nations. See discussion, *infra*, under heading "Boards of Pilot Commissioners."

Duties and Responsibilities of Pilots

No better description of the duties and skills of a pilot can be found than that set forth in *Atlee v. N. W. Packet Co.* (1874), 88 U.S. 389, in which Justice Miller stated:

The character of the skill and knowledge required of a pilot in charge of a vessel on the rivers of the country is very different from that which enables a navigator to carry his vessel safely on the ocean. In this latter case a knowledge of the rules of navigation, with charts which disclose the places of hidden rocks, dangerous shores, or other dangers of the way, are the main elements of his knowledge and skill, guided as he is in his course by the compass, by the reckoning, and the observations of the heavenly bodies, obtained by the use of proper instruments. It is by these he determines his locality and is made aware of the dangers of such locality if any exist. But the pilot of a river steamer, like the harbor pilot, is selected for his personal knowledge of the topography through which he steers his vessel. In the long course of a thousand miles in one of these rivers, he must be familiar with the appearance of the shore on each side of the river as he goes along. Its banks, towns, its landings, its houses and trees, and its openings between trees, are all landmarks by which he steers his vessel. The compass is of little use to him. He must know where the navigable channel is, in its relation to all these external objects, especially in the night. He must also be familiar with all dangers that are permanently located in the course of the river, as sand-bars, snags, sunken rocks or trees or abandoned vessels or barges. All this he must know and remember and avoid. To do this he must be constantly informed of changes in the current of the river, of sand-bars newly made, of logs or snags, or other objects newly presented, against which his vessel might be injured. In the active life and changes made by the hand of man or the action of the elements in the path of his vessel, a year's absence from the scene impairs his capacity, his skilled knowledge, very seriously, in the course of a long voyage. He should make a few of the first "trips," as they are called, after his return, in company with other pilots more recently familiar with the river.

It may be said that this is exacting a very high order of ability in a pilot. But when we consider the value of the lives and property committed to their control, for in this they are absolute masters, the high compensation they receive, and the care which Congress has taken to secure by rigid and frequent examinations and renewal of licenses, this very class of skill, we do not think we fix the standard too high.

Later cases citing *Atlee* are: *Ralli v. Troop*, 157 U.S. 386; *Davidson Steamship Co. v. U.S.*, 205 U.S. 187; *General Petroleum Corp. v. City of Los Angeles*, 1941 A.M.C. 510; *Matheson v. Norfolk & North American S.S. Co.*, 1934 A.M.C. 1451, 73 F2d 177 (CA-9); *Newfoundland Export & Shipping Co. v. United British S.S. Co.*, 1934 A.M.C. 272, 69 F2d 300 (CA-5); *Essex County Electric Co. v. M/S Godafoss*, 1955 A.M.C. 755, 129 F.Supp. 657 (USDC, Mass.); *Utility Service Co. v. Hillman Transp. Co.*, 1956 A.M.C. 2005, 142 F.Supp. 473 (USDC, Pa.); *Barbey v. S.S. Stavros*, 1959 A.M.C. 1542, 169 F.Supp. 897 (USDC, Ore.); *Johnson Construction Co. v. S.S. Rio Orinoco*, 1966 A.M.C. 791, 249 F.Supp. 182 (USDC, Pa.); *Dampsk. Atalanta v. U.S.*, 1929 A.M.C. 851, 31 F2d 497 (CA-5); *Transportes Maritimos de Estados v. Roth*, 1923 A.M.C. 696, 289 F2d 155 (USDC, Mass.).

His responsibilities are admittedly great. As Justice Curtis put it in *Cooley v. Board of Wardens for the Port of Philadelphia*, 12 How. (U.S.) 289:

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

Justice Story stated as early as 1836 in *Hobart v. Drogan*, 10 Pet. (U.S.) 108 that, "His is properly the duty to navigate the ship over and through his pilotage limits." And in *Ralli v. Troop*, 157 U.S. 386, the court stated:

. . . to the pilot . . . temporarily belongs the whole conduct of the navigation of the ship, including the duty of determining her course and speed and the time, place and manner of anchoring her. . . .

Where the piloting is required to be done upon waters which serve as the boundary between two states, the pilotage laws of both states apply.⁸

3. No state may discriminate in its pilotage laws in the rate of pilotage or half-pilotage between vessels sailing between the ports of one state and those sailing between ports of different states, nor may any state discriminate against any vessel propelled in whole or in part by steam, nor may any state discriminate against a national vessel of the United States.

4. No state or municipal government may impose upon coastwise pilots other or additional requirements than those provided for by the Federal government.

5. Pilotage on the Great Lakes is governed by a reciprocal arrangement between the United States and Canada, pursuant to legislation enacted in 1960. Essentially, registered vessels of the United States and "foreign vessels" navigating certain designated portions of the Lakes must have in their service a United States registered pilot or a Canadian registered pilot for the waters concerned. In undesignated portions, there must be on board such registered vessels and "foreign vessels" a United States registered pilot or a Canadian registered pilot, or "other officer qualified for the waters concerned." The authority for Canadian pilots to serve in United States waters in the Great Lakes is in effect only so long as Canada extends like reciprocity to United States licensed pilots. So-called "lakers" (vessels which navigate exclusively on the Great Lakes) may have officers on board who are licensed by the appropriate agency of either the United States or Canada. Provision is also made for the formation of voluntary "pools" by voluntary associations of pilots to provide the facilities and arrangements necessary for rendering the pilotage services required by the Act. Thus, a new Federal system of pilotage has engrafted upon it certain salient features of state pilotage systems. For the full text of the Act, see 46 U.S.C.A. 216-216(i).

Bonding of Pilots

A number of state pilotage acts require that pilot licensees be bonded and it is not unusual for such a bond to be required as a prerequisite to the issuance of a license.

⁸ See special provisions relating to Great Lakes pilotage, *infra*.

Since such bonds relate to the doing of a maritime act, it has been held that admiralty jurisdiction applies. *Fort Armstrong*, (USDC, Ga.) 1931 A.M.C. 1145, 51 F2d 1063. See also, *Haller v. Fox*, 51 F2d 298 (USDC, Wash.), and *Insurance Co. v. Dunham*, 78 U.S. 1.

Such bonds are ordinarily strictly construed in favor of the obligor—the party giving the bond. *Leggett v. Humphreys*, 62 U.S. 66; *Washington v. London and Lancashire Indemnity Co.*, 10 Fed. 641; *Moody v. McGee*, 1930 A.M.C. 1677, 41 F2d 515; *McGrath v. Nolan*, 1936 A.M.C. 724, 83 F2d 746 (CA-9).

While the bond may run to a state, an officer thereof, a pilot board or other person designated by statute, the party injured by reason of the negligence of the pilot may be compensated under the bond if the intent of the statute is clear and its language shows, expressly or by implication, that it is intended for the benefit of the injured party rather than to the obligee. *Fort Armstrong*, 1931 A.M.C. 1145, 51 F2d 1063 (USDC, Ga.).

On the other hand, it was held in *Moody v. McGee (The El-dean)*, 1930 A.M.C. 1677, 41 F2d 515 (construing a Texas bonding statute for pilots requiring the giving of a bond for the faithful performance of the duties of his office), that there had been no breach of the condition of the bond since in piloting a ship the pilot was not discharging an official duty. The court stated, in part:

. . . A pilot, after receiving his license, is at liberty to pursue his vocation or not, as he sees fit. He is under no legal obligation to accept employment from anyone. In piloting a vessel he is not discharging any official duty. . . .

This view was followed in *McGrath v. Nolan*, 1936 A.M.C. 724, 83 F2d 746 (CA-9). There the condition of the bond was that the pilot and his sureties were liable to the persons interested, i.e., the vessel or her cargo. Hence, a seaman seeking recovery for injuries sustained by reason of the negligence of the pilot was not one of the beneficiaries intended to be covered by the statute.

As a practical matter, the amount of such a statutory bond is usually set so low that an opportunity to recover is more illusory than real. This was recognized in Oregon in 1957 when the pilotage act was amended to delete any reference to a requirement of a bond.

The system is different in Great Britain and the Commonwealth Nations. Under the Pilotage Act, 1913, by virtue of Sec. 35, a pilot

See also, *The Oregon*, 158 U.S. 186; *McGrath v. Nolan* 1936 A.M.C. 724, 83 F2d 746 (CA-9); *Dampsk. Atalanta v. U.S.*, 1929 A.M.C. 855, 31 F2d 961 (CA-5); *Union Shipping & Trading Co. v. U.S.*, 1942 A.M.C. 709, 127 F2d 771 (CA-2); *Grays Harbor County v. The Brimanger*, 1933 A.M.C. 368, 18 P2d 25, 171 Wash 396; *State v. Turner*, 34 Or. 173, 56 Pac. 145; *The Christiana* (1850) 7 Moo. P.C. 160, 13 E.R. 841; *The City of Cambridge* (1874) L.R. 5 P.C. 451; *The Tactician* (1907) P. 144, [1904-7] All E.R. Rep. 743, 10 Asp. M.L.C. 534, C.A. Compare, for example, the language of the court in *Ralli v. Troop*, *supra*, with the decision in *The Christiana*, *supra*, where the court said:

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

The pilot's responsibility is manifold and includes many duties. See, for example, *The Agricola* (1843) 166 E.R. 659 (time and manner of dropping anchor exclusively within the province of the pilot); *The Gipsy King* (1847) 166 E.R. 858 (method of "catting" the anchor, preparatory to bringing up a vessel at her anchorage ground, within the province of the licensed pilot); *The Oakfield* (1886) 5 Asp. M.L.C. 575 (pilot should decide whether to proceed in fog); *Shaw Saville and Albion Co., Ltd. v. Timaru Harbour Board* (1888) 6 N.Z.L.R. 456 (NZ) (duty to make a proper start where a pilot is in charge of a ship which is being towed); *The Octavia Stella* (1887) 57 L.T. 632, 6 Asp. M.L.C. 182; *Re The Lotus* (1861) 11 L.C.R. 342, 2 S.V.A.R. 58 (Can.) (anchoring); *The Monte Rosa* [1893] P. 23, 7 Asp. M.L.C. 326 (position anchor carried); *The Schwalbe* (1860) 14 Moo. P.C. 241, 15 E.R. 295 (to give orders to the helm); *The Lochlibo* (1851) 7 Moo. P.C. 427, 13 E.R. 945; *The Carrier Dove* (1863) 2 Moo. P.C. (N.S.) 260, 15 E.R. 899; *The Ocean Wave* (1870) L.R. 3 P.C. 205, 16 E.R. 812, P.C. (to decide when to get underway or to hove to); *The Batavier* (1854) 9 Moo. P.C. 286, 14 E.R. 305;

The Calabar (1868) L.R. 2 P.C. 238 (to determine the speed of the vessel); *The Princetor* (1878) 3 Asp. M.L.C. 562 (to let go a second anchor); *The Julia* (1860) 14 Moo. P.C. 210, 15 E.R. 284 (to advise as to the necessity for employing a tug); *Gerwi (Grounding)*, 1973 A.M.C. 383, 467 F2d 456 (CA-3) (pilot about to take a deeper draft vessel into a channel which had been used for vessels of a lesser draft under a stronger duty to check depths); *Canal Barge Lim. Procs.*, 1973 A.M.C. 843, 480 F2d 11 (CA-5) (pilot required to inform himself of special current conditions arising from circumstances known to him); *Alter Co. v. Federal Barge*, 1976 A.M.C. 2357 (ND, Ill.), *aff'd* 544 F2d 522 (CA-7) (pilot chargeable with knowledge of changes in river conditions when the means of obtaining such information are available).

Since the pilot is clothed with an aura of competency, he must bear the burden of fulfilling that obligation with proficiency. He is required to possess qualities of expertness and dexterity in the domain of his pilotage area and he must use careful navigating skill in the performance of his duties. Upon his failure to possess the requisite skills, or if possessing them he neglects to use them, he is held liable for any injury or damage caused thereby. His negligence may often, therefore, be more readily premised than those who are not charged with such a degree of expertise. Stated simply, since he is considered an "expert" or a "specialist," he is held to a higher degree of care by reason of his proficiency. The court stated it concisely in *Barbey Packing Co. v. S.S. Stavros*, (USDC, Ore.) 1959 A.M.C. 1542, 169 F.Supp. 897, at 1550 and 1551, as follows:

The reason a vessel employs a pilot is because of the pilot's particular knowledge of local conditions. . . . *Compagnie de Navigation Francaise v. Burley*, 183 Fed. 166, *aff'd* 194 Fed. 335. . . .

Under the rationale of *City of Long Beach v. American President Lines*, 1955 A.M.C. 1548, 223 F2d 853, the contract for the highly personal services of the pilot contained an implied covenant that such service would be performed with the necessary skill and without neglect. *The City of Long Beach* case, *supra*, involved a pilot hired under a compulsory pilotage act, as contrasted to the non-compulsory act here involved. . . . If a pilot was hired to move a vessel from one point to another it is difficult to see how different standards of care would be imposed on the pilot, depending upon whether he was hired under a compulsory or non-compulsory pilotage act. Logic would seem to dictate that for the safety of the vessel, her crew, and such

property as might be affected by the ship's movement, the pilot should be held to a high standard of skill and care for the safe passage of the vessel.

. . . A showing of ordinary negligence on the part of a pilot in the performance of his duty is a maritime tort within the jurisdiction of this Court. Furthermore, the situation is analagous to an obligation on the part of a stevedore to perform his services in a workmanlike manner. See *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Co.*, 350 U.S. 124, 1956 A.M.C. 9. The failure of the pilot in this case to conform to the standard demand of his profession breached an implied covenant that his services would be performed with all necessary skill and care.

See, also, *Selim v. Naviera Aznar*, 1976 A.M.C. 673 (ND, Ohio) where the court noted that a tug, a ship's master and the pilot owed to the vessel towed a similar duty, i.e., to exercise reasonable care and maritime skill in performing their services commensurate with that which prudent navigators performing similar services would employ. However, once a pilot's training and capacity have been established, the burden shifts to those attacking his competency to prove the shipowner's lack of due diligence in accepting him. *Grace Line, Lim. Procs.*, 1975 A.M.C. 991, 517 F2d 404 (CA-2).

Duty of Shipowner, Master, and Crew

Even though the pilot has "charge of" the ship and to him belongs the whole conduct of the navigation of the ship, the owners of the vessel are responsible for the sufficiency of the ship and her equipment, the competency of the master and crew, and their obedience to his orders which, under ordinary circumstances, must be explicitly obeyed. *The Christiana* (1950), *supra*; *The City of Cambridge* (1874), *supra*; *The Ape* [1916] P. 303, C.A.; *The Batavia* (1854), *supra*; *The Velasquez* (1867) L.R. 1 P.C. 494, 16 E.R. 378, P.C.; *The Iona* (1867) L.R. 1 P.C. 426, 16 E.R. 344, P.C.; *S.S. Alexander Shukoff v. S.S. Gothland* [1921] 1 A.C. 216, 15 Asp. M.L.C. 242, H.L.; *The Tactician* [1907], *supra*; *The Elysia* [1912] P. 152, 12 Asp. M.L.C. 198; *The Yorkmar*, 1977 A.M.C. 805, 434 F.Supp. 715 (D,Md.); *Gypsum Carrier Lim. Procs.*, 1979 A.M.C. 1311, 465 F.Supp. 1050 (SD,Ga.); *Nippon Yusen v. Zepher Shipping*, 1971 A.M.C. 949 (D,Mass.).

In *The Batavier*, *The Velasquez*, *The Iona*, and *The Alexander Shukoff*, *supra*, it was noted the paramount duty of the master and

the ship's crew was to keep a good lookout and inform the pilot of anything occurring in navigation which may require his attention. In *The Iona*, the court noted that the duty of the pilot was to attend to the navigation of the ship and the master and crew to keep a good lookout. In *The Alexander Shukoff*, the court pointed out that the pilot is entitled to the same assistance from a lookout as would in the ordinary course be given by the lookout to the officers in charge of the vessel.

In *The Tactician*, *supra*, the court held that the pilot was entitled to the active assistance of the master, not by way of interfering with the navigation but in pressing upon his attention such a matter as the nature of the lights of another vessel about which the pilot had apparently formed a mistaken opinion involving risk. In *The Elysia*, *supra*, it was held that though the pilot was negligent, so was the vessel by reason of the master's failure to call to the pilot's attention that another vessel was at anchor and his failure to remind the pilot of the desirability of sound signals.

In *The Yorkmar*, *supra*, although the pilot was "compulsory," the vessel owner was not permitted to escape liability *in personam* for a bridge collision where the vessel's unseaworthiness (inoperable radio transmitter) was a contributing factor. In *Gypsum Carrier Lim. Procs.*, *supra*, the vessel owner was held 80% at fault in a collision with a railroad drawbridge for failure to have a proper lookout and to have the vessel's radar properly manned.

Attention is called to *The Fina Canada*, [1962] 2 Ll.L.Rep. 113, where the court held that where an efficient officer is keeping a radar watch and passing along information to the pilot, the pilot is not obligated to keep the radar watch himself.

In *The Mobile* (1856) 10 Moo. P.C. 467, 166 E.R. 1024, a collision occurred while the pilot was unavoidably below for a few minutes. The vessel owners were held liable.

Master's Duty to Intervene

Notwithstanding the relatively awesome responsibility attached to the pilot, the master of the vessel is nonetheless still in command of his vessel and, in appropriate circumstances, must relieve the pilot if the latter is manifestly incompetent. Consequently, if the master observes or discovers the incompetency of the pilot it is his duty to

interfere with, warn, or even to take over and relieve the pilot. As Justice Swayne said in the *China*, 74 U.S. 53 (1868):

. . . It is the duty of the master to interfere in cases of the pilot's intoxication or manifest incapacity, in such cases of danger which he does not foresee, and in all cases of great necessity. . . .

In *The Oregon*, 158 U.S. 186, the court stated:

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

See also, *The City of Canton*, 1925 A.M.C. 887, 6 F2d 6 (CA-5); the *Brenta II*, 1929 A.M.C. 897, 32 F2d 209 (CA-2); *Union Shipping and Trading Co. v. U.S.*, 1942 A.M.C. 709, 127 F2d 771 (CA-2); *Dampsk. Atalanta v. U.S.*, 1929 A.M.C. 855, 31 F2d 961 (CA-5); *McGrath v. Nolan*, 1936 A.M.C. 724, 83 F2d 746 (CA-9); *City of Los Angeles v. Standard Transfer Co.*, 1929 A.M.C. 1287, 32 F2d 988 (CA-9); *The Framlington Court*, 1934 A.M.C. 272, 69 F2d 300 (CA-5); *Tankers and Tramps Corp. v. Jane McAllister*, 1964 A.M.C. 2551 (USDC, NY); *Fort Fetterman v. S.C. Highway Bridge*, 1958 A.M.C. 1735, 155 F.Supp. 359; *Barbey Packing Co. v. S.S. Stavros*, 1959 A.M.C. 1542, 169 F.Supp. 897; *Canal Barge Co., Lim. Procs.* 1971 A.M.C. 2577, 323 F.Supp. 805 (ND, Miss.); *Sydney Ferries Ltd. v. The Ship Tahiti* (1930) 30 S.R. (N.S.W.) 360, 47 W.N. 130 (Aus.); *The Tactician* [1907], *supra*; *The Prinses Juliana* [1936] P. 139, 54 Ll.L.Rep. 234; *Tower Field (Owners) v. Workington Harbour and Dock Board* [1950] 84 Ll.L.Rep. 233, [1950] 2 All E.R. 414, [1951] A.C. 112.

In *Tower Field*, Lord Normand stated the rule succinctly:

The master is not merely entitled but bound to point out to the compulsory pilot that he may be mistaken in an opinion he has formed (*The Tactician* [1907] P. 244). He is also entitled, in order to avoid immediate peril, to take the navigation out of the hands of the

pilot, but if he does so he must be prepared to show justification (*The Prinses Juliana* [1936] P. 139, 54 Ll.L.Rep. 234).

Dr. Lushington, in *The Peerless* (1860) 167 E.R. 16 said:

There may be occasions on which the master of a ship is justified in interfering with the pilot in charge, but they are very rare. If we encourage such interfering, we should have a double authority on board, a *divisum imperium*, the parent of all confusion, from which many accidents and much mischief would probably ensue. If the pilot is intoxicated, or is steering a course to the certain destruction of the vessel, the master no doubt may interfere and ought to interfere, but it is only in urgent cases.

In *Sydney Ferries, Ltd., supra*, the master was held to be negligent in giving no warning to the pilot as to the possibility of danger or as to the breach of regulations as to speed.

While the master may be required to assume control and supersede the pilot in certain circumstances, it is equally clear that he does so literally at his own peril. Since the pilot is employed because of his greater familiarity with local waters and conditions, the master who displaces him must be certain that his action is correct and proper in the circumstances then existing. *Homer Ramsdell v. Compagnie Generale Transatlantique*, 63 Fed. 845, 182 U.S. 406; *White v. Lavergne*, 2 Fed. 788 (1880) (SDNY); the *Sierra Leone*, 1929 A.M.C. 855, 31 F2d 961 (CA-5); *Union Shipping and Trading Co. v. U.S.*, 1942 A.M.C. 709, 127 F2d 771 (CA-2). He is presumptively entitled to rely on the pilot's special knowledge and skill. *White v. Lavergne, supra*; *Homer Ramsdell v. Compagnie Generale Transatlantique, supra*; *Waterman S.S. Co. v. U.S.*, 1969 A.M.C. 2100. And see *The Peerless* (1860), *supra*; *The Hans Hoth*, [1952] 2 Ll.L.Rep. 341; *The Saltaro* [1958] 2 Ll.L.Rep. 232. In *The Hans Hoth, supra*, the collision occurred through negligence of the pilot in disregarding a local signal. The defendant, the master and a part owner of the vessel, sought to limit his liability. The plaintiffs contended he had contributed to the accident because he had not familiarized himself with the local regulations. The court, in granting limitation, said:

It would be, in my judgment, putting too much upon a master, and would be asking him to exercise more than ordinary care, to regard

him as being under a duty to know all the local signals when he has a pilot on board, or to expect him to be ready to query the pilot's actions in relation to such local signals. In my judgment, on such matters of purely local knowledge, a master exercising ordinary and reasonable care is entitled to rely on the guidance which he obtains from the local pilot.

The question is one of fact, not law, and in jury cases is, of course, a jury question. The *Sierra Leone, supra*; the *Brenta II*, 1929 A.M.C. 897, 32 F2d 209 (CA-2); and *Hinman v. Moran Towing & Transportation Co. (The Savoia)*, 1934 A.M.C. 544.

Liability of Pilots

A pilot is not held liable merely because a disaster occurs providing he uses sound judgment in the carrying out of his duties. This is true even though that judgment may have proven erroneous on hindsight. *Dampsk. Atalanta v. U.S. (Sierra Leone)*, 1929 A.M.C. 858, 21 F2d 966 (CA-5); *Andros Shipping Co. v. Panama Canal Co.*, 1962 A.M.C. 870, 298 F2d 720 (CA-5).

To hold the pilot liable, he must be shown to have been negligent, since negligence is the *sine qua non* of liability. The burden of proving his negligence is upon the one alleging it. See the *Manchio-Neal*, 243 Fed. 801 (SDNY) (1917) (CA-2), where the court said:

. . . But a pilot is responsible only for his personal negligence and that must be affirmatively shown. . . . Beebe (the pilot) cannot be held without clearer proof than is here presented of his personal responsibility for the error.

See also, *The China v. Walsh*, 74 U.S. 53; *Andros Shipping Co. v. Panama Canal Co., supra*; *U.S. v. Soriano*, 1967 A.M.C. 41, 366 F2d 699; *Mariblanca N.S.A. v. Panama Canal Co.*, 1962 A.M.C. 601, 298 F2d 729; *Mathieson v. Norfolk & North American S.S. Co.*, 1934 A.M.C. 1451, 73 F2d 177; *Barbey Packing Co. v. S.S. Stavros*, 1959 A.M.C. 1542, 169 F.Supp. 987 (D.Ore.); *U.S. v. Sigfridson*, 1964 A.M.C. 2341 (D.Ore.); *Storts v. Clements* (1792) Peake, 107, 170 E.R. 109, N.P.; *Lawson v. Dumlin* (1850), 137 E.R. 811; *The Octavia Stella* (1887) 57 L.T. 632, 6 Asp. M.L.C. 182; *Re The Lotus* (1861), 11 L.C.R. 342, 2 S.V.A.R. 58 (Can.).

As noted hereafter, however, suits against pilots are relatively rare either because of low limits of statutory liability (such as Sec. 35 of the Pilotage Act, 1913), or because the pilot is usually without

sufficient financial resources to make it worthwhile to attempt to pursue recovery from him.

Voluntary Versus Compulsory Pilotage

Since the liability of those employing pilots depends upon the relationships among the pilot, the vessel he is piloting, and the owner of that vessel, it is important to make a distinction between whether the pilotage is "voluntary" or "compulsory."

In a sense, of course, it is compulsory pilotage when a vessel is required by federal law to employ a federally-licensed pilot. See 46 U.S.C.A. 364, discussed *supra*. On the other hand, an owner of a small vessel exempted from inspection (and thus the requirement of carrying a licensed pilot) may, if he chooses, employ a federal pilot or state pilot merely because of a belief that such an individual possesses a higher degree of competence. Clearly, this is a "voluntary" type of pilotage, *National Grocery Co. v. Olsen*, 1941 A.M.C. 376, 108 P2d 320.

Neither of these situations involve voluntary pilotage nor compulsory pilotage in the narrow sense in which it is used in the present context.

"Compulsory" pilotage, as used here, refers only to the situation where a vessel is compelled by statute to take on a licensed pilot to conduct the vessel over certain well-defined pilotage grounds, or upon failure to do so, be liable for the payment of half-pilotage, or the entire pilotage fee, or subject the owner and/or master to criminal penalties, whichever may be required by the particular statute involved.

"Voluntary" pilotage, as used here, refers to jurisdictions which, by statute, permit the owner or master of the vessel to pilot his own vessel, there being no provision requiring him to take on a licensed pilot, or to pay half or whole pilotage for not doing so.

As the Supreme Court stated in *Homer Ramsdell Transp. Co. v. La Compagnie Generale Transatlantique*, 182 U.S. 406, describing true "voluntary" pilotage:

. . . And it will make no difference . . . that the pilot, if any is employed, is required to be a licensed pilot; provided the master is at liberty to take a pilot, or not, at his pleasure; for in such a case the master acts voluntarily, although he is necessarily required to select from a particular class.

Contrast this language with that of the Supreme Court in *The China v. Walsh*, 74 U.S. 53, where it was said:

. . . If it be said the master had the option to pay the pilotage and proceed without the pilot, the answer is that he would have had the same option if the consequence had been fine and imprisonment, or the visiting upon him of any other penal sanction. In each case there would be compulsion, measured in its force by the means prescribed to make it effectual. A duty is enjoined and an obligation is imposed. The alternatives presented are to receive the pilot or to refuse and take the consequences. . . . It seems to us clear, in the light of both reason and authority, that the pilot was taken by the steamship upon compulsion.

See also, *Newfoundland Export and Shipping Co. v. United British S.S. Co. (Framlington Court)*, 1934 A.M.C. 272, 69 F2d 300 (CA-5); *Mattina v. Commercial Cable Co.*, 1956 A.M.C. 327, 137 F.Supp. 472 (SDNY); *Standard Oil Co. of N.J. v. U.S.*, 1928 A.M.C. 1419, 27 F2d 370 (DC, Ala.).

In several cases, it was stated by way of dicta that not only must a statute require the taking of a pilot but must also carry the penalty of a fine in order for it to be considered compulsory. *Martin v. Hilton*, 2 Metc. (Mass. 371); *The Merrimac*, 20 L.ed. 873. However, other cases both prior and subsequent have disagreed. *The China v. Walsh*, *supra*; *Homer Ramsdell Trans. Co. v. La Compagnie Generale Transatlantique*, *supra*; *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 167; *Sprague v. Thompson*, 118 U.S. 90; *Huus v. N.Y. and P.R.R. Co.*, 182 U.S. 392; *Standard Oil Co. v. U.S.*, *supra*; *State v. Ring*, 122 Or. 644, *aff'd* 276 U.S. 607.

Section 11 of the Pilotage Act, 1913, states the requirement of compulsory pilotage in Great Britain as follows:

(1) Every ship (other than an excepted ship) while navigating in a pilotage district in which pilotage is compulsory for the purpose of entering, leaving, or making use of any port in the district, and every ship carrying passengers (other than an excepted ship) while navigating for any such purpose as aforesaid in any pilotage district (whether pilotage is compulsory or not compulsory in that district) shall be either—

- (a) under the pilotage of a licensed pilot of the district; or
- (b) under the pilotage of a master or mate possessing a pilotage certificate for the district who is bona fide acting as master or mate of the ship.

(2) If any ship (other than an excepted ship) in circumstances in which pilotage is compulsory under this section, is not under pilotage as required by this section, after a licensed pilot of the district has offered to take charge of the ship, the master of that ship shall be liable in respect of each offence to a fine not exceeding double the amount of the pilotage dues that could be demanded for the conduct of the ship.

Section 41 provides that when a ship is navigating in a district and has on board a pilot licensed for that district, or a master or mate holding a pilotage certificate for that district, the master shall cause a pilot flag to be exhibited; failure to do so without reasonable cause subjects the master to a fine not exceeding fifty pounds.

Section 42 provides for a like fine if a pilot flag (or one so nearly resembling the pilot flag as to be likely to deceive) is displayed on a vessel not having a pilot on board or a master or mate holding a pilotage certificate.

Section 43 requires the master of a vessel (other than an excepted ship) when navigating in circumstances in which pilotage is compulsory to display a pilot signal and keep it displayed until a licensed pilot comes on board. The same requirement is imposed where the vessel is being piloted in a pilotage district by a pilot not licensed for the district. Failure to comply subjects the master to a fine not exceeding twenty pounds.

Section 44 requires the master of a vessel, whether in circumstances in which pilotage is compulsory or not, to facilitate the pilot getting on board. Violation subjects the master to a fine not exceeding double the amount of pilotage dues that could be demanded.

The Charlton (1895) 8 Asp. M.L.C. 29, states very clearly one of the principal reasons for compulsory pilotage:

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

Equally clearly, another strong reason is to provide financial support for the pilotage service.

Under the Pilotage Act, subject to any provision of a Pilotage Order [by Sec. 7, the Board of Trade was authorized, *inter alia*, to provide by order that pilotage be made compulsory or non-compulsory in pilotage district], compulsory pilotage was continued in any district where it was compulsory at the effective date of the Act, and non-compulsory pilotage was also continued under the same terms.

For illustrative cases involving compulsory pilotage statutes and regulations, see discussion, *infra*, under that heading.

Whether pilotage is compulsory or voluntary is of great concern in the United States (as will be shown in the discussion which follows) for the reason that in the United States the doctrine prevails that neither the master nor owner of a vessel being piloted by a compulsory pilot is liable *in personam* for the negligence of that pilot. In Great Britain and the Commonwealth Nations the defense of compulsory pilotage has been abolished by statute.

Recovery for Negligence of the Pilot

(A) AGAINST THE PILOT HIMSELF:

The pilot, whether voluntary or compulsory, is individually liable for his own negligence. However, since he is rarely of sufficient affluence to respond in heavy damages, the injured party generally looks elsewhere for the source of his recovery. As was said in *The China v. Walsh, supra*:

. . . The remedy of the damaged vessel, if confined to the culpable pilot, would frequently be a mere delusion. He would often be unable to respond by payment—especially if the amount recovered were large. . . .

Possible inability to pay the judgment has not, however, always prevented suits being brought against pilots. See *Donald v. Guy*, 127 Fed. 228 (ED, Va., 1903); *Barbey Packing Co. v. S.S. Stavros*, 1959 A.M.C. 1542, 169 F.Supp. 897 (DC, Ore.); *U.S. v. Joyce*, 1975 A.M.C. 1498, 511 F2d 1127 (CA-9). This has been particularly true where pilot associations have carried liability insurance covering their respective pilot members [such policies have usually been procured through the pilot associations, but coverage is limited to the individual pilot members and no coverage is provided with respect to

the pilot association *per se*; in practice, the pro-rata premium applicable to each individual pilot has been deducted from his share of income from the association's "pooled income" derived from pilotage fees]. When the pilots have procured such individual liability insurance, its availability to interested litigants soon becomes known. As a result, interested litigants (usually shipowners or third parties injured by reason of a collision by the ship while being piloted) have frequently filed suits *in personam* against the involved pilot, in the hope that the pilot's liability underwriter could be persuaded to contribute something toward a settlement. Recognition of this factor has led some pilot associations and individual pilots in the United States to abandon liability insurance altogether.

The pilot associations in Oregon in 1959 (which at that time had voluntary pilotage only; i.e., either the master or the owner of the vessel was privileged to pilot the vessel and need not hire a pilot) adopted an ingenious system which was sanctioned [insofar as it was legally permissible to do so] by the state legislature. The system adopted was on the theory that state pilotage rates must directly reflect the cost to the pilots of doing business; consequently, if they were required to pay high premiums to procure adequate insurance to protect themselves against a high degree of liability, the pilotage rates would necessarily have to be increased. Since all vessel owners carry P & I insurance on their vessels, which insurance protects the vessel owner with respect to negligence of the pilot aboard it, if the pilots likewise carry liability insurance, the vessel owner is paying for his liability coverage twice—first in connection with the P & I premium and second in paying an increment in the pilotage fee to reflect the cost of liability insurance for the pilot.

In 1959, in a rare show of unanimity and enlightened self-interest, the pilot associations and the Steamship Operators' Association combined forces to lobby an act through the state legislature reading as follows (ORS 776.520):

Special contracts or tariffs limiting liability of licensed pilots. Pilots licensed by this state are authorized to limit their liability by special contracts or tariffs containing substantially the terms and provisions of the following form:

The rates and charges named in this tariff do not include marine insurance insuring the vessel, its owners, agents or operators from the consequences of negligence or errors in judgment of the particular pilot supplying the services.

Upon reasonable notice from the vessel, its master, owners, agents or operators, pilots parties hereto will provide such insurance on a "trip" basis to the value of the vessel and its cargo, the premium of which will be assessed in addition to the rates and charges specified herein.

The election of the vessel, its master, owners, agents or operators not to request pilots parties hereto to procure such insurance and to elect to have the pilots parties hereto perform services on the rates and charges specified herein shall constitute a binding and irrevocable agreement on the part of the vessel, its master, owners, agents or operators to the terms and conditions of the following:

It is understood and agreed, and is the essence of the contract under which services of the pilot are tendered to and accepted by the vessel, its master and owners, that:

(1) The services rendered hereunder are rendered by a pilot duly and regularly licensed by the State of Oregon pursuant to ORS chapter 776, or (with respect to domestic vessels) the holder of a valid license issued by the Federal Government;

(2) Such services have been voluntarily requested and are voluntarily rendered;

(3) Such services are advisory in nature only, the master of the vessel remaining at all times in full command of the vessel;

(4) The services of the pilot are accepted on the express understanding that when he goes aboard the vessel he becomes the servant of the vessel and its owners and operators, and the master, owners and operators of the vessel expressly covenant and agree not to assert any personal liability against the pilot to respond in damage (including any rights over) arising out of or connected with, directly or indirectly, any damage, loss or expense sustained by the vessel, its master, owners, operators and crew, and any third parties, even though resulting from acts or omissions of the pilot in respect to the giving of orders to any tugs furnished to or engaged in assisting services and in respect to the handling of the vessel; and provided, further, that to the extent only to which liability is legally imposed against the vessel, taking into consideration any limitation thereof to which the vessel or its owners is entitled by reason of contract, bills of lading or any statute or rule of law in force, the said master, owners and operators further covenant and agree to indemnify and hold harmless the pilot in respect to any liability arising out of suits or actions directly against the pilot by third parties by reason of errors or omissions of the pilot in the performance of pilotage services; excepting, however, such personal liability and rights over as may arise by reason of the wilful misconduct or gross negligence of the pilot; and

(5) The fees charged for the services rendered by the pilot under this agreement have been computed and are assessed in accordance with and based upon the above stipulations.

The system appears to have worked admirably. The pilot associations arranged through London underwriters to provide so-called "trip" insurance at relatively nominal rates. If the vessel owner requests such trip insurance, the associations notify their local broker who, in turn, arranges for the issuance of a "trip certificate" and charges a premium on an audit basis. Thus far, to the best of the author's knowledge, only the Federal government has requested such trip insurance. Such trip insurance was involved in *U.S. v. Sigfridson*, 1964 A.M.C. 2341, involving a collision with a pile dike by a United States Navy tug and barge flotilla under the command of a Columbia River pilot. The court held the pilot negligent as well as the crew of the tug and thus divided the damages. (The fact that "trip" insurance was involved does not appear from the reported decision.) The voluntary "insurance option" pilotage agreement appears to have virtually eliminated suits against individual pilots in Oregon.

Logically, of course, notwithstanding a tendency on the part of the Supreme Court to strike down clauses exculpating one from the consequences of his own negligence (see the discussion with respect to *Bisso*, *supra*, Chapter III), there appears no reason why individual pilots as well as individual towboat companies in harbor pilotage situations should not be able to exculpate themselves wholly or at least partially from the consequences of negligence if:

(a) The parties occupy relatively equal bargaining positions;

(b) The agreement between them is freely and openly negotiated;

(c) The rates charged do properly reflect the allocable cost of providing—or not providing—liability insurance, and the party agreeing to absolve the other from liability has a free choice to grant absolution or not, based upon the economic cost of liability insurance; and

(d) Voluntary pilotage is involved as distinguished from compulsory pilotage.

The foregoing conclusion received judicial approval in *U.S. v. President Van Buren*, 1974 A.M.C. 1844, 490 F2d 504 (CA-9). That case involved provisions in a tariff of the City of Long Beach,

California relating to pilotage which provisions were essentially identical in all respects to the provisions of ORS 776.520 quoted above. [It is quite apparent that the City of Long Beach became aware of the actions taken in Oregon in 1957 and accordingly adopted a similar tariff.]

The Ninth Circuit, relying upon *The Merrimac*, 81 U.S. 199 (1872), held that the assessment of three-fourths of the applicable pilotage fee if a vessel did not take a pilot, did not render pilotage compulsory in the City of Long Beach. It further sustained the validity of the City's exculpatory tariff provisions, particularly in light of the privilege accorded to vessel owners to take or not take out "trip" insurance, stating:

Because of the voluntary nature of the pilotage and the availability of trip insurance at a nominal cost, the provisions of the tariff of the Port of Long Beach exculpating the pilot and his employers from liability are valid and enforceable.

In 1957, when the Oregon pilots set up their legislatively-sanctioned system, the Oregon Pilotage Act read (with respect to the obligation to take a pilot) as follows:

ORS 776.405. No person shall pilot any vessel upon any of the pilotage grounds established under ORS 776.025 or 776.115 without being a licensed pilot under this chapter *unless he is the master or owner of the vessel.* (Emphasis added)

Incomprehensibly, in 1973, the Oregon pilots instigated an amendment to ORS 776.405 which, in effect, made pilotage compulsory in Oregon. The amended version of 776.405 reads:

776.405. Except as expressly exempted by federal statute, no person shall pilot any vessel upon any of the pilotage grounds established under ORS 776.025 or 776.115 without being a licensed pilot under this chapter.

Thus, the phrase "except as expressly exempted by federal statute" was added and the phrase "unless he is the master or owner of the vessel" was deleted.

The addition of the first phrase was unnecessary in light of the many decisions holding that state pilotage laws have no effect on vessels sailing under license or enrollment on which the master or officer in charge has a federal license. The deletion of the second

phrase quoted above destroyed the voluntary nature of pilotage under state laws and, in effect, undermined the theory through which Oregon pilots since 1957 have been free of lawsuits.

The validity of the scheme was premised upon two basic factors: i.e., that pilotage was *voluntary* and that vessel owners could, if they wished, elect to have the pilots procure for their account "trip" insurance against the pilot's negligence for a nominal charge. Elimination of the voluntary nature of the pilotage destroyed one of the essential elements of the scheme.

To the best of the author's knowledge, no Oregon pilots have been sued since the 1973 amendment. Whether this has been due to a lack of knowledge concerning the 1973 amendment, or the admitted reluctance on the part of the admiralty bar to file suits against pilots, is not known. In any event, clearly it is only a matter of time until someone challenges the exculpatory scheme.

(B) AGAINST THE VESSEL OWNER, *IN PERSONAM*:

If the pilot is a voluntary pilot, in the narrow sense used herein, the owner of the vessel (*in personam*) and the vessel (*in rem*) are also liable if he is negligent. This is upon the theory that the master or owner of the vessel, of his own volition, chose the pilot, notwithstanding that the choice may have been restricted from among a designated class—licensed pilots. Having thus chosen, the relation of master and servant arises and the maxim "*qui facit per alium facit per se*" applies. Literally translated the term means, "He who acts for another acts for himself." Consequently, suit may be brought against the owner *in personam* and against the vessel *in rem*. *White Ash v. W.S. Holbrook (The Helen)*, 1925 A.M.C. 267, 5 F2d 54 (CA-2); *Consolidated Coastwise Co. v. Lee Towing Co. (The Maren Lee)*, 278 Fed. 918 (CA-2); *Logue Stevedoring Corp. v. Tugs Dalzellance*, 1952 A.M.C. 1297, 196 F2d 1369; *Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique*, 182 U.S. 406. This principle was well stated in *Homer Ramsdell, supra*:

The liability of the owner at common law for the act of a pilot on his vessel is well stated by Mr. Justice Story in his Treatise on Agency, 2d ed. §456a: "The master of a ship, and the owner also, is liable for any injury done by the negligence of the crew employed in the ship. The same doctrine will apply to the case of a pilot employed by the master or owner, by whose negligence any injury happens to a third person or his property; as, for example, by a collision with another

Hondurena v. Bank Line, 1977 A.M.C. 1944, 434 F.Supp. 602 (SDNY); *Burgess v. Tamano*, 1977 A.M.C. 1892, 564 F2d 964 (CA-1).

In *Burgess v. Tamano*, *supra*, the court held that the Federal Water Pollution Control Act (33 U.S.C.A. 1321 *et seq.*), in exempting shipowners from liability for act or omission of a "third party," did not refer to independent contractors hired by the shipowner, and consequently held that the ship was liable for the negligent navigation of compulsory pilot inasmuch as the statute does not recognize any distinction between the ship and her owner.

Compare, however, *The Yorkmar*, 1977 A.M.C. 805, 434 F.Supp. 715 (D,Md.), where the court held that although a Chesapeake and Delaware Canal pilot was "compulsory" under 46 U.S.C.A. 364 and 224, the vessel owner could not escape *in personam* liability for a bridge collision where the vessel's unseaworthiness (inoperable radio transmitter) was a contributing cause.

In short, the fact that the owner or the master was compelled to take a pilot by virtue of the applicable state pilotage law is no defense to a suit against the vessel *in rem*.

What is the effect of this rule with respect to the rights of a libellant in a both-to-blame case where the vessel of the libellant is under the control of a compulsory pilot? Logically, it would seem to make a difference if the suit is *in personam* rather than *in rem*. [If the suit were brought *in rem*, under the rule in *The Barnstable*, *supra*, the libellant should recover only proportionately because the vessel was being navigated by a pilot (even though a compulsory pilot) who was lawfully in charge. On the other hand, if the suit were *in personam*, the owner would not be liable for the fault of the pilot.] This question was raised in *Harrison v. Hughes*, 125 Fed. 861 (CA-3), *cert. den.* 191 U.S. 575, where the vessel, under the command of a compulsory pilot, ran into an unlighted breakwater at night. The master of the vessel sued the owner of the breakwater *in personam*. There was no cross libel but the court held that both parties were at fault. The Court of Appeals, disregarding the fundamental distinction between suits *in personam* and *in rem*, nonetheless held that the vessel could only recover half damages. The result is difficult to understand.

Pilot must be solely at fault if owner is to avail himself of defense of compulsory pilotage.

Obviously, a defense based upon the fact that the pilot was compulsory should apply only if the fault imposed upon the vessel was solely that of the pilot. And the courts have so held. *The China*, 74 U.S. 53 (1868); *The Paris*, 1930 A.M.C. 153, 37 F2d 734, *aff'd* 44 F2d 1018; *The Savoia*, 1934 A.M.C. 544; *City of Canton*, 1925 A.M.C. 887, 6 F2d 6 (CA-5); *Charente S.S. Co. v. U.S.*, 1926 A.M.C. 1115, 12 F2d 412 (CA-5). If a contributing cause of the failure is the failure of the master or the crew of the vessel being piloted to do some proper act (or the doing of something which should not have been done) then the defense of compulsory pilotage fails. See, for example, *The Yorkmar*, 1977 A.M.C. 805, 434 F.Supp. 715 (D,Md.).

Liability of Port and Harbor Authorities, Canal Companies, and Municipalities Employing Pilots

As might be expected, in the absence of statutory limitations or exculpatory measures, the doctrine of *respondeat superior* (where the principal or master is held responsible for the acts of his servant or employee) imposes liability upon those organizations employing pilots.

In *U.S. v. Port of Portland*, 147 Fed. 865 (DC, Ore.), *aff'd* 176 Fed. 866 (CA-9), the court held the Port of Portland liable for the negligence of a pilot employee, stating:

The Port of Portland was created by act of the Legislative Assembly of the State of Oregon with power to make all contracts, to hold, receive and dispose of real and personal property, and do all other acts and things which might be requisite, necessary or convenient in carrying out the objects of the corporation, to sue and be sued, plead and be impleaded, and to improve the channel of the Willamette and Columbia Rivers, between Portland and the sea and to that end was duly authorized to employ engineers, superintendents, mechanics, clerks, and other persons at such rates as it might deem just. . . .

But the present [case] is even a stronger case because the responsibility of the Port of Portland is more nearly analogous to that of an incorporated city having the control and charged with the supervision and care of the public streets; . . . If negligent in the manner as alleged in the libel, the tug and tow might be regarded as a dangerous and perhaps unlawful obstruction in the navigable channel of the Co-

lumbia River; so that in view of the closer analogy to the case of a city, in respect to the repair of its streets, the Port of Portland would then be amenable upon the same principle.

The same question was raised in *The Thielbek*, 241 Fed. 209 (CA-9), where the Ninth Circuit stated:

... the further contention in behalf of the municipality that the pilot was not the servant of the port, but really a servant of the vessel for whose negligence the Port of Portland was not responsible, is sufficiently answered by the cases of *Workman v. Mayor, etc. of New York City*, 179 U.S. 522, 21 Sup. Crt. 214, 45 L.ed. 212 and *U.S. v Port of Portland*, 147 Fed. 865, *aff'd* by this court in 176 Fed. 886. . . .

In *Workman, supra*, the city was sued by Workman to recover damages suffered by his vessel when it was hit by a fireboat belonging to the City of New York while in the custody and management of its fire department. It was charged that the fireboat was negligently handled while being used to assist in putting out a fire. The Supreme Court said:

... [I]t unquestionably appears that the fire department of the City of New York was an integral branch of the local administration and government of that city. The ministerial officers who directed the affairs of the department were selected and paid by the city; all the expenses of the department of every kind and nature were to be borne by the city, which was bound by all contracts made for such purpose; all the property of the department, including the fireboats, belonged to the city; . . .

That upon such a state of things, the relation of master and servant existed between the City of New York and those in charge of the fireboat is clear. And that under the general maritime law, where the relation of master and servant exists, an owner of an offending vessel committing a maritime tort is responsible, under the rule of *respondent superior* is elementary. . . .

To the same effect is *Boston, Cape Cod and New York Canal Co. v. Chadwick and Co.*, 266 Fed. 775 (CA-1), where the pilotage fees were derived from the tolls charged for passage through the canal. The court stated, in part:

By its charter the canal company was authorized to maintain and operate steamers and other vessels or use any other means or methods

for assisting vessels in the approach to and passage through and from the canal . . . and this assistance would include the furnishing of pilots as well as tows.

In *The Dona Aurora*, 1961 A.M.C. 1105, 289 F2d 586 (CA-9), the City of Long Beach and a compulsory pilot hired by the city were held liable for the negligence of the pilot in entering the harbor, with resultant grounding on a breakwater. Compare, however, *Standard Oil Co. of New Jersey v. U.S. (Bostwick-Casey)*, 1928 A.M.C. 1419, 27 F2d 370 (DC, Ala.), where the dock commission of the city was exonerated from liability even though the pilot, a harbor master of the dock commission, was negligent in piloting the vessel. The decision appears to be out of line with all other decisions.⁹

Prior to 1950, the United States was not held liable for damages in the Panama Canal, except in the locks, caused by fault on the part of Canal pilots unless the Governor determined otherwise. 48 U.S.C.A. 1319; *The Wisconsin*, 1937 A.M.C. 1035, 90 F2d 225 (CA-5). The Federal Tort Claims Act, 28 U.S.C.A. 921-946 expressly provides that the act does not apply to any claim arising from injury to vessels, cargo, crew or passengers of vessels, while passing through the locks of the Panama Canal or while in Canal Zone waters.

In 1950, Congress amended the Canal Zone Code (see text of amendatory act in 1950 A.M.C. 1931) to provide that the Panama Canal Company is liable for payment for injuries to vessel, cargo, crew or passengers arising out of passage of the vessel through the locks under the control of officers and employees of the Company. Further, the Canal Company is liable for such injuries to vessels, etc., in other waters of the Canal, other than the locks, when such injuries are proximately caused by negligence or fault on the part of any officer or employee acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal; provided, however, that in the case of a vessel required to have a Panama Canal pilot on duty aboard, no damages are payable

⁹ In *Pacific Transport Lines v. Hawaii*, 1963 A.M.C. 1321 (St. Haw.), the court held that although the territory had waived immunity in contract actions, it had not waived such immunity with respect to torts. The court further held that whenever a compulsory pilot hailed an inbound vessel, an implied pilotage contract arose. However, such implied pilotage contract did not compel a conclusion that there was an implied warranty that the Territory would indemnify the shipowner for a failure on the part of the pilot to perform his job with workmanlike skills.

unless at the time of injury the navigation or movement was under the control of the Panama Canal pilot.

In the *Aurora Borealis*, 1960 A.M.C. 266, 272 F2d 726, and in *Victorias Milling Co. v. Panama Canal Company*, 1960 A.M.C. 251, 272 F2d 716, the Fifth Circuit construed the amendatory act. In the latter, the Company was exonerated on the grounds that the negligence lay in the failure of the vessel's personnel to execute the pilot's orders promptly and properly; in the former, the Canal Company was held liable due to the failure of the pilot to use two tugs instead of only one and in the failure of the tugmaster to cooperate with the pilot and obey his orders. See, to the same effect, *Dreyfus & Cie. v. Panama Canal Co.*, 1954 A.M.C. 652, where the trial judge applied the doctrine of *res ipsa loquitur*. In *Victorias Milling, supra*, the Fifth Circuit stated it felt the doctrine was "generally inapplicable" to strikings and groundings in the Canal.

In the *Mariposa*, 1960 A.M.C. 1607, 182 F.Supp. 369 (CZ), the Canal Company was exonerated from liability on grounds that the pilot was not at fault and that the striking of the vessel against the bank was due to negligence on the part of the vessel's employees. The court held the doctrine of *res ipsa loquitur* could not be applied and that the vessel had failed to prove specific acts of negligence against the pilot. And in the *Andros Venture*, 1960 A.M.C. 2348, 184 F.Supp. 246, the court exonerated the Canal Company, finding the pilot not at fault but the vessel at fault—she had an improperly designed rudder, her draft was not properly reported to the pilot, her turbine nozzle power was improperly managed by the engine-room personnel and her throttle movements did not obey commands from the bridge. In so doing, the court commented that while the Canal Zone pilot was not an insurer of the vessel's safety, he was required to exercise such care and expert skill as would be commonly possessed by others in his profession.

In *Gulf Oil v. Panama Canal Co.*, 1970 A.M.C. 2410, 311 F.Supp. 1307 (CZ), on remand the Panama Canal Co. was held liable for rudder damage sustained by a transiting vessel which struck the canal bank due to the compulsory pilot's failure to exercise the required degree of skill.

In *Waterman S.S. Co. v. U.S.*, 1969 A.M.C. 2100, 304 F.Supp. 401 (WD, Wash.), the United States was held liable for the negligent action of its pilot resulting in damage to a merchant vessel being docked at Da Nang, Vietnam, caused by the assisting tug's pushing

rather than pulling in turbulent waters. And in *American Foreign S.S. v. U.S.*, 1974 A.M.C. 1557 (SDNY), the court, in view of wartime controls exercised by the Military Sea Transportation Service in Saigon in 1967, imputed the negligence of compulsory river pilots to the United States rather than to the Republic of Vietnam.

In *Mathiesen v. Panama Canal Co.*, 1977 A.M.C. 981, 551 F2d 954 (CA-5), the Panama Canal Co. did not challenge its liability—only the reasonableness of a settlement—in an indemnity action by a Norwegian shipowner which had settled a collision suit brought against it by a Dutch shipowner. The collision was found to have been caused by the negligence of the Company's pilot. The appeals court held that the district court did not err in judging the reasonableness of the settlement of the Dutch litigation on the basis of opinions of Dutch attorneys who settled the case as to the likely result if the case had been tried.

Pilotage Authorities and Harbor Authorities

Section 19 of the Pilotage Act, 1913, precludes any liability being imposed upon a pilotage authority for negligence or fault of a pilot. But such an authority may be held liable for damages caused by reason of a failure to provide adequate pilotage service. *Anchor Line (Henderson Bros.), Ltd. v. Dundee Harbour Trustees, Ellerman Lines, Ltd. v. Same, etc.*, (1922) 38 T.L.R. 299, 10 Ll.L.Rep. 47, H.L. In that case, the plaintiffs' vessels were damaged by striking a submerged wreck when they attempted to enter the River Tay after having waited vainly for pilots to tender their services. The plaintiffs claimed that the authority was negligent in not taking reasonable steps to secure the attendance of pilots and in not properly buoying the estuary so as to apprise vessels coming in of the presence of the wreck. The court held that in each action the damage was caused by negligence in both particulars.

Under the Pilotage Authorities (Limitation of Liability) Act, 1936, a pilotage authority's liability for damage caused without the actual fault or privity of the authority may be limited to £100 multiplied by the number of pilots holding licenses in the district at the date the damage occurs.

In *Workington Harbour & Dock Board v. S.S. Towerfield (Owners)* [1950] 2 All E.R. 414, [1951] A.C. 112, 84 Ll.L.Rep. 233,

H.L., the House of Lords had before it a case in which the harbor authority was negligent in not fulfilling their obligations by sounding and dredging the channel and in not insuring that the pilot and master were warned of the state of the channel. A compulsory pilot was aboard and he also was found negligent. The vessel struck bottom and subsequently broke her back. The owners sued to recover, alleging that the harbor authority had breached its duty to take reasonable precautions that the approaches were safe or to give warning that they were not and alleging further that the condition of the harbor was not in accordance with the chart.

The House of Lords imputed the negligence of the compulsory pilot to the vessel owners on the ground that Section 15 of the Pilotage Act applied to the claim by the shipowners whether it sounded in tort for negligence or in breach of contract. On that basis and the finding that the harbor authority was also negligent, the court held neither could recover from the other. However, under Section 74 of the Harbours, Docks & Piers Clauses Act, 1847, the ship's owners were held liable for damage caused to the harbor notwithstanding the contributory negligence of the harbor board, but such damages were limited to actual physical damage and did not include loss of revenue.

It is apparent from the case that if a harbor board provides compulsory pilots and damage is caused by reason of the compulsory pilot's negligence or fault, the shipowner has no recourse as the negligence of the compulsory pilot will be imputed to him.

No case can be found in the United States in which liability has been imposed upon pilotage authorities for negligent acts of pilots licensed by them. To the contrary, in *State of Washington v. M/V Dilkara*, 470 F.Supp. 437 (WD, Wash., 1979), a defense of vicarious liability on the part of the State for having licensed a pilot was stricken on motion, where the only function of the State was to license pilots and it did not otherwise benefit from the contract between the vessel and the pilot or control the pilot's actions.

For other cases involving liability of harbor authorities in England and the Commonwealth Nations where negligence of a pilot was not involved, see *Mersey Docks Trustees v. Gibbs*, *Mersey Docks Trustees v. Penhallow* (1866) 11 H.L. Cas. 686, 11 E.R. 1500, H.L.; *R. v. Williams* (1884) 9 A.C. 418, 51 L.T. 546, P.C.; *Reney v. Kirkcudbright Magistrates* (1892) A.C. 264, 7 Asp. M.L.C. 221, H.L.; *Anchor Line Ltd. v. Dundee Harbour Trustees* (1922), *supra*;

Thompson v. North Eastern Ry. Co., (1862) 31 L.J.Q.B. 194, 121 E.R. 1017, Ex.Ch.; *Dormont v. Furness Ry. Co.* (1883) 11 Q.B.D. 496, 5 Asp. M.L.C. 127; *The Bearn* [1906] P. 48, [1904-7] All E.R. Rep. 315, 10 Asp. M.L.C. 208, C.A.; *Thompson v. Sandwich Corp.* (1901) 1 O.L.R. 407, 21 C.L.T. 206 (Can.); *Hood v. Toronto Harbour Commissioners* (1872) 34 U.C.R. 87, *aff'd* (1876) 37 U.C.R. 72 (Can.); *Robertson v. Portpatrick & Wigtownshire Joint Committee* [1919] S.C. 293, 56 Sc.L.R. 173, [1918] 2 S.L.T. 56 (Sect.).

Attention is called to *Otago Harbour Board v. Cates* (1883) 2 N.Z.L.R. 123 (N.Z.), where it was held that under the Harbours Act, 1878, the harbor board was not responsible for the negligence of a duly licensed pilot appointed by the Board.

For cases involving attempts to hold pilot associations liable for acts of their individual members, see discussion *infra*.

Harbor Pilotage (Pilots Supplied by Tug Companies)

Much of the litigation involving pilotage has arisen from collision damage occasioned while vessels are under command of local, non-compulsory harbor pilots. In many American ports, the local pilots are customarily masters of one of the assisting tugs who go aboard the vessel to be piloted and act as the pilot during the maneuver.¹⁰

The legal principles applicable to such harbor pilotage are fairly well delineated, absent a specific "pilotage clause" under which the various liabilities vis-a-vis the respective parties are materially affected. In order to present logically these legal principles, it is necessary to understand what principles are applicable in the absence of a "pilotage clause." Thereafter, the application of a "pilotage clause" and the manner in which the respective liabilities are altered or shifted can be more readily grasped. In the discussion which follows, cases in which pilotage clauses have been involved are frequently cited in support of the basic legal principle. The impact of the pilotage clause upon the basic principle will then be set forth in a

¹⁰ In some states, notably Oregon and Washington, pilots licensed by the state pilot commission perform such harbor pilotage services; as such, they are members of the local, independent pilot associations and are not employed by tug companies although the members of the pilot associations are customarily drawn from the ranks of former tugmasters.

separate section, thereby, to some extent, resulting in multiple citations of the same cases.

Essentially, harbor pilotage cases break down into rather clearly defined categories, outlined as follows:

(1) Those instances in which the tug company undertakes to take charge of and control the entire movement, whether by furnishing merely the motive power by way of its tugs without furnishing a pilot, or by furnishing both tugs and a company "loaned" pilot. These cases involve both the handling of "dead" ships (ships without power) or "live" ships (ships with power whether or not the power is applied in terms of assisting in the maneuvering and shifting).

(2) Those instances in which the pilot is employed by the shipowner and the tug company merely provides the assisting tugs.

Each of the foregoing categories is further subdivided into those situations in which the tug company was found liable and those in which the tug company was not found liable.

Taking these categories *seriatim*:

Tug Company in Complete Charge As Independent Contractor

DEAD SHIPS

Clearly where the agreement between the tug company and the assisted vessel involves the tug company accomplishing the movement as an independent contractor, either with or without the help of a pilot, and the vessel is without power, the assistance is straight towage and the principles enunciated in *The John G. Stevens*, 170 U.S. 113 (1898), and *Stevens v. The White City*, 1932 A.M.C. 468, 285 U.S. 195 (1932), apply. [See discussion, Chapter III, *supra*.] Consequently, since a bailment does not exist, if negligence on the part of the tug company or its employees is shown, the assisted ship is not liable for damages sustained during the movement. As the Supreme Court said in the *Eugene F. Moran*, 212 U.S. 466 (1909), there is a difference between the case where the harm is done by the mismanagement of the offending vessel and that where it is done by the mismanagement of another vessel to which the immediate but innocent instrument of harm is attached. As the tug company and its

servants are not the agents of the assisted vessel, the latter is not liable *in rem* nor are her owners liable *in personam*. See also, *Sturgis v. Boyer*, 65 U.S. 110 (1861).

The foregoing principle is illustrated in the following cases in all of which the tug company was found liable:

The Barendrecht, 1925 A.M.C. 1121, 9 F.2d 614; *Edward G. Murray*, 278 Fed. 895 (CA-2, 1922); *The Caspian*, 1925 A.M.C. 1407, 14 F.Supp. 1013; *Syria*, 1927 A.M.C. 216 (EDNY); *Wyethville*, 1927 A.M.C. 216 (SDNY); *Bird City—Ozaukee*, 1930 A.M.C. 1526 (EDNY); *William Rockefeller*, 1932 A.M.C. 427, 57 F.Supp. 897 (EDNY); *Norfolk—Berkley Bridge Case*, 1928 A.M.C. 1636, 29 F.2d 115 (ED, Va.); *Corozal*, 1929 A.M.C. 1787 (Arb.); *Ora Ellis—Primavera*, 1952 A.M.C. 1291, 197 F.2d 607 (CA-2); *Marjory—Jos. E. Wing*, 1952 A.M.C. 545, 102 F.Supp. 391 (SDNY); *Nicholson Transit v. Great Lakes Towing*, 1960 A.M.C. 962, 185 F.Supp. 685 (ND, Ohio); *Hur Canaan—Pipe Line Damage*, 1961 A.M.C. 703, 287 F.2d 852 (CA-5); *Sands Point—Abogado*, 1968 A.M.C. 668 (D, Md.)¹¹; *Penn Vanguard*, 1971 A.M.C. 1547, 440 F.2d 193 (CA-5) (pilot found liable).

In the following "dead ship" cases, the tug company was exonerated from fault, either based on the facts involved or the existence of an exculpatory pilotage clause.

Barranca, etc., 1929 A.M.C. 687, 31 F.2d 963 (CA-5) (ship had steam up but used tug as motive power; ship's pilot negligent and tug properly obeyed the pilot's orders); *Hagood*, 1925 A.M.C. 1646 (SDNY) (ship's steering engine broke down and ship drifted; tugs and pilot aboard not negligent); *Southern Cross*, 1927 A.M.C. 457 (SDNY) (uncontrollable sheer; tugs who did their best *in extremis* not liable); *Otsego—Fox—McNaughton*, 1930 A.M.C. 1156, 40 F.Supp. 925 (EDNY) (shipowner failed to sustain burden of proving negligence); *West Wauneke—Willowpool*, 1933 A.M.C. 836, 65 F.2d 385 (CA-2) (strong following wind; ship failed to follow the tug and took sheer); *Papoose*, 1935 A.M.C. 1090, 1579, 79 F.2d 2 (CA-2) (navigation of tug without negligence); *North Atlantic, etc. v. U.S. (Samcree)*, 1954 A.M.C. 363, 209 F.2d 487 (CA-2) (tug and tug company pilot not negligent; vessel's equipment defective); *Spokane, P. & S. Ry. Co. v. Fairport*, 1953 A.M.C. 1638, 116 F.Supp. 549 (D., Ore.) (tug not negligent; assisted vessel held solely liable).

¹¹ Liability predicated, in last case at least in part, on breach of warranty of workmanlike service, discussed in depth, *infra*.

(SDNY) (pilotage clause); *Otto M. Reiss*, 1948 A.M.C. 1636, 79 F.Supp. 1 (D, Minn.) (ship's personnel negligent; effect of pilotage clause not considered); *N.J. Bell Tel. Co. v. Standard Oil Co.*, 1950 A.M.C. 136, 88 F.Supp. 806 (SDNY) (pilotage clause); *Port Republic*, 1953 A.M.C. 1898, 118 F.Supp. 832 (EDNY) (assisted vessel proceeded too fast; tugs not negligent; pilotage clause applicable); *Sealand D. & T. Co. v. Zion*, 1962 A.M.C. 391 (SDNY) (assisted ship's personnel found negligent); *Patterson Terminals v. Johannes Frans*, 1962 A.M.C. 2623, 209 F.Supp. 705 (ED, Pa.) (pilotage clause); *Sun Oil Co. v. Dalzell Towing Co.*, 1933 A.M.C. 35, 287 U.S. 291, 53 Sup. Ct. 135, 77 L.ed. 311 (1932); *U.S. v. Nielson*, 1954 A.M.C. 2231, 349 U.S. 129, 75 Sup. Ct. 654, 99 L.ed. 939 (1955); *Nippon Yusen v. Zepher Shipping*, 1971 A.M.C. 949 (D, Mass.) (pilotage clause obligates owner of assisted tanker to indemnify towing company for its tug captain's negligence, even though towing company had a virtual monopoly in Boston, there being no evidence that it acted to exclude competition); *C.G. & T. Lim. Procs.*, 1974 A.M.C. 261 (SDNY) (assisting tug's action in casting off towline 30 seconds before collision with bridge abutment will not be condemned on the basis of hindsight); *American Oil Co. v. Lacon*, 1973 A.M.C. 1900, 337 F.Supp. 1123 (SD, Ga.) (where vessel was found 75% negligent and docking master 25% negligent in ship-pier collision, not necessary to apply divided damages rule because the tugowner entitled to full indemnity from shipowner; pilotage clause binding where evidence showed it was included in "Schedule of Rates, Terms and Conditions" which was presented to the master of the vessel who signed a receipt acknowledging the performance of tug services "as per" the Schedule); *A/S Atlantica v. Moran T. & T. Co.*, 1974 A.M.C. 555, 498 F.2d 158 (CA-2) (pilotage clause excuses tug company from liability for undocking pilot's negligence; Second Circuit will not follow the doctrine that undocking pilot's failure to request adequate tug power breaches the workmanlike service warranty implied in the towage contract and is therefore outside the protection of the pilotage clause); *Reederei Franz Hagen v. Resolute*, 1976 A.M.C. 2133, 400 F.Supp. 680 (D, Md.) (pilotage clause exempts tug company from liability for stranding damage sustained by assisted steamship and proximately caused by the negligence of the tug company's employee while acting as undocking pilot; the employee was fully competent, his negligent maneuver resulted from a decision made on board the steamship

rather than a faulty preconceived plan, and the assisting tugs were seaworthy and adequately manned); *Consolidated Edison v. Orion Comet*, 1970 A.M.C. 224 (SDNY) (tug, working in tandem with another tug, not negligent for following the orders given by the undocking pilot; the tugs had sufficient power to carry out the maneuver if proper orders had been given and no breach of warranty of workmanlike service was established); *H. Schuldt v. Standard Fruit*, 1978 A.M.C. 2061 (SDNY) (under pilotage clause, all negligent acts of the pilot are attributed to the shipowner and not to the assisting tug; *semble* charterer/pier lessee cannot file a third party complaint against the tug based on the pilot's negligence but may assert liability of the tug, her owner and her pilot based on unseaworthiness).

The question has arisen as to the liability of the tug whose regular master goes aboard the assisted vessel to act as harbor pilot and does so negligently. In the *Algic and Capillo*, 1936 A.M.C. 415, 13 F.Supp. 834 (SD, Fla.), the contract provided that "your tugs" shall be liable for the fault of "tug or tug master." The court properly held that the innocent tug was not liable *in rem* for the negligence of its regular master while acting as a "harbor pilot" aboard the assisted vessel.

It should be emphasized that the pilotage clause runs between the tug company and the person contracting for the pilot's service. It does not bind a third party who was not party to the contract.¹³ This is illustrated in *Niels Finsen*, 1931 A.M.C. 1014, 52 F.Supp. 795 (SDNY), where the charterer under a Government Standard Form time charter contracted for the services of a harbor pilot under the usual pilotage clause. The pilot was negligent and as a result damage was caused to the dock. The court held that the owner of the vessel was not bound by the pilotage clause; that the vessel was, however, liable *in rem*; that the assisting tugs which obeyed all orders properly were not liable; but that the towing company was secondarily liable. To the same effect, see *People of California v. Jules Fribourg*, 1956 A.M.C. 939, 140 F.Supp. 333 (ND, Cal.); *Victory Carriers v. Sea Scout*, 1959 A.M.C. 2164, 272 F.2d 463 (CA-9); *American Oil Co. v. Lacon*, 1973 A.M.C. 1900, 337 F.Supp. 1123 (SD, Ga.) (pilotage

¹³ While it may not "bind" a third party, it does create a factual situation, or is evidence of a factual situation, by which the tug company limits the area in which its general employee is doing the tug company's work, beyond which he is or becomes someone else's employee; i.e., the assisted vessel's.

clause does not affect the tort liability of a tug company who furnishes the docking master to a dock owner who is not a party to the contract between the tug and the vessel).

Where two tugs were engaged in a joint enterprise in towing a large vessel under the direction of the master of one of them and through faults on the part of both tugs damage was caused, the court held that the master in charge was in effect the master of both tugs and that both tugs constituted the unit to be surrendered in limitation proceedings. *Henrik Ibsen, etc.*, 1930 A.M.C. 513, 38 F2d 980 (CA-4). This result conflicts, however, with other decisions relating to *in rem* liability of tugs for negligence on the part of tugmasters who go aboard the assisted vessel as "harbor pilots." In this connection, it should be emphasized that the liability of an assisting tug ordinarily must rest upon some negligence on its part. A tug is not liable nor does her owner assume liability and subject it to a maritime lien for collision damage even when the negligence was that of other tugs of the same owner or of the harbor pilot whom the tug company supplied. *The Gallia*, 196 Fed. 509 (1910); *the W. G. Mason*, 142 Fed. 913 (1905); *Edward G. Murray*, 278 Fed. 895 (1922); *the Sarnia*, 261 Fed. 900 (1919); *The Coamo*, 267 Fed. 686 (1920); *Gypsum Express*, 1968 A.M.C. 616 (DC,La); *Consolidated Edison v. Orion Comet*, 1970 A.M.C. 224 (SDNY).

Pilot Employed Directly by Shipowner—Tugs Merely Assisting

If the pilot is employed directly by the shipowner and a tug company is called upon to supply assisting tugs under the direction and control of the pilot, the tug company is not responsible for negligence on the part of the pilot. *Spokane, P. & S. Ry. Co. v. Fairport*, 1953 A.M.C. 1638, 116 F.Supp. 549 (D, Ore.); *Sturgis v. Boyer*, 65 U.S. 110, 16 L.ed. 591 (1861); *In re Walsh*, 136 Fed. 557 (CA-5, 1905); *The Stella*, 278 Fed. 939 (1922); *Georgia Ports Authority v. Bilderdyk*, 1976 A.M.C. 525, 402 F.Supp. 706 (SD,Ga.); *Gypsum Express*, 1968 A.M.C. 616 (ED,La.).

Obviously, if the tugs do nothing to contribute to the damage, they are not liable. But equally obviously, the tugs may themselves be at fault, either by failing to carry out the pilot's orders properly, or for carrying out an obviously dangerous order, or for proceeding on their own initiative without waiting for appropriate instructions and directions from the pilot. *Edward G. Murray*, 278 Fed. 895

(CA-2, 1922); *Great Lakes Towing Co. v. American S.S. Co.*, 1948 A.M.C. 249, 165 F2d 368 (CA-6); *Maryland—Yale*, 1933 A.M.C. 1117, 65 F2d 543 (CA-6); *Gypsum Queen—Peerless*, 1953 A.M.C. 2071 (ED, Va.); *Lykes Bros. v. Whiteman*, 1956 A.M.C. 1192, 138 F.Supp. 725 (ED, La.); *National Defender v. Abqaiq*, 1970 A.M.C. 213, 418 F2d 1241 (CA-2); *Universal Tramp v. Irish Salt*, 1970 A.M.C. 1783 (D,Mass.); *Thor—Lindenwood Victory*, 1969 A.M.C. 1962, 305 F.Supp. 570 (WD,Wash.).

Effect of Pilotage Clause¹⁴

The so-called "pilotage clause" is like Topsy—"it just growed." Originally, tug captains began to board vessels in harbors to act as docking and undocking pilots at the invitation of the shipowners. A small gratuity was usually given them in recognition of the fact that they were acting on their own, beyond the scope of their duties to their regular tug company employers and that they were, in fact, analogous to the well-known "loaned employee" situation.

Being a verbal understanding, it is not surprising that some courts became confused over the relationship of such harbor pilots and, in some instances, their regular tug company employers were saddled with liability by reason of the negligence of their "loaned" harbor pilots.

As a consequence, the pilotage clause came into being. Its validity was subsequently upheld in *Sun Oil Co. v. Dalzell*, 1933 A.M.C. 35, 287 U.S. 291 (1932), and the decision has never been overruled or distinguished. That the Supreme Court correctly grasped the nature of the services rendered by the harbor pilot and the inapplicability of the doctrine of *respondeat superior* as respects his "regular" tug company employer clearly appears from the following quotation from that case:

Respondent's [the tug company] responsibility is not to be extended beyond the service that it undertook to perform. It did not furnish pilotage. The provision that its tug captains while upon the assisted

¹⁴ The author wishes, in the discussion which follows, to acknowledge his indebtedness to Eugene Underwood (now retired), formerly of Burlingham, Underwood, Wright, White & Lord, New York City, for most helpful suggestions, comments and background information on the origin of pilotage clauses, as well as penetrating observations on the applicability of the doctrine of warranty of workmanlike service.

ship would be the servants of her owner is an application of the well-established rule that when one puts his employe at the disposal and under the direction of another for the performance of service for the latter, such employe while so engaged acts directly for and is to be deemed the employe of the latter and not of the former. [Citing *Denton v. Yazoo & M.V.R. Co.*, 284 U.S. 305, 308.] It would be unconscionable for petitioner [the shipowner] upon occurrence of a mishap to repudiate the agreement upon which it obtained the service.

While the statement by the Supreme Court would seem to be perfectly clear, and wholly dispositive of the question, considerable confusion has arisen among the courts in later decisions, thus creating what might be considered "exceptions" to the general proposition or, depending upon the language of the court, palpable error in construing the effect of the pilotage clause.

To simplify discussion, the later decisions adhering to the rule in *Sun Oil* are set forth below, followed thereafter by a discussion of those cases which either create apparent exceptions, or which reveal erroneous concepts.

Those cases adhering to the rule in *Sun Oil* are:

Brenta II, 1937 A.M.C. 981, 92 F2d 37 (CA-2) (also allowing indemnity over to the tug company for sums it was required to pay out); *William Wirt—Barge YC-749*, 1950 A.M.C. 2043, 93 F.Supp. 654 (SDNY); the *Carrabelle*, 1955 A.M.C. 604, 134 F.Supp. 194 (D, Mass.); *Atlantic Mut. Ins. Co. v. Bulkcrude*, 1952 A.M.C. 1400, 107 F.Supp. 771 (SD, Tex.); *Cayuse*, 1953 A.M.C. 1108, 118 F.Supp. 927 (SDNY); *Gypsum Queen—Peerless*, 1953 A.M.C. 2071 (ED, Va.) (pilotage clause held effective to make tugmaster the servant of the assisted vessel; tug company's tug also liable; tug company entitled to indemnity from vessel for one-half paid to dock owner); *International Term. Op. v. Naviera Aznar*, 1961 A.M.C. 1758, 198 F.Supp. 214 (SDNY); *Patterson Terminals v. Johannes Frans*, 1962 A.M.C. 2623, 209 F.Supp. 705 (ED, Pa.); *Transpacific v. Ellen F. McAllister*, 1964 A.M.C. 2570, 336 F2d 371 (CA-2); *Farrell Lines v. Birkenstein*, 1963 A.M.C. 1846, 207 F.Supp. 500 (SDNY); *El Salvador—Russell No. 18*, 1966 A.M.C. 1777, 248 F.Supp. 15 (SDNY); *Lyons Creek—Sister Katingo*, 1967 A.M.C. 1561 (SDNY); *Consolidated Edison v. Orion Comet*, 1970 A.M.C. 224 (SDNY); *Federal Steam Navigation Co. v. Savannah*, 1970 A.M.C. 115, 305 F.Supp. 1293 (SD, Ga.) (tugowners provided only docking master

services in port of Savannah and had no competition; its position created superior bargaining position but did not create a monopoly so as to invalidate clause); *U.S. v. Neilson*, 1954 A.M.C. 2231, 349 U.S. 129 (1955); *Hagen v. Resolute*, 1976 A.M.C. 2133, 400 F.Supp. 680 (D,Md.); *Nippon Yusen v. Zepher Shipping*, 1971 A.M.C. 949 (D,Mass.); *A/S Atlantica v. Moran T. & T. Co.*, 1974 A.M.C. 555, 498 F2d 158 (CA-2); *American Oil Co. v. Lacon*, 1973 A.M.C. 1900, 337 F.Supp. 1123 (SD,Ga.); *H. Schuldt v. Standard Fruit*, 1978 A.M.C. 2061 (SDNY).¹⁵

Notwithstanding *Sun Oil*, some courts have simply refused to treat the tugmaster-harbor pilot as a "loaned" employee of the ship, notwithstanding the existence of a pilotage clause, and have held the tug company liable for the negligent acts of its "loaned" employee:

West Eldara, 1939 A.M.C. 977, 104 F2d 670 (CA-2) (contract entered into by charterer; shipowner unaware of pilotage clause. No agency relationship established between charterer and owner, and tug company held solely liable for damage to pier and vessel being assisted); *Patterson v. Curtis Bay*, 1953 A.M.C. 1371, 205 F2d 694 (CA-3) (pilotage clause improperly pleaded by way of answer rather than cross libel; apparently, had it been properly presented, effect might have been given to it); *Elmer A. Sperry—Tower Grange*, 1948 A.M.C. 1885, 80 F.Supp. 461 (D,Md.) (tug company held "secondarily liable" on theory of principal and agent; i.e., "loaned" harbor pilot nonetheless considered servant of tug company); *Otto M. Reiss*, 1948 A.M.C. 1636, 79 F.Supp. 1 (D,Minn.) (pilotage clause defense simply not considered); *People of California v. Jules Fribourg*, 1956 A.M.C. 939, 140 F.Supp. 333 (ND,Cal.); *Har Canaan—Pipe Line Damage*, 1961 A.M.C. 703, 287 F2d 852 (CA-5) ("dead ship" case; apparently court felt the tug company was in complete charge (straight towage contract), including providing assisting tugs and pilot as well); *State Marine Co. v. Victory Carriers*, 1959 A.M.C. 2164, 272 F2d 463 (CA-9) (pilotage clause not effective to bind shipowner when contract arranged by charterer; indemnity over against charterer allowed for breach of its warranty that it had authority to bind shipowner); *Tankers and Tramps v. Jane McAllister*, 1966 A.M.C. 1205, 358 F2d 896 (CA-2) (failure on part of tug company to prove that pilotage clause was part of the contract or embodied by virtue of prior dealings); *Traverse*

¹⁵ Citing the First Edition of this text.

County—Coppedge Tugs, 1966 A.M.C. 1809, 251 F.Supp. 47 (MD, Fla.) (repair company by an oral contract had no authority to bind vessel owner to a pilotage clause).

While not directly involving the validity of a pilotage clause, as apparently there was no pilotage clause embodied in the contractual arrangements between the respective parties, it is important to note *Sands Point—Yacht Abogado (Baker-Whiteley Towing Co. et al v. Tebbs)*, 1968 A.M.C. 668, 271 F.Supp. 529 (D, Md.), *aff'd* 1969 A.M.C. 275 (CA-4), in which the court for the first time in a case involving a docking and undocking pilot applied the doctrine of breach of warranty of workmanlike service, recently applied in several towing cases in the face of the contrary doctrine that negligence must be proved against the tug company (enunciated in *Stevens v. White City*, 1932 A.M.C. 468, 285 U.S. 195 (1932), and innumerable later decisions following it).

The applicability of the doctrine of warranty of workmanlike service apparently first arose in *James McWilliams Blue Line, Inc. v. Esso Standard*, 1957 A.M.C. 1213, 245 F2d 84 (CA-2). In that case, a barge was damaged while being turned. Its owner sued the charterer for damage and, some time later, the charterer impleaded the tug company. The court having held that the charterer was liable to the owner for any damage caused to the barge by the negligence of those to whom it entrusted the barge, the issue then was whether or not the tug company was liable to the charterer. The tug company raised the three-year statute of limitations applicable to negligence actions in the state in which the damage occurred, contending that the failure of the charterer to implead within the three-year period barred the charterer by reason of laches. The Second Circuit held that the tug company owed a warranty of workmanlike service to the charterer and operator of the barge and that the six-year contract statute of limitations applied. Apparently, the rule in *Stevens v. White City, supra*, was neither briefed nor considered by the court or counsel.

In *Dunbar, Admx. v. H. Dubois' Sons Co. and Bronx Towing Line, Inc.*, 1960 A.M.C. 1393, 275 F2d 304 (CA-2), the Second Circuit, in a wrongful death action against the owner of the barge in tow, who in turn impleaded the tug company, cited the *James McWilliams Line* case, *supra*, with approval, stating in part:

. . . it becomes clear that appellant has set forth a cause of action against Bronx Towing by alleging that the unseaworthy condition of

the *Trenton* which led to Dunbar's death was brought into play by the negligent manner in which the tug *Cortland* performed its towing operations.

In its decision in *Sands Point—Yacht Abogado, supra*, the court cited *James McWilliams* and *Dunbar, supra*, with approval, as well as the stevedoring cases upon which they were predicated (*Ryan Co. v. Pan-Atlantic Corp.*, 1956 A.M.C. 9, 350 U.S. 124; *Weyerhaeuser S.S. Co. v. Nacirema Operating Co.*, 1958 A.M.C. 501, 355 U.S. 563; *Crumady v. J. H. Fisser*, 1959 A.M.C. 580, 351 U.S. 423, etc.). *James McWilliams* and *Dunbar, supra*, have also been cited as authority in a straight towage situation. *Singer v. Dor Towing Co.*, 1963 A.M.C. 146, 272 F.Supp. 931 (ED, La.), again without either court or counsel apparently being aware of the contrary rule in *Stevens v. White City, supra*. Cf., *Transcontinental Gas Pipe Line Corp. v. Mobile Drilling Barge, etc.*, 1970 A.M.C. 1147, 424 F2d 684 (CA-5).

See, discussion, Chapter VI, *Collision and Limitation of Liability*, under heading *Personal Contracts*, for additional cases applying the doctrine of "warranty of workmanlike service," although not in a context of the pilotage clause. See, also, *Stevenson v. Whiteman Towing*, 1971 A.M.C. 345, 331 F.Supp. 1038 (ED, La.).

It is submitted that an extension of the warranty of workmanlike service to towage and harbor pilotage situations is in error from many standpoints:

(1) It runs counter to the well-established rule in *Stevens v. White City, supra*, that negligence must be proved; i.e., an action for damage arising from a towage situation is *ex delicto*, not *ex contractu*;

(2) If the liability in either a towage or harbor pilotage situation is truly based on warranty, then the tug company cannot limit liability for damages flowing from its breach although it could limit against the same claims if they sound in negligence. *The Cullen No. 32*, 1933 A.M.C. 1584, 290 U.S. 82 (1933). That is, the warranty even though implied and not express, would be construed as a pe

¹⁶ Note, however, *A/S Atlantica v. Moran T. & T. Co.*, 1974 A.M.C. 549, 498 F2d 158 (CA-2), where the court stated that the Second Circuit will not follow the doctrine that the undocking pilot's failure to request adequate tug power breaches the workmanlike service warranty implied in the towage contract and therefore outside the protection of the pilotage clause.

sonal contract of the owner against which the right to limit is precluded.

As noted above, the courts have created apparent exceptions to the broad doctrine enunciated in *Sun Oil*, and, in some instances, have simply ignored the basic premise underlying it; i.e., that the harbor pilot is a "loaned employee" who, for the time being, becomes the employee of the assisted vessel for all purposes.

For example, in a number of cases the courts have found tug companies liable for what appears to be "antecedent negligence" on the part of the tug company or its employees. In *American South African Line v. Sheridan*, 1936 A.M.C. 287 (ED, Pa.), the court found that the pilot went aboard the vessel to be assisted with knowledge of the lack of power on the part of the assisting tugs; that the tug company was responsible for his negligence in doing so despite the existence of the usual pilotage clause and the fact that the ship was proceeding under her own power; and that his knowledge would not be imputed to or bind the shipowner.

In *William J. Worth*, 1949 A.M.C. 121, 171 F2d 48 (CA-3), the court held that the tug company's managerial employees on shore were aware that the assisting tugs were inadequately powered for the task at hand before the pilotage job was undertaken, and that the tug company was liable.

In *Luckenbach v. Weatherbee*, 1955 A.M.C. 1606 (SD, Tex.), the tugs had been ordered to assist a steamship entering Galveston from Houston. One tug, paralleling the vessel's course before putting a line on her, collided twice with the vessel's port side, causing damage. The court held that the contract exemption was ineffective because the steamship had not yet been taken "in tow" at the time of the collision.

In *People of California v. Jules Fribourg*, 1956 A.M.C. 939, 140 F.Supp. 333 (ND, Cal.), the court found that the harbor pilot's negligence lay in his failure to order a second tug for use in case of need. As such, his negligence was not "in respect to the giving of orders to" any assisting tugs and "in respect to the handling of the vessel" and, therefore, the pilotage clause was ineffective.

In *Penna. R.R. v. Beatrice*, 1958 A.M.C. 1612, 161 F.Supp. 136 (SDNY), the court simply misunderstood the status of the harbor pilot. There, a vessel, using her own propelling power and assisted by two tugs, with a docking pilot on the bridge, pinned one of the assisting tugs against an adjacent barge, causing damage. The court

found that the tug, the docking pilot and the ship's crew were all negligent and divided the damage three ways. The difficulty with the decision is that the court found the tug company negligent only because of the negligence of the docking pilot, stating,

Dalzell through its employe, the pilot or tug captain, on board the Beatrice, was negligent in the operation and maneuvering of the flotilla in the following respects (enumerating). . . . (Emphasis supplied.)

Notwithstanding that the court found that the docking pilot was an employee of the tug company (in the face of the usual pilotage clause), the tug company was nonetheless granted indemnity over against the assisted vessel based upon the indemnity provisions of the pilotage clause. As a consequence, the shipowner paid two-thirds of the damage and the tug company bore one-third because of the negligence of its tug *in rem*. The court obviously overlooked the fact that the basic understanding, even before the advent of the pilotage clause, was that the docking pilot was a "loaned employee," doing the shipowner's work, under the supervision of the master and was not doing the tug company's work when piloting a vessel under its own power. To the same effect, see *Booth S.S. Co. v. Dalzell No. 2*, 1966 A.M.C. 2615 (SDNY).

In *Great Lakes Towing Co. v. American S.S. Co.*, 1948 A.M.C. 249, 165 F2d 368 (CA-6), the court held a pilotage clause ineffective because the assisting tug proceeded on its own initiative without requesting directions from the harbor pilot or furnishing an opportunity for directions to be given.

In *Tankers and Tramps v. Jane McAllister*, 1966 A.M.C. 1205, 358 F2d 896 (CA-2), the court ignored the well-established "loaned employee" custom, and held that the existence of a pilotage clause had not been established as a part of the original oral contract or embodied in prior dealings between the parties. The same result was essentially reached in the *West Eldara*, 1938 A.M.C. 282 (SDNY), modified on appeal in 1939 A.M.C. 877, 104 F2d 670 (CA-2).

Pilotage Clause Ineffective as to Third Parties

Clearly, the pilotage clause does not protect the tug company from liability to third parties if its assisting tugs are negligent, or, in those instances in which the pilotage clause is held ineffective (whatever

the reason), for the negligence of the harbor pilot.¹⁷ If the pilotage clause is held effective, however, the tug company can obtain indemnity over against the assisted vessel. *William J. Worth*, 1949 A.M.C. 121, 171 F.2d 48 (CA-3); *Brenta II*, 1937 A.M.C. 981, 92 F.2d 37 (CA-2); *Patterson v. Curtis Bay*, 1953 A.M.C. 1371, 205 F.2d 694 (CA-3); *Gypsum Queen—Peerless*, 1953 A.M.C. 2071 (ED, Va.); *People of California v. Jules Fribourg*, 1956 A.M.C. 939, 140 F.2d 333 (CA-9); *Penna. R.R. Co. v. Beatrice*, 1958 A.M.C. 1612, 161 F.Supp. 136 (SDNY); *International Term. Op. v. Naviera Aznar*, 1961 A.M.C. 1758, 198 F.Supp. 214 (SDNY); *Nippon Yusen v. Zepher Shipping*, 1971 A.M.C. 949 (D,Mass.).

The pilotage clause, unless properly drafted, does not provide indemnity to the tug company for damages sustained by its assisting tugs. *Atlantic Mut. Ins. Co. v. Bulkcrude*, 1952 A.M.C. 1400, 107 F.Supp. 771 (SD, Tex.); *State Marine Corp. v. Victory Carriers, Inc.*, 1959 A.M.C. 2164, 272 F.2d 463 (CA-9); *El Salvador—Tug Russell No. 18*, 1966 A.M.C. 2392, 364 F.2d 118 (CA-2); *U.S. v. Neilson*, 1955 A.M.C. 935, 349 U.S. 129 (1955). It should be noted, however, that in *Neilson, supra*, Justice Black, in writing the opinion for the majority observed:

An agreement that one shall not be liable for negligence of a third person cannot easily be read as an agreement that one is entitled to collect damages for negligence of that third person. And there is no reason to stretch contractual language to force payment of damages under circumstances like these. A person supplying his own employes for use by another in a common undertaking cannot usually collect damages because of negligent work by the employe supplied. Clear contractual language might justify imposition of such liability. But the contractual language here does not meet such a test and we do not construe it as authorizing respondent to recover damages from petitioner. (Emphasis supplied.)

Compare *Dalzell v. New York*, 1948 A.M.C. 1230, 77 F.Supp. 793 (EDNY) (decided before *Neilson, supra*) where the court allowed recovery against the assisted vessel for damage to an assisting tug. See, also, *American Oil Co. v. Lacon* (1973), *supra*, and *Nippon Yusen v. Zepher Shipping* (1971), *supra*.

¹⁷ As noted heretofore, it does so protect the tug company when properly understood; not as a private contract term but as a declared limitation of the boundaries beyond which the tug company does not permit or authorize its servants to work.

Pilot Individually Liable

It goes without saying, of course, that the general rule applicable to all pilots applies and the harbor pilot is still responsible individually to injured parties for his own negligence. *Gypsum Queen—Peerless*, 1953 A.M.C. 2071 (ED, Va.); *Barbey Packing Co. v. S.S. Stavros*, 1959 A.M.C. 1542, 169 F.Supp. 897; *U.S. v. Joyce*, 1975 A.M.C. 1498, 511 F.2d 1127 (CA-9); *Bethlehem Steel v. Yates*, 1971 A.M.C. 577, 438 F.2d 798 (CA-5).

Ship Not Bound by Pilotage Clause If the Person Accepting the Same Is Without Authority to Bind the Vessel

On clear agency principles, courts have refused to bind vessel owners to pilotage clauses where the acceptance of such clauses was by one having no authority to bind the vessel owner. If, however, the person accepting the clause warrants an authority he does not have, the tug company is entitled to indemnity from him. *States Marine Co. v. Victory Carriers*, 1959 A.M.C. 2164, 272 F.2d 463 (CA-9); *West Eldara*, 1939 A.M.C. 877, 104 F.2d 670 (CA-2) (no indemnity against charterer as charterer did not warrant authority to bind the vessel owner); *Traverse County—Coppedge Tugs*, 1966 A.M.C. 1809, 251 F.Supp. 47 (MD, Fla.); *A/S Acadia v. Curtis Bay Towing*, 1969 A.M.C. 648, 304 F.Supp. 1050 (ED, Pa.).

Great Britain and the Commonwealth Nations

Harbor pilotage in Great Britain and the Commonwealth Nations appears to be handled by the duly licensed pilots for the pilotage area in question, and the "pilotage clause" is of academic interest only. One of the primary reasons, of course, is that the defense of compulsory pilotage has been abolished and the vessel owner is liable for the pilot's negligence whether the pilot is compulsory or voluntary.

The responsibility for the hiring of tugs in ordinary circumstances appears to rest upon the master and not the pilot. *The Julia* (1860), *supra*. However, as a practical matter, the master should and usually does consult the pilot beforehand.

In making fast, it is the duty of the assisting tugs to keep clear and avoid a collision. *Contest v. Age*, (1923) 17 Ll.L.Rep. 172; *Assistance and Others v. Lagarto* (1923) 17 Ll.L.Rep. 264. But the

assisted ship also has to exercise due care, cannot ignore the presence of the tug, and cannot expect her to bear the full brunt of looking out for her own safety. *Harmony v. Northborough* (1923) 15 Ll.L.Rep. 119. Compare *Academy Tankers v. Steuart Transp.*, 1971 A.M.C. 1382, 441 F.2d 724 (CA-4), where it was held that an assisting tug was not bound to warn the assisted vessel of its dereliction of duty by excessive speed or improper rudder orders unless the tug knew or by reasonable care should have known that such derelictions would occur, and *Thor—Lindwood Victory* (1969), *supra*, where it was held that while generally an assisting tug in a docking or undocking maneuver is held to know that the assisted vessel's engines may be reasonably used and without notice thereof to the assisting tug, the assisted vessel is under a duty to see that its maneuvers do not place the tug in a position of peril, and if the vessel engages in an unexpected maneuver which it could foresee would place the tug in a position of peril, it is liable for the resulting damage.

It is also the duty of the assisting tug during maneuvering to keep out of the way, and this includes the duty of shifting the towing hawser as appropriate. *The Alexander (Newport and South Wales) Docks and Railway Company v. Cape Colony* (1920) 4 Ll.L.Rep. 116.

While it is not the obligation of the pilot to be constantly giving orders to the assisting tug, failure to give proper and timely instructions is a fault. *The Energy* (1870) L.R. 3 A. & E. 48. Compare, however, *Smith v. The St. Lawrence Tow Boat Company* (1873) L.R. 5 P.C. 308, 2 Asp. M.L.C. 41, P.C. with *The Siquasi* (1880) 5 P.D. 241, 4 Asp. M.L.C. 383. In the former it was held that the tug was responsible for the course of both vessels so long as no orders were given by the pilot in charge of the tow; in the latter, a collision occurred because the tug made a wrong maneuver. It was held that the fact that the pilot had given no instructions to the tug before the collision did not relieve the assisted vessel's owners from liability. And see *The Panther and the Ericbank, Steam Barge Trishna* [1957] 1 All E.R. 641, [1957] 1 Ll.L.Rep. 57, where the assisting tug failed to stop her engines when collision was imminent and her revolving propeller was the single largest contributing factor to the damage to the colliding vessel. It was held that while it was the duty of the pilot on the assisted vessel to give general directions to the officer in

charge of the tug, such as to start or stop towing, the detail of the maneuvers by the tug was left to the discretion of the tugmaster.

In *Smith v. St. Lawrence Tow Boat Company* (1873), it was also held to be negligence on the part of the pilot in not ordering the assisting tug to stop in order that the vessel assisted could come to anchor in a dense fog.

Attention is also directed to *The Saratoga* (1861) 167 E.R. 140, where a tug was assisting a vessel into a dock basin and was lashed alongside. The tide forced the vessel and the tug close to a landing stage and the pilot ordered the tug to hold on and go ahead, which the tug did. In doing so, it was forced against the landing stage and was damaged. The court held that if, during towing, an extraordinary peril arises, the tug is not at liberty to abandon the towed vessel but is bound to render her the necessary assistance, and if she does, she is entitled to a salvage award including repayment of all damages thereby incurred.

Collateral Decisions of Interest

In at least one decision, a harbor pilot was denied maintenance and cure for injuries sustained by him while aboard the vessel being assisted. *Bonnewell v. U.S.*, 1948 A.M.C. 842 (ED, Va.). The decision is difficult to understand if the pilotage clause is to be given its full effect.

Of interest with respect to preservation of the tug company's right of indemnity is *Moran T. & T. Co. v. U.S.*, 1944 A.M.C. 784, 56 F.Supp. 104 (SDNY). In that case, the litigation originated in state courts and involved damage to shore structures (prior to the 1948 Extension of Admiralty Act). Because of the procedural difficulties involved, the tug company brought a "protective" libel in Federal court to establish its right to indemnity prior to the running of the applicable statute of limitation, and prior to final resolution of the state court proceeding. The court refused to dismiss the libel and stated it presented a claim cognizable in admiralty.

In *Sears v. American Producer*, 1972 A.M.C. 1647 (ND, Cal.), no custom was proven that San Francisco harbor tugboats, assisting distressed vessels without salvage contracts, charge only for towage and not salvage.

In *Grace Line v. Todd Shipyards*, 1974 A.M.C. 1136, 500 F.2d 361 (CA-9), a steamship under control of a pilot collided with a con-

cealed underwater obstruction of a drydock. It was held that the pilot's knowledge of prior accidents caused by the obstruction did not necessarily establish his *actual* awareness on the date of the collision as he may have forgotten about the hazard or believed that it had been eliminated. The duty of the negligently constructed drydock was either to eliminate the danger or give notice of it.

*Economic Considerations Compel a Recognition
and Enforcement of a Pilotage Clause*

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

For example:

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

(2) If the "loaned employee" status is ignored, it could easily result in the owner of the assisted ship losing his immunities under Cogsa and bill-of-lading clauses. To illustrate: A ship strikes a submerged object, resulting in heavy damage to both ship and cargo. Cargo owners file suit against the ship and the tug company providing the harbor pilot and the assisting tugs. If the actions of the harbor pilot are attributed to the tug company, cargo interests could recover against the tug company. In turn, however, the tug company, under the pilotage clause, could require the shipowner to indemnify it, including the costs of defending the suit. The shipowner would therefore be in the unfortunate position of having to pay for damages to cargo on his own ship resulting from errors in

navigation which it would not otherwise have had to pay under the immunities granted by Cogsa and the bill-of-lading clause.¹⁸

(3) While a shipowner can, in appropriate circumstances, limit his liability against negligence claims, he cannot limit as against contractual indemnity claims arising under the pilotage clause. Thus, if a harbor pilot's negligence results in damage serious enough to invoke the limitation of liability statutes, the shipowner can limit his liability only if the harbor pilot is construed as his employee. If the harbor pilot is held to be doing the tug company's work, in whole or in part, the tug company could be liable to third parties but could then claim indemnity over against the shipowner—who, in turn, cannot limit against an obligation which he has contracted to pay.

It was to clarify the status of harbor pilots and to reemphasize their "loaned employee" relationship, that the first paragraph of the pilotage clause was recently revised so that it now reads:

We do not furnish pilots or pilotage to vessels making use of or having available their own propelling power so that whenever any licensed pilot, or a captain of a tug which is furnished to or is engaged in the service of assisting a vessel making use of or having available her own propelling power, participates in directing the navigation of such vessel, or in directing the assisting tugs, from on board such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes and in every respect, his services while so engaged being the work of the vessel assisted, her owner and operator, and being subject to the exclusive supervision and control of the vessel's personnel. Any such service performed by any such person is beyond the scope of his employment for us and neither those furnishing the tugs or lending any such person, nor the tugs, their owners, agents, charterers, operators or managers shall be liable for any act or omission of any such person. The provisions of this paragraph may not be changed or modified in any manner whatsoever except by written instrument signed by an officer of this company.

¹⁸ This situation was almost litigated in the *Alkaid*, 1968 A.M.C. 748 (SDNY), where cargo owners sued both the ship and the tug company. The latter had provided tug services to "assist" the ship and one of its docking pilots was on the ship's bridge. The tug company filed an answer, claiming in substance that the tug captain on the bridge of the ship was doing work beyond the scope of his duties for the tug company. After several depositions were taken, the cargo owner dismissed as to the tug company.

Liability of Pilot Associations for Negligence of Member-Pilots

The general form of a pilot association is that of a loose partnership, in which the various members maintain a central accounting and dispatch office and operate out of a "pool"; that is, the individual pilot members take turns in piloting vessels on a rotation basis. Revenues derived from the individual members piloting such vessels are put into a common bank account, the expenses of operating the association are then paid, and the balance distributed. The distribution may not be exactly equal and, in fact, is usually pro-rated on the basis of the number of trips made by each pilot. Also, apprentice or "cub" pilots usually received a lesser share. It is not uncommon for the common bank account to be completely paid out at the end of each month.

As a pilot association is clearly a species of partnership, one would normally expect that the association could be held liable for the negligence of its individual members. Such is not the case. Almost without exception recovery has been denied.

The leading case on this point is *Guy v. Donald*, 203 U.S. 399, where Justice Holmes said:

. . . The substance of the case is this: A man who is responsible before the law is alleged to have committed a tort. It is proposed to make other men pay for it who not only have not commanded it or any act of which it was the natural consequence, but who would have prevented it if they could, and who have done what they could to prevent it, so far as the qualifications and employment of the pilot were not taken out of their hands by law. Why they should have to pay is the problem recurring through agency in all its forms, and whatever may be thought of some of the reasons that have been offered when the obligation has been imposed, it is certain that something more and better must be found than that the defendants divide the pay for the work that they have done, or that it is a convenience to the party aggrieved to discover a full purse to which to resort.

. . . If we imagine such a pilot performing his duties within sight of the assembled association, he still would be sole master of his course. If all of his fellows passed a vote on the spot that he should change, and shouted it through a speaking trumpet, he would owe no duty to obey, but would be as free as before to do what he thought best. (Citing *The City of Dundee*, 108 Fed. 679.)

Among the many other cases adhering to this rule with respect to pilot associations are: *Mason v. Ervine*, 27 Fed. 459 (1886); *Mobile Bar Pilots Association v. Commissioner of Internal Revenue*, 1938 A.M.C. 1052, 97 F.2d 695 (CA-5); *McGrath v. Columbia River Bar Pilots Association (The Childar)*, 1936 A.M.C. 724, 83 F.2d 746 (CA-9); *Damp. Atalanta v. U.S.*, 1929 A.M.C. 855, 31 F.2d 961 (CA-5); *Nelson v. U.S.*, 1928 A.M.C. 887, 25 F.2d 312 (USDC, Tex.); *United Fruit Co. v. Mobile Towing & Wrecking Co.*, 1960 A.M.C. 115, 177 F.Supp. 297 (DC, Ala.); *Liv. General, Admx. v. Pilots Association*, 1966 A.M.C. 1734, 254 F.Supp. 447; *Manchioneal*, 243 Fed. 801 (CA-2); *O'Hare v. U.S.*, 1950 A.M.C. 182 (WD, Wash); *Steinhort v. Commissioner of Internal Revenue*, 335 F.2d 496 (1964) (CA-5); *Port of Seattle v. Maria Rubicon*, 1976 A.M.C. 109, 404 F.Supp. 302 (WD, Wash); *In re China Lines, Ltd.*, 342 F.Supp. 426, *aff'd sub nom C. & G. Boat Co. v. Crescent River Port Pilots Ass'n*, 456 F.2d 1290 (CA-5); *McKeithen v. Frosta*, 1978 A.M.C. 2653, 441 F.Supp. 54 (ED, La).

There appears to be only one case holding that a pilot association is liable for the acts of its individual members and, in that case, the facts were somewhat unusual. *Santiago v. Morgan*, F. Cas. #12331 (DC, Cal.). There, the pilot associations were restricted to six members each and each of the six-member associations owned its own pilot boat. Also, the bills for pilotage were made out in the name of the association and payments collected by it. The court said, in part:

. . . Under these circumstances I am unable to conceive any definition of the partnership which would not include an association like the one described. Any member of it would be clearly entitled to an account, and each participated in the profits, as such, and was liable for his proportion of the losses. It follows that the partnership must be liable for malfeasance or negligence committed by one of the partners in the course of his employment and within the scope, and while engaged in performing, the business of the partnership.

In *The Joseph Vaccaro*, 180 Fed. 272 (DC, La., 1910), the pilot association sued a vessel for damages inflicted to property of the pilot association. The vessel at the time the damage occurred was being piloted by one of the members of the pilot association. The court denied recovery on the grounds that "a partnership is suing to

recover damages to the partnership property occasioned by the fault of one of its members." The implications of the holding are clear; if, on the one hand, fault on the part of one of the pilots is to be imputed to the pilot association of which he is a member (when suing for damages to partnership property), by a parity of reasoning, damages sustained by a third party by reason of the negligence of a pilot-member of a pilot association ought also to be recoverable.

These two cases are of dubious authority in view of the fact that the Ninth Circuit (which embraces California) must be deemed to have overruled *Santiago v. Morgan* by its later decision in *McGrath v. Columbia River Bar Pilots Association*, *supra*, and the Fifth Circuit (which embraces Louisiana) overruled by implication *The Joseph Vaccaro* in its later decision in *Damp. Atlanta v. U.S.*, *supra*.

The pilot associations are indeed fortunate that the rule of non-liability of such associations seems so firmly established. It must be conceded, as a matter of logic, that it is difficult to harmonize the rule of non-liability of pilot associations with the repeated liability imposed upon "associations" of physicians practicing in a common medical clinic whose *modus operandi* as respects division of profits and expenses does not significantly vary.

As noted heretofore, in Great Britain and the Commonwealth Nations, the "pilotage authorities" in those countries are governmental bodies. Apparently, no case has arisen in which actions have been prosecuted against pilots' associations or unions seeking to impose liability upon the associations or unions for the acts of the individual members.

Recovery by Pilot for Negligence of Others

Obviously, pilots may be and often are injured during the course of performance of their piloting duties. If injured through the negligence of others, they are entitled to recover for their injuries.

In *Ingo Peterson, Admx. v. American Diamond Line (Black Gull)*, 1936 A.M.C. 334, 1937 A.M.C. 175, 1937 A.M.C. 846, 82 F2d 758 (CA-2), the steamship *Black Gull* was in charge of a Sandy Hook pilot. When his piloting job was completed, the steamer signaled the pilot boat to come alongside and take the pilot off the steamer. A heavy gale was blowing and visibility was very poor.

During the transfer, the pilot was drowned. Suit was brought to recover from the *Black Gull* for its negligence in transferring the pilot. The steamer was found at fault for moving on too soon, without seeing to it that the pilot's transfer was safely made.

More recently, in *Magnolia Towing Company v. Pace*, 1967 A.M.C. 2079, 378 F2d 12 (CA-5), a pilot employed by a towing company was in an accident while being driven from his home to work in an automobile owned by his employer towing company. The court held he was an employee of the towing company and, as such, was a "seaman" under the Jones Act. See also, *Mason v. U.S.*, 1949 A.M.C. 1800, 177 F2d 352 (CA-2) (defective Jacob's ladder; pilot severely injured); *Maryland Casualty Co. v. Toups*, 1949 A.M.C. 994, 173 F2d 542 (CA-5) (Texas Workmen's Compensation law applicable to employee of Sabine Pilots' Association who drowned by falling off the association's dock); *Browne v. Makin*, 1950 A.M.C. 114, 177 F2d 753 (CA-5) (Savannah bar pilot's loss of middle finger and index finger permanently incapacitated him from acting as pilot and entitled him to his share of benefits under the association's pooling agreement); *U.S. Lines v. Cummings*, 1952 A.M.C. 608, 195 F2d 221 (CA-9) (harbor pilot coming aboard was injured on the Jacob's ladder; vessel held at fault); *Southard, Admr. v. Independent Towing*, 1972 A.M.C. 116, 453 F2d 1115 (CA-3) (action for death of a docking master who fell to his death while boarding a vessel. At the trial court level, a verdict was directed in favor of the ship but on appeal it was reversed on the grounds that the plaintiff's evidence was sufficient to go to the jury); *Robinson v. Grancolombiana*, 1970 A.M.C. 1781, 430 F2d 645 (CA-5).

Compensation for Pilotage Services

Pilots are, of course, entitled to recover compensation for their services whether such pilotage is compulsory or voluntary.¹⁹ In all states, the rates for pilotage are set either by statute or by rule and regulation of the state pilot commission. *Powell v. State Board of Pilot Commissioners*, 224 Or. 122, 355 P2d 224; *Portland Steamship*

¹⁹ In Maine, the master of a vessel may act as pilot. All other states having pilotage laws impose compulsory pilotage when a vessel has been properly "spoken" by the pilot, either on the basis of the full pilotage fee or "half-pilotage" (Texas and California).

Operators' Association v. Oregon State Board of Pilot Commissioners, 1963 A.M.C. 1872, 232 Or. 495, 375 P2d 420. This, however, is not true with respect to "harbor pilotage" where docking and undocking masters are provided by the tug companies. Such rates are set by the employing companies in most instances, but may be subject in some instances to collective bargaining rates fixed by contract between their employers and the pilots' union-bargaining representatives. See, for example, *Treakle v. Pocahontas S.S. Co.*, 1969 A.M.C. 33, 406 F2d 412 (CA-4), in which it was held that tugboat pilots employed by towing companies at Hampton Roads, Virginia, whose collective bargaining agreement in addition to an hourly wage rate provided added compensation of \$8.50 per day to "cover the service of docking and undocking ships," were not entitled to claim compensation as "docking pilots" and to assert maritime liens against oceangoing vessels assisted by them in addition to the compensation fixed by the collective bargaining agreement.

In *Daniels et al v. U.S.*, 1969 A.M.C. 1247 (CtCl), the authority of the Secretary of the Navy to prescribe a salary formula for civilian pilots employed by his Department was upheld even though the rates of pay might be lower than those of non-Government pilots in the area or port.

See, also, *Blair v. Blue Spruce*, 1972 A.M.C. 1298, 323 F.Supp. 79 (D,Mass.), where, even though the ship's master refused to accept a compulsory pilot's services, the pilot was held to have a maritime lien for the statutory fees for his tendered service. The court also held that pilotage services are "other necessities" under the 1920 Federal Maritime Lien Act, which lien superseded that of a local Massachusetts statute also conferring a lien for pilotage services. With respect to the last point, see, also, *Ajubita v. Piek*, 1970 A.M.C. 1463, 434 F2d 1345 (CA-5).

In *Powell v. State Board of Pilot Commissioners*, 224 Or. 122, 355 P2d 224 (1960), the Oregon Supreme Court struck down the pilots' association's attempt to assess extra charges for ancillary services such as docking and undocking vessels, moving vessels within harbors, etc. on the ground that such ancillary services were embraced within the term "pilotage" as used in the Oregon Pilotage Act.

Under the Pilotage Act, 1913, Sec. 50, a pilot is prohibited from demanding or receiving, and the master shall not offer or pay to the

pilot, pilotage dues in respect of pilotage services at any other rates, whether greater or less, than the rates which may be demanded by law.

In *Muller v. Trinity House (Deptford Strond)* [1925] 1 K.B. 166, [1924] All E.R. Rep. 706, 16 Asp. M.L.C. 458, 20 Ll.L.Rep. 56, the term "pilotage services" under the Act was interpreted as meaning "services rendered" and the pilotage authority could not by by-law impose a charge upon a ship when, in fact, no pilotage services were performed. See, with respect to "separate services," *Humber Conservancy Board v. Massey Sons Ltd.* (1937) 58 Ll.L.Rep. 98, C.A.

Section 17(g) of the 1913 Act provides that if and so far as it appears to the pilotage authority to be generally desired by the pilots concerned, the authority may provide for the "pooling" of pilotage dues earned by the licensed pilots or by any class of pilots in the district. Pursuant to that authority, the Forth Pilotage Authority adopted a by-law providing that should any question arise regarding the distribution of the Authority's pooled earnings among the pilots entitled to share therein, the question would be referred to the Authority whose decision would be final. The by-law was stricken down as being *ultra vires* and beyond the authority of the pilot authority. *McAlister v. Forth Pilotage Authority* (1943) 76 Ll.L.Rep. 32.

See, generally, with respect to earlier decisions relating to a right to compensation, *The Servia, The Carinthia* [1898] P. 36, 8 Asp. M.L.C. 353; *The Adah* (1830) 166 E.R. 262; *The Clan Grant* (1887) 12 P.D. 139, 6 Asp. M.L.C. 144. See, also, *The Ambatielos, The Cephelonia* [1923], *supra*.

Compulsory Pilotage

In those states having compulsory pilotage, either full pilotage fees or half pilotage fees, as the case may be, are recoverable when such services have been properly tendered and refused. The compulsory fee is recoverable by the pilot who first properly "speaks" the vessel at a point within a reasonable distance of the pilotage grounds. *Cooley v. Board of Wardens*, 53 U.S. 299 (1851); *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450 (1864); *Ex Parte McNeil*, 80 U.S. 236; *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187; *The Glenearne*, 7 Fed. 604 (D,Ore.) (1881); *Fordham v. Munson S.S. Line*, 1934 A.M.C. 49, 6 F.Supp. 435 (1934); *The Francisco Garguilo*, 14 Fed.

495 (EDNY) (1882); *The S. & B. Smith* (DC, NY) Fed. Cas. #12291; *Horton v. Smith*, Fed. Cas. #6709 (DC, NY); *The Swift Arrow*, 1923 A.M.C. 1012, 292 Fed. 651 (D, Mass.); *Weldt v. Howden*, 39 Fed. 877 (SD, Cal.) (1889); *Craig v. Gulf Barge and Towing Co.*, 201 N. C. 250, 159 S.E. 24; *Wilson v. McNamee*, 102 U.S. 572.

To properly "speak" a vessel means simply to make a valid and proper tender of pilotage services. In *The Ullock*, 19 Fed. 207 (D, Ore., 1884), the court explained it as follows:

. . . The usual signal by which an offer of pilot service is made in the daytime is a flag at the masthead. This, of course, will be the flag of the country in which the offer is made, or that modification or portion of it called the "Jack." In the United States it is a blue flag charged with a star for every state in the Union, and called the "Union Jack."

. . . But the burning of "flare-ups," or a flashing light, over the side of the boat, at short intervals, is also the customary method of making an offer of pilot service at night. It follows that the libellant made a proper tender of his service as a pilot to the *Ullock*, both in the daytime and after night, provided he did so within the distance prescribed by the ninth pilot rule. . . .

To the same general effect are *The Mascotte*, 39 Fed. 871 (SD, Fla. 1889); *Beebe v. Yumarri*, 68 Fed. 930 (D, N.Y.); *The Swift Arrow*, 1923 A.M.C. 1012, 292 Fed. 651 (D, Mass.). And in *The Queen*, 206 Fed. 148 (CA-9) (1913), *aff'd sub nom Anderson v. Pacific Coast S.S. Co.*, *supra*, the court stated that merely because a statute provided for certain methods of tender, this did not necessarily exclude other methods. It cannot be doubted, for example, with practically all vessels having voice communication with other vessels by radio, that an exchange of radio signals would constitute a valid offer and acceptance of pilotage services.

In *Campos v. Puerto Rico Sun Oil Co.*, 1976 A.M.C. 2629, 536 F2d 970 (CA-1), a pilot licensed for Vicques Sound of Puerto Rico "spoke" to defendant's vessel, but the services were refused as the vessel already had aboard it a harbor pilot whose harbor license was endorsed "from sea to Puerto de Yabucoa." In order to reach Puerto de Yabucoa, it was necessary to transit Vicques Sound but the harbor pilot had not been "tested" for Vicques Sound. At first instance, the district court held that the pilot licensed for Vicques Sound was entitled to the compulsory pilotage fee but on appeal the First Circuit reversed, holding the Coast Guard and the Puerto Rico

Ports Authority had licensed the first pilot to board and his license was not subject to collateral attack where neither the Coast Guard, the Ports Authority or the rival pilot were joined as defendants.

In *Jackson v. Marine Explorations*, 1979 A.M.C. 1331, 583 F2d 1336 (CA-5), the Fifth Circuit held that a pilot "speaks" a dumb barge under tow by "speaking" the personnel aboard the towing tug.

In *Babbs v. Press* [1971] 2 Ll.L.Rep. 383, [1971] 2 All E.R. 654, and in *Montague v. Babbs* [1972] 1 All E.R. 240, [1972] 1 Ll.L.Rep. 65, the pilots claimed that a pilot flag displayed at Trinity House pilot station at Gravesend two miles downriver from where the vessel commenced its movement was an "offer" to pilot. The court disagreed, holding that such a "global offer" could not be seriously considered as an "offer" for purposes of Sec. 30(3) of the Pilotage Act, 1913.

In addition to "speaking" the vessel properly, the tender must be made in the proximity of the pilotage grounds. When the subject is covered by statute or by regulations promulgated pursuant to statute, the tender must be made within the limits set forth in the statute or regulation (*Moore v. Heide*, 152 N.C. 625, 68 S.E. 173), but in the absence of a statute or regulation clearly defining the area where tender must be made, the tender may be made within a reasonable distance of the pilotage grounds. In *Beebe v. Yumarri*, 68 Fed. 930 (SDNY) (1895), the court stated:

I find that the pilot boat approached the *Yumarri* within the customary cruising grounds for incoming vessels, and displayed the blue flag as a signal which was recognized, or ought to have been recognized, by the master and mate of the *Yumarri* when the pilot boat was within a reasonable distance and that this was, in legal effect, a tender and offer of service to pilot the *Yumarri*.

See, also, *The Mascotte* (1889), *supra*; *The Ullock* (1884), *supra*; *The S. and B. Smith* (1832), *supra*; *Horton v. Smith* (1827), *supra*; *Wilson v. McNamee* (1876), *supra*; and *Babbs v. Press* [1971], *supra*.

Attention is directed to *Ajubita v. Peik*, 1970 A.M.C. 1463, 428 F2d 1345 (CA-5), where the court stated that pilots are entitled to refuse to offer their services except on a cash basis where a ship operator had not established good credit, and *The Frederick* (1838) 166 E.R. 480, where the court held that a pilot was entitled to refuse

to board a disabled vessel for mere pilotage dues, if the circumstances would otherwise entitle him to salvage. See, in this connection, *Akerblom v. Price* (1881) 7 Q.B.D. 129, 50 L.J.K.B. 629, 4 Asp. M.L.C. 441, C.A., where the court held that when a pilot has assisted in navigating a vessel from a dangerous situation to a safe anchorage, the test whether he is entitled to be remunerated for salvage services is not, on the one hand, whether the vessel was at the time of succour in distress, or, on the other hand, whether she was then damaged; but the test is whether the risk attending the services to the vessel was such that the pilot could not be reasonably expected to perform them for the ordinary pilot's fees, or even for extraordinary pilotage reward.

The subject of pilots claiming salvage is discussed in detail in Chapter XII, *Salvage*, under heading "Salvage Services Rendered by Pilots."

Illustrative Cases Involving Compulsory Pilotage

In *People v. McDonald*, 1972 A.M.C. 2090 (NYM), the New York statute, providing that only a Hell Gate pilot could be used by foreign vessels in certain New York harbor waters, was repealed because of a drastic shortage of pilots. In light of the legislative history, the court refused to impose liability upon vessels violating the statute during the five-month period before the repeal date.

In *Blair v. Blue Spruce*, 1970 A.M.C. 1298, 315 F.Supp. 555 (D,Mass.), it was held that even though the master rejected a compulsory pilot's offer of services, the pilot was deemed to have "furnished" them and was entitled to assert a federal maritime lien against the vessel.

In *Jackson v. Marine Explorations* (1979), *supra*, the court approved recovery of pilotage fees under Florida's compulsory pilotage law where the operator of registered tugs and barges engaged in foreign trade had refused to accept state licensed pilots.

In *Baesler v. Mobile Oil*, 1974 A.M.C. 85, 375 F.Supp. 1220 (SDNY), it was held that where the New York and New Jersey statutes required employment of Sandy Hook pilots only by vessels entering or leaving New York harbor by way of Sandy Hook, a vessel shifting from Stapleton anchorage to Port Mobil, Staten Island, was not obligated to pay a pilotage fee even though she crossed the

Sandy Hook bar area in doing so. See, also, in this connection, *The Stranton* (1917) P. 177, 14 Asp. M.L.C. 280.

In *Los Angeles v. U.S.*, 1973 A.M.C. 722, 355 F.Supp. 461 (CD, Cal.), it was held that the Supremacy Clause of the U.S. Constitution bars municipalities from requiring MSTTS vessels belonging to, or demise chartered by, the United States to employ or pay for local pilotage services.

In *Davis v. Ester S.*, 1975 A.M.C. 1579, 509 F2d 1377, 512 F2d 1406 (CA-5), the Fifth Circuit held that by enacting 46 U.S.C.A. 391(a) to broaden the definition of "steam vessel," Congress intended to make such vessels subject to Section 364 requiring federal-ly licensed pilots. Consequently, a non-self-propelled barge, transporting combustible cargo, was a "steam vessel" subject only to federal pilotage requirements and need not take a state licensed compulsory pilot when entering Jacksonville, Florida, on a coastwise voyage.

In *Sandoval v. Mitsui Sempaku*, 1973 A.M.C. 135, 460 F2d 1163 (CA-5), the Fifth Circuit held that the presence of Panama Canal line-handlers, bosun and pilot required by Canal Regulations to assist in navigation through the Canal did not amount to compulsory pilotage, for the errors of which a shipowner would not, under U.S. law, be liable *in personam*.

Section 11 of the Pilotage Act, 1913, established compulsory pilotage for vessels while navigating in a compulsory pilotage district . . . for the "purpose of entering, leaving, or making use of" any port in the district. In *Cannell & Trinity House Corp. v. Lawther, Latta & Co.* [1914] 3 K.B. 1135, 83 L.J.K.B. 1832, 12 Asp. M.L.C. 578, the vessel, under charter, was ordered to proceed to Dover to receive orders as to her port of discharge. She passed Dungeness and proceeded to Dover where she stopped for half an hour. The London pilotage district extended to Dungeness, and the port of Dover was within that district. It was held that by stopping outside the port of Dover awaiting orders the vessel had "made use of" that port within the Pilotage Act and was therefore bound to be under the pilotage of a licensed pilot for the district.

In *Thames Launches Ltd. v. Corporation of Trinity House* [1961] 1 All E.R. 26, the plaintiff corporation owned launches which were used to transport passengers on pleasure tours on the Thames within and without the London Pilotage District. The Trinity House

brought criminal proceedings by way of informations against the master of one of plaintiff's vessels for failure to have on board a qualified pilot licensed by the pilotage district. Plaintiff brought an action asking for issuance of an injunction of the criminal proceedings as there was then pending a civil action between the parties involving the same issues and the same parties. The injunction was granted. In *Thames Launches, Ltd. v. Corporation of Trinity House of Deptford Strond (No. 2)*, [1961] 2 All E.R. 913, [1962] Ch. 153, [1961] 1 Ll.L.Rep. 608, the court held on the basis of legislation dating back to the reign of Henry VIII and the terms of the Pilotage Act, 1913, that the history of the legislation showed a separation between enactments dealing with the Thames as a highway navigable by the public and those dealing with the pilotage of vessels coming into or leaving the Thames and, viewed against that background, the true construction of the 1913 Act was that navigation for the purpose of using the river as a highway (which plaintiff's company's navigation was) was not navigation for the purpose of "making use" of the port within the 1913 Act; that at the time of the passage of the 1913 Act there was a custom that within the watermen's district, passenger boats plying for hire should be navigated only by licensed watermen or lightermen and should be exempt from compulsory pilotage; and that there was nothing in the London Pilotage Order superseding this custom within Sec. 59 of the 1913 Act.

For other cases dealing with the subject of compulsory pilotage with respect to "passengers," see *The Lion (Owners) v. The Yorktown (Owners)* [1869] L.R. 2 P.C. 525, 16 E.R. 688, P.C.; *The Hanna* (1866) 15 L.T. 334, 2 Mar. L.C. 434; *The Aletta* [1965] 2 Ll.L.Rep. 479; and *Clayton v. Albertsen* [1972] 3 All E.R. 364, [1972] 2 Ll.L.Rep. 457.

In *Beechgrove S.S. Co. Ltd. v. A/S Fjord of Kristiania* [1916] 1 A.C. 364, 13 Asp. M.L.C. 188, H.L., the Clyde Pilot Board by by-law attempted to extend the area of compulsory pilotage beyond the boundaries specified by the enabling act. The by-law was held to be *ultra vires*.

In *Humber Conservancy Board v. Federated Coal & Shipping Co., Ltd.* [1928] 1 K.B. 492, [1927] All E.R. Rep. 626, the vessel came within the compulsory pilotage district for the purpose of obtaining, by signalling, orders as to her port of destination from one of Lloyd's signalling stations and did not take a pilot. It was held that although the signalling station was a "place," it was not a

"port" within the Pilotage Act, 1913 and, consequently, the vessel was not navigating for the purpose of making use of any port within Sec. 11 of the Act.

In *Rindby v. Brewis* (1926) 25 Ll.L.Rep. 26, the court held that while there was no obligation on the part of a master to go out and search for a pilot, under the Act there was a continuing obligation of the navigating vessel to take reasonable steps to keep a lookout for the pilot and fly a pilot flag, noting that the whole Act would be unworkable unless such obligations were imposed.

Under English law, orders of the military and Defence of the Realm regulations with respect to the duty to take pilots are considered as compulsory pilotage. *The Nord* [1916] P. 53; *The Mickleham* [1918] P. 166, C.A.; *The Andoni* [1918] P. 14, 14 Asp. M.L.C. 326; *Humber Conservancy Board v. Grant* (1919) 85 L.J.K.B. 1699, 13 Asp. M.L.C. 421.

In *Alaska Trainship Corp., et al v. Pacific Pilotage Authority*, [1978] 1 F.C. 411 (Can.), the court had before it the question of the validity of regulations promulgated by the Pacific Pilotage Authority under the Canadian Pilotage Act, 1971, 19-20 Elizabeth II, Ch. 52. Drawing heavily on the Report of the Royal Commission on Pilotage, PC 1962-1575, November 1, 1962, the court noted that under the 1971 Act, exemption from compulsory pilotage could be obtained in only three ways, namely:

- (1) By express exemption;
- (2) By waiver;
- (3) By a qualified master or deck officer of a ship obtaining and holding a "pilotage certificate" within the meaning of Sections 2(j) and 15 of the Act.

After consideration of the evidence, the court held that the regulations in question—by which a Japanese-built vessel owned by an American corporation, engaged in transporting principally Canadian cargoes between New Westminster, Canada, and Whittier, Alaska, was subjected to compulsory pilotage—were *ultra vires*, as they prescribed the flag of a vessel as a condition respectively of exemption and of waiver which was not within the parameters of the enabling powers contained in the Act. The court further held that the Pilotage Authority, "probably" as a result of the three pilot members, was motivated so as to make it impossible for the vessel to be exempted, knowing that the pilotage certificate route of exemption was also unavailable to the vessel by virtue of actions taken by

the Canadian Merchant Service Guild to forbid its members from applying for pilotage certificates under any circumstances. The court also found that it was unnecessary for the purpose of safety to have a pilot aboard for the run which the vessel was making, and therefore the regulation did not serve a public purpose.

On appeal, the Federal Court of Appeal, LeDain, J., varied the judgment in three respects. It held that (1) there could be no severance of the exemption and waiver provisions, and they must be held *ultra vires* in whole; (2) the various declarations in the formal judgment of the trial court should be deleted; and (3) the Pilotage Authority was entitled to recover \$3,594.04 on its claim for pilotage fees. The judgment of the trial court dismissing the counterclaim of the vessel owner for pilotage fees paid in error of law was affirmed. The result, of course, was to leave the general provisions for compulsory pilotage in force without the opportunity for the vessel owner to claim an exemption or waiver.

On appeal to the Supreme Court of Canada, [1981] ___ S.C.R. ___, the appeal was allowed, and the requirement that the vessel be registered in Canada as a condition to obtain an exemption, as well as the requirement that the vessel be registered in the United States as a condition to obtain a waiver, were severed from the regulations as going beyond the powers conferred upon the Pilotage Authority. The Authority was compelled to disgorge the award for pilotage fees, and the vessel owner was allowed costs throughout.

For cases relating to various pilotage districts in Great Britain, many of which antedate enactment of the Pilotage Act, 1913, see Vol. 42, *English & Empire Digest*, Part XVI, Pilotage, pp. 1058-1060. For cases involving "Excepted Ships," see pp. 1060-1062, *idem*.

Notwithstanding the clear language of the Pilotage Act, 1971, in *Maritime Telegraph and Telephone Co., Ltd. v. The Demurra*, [1977] 15 N.R. 382, 75 D.L.R. (3rd) 766 (Can.), the owner of a vessel doing damage to a submarine cable attempted to set up a defense of compulsory pilotage as the vessel at the time of the damage was in a compulsory pilotage area and under the control of a licensed pilot. The defense was rejected at trial and the defendant vessel owner appealed. The Federal Court of Appeal held that the appeal should be dismissed because Section 31 of the Act abolished the defense of compulsory pilotage in both actions *in rem* and *in personam*.

Voluntary Pilotage

In those states in which pilotage is voluntary (Maine), if the offer of pilotage services is accepted, the rates set by statute or by regulation of the local state pilot commission apply. *Powell v. State Board of Pilot Commissioners*, 224 Or. 122, 355 P2d 224; *Portland Steamship Operators' Association v. Oregon State Board of Pilot Commissioners*, 1963 A.M.C. 1782, 317 F2d 41, 232 Or. 495, 375 P2d 420. [With respect to the authority of state pilot boards to set pilotage rates by regulation, see discussion, *infra*, under subheading "Authority to Fix Rates."]

Though not pilotage in the technical sense discussed here, there are occasions when pilots undertake to pilot a vessel for a particular voyage or a particular period of time. The compensation payable for such pilotage service is the amount contracted to be paid, and where there is no agreed price, compensation is upon a *quantum meruit* or "reasonable value" basis. *Mephram v. Biessel*, 76 U.S. 370; *Sprague v. Thompson*, 118 U.S. 90; *Beataugh v. Nicholson*, Fed. Cas. #1194 (1851); *The Glenearne*, 7 Fed. 604 (D.Ore.); *Lent Traffic Co. v. Goul*, 2 F2d 554 (CA-3); *The King Philip*, 1929 A.M.C. 296; *Boyd v. Panama Canal Co.*, 1958 A.M.C. 771, 160 F.Supp. 50; *Panama Pilot Pay Case*, 1957 A.M.C. 1395, 151 F.Supp. 929.

Discrimination in Rates

46 U.S.C.A. 213 (quoted, *supra*, under *State Control*) forbids discrimination in pilotage rates between vessel sailing between ports of one state and vessels sailing between ports of different states, or between vessels, or against national vessels of the United States. This section was enacted by Congress to stop a growing practice of discrimination in pilotage rates between ships of different propulsive power, between ports of the same and of different states, and also between government and private vessels. Discriminatory rates were stricken down in *Olsen v. Smith*, 195 U.S. 332; *Sprague v. Thompson*, 118 U.S.90; and *Freeman v. The Undaunted*, 37 Fed. 662 (ND, Cal., 1889).

Only the discriminatory features of statutes setting pilotage rates are abrogated. Where the discriminatory features can be eliminated without destroying the remaining provisions of the statute, the statute continues to apply with the discriminatory provisions omitted. *Olsen v. Smith*, *supra*.

Lien for Pilotage in the United States

Prior to the passage of the Federal Maritime Lien Act of 1920 (46 U.S.C.A. 971-975), there was no Federal statute creating a lien for pilotage. Nonetheless, the courts were unanimous in imposing a lien for pilotage under general maritime law against the vessel piloted. And, of course, the master and owner of the vessel are also liable *in personam* for the amount of the pilotage fee. *S.S. Emily Souder v. Beatty, et al*, 84 U.S. 666; *In the Matter of Walter F. Hagar*, 104 U.S. 520; *In the Matter of the State of Pennsylvania*, 109 U.S. 174.

The proposition is clearly stated in *The Glenearne*, 7 Fed. 604 (D,Ore.) (1881), where the court stated:

Claims for pilotage are cases of admiralty jurisdiction and they may be enforced either against the owner or the vessel. An offer and refusal of pilotage services under a law giving half-fee therefore creates an obligation or contract upon the part of the owner to pay the same which may be enforced in admiralty against the vessel.

Other cases to the same effect are: *The America*, Fed. Cas. #289; *The Alameda*, 32 Fed. 331 (CA-9) (ND, Cal., 1887); *The Furnwell*, 70 Fed. 331 (CA-3); *U.S. v. Kintner*, 216 F2d 418 (CA-9); *Mobile v. Commissioner*, 1938 A.M.C. 1052, 97 F2d 695 (CA-5); *Maret Fund*, 1944 A.M.C. 1203, 145 F2d 431 (pilot and supply man in foreign port may obtain valid maritime liens for advances made for ship's preservation and safety and the general agent, upon paying the same, may be subrogated to such lien rights).

Under a state statute providing, in effect, that the "master, owner and consignee or agent" of a vessel shall be jointly and severally liable for pilotage fees, the term "agent" was construed to mean an agent for the vessel as well as agent for the owner, with the bareboat charterer being the equivalent of an owner *pro hac vice*. *Caples v. International Shipping Co.*, 1959 A.M.C. 1880 (D, Ore.).

In the *Northern Star*, 1925 A.M.C. 1135 (EDNY), the court held that a claim for pilotage does not come within the class of a preferred maritime lien and therefore the lien of a preferred ship's mortgage takes precedence over it.

In the *King Philip*, 1929 A.M.C. 216, 30 F2d 366 (D, Mass.), it was held that a pilot has a lien for his services and does not lose his lien by also acting as master. However, in the *Zizania*, 1934 A.M.C. 770 (D, Mass.), *Collyer v. Favorite*, 1940 A.M.C. 1051 (SDNY), and

Paradine v. Hook Mountain, 1940 A.M.C. 1054 (SDNY), the court held to the contrary; i.e., that the master could not abandon his position as master and claim as a pilot since the vessel would thereby have no master. These decisions are probably of little value in the light of the amendment to the Federal statutes granting a right of lien to a master. 46 U.S.C.A. 600-608, 1968.

As noted heretofore, it is not clear whether there is a maritime lien for pilotage in Great Britain and the Commonwealth Nations. *The Ambatielos, The Cephelonia* [1923] P. 68. However, the Administration of Justice Act, 1956, provides that admiralty jurisdiction may be invoked to recover pilotage fees by proceedings *in rem* against the ship in question or against a sister ship. See, moreover, *Re The Premier* (1854) 6 L.C.R. 493 (Can.), holding that a pilot may claim a lien, and *La Constancia* (1846) 11 L.T. 113, 166 E.R. 829, and *The St. Lawrence* (1880) 5 P.D. 250, both of which appear to favor the existence of a lien for pilotage. See, also, *Hamilton Harbour Commissioners v. The A.M. German, Same v. The Frank Dixon, Same v. The Strathmore* [1973] F.C. 1254 (Can.).

Federal Maritime Lien Act of 1920

In 1920, Congress enacted the Federal Maritime Lien Act, 46 U.S.C.A. 971, 975. 46 U.S.C.A. 971 provides:

Any person furnishing repairs, supplies, towage use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and it shall not be necessary to allege or prove that credit was given to the vessel. . . . (Emphasis supplied.)

Does a lien for pilotage fall within the category of "other necessities"? In the *Seathunder* (*Diaz v. S.S. Seathunder*), 1961 A.M.C. 561, 191 F.Supp. 807 (D, Md.), the court held that towage and pilotage are clearly included within the meaning of "necessaries." To the same effect, see *Blair v. Blue Spruce*, 1970 A.M.C. 1298, 315 F.Supp. 555 (D,Mass.), and *Ajubita v. Piek*, 1970 A.M.C. 1463, 428 F2d 1345 (CA-5).

However, at the time of the decisions, 46 U.S.C.A. 973 read in part:

... but nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefore.

Under the section, the courts in *Seathunder* and *Ajubita* held that the pilot was not entitled to a lien because he failed to inquire as to the authority of the agent or charterer to bind the vessel. The court also held that the requirement of the charter party that the charter "will exhibit" the charter to any person having business with the vessel and also exhibit the same to any representative of the owner on demand does not override or repeal the statutory duty of inquiry placed upon furnishers of necessities to the vessel by the Federal Maritime Lien Act.

In 1971, Sec. 973 was amended by simply excising from it the above quoted language relating to knowledge and duty of inquiry provisions. Consequently, it now appears that only *actual knowledge* of a lien prohibition will suffice to cause a loss of a lien falling under the 1920 Lien Act.²⁰

Boards of Pilot Commissioners

The legislatures of all the coastal States have, by statute, created boards or commissions to govern the operation of pilots of their respective states; for the appointment and licensing of such pilots; and, frequently, for the fixing of rates for pilots. Such boards and commissions are administrative agencies and, as such, are creatures of statute. *Civil Aeronautics Board v. Delta Air Lines*, 367 U.S. 316. The jurisdiction and authority which they assert must be found within the four corners of the statutes under which they were created. *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419 (1957).

If the statutory power creating such boards or commissions grants them the power to make reasonable rules and regulations, the

²⁰ *Lake Union Drydock Co. v. M/V Pclar Viking*, 1978 A.M.C. 1477, 446 F.Supp. 1286 (WD, Wash.); *J.C. Uterwyk v. Mare Arabico*, 1978 A.M.C. 2609, 459 F.Supp. 1325 (D, Md.).

courts uniformly sustain rules and regulations insofar as they are within the general scope of the statutory authority and within the confines of due process. As the court said in *Powell v. State Board of Pilot Commissioners*, 224 Or. 122, 355 P2d 224 (1960):

We hold that the full scope of the legislative grant of power to the board includes the power to regulate every service performed by a pilot as a pilot in accordance with his license and any acts of the pilot necessary to the ultimate performance of that service.

Jurisdiction and Authority in the United States

In order for the pilot commission to function, the commissioners must be chosen in the manner prescribed by statute and, where not so appointed, the commission is not duly constituted and has no jurisdiction to act as such; e.g., in *Opinion of the Justices* (Mass.), 31 N.E. 634, the governor appointed an incumbent who had not been recommended by the Boston Marine Society in spite of a statutory requirement that the Society should nominate members. The court held that appointments could be made only from the list of those nominated and that, therefore, the commission was not properly constituted.²¹

In *The Application of Puget Sound Pilot Association* (Wash.), 385 P2d 711, the statute required that the fifth member of the pilot commission be the Director of the State Department of Labor. The director designated one of his assistants to act for him. The court held that the commission was not organized as required and was, therefore, without jurisdiction to function.

Authority cannot be exercised where one commissioner endeavors to delegate to another commissioner the authority which by statute has been imposed upon him. In the *California*, Fed. Cas. #2313 (D, Ore.), where the statute required all three commissioners to sign their names to a license granted to a pilot, one of them could not delegate to one of the other commissioners the authority to sign for him, notwithstanding all three had agreed to grant the license.

²¹ Compare, however, recent decisions such as *Group Health Co-op v. King County Medical Society*, 39 Wash 2d 586, 237 P2d 737 (1961); *Bell et al v. Georgia Dental Association*, 231 F.Supp. 299 (1964). In the latter case, the governor was compelled to appoint members of the Georgia Board of Dental Examiners from a list recommended by the Georgia Dental Association. The court invalidated the law.

The term of a member continues until his successor is appointed and qualifies. *January v. Riley* (Cal.), 4 P2d 133. And the jurisdiction of the board to act continues notwithstanding an attempt to remove a member who was appointed by the governor with the consent of the state senate. *People v. Freeze*, 76 Cal. 633, 18 Pac. 812, 23 Pac. 379.

Actions of a pilot commission are void where the commission attempts to act in a manner beyond the scope of its underlying statutory authority, or beyond the scope of rules and regulations promulgated by it. *Bulger v. Benson*, 262 Fed 929 (CA-9) (1920) (pilot disregarded a penal rule and was found guilty and fined. The attempt of the pilot commission, in addition, to suspend his license was stricken down); *State v. Verden* (Del.), 43 Atl. 525 (statute authorizing licensing and governing of pilots gave no authority to regulate "apprentice" pilots); *State v. Merny*, 29 N.J. Law. 189 (pilot convicted for neglect of duty and suspended for two months; pilot commission could not punish him for same offense by outright revocation of his license); *In re Delaware Pilotage*, 22 Pa. Dist. 329 (pilot commission without authority to try a pilot on charges of misbehavior in the absence of a complaint by the person injured); *Morris v. Board of Commissioners*, 30 Atl. 667 (authority to make rules did not include authority to adopt a rule relating to revocation of licenses); *Verden v. Board of Pilot Commissioners*, 8 Del. Ch. 1, 67 Atl. 975 (board adopted *ex post facto* rules after an offense had been committed; authority to revoke a license under the new rules held lacking).

The state statute in *Patterson v. Pilot Commissioners*, 30 Or. 301, 47 Pac. 786 (1897), gave the pilot commission authority to limit the number of pilots to be licensed. However, the statute also provided that licenses would be renewed as a matter of course unless the board determined that there was good cause for withholding the renewal. The statute also required written notice of intent to deny. The court held that the authority of the commission to limit the number of pilots did not include the power to withhold renewals, without notice or hearing, stating:

The statute makes no distinction as to the method of procedure in a case where the pilot commissioners desire to withhold the renewal of a license because of the alleged incompetency or unfitness of a particular pilot, and one where they desire to withhold such renewal on

the ground that the interests of commerce require the number of pilots to be reduced. In either case the pilot to be affected is entitled to notice and an opportunity to present such reasons as he may have why the contemplated order should not be made. . . .

However, hiring an attorney to acquaint the board with the manner of conducting an investigation is not an unlawful delegation of authority. *Snow v. Reed*, 14 Or. 342.

So long as the pilot board or commission acts within the scope of its statutory authority, its decisions will be sustained. This was clearly demonstrated in *Kotch v. Board of River Port Pilot Commissioners for New Orleans*, 1947 A.M.C. 535, 330 U.S. 552 (1947). In that case, otherwise qualified applicants brought suit against the Board of Pilot Commissioners, alleging nepotism on the part of the Board in that it invariably appointed only relatives or close friends of the already licensed pilots. (The Board itself was composed of licensed pilots.) The Supreme Court stated, in part:

The practice of nepotism in appointing public servants has been a subject of controversy in this country throughout our history. Some states have adopted constitutional amendments or statutes, to prohibit it. . . . But Louisiana and most other states have adopted no such general policy. We can only assume that the Louisiana legislature weighed the obvious possibility of evil against whatever useful function a closely knit pilotage system may serve. Thus the advantages of early experience under friendly supervision in the locality of the pilot's training, the benefits to morale and *esprit de corps* which family and neighborly tradition might contribute, the close association in which pilots must work and live in their pilot communities and on the water, and the discipline and regulation which is imposed to assure the State competent pilot service after appointment, might have prompted the legislature to permit Louisiana pilot officers to select those with whom they would serve.

The Supreme Court also upheld the acts of the Louisiana Board as against attacks based on the due process clause of the Constitution and the antitrust statutes, citing *Olsen v. Smith*, 195 U.S. 332.

Justice Rutledge filed a strong and well-reasoned dissent, noting that the unconstitutional administration of an otherwise valid statute incurs the same condemnation as if the statute had incorporated the discrimination in its terms, citing *Yick Wo v. Hopkins*, 118 U.S. 356.

Although it would be assumed that the *Kotch* case laid the question to rest, the same contentions were again presented in court in *Brechtel et al v. Board of Examiners of Bar Pilots for the Port of New Orleans*, 1965 A.M.C. 1013, 230 F.Supp. 18 (ED, La.) with the same result.

Jurisdiction and Authority in Great Britain and the Commonwealth Nations

In Great Britain, the jurisdiction and authority of "pilot boards" is spelled out with particularity in the Pilotage Act, 1913, and it is to the text of that Act that reference must be made in the first instance.

As originally enacted, Part I of the Act set up a basic scheme of improvement designed (a) to obtain information and (b) to effect changes considered necessary for such improvement by making "Pilotage Orders." Through the Pilotage Orders it was envisioned that the various local Acts, charters, by-laws, regulations and provisions would be made uniform.

Under Part II of the Act, as now constituted, the Secretary of State for Trade is empowered to make Pilotage Orders defining the limits of jurisdiction of each "pilotage authority." He is empowered to confirm or reject by-laws submitted by the various pilotage authorities, require the publication of proposed by-laws, hold hearings, compel the issuance of pilot licenses or certificates and the issuance of a renewal of a revoked certificate, require, in certain circumstances, for the representation of pilots, shipowners and harbor authorities on a pilotage authority, etc.

Pilotage Orders made under Part I of the Act require confirmation by Parliament; pilotage orders made for other purposes are made only upon application by an interested party. Such orders do not require confirmation unless a petition against the order in question is received by the Secretary of State for Trade within a specified period and is not withdrawn.

Section 17(1) of the Act specifies in seventeen subsections the power of pilotage authorities to make by-laws. These may be summarized as follows: determine the qualifications of pilots; issue licenses and revoke or suspend them; fix limits on the number of pilots; provide generally for the good government of pilots; determine the system with respect to supply and employment of pilots; provide for punishments and fines; fix pilotage rates; provide for

pooling of earnings of pilots; provide for deductions for pilotage administration and pension funds; provide for bonds of pilots; establish pilots' benefit funds; and determine method of conducting examinations for pilotage certificates, who shall be issued certificates, who shall be granted deep sea certificates, etc.

The more important of these powers will be considered in relation to the subheadings set forth hereafter.

Authority to Fix Rates—United States

The authority of a pilot commission to fix rates is dependent upon the statutes creating the commission and defining its powers. In the *Chase*, 14 Fed. 854 (D, Fla.), the court said:

Since the organization of the state governments no less than 25 acts have been passed upon the subject, and by a large majority of them, local boards have been given full power to make rules and regulations, establish rates and change the same as deemed best. . . .

In my judgment it was the intention of the legislators that the local boards should have the power, not only to determine what rates should be paid by a vessel employing a pilot, but also by one spoken.

In *Virginia Pilots' Association v. Commonwealth*, 145 Va. 757, 134 S.E. 682, the statute gave to the Corporation Commissioner of the state the authority to fix and enforce rates for pilotage. Under that authority, the Commissioner fixed the rates but before they were put into effect, he lowered them. Upon challenge by the pilots' association, the court held that the Commissioner was exercising a properly delegated function and that in doing so, his actions would not be reviewed.

Probably the leading cases on authority to fix and adjust pilotage rates will be found in Oregon. The first case to arise was *Powell v. State Board of Pilot Commissioners*, 224 Or. 122, 355 P2d 224 (1960). The statute involved in that case empowered the board to "provide for efficient and competent pilotage service" and to "fix, at reasonable and just rates, pilotage fees." The Columbia River Pilot Association applied for rate increases which were granted in part. Thereafter, the pilot association published its own tariff, establishing extra or additional fees for such ancillary services as docking and undocking vessels, moving vessels within harbors, standby time, etc., on the theory that the authority to fix "pilotage

fees" embraced only fees for piloting a ship from Astoria, Oregon (on the coast) to Portland and other upriver ports.

The controversy terminated in a declaratory judgment suit. Although holding that this was an inappropriate method of review, the Oregon Supreme Court nonetheless discussed the definition of the term "pilotage" and held that it embraced the ancillary services mentioned in the pilots' tariff.

In 1962, the subject of rate fixing was again before the Oregon Supreme Court. *Portland Steamship Operators Association v. Oregon State Board of Pilot Commissioners*, 1963 A.M.C. 1872, 232 Or. 495, 375 P2d 420 (1962). On this occasion, the pilot commission had granted the Columbia River pilots an increase in rates on the grounds that a disparity in rates between the river pilots on the one hand and the Columbia River Bar Pilots on the other would attract disparate numbers of applicants for bar pilots' licenses as contrasted with applicants for river pilots' licenses. Unfortunately, the pilot commission did not base its conclusion upon any evidence. As a consequence, the increase was denied. The court said, in part:

. . . And yet there was no substantial evidence to support this conclusion. There was no evidence closely bearing upon the supply of and demand for pilotage services. Nor is there any evidence supporting the premise that the disparity with which the board was concerned would have had any substantial effect on the availability of men for either type of pilotage. . . .

The fixing of rates by pilot commissions must be within some reasonable framework and the rates fixed must bear a reasonable relationship to the ends to be accomplished. The Oregon statute (ORS 776.115 (7)) specifically establishes guidelines for the establishment of rates which the pilot commission must follow. The statute, a model of its kind, deserves citing:

(7) In fixing fees pursuant to subsection (6) of this section, the board, shall give due regard to the following factors:

- (a) The length and net tonnage of the vessels to be piloted;
- (b) The difficulty and inconvenience of the particular service and the skill required to render it;
- (c) The supply of and demand for pilotage services;
- (d) The public interest in maintaining efficient, economical and reliable pilotage service;
- (e) Other factors relevant to the determination of reasonable and just rates.

The courts are reluctant, in the area of rate-fixing, to substitute their judgment for that of an administrative body especially created for that purpose. See *Application of Puget Sound Pilots' Association* (Wash.), 385 P2d 711, where the court held that the pilot commission was authorized to change rates and, having done so, its action would not be questioned since its action was of a quasi-judicial nature and not merely a ministerial act. If the commission's decision is supported by any competent evidence, the courts will sustain it. Only where a decision is unsupported by any evidence or exceeds the statutory authority granted to the commission will the courts invalidate it. Compare *Portland Steamship Operators' Association v. Oregon State Board of Pilot Commissioners*, *supra*, with *Application of Puget Sound Pilots' Association*, *supra*.

In other areas, notably the issuance of pilot licenses, the courts refrain from substituting their judgment for that of the pilot commissions. In *Caples v. McNaught*, 147 Or. 72, 31 P2d 780, the court held there was no ground to justify enjoining the pilot commission from issuing a license to a pilot on the premise that sufficient licenses had already been granted to satisfy the requirements of navigation on the Columbia River. The court stated, in part:

. . . The discretion of the commissioners should be exercised in the matter, and not the discretion of the courts or the plaintiffs. . . .

To the same effect was *Ring v. Patterson*, 137 Or. 234, 1 P2d 1105, where the court refused to direct the pilot commission to issue a license, stating:

. . . The authority to grant pilots' licenses is not an attribute of this court. It has been conferred upon the defendant [the pilot commission] exclusively. Moreover, all discretion incidental to the exercise of the power likewise belongs to the Pilot Commission and not to this court. . . .

See, also, *Snow v. Reed*, 14 Or. 342.

In *Bloomfield S.S. Co. v. Sabine Pilots' Association*, 1959 A.M.C. 368, 262 F2d 345 (CA-5), the plaintiff steamship company sought to recover pilotage fees allegedly assessed in excess of those permitted by statute. The pilots contended, on the other hand, that the statutory maximum applied only as far as Port Arthur, Texas; that vessels continuing on up the Sabine waterway to Beaumont could be charged an additional fee; and that such rates had been charged for over 27 years without protest. The court of appeals held

that the statute was clear and unambiguous; that the rate to Beaumont could not legally be charged; and that excess rates since the last rate increase could be recovered (the excess prior to that time was deemed barred by laches).

In *Portland Steamship Operators Association v. Coos Bay Pilots' Association*, 592 P2d 1060 (1979, Ore.), the steamship operators' association appealed from a decision of the Board of Pilot Commissioners increasing rates on the grounds that the Board had allegedly failed to give due regard to the number of hours worked by the pilots as compared to the work load of other pilots in other areas and the refusal of the Board to consider the pilots' outside income from the operation of a towboat company in the harbor. [The pilots had negotiated with the steamship operators for a 21% increase; the pilots asked the Board to grant a 50% increase, and the Board actually granted an increase of 28%.]

The Court of Appeal held that the Board had clearly considered the work load factor as well as many others and that the balancing of the various considerations involved was a matter of expertise for the Board, not the court. The court also noted there was no contention that the arrangements between the pilots and the towboat company was invalid, improper or against public policy and held that the charges made were reasonable, the services rendered reasonably necessary, and that the outside income of the pilots was irrelevant. The court concluded:

The order being supported by substantial evidence in the whole record, and not being unlawful in substance, the court cannot substitute its judgment for that of the Board.

Authority to Fix Rates—Great Britain and Commonwealth Nations

The decisions in other jurisdictions do not depart from the principles enunciated above. As Halsbury notes,²² if a by-law (or ordinance) is properly and validly made, it has the force of law within the sphere of its legitimate operation. Four elements are essential to any by-law: (1) it must be within the power of the authority which makes it; (2) it must not be repugnant to the general law; i.e., it must not "expressly or by necessary implication, profess to alter the general law by making something unlawful which the general law makes lawful,

²² Halsbury's Laws of England, Vol. 24, p. 510 et seq. (3rd Ed.).

or vice versa, or by adding something inconsistent with the provisions of a statute creating the same offence, or by depriving a defendant of a defence he would have under the general law. A by-law adds something to the general law, but it must not be contrary to or inconsistent with it"; (3) it must be certain, clear and exact; and (4) it must be reasonable; i.e., not unjust, inequitable, discriminatory, capricious or constitute oppressive interference.

See, for example, *Muller v. Trinity House* [1925], *supra* (the word "services" in Sec. 17(1) of the Act means *services rendered* and a pilotage authority could not make a by-law imposing a liability on shipowners to pay pilotage dues other than for such services); *Lower St. Lawrence Pilots Corp. v. R.* [1974] 1 F.C. 158 (Can.) (involving interpretation of Quebec Pilotage District General By-Law relating to services of two pilots during winter months on the St. Lawrence); *The Cyclops* [1923] P. 80, 16 Asp. M.L.C. 155 (interpretation of by-law of Mersey Docks & Harbour Board with respect to "berthing" and "transporting"); *The Servia, The Carinthia* [1898] P. 36, 8 Asp. M.L.C. 353 (Mersey Docks & Harbour Board held to have authority, under the Mersey Docks Acts Consolidation Act, 1858, to fix a reasonable charge by way of "extra" compensation for taking an outward bound vessel and an inward bound vessel in certain circumstances); *Humber Conservancy Board v. Grant* (1916) 85 L.J.K.B. 1699, 13 Asp. M.L.C. 421 (direction of Admiralty during wartime to compel the taking of pilots on the Humber held to be *intra vires*); *Hamilton Harbour Comm. v. The A.M. German, The Frank Dixon, and The Strathmore* [1973] F.C. 1254 (Can.) (by-law authorized a pilotage fee for moving a vessel in the harbor but no by-law had been passed authorizing docking charges; held: harbor board had no authority to collect docking charges); *Re Pilots (State) Conciliation Committee* (1932) A.R. (N.S.W.) 187 (N.S.W. Indus. Comm., Full Bench) (Aus.) (although pilots in New South Wales are employees appointed and directly employed by the Crown, and although covered by regulations under the Navigation Acts, an award regulating their remuneration and conditions of employment could be made under the Industrial Arbitration Act).

Validity of Actions of Pilot Commissions

The authority of pilot commissions to take action, even in the absence of duly adopted rules and regulations covering the subject in

dispute, is perfectly clear so long as the commissions act within the parameters of the statutes creating them and defining their powers. *Williams v. Potter*, 210 Fed. 318, *aff'd* 223 Fed. 423 (CA-2); *Sturgis v. Spofford*, 45 N.Y. Rep. 446; *Farney v. Stockton Port District*, 12 Cal 2d 832, 86 P2d 832; *In re Hand*, 266 Pa. 277, 109 Atl. 692; *Caples v. McNaught*, 147 Or. 72, 31 P2d 780; *Ring v. Patterson*, 137 Or. 234; *Riley v. Thompson*, 227 Pac. 712.

In *Williams*, *supra*, the decision of the pilot commission that the plaintiff applicant did not possess the qualifications for issuance of a license was sustained. In *Sturgis*, *supra*, a statutory penalty was upheld against a pilot who employed an unlicensed person to act as a pilot, although the penalty was limited to one occasion and not for each day that he employed the unlicensed person. In *Farney*, *supra*, the court held that a pilot whose license had expired or had been revoked could not compel the commission to issue a renewal. In *re Hand*, *supra*, held that the pilot commission had authority to decide whether or not a pilot had overcharged on his fees and, if so, to require him to repay the overcharge to the vessel piloted or face suspension of his license. In *Riley*, *supra*, the statute provided for a 5% fee to be withheld from pilotage fees and retained by the pilot commission for salaries and expenses. The court held that the 5% fund need not be paid into the state treasury but could be withheld without further accounting.

See, however, *Moore v. Clyde Pilotage Authority* [1943] S.C. 457, 77 Ll.L.Rep. 138 (Scot.), where the pilotage authority revoked a pilot's license. He appealed to the Sheriff on the grounds that the procedure was irregular and that the authority had reached the wrong conclusion on the merits. The Sheriff reversed on both grounds of appeal. In *McGillivray v. Kimber* (1915) 52 S.C.R. 146, 26 D.L.R. 164 (Can.), the pilotage authority, by resolution alone, without complaint, notice or investigation, declared a pilot dismissed for "neglect and incapacity." It was held that the failure of the authority to observe statutory requirements resulted in the authority not having exercised "judicial functions" and did not insulate it from liability in an action by the pilot for damages. In *Halifax Pilot Comm. v. Farquhar* (1894) 26 N.S.R. 333 (C.A.) (Can.), efforts by the pilotage authority to collect pilotage dues from the purchaser of a barque wrecked, beached, condemned and sold and later towed into Halifax by another vessel were stricken down on the ground that the barque was not a "ship" within the meaning of the

Pilotage Act, 1886. In *In re Lee* (1899) 25 V.L.R. 205, 21 A.L.T. 101, 5 A.L.R. 253 (Vic.Sup.Ct., Aus.), the practice of Marine Board to treat certificates of exemption to a master as valid without the consent of the Board, as required by statute, held to violate the statute.

Rules and Regulations

Rules and regulations of pilot commissions, validly and properly adopted, are of the same force as if such rules and regulations were incorporated in the enabling statute. *Nash v. Thebes*, Fed. Cas. #10022 (DC, Mass.).

If pilot commission rules and regulations are to be sustained, certain conditions must occur; i.e., the enabling statute, by its terms, must authorize the adoption of such rules and regulations; the rules and regulations must be reasonable and not arbitrary and capricious; they generally must be in the interest of safe navigation and promote an orderly administration of the pilotage laws; they must bear a reasonable relationship to the ends to be effected; and they must not infringe upon Constitutional rights and privileges.²³

Rules and regulations by pilot boards and commissions were sustained in the following instances:

Morse v. Heide (N.C.), 68 S.E. 173 (rule prohibiting pilots from leaving their assigned stations); *Davis v. Heide* (N.C.), 77 S.E. 691 (rule limiting the cruising grounds beyond which a vessel could not be "spoken," prescribing penalties for failure to answer a signal requesting a pilot, and removing pilots for misbehavior or misconduct in office); *People v. Gunner* (N.Y.), 108 N.Y.S. 726, 124 App. Div. 153 (rule providing that business of pilotage should be carried on by one vessel and that inward bound vessels should be spoken and boarded from a pilot boat stationed within a radius of three miles from a designated point); *In re Appeal of Henry Verden*, 13 Phila. 151 (rule authorizing board of wardens to revoke a pilot license when a pilot deserts his vessel and ordering the pilot to refund the compensation received); *Verden v. Board of Pilot Commissioners*, 8 Del. Ch. 1, 67 Atl. 975 (rules regulating the boarding of pilots at specific ports of vessel bound for the Delaware River and Bay); *People v. Board of Pilot Commissioners*, 23 Hun. (N.Y.) 603 (rule

²³ Note the remarkable similarity to Halsbury's four essential elements of a valid by-law, *supra*.

prescribing the type of vessel which could be used by pilots for boarding vessels); *Baldwin v. Pouliot* [1969] S.C.R. 577, 7 D.L.R. (3d) 367 (Can.) (by-law prohibiting the consumption of alcoholic beverages while on duty or about to go on duty held validly enacted under Sec. 329(f) of Canada Shipping Act, 1952); *Forth (Trinity House of Leith) Pilotage Authority v. Lord Advocate and Others* (1949) 82 Ll.L.Rep. 1000 (not necessary for unanimous agreement between all members of pilotage authority before a by-law concerning the handling of money in a pilot's benefit fund would be confirmed).

By contrast, however, see *Jones v. Gamache; Gamache v. Ministre Des Tpts.*, [1969] S.C.R. 119, 7 D.L.R. (3d) 316, varying [1968] 1 Ex. C.R. 345, where by-laws adopted by the Quebec Pilotage District setting up classes of pilots having unequal rights were held invalid as the adoption of such by-laws was not authorized under the 1952 Act. In *McAlister v. Forth Pilotage Authority* (1943) 76 Ll.L.Rep. 32, a by-law requiring that any question involving the distribution of a pilots' pooling fund be referred to the Authority and that the decision of the Authority would be final was held invalid as not being justified by the provisions of the Pilotage Act. In *Bruce v. Moore; Ex Parte Moore* (1911) S.Q.R. 57, 5 Q.J.P.R. 45 (Q. Sup. Ct., F.C., Aus.), a regulation, forbidding any unlicensed person from acting as a pilot in the Torres Strait and Inner Route when the services of licensed pilots were available and imposing a penalty for so acting, was held partially valid and partially invalid. And see cases cited, *supra*, under "Authority to Fix Rates."

Revocation and Suspension of Licenses

It is rather surprising but nonetheless true that many believe that licensing boards given broad powers can simply revoke or suspend licenses on a mere whim. Nothing could be further from the truth. No license can be revoked or suspended arbitrarily and capriciously. Uniformly, pilotage authorities are required to grant a hearing to an accused pilot at which time he is entitled as of right to be heard, to be present, to confront witnesses, to be fully apprised of the charges against him, to present evidence, and to be judged on a fair and impartial basis. And if the pilot feels he has been unjustifiably punished, he has a right of appeal to a higher tribunal.

An excellent example is *Conway v. Clyde Pilotage Authority* (1951) S.L.T. Sh.Ct. 74 (Scot.). There, a pilot whose license had been revoked after a casualty appealed under Sec. 28 of the Pilotage Act, 1913, to the sheriff having jurisdiction at the port where the decision was given. The pilot contended the decision was wrong on the merits, that the proceedings were irregular because there was no proper procedure for ascertaining the facts, nor was he fully informed of the charges against him nor of the possible penalty, and because his fault was assumed and he was not given a fair hearing. The Sheriff-Substitute sustained the appeal in that it was wrong on its merits, and that the proceedings were irregular. In doing so, he stated in part:

In my view no accident should be recorded against a pilot in the sense that it may be used against him prejudicially at a later inquiry, unless the evidence necessary for a judicial decision has been heard by or on behalf of the executive committee.

The pilot was not informed that the suspension or revocation would be considered which would have afforded the opportunity of preparing an adequate defence in advance. He did not bring to the meeting witnesses whose evidence was essential for a proper decision.

The executive committee allowed to be raised and to be considered matters which were irrelevant on the question of fault, such as unspecified complaints by certain shipowners.

In *Moore v. Clyde Pilotage Authority* (1944), *supra*, the Sheriff-Substitute held that the proceedings by which the pilot's license had been revoked were irregular, oppressive and unjudicial, and the punishment meted out too severe. The pilotage authority appealed to the Court of Session whereupon the decision of the Sheriff-Substitute was sustained. The court noted that the right to be heard embraced the right to put on evidence on the part of the pilot, and the pilot was not given an opportunity to do so. See, also, *Gariepy v. R.* [1939] Ex. C.R. 321, [1940] 2 D.L.R. 12 (Can.); *McGillivray v. Kimber* (1915), *supra*; *Belisle v. Minister of Transport* [1967] 2 Ex. C.R. 141 (Can.); *Koenig v. Minister of Transport* [1971] F.C. 190 (C.A.) (Can.); *Bulger v. Benson*, 262 Fed. 929 (CA-9); *State v. Merny*, 29 N.J.Law. 189; *In re Delaware Pilotage*, 22 Pa.Dist. 329; *Morris v. Board of Commissioners*, 30 Atl. 667; *Verden v. Board of Pilot Commissioners*, 8 Del. Ch. 1, 67 Atl. 975; *Farney v. Stockton Port District*, 12 Cal. 2d 832, 86 P2d 832.

Members of Pilot Associations—Rights, Duties, and Obligations, *Inter Sese*

The relative rights, duties and obligations of pilots vis-a-vis themselves and their respective pilot associations are of the utmost importance. As a practical matter, it is almost impossible for a pilot to operate individually, especially so where he must make provision for means of boarding and unboarding vessels; and expulsion or suspension of membership in the association literally means economic destruction for an individual pilot.

Considerable litigation has arisen between individual pilot members and their associations, relating to such matters as pension rights, accountings, suspension or revocation of membership, and rights to a division of association assets upon retirement or death.

In *Magee v. San Francisco Pilots B & P Association* (Cal), 198 Pac. 933, the pilot-member was permanently injured while boarding a vessel, thereafter retired as a regular member and applied for an associate membership. He surrendered his regular certificate of membership and received \$7,500, the then present value of the certificate. A by-law of the association provided that one could be accepted for associate membership only upon a two-thirds vote of the membership, and the plaintiff fell far short of receiving sufficient votes. The court held that there was no evidence that a pension fund had been created under the by-laws of the association and that since the plaintiff was denied associate membership, he was entitled only to the \$7,500 received.

In *Browne v. Makin*, 1950 A.M.C. 114, 177 F2d 753 (CA-5), the pilot was permanently injured and brought suit to establish his pension rights. The court held that he was entitled to share in the fund because he had contributed to it for a considerable period of time. After pooling of the fees and payment of expenses, the net amount was divided in such fashion that a retired or incapacitated pilot received two-thirds of the amount received by active pilots. Having contributed his share in prior years, so that other pensioners received their proper amounts, he was entitled to "reap part of the harvest which he had helped to sow."

Right to Expel from Membership

The authority of an association to expel a member depends upon the existence of a valid and proper by-law permitting the same but only in accordance with procedural due process.

In *Walters v. Maryland Pilot Association*, 1937 A.M.C. 1141 (Cir. Ct., Md.), the association expelled the member for alleged acts detrimental to the association. The court held that since a proper notice of charges and a hearing was not given to the expelled pilot, his expulsion was unlawful and he was ordered reinstated. In *Heuer v. Crescent River Pilots' Association*, 1964 A.M.C. 821, 158 So. 2d 221 (Ct. App., La.), the court upheld the right of the association to expel its president for his refusal to account for the expenditure of approximately \$200,000 in association funds. In *Marshall v. Verden*, 19 Pa. Super. Ct. 245, the pilot absented himself so that he was unable to take his regular piloting turn. Pursuant to an association by-law, and after due notice, he was suspended from membership. On his appeal, the court refused to set aside his suspension, stating:

. . . The president and board of directors, at a regular meeting of which the plaintiff had notice, held the plaintiff bound by the by-law above quoted. The action was taken pursuant to the seventh article of the constitution referring to that body the determination of matters of dispute arising among the members.

The result to the plaintiff is a considerable loss for what might seem to be trivial transgression. But we are not willing to stamp the by-law as unreasonable and for that reason unenforceable. The plaintiff was a member of the defendant association. He participated in its organization. He assented to its by-laws. He found nothing unreasonable in the provision now complained of until he chose to violate it. Furthermore, the by-law covered a subject of no mean importance. The members of the defendant association have much to do with the commerce of the city of Philadelphia. If without severe penalty members might absent themselves at will, serious consequences might result to outgoing vessels and thus to the interests of a large community. As the learned judge of the court below says, the organization is quasi-public. Its members perform high duties with which go great responsibilities. In view of the considerations suggested, we cannot regard the penalty here imposed by virtue of the by-law so unreasonable as to set aside the by-law or to relieve from its operation.

Imposition of Fines

The authority of an association to fine its members again depends upon the existence of a valid by-law and observance of procedural due process.

In *re Vachon*, 1963 A.M.C. 2097 (Arb.), the arbitrator ruled that a \$500 fine imposed against the pilot should be refunded to him since he was not given a hearing upon that phase of the arbitration.

In *Nelson v. Associated Branch Pilots of Lake Charles (La.)*, 44 So2d 357, *reh. den.* 45 So2d 218, the pilot was fined for refusing to obey the secretary-treasurer's lawful orders on four separate occasions during one month. On appeal, the court sustained the fine and, in addition, ruled that the fine should not be considered as a capital asset of the association in which the pilot under discipline should share, but instead should be distributed among the other non-offending pilots as compensation for the extra work they were compelled to perform because of the dereliction of the pilot who was fined.

In *Levine v. Michel*, 35 La. Ann. 1121, the association filed a suit for specific performance and an injunction, alleging that the defendant pilot had violated the articles of agreement requiring that he bring to the association his skill, time, labor, etc., and should not carry on any business in the nature of pilotage for his own account. The association alleged that the pilot was, for his own account, piloting from a small open boat and refusing to use the pilot boats of the association. Upon rehearing, the court held that while the delinquent pilot could not be compelled specifically to perform his contract, he could and would be enjoined from piloting for his own account so long as the association remained undissolved.

In *Application of W. J. Warner*, 1962 A.M.C. 1036 (NYPC), the court held, in accordance with the general rule, that before a pilot association can validly fine or discipline a member, it must comply with the fundamental requirements of due process, to wit, notice, hearing and an opportunity to defend. The court found that the pilot had been unjustly removed from the assignment board for 7 days and that the fine imposed on him should be remitted because it was imposed without notification or a fair hearing, but upheld the intrinsic validity of the association by-law stating that a pilot could be fined for refusing an assignment and failing to request being taken off the assignment board in the event of illness.

It would appear that the development of the law in England with respect to the control exercised over domestic tribunals (voluntary associations) was somewhat tardy as compared to the development of that field of law in the United States. *Lee v. The Showmen's Guild*, [1952] 2 Q.B. 329, was a landmark decision in that direction.

In that case, the plaintiff had a recognized "pitch" at the Bradford Summer Fair. Another showman, William Shaw, claimed the pitch. The Trade Union committee decided in favour of Shaw. They

found the plaintiff had been guilty of unfair competition and fined him £100. He then brought an action against the Trade Union, claiming that the committee's decision was invalid. Lord Denning, in his crisp and precise style, said, in part:

Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance, observe the principles of natural justice. They must give the man notice of the charge and a reasonable opportunity of meeting it. Any stipulation to the contrary would be invalid. They cannot stipulate for a power to condemn a man unheard . . . Another limitation arises out of the well-known principle that parties cannot by contract oust the ordinary courts from their jurisdiction . . . They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in case of error of law, then the agreement is to that extent contrary to public policy and void. . . .

. . . This is a new question which is not to be solved by turning to the club cases. In the case of social clubs, the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties.

* * *

It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great as, if not greater than, any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life and which is the only trade he knows . . . If he is to engage in the trade, he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say no. A man's right to work is just as important to him as, if not more important than, his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work.

But the question still remains: to what extent will the courts intervene? They will, I think, always be prepared to examine the decision to see that the tribunal has observed the law. This includes the correct interpretation of the rules.

. . . The rules are the contract between the members. The committee cannot extend their jurisdiction by giving a wrong interpretation to the contract, no matter how honest they may be. They have only such jurisdiction as the contract on its true interpretation confers on them, not what they think it confers. The scope of their jurisdiction is a matter for the courts, and not for the parties, let alone for one of them.

That decision was followed by *Bonsor v. Musicians' Union*, [1956] A.C. 104, in which the plaintiff was awarded damages for having been wrongfully expelled for being in arrears on his union dues. Subsequently, there followed *Nagle v. Feilden* [1966] 2 Q.B. 633 (wrongful exclusion by the Jockey Club of a woman applicant for a license); *Dickson v. Pharmaceutical Society* [1967] Ch. 708 (rule prohibiting chemists from selling certain materials in their shops held invalid); *Edwards v. SOGAT* [1971] Ch. 354 (exclusion from membership held unfair where the union by its own mistake failed to notify employers about the payment of union dues); and *Green v. AEU* [1971] 2 Q.B. 175 (refusal by committee to approve election of a shop steward on a misapprehension). And see *Enderby Town Football Club v. Football Association* [1971] 1 Ch. 591, involving the right of a member to be represented by legal counsel at a hearing before a domestic tribunal.²⁴

Decisions of Collateral Nature

In *McNulty v. Higginbotham* (Ala.), 40 So2d 414, a pilot member brought suit against the association secretary-treasurer for an accounting of association funds. The court held that, in the absence of an allegation of fraud, suit would not lie.

Houston Pilots v. Goodwin (Tex.), 178 SW2d 308, involved a suit between two pilot associations, each of which claimed the right

²⁴ I am greatly indebted to Lord Denning for calling attention to the foregoing cases in his delightful and illuminating book, *The Discipline of Law*, London, Butterworth's, 1979. I am emboldened to make this laudatory comment as it is most unlikely that I shall ever have to appear before his Court and therefore cannot be accused of attempting to curry favor with the Court.

to pilot on certain pilotage grounds. The court held that the Galveston pilots did have exclusive rights to pilot on the specified grounds and that the Houston pilots had intentionally and wilfully trespassed on such rights. Not content with this judicial ruling, the Houston pilots brought a libel in Federal court seeking to establish their right to pilot on the disputed grounds. *Galveston—Houston Pilots' Case*, 1945 A.M.C. 5, 146 F2d 341 (CA-5). The Federal court, principally on the grounds of the state court decision being *res judicata*, denied relief.

Citizens' Bank of Houston v. O'Leary (Tex.), 167 SW2d 719, involved a contest between two parties claiming a lien against a pilot's certificate, having a fixed value of \$3,000 payable by the association to the executor of a deceased member. A bank held the certificate as collateral security for a loan made to the pilot, and the pilot's sister held a chattel mortgage on it also but had failed to perfect her recordation of the mortgage. The court held that the bank's lien was superior to that of the deceased pilot's sister.

Taxes

A pilot association doing no business except as agent for its individual members, owning no property and having no income as an entity, is not required to pay income taxes as an association, and if, by mistake, it previously filed an income tax return, an estoppel does not result thereby. *Mobile v. Commissioner*, 1938 A.M.C. 1052, 97 F2d 695 (CA-5).

In *Seeth v. Joseph*, 1950 A.M.C. 1723 (NYAD), the court held that the City of New York could not assess and collect a gross receipts tax on business upon the earnings of a Sandy Hook pilot whose work related to interstate commerce within the meaning of the Commerce Clause.

Penalties and Offenses

For the violation of a statute or lawful rule and regulation, there is usually exacted either a penalty, or the act or omission is deemed a criminal offense. Where recovery for the doing or failure to do a certain act runs in favor of someone other than the state, or where the same is made subject to forfeiture only, it is usually denominated a penalty. On the other hand, where the doing or the failure to do

some act is punishable by fine or imprisonment or both, and is made the subject of an information, indictment or formal disciplinary charges (in the case of Coast Guard violations), it is deemed an offense.

Penalties

In the following cases, penalties were imposed on pilots or would-be pilots for violations of statutes or regulations:

United States v. Sience, Fed Cas. #16239 (DC, Pa.) (captain began his voyage and continued it without having on board a licensed pilot, thereby arrogating to himself the responsibilities of a pilot; he was fined \$100 and his vessel subjected to a penalty of \$500 by suit in admiralty); *Carrie L. Taylor*, 106 Fed. 246 (CA-4) (one acting as a pilot but not licensed as such subjected to a \$40 fine and forfeiture of pay received, for the use of the pilot commissioners); *Commissioners of Pilots v. Pacific Mail S.S. Co.*, 52 N.Y. 609 (pilot commissioners recovered a judgment against the steamship company defendant pursuant to statute for employing a person not holding a license as a pilot and for piloting a vessel to sea without a pilot); *Cash v. Auditors of Clark County*, 7 Ind. 227 (one piloting a boat over the falls without having a license as a pilot was forced to pay the penalty prescribed by statute, notwithstanding there was a licensed navigator aboard who merely acted as a steersman); *U.S. v. Greenman*, 37 Fed. 64 (DC, Conn.) (pilot violated the overtaking rule by endeavoring to pass a vessel at an improper time and in improper circumstances).

In 1969, in *Dewey Soriano—Pilot License*, 1969 A.M.C. 2141 (USCG), a Coast Guard examiner handed down a decision involving a state pilot's license which could have had far-reaching implications. That proceeding involved charges of negligence against a pilot arising out of a collision involving a vessel of foreign registry he was piloting under the authority of his state license. The hearings examiner found the respondent pilot guilty of fault in a number of respects. The critical issue in the proceeding was whether or not the U.S. Coast Guard could take disciplinary action against the Federal license of the pilot for negligence or fault of the pilot while piloting a foreign registered vessel under his state license. Notwithstanding a prior decision to the contrary by another hearings examiner involving an earlier proceeding in which the same pilot was charged (see

1965 A.M.C. 391), the hearings examiner held that the Coast Guard did have jurisdiction to discipline the pilot in such circumstances and suspended his Federal license for a period of twelve months. Among other conclusions, the hearings examiner stated:

(1) To hold otherwise would disregard the mandate of Congress to safeguard life and property at sea, including protection of foreign flag vessels transiting United States waters;

(2) The controlling statute was 46 U.S.C.A. 214 (quoted *supra*, "Licensing of Pilots");

(3) The Washington State Pilotage Act requires a Federal license as a condition precedent to issuing a state license;

(4) Consequently, the pilot was acting under authority of his Federal license and endorsement thereon at the time he was piloting the vessel.

The examiner stated in part:

... Without this Federal license the respondent could not serve on any vessel in waters of the Puget Sound in capacity of pilot. The Coast Guard is not bound, nor required, to recognize the primacy of State authority and jurisdiction over a State Pilot on a foreign vessel, even if it may have done so in the past.

The examiner summarily dismissed the contention that he was bound by a prior decision by another hearings examiner, stating: "An examiner may be guided by another examiner's decision but that is the extent of its authority."²⁵

In the First Edition of this text it was stated:

"The soundness of the examiner's decision is seriously doubted in the light of the historical development of state pilotage laws and the present state of the Federal pilotage statutes. For example, 46 U.S.C.A. 211 makes it perfectly clear that until further provision is made by Congress, all pilots in bays, inlets, rivers, harbors and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilot may be or with such laws as the states may respectively enact for that purpose. And 46 U.S.C.A. 215 concludes with this proviso:

²⁵ Counsel for the pilot, Jacob Mikkeltorg of Seattle, Washington, advised at the time that the decision was being appealed to the Commandant of the Coast Guard and that it was probable that it would be appealed to the courts. And that is what happened.

. . . Nothing in Title 52 of the Revised Statutes shall be construed to annul or affect any regulation established by the laws of any State, requiring vessels entering or leaving a port in any such State, other than coastwise steam vessels, to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of such State.

"(46 U.S.C.A. 214, relied upon by the examiner as authority for the suspension of the pilot's license, was, of course, enacted as a part of Title 52 of the Revised Statutes.)

"The thrust of the examiner's decision seems to be based upon 'bootstrap' reasoning; i.e., alleged acts of negligence while piloting under the authority of his state license were utilized as a basis for a finding under 46 U.S.C.A. 214 that it constituted satisfactory evidence 'of negligence, unskillfulness, inattention to the duties of his station' as respects his Federal license although he was not in the least performing his services under such Federal license. As such, it partakes of 'guilt by association—once removed'."

The Commandant did in fact sustain the examiner's conclusions, and on appeal to the District Court, Western District of Washington (1972 A.M.C. 1767) the decision was again affirmed. However, the Ninth Circuit (1974 A.M.C. 283, 494 F2d 681) reversed, holding squarely that the pilot holding both licenses, while piloting a foreign flag vessel in the state waters of Puget Sound, was acting under his state license only and was not subject to disciplinary action or suspension of his Federal license by the Coast Guard.

In *York v. Board of Port Wardens*, 1976 A.M.C. 166 (St. Fla.), the state board was held to have the authority to revoke an apprentice pilot's license for gross misconduct, noting that the statute authorizing the Board to suspend and/or revoke a pilot's license necessarily embraced the power to revoke an apprentice pilot's license and that it would be incongruous not to do so.

In *Kennedy v. Board of Commissioners*, 1973 A.M.C. 1166 (NYAD), where a New York statute required the state board to grant a license to all Federal pilots who had been "actively engaged, as a regular occupation" in piloting vessels through specified state waters, the state board had no discretion to deny licenses to qualified persons because they had made only a certain number of trips or derived less than a certain percentage of their income from pilotage in such waters.

In *Ohrn v. R.I. Pilotage Commission*, 1975 A.M.C. 327 (St., R.I.), a Rhode Island requirement existed to the effect that applicants for a Rhode Island pilot's license must have resided in Rhode Island for at least five years immediately preceding the application. The plaintiff applicant, a resident of neighboring Massachusetts, was fully qualified, had passed all required tests and had in fact been navigating and piloting vessels in Rhode Island for eight years under his Federal Coast Guard license. The court held the requirement unconstitutional as a violation of the equal protection clause of the 14th Amendment, noting that there was absolutely no relationship between residency in Rhode Island and a person's knowledge of Rhode Island waters or his competency to pilot on those waters.

In the following cases, although recognizing the propriety of the imposition of a penalty, the courts held that penalties were not enforceable.

People v. Deming (N.Y.), 13 How. Pr. 441 (statute provided for imposition of penalty for piloting without a license by a suit by the "master warden"; the suit was not prosecuted in the name of the "master warden"); *Hunt v. Cash* (Mass.), 14 Pick. 135 (statute imposed a penalty for piloting a vessel into Boston harbor without a license; court held the statute did not apply to a British vessel by reason of a treaty between the United States and Great Britain); *Ayers v. Knox*, 7 Mass. 306 (statute assessing a penalty for piloting without a license held not applicable to a vessel of war of the United States). See also, *Commonwealth v. Kemp* (Mass.), 150 N.E. 172.

In *Lister v. Warne*, *Lister v. Abson* (1935) 53 Ll.L.Rep. 96 D.C., a company purchased a steamship for scrap and had it towed from Norway to the River Tees. Abson, a master mariner and a director of the company, was in charge of the vessel as it entered the Tees. While within the Tees Pilotage district, a licensed pilot offered his services which were refused. Warne then gave orders to the tugs although he was not a licensed pilot or the master or member of the crew. The defense was that neither of them received any pay for carrying out the functions complained of. Both were convicted, Warne on the basis of a prima facie case having been proved and Abson because the Act did not imply that remuneration had to be paid when one is "employed."

In *Smith v. Cocking* [1959] 1 Ll.L.Rep. 88, D.C., Cocking (who was not a licensed pilot) was convicted of having piloted a vessel

after a licensed pilot had offered to do so and was refused by the master.

See, also, *Phillips v. Born* (1905) 93 L.T. 634, 10 Asp. M.L.C. 131, D.C. (master convicted for refusal to take a pilot in a compulsory district); *Turner v. Peat* (1888) 53 J.P. 230, D.C. (Third mate of a vessel convicted for acting as a pilot after a duly licensed pilot had offered to take charge); *Stafford v. Dyer* [1895] Q.B. 566, 7 Asp. M.L.C. 568; *Beilby v. Shepherd* (1848) 18 L.J. Ex. 73; *Buck v. Tyrrel* (1922) 10 Ll.L.Rep. 74, D.C.; *Acton v. Walden* (1862) 20 J.P. 166; *Babbs v. Press* [1971], *supra*; and *McMillan v. Crouch* [1972], *supra*.

Offenses

In the following cases, convictions were sustained by the courts:

Leech v. Louisiana, 214 U.S. 175, 53 L.ed. 956, 290 Sup. Crt. 552 (defendant indicted for piloting a foreign vessel from the Gulf of Mexico to New Orleans without a license issued by the State of Louisiana. Defendant's defense was the Federal statute authorizing the employment of a pilot licensed by either of two states to pilot vessels upon waters which constitute the boundaries between two such states. 46 U.S.C.A. 212. The court sustained the conviction on the grounds that New Orleans, although situated upon the Mississippi River, was not situated on waters which constituted the boundary between two states); *The Glenearne*, 7 Fed. 604 (DC, Ore., 1881) (same ruling as respects pilotage on the Columbia and Willamette Rivers); *Commonwealth v. Sheriff* (Pa.), 13 Phila. 446 (jury's verdict finding defendant guilty of piloting a vessel on Delaware Bay sustained); *People v. Sperry* (N.Y.), 50 Barb 170 (defendant convicted of misdemeanor in permitting the towing of a vessel without a licensed pilot); *State v. Ames*, 47 Wash. 328, 92 Pac. 137 (defendant convicted of piloting without a license although the legislature repealed the statute after the appeal was taken); *Dorgan v. State*, 29 Ala. App. 362, 196 So. 160 (conviction sustained for piloting without a license); *U.S. v. Vogt*, 230 F.Supp. 607 (D,La.) (indictment alleged that defendant, as pilot, by his misconduct, negligence and inattention to duty navigated a vessel so as to cause loss of life; indictment upheld and motion to dismiss denied); *Commonwealth v. Ricketson* (Mass.), 6 Metc. 412 (defendant indicted for piloting a barge into harbor without a license; cause remanded on other

grounds); *Commonwealth v. Fitzpatrick* (Fa.), 15 Penn. Co. 154 (defendant found guilty of signing a receipt for pilotage fees which he did not in fact receive); *State v. Ring*, 122 Or. 646, 259 Pac. 760 (defendant had a Federal license but no state license; convicted of piloting a foreign vessel sailing under register).

Section 46 of the Pilotage Act, 1913, classifies certain acts committed by pilots as being "misdemeanors." There appears to have been no cases under this section, but cases under the Merchant Shipping Act, Section 220 may be persuasive as the two sections are phrased in identical terms although the latter relates only to masters, seamen and apprentices. See, *R. Gardner* (1859) F. & F. 699 and *Deacon v. Evans* [1911] 1 K.B. 571, 80 L.J.K.B. 385, 11 Asp. M.L.C. 550, D.C.

In the following cases, prosecutions for alleged violations failed.

State v. Turner, 34 Or. 173, 55 Pac. 92 (person navigating a vessel by towing it alongside held not a "pilot" in the definition of the term [as he was not aboard the vessel being "piloted"] and conviction reversed); *Bloom v. State*, 57 Miss. 782 (statute required all pilots bringing vessels into port to display flag at half-mast and keep it there until visited by a quarantine physician; person indicted was not a "pilot" and, therefore, the statute did not apply); *State v. Penny*, 19 S.C. Rep. 218 (indictment brought in wrong court).

In connection with offenses, attention is directed to *Gulf Oil v. Kate Malloy*, 1968 A.M.C. 1056, 291 F.Supp. 816 (ED, La.), holding that the master/pilot of a tug who pled the Fifth Amendment is entitled to refuse to answer questions at a deposition regarding a collision, both as to the facts of the collision and as to his background, for the reason that his answers might incriminate him under Sections (l) and (m) of the Motorboat Act (46 U.S.C.A. 526).

Pilot Vessels

Attention is directed to Section 17(d) of the Pilotage Act, 1913, which authorizes a pilotage authority to make by-laws for, *inter alia*, "the approval, licensing, and working of pilot boats in the district, and for the establishment and regulation of pilot boat companies."

In the United States it is common for the pilots' associations to own their own pilot vessels. Indeed, it is difficult to conceive how

pilotage could be carried on without means of boarding and unboarding the vessels served. Because the capital requirements for construction and maintenance of such vessels are so great, an individual pilot would find it difficult if not impossible to provide such facilities and, therefore, pilotage is effectively (and as a practical matter) restricted to members of pilot associations.

Cases have arisen involving pilot vessels. In *United N. Y. Sandy Hook Pilots Ass'n. v. Stans*, 1972 A.M.C. 2265 (EDNY), it was held that pilot vessels do not qualify for capital construction tax benefits under the 1970 Merchant Marine Act since they are not operating in "foreign trade" even though they service ships engaged in that trade. In *Bailey v. Pilots' Association*, 1976 A.M.C. 1047, 406 F.Supp. 1302 (ED,Pa.), an apprentice pilot, who was paid \$5 per month for service aboard a pilot boat, was held to be an employee entitled to receive minimum wages prescribed by the Fair Labor Standards Act, but as he was employed as a "seaman" he was not entitled to the Act's overtime pay requirements. See, also, *Spears v. St. John Pilot Commissioners* (1910) 39 N.B.R. 495 (C.A.,Can.), involving the term "suitable pilot boat."

See, also, *Portland Steamship Operators Association v. Coos Bay Pilots' Association* (1979), *supra*, holding that the outside income derived by the pilots' association from the operation of tugboats (also used as pilots' boats) was irrelevant in the setting of pilotage fees by the Board of Pilot Commissioners.



CHAPTER XII
SALVAGE

As Brady observes, salvage of vessels may be generally classified in three categories: strandings, sinkings, and rescue (towing).¹ Norris, in his excellent text *The Law of Salvage*, refers to the last category as "salvage towage." Either term seems appropriate.

Whatever the category may be, it is almost certain that the salvage operation will be performed by a tug. Although occasionally other types of vessels may participate in, or even wholly perform, a salvage operation, it is safe to estimate that 95% of all salvage operations are performed by tugs, or by tugs in conjunction with other special service type accessorial vessels.

There have been several treatises on the subject of salvage generally, and many works on admiralty containing chapters on the subject. The leading American text on the subject in general is *The Law of Salvage*, Martin J. Norris. The standard English texts are Jones, *The Law of Salvage* and Kennedy, *The Law of Civil Salvage*. Chapters on the subject will also be found in Gilmore & Black: *The Law of Admiralty*; *Robinson on Admiralty* (Hornbook Series); and *Benedict on Admiralty* (6th ed.).

The scope of this chapter is limited to a brief discussion of the fundamentals of the law of salvage with particular emphasis where the cases have involved tugs, and a discussion in depth of the cases, both English and American, where salvage services have been rendered to tows by the towing tugs, and where salvage services have been rendered to vessels by pilots.

Fundamentals of Salvage—Elements and Definitions

The Supreme Court in the case of the *Blackwall*, 77 U.S. 1, 19 L.ed. 870 (1869) defined salvage as follows:

¹ Edward M. Brady, *Marine Salvage Operations*, Cornell Maritime Press, 1960, p. 1. Mr. Brady's text is an indispensable guide to the practical aspects of salvage operations.

In *Standard Navigation v. K.Z. Michalos*, 1981 A.M.C. 748 (SD, Tex.), it was held that a time charterer, who was contractually obligated to pay hire even though the vessel was out of service during collision repairs, was subrogated to the shipowner's claim against the colliding vessel for lost earnings; the *Robins Drydock* doctrine does not preclude application of equitable subrogation principles.

Page 986. Under "Breach by Either Owner or Charterer" add: See cases discussed, *infra*, under "Arbitration."

Page 998-1000. Under "Arbitration" add:

A party may be bound to arbitrate even though it has not signed the agreement.⁹ Thus, it was an error for the district court not to order a trial as to whether a contract signatory's corporate affiliates and subsidiaries were bound by an arbitration clause, *McAllister Bros. v. A. & S.*, 621 F.2d 519, 1980 A.M.C. 2050 (2d Cir.). Thus, where a tug services contract provided for arbitration of any disagreement as to the "adequacy" of the tug company's services, arbitration was correctly required even though one party claimed that the contract had been "abandoned" before its expiration date, *McAllister, supra*.

Where a charter party guarantee is silent as to how disputes concerning the guarantor's liability are to be resolved, the guarantor is not bound by the charter arbitration clause, *Cordoba Shipping v. Maro Shipping*, 494 F.Supp. 183, 1980 A.M.C. 1945 (D, Conn.).

An arbitration panel exceeds its powers when it awards damages for breach of a time charter of a tug on an issue not submitted by the claiming party. The panel also acts improperly in telephoning the shipowner's counsel to verify a fact without advising the charterer's attorney, *Totem Marine Tug & Barge v. North American Towing*, 1980 A.M.C. 1961 (5th Cir.).

A claim for negligent repair and reinstallation of a vessel's engine, based on a written work order, sounds in contract as well as in tort and is subject to arbitration under the "any disputes" clause in the work order, *Andrew Martin v. Stork-Werkspoor*, 480 F.Supp. 1270, 1980 A.M.C. 2459 (ED, La.).

The risk of having to arbitrate in two different forums is something which should be foreseen. Thus, where a vessel was hired under time charter containing a London arbitration clause, and the charterer subsequently entered into voyage charters providing for

9. Subject to the qualification that the face of the relevant instrument must give notice of any arbitration provision. See *Maru Shipping v. Burmeister*, 1980 A.M.C. 2186 (SDNY) (arbitration clause contained on reverse side of manufacturer's form, acknowledging receipt of an order for parts).

arbitration in New York, the charterer was required to arbitrate in both forums, *Seri Agriculture v. Pacific Importer*, 1981 A.M.C. 253 (SDNY).

Conflicting charter party clauses must be construed to give effect to both wherever possible, *Red. Kungsoil - Perusahaan*, 1983 A.M.C. 1441 (Arb., N.Y.).

Where a party raises a genuine issue of fact as to whether it is bound by a charter party arbitration clause, it is error to compel arbitration without first conducting a summary trial of the arbitrability issue as required by Section 4 of the Federal Arbitration Act, *Interbras Cayman v. Orient Victory*, 663 F.2d 4, 1982 A.M.C. 737 (2d Cir.).

Attention is specifically directed to the following cases: *Texaco v. American Trading*, 644 F.2d 1152, 1982 A.M.C. 191 (5th Cir.) (time charterer's tort action against owner of chartered vessel for collision damage to charterer's dock is not a dispute "arising out of the charter" subject to the charter party arbitration clause); *Prudential Lines v. Exxon*, 704 F.2d 59, 1983 A.M.C. 1686 (2d Cir.) (party resisting arbitration has the burden of proving that the disputed issue arises out of a "collateral" agreement which is not subject to arbitration, as opposed to a subissue arising out of and arbitrable under the main agreement); *Bangladesh Agricultural v. Transcontinental Imex*, 1983 A.M.C. 1970 (SDNY) (a cargo plaintiff, suing a P & I insurer under the Florida direct action statute, is not bound by an arbitration provision in the insuring agreement to which it neither expressly nor impliedly consented); *Lubrizol v. Stolt Argobay*, 562 F.Supp. 565, 1983 A.M.C. 2488 (SDNY) (even though earlier appointed arbitrators had previously decided one dispute arising out of a particular voyage, a second dispute can be ordered arbitrated by a newly appointed panel where the dispute concerns the same events but involves significantly different issues); *Anthony Shipping v. Hugo Neu*, 482 F.Supp. 965, 1980 A.M.C. 1477 (SDNY) (an award may not be set aside as in "manifest disregard of law" merely because the three arbitrators denied a shipowner's claim against a charterer on differing grounds); *Albers v. Antone F.*, 487 F.Supp. 37, 1980 A.M.C. 2446 (WD, Wash) (London arbitration provision in a salvage contract executed on behalf of the salvaged barge's then owner does not bind the barge's subsequent purchaser); *Amoco Transportation Co. Lim. Procs.*, 659 F.2d 2407, 1981 A.M.C. 2407 (7th Cir.) (shipowner's tort action against salvaging tug, asserting claims for misrepresentation and breach of duty before Lloyd's Open Form Salvage agreement was entered into, is subject to arbitration in London under the agreement's arbitration clause). For other pertinent decisions, see

American Maritime Cases, Twelfth 5-Year Digest under digest headnote, "Arbitration."

It should again be emphasized that there is no impediment to attachment of funds of an arbitrating party pending arbitration. The practice of attaching funds in order to secure payment of an anticipated arbitration award is a recognized one in admiralty: *Apex Oil v. Hector Maritime*, 659 F2d 1057, 1981 A.M.C. 2972 (2d Cir.); *Filia Compania Naviera v. Petroskip, S.A.*, 1982 A.M.C. 1217 (SDNY).

The circuits appear to be divided as to whether or not a stay of an action pending arbitration is appealable. Compare *Rhone Mediterranee Compagnia v. Lauro*, 712 F2d 50 (3d Cir., 1983), with *Texaco v. American Trading*, 644 F2d 1152, 1982 A.M.C. 191 (5th Cir.). As to judgments dismissing writs of attachment, vessel arrests and garnishments conditioned upon submission to arbitration in another jurisdiction, and the posting of adequate security see *Constructura Subacuatica Diavex v. M/V Hiryu*, 718 F2d 690 (5th Cir., 1983).

CHAPTER XI

Pilotage

In general, it should be observed that in England the Pilotage Act 1983 consolidates the Pilotage Act 1913 and 1936 and certain provisions of the Merchant Shipping Act 1979. The Act went into force as of August 8, 1983.

Page 1011. Add to footnote 5 the following:

Quebec North Shore Paper and McNamara Construction, supra, imposed a restriction or limitation on Federal court jurisdiction that there must be "applicable and existing Federal law, whether under statute or regulation or common law." While this general limitation has not been challenged, succeeding decisions have interpreted existing Federal "maritime" law so as to extend and clarify the types of maritime claims which can be entertained in the Federal courts, including the following: *B.C. Marine Shipbuilders Ltd. v. F.M. Yorke & Son Ltd and Wire Rope Industries of Canada*, (1981) N.R. 288 (S.C.) (claim against repairer of a towing cable); *Zavarovalna Skupnost Triglav v. Terrasses Jewellers, Inc.*, [1983] I.L.R. 1-1627 (S.C.) (marine insurance); *Tropwood A.G. v. Sivaco Wire & Nail Co.*, (1980) 99 D.L.R. (3d) 235 (S.C.) (claim under a bill of lading for damage to cargo discharged in Canada—Canadian Carriage of Goods by Water Act only applies to bills of lading for shipments from Canada); *United Nations v. Atlantic Seaways Corp.*, (1980) 99 D.L.R. (3d) 609 (F.C.A.)

(claim arising out of a foreign contract for the carriage of goods between the U.S. and the Persian Gulf where all parties were located outside Canada); *Skaarup Shipping Corp. v. Hawker Industries Ltd.* (1990) 111 D.L.R. (3d) 343 (F.C.A.) (claim for damages for breach contract to clean up oil escaping from a ship); *Antares Shipping Co. v. The Capricorn*, (1980) 1 S.C.R. 553, 111 D.L.R. (3d) 289 (S.C. (action brought to set aside a sale of the defendant ship)); *The Queen v. St. John Shipbuilding & Dry Dock Ltd. et al.*, (1982) 126 D.L.R. (3d) 359 (F.C.A.) (claim for damage to a floating crane).

Litigants in Canada have been plagued with uncertainty as to the concurrent jurisdiction of the Provincial courts in admiralty, not to mention the additional costs and expenses incurred when proceedings are necessary in two courts because an action *in rem* brought in the Federal courts cannot deal with all the claims between the parties. To date, legislation (including necessary amendments to the rules of the Provincial courts) has not been enacted to enable any of the Provincial courts to exercise concurrent jurisdiction by *in rem* proceedings.

See, also, with respect to admiralty jurisdiction, *McAllister Towing & Salvage Ltd. v. Gen. Security Ins. Co.*, [1982] 2 F.C. 34 (F.C.A.); *Kuhr v. Friedrich Busse*, (1982) 134 D.L.R. (3d) 261, 1983 A.M.C. 563 (F.C., Can.); *Cull v. Rose*, (1982) 139 D.L.R. (3d) 559 (Nfld. Sup. Ct.); *Seafarers' Union of Canada and Crosbie Offshore Services Ltd.*, (1982) 135 D.L.R. (3d) 485 (F.C.A.); *Miida Electronics Inc. v. Mitsui O.S.K. Lines*, (1981) 124 D.L.R. (3d) 33 (F.C.A.); *Nisshin Kisen Kaisha Ltd. v. C.N.*, [1981] 2 F.C. 705 (F.C.A.); *Elesguero Inc. v. Ssangyong Shipping Co. Ltd.*, [1981] 2 F.C. 326 (F.C.) (jurisdiction refused because there was no jurisdiction *ratione personae* although there was jurisdiction over the *ratione materiae* . . . a breach of a charter party).

Page 1011. Under "Licensing of Pilots" add:

Recent cases have thrown additional light on regulation of pilots and the connection between state and Federal control over pilots. For example, in *Davis v. TMT Jacksonville*, 484 F.Supp. 52, 1980 A.M.C. 2943 (MD, Fla), it was held that state pilotage regulations are preempted by federal statutes and do not apply to a barge properly enrolled with the Coast Guard even though it was not "steam propelled." The court also held that the definition of "steam vessel" in 46 U.S.C. 361 does not apply to 46 U.S.C. secs. 215 and 364.

In *Jackson v. Moran Maritime*, 1980 A.M.C. 2134 (SD, Fla), the court held that a flotilla consisting of a tug and tow is considered as a unit; therefore, an unmanned enrolled tank barge in tow of a tug under the command of a federal pilot is a "coastwise seagoing vessel" under 46 U.S.C. 215 and exempt from state pilotage requirements.

In *Moran Maritime v. U.S.C.G.*, 1981 A.M.C. 2778 (D,DC), it was held that despite the Coast Guard's failure to enforce the federal pilotage statute (46 U.S.C. 364) requiring a federally licensed pilot on tugs towing barges of more than 1,000 gross tons which transport oil or hazardous substances in inland waters, the Coast Guard had never varied in its interpretation of its regulations to that effect. Hence, the Administrative Procedures Act (28 U.S.C. 553) did not require the Coast Guard to give notice and solicit comments before deciding to enforce the statutory requirement.

The Department of Transportation of the United States has ruled that the Coast Guard has no jurisdiction to proceed against the Coast Guard license of a pilot acting pursuant to state authority even though the state's authority to regulate pilotage had been delegated to a port district which would only issue a pilot commission to holders of a Coast Guard license. *U.S.C.G. v. Pierce*, 1980 A.M.C. 2014 (DOT). By a parody of reasoning, in *Hayes v. Cluff*, 1982 A.M.C. 2215 (NTSB), it was held that the Chesapeake and Delaware regulations do not preempt state pilotage jurisdiction over pilots aboard foreign vessels transiting the Canal and, therefore, the Coast Guard lacks jurisdiction to suspend a pilot's federal license because of the vessel's allision with a bridge.

In *Hayes v. Jahn*, 1982 A.M.C. 1603 (NTSB), it was held that in a proceeding against a pilot's license for collision with a stationary aid to navigation, the Coast Guard could not rely on any presumption of negligence once the pilot adduced evidence that there could have been some cause other than negligence.

A regulation of a state pilotage board requiring mandatory retirement of pilots at age 65, even though licenses issued by the federal government and other states contain no such age restrictions, does not violate a pilot's rights under either the equal protection or substantive due process requirements of the U.S. Constitution to continue the practice of his profession, *MacDonald v. Board of Commissioners*, 523 F.Supp. 949, 1982 A.M.C. 1147 (SDNY).

In *Baggett v. Department of Professional Regulation*, 717 F2d 521 (11th Cir.), a harbor pilot instituted suit in federal court requesting injunctive relief against an administrative prosecution by the state. It was held that *Younger* abstention was inappropriate where it was clear that under federal statutes the state was without authority to regulate the pilot's conduct.

In *Barker v. Pacific Pilotage Authority*, [1982] 42 N.R. 598 (F.C.A., Can.), a pilot was suspended because the ship he was piloting struck a rock or some other object while the ship was proceeding at an excessive speed and without regard to the ship's heavy trim. The

suspension was confirmed by the Minister of Transport who referred in his report to a similar accident of the same pilot in the same waters. On appeal, the Federal Court of Appeal set the decision aside and referred it back to the Minister for reconsideration, principally because the previous similar accident was deemed irrelevant as to the pilot's negligence on the particular occasion in question.

Page 1016. Note that Public Law 98-89, approved on August 26, 1983, substantially recodified the majority of the maritime safety and seamen protection laws administered by the Coast Guard, including the statutes referred to on pages 1016 through 1020 of the principal text. Refer to the discussion, *supra*, under Chapter VII, *Governmental Regulation*, this Supplement.

Page 1022. Under "Duties and Responsibilities of Pilots" add:

See *Transorient Navigation v. Southwind*, 525 F.Supp. 373, 1982 A.M.C. 1085 (ED,La) (inbound pilot should have been aware of potential danger of sheering caused by rapid narrowing of the channel beyond a government-excavated "borrow pit"; his negligence was sole cause of collision and not the government's excavation or maintenance of the channel).

Page 1027. Under "Master's Duty to Intervene" add:

See discussion in *Societa v. Los Angeles*, 1982 A.M.C. 2281 (Cal. Sup.Ct., 1982).

Page 1031. Under "Voluntary Versus Compulsory Pilotage" add:

See discussion in *Societa v. Los Angeles*, 1982 A.M.C. 2281 (Cal. Sup.Ct., 1982); *Olympia Sauna Compania Naviera, S.A. v. U.S. et al*, Civil No. 80-699LE, D., Ore., June 8, 1983 and November 4, 1983 (not yet reported); *Texaco Trinidad v. Afran Transport*, 538 F.Supp. 1083, 1983 A.M.C. 1582 (ED,Pa); *Kane v. Hawaiian Independent Refinery*, 690 F2d 722 (9th Cir.); *Kitanihon-Oi v. General Construction*, 678 F2d 109, 1982 A.M.C. 2275 (9th Cir.).

Page 1034-1039. Under "Recovery for Negligence of the Pilot" add:

During the 1983 Legislative Session in Oregon, the Oregon pilots, with the aid and support of the local steamship operators' association, succeeded in persuading the Legislature to amend the Oregon Pilotage Act. Essentially, the amendments embraced: (1) reinstating noncompulsory pilotage in Oregon; (2) strengthening and clarifying the obligation of vessel owners to indemnify and hold harmless pilots for their negligence; and (3) placing a limit on a pilot's liability of \$250 per incident. Upon a claim being made against him for damages for his negligence, a pilot may, by posting a bond or cash for \$250 with the clerk of the court in which the claim is

brought, limit his liability to that amount. In this respect, the \$250 bond or cash provision does not differ from its counterpart in the Pilotage Act of 1913 in Great Britain.

Meanwhile, in *Olympia Sauna Compania Naviera, S.A. v. U.S. et al*, supra, the existing Oregon dual-rate pilotage tariff was upheld and construed as part of the contract between the shipowner and the pilot. Although pilotage in Oregon was (at that time) compulsory, the terms by which the pilot became the servant of the vessel and its owners were held not to be compulsory. Consequently, the court held, the shipowner consented voluntarily to a contract which made it responsible for damages, if any, that resulted from the pilot's negligence.

The facts in *Olympia Sauna* were unusual in that the only damage sustained was by the vessel itself whose bottom was ripped out when the vessel went on a rocky reef. The pilot blamed the stranding on a buoy which had been misplaced by the Coast Guard. The misplacement of the buoy had been brought to the attention of some of the members of the pilots' association but not to the individual pilot on board the vessel as he had been on vacation just prior to undertaking that particular pilotage movement. The vessel owners brought suit against the U.S. government which, in turn, impleaded the pilot and each individual member of the pilot association. The court exonerated the individual members of the pilot association. As to the pilot on duty at the time of the casualty, the court held that if the pilot and the United States were found negligent at the trial on the merits, their damages consequently would be apportioned with the United States being liable only for its own negligence. However, as the pilotage clause insulated the pilot from personal liability, that portion of his liability, if any, would have to be borne by the vessel owner as his "employer," and he was entitled to indemnity from the vessel owner.

Kane v. Hawaiian Independent Refinery, supra, involved a mooring master employed on a salary by the refinery. The refinery insisted, as a condition of doing business with it, that its mooring master be used to dock and undock vessels using its pier. Notwithstanding that the refinery compelled the use of its mooring master; that the vessel did not request the services of the mooring master; that the pilotage clause and general instructions were not given to the vessel until the mooring master boarded the vessel; and that there were no prior dealings between the parties since the vessel's captain spoke little English, the validity of the pilotage clause was upheld.

By contrast, however, in *Texaco Trinidad v. Afran Transport*, 538 F.Supp. 1083, 1983 A.M.C. 1582 (ED,Pa), involving substantially

similar facts, the court held that a pilot may be characterized as "compulsory" if required by a berth owner as a condition of discharging at the nominal employer's berth, even though his employment was not mandated by government statute or regulation. Consequently, the berth owner, as the nominal employer of the pilot, was held liable for the negligence of the pilot and the vessel compelled to use his services was exonerated.

Page 1039. Under "(B) Against the Vessel Owner, *In Personam*" add:

See *Societa v. Los Angeles*, 1982 A.M.C. 2281 (Cal.Sup.Ct., 1982), where it was held that harbor pilotage at Los Angeles is not "compulsory" even though local regulations required vessels to pay 75 percent of the applicable charges whether or not they elected to use the municipal pilots' services. It was also held that the pilot would be treated as the servant of both the municipality and the vessel owner for purposes of the *respondet superior* doctrine; that although the California Tort Claims Act allows a public body to alter its liability by contract, the City had failed to prove that the shipowner had actual or constructive notice that the tariff provisions were intended to be incorporated in the implied oral contract arising out of the request for pilotage services; and that the City nonetheless had no obligation to indemnify the shipowner for navigational negligence of the non-compulsory municipal pilot.

And in *Kitanihon-Oi v. General Construction*, 578 F.2d 109, 1982 A.M.C. 2275 (9th Cir.), the court held that the fact that the Port of Sacramento commissions harbor pilots and requires their use by its tariff does not mean that the Port owes shipowners any implied warranty of nonnegligent performance by pilots who are not employed or paid by it. As the court noted, shipowners are better able to protect themselves by insurance, citing this text.

Page 1040. Under "(C) Against the Vessel, *In Rem*" add:

The defense of compulsory pilotage, valid in the United States, has been abolished in England and Canada. See Sec. 15(1) of the Pilotage Act, 1913, in England as well as *Tower Field (Owners) v. Workington Harbour and Dock Board*, (1948) 81 L.L. Rep. 419, C.A., and *The Chyebassu*, (1919) P. 201. In Canada, see Sec. 31 of the Pilotage Act S.C. 1970-71-72 and *Maritime Telegraph and Telephone Co. Ltd v. The Denurra*, 75 D.L.R. (3d) 766 (Can.).

Page 1043. Under "Liability of Port and Harbor Authorities, Canal Companies, and Municipalities Employing Pilots" add:

See *Societa v. Los Angeles*, supra, and *Kitanihon-Oi v. General Construction*, supra.

Salvage

Page 1115. Under "Marine Peril" add:

Platoro v. Unidentified Remains, 614 F2d 1051, 1981 A.M.C. 1097 (5th Cir.) (wreck of Spanish galleon, buried under sea bottom in Texas waters for over 400 years, was exposed to a "marine peril" from the action of the elements sufficient to justify an award for salvage expenses); *Henner v. U.S.*, 525 F.Supp. 350, 1982 A.M.C. 847 (SDNY) (fact that sunken silver ingots might be stolen by treasure hunters constitutes a sufficient "peril" to make the ingots a fit subject for salvage); *Markakis v. Volendam*, 486 F.Supp. 1103, 1980 A.M.C. 915 (SDNY) (passenger ship, adrift without power for 20 hours off the rocky north coast of Cuba, was "imperiled" so as to justify an award of salvage to master and crew of sister vessel which took aboard passengers and crew and towed the disabled ship away from the Cuban coast pending arrival of rescue tug (reviewing cases); *B. V. Bureau Wijsmuller v. U.S.*, 702 F2d 1471, 1983 A.M.C. 1471 (2d Cir.) (in professional salvor's action for an award for removing \$6.5 million government-owned cargo from a stranded merchant vessel, court held that the vessel was in peril as it was stranded on a rocky ledge at the mercy of wind and water; the trial court correctly applied the proper six factors in arriving at a \$500,000 award . . . reviewing cases); *Cobb Coin v. Unidentified Remains*, 525 F.Supp. 186, 1983 A.M.C. 966, 549 F.Supp. 540, 1983 A.M.C. 1018 (SD,Fla) (ancient shipwreck is subject to a "marine peril" through the action of the elements or of pirates which is sufficient to support an admiralty salvage claim).

By contrast, in *W.P.L. Services, Inc. v. Bisso*, 598 F2d 417, 1980 A.M.C. 2959 (5th Cir.), because the stranded vessel could have broken free without assistance, no marine peril was found. And, in *Containerships v. Lloyd's*, 1981 A.M.C. 60 (SDNY), after a fire aboard a containership at sea had been extinguished, the vessel was taken in tow for six days by a sister ship under a "no cure, no pay" salvage agreement. It was held that the sister ship service constituted towage, not salvage, and only \$120,000 of the \$350,000 paid in settlement of the sister ship's claim was allowed in general average.

Page 1117. Under "Voluntary Service Not Owed As a Matter of Duty" add:

Isaacs v. Sun State, 1982 A.M.C. 111 (SD,Ga) (tug volunteering assistance to prevent sinking of a capsized trawler cannot be held liable for failing to perform services which she never undertook; i.e.,

no liability for failing to locate and remove persons trapped between the trawler's hull or to administer resuscitation treatment after their bodies were recovered); *Consolidated Towing v. Hannah*, 509 F.Supp. 1031, 1982 A.M.C. 354 (WD,Mo) (vessel owner need not compensate volunteer salvor who, despite the fact that his offer had been unequivocally rejected, proceeded with unsuccessful salvage efforts knowing that the owner had engaged another salvor).

Page 1119. Under "Municipal Firemen" add:

S.C. Loveland v. Arlington, 1982 A.M.C. 704 (WD,La) (municipal fire department held entitled to \$50,000 award for successful salvage of foundering barge since it had no legal duty to render assistance. Also, court held that because a tug has an obligation to see to the safety of her tow, she is not entitled to a salvage award without proof that the peril from which the tow was saved was not caused by the tug's negligence and that the tug used extraordinary efforts in the rescue).

Page 1120. Under "Master and Crew" add:

In *Texaco Southampton v. Burley*, 1983 A.M.C. 524, [1983] 1 Lloyd's Rep. 94 (N.S.W. Ct. App., Aus.), which may well prove to be a landmark decision, a tanker found itself without power as a result of a switchboard fire and was drifting toward the shoreline about 3½ miles away. Following a request by the master, its agents requested a local tug company, sole supplier of tugs for the tanker owner, to render assistance. The tug company, in turn, requested another tug company to perform the service for it.

When the tug left port, all the plaintiffs (master, pilot, and crew) were aware that it was likely they would be required to tow the vessel into Sydney, Australia, harbor. Few had any real experience in towing a disabled vessel at sea and the services performed involved little more than the kind of work they customarily performed as members of a tug crew. They were paid generous wages and the tug company was amply compensated for the use of its tug.

The plaintiff crewmen contended that any services rendered to a vessel in danger, by whomsoever rendered, are by their nature salvage services and the fact that the services of the master and crew were rendered pursuant to their contract of employment did not deprive them of a salvage award since (a) they owed no duty to the salvaged vessel, and (b) a contract binding the tug which excluded a claim by it to a salvage award would not bar such a claim on the part of its crew, who did not assent to the contract. The owners contended that neither the tug nor its crew were volunteers because (a) the tug owner was bound by its contract to provide towing services and the plaintiffs were bound to it by their contracts of employment,