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Pilotage

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT


DIVISION OF OCCUPATIONAL LICENSING

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Date: December 19, 1990

To: ALL INTERESTED PARTIES

From:  JoAnne Cummings
Licensing Examiner
Alaska State Board
of Marine Pilots

Subject: Minutes of Marine Pilots Meeting

Attached are the minutes of the Board of Marine Pilots meeting held November 8-9, 1990. These minutes were approved by the board on December 17, 1990.

Copies of the attachments are available on request. Please write to the above address if you would like further information.

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Attachments

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF MARINE PILOTS

MINUTES OF MEETING
NOVEMBER 8 and 9, 1990

By authority of AS 08.01.070(2) and AS 08.62.030 and in compliance with the provisions of AS 44.61, Article 6, and AS 44.62.310, a scheduled meeting of the Board of Marine Pilots was held on November 8 and 9, 1990 at the Frontier Building, 3601 "C" Street, Suite 336, Anchorage, Alaska.

Agenda Item 2

Call to Order/Roll Call

The meeting was called to order by Chairman Taylor at 8:30 a.m. Those present and constituting a quorum of the board were:

Captain Harold K. Elsensohn
Mark A. Foster
William Lorch
Captain Michael O'Hara
M. Paul Taylor, Chairman

Board members not in attendance were Randall Burns and Russell Sell.

Also present from the Department of Commerce and Economic Development, Division of Occupational Licensing, was JoAnne Cummings, Licensing Examiner.

Guests present on the first day of the meeting were:

Anthony Chadwick
R. G. Winter
William Anderson
Donald Charles
William Cork
David Sanders
Archie Diment, SEAPA
Terry Bennett
R. W. Smith, SEAPA
Mark Walatka, North Star Maritime
Joseph Homer, Alaska Coastwise Pilots
Bill Sharp, North Pacific Maritime, SE Stevedoring Corp.
John Baldry, SEAPA
Arnt Antonsen, SEAPA
Ed Creasey, SEAPA

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 2

George Porter, SEAPA
Lisa Parker, Cominco Alaska
John Murphy, Cominco, Ltd.
Scott Jones, Alaska Maritime
Ed Murphy, SWAPA
Mark Hawker, SWAPA
Vincent Tillion, SWAPA
Cees Deelstra, HALW/NWCA
Paul Hedger, Navios Corp.

Agenda Item 1

Oral Examinations

On a motion made by Foster, seconded by Lorch and in accordance with AS 44.62.310, it was

RESOLVED to enter executive session for the purpose of conducting oral examinations.

Entered executive session at 8:30 a.m.

Russell Sell joined the meeting at 8:50 a.m.

Randall Burns joined the meeting at 9:54 a.m.

Adjourned from executive session at 10:26 a.m.

Application Review. The applications of William Cork and David Sanders were reviewed by the board to determine if these applicants would be allowed to take the oral exam.

- A. William E. Cork: His application for a Limited, Step 1 pilot license was reviewed. The dockings and undockings submitted were reviewed with explanations by Captain Cork. His Coast Guard license was also reviewed.

The board took a brief recess from 10:43 a.m. to 10:55 a.m.

On a motion made by Foster, seconded by Burns and carried unanimously, it was

RESOLVED to deny the licensure application of William Cork based on 12 AAC 56.040(c).

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 3

12 AAC 56.040(c)(2) requires 20 dockings and undockings, and not all the dockings and undockings submitted with the application meet the statutory definition of 12 AAC 56.990(7) and (8). Also, the qualifications under 12 AAC 56.040(c)(1) have not been met because Captain Cork's USCG license does not show one year as a licensed master or pilot on the waters of Dutch Harbor, Captain's Bay and Akutan.

B. David A. Sanders: His application for a Limited, Step 1 pilot license was reviewed. The dockings and undockings submitted were reviewed with explanations by Captain Sanders. His Coast Guard license was also reviewed.

On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to deny the application of David Sanders and seal his exam scores because he does not have sufficient dockings and undockings to qualify under 12 AAC 56.040(c)(2), and he does not qualify under 12 AAC 56.040(c)(1) because he has not held an endorsement to his USCG license on the waters for which he is applying for a minimum of one year.

On a motion made by Burns, seconded by Foster and in accordance with AS 44.62.310 it was,

RESOLVED to enter executive session for the purpose of completing the oral examinations.

Adjourned from executive session at 11:33 a.m.

Agenda Item 8

Investigative Report

Marcia Bissell and Gary Veres were present from the Division of Occupational Licensing to present the investigative report.

On a motion made by Sell, seconded by Foster and in accordance with AS 44.62.310, it was

RESOLVED to enter executive session for the purpose of hearing the investigative report.

Entered executive session at 11:35 a.m. Adjourned from executive session at 12:00 noon.

On a motion made by Sell, seconded by Elsensohn and carried unanimously, it was

RESOLVED to close cases:

1900-89-4
1900-89-10
1900-89-12
1900-90-1
1900-90-2
1900-89
1900-89-1

Agenda Item 3

Review Minutes

On a motion made by Elsensohn, seconded by Foster and carried unanimously, it was

RESOLVED to approve the minutes of the April 5-6, 1990 meeting, the June 1, 1990 teleconference, and the June 25, 1990 teleconference.

Agenda Item 4

Results of November 7, 1990 Examinations

Captain O'Hara, Captain Elsensohn and JoAnne Cummings administered written exams on November 7, 1990. Seven applicants took the initial license exams; eight applicants took extension of route exams.

Captain O'Hara reported the following results:

- A. Gordon Terpening - Extension of Route.
Should be issued a license to read, "Pilot on vessels of any gross tons upon the waters of Northern Prince William Sound including the ports of Valdez and Whittier; Resurrection Bay/Seward; Kodiak/St. Paul Harbor; Western

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 5

Alaska except Cold Bay and Adak; and Cook Inlet south of the forelands except Drift River, Seldovia and Port Graham."

- B. David Grobschmit - Extension of Route. Should be issued a license to read, "Pilot on vessels of not more than 20,000 gross tons upon the waters of Captain's Bay, Dutch Harbor/Unalaska, Iliasik Passage, Chignik, Port Moller and Herendeen Bay."
- C. William Anderson - Initial Exam. Should be issued a license to read, "Pilot on vessels of not more than 20,000 gross tons upon the waters of Dutch Harbor/Unalaska, Captain's Bay, and Akutan."
- D. Eric Eliassen - Extension of Route. Should be issued a license to read, "Pilot on vessels of not more than 40,000 gross tons upon the waters of Prince William Sound except entrances; Cook Inlet; Kodiak/St. Paul Harbor, Port Lions, Whale Passage and Ouzinki Narrows; Seward/Resurrection Bay; King Cove, Cold Bay, Sand Point, Chignik and Aleutian Island Ports except Adak and Akutan."
- E. Mark Hawker - Extension of Route. Should be issued a license to read, "Pilot on vessels of not more than 40,000 gross tons upon the waters of Prince William Sound; Resurrection Bay; Cook Inlet except Seldovia, Port Graham, and Drift River; Kodiak/St. Paul Harbor; and the Aleutian Island Ports except Adak and Akutan."
- F. Robert Hendsch - Extension of Route. Passed Port Moller/Herendeen Bay. The examiner is directed to check his past examinations and contact Captain O'Hara for the license wording.
- G. Vincent Tillion - Extension of Route. Should be issued a license to read, "Pilot on vessels of not more than 20,000 gross tons

upon the waters of Resurrection Bay/Seward; Cook Inlet; Kodiak/St. Paul Harbor and Ouzinki Narrows; the Alaskan Peninsula North and South except Cold Bay; and the Aleutian Islands."

On a motion made by Elsensohn, seconded by Burns and carried unanimously, it was

RESOLVED to accept Captain O'Hara's recommendations and issue the above licenses as read.

Captain Elsensohn reported on the following exam results:

- H. Robert Winter - Initial Exam. Should be issued a license to read, "Channel Pilot on the waters of Southeast Alaska, Dixon Entrance to Cape Spencer excluding all waters from Dixon Entrance through Sumner Strait, West Coast of Prince of Wales, Sitka Sound, Peril Strait, Hoonah Sound, White Stone Narrows, Neva Strait, Icy Strait, Cross Sound and the ports of Metlakatla, Ketchikan, Wrangell, Klawock, Sitka and Hoonah."
- I. Kurt Petrich - Initial Exam. Should be issued a license to read, "Channel Pilot on the waters of Southeast Alaska, Dixon Entrance to Cape Spencer excluding Snow Pass, Sitka Sound, Glacier Bay, West Coast of Prince of Wales, and the Port of Klawock."
- J. Don Charles - Initial Exam. Should be issued a license to read, "Channel Pilot on the waters of Southeast Alaska, Dixon Entrance to Cape Spencer excluding Nichols Passage, Snow Pass, Sitka Sound, Gastineau Channel, Icy Strait, Cross Sound, West Coast of Prince of Wales, and the Ports of Metlakatla, Sitka, Juneau and Klawock."
- K. Anthony Chadwick - Initial Exam. Should be issued a license to read, "Channel Pilot on the waters of Southeast Alaska, Dixon

Entrance to Cape Spencer excluding Wrangell Narrows, Peril Strait, Hoonah Sound, Whitestone Narrows, Neva Strait, Olga Strait, West Coast Prince of Wales and the Ports of Klawock and Petersburg."

- L. Michael Clinkscales - Extension of Route. Should be issued a license to read, "Unlimited: Kodiak Island; Alaska Peninsula except Cold Bay, Port Moller/Herendeen Bay; Seward/Resurrection Bay, Prince William Sound except Hinchinbrook Entrance, and Lower Cook Inlet south of Anchor Point. Also, Southeast Alaska, Dixon Entrance to Cape Spencer except Wrangell Narrows, West Coast Prince of Wales and Ports of Petersburg and Klawock. Also Yakutat."
- M. Charles Bates - Extension of Route. Should be issued a license to read, "Pilot on vessels of not more than 20,000 gross tons upon the waters of Southeast Alaska, Dixon Entrance to Cape Spencer excluding Klawock."

The examiner was directed to check Captain Bates' file to see if the exam for West Coast Prince of Wales was passed previously.

On a motion made by Elsensohn, seconded by Foster and carried unanimously, it was

RESOLVED to issue the licenses for the above applicants as read.

Captain O'Hara amended the wording on Captain Grobschmit's license to read, "Pilot on vessels of not more than 20,000 gross tons on the waters of the Alaskan Peninsula (North and South); Dutch Harbor/Unalaska, Captain's Bay, and Akutan."

The examiner was directed to check the file of Captain Grobschmit to see if the tonnage limit is 20,000 or 40,000 gross tons; also, to see if the Aleutian Islands General Exam was passed.

Agenda Item 5 Extension of Route Temporary to Permanent License

On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to make permanent the following extension of routes:

Michael Skovoth - Southeast sets one and seven
Robert Herring - Seward/Resurrection Bay
Harry Scally - Prince William Sound, Western Entrances
Mike Collins - Yakutat
David Grobschmit - Sand Point, King Cove, False Pass, Akutan

Agenda Item 6 Tonnage Upgrades - Temporary to Permanent License

On a motion made by Burns, seconded by Elsensohn and carried unanimously, it was

RESOLVED to make permanent the following license upgrades:

Eric Eliassen - 20,000 to 40,000 Gross Tons.
Farrell Brown - Channel Pilot to 20,000 Gross Tons.
Richard Gurry - 40,000 Gross Tons to Unlimited.
Werner Sund - Channel Pilot to 20,000 Gross Tons.

Agenda Item 7 VLCC Endorsements - Temporary to Permanent License

On a motion made by Burns, seconded by Sell and carried unanimously, it was

RESOLVED to make permanent the VLCC endorsements for the following licensees:

Jeffrey Pierce
Anthony Joslyn
James Wright
William Tingley
Michael O'Hara

John Webb
John Bradley
Robert Hendricks
William Murphy
Richard Cochinos
James Hurd
Steven Hunicutt
Kaare Elde
Timothy Christy
John Cunningham
Robert Herring
Michael Stone

The VLCC endorsement applications of Harry Scally and William Bullard will be discussed separately.

Agenda Item 10

Recess for Lunch

On a motion made by Burns, seconded by Sell and carried unanimously, it was

RESOLVED to recess for lunch at 12:30 p.m.

Reconvened at 1:06 p.m.

Agenda Item 11

Cominco/Red Dog Pilot Station

Lisa Parker, Cominco Alaska; Bill Sharp, North Pacific Maritime/Southeast Stevedoring Corp.; and Paul Hedger, Navios Corp., were introduced.

Randall Burns spoke briefly on conflicts of interest among board members. A board member may not vote or participate in discussion if an issue presents a conflict of interest for a member.

Paul Hedger, representing Navios Corporation, addressed the board. He gave a brief description of Navios Corporation.

Navios submitted a briefing report to the board on November 2, 1990 showing the studies and surveys that have been performed by Navios, Cominco and outside consultants. The report also contains factual information gained from the first season

of operation and responds to the board's concerns regarding shipping in the Red Dog Mine area (see Attachment #1).

Navics suggests the board form an ad hoc advisory committee to study the matter, look at alternatives and make recommendations to resolve the issue of compulsory pilotage waters in the Red Dog Mine area.

Captain Murphy, President of Southwest Alaska Pilot Association, addressed the board. A letter was previously submitted by SWAPA (see Attachment #2).

Captain Murphy stated that SWAPA attempted to provide pilots but felt Navios was not interested in complying with the pilot requirement.

Randall Burns summed up the board's concerns in four issues that need to be settled.

1. Appropriateness of the pilot station.
2. Length of time a ship should hold waiting for a pilot.
3. Size of the area created in regulation as compulsory pilotage waters.
4. Validity of compulsory waters in the Red Dog Mine area at all.

Gary Amendola, Assistant Attorney General, addressed the board. He feels that the emergency regulations adopted by the board in June 1990 concerning the compulsory pilotage waters are indefensible as written. These regulations have recently expired.

The board has authority by statute to consider "inside coastal waters" as compulsory pilotage waters. This phrase has been defined by the board through regulation.

2:00 p.m. The board took a brief recess, and reconvened at 2:11 p.m.

The board chairman, Paul Taylor, appointed a three-person committee made up of Captain Elsensohn, Mark Foster and himself to study pilotage in the Red Dog Mine area and report back to the board by January 15, 1991.

3:00 p.m. The board took a short recess.
Reconvened at 3:11 p.m.

Agenda Item 12

Pilotage Contracts with Cruise Ship Companies

Dale Collins, president of Southeastern Alaska Pilots' Association, presented a letter and addressed the board regarding possible regulations requiring ships that come to Southeast Alaska on a regular basis to sign contracts with a pilot association.

Mr. Collins pointed out that the law requires a vessel employ a pilot "if available," and a loophole in the law may be created if pilot associations are not able to plan for an adequate number of pilots.

Comments from the audience were received by the board on this issue.

- A. Ed Creasey, SEAPA, agreed that contracts are needed.
- B. Bill Sharp, Southeast Stevedoring, disagreed with the implication that ships would try to take advantage of a loophole and enter without a pilot. Also, the state should not be involved in this matter; it should be worked out between the pilot associations and the cruise ship companies.
- C. Captain George Porter raised the question of what action the board would take if pilots were available and a ship proceeded without a pilot.

Agenda Item 13

Revision of Forms

- A. Medical Forms.

On a motion made by Foster, seconded by Burns and carried unanimously, it was

RESOLVED to continue to use the medical forms currently included with the initial and renewal applications.

B. Supervised Docking/Undocking Form (see Attachment #3).

On a motion made by O'Hara, seconded by Foster and carried unanimously, it was

RESOLVED to accept the supervised docking/undocking form submitted by Captain O'Hara with the "location" section of the form amended to delete "multiple mooring buoy."

Agenda Item 9

Review of FY 91 Goals and Objectives (see Attachment #4).

1. Exercise the powers and duties of the board. This goal is ongoing and will be covered during tomorrow's discussion of the proposed state pilotage act.
2. Continuing Education. Mr. Sell is continuing to work on this project. The rewritten pilotage act may require continuing education for pilots.
3. Processing of investigations and hearings. The Division is working on a request for proposals for contracting with a pilot for marine investigations. The proposed legislation may create a pilot coordinator position that would include investigative duties.
4. Propose necessary legislation. Covered by proposed marine pilotage act.
5. Update and improve regulations. Covered by proposed marine pilotage act.
6. Monitor pilot competency and availability. This goal is ongoing.
7. More stringent entry and renewal requirements. Covered by proposed marine pilotage act.

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 13

8. Provide for three meetings per year. Covered by proposed marine pilotage act.
9. Develop appropriate policy and regulations concerning the Nome and Kotzebue pilotage areas. This goal is ongoing.
10. Monitor shipping between Nome and Siberia. This goal is ongoing.

Agenda Item 14 Report on Contract Pilot for Investigations.

This item was discussed under agenda item 9.

Agenda Item 21 Office Business.

- A. Renewal Procedures - Pilots without quarterly reports on file must submit evidence of recency in Alaska.
- B. Tonnage Upgrades - To be reviewed tomorrow.
- C. Set Temporary License Exam Dates - January 22, 1991 in Juneau and Anchorage.
- D. Set Spring Meeting and Exam Dates - April 3-5, 1991 in Juneau.

Agenda Item 22 Regulations

- A. Drug and alcohol testing will be discussed tomorrow under the proposed marine pilotage act.
- B. Trip Sheets of Federal Pilotage - Captain O'Hara will distribute a letter from the Coast Guard on this topic.

The board recessed for the day at 4:25 p.m.

Friday, November 9, 1990

Agenda Item 6 Call to Order.

The meeting was called to order at 9:00 a.m.
Present and constituting a quorum were:

Paul Taylor, Chairman
Russell Sell
Captain Elsensohn

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 14

Bill Lorch
Mark Foster
Captain O'Hara

Randall Burns was not present.

Guests present on November 9, 1990 were:

W. E. Murphy, SWAPA
J. M. Baldry, SEAPA
George Porter, SEAPA
Ed Creasey, SEAPA
Arnt Antonsen, SEAPA
Wendy Mulder, Alaska State Legislature
Dale Collins, SEAPA
Chuck Cloudy, SEAPA Attorney
Terry Bennett
Bobby Parker, Parker Marine, Inc.
Steve K. Yoshida, SWAPA
Cees Deelstra, HALW/NWCA
Stan Stanley, Regional Citizens Advisory
Council
Joseph Merrill, Alaska Marine Pilots Dispatch
Service
Stuart Mork, AMP
Bill Sharp, North Pacific Maritime/SE
Stevedoring Corp.
Tony Chadwick, SEAPA
Tony Thein, Holland America Line
Senator Drue Pearce, State Legislature
Vincent Tillion, SWAPA
Joseph Homer, Alaska Coastwise Pilots
Brad Pierce, Office of Management and Budget
Marilou Madden, Office of Management and
Budget
Gary Amendola, Attorney General's Office

Agenda Item 7

VLCC Endorsements

Mark Foster reported on the VLCC applications he reviewed. The application of Captain William Bullard has no dockings more recent than 1979.

On a motion made by Foster, seconded by O'Hara and carried unanimously, it was

RESOLVED to adopt as a working rule for VLCC endorsement applications that dockings and undockings be made no more than five years prior to the application date.

9:05 a.m. Randall Burns joined the meeting.

On a motion made by Foster, seconded by Sell and carried unanimously, it was

RESOLVED to accept the application of Harry Scally for VLCC endorsement.

Agenda Item 17

OMB Report and Proposed Legislation

Brad Pierce and Marilou Madden from the Governor's Office of Management and Budget presented the results of a study and their recommendations regarding the state's Marine Pilotage Act (see Attachment #5).

- A. OMB Role - Collect information and comments and turn over the drafting of legislation to the board through Gary Amendola, Assistant Attorney General.
- B. Reasons for the Study.
 - 1. Prompted by a letter to the Governor from Captain Murphy
 - 2. Other states are studying marine pilot laws after the Exxon oil spill.
 - 3. Sunset review in FY 91.
- C. Is the Current Law a Problem?
 - 1. Marine pilot law is old; many changes in Alaska since the law was written.
 - 2. Alaska has the lowest requirements of all states.
 - 3. Alaska treats licensing as a right.
- D. Study Methodology.
 - 1. Surveyed pilots by mail.

2. Conducted phone conversations with board members and vessel agents.
 3. Visited associations.
 4. Reviewed other states' statutes.
- E. Establish a Social Contract between the State and Pilot Associations - The state supplies liability and antitrust protection in return for greater control of the profession.
- F. Legislative Intent.
1. Emphasis on local knowledge.
 2. Protect safety of lives, property and marine environment.
 3. Establish independence of pilots.
- G. Pilot Qualifications - Requirements should be high enough to assure entry level applicants have extensive seagoing experience.
- H. Regions - Exclusive regional licensing is recommended; current pilots with overlapping regions would have to choose one region after a transition period.
- I. Deputy Pilot Training Program
1. The board should review, approve and evaluate training programs run by pilot associations.
 2. The board should work with pilot groups to develop training criteria beyond dockings and undockings.
 3. The goal is to have an adequate number of unlimited pilots with wide experience.
- J. Check Ride Evaluation for Licensed Pilots
1. Required to ensure licensee is functioning at a competent level.
 2. Done through peer review, immune from liability and peer pressure
- K. Recency Criteria and Continuing Education Requirements are Recommended.

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 17

- L. Drug Testing and Annual Physical Exam.
 - 1. Random drug and alcohol testing.
 - 2. More complete annual physical.
 - 3. Testing done through accord with Coast Guard.

- M. Marine Pilot Coordinator.
 - 1. Will serve as staff to board.
 - 2. Will review and evaluate training programs and pilot association bylaws.
 - 3. Will conduct investigations in accord with USCG.
 - 4. Will provide management reports.

- N. Accord with the Coast Guard - In the areas of travel, expense for investigations and drug testing.

- O. Limit Number of Licenses Issued? - Limiting is not recommended at this time.

- P. Board Authority - Recommending a pilot representative from Western Alaska replace the commissioner's designee on the board. This would alter the balance of the board.

- Q. Tariffs.
 - 1. More board authority.
 - 2. Board should review existing structure.
 - 3. No undercutting.
 - 4. Tariff would include board administrative costs and pilot training costs.

- R. Board and the Social Contract.
 - 1. State should recognize pilot associations in statute.
 - 2. State should provide limitation of liability.
 - 3. State should protect associations from antitrust actions.

4. Board should have power to review associations' bylaws and exercise administrative control.

The board took a brief recess from 10:02 a.m. to 10:15 a.m.

Gary Amendola, Assistant Attorney General, discussed the draft legislation with the board (see Attachment #6).

Section 1 - Intent. Replaces "inside coastal waters" with "waters in, around and adjacent to State of Alaska."

Section 2 - Creation and Membership of the Board. Balance of the board was discussed.

Section 3 - Term of Office.

Section 4 - Meetings - Allows for three meetings per year without prior approval from the Governor's Office.

Section 5 - Powers & Duties. Describes board authority with more particularity. A separate section with guidelines for training programs may be needed.

Section 6 - Marine Pilot Coordinator. Authorization to hire.

Section 7 - Licensing Requirements. Includes the recommendations of the Office of Management and Budget.

Section 8 - Application.

Section 9 - Entry Level Qualifications. Language is unclear as to whether this applies to deputy pilots or licensed pilots. Different regions may have different entry level requirements. More explicit authority for drafting regulations may be needed.

Section 10 - Renewal - Some currently licensed pilots won't be able to meet the renewal requirements. Section 19 addresses this.

Section 11 - Lapsed License.

Section 12 - Enforcement Authority.

Section 13 - Disciplinary Sanctions. Refers back to centralized licensing statutes.

Section 14 - Mandatory Employment of Licensed Pilots.

Section 15 - Allocation of Liability. Ship owner is responsible rather than the pilot.

Section 16 - Pilot Organizations. May need to add explicit protection from antitrust in this section; also need to reword exemptions in simpler terms.

Section 17 - Penalties. May need to be more severe.

Section 18 - Short Title.

Section 19 - Transition.

Members of the audience commented on the OMB report and the proposed legislation.

- A. Tony Phein, Holland America Lines: Supports effort to upgrade pilotage standards; concerned about economic aspect; against monopoly, rate making, pilot liability limit, and prohibition on direct employment by pilots; pilots who are nonassociation members must have opportunities for training.
- B. Joseph Merrill, Alaska Marine Pilot Dispatch Service: Each pilotage region should be represented on the board before any regulation of these regions is attempted; supportive of regional differences in

qualifications; ability of pilot to be employed should be addressed.

- C. Steve Yoshida, SWAPA: More explicit statutory qualifications needed; number of licenses should be limited by the board.
- D. Dale Collins, SEAPA: In order for associations to allow board review, only one association should be sanctioned in each region; favors limiting licenses and limited pilot liability.
- E. Scott Jones, Alaska Maritime: Favors balance on the board between pilots, agents and public members; doesn't see value in limiting number of licenses issued.
- F. Ed Murphy, SWAPA: Favors maintaining a balance between pilots, industry and public on the board as well as retaining the administrative voice; in favor of increased licensing standards.
- G. Bill Sharp, Southeast Stevedoring: Encourages expression of the intent of the legislation; industry shouldn't solely bear the cost of pilot training; favors maintaining the balance of pilot/industry/public representation on the board.
- H. Terry Bennett, Independent Pilot: Opposed to state providing antitrust protection for associations in exchange for better training and standards; board needs to represent all interests, and more attention needs to be given to the makeup of the board; supports competitive pricing.

The board will plan a one-day work session on the proposed legislation and receive public comment for review prior to the work session.

On a motion made by Elsensohn, seconded by Sell and in accordance with AS 44.62.310, it was

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 21

RESOLVED to enter executive session for the purpose of attorney client consultation.

Entered executive session at 11:55 a.m.; adjourned from executive session at 12:00 noon.

Captain David Sanders and Captain William Cork addressed the board along with their attorney, Michael Hanson, to request approval to take the oral examinations. They are requesting a hearing on the denial of their applications and would like to be able to obtain their licenses without further delay if they prevail in the appeal.

On a motion made by Foster, seconded by Sell and carried unanimously, it was

RESOLVED to deny the requests of Captain Sanders and Captain Cork to be given the oral examination.

On a motion made by Burns, seconded by Elsensohn and carried unanimously, it was

RESOLVED to enter executive session for the purpose of attorney client consultation.

Entered executive session at 12:10 p.m. Adjourned from executive session at 12:30 p.m.

On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to recess for lunch at 12:30 p.m.

Reconvened at 1:00 p.m. to continue discussion of the OMB report and proposed legislation.

On a motion made by Lorch, seconded by Sell and carried unanimously, it was

RESOLVED to schedule a one-day work session on the proposed rewrite of the Marine Pilotage Act on December 17, 1990 in Anchorage. December 10, 1990 will be the deadline for public comment.

Agenda Item 16b

Tonnage Upgrades

1. Larry Pullin applied to upgrade his license from Limited, Step 1 to Unlimited.

On a motion made by Foster, seconded by Lorch and carried unanimously, it was

RESOLVED to upgrade the license of Larry Pullin to Limited, Step 2, 40,000 gross tons, effective April 5, 1991.

2. Peter Lie-Nielsen applied to upgrade his license from Limited, Step 1 to Unlimited.

On a motion made by Foster, seconded by Sell and carried unanimously, it was

RESOLVED to upgrade the license of Peter Lie-Nielsen to Limited, Step 2, 40,000 gross tons, effective November 9, 1990.

3. Terry Bennett applied to upgrade his license from Channel Pilot to Limited, Step 1.

Captain Elsensohn was granted permission to be excused from the vote and discussion on Terry Bennett's application due to a possible conflict of interest.

On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to deny the request of Terry Bennett for a waiver to the requirement of 12 AAC 56.027(a)(4) that no more than five of the dockings and five of the undockings be made under the supervision of the same pilot.

BE IT FURTHER RESOLVED that a letter will be sent to Southeastern Alaska Pilots' Association requesting that Terry Bennett be provided opportunity to perform the necessary dockings and undockings. This opportunity should be provided by June 1, 1991. If this

BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 23

cannot be accomplished by June 1, SEAPA should let the board know as soon as possible what date would be reasonable.

4. Mike Collins applied to upgrade his license from Limited, Step 1 to Unlimited.

On a motion made by Foster, seconded by Sell and carried unanimously, it was

RESOLVED to issue a Limited, Step 2, 40,000 Gross Tons license to Mike Collins.

5. Keith Douglas applied to upgrade his license from Limited, Step 2 to Unlimited.

On a motion made by Elsensohn, seconded by Burns and carried unanimously, it was

RESOLVED to approve an Unlimited license for Keith Douglas effective May 11, 1991.

6. Jeff Baken applied to upgrade his license from Channel Pilot to Limited, Step 1.

On a motion made by Elsensohn, seconded by Lorch and carried unanimously, it was

RESOLVED to approve the application of Jeff Baken to upgrade to a Limited, Step 1, license.

Randall Burns left the meeting at 2:00 p.m.

7. Hans Antonsen wrote a letter to the board supporting the procedure of granting upgrades on a step-by-step basis. However, he asked that if exceptions were to be made to allow applicants to bypass steps, he would also like to be considered for an Unlimited license.

On a motion made by Foster, seconded by Sell and carried unanimously, it was

RESOLVED to deny the request of Hans Antonsen to receive an Unlimited license.

Agenda Item 22 VLCC Qualifications

Captain O'Hara expressed concern over the current requirements for a VLCC endorsement under 12 AAC 56.510. There is no requirement for local experience.

No regulation change will be requested at this time. The rewrite of the Pilotage Act may resolve this problem.

Agenda Item 23 Public Comment

Dale Collins, SEAPA, asked if tariffs are in effect and, if so, if they can be negotiated up or down.

The board directed the Attorney General's Office to find the answer to this inquiry.

On a motion made by Foster, seconded by Elsensohn and carried unanimously, it was

RESOLVED to take a brief recess at 2:15 p.m.

Reconvened at 2:25 p.m.

Terry Bennett and Joseph Homer spoke briefly on tariffs. Captain Elsensohn and Captain O'Hara explained how tariffs are set for areas that are not included in the published rate schedule.

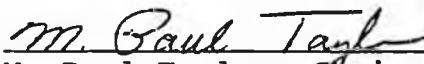
Agenda Item 24 Adjourn

On a motion made by Sell, seconded by Elsensohn and carried unanimously, it was

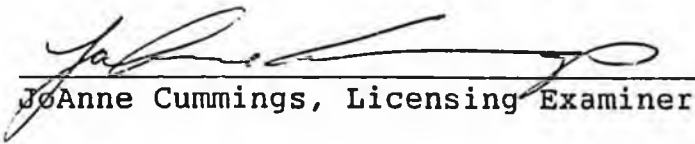
BOARD OF MARINE PILOTS
MINUTES OF MEETING
NOVEMBER 8 and 9, 1990
Page 25

RESOLVED to adjourn at 2:30 p.m.

Respectfully submitted,



M. Paul Taylor, Chairman



JoAnne Cummings, Licensing Examiner

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

ALASKA BOARD OF MARINE PILOTS Tentative Agenda November 8-9, 1990

Frontier Building, Room 336
3601 C Street
Anchorage, Alaska

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

*Reg
Chill*

November 7, 1990 - Wednesday

8:30 a.m. Written Examinations
Initial Licensure - SW - 1; SE - 4
Extension of Route - SW - 6; SE - 2

November 8, 1990 - Thursday

<u>TIME</u>	<u>TOPIC</u>	<u>LEAD PERSON</u>
1. 8:30 a.m.	Oral Examinations	Mr. Paul Taylor, Chair
2. 10:00 a.m.	Meeting Called to Order Roll Call	Mr. Taylor
3. 10:05 a.m.	Review Minutes a. April 5 & 6, 1990 Meeting b. June 1, 1990 Teleconference c. June 25, 1990 Teleconference	Mr. Taylor
4. 10:20 a.m.	Examination Results - Nov 7, 1990 a. Initial Licensure b. Extension of Route	Captains O'Hara & Elsensohn
5. 10:30 a.m.	Permanent Licensure Extension of Route (Previously Approved for Temporary)	Captains O'Hara & Elsensohn

Skovoth, Michael
SE set 1 and 7

Herring, Robert
Seward/Resurrection Bay

Scally, Harry
Prince William Sound
Western Entrances

	<u>Grobschmit, David</u> Sand Point, King Cove, False Pass, Akutan	
6. 10:40 a.m.	Tonnage Upgrades Permanent Licensure (Previously Approved for Temporary)	Captains O'Hara & Elsensohn
	<u>Eliassen, Eric</u> 20,000 to 40,000 Gross Tons	
	<u>Brown, Farrell J.</u> Channel to 20,000 Gross Tons	
	<u>Gurry, Richard</u> 40,000 Gross Tons to Unlimited	
	<u>Sund, Werner</u> Channel to 20,000 Gross Tons	
7. 10:50 a.m.	VLCC Endorsements Permanent Licensure (Previously Approved for Temporary)	Captains O'Hara & Elsensohn
	<u>Pierce, Jeffrey</u>	
	<u>Joslyn, Anthony</u>	
	<u>Wright, James</u>	
	<u>Tingley, William A.</u>	
	<u>O'Hara, Michael</u>	
	<u>Webb, John</u>	
	<u>Bradley, John</u>	
	<u>Hendricks, Robert L.</u>	
	<u>Murphy, William</u>	
	<u>Cochinos, Richard</u>	
	<u>Hurd, James</u>	
	<u>Hunicutt, Steven</u>	
	<u>Elde, Kaare</u>	
	<u>Christy, Timothy</u>	
	<u>Cunningham, John</u>	
	<u>Herring, Robert</u>	
	<u>Bullard, William</u>	

- | | | |
|--|--|--|
| 8. 11:00 a.m. | Investigative Report
(Executive Session) | DOL Staff |
| 9. 11:40 a.m. | Review of FY91 Goals and Objectives | Mr. Taylor |
| 10. 12:00 noon | Recess for Lunch | |
| 11. 1:00 p.m. | Cominco/Red Dog Pilot Station | Mr. Taylor |
| 12. 3:00 p.m. | Pilotage Contracts with Cruise Ship
Companies | Mr. Dale Collins
SEAPA |
| 13. 3:30 p.m. | Revision of Forms
a. Certificate of Medical Exam
b. Supervised Docking/Undocking | Mr. Taylor
Capt. O'Hara |
| 14. 4:00 p.m. | Marine Casualty Investigation
Report on Contract Pilot | Mr. Burns |
| 15. 4:30 p.m. | Recess | |
| November 9, 1990 - Thursday <i>Friday</i> | | |
| 16. 9:00 a.m. | Call to Order | Mr. Taylor |
| 17. 9:05 a.m. | OMB Report, Proposed Legislation
and Sunset Audit | Brad Pierce, OMB
Mary Lou Madden, OMB
Gary Amendola, AAG |
| 18. 12:00 noon | Recess for Lunch | |
| 19. 1:00 p.m. | OMB Report Continued | |
| 20. 1:45 p.m. | Review Reports on Exxon Valdez
Accident and Pilotage
a. National Transportation Safety
Board
b. Battelle, "A Comparative Assess-
ment of State Pilot Safety"
c. National Resources Defense Council,
"No Safe Harbor: Tanker Safety in
America's Ports"
d. Bauman, "Report of the Pilot Study Group" | Mr. Foster |
| 21. 2:30 p.m. | Revision to VLCC Qualifications
a. Require 1/2 time in Alaskan
waters
b. Require 20 round trips in Alaskan
waters | Capt. O'Hara |

22. 3:00 p.m. Office Business DOL Staff
a. Renewal Procedures - Recency
b. Tonnage Upgrade Applications
c. Set Temporary License Exam Dates
d. Set Spring Meeting and Exam Dates
23. 3:30 p.m. Regulations Mr. Taylor
a. Drug and Alcohol Testing
b. Trip Sheets of Federal Pilotage
24. 4:00 p.m. Public Comment Mr. Taylor
25. 4:30 p.m. Adjourn

JAC/lvs3955t
101190b

MEMORANDUM (Brief Communications)

State of Alaska

JAN 2 1991

TO:	Name	Dept./Div./Sect.	Mail Stop
		Sen. Pearce's Office	
FROM:	Name	Dept./Div./Sect.	Phone
	JoAnne Cummings <i>JAC</i>	Occupational Licensing	465-3035
SUBJ:	Marine Pilot Board Meeting - Minutes		Date
			12/28/90

Enclosed is a draft copy of the minutes from the meeting of the Board of Marine Pilots on December 17, 1990. These are unofficial as they have not yet been approved by the board.

If you have any questions, please call.

MEMORANDUM (Brief Communications)

State of Alaska

TO:	Name Peg Cahill	Dept./Div./Sect. Sen. Pearce's Office	Mail Stop
FROM:	Name JoAnne Cummings	Dept./Div./Sect. Occupational Licensing	Phone 465-3035
SUBJ:	Marine Pilot Board Meeting - Minutes		Date 12/28/90

Enclosed is a draft copy of the minutes from the meeting of the Board of Marine Pilots on December 17, 1990. These are unofficial as they have not yet been approved by the board.

I have also sent a copy to your Anchorage office. If you have any questions, please call.

DRAFT

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF MARINE PILOTS

MINUTES OF MEETING
DECEMBER 17, 1990

By authority of AS 08.01.070(2) and AS 08.62.030 and in compliance with the provisions of AS 44.61, Article 6, and AS 44.62.310, a scheduled meeting of the Board of Marine Pilots was held on December 17, 1990 at the Frontier Building, 3601 C Street, Suite 336, Anchorage, Alaska.

Agenda Item 1

Call to Order/Roll Call

The meeting was called to order at 9:00 a.m. by Chairman Paul Taylor. Those present and constituting a quorum of the board were:

Captain Harold K. Elsensohn
Captain Michael O'Hara
M. Paul Taylor, Chairman
William Lorch
Russell Sell
Randall Burns, Commissioner's Designee

Mark Foster arrived at 9:02 a.m.

Also present from the Department of Commerce and Economic Development, Division of Occupational Licensing, was JoAnne Cummings, Licensing Examiner.

Guests present were:

John Baldry, Southeastern Alaska Pilots' Association (SEAPA)
George Quick, International Organization of Masters, Mates and Pilots
Dale O. Collins, SEAPA
C. C. Cloudy, SEAPA
W. E. Murphy, Southwest Alaska Pilots Association (SWAPA)
G. R. Porter, SEAPA
Arnt Antonsen, SEAPA
Joseph Merrill, Alaska Marine Pilot Dispatch Service (AMP)
C. J. Cary, C. J. Cary Marine
Tom Rueter, North Star Maritime
Judith Brogan, Regional Citizens' Advisory Council
Steve K. Yoshida, SWAPA
Bill Sharp, North Pacific Maritime

Review Agenda

One topic was added to the agenda as item 6.1. A discussion of the Red Dog/Cominco pilot station was scheduled for discussion after the lunch break.

On a motion made by Elsensohn, seconded by Sell and carried unanimously, it was

RESOLVED to approve the agenda as amended.

Agenda Item 2

Approve Minutes of November Meeting

On a motion made by Burns, seconded by O'Hara and carried unanimously, it was

RESOLVED to approve the minutes of the November 8-9, 1990 meeting as presented.

Agenda Item 3

Public Comment

Members of the audience were invited to speak on the proposed rewrite of the Marine Pilotage Act.

Captain Murphy, Southwest Alaska Pilots' Association:

1. Establish in the legislation the independent nature of state pilotage free from industry control.
2. Entry standards need to be higher with a provision that pilots be properly trained.
3. Limit pilot liability.
4. Limit the number of licenses issued.

John Baldry, Southeastern Alaska Pilots' Association:

1. Use examples from other jurisdictions, comments from authorities and literature available to make proposal for legislation.
2. Limit number of licenses issued, or at least include authority in statute to set these limits.

Dale Collins, Southeastern Alaska Pilots' Association, read a letter into the record:

1. Limit number of licenses issued.
2. Sanction one exclusive pilot association per region.

George Quick, International Organization of
Masters Mates and Pilots:

1. Recognize pilot association as operating entity for pilotage services.
2. Limit number of licenses issued.

Captain Quick responded to questions from the board regarding other pilot areas in the world, the methods of regulation used, and the problems experienced.

Joseph Merrill, Alaska Marine Pilots Dispatch
Service:

1. Make areas of board authority clear.
2. Limit liability of dispatchers and individual pilots.
3. Recognize differences due to regions and types of vessels when formulating training and qualification requirements.
4. Clarify and regionalize the tariff (requires sanctioning of a pilot group per region).

Bill Sharp, North Pacific Maritime/Cruise Line
Agencies of Alaska:

1. Need for changes in the law stems from internal problems of pilots rather than industry.
2. Legislation should include industry and its ability to have input into daily operations of the business.
3. Exclusive associations should not be sanctioned by the board.

The meeting recessed briefly from 10:15 to 10:35 a.m.

Agenda Item 6.1

Red Dog/Cominco Pilot Station

A committee of the board, consisting of Captain Elsensohn, Mark Foster and Paul Taylor, met with representatives from Navios Corp., Cominco Ltd., North Pacific Maritime and the U.S. Coast Guard on December 16, 1990 to discuss the compulsory pilotage waters in the Red Dog Mine area.

The committee recommended establishing compulsory pilotage waters from Cape Prince of Wales to outboard of the reefs (latitude and longitude to be supplied), to 12 miles off of Cape Espenberg, to Cape Krusenstern, to Point Hope. The pilot station will be at the intersection of the shipping lane and the line of compulsory pilotage waters, approximately 12-14 miles from the harbor site. (See Attachment #1)

On a motion made by Elsensohn, seconded by Burns and carried by a vote of 4-2 with Foster and Sell objecting, it was

RESOLVED to accept the proposal of the subcommittee to resolve the Cominco/Red Dog Mine pilotage difficulty.

On a motion made by Burns, seconded by Elsensohn, and carried unanimously, it was

RESOLVED to adopt the subcommittee's proposal for publication as a proposed regulation, invite public comment and schedule discussion regarding adoption of the regulation for the April, 1991 meeting.

Agenda Item 4

Proposed Marine Pilotage Act Amendments

Brad Pierce and Marilou Madden from the Office of Management and Budget joined the meeting along with Gary Amendola, Assistant Attorney General.

A discussion of the draft legislation followed. (See Attachment #2)

Section 1 - INTENT. Changes to other sections of the draft legislation may require changes to this section also.

Section 2 - CREATION AND MEMBERSHIP OF THE BOARD. Action on this section was postponed.

Section 3 - APPOINTMENT AND TERM OF OFFICE. No changes to this section.

Section 4 - MEETINGS. No changes to this section.

Section 5 - POWERS AND DUTIES. Action on this section was postponed.

Section 6 - MARINE PILOT COORDINATOR. No changes to this section.

Section 7 - LICENSE REQUIREMENTS. Action on this section was postponed.

The board recessed for lunch at 11:45 a.m. and reconvened at 1:09 p.m.

Section 8 - APPLICATION. No changes to this section.

Section 9 - ENTRY LEVEL QUALIFICATIONS. A definition of one year of service will be included in the legislation. The Coast Guard standard will be used.

On a motion made by O'Hara, seconded by Sell and carried by a vote of 4 to 3 with Burns, Foster and Lorch objecting, it was

PESOLVED to delete section 9(b)(5) from the proposed legislation.

On a motion made by Elsensohn, seconded by O'Hara and carried unanimously, it was

RESOLVED to replace the deleted section (b)(5) with wording proposed by SWAPA:
"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 of freight or towing vessels of not more than 1,600 gross tons."

The board noted that the tonnage minimum in section 9(b)(4) should read 1,600 rather than 1,000 tons.

Section 10 - RENEWAL. Action on this section was postponed.

Section 11 - LAPSED LICENSES. Action on this section was postponed.

Section 12 - ENFORCEMENT AUTHORITY. On a motion made by Elsensohn, seconded by O'Hara and carried unanimously, it was

RESOLVED to approve proposed 08.62.150
(section 12) as written.

Section 13 - DISCIPLINARY SANCTIONS. On a motion made by Elsensohn, seconded by Burns and carried unanimously, it was

RESOLVED to approve proposed 08.62.155
(section 13) as written.

Section 14 - MANDATORY EMPLOYMENT OF PILOTS. On a motion made by Foster, seconded by Burns and carried by a vote of 4-2 with Elsensohn and Sell objecting, it was

RESOLVED to approve section 14 as written.

The board took a short break from 2:47 to 3:00 p.m.

Section 15 - ALLOCATION OF LIABILITY. A motion was made by Elsensohn, and seconded by Burns to accept section 15 as written.

A motion was made by Elsensohn and seconded by Sell to amend the above motion to add the phrase, "per incident;" and to add "cargo" to paragraph (b) after "Nothing in this section exempts the vessel, . . ." The motion to amend was carried unanimously, and by a unanimous vote it was

RESOLVED to accept section 15 as amended.

Section 16 - PILOT ORGANIZATIONS. On a motion made by Foster, seconded by Burns and carried unanimously, it was

RESOLVED to accept section 16 as written.

A motion to amend the above motion to include wording proposed by SWAPA failed by a vote of 2-4 with Elsensohn and O'Hara voting in favor of the motion. (See SWAPA proposal AS 08.62.175(b) in Attachment 22)

Section 17 - PENALTIES. On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to adopt the wording proposed by SWAPA under the penalties section changing the penalties under paragraph (a) to "not less than \$5,000 nor more than \$15,000" and under paragraph (b) to "not less than \$1,000 nor more than \$5,000."

On a motion made by Elsensohn, seconded by Burns and carried unanimously, it was

RESOLVED to delete the phrase "when a licensed pilot is available" from section 17(a).

The definitions under 08.62.200 need to be expanded to include a definition of chemical impairment and the standard for measuring time served.

Section 18 - SHORT TITLE. On a motion made by Burns, seconded by Foster and carried unanimously, it was

RESOLVED to approve section 18 as written.

The board took a short break from 4:15 to 4:25 p.m. before taking up discussion of sections of the proposed legislation which were postponed.

Section 5 - POWERS & DUTIES. Section 5(a)(4) was amended to delete the phrase "provided that the board may adopt different tariffs within a region if justified." Section 5(a)(7) was amended to add "or individual" after "audit a pilot association."

On a motion made by Burns, seconded by Foster and carried by a vote of 5-1 with O'Hara objecting, it was

RESOLVED to approve section 5 as amended.

Section 7 - LICENSE REQUIREMENTS. A motion was made by Foster and seconded by Burns to adopt section 7 as written.

A motion was made by Elsensohn, seconded by Burns and carried by a vote of 4-2 with Foster and Lorch objecting, to amend the above motion to substitute the following wording for section 7(b) and (c):

- (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."

By unanimous vote, it was

RESOLVED to adopt section 7 as amended.

Section 2 - CREATION AND MEMBERSHIP OF THE BOARD. On a motion made by Lorch, seconded by Sell and carried unanimously, it was

RESOLVED to keep the board in its present form.

LIMITATION OF LICENSES (SWAPA proposal 08.62.105 in Attachment 2). A motion to adopt the SWAPA proposal to limit the number of licenses issued failed by a vote of 2-4 with O'Hara and Elsensohn voting in favor of the motion.

TRAINING (SWAPA proposal 08.62.117 in Attachment 2). Specific training requirements will be given in regulation rather than statute and may differ by region.

Section 10 - RENEWAL. The board changed paragraph (b) to require a pilot to work in the region for which he is licensed for a minimum of 60 days during the two years prior to a request for renewal of the license.

Section 11 - LAPSED LICENSE. The board agreed to change the time requirement for reexamination under paragraph 2 from five years to one year.

A motion to reopen the discussion of training requirements proposed by SWAPA failed by a vote of 1-4 with Elsensohn abstaining and O'Hara voting in favor of the motion.

At 5:30 p.m., the meeting was adjourned.

Respectfully submitted,

M. Paul Taylor, Chairman

JoAnne Cummings, Licensing Examiner

Minutes Approved on _____.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

ALASKA BOARD OF MARINE PILOTS

Tentative Agenda
December 17, 1990

Frontier Building, Room 336
3601 "C" Street
Anchorage, Alaska

1. 9:00 a.m. - Call to Order/Roll Call
2. 9:05 a.m. - Approve Minutes of November 8-9, 1990 Meeting
3. 9:10 a.m. - Public Comment
4. 11:00 a.m. - Board Discussion/Action re: Proposed Marine Pilotage Act Amendments
5. 12:00 p.m. - Recess for Lunch
6. 1:00 p.m. - Board Discussion/Action re: Proposed Marine Pilotage Act Amendments
7. 5:00 p.m. - Adjourn

The board will have reviewed all written comments received before meeting on December 17. The period of public comment at the start of the meeting will, therefore, be limited to allow the board sufficient time to fully review and discuss the proposed rewrite of the Marine Pilotage Act. The board will, at its discretion, ask for specific comment at any time during the meeting, or provide for other brief periods of time for additional public comment.

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WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 7, 1990

To persons interested in Alaska Marine Pilotage:

Enclosed is a copy of the final report of our study: *Improving Alaska's Marine Pilotage System*. Legislation to implement the recommendations of this report will be considered by the state Board of Marine Pilots in a work session scheduled for 9:00 A.M. December 17, 1990 in the Frontier Building in Anchorage. All interested parties are invited to attend.

Peg knows
(S)

We would like to thank all who contributed to preparation and review of this report.

Sincerely,

Brad Pierce *Marilou Madden*
Brad Pierce Marilou Madden
Senior Policy Analysts

Did Peg listen ???

465-3568

NO she didn't work yesterday

back to dp

(S)

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

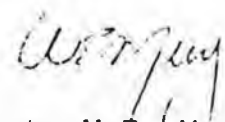
Dear Board Members:

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

DI..

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

D.V.

11/30/90

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.

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DEC 10 1990
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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. 08.62.120. 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 Board.

(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

STATE OF ALASKA
DEPARTMENT
& ECONOMY

DEC 10 1990

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.

STATE OF ALASKA
DEPARTMENT OF REVENUE
& LICENSING
DEC 10 1990

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


AMERICAN PRESIDENT LINES, LTD.

November 19, 1990

Ms. Mary Lou Madden
Mr. Brad Pierce
Division of Policy
Office of Management and Budget
Office of the Governor
P. O. Box AD
Juneau, Alaska 99811

**SUBJECT: PILOTAGE ACT DRAFTING GROUP
STATE OF ALASKA**

To whom it may concern:

American President Lines has recently become aware of your intention to rewrite the State of Alaska Marine Pilot Act. Because we are a customer of the South West Alaska Pilots Association, and a frequent caller at Iliuluk Bay, Dutch Harbor, we would like to take this opportunity to present our views on Alaska pilotage. We present these comments in the hope of assisting you in this task.

First, we feel that the State of Alaska should be the primary authority for managing and controlling pilotage within the state's area of jurisdiction. The present system has caused us concern because of the lack of control and enforcement in keeping the approaches to the APL berth in Iliuluk Bay, Dutch Harbor clear. In early 1990, when the bay became congested with anchored vessels blocking our approach to the APL berth, local authority suggested we request USCG assistance. The USCG-Anchorage felt it was a local Dutch Harbor matter, (between the pilots) and therefore recommended to let them work it out. Fortunately all parties came to a gentlemen's agreement and with a few minor exceptions things have worked well. Regardless, many management hours were spent seeking solution.

APL has considerable experience dealing with pilotage in Asia, the mid-East and the West Coast of the United States. The solutions we have obtained in one area, in many cases, are not acceptable in other areas. Therefore, we recognize that our experiences may not assist you, but in almost every case one factor was evident: We had great difficulty locating a single point of contact to deal with.

Sometimes, pilot associations become fixed in their mode of operations and changes in the industry are not taken into account; this easily becomes expensive and time consuming. In cases like Dutch Harbor it may make the difference in whether the ship will make the call. In the intermodal transportation business schedule is the key to success. We urge you to consider an element that will permit customers to communicate their concerns and problems for coordination.

*Public comments
received by OMB
on the proposed
rewrite of the state's
Marine Pilotage Act.*

OFFICE OF MANAGEMENT AND BUDGET
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STRATEGIC PLANNING

November 19, 1990

We must state that we have had the greatest cooperation and assistance from the South West Alaska Pilots Association and would like that relationship to continue. We have trained our masters and crews with these pilots and they are familiar with our ships and their equipment and they function well together.

Few industries require less continuing education than the Maritime Industry. Our experience with having pilots join our senior ship officers' in their ship handling and bridge team operations training has proven worthwhile and is recommended. Training is expensive, and time consuming. The training of pilots in basic, advanced and continuing education programs is frequently rejected by those that need the training most. Procedures that require pilots to undergo continuing and when needed, remedial training, is essential. Today there are a number of places where useful training may be accomplished, but unfortunately they are all located in the East. A facility is needed on the West Coast. The California Maritime Academy is endeavoring to acquire a ship handling-bridge operations trainer. I am sure they would appreciate your support; and we urge you to support CMA.

Essentially, we engage pilots for the following reasons:

1. They provide local knowledge;
2. they are familiar with the tugs and docking/undocking procedures, and
3. they reduce in-port transit times.
4. They increase the margin of safety in protection of vessels & port facilities.

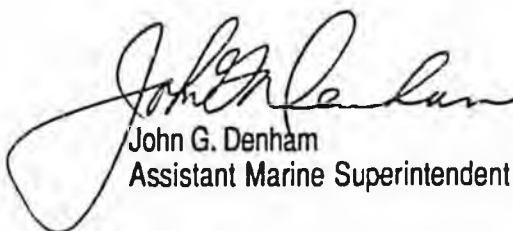
The premise of pilotage is to provide safe, efficient and reliable service for visiting ships that are not familiar with the port; in most cases state pilotage laws support this premise. To guarantee this service and maintain quality, states must be involved in some form of monitoring the quality of the pilotage service, providing for the public protection, and providing legislative assistance to the pilots to operate a reliable, efficient service which permit an adequate income. This service should be supported by fees.

We find, especially on the West Coast, that tug and pilotage costs have become the highest port costs. The trend has been for all pilot services to attempt to obtain near equal net incomes, regardless of the differences in the tasks to be performed. Equanimity is not factor in shipping rates and therefore, not a factor in compensation. We are firmly committed to fair and equitable compensation for tasks performed, and additional costs for additional work. Escalating labor and port costs can only be passed on to our customers; at some point our customers will seek other less expensive carriers. There are only two U. S. Flag liner carriers operating overseas from Alaska ports now.

We are eager to assist you in your task, and will gladly provide you any material or discuss any points you desire. Our purpose is to make our experiences available to you so that you may put together a pilotage law that provides good pilotage to all.

Respectfully,

AMERICAN PRESIDENT LINES, LTD.


John G. Denham
Assistant Marine Superintendent

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

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16711
October 31, 1990

Office of Management and Budget
Division of Policy
P. O. Box AD
Juneau, Alaska 99811-0199

STRATEGIC PLANNING

Dear Mr. Pierce and Ms Madden:

This is in response to your letter of 12 October 1990. in which you requested our comments on "The Alaska Marine Pilotage Study" and your proposed legislation to modify the Marine Pilots Act. Comments from the three Coast Guard Marine Safety Offices have been edited and included in this letter.

The following comments concern issues discussed in "The Alaska Marine Pilotage Study" and are submitted for consideration:

BOARD OF MARINE PILOTS-We agreed that "accord with the Coast Guard" should be established. It is felt that dialog between the state and the Coast Guard should be established and maintained on all pilotage issues. Recommend the Board of Marine Pilots meet annually with each of the Officers in Charge of the three Marine Safety Zones and pilot associations. The benefit of these meetings would be joint evaluation of training, examinations and qualifications requirements and review of all state waters usage to determine pilotage needs.

TRAINING-The provision allowing the Pilot Board to require certain training is an important issue. There was a situation last year where the MOBIL ARCTIC experienced a gyro casualty immediately after getting underway from the berth. The pilot (and the master) interpreted it as a steering casualty. The resulting confusion let the MOBIL ARCTIC drift almost the entire width of Port Valdez (in zero viz fog) while things were sorted out. Such confusion in restricted waters could have disastrous consequences. This was not an isolated situation. The dependence on the gyro and the radar has resulted in conning officers that often don't (or can't) keep track of things without them. Pilots need frequent recurring training on emergency situations. The very things that don't happen too often - but create catastrophes when they do. The type of recurrent training airline pilots undergo every six months on simulators is what should be considered (on an annual or biennial schedule) for pilots and all conning officers. This is not an onerous or unreasonable burden. The size of the cargo vessels, the increased automation on bridges and the nature of cargoes carried make mistakes too costly to accept as part of doing business. All conning officers, and pilots in particular, need safe (i.e. simulator), effective training targeting emergency situations.

PERFORMANCE EVALUATIONS-The report commented that doctors don't have to be evaluated to renew a license, why should pilots? The issue is not whether another profession does things a certain way, but if there is value in pilots doing things a certain way. It has been suggested that the state should conduct periodic review of pilot performances (annual). One suggestion was to have the master fill out a one page form and mail it directly to the Board. It should ask about near collisions/collisions, damage to vessel or dock, groundings/near groundings, and docking skills with information on the weather conditions prevailing. To hold that a professional, especially one in a monopoly business, not be subject to performance review flies in the face of everything we know of sound management practice.

Another suggestion was for the state consider developing "trip report forms". These forms should include a section to document a master/pilot conference establishing the condition of the vessel's systems and its maneuvering characteristics before beginning of a transit. It could include information to document service, training, report problems, and accidents and also provide the board area usage data to allow evaluation for fee and tariff changes. Recommend requiring form submissions for each trip signed by the pilot and certified by vessel masters, senior pilots if the individual is obtaining observer time, association presidents and/or company port captains.

SAFETY OF PILOTS-Apropos competition, but more importantly safety, there should be enough pilots so the work load does not lead to fatigue. The Board should spell out hours of continuous service at which time mandatory rest begins, much as an aircraft pilot may not be overworked.

It is recommended that the state consider establishing workhour standards for pilots similar to the federal standards for tankers in the 1990 Oil Pollution Act. It would also be appropriate to define work to include all activities relating to pilotage including transits to and from vessels. If a vessel exceeds the period allowed then vessel should be provided with two qualified pilots for the transit. The 1990 Oil Pollution Act, for tankers, limits the number of hours to not more than 15 in any 24-hour period, or not more than 36 in any 72 hour period.

COMPETITION-It is felt that competition among pilots for jobs could reduce public safety. However, it would be more a case of an honest disagreement between 2 persons of experience and not gross negligence. Nonetheless, a pilot would take a risk in a competitive situation he would not without competition. It is considered that an unnecessarily cautious pilot could adversely affect the ship. If the master thinks a situation is safe, his judgement should carry weight, but the pilot should prevail. Better to hold up a number of ships than have one grounding or collision.

LICENSE-There is a marked difference between adequate experience and a requirement that becomes unnecessarily burdensome. It may be better to stay with a standard similar to

the Coast Guard regulations. The suggested requirement that a Master, Oceans, Any Gross Tons should be a minimum for a state license significantly exceeds federal requirements and those of other states. It would be more appropriate for the Pilot Association to keep an otherwise licensed, qualified trainee with a more experienced pilot until they felt he was qualified enough to be on his/her own.

The study refers to Coast Guard master's license for vessels of 10,000 gross tons under the entry level requirements. This is an unlikely license as current federal regulations allow service over 1,600 gross tons to be sufficient for the removal of all tonnage restrictions. Some have considered this cut-off as patently inadequate for the size of freighters, tankers and passenger vessels coming to Alaskan waters. Presently the Marine Safety Office in Anchorage is conducting a study to determine the feasibility of establishing a tonnage-step program. Once they receive input from the other two zones they plan to present a consolidated document to the program managers in Washington for consideration. It would be in the best interest for the industry if the state and Coast Guard had a uniform system.

DOCKING PILOTS-In many states docking pilots are separate and usually assume the direction and control of a vessel either at the end of the arrival transit or in the beginning of a departure transit. In some areas they have also assumed control and navigation of the vessel during short shifts between berths within harbors. The expertise required to conduct docking evolutions are different than what is required of a individual piloting a vessel underway in restricted waters. Local knowledge is valuable but not sacrosanct, especially in docking. Since the training needed to become competent are different the state may want to consider creating a separate license and/or endorsement for docking pilots. The prerequisites and training requirements can be developed which are more appropriate to the duties of a docking evolution rather than a navigating evolution. It is suggested that the state develop a formula allowing certain docking experience from anywhere be combined with a Alaskan docking in the area pilotage is requested, e.g. 50% in Alaskan waters desired, 50% anywhere else on appropriate sized vessels.

The following comments concerning the draft legislation amending the Marine Pilots Act are submitted for your consideration:

Sec. 08.62.040. POWERS AND DUTIES-You may want to consider adding periodic audits of training programs in paragraph (8). This would allow the state periodic opportunity to evaluate the programs effectiveness and provide recommendations for improvement.

Sec. 08.62.090. APPLICATION-Suggest including an additional paragraph (c) to provide language requiring pre-employment physical examinations including a chemical test for dangerous drugs as part of the physical exam. Current Coast Guard regulations require physicals for all originals, upgrades and renewals of federal pilot licenses. These physicals must now

include results of chemical testing. It is recommended that the state adopt legislation similar to Coast Guard regulations and require physicals possibly on an annual basis which will include a chemical drug testing provision. You may want to consider having state appointed physicians to establish minimum physical standards relating to vision, hearing and general physical condition and possibly review and/or administer physicals.

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS-It is recommended in paragraph (b)(2) the phrase "~~not less than 1,600 gross tons,~~" be changed to reflect existing Coast Guard license nomenclature to avoid confusion. "Any gross tons" should be used for a license to operate on vessels over 1,600 gross tons, and "not more than 1,600 gross tons" should be used for a license to operate on vessels less than 1,600 gross tons.

It is recommended to substitute in paragraph (b)(3) One year service instead of 2 years service as a chief officer on ocean or coastwise vessels of more than 1,600 gross tons while holding a license as the master of ocean or near coastal steam or motor vessels of any gross tons. Once a person has achieved the level of chief officer, he or she would have six years of sea time experience. By sailing as a chief officer for one year, this person should have sufficient seamanship skills and the maturity to become a respectable candidate.

It is recommend that (b)(4) to read "Two years service as a qualified officer in charge of a navigation watch on board a United States government vessel more than 1,600 gross tons and holding a license as master of ocean or near coastal steam or motor vessel of any gross tons." The reasons for these recommendations are twofold. First, a qualified officer in charge of a navigation watch has the same responsibility as a chief mate standing a navigation watch on board a merchant vessel. In (b)(4) it requires a person in this category to have "a master of ocean steam or motor vessels of any gross tons." Therefore, it is a mute point to lower the requirement tonnage to 1000 gross tons.

It is recommended that you clarify the wording in paragraph (b)(5) "appropriate to the pilotage region." Without definition, this could lead to wide interpretation. Furthermore, this part doesn't require an applicant to hold any specific type of marine license.

It is recommended the state consider the following as part of the entry level qualifications: 2 years service as a chief officer on board an inspected vessel over 1,600 gross tons while navigating in the pilotage waters which the applicant seeks to be licensed. There are many talented deck officers employed on board the Alaskan Marine Highway vessels, and these officers have superior local knowledge over many nonresident candidates.

Sec. 08.62.120. RENEWAL-It is recommended in subparagraph (1) to provide language requiring the physical examinations to include a chemical test for dangerous drugs as part of the physical exam.

Sec. 08.62.130. LAPSED LICENSE-It is recommended in subparagraph (1) that the requirement be revised to read, "Two round trips on vessels over 1,600 gross tons for each years that

the license has been lapsed to each major port and waterway in the pilotage region covered by the license, with at least one round trip being made at night."

It is recommended in paragraph (a)(4) that the term "state or federal" be inserted prior to the word "license."

Sec. 08.62.150. ENFORCEMENT AUTHORITY-I believe that clarification is needed in paragraph (a)(2), for the term "chemically impaired [HABITUALLY INTOXICATED]." I recommend 33 CFR Part 95 as a guide for better terminology or provide a definition in Sec. 08.62.200. The term "habitually" is unnecessary and would only add difficulties in disciplining an individual.

In paragraph (a)(4) I recommend the term "state or federal" be inserted prior to the word "license."

Sec. 08.62.200. DEFINITIONS-It is recommended that the State provide a definition on the issue of when a pilot is considered on and off duty while on board a vessel.

Sincerely,



R. C. Simonson
Lieutenant Commander, U. S. Coast Guard
Chief, Merchant Vessel Safety Branch
By Direction

SUITE 315
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SEATTLE, WASHINGTON 98119-4151



October 31, 1990

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OFFICE OF THE GOVERNOR
Division of Policy
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Juneau, Alaska 99811

ATTN: Marilou Madden
Brad Pierce

Dear Marilou and Brad,

We are in receipt of the draft of proposed changes to the Alaska Marine Pilots Act and would like to submit some general comments. For your guidance ALASKA MARITIME AGENCIES has been handling ocean going vessels throughout Alaska since 1956, prior to Alaska's statehood. We currently represent hundreds of vessel owners in the tanker, fisheries, cruise, log and bulk trades and we are in the process of contacting them all for their insights and concerns in regard to the proposed amendments and will forward this information as the proposal winds its way through the legislative process. For the time being please find the following input and give it your kind consideration for inclusion into the final draft:

We feel that the designation of three zones, Southeast, Central and Westward is a good idea in terms of dispatching pilots as well as developing working rules. The needs of the areas are separate and distinct in many ways. However we insist on reserving the right to employ any qualified pilot in any region regardless of what group they may be currently affiliated. Furthermore, any person or group that has served a particular area in the past should be allowed to continue to do so regardless of affiliation. These proposals should in no way attempt to grant monopoly franchises to anybody.

The concept of a Pilot Coordinator is good provided this individual will perform investigative and clerical support work at the direction of the Board of Pilots. In no way should this position assume operational or administrative control of policy.

The makeup of the Board must remain equally balanced amongst the public, the pilots and industry. Therefore we must strongly dispute the contention in the draft that the State will best be served by keeping Board membership at seven persons with the pilots holding three of these seats. This would easily develop into a situation whereby the Board would become controlled by the very group it is empowered to regulate. The Board should be expanded to nine members; one pilot, one public and one industry from each of the three regions.

ANCHORAGE • Cordova • Homer • Kenai • Kodiak • Seward • Whittier • DUTCH HARBOR • Delogham • Naknek
KEETCHIKAN • Hoonah • Gustavus • Sitka • Kodiak • Kodiak

7.11
We heartily support recommendation #5 in Section 9 wherein two years of service as Master in a local region will satisfy entry level requirements. Our reasons for this are to keep the experience level high for pilots in the Westward area where deep draft vessels are uncommon and the vast majority of pilots come from the pool of fisheries vessels, tugs and the mosquito fleet. Most of these highly experienced individuals would never have the tonnage requirements called for in other areas of the State and without this important recommendation would therefore be precluded from gaining pilotage ratings.

We are strongly supportive of increasing the authority of the Board and would insist on their being given statutory authority to conduct audits of financial records of pilot groups for the purposes of tariff adjustment, approve of all dispatching and working rules employed by pilot associations (another function to which the proposed pilot coordinator can contribute) and approval or rejection of expense items claimed by pilot associations that will impact the tariff.

Lastly, a related matter to the preceding paragraph, is the formula by which tariffs will be created. We strongly feel that the expenses of the Board in conducting the States business should be part of the tariff. This should relieve any concerns the State might have about a financial burden in increasing the size of the Board. Secondly, any expenses not directly related to shipboard operations should not be recovered through the tariff. An example of this are the legal costs and travel etc. that will be incurred during the restraint of trade cases pending against a pilotage group in Alaska. It has been our experience that pilots often choose to be "independant contractors" when appropriate for them but become "custodians of the States' environment" when expedient and thereby try to recover expenditures that rightfully belong to them as businessmen. There is ample precedent for this kind of activity along the West Coast and should be clearly discouraged in Alaska.

In closing we would like to note that we appreciate the chance to comment at this time and will continue to offer our extensive experience, where appropriate, throughout the coming process. We feel an issue with such wide ranging implications as this, and its' impact on Alaska's competitiveness in world trade, deserves no less.

Kindest Regards,
Alaska Maritime Agencies


Scott Jones
Vice President

cc: Pilot Board



**ALASKA MARINE PILOTS
& DISPATCHING SERVICE**

P. O. BOX 730 • DUTCH HARBOR, ALASKA 99692 • 907/581-1240
FAX: 907/581-1372

October 1, 1990

TO: The Pilots of Alaska Marine Pilots
FROM: Joe Merrill

RE: September 13-14 meeting in Juneau called by Governor's Office to revise piloting statute.

As you are no doubt aware the Governor's Office, Division of Planning, invited non-pilot representatives of each pilot group, the Attorney General's Office and the President of the American Pilots Association to a work session in order to rewrite the law that makes pilotage compulsory and establishes the Board and specifies its authority. The meeting resulted from Mary Lou Madden's follow-up of Captain Murphy's letter to the governor regarding aspects of piloting that were felt to be in need of change. SWAPA and Southeast were represented by their attorneys and I held down the fort for your group.

The output of the meeting will be a draft of proposed changes to the Alaska Statute. We did not deal with the regulations of the Board because changes will be proposed to the authority and make-up of the Board. When and if it changes and has a new law then the regulations will be addressed. The Attorney General's Office is writing up the proposed changes and will distribute them by about October 15th. At that time we can make additional comments in preparation for a public comment meeting in November. The expectation is that from the November meeting will come final language for statutory changes to be pre-filed prior to the legislature meeting in January.

The substance of the group agreed upon aspects of changes is given below. We did not vote but had a consensus that the Attorney General's Office will put into formal language. The items agreed upon were:

- 1) The Statute must give the Board clear authority to set rates for pilotage. Presently the regulatory language is challengeable.
- 2) The Dept. of Commerce will lose its seat on the Board to be replaced by a pilot from AMP.

- 3) Annual pilot license fee should be increased to \$1,500 per year and the fee can be recovered through the tariff. The purpose of the fee increase is to generate funds so the state can hire a coordinator. (More about that later.)
- 4) Increase requirements for license renewal to incorporate the idea of "use it or lose it".
- 5) Divide the state pilotage waters into three regions to reflect the general unique shipping characteristics of each region and to get manageable areas in order to increase the "local knowledge" aspect of piloting. No specific boundaries of the region were discussed but in general would be based upon the areas serviced by the three pilot organizations.

Regionalizing the areas would allow:

- A - Regional licensing requirements upon the nature of the shipping business.
 - B - Regional tariff structures.
 - C - Identifying regional pilot organizations for the purpose of the State regulating the group. Regulating the group would include the Board's approving the training program and the operating rules of the group. Additionally, from each group the Board would select a "designated pilot" whose functions would include giving check rides to pilots to their license being renewed. This would allow some form of "peer review".
- 6) The licensing requirements and process would be changed to some form with the following characteristics:
 - A - Regional requirements for entry to training would be established. It seems that a Coast Guard pilot's license based upon sea and deck officer criteria and local knowledge would be required prior to taking the State exam.
 - B - After consultation with the pilot organization agents the number of required pilots for an area would be established. When the number had to be increased those individuals taking the State exam would be ranked by score and other qualifications. The highest ranking would then be allowed to train in the region.

- C - The regulated pilot organization would do the training. In exchange for this service the state would limit the liability of the pilot doing the training.
- D - The training program would consist essentially of ship handling - i.e. docking and undocking throughout the region. During the training progress reports would be filed with the Board who would have the authority, and based upon the pilots who act as trainers, to terminate a trainee who is not making it. In short, someone in training can flunk out. Additionally, it appears that the training period must extend over a fixed time period. For instance a year even if all the required dockings had been accomplished in two weeks.
- E - At the end of the successful training period the person would then get their license.
- F - After getting the license the person would automatically be eligible to be dispatched through the pilot organization. However, the pilot organization could require an "affiliation fee" so that the organization can cover the costs of property and operations. In short, this is like the \$10,000 AMP now requires.

In addition the pilot organization can have operating rules to allow income sharing based in varying percents that take into consideration coverage and tonnage.

One last point on the training is that the organization does not have to pay for it. That is, the trainee still has to pick up the living and travel costs involved in getting the license.

- G - A person getting a license does not have to join the organization. That is they can pilot on their own. However, they can not be kept out of the organization if they pay the affiliation fee.

The above are the main features that it was felt must somehow get into the law if the state is to continue to have compulsory pilotage and implement it without just having state employees.

The Pilot Coordinator would be a qualified pilot working as an employee of the state to oversee the organizations, licensing and complaint aspects.

page 4

After the meetings I spent a long time visiting with Captain Ed Murphy of SWAPA. The state is well aware of past conflicts between SWAPA and AMP. I've always had respect for Ed's interest in keeping high standards for the piloting profession and we get along well as friends.

The purpose of the meeting was to find a way to work together towards the goals of building AMP, protecting SWAPA's interest in Dutch Harbor and at the same time insure high professional standards. After we get the report from the Attorney General's Office I will meet with SWAPA to try to insure that we are harmonious at the November meeting. I think that will be the case. If the pilots are not united then the State may discount our input and do what they want.

When I get the material from the Attorney General I'll distribute it to you so we can discuss it.

Sincerely,

Joe Merrill

JM:as

cc: Mary Lou Madden
Brad Pierce
Captain Ed Murphy

INTERNATIONAL



ORGANIZATION

ROBERT J. LOWEN
International President
F. LEWOOD RYNER
International Secretary-Treasurer
GEORGE A. QUICK
Vice President

OF
**MASTERS
MATES &
PILOTS**

J. ALFRED ELLIS JR.
East Coast Regional Representative
DONALD J. HOFFMANN
Gulf Coast Regional Representative
REX POLLITT
West Coast Regional Representative
EMIL F. BOWERMAN
Panama Canal Regional Representative

November 15, 1990

State of Alaska
Office of the Governor
Office of Management and Budget
Division of Policy
P.O. Box AD
Juneau, AK 99811-0164

Attention: Brad Pierce, Marilou Madden

Dear Mr. Pierce and Ms. Madden:

I want to thank you for the copy of the Alaska Marine Pilotage Study and the draft of a proposed Alaska Marine Pilotage Act.

Our Organization represents approximately 1,150 marine pilots throughout the United States, the Panama Canal and Puerto Rico, as well as masters and deck officers on American flag ships.

We are concerned about the treatment of two issues in the report and proposed legislation that have the potential for serious consequences at some future time.

First, there is an absence of any requirement that pilots provide service through an association. Secondly, there is no provision to limit, either directly or indirectly, the number of licenses issued. The issue of permitting pilots to work outside the structure of an association and an unrestricted number of licenses are closely related. One permits competition and the other encourages it.

While these issues may not seem critical under the present circumstances in Alaska, failure to address them now could result in an orderly pilotage system collapsing in the future.

A policy choice must be made whether to have a regulated pilotage system that serves the interests of the State, or a competitive business that serves the interests of the shipowners.

If the safety of shipping and the protection of the marine environment are the first priority of a regulated pilotage system, then the pilot must be insulated from the shipowners





competitive pressures. It is unreasonable to expect him to give the highest priority to the State's interests, if doing so will expose him to retaliations in the loss of future assignments.

If shipping companies are permitted to select between competing pilots, it will place effective control over the pilot in the hands of the company whose interest in public safety and the marine environment are tempered by economic concerns.

The public interest is best served by protecting the pilotage system from competitive pressures, and making it clear in law and regulation that the pilots first and paramount duty is to the State acting through the Board of Marine Pilots.

You have pointed out in the study the need for an organizational structure to administer an efficient pilotage service. The service has to provide pilots, central dispatching, employees, boats and equipment, pilot stations, radio and communication equipment, transportation, training and administration of the whole as a system.

Permitting a pilot to work outside the association undermines the system. It will not only create a competitive climate, but removes revenue that should go to support a unified system. The infrastructure of people and equipment required for a reliable system can not be supported on an individual basis. The possibility that members could leave an association to operate independently inhibits long range planning and the commitment to undertaking financial obligations in equipment, facilities and personnel to provide services. In the unfortunate cases in other states where pilots have broken away from associations there is always a significant decline in the quality of service.

The Board of Marine Pilots should be authorized to recognize an association as exclusive representative of pilots in a port or region with control over dispatching and collection of fees. Recognition should be dependent on the requirement that their bylaws and working rules be approved by the Board and that they contain a plan for the efficient maintenance of a reliable pilotage system for their port or region.

We would also urge that consideration be given to the Board being authorized to establish the number of licenses that can be issued to a number sufficient to protect the commercial interests of the State. That number could be established periodically on an informal basis, or on a formal basis after public hearing, after a review of expected traffic volume, expected attrition rates among pilots, or other relevant factors.



Page Three

If we can be of any assistance in providing more detail on our views, please contact us.

I must congratulate you on a very thorough and fine report. It is one of the best analysis of pilotage that I've seen.

Sincerely,

George A. Quick

George A. Quick
Vice President, Pilots

CAPTAIN EDWARD H. CREASEY

Post Office Box 6583
Ketchikan, Alaska 99901

October 29, 1990

Office of Management and Budget
Division of Policy
State of Alaska
Box AD
Juneau, Alaska 99811-0199

Attention: Ms Marilou Madden
Mr. Brad Pierce

I applaud your efforts on "The Alaska Marine Pilotage Study".

This is the most comprehensive study of its type that I have
ever read. Keep up the good work.

Thank you,

Captain E. H. Creasey

EHC:bjj

Captain George J. Spence
PO Box 20251
Juneau, Alaska 99601

Mr. Brad Pierce, Ms. Marilou Madden
Pilot Study Group/Governors Policy Office
Office of Management and Budget
PO Box AD
Juneau, Alaska 99611-3568

November 5, 1990

Dear Mr. Pierce and Ms. Madden,

I am particularly interested in any efforts to upgrade the existing levels of professionalism and competency of pilotage in this State, and to furthering the pilotage profession in general. Your efforts in conducting the survey and review are commendable, however, some aspects of the fact-gathering are already flawed, and some areas merit considerable additional study by the reviewing parties if the recommended changes are to achieve the desired result.

To elaborate on these remarks, I offer the following:

I.) The State of Alaska has a duty to follow democratic principles of representation in matters such as this, which intimately concern the rights of individuals to pursue their profession.

a) The presentations made by Mr. Cloudy and Officers of SEAP are not truly representative of the views of the 40-odd pilots who earn their livings by piloting in Southeast Alaska. This is due to the fact that, although all of these pilots, members and contractors alike, must contribute an equal dollar amount to funding those presentations (willingly or not), and only nine have a full vote in the affairs of the Association.

b) The seat on the Board of Marine Pilots occupied by the Southeastern Alaska pilot is only accessible to a restricted few members of SEAP because of internal implicit prohibitions in the Bylaws of the Association (SEAP Bylaws Art. VIII, sect. 4). Enforcement of this prohibition is accomplished under threat of expulsion (and consequent unemployment) by the disciplinary procedures of the Association.

II.) Factual inaccuracies have already been introduced to this study by parties whose views are overweighted. For example:

a) Mr. Cloudy's letter of 6/25/90, attached to the Study Draft, on p. 3, states as follows: "non-member pilot is charged...between 25% and 10% of the tariff receipts generated by the nonmember pilot depending upon his license level. These funds are ... shared equally by the member pilots." In fact, those funds are not distributed equally at all, with some members receiving more than double the amount given to others.

b) Mr. Cloudy's letter, p. 2, #2: "Almost all of these non-member pilots came to SEAP with little more than entry-level qualifications, and without exception anyone who wanted to train up was given the opportunity to do so. For the most part, however, these nonmembers have been content to skim off the cream in the Summer and very reluctant to come back in the winter and avail themselves of training-up opportunities." In fact, a substantial portion of SEAP's contractor pool came to SEAP with prior pilotage experience, and a great number have willingly made a great effort to train up in the winter.

of Mr. Cloudy's letter, D.F. #3, pp. 91. "Experience over the years has shown that the masters will not involve themselves in evaluating a pilot's performance." In fact, SEAP has received a number of written and verbal pilot performance reports by vessel masters in the past three years alone, and has generally ignored and discouraged those reports.

c) Marine Pilotage Study draft, p. 4, #3, "By contrast, it is estimated that less than 50 federally-licensed pilots are employed regularly, primarily on coastwise oil tankers." In fact, the ferry systems of Alaska and Washington alone employ over 150 such federal pilots. The federally licensed independent pilot infrastructure on the East coast (interport Pilots, Northeast Pilots, and various docking master organizations) alone easily employs over the stated fifty pilots operating under federal licenses.

In citing the above items, my intention is not to discredit any of the sources of the stated information, but to direct the attention of the group involved in this study to the need for greater objectivity and consideration of the lopsided forces already working on their effort.

Additionally, I would ask that the study group consider some of the more abstract aspects of the regulated monopoly issue before it embraces that concept completely. For example, are marine pilots as a class going to be denied the protections offered to all other citizens under existing antitrust law?

Pilotage, unique a profession as it may be, does not have to be separated from the mainstream of professional classes in such matters as employment accessibility and equitable compensation. Nor does our business have to be dominated by archaic, dictatorial, or nepotistic practices that might have gained statutory approval in other states many years ago.

I believe professional standards for pilotage in Alaska should be enhanced and elevated to the highest possible level, yet I am not convinced that a regulated monopoly assures such a scenario. A lack of competition does not assure competence. Similar arguments have been made in other transportation industries (the airlines, notably), that safety is compromised if competition is permitted, yet State and Federal policy has not accepted the anticompetitive argument in those industries.

It might reasonably be argued that Association policies do not in fact promote enhanced professionalism or competent pilotage. The record of disciplinary policy of SEAP, for example, reveals that the Association has never proceeded against a pilot for pilotage errors which have resulted in groundings or damage or destruction to property and environment, even when the State has determined pilot fault. Nor has it in instances of alcohol or drug abuse, despite the stated authority for such discipline in the misconduct sections of its Bylaws and Operating Rules.

Given the incidents of alcohol and drug-related problems in our profession, and the record of inaction by the Association, it may be fairly inferred that the presence of language in the Operating Rules and Bylaws of SEAP pertaining to this type of professional misconduct reflects only a political concern, and not a concern for the sober and competent performance of pilotage.

Earlier this year, Mr. Cloudy drafted extensive changes to the Misconduct section of the Bylaws of SEAP, giving even broader powers of discipline to the Board of Directors of the Association. While those measures have not as yet been adopted by SEAP, they nonetheless represent the direction Mr. Cloudy (and presumably certain pilots) would like to see our Association go in its disciplinary powers. Among the proposed rules were the following:

Looking the Board of Hear the Pilots or the Alaska legislature in pilotage matters without the prior authorization of the Board of Directors. First
Third offense (Expulsion)

"Any conduct or behavior detrimental to either or both the Association and the reputation of its membership. Third offense (Expulsion) "

It is not difficult to understand the power that such broad disciplinary discretion given to an Association controlled by few pilots would have. They would literally have the power to bring financial ruin to any pilot who should question their ways.

The State must investigate disciplinary policies of the Pilot Associations and safeguard them from being merely a vehicle for advancing the views of an empowered minority.

If the State of Alaska is to approve or endorse the operating procedures of the existing Associations, and sanction their total control over the profession, it must **first and foremost** review the **internal procedures** of the Associations. This task in itself is formidable, given funding and staffing constraints on the State Department of Law, and the well-funded interests who will seek to preserve the present inequities. Association procedures must be regularly reviewed by disconnected parties to assure and promote fair and democratic principles. Above all, the Associations cannot, as Mr. Cloudy suggests in his letter, be the "watchdogs" over themselves.

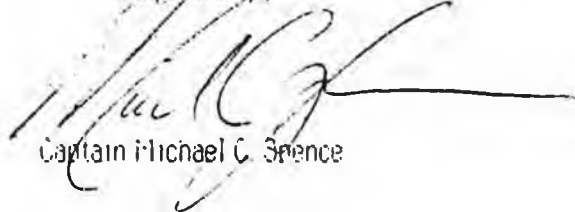
The issue of group liability for ship accidents is appropriately stated as a primary concern among pilots, but other areas of group liability should also be addressed. For example, liabilities for litigation costs and legal settlements of SEAP have been spread upon contract pilots who have no vote or representation in the Association, and are not responsible for the actions which precipitated the litigation. This is another area of liability which will likely not be brought up by the funded representatives of SEAP, but which the State must.

If the State of Alaska is to approve the procedures for allocation of income of Pilot Associations, and to increase fees for licensing, it must insure that income and expensing procedures are equitable, and equal to the work performed. If income differentials are permitted, they must be tied to higher license or seniority, and there must also be proportionate expensing. On the matter of increased license fees to fund increased State intervention, The State cannot expect a pilot who earns \$30,000.00 annually to pay the same licensing fee as a pilot who earns \$150,00.00

In Summary, if the state of Alaska is to endorse or approve the existing infrastructure of Pilot Associations, it must first accomplish a vigorous and comprehensive review of their Bylaws, Operating Rules, Articles, and other documents. This should be accomplished with particular regard to establishing and maintaining the rights of pilots, as for other citizens, under the law, to due process, free speech, and freedom to pursue a livelihood in their chosen profession.

This task must not be underestimated. The State should be mindful of the special interests within the pilotage community, and give equal credence to each of the pilots whose welfare is directly affected, not just an entrenched minority

Respectfully,



Captain Michael C. Spence

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ROBERT H. ZIEGLER, SR.

October 31, 1990

Ms. Marilou Madden
Mr. Brad Pierce
Senior Policy Analysts
State of Alaska
Office of the Governor
Office of Management & Budget
Division of Policy
Post Office Box AD
Juneau, Alaska 99811-0199

Re: SEAPA
Our File 29.039.48

Dear Marilou and Brad:

Our clients individually and collectively are directly responding to the materials received under cover of your letter of October 8. My own comments here set forth are supplementary.

DRAFT STUDY

I offer the following editorial comments:

Page 16. All members of SEAPA hold an unlimited license. Because such a particular reference is made to SWAPA on page 18, a similar reference should be made to SEAPA or abandoned entirely as to both.

Page 17. There are no "contract" pilots who have not been accepted for membership into SEAPA in recent years because none, to the knowledge of the various Boards of Directors involved, have sought admission. While it is true that if someone had sought admission he would have been turned down for lack of vacancy, the draft language suggests more than that.

Page 18. We do not believe the references to "heavy-handed intimidation tactics" and "to quell dissent" are warranted. Whatever has come to your attention, has not been brought to the attention of SEAPA and it is unfair to SEAPA to engage

ZIEGLER, CLOUDY, KING & PETERSON

Ms. Marilou Madden
Mr. Brad Pierce
State of Alaska
Officer of the Governor
October 31, 1990
Page 2

in such characterization based on one way input. Also, SEAPA's encouragement to staff with regard to meeting with "dissident pilots" was not predicated upon any awareness of who these pilots may have been other than those in litigation against the Association. The question was put to SEAPA as to whether or not they would object to a canvass of dissident pilots if any there might be and the answer was there was no objection.

Page 24. Although Captain Clough was one of the very first pilots admitted to membership in SEAPA, he was not a founder.

DRAFT LEGISLATION

08.62.005(a). Add to this paragraph the following language:

In establishing tariffs, the Board shall seek to compensate the marine pilots in such measure as will ensure that safe, efficient and year-round pilotage will be provided to those vessels obligated to employ Alaska marine pilots.

08.62.040(a)(4). A criteria reference should be included related to carrying out the legislative intent as expressed in 08.62.005 in addition to the criteria set out in the draft.

08.62.040(a)(8). Oversight authority over the training program should also be included as a power and duty of the Board.

08.62.040(b). The word "shall" should be substituted for the word "may".

08.62.165(a). Either the one or the other of the phrases "grossly negligent" and "guilty of willful misconduct" should be deleted. The Alaska Supreme Court has consistently held that the one term encompasses the other. To use both terms suggests a distinction which does not exist and would only serve to promote needless litigation over the question.

08.62.165(b). Cargo should be named as being held in for damages along with the vessel and its operators. Cargo is being held in under oil spill legislation; however, when it comes to damages, involved cargo could include lumber, logs and hard mineral ores, to name but a few.

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Ms. Marilou Madden
Mr. Brad Pierce
State of Alaska
Officer of the Governor
October 31, 1990
Page 3

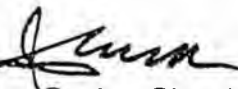
new
08.62.190(a). This section should also provide for a separate violation for each vessel movement to which a separate tariff has been assigned. In Southeastern Alaska, at least, the draft is susceptible of a reading of a single misdemeanor for each 7-10 day cruise transit of the involved vessel rather than multiple misdemeanors for the separate pilotage movements carried out by the master during the 7-10 day cruise.

new
New Section. A section should be added which expressly authorizes the Board to establish regulations which limit the number of pilots to be licensed under the Act, giving due regard to the stated legislative intent and the fact that wide open licensing could well be counter productive to the policy statements set out in the legislative intent.

new
New Section: Anti-Trust Protection. In addition to 08.62.175, allowing marine pilots to form a pilot association, Section 45.50.572(a) should be amended to read: "AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural organizations created for the purpose of mutual help, and not conducted for profit, as well as marine pilot organizations whose organizational structure has been approved under the Alaska Marine Pilotage Act, 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".

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

By 
C. L. Cloudy

CLC:cz
ZICLC

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ROBERT L. ABARE
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FAX (202) 337-0034
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TO: BRAD PIERCE / MARILOU MADDEN

FROM: PAUL G. Kirchner

DATE: November 1, 1990

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER PAGE): 9

MESSAGE:

Please confirm receipt of this by return fax
message

STATE OF ALASKA
OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF POLICY

COMMENTS OF THE AMERICAN PILOTS' ASSOCIATION
ON
PROPOSED LEGISLATION TO MODIFY THE MARINE PILOTS ACT
November 1, 1990

The American Pilots' Association (APA) appreciates the opportunity to comment on the proposed legislation to modify the Alaska Marine Pilots Act. We have reviewed the proposed legislation carefully and have discussed it with the Southwest Alaska Pilots' Association (SWAPA) and the Southeastern Alaska Pilots' Association (SEAPA), both of which are members of the APA.

The Division of Policy is to be commended for the thoroughness and purposiveness with which it has conducted the review of Alaska pilotage law. The APA is encouraged that the State of Alaska is obviously intent on improving its present pilot regulatory system, and the APA will continue to follow this matter with great interest and with whatever assistance we can provide. In that respect, the APA offers the following brief comments on the draft legislation. We are aware of the concerns and questions of SWAPA and SEAP. Rather than repeat those items in these comments, the APA simply asks that State consider carefully the SWAPA and the SEAP comments.

COMMENTS ON DRAFT LEGISLATION1. New Sec. 08.62.040. POWERS AND DUTIES OF BOARD

In addition to the powers and duties listed in the new section, the Board should be given the power to limit the number of licenses that it will issue. The absence of such a power is, the APA believes, a significant flaw in the proposed legislation.

When a license is a matter of right and a state issues as many licenses as there are individuals who desire one, a simply unworkable and unsafe situation develops, no matter what qualifications and standards are set for a license. It inevitably leads to an oversupply of pilots, which in turn, results in the worst manifestations of competition in the provision of pilotage services. Such competition is inconsistent with the function of state pilotage and with the proposed legislative recognition (new Sec. 08.62.005(b)) of the value of having pilots who are independent of the shipping industry. Those few states that have experimented with unlimited licensing have regretted it, and those states that have considered it carefully have rejected it. (See, "Review of Chapter 310, Florida Statutes Relating to Pilots, Piloting and Pilotage," Report of the Florida Senate Economic, Community and Consumer Affairs Committee, January, 1986 (the "Upchurch Report"), pages 27-29).

A state should acknowledge and make it clear that it does confer certain monopoly benefits on state pilots by controlling the number of licenses it issues. In return for the monopoly conferred by the license, however, a state regulates the pilots extensively, including setting the fees that the pilots may charge. This is the traditional way in which State pilotage has

operated in this country. It has worked well.

We recommend that the following item be added to the proposed list of Board powers and duties:

() determine the number of pilots based on the supply and demand for pilot services and the public interest in maintaining efficient and safe pilotage services.

This is modeled after the provision in Florida's pilotage law. Fla. Code Ann. §310.061.

2. Sec. 08.62.160. ALLOCATION OF LIABILITY

A separate statement of legislative findings and intent should be added to this proposed section. Such a statement should say that the legislature finds that in order to secure to Alaska's system of compulsory state pilotage the benefits identified in Sec. 08.62.005, and in particular to assure an adequate supply of qualified, independent state pilots and to maintain pilotage rates at reasonable levels, it is necessary to provide state pilots with protection from liability for damages that far exceed the pilots' ability to pay. Further, the legislature finds that such liability limitation will not in any way diminish the ability of any party harmed by acts or omissions of a pilot relating to the pilotage of a vessel to be compensated for whatever damages are suffered as a result of such acts or omissions. Other state pilotage statutes with similar liability limitation provisions contain such statements, which can be consulted.

3. Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS;
Sec. 08.62.180. EXEMPTIONS; Sec. 08.62.185. CERTAIN
LICENSED PILOTS REQUIRED FOR OIL TANKERS

We recognize that the Alaska pilotage requirement was not one of the items specifically considered in the review of the existing Alaska regulatory system. Also, we are aware that the draft legislation mainly continues the present language of these sections. Nevertheless, the rewrite of the pilotage law presents an opportunity to improve the present pilotage requirement, which is somewhat confusing and employs language and terms that no longer have accepted meanings. For example, Sec. 08.62.180 refers to "vessels under enrollment" and vessels that are "registered." The Vessel Documentation Act of 1980, P.L. 96-594, 46 U.S.C. §12101 et seq., eliminated the term "enrollment" and significantly changed other terms used in the documentation of vessels under the laws of the United States. A number of states have encountered problems with their pilotage requirements that use documentation terms made obsolete by the VDA.

We suggest that Secs. 08.62.160, 08.62.180, and 08.62.185 be replaced with the following section:

- (a) Except as may be specifically provided in subsections (b) and (c) hereof, all vessels shall be under the direction and control of a pilot holding a valid license issued under this chapter when underway on the navigable waters of the State of Alaska and the approaches thereto.
- (b) This section shall not apply to:
 - (1) vessels exempt from state pilotage requirements under Federal law;
 - (2) fishing vessels documented under the laws of the United States or registered in British Columbia, Canada;

- (3) vessels propelled by machinery and not more than 65 feet in length over deck, except tug boats and towboats propelled by steam;
 - (4) vessels documented under the laws of the United States of less than 300 gross tons and tow boats documented under the laws of the United States and vessels owned by the State of Alaska, if such vessels are engaged exclusively--
 - (A) on the rivers of Alaska, or
 - (B) in the coastwise trade of the United States including Alaska, Hawaii, and British Columbia.
 - (5) vessels documented under the laws of Canada, including Canadian-flag 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 documented under the laws of the United States; and
 - (6) pleasure craft.
- (c) The Board may, by regulation, determine that certain waters of Prince William Sound do not require the use of a pilot licensed under this chapter subject, however, to whatever conditions the Board may impose on vessels moving on such waters without a pilot licensed under this chapter and provided that any oil tanker of 50,000 dead weight tons or greater shall, when on such waters, be under the direction and control of either a pilot licensed by the state under this chapter or a federally-licensed pilot whose duty station has been on that tanker throughout that specific voyage.

As the above language indicates, the suggested section maintains the exemptions from state pilotage under present Alaska law -- or at least our understanding of the exemptions. The APA is concerned, however, that the present and the proposed pilotage law has too many such exemptions. That subject is beyond the scope of these comments. The APA's general position is that each state's compulsory pilotage requirement should be as clear and as broad as possible. Moreover, the pilotage requirement should not give pilot boards so much discretion in applying the requirement

or in granting exemptions from the requirement that exemptions are encouraged. Pilots and pilot boards should not be faced with the burden of responding to an unending succession of exemption requests from every shipowner or operator who wants to avoid pilotage.

4. Sec. 08.62.190. PENALTIES

The penalties that would be provided for failure to take a required state pilot are inadequate. We normally recommend that there be three available methods of enforcing a pilotage requirement: criminal penalties, civil penalties, and the recovery of pilotage fees that would have been paid if a pilot had been taken.

Although criminal penalties can be very effective, they should not be the sole enforcement device. Because of the nature of criminal charges and procedures and the burden that a state has in obtaining a criminal conviction, experience with the use of criminal penalties in other states has been disappointing on several occasions. Lower-level state judges are often unfamiliar with pilotage and pilotage law and extremely reluctant to find individuals guilty of criminal charges in an area of the law and with respect to a matter that they themselves may not understand. Also, state prosecuting authorities are often just as unfamiliar with pilotage and are unwilling to assign priority to prosecuting violations of pilotage laws, except in the case of major, headline-grabbing accidents.

Assuming that sufficient authority can be given to the Board under Alaska law, we would suggest the addition of civil penalties

similar in nature and amount to those that the United States Coast Guard is authorized to assess for violations of federal pilotage law under 46 U.S.C. §§8502 and 8503. Such civil penalties provide a state with a flexible and responsive tool for enforcing its pilotage requirement.

Finally, most state pilotage statutes make a vessel owner, operator or master liable for payment of pilotage fees otherwise due if the vessel does not take the required pilot. In addition, a lien is created for the payment of the fees. Sec. 08.62.170 of existing Alaska law does recognize a lien but the lien is available only when a pilot has been actually employed.

Recovery of pilotage fees and a lien for such fees is a very effective and useful device for enforcing a pilotage requirement. See, Jackson v. Marine Exploration Company, Inc. 583 F.2d 1336 (5th Cir. 1978). Not only does it give an added penalty for failing to take a required pilot, it allows for a measure of private enforcement. Id. The only caution here is that the obligation to pay pilotage fees should be clearly presented as a penalty provision, not as an alternative to the requirement to take a pilot.

5. ANTITRUST IMMUNITY

We understand that one of the intended objectives of the proposed legislation is to provide the pilot associations with immunity from the antitrust laws in connection with their pilotage operations authorized under the pilotage statute. The APA supports that wholeheartedly. We need not discuss here how antitrust suits are becoming a potentially crippling influence in state pilotage

today. The State of Alaska is to be congratulated for deciding to deal with this issue head-on.

It is not apparent how the draft legislation would provide such immunity from antitrust laws, however. This should be stated clearly in the legislation. Further work needs to be done on developing suitable and effective language. The APA does not have a suggestion at this time but intends to work with SWAPA and SEAP and may be able to recommend specific language or at least a legislative approach in the near future.

Respectfully submitted,

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TO: BRAD PIERCE / MARILOU MADDEN

FROM: Paul Kirchner

DATE: November 5, 1990

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER PAGE): 6

MESSAGE:

STATE OF ALASKA
OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF POLICY

COMMENTS OF THE AMERICAN PILOTS' ASSOCIATION
ON
REVIEW DRAFT OF "THE ALASKA MARINE PILOTAGE STUDY"
November 5, 1990

The American Pilots' Association (APA) appreciates the opportunity to comment on the Review Draft of "The Alaska Marine Pilotage Study" (the "Study").

The Study is a very impressive document that evidences a thorough and objective review of Alaska state pilotage regulation. It provides accurate and useful information, thoughtful analysis of the strengths and weaknesses of Alaska's regulatory system, and well-considered recommendations for improving the system. The APA is particularly pleased with the Study's acceptance of the need for improved training and entry requirements.

To the extent that the Study's recommendations are embodied in the proposed legislation to modify the Marine Pilots Act, the comments of the APA on the legislation address the underlying recommendations and will not be repeated here except to express again the disappointment of the APA that the Review Draft of the Study does not recommend limiting the number of pilots.

The APA does offer the following minor comments or suggestions on the factual discussion in the first part of the Study.

1. Page 1 - Description of State/Federal Pilotage Jurisdictions

The description of state pilotage jurisdiction should include not only foreign-flag ships but United States-flag ships on foreign voyages as well.

2. Page 4, Note 8 "Vessels Sailing Under Register"

Technically, the U.S. Customs Service has never granted permission to American vessels to engage in foreign trade. No permission is necessary for such trade. Indeed, at least until the Vessel Documentation Act of 1980 went into effect in 1982, it was not necessary for a vessel to have any document at all in order to to engage in a United States foreign trade. It might be better to state that vessels sailing under register are United States-flag vessels engaged in a foreign trade or in any trade other than one requiring a coastwise, Great Lakes, or fisheries license.

3. Page 4 Voluntary v. Compulsory Pilots

This discussion seems to confuse two different concepts, viz., compulsory v. voluntary pilots and independent v. employee pilots. Compulsory pilotage does, in fact, refer to a pilot who is used by a ship under compulsion of law, whether federal law or state law. A federally licensed pilot on a United State-flag coastwise vessel (use of the term "enrolled" to refer to a vessel engaged in the domestic or coastwise trade is no longer accurate) is a compulsory pilot who is required to direct and control the vessel under 46 USC §8502(a). Conversely, some state pilotage requirements are considered voluntary, e.g., Oregon's.

The federal pilotage requirement can be met with a federally licensed pilot who is a member of a vessel's crew. There are, however, some groups of federally licensed pilots who operate in particular ports, are not members of vessels' crews, and go aboard vessels only when the vessels are moving in the port. Pilots in these groups operate somewhat like independent state pilots, although in some cases they enter into employment contracts with vessel owners and otherwise can be more accurately considered employees.

Most state pilots are required to be independent of the vessels and vessel owners for which they provide their services. They are more correctly viewed as officials or agents of the state that licenses them. This is one of the distinguishing features of state pilots. Ironically, Alaska is one of the few states in which a state pilot need not be independent of a vessel or its owner. The oil industry and certain people with an interest in pilotage have pointed out to the APA that there is nothing in Alaska law to prevent a vessel owner from employing a compulsory Alaska pilot to serve exclusively on its vessel. As the APA has observed, this is one of the shortcomings of the Alaska system.

4. Page 8 Apprenticeship/Deputy Pilot Programs

The description of these types of programs and the differences between the two is somewhat inaccurate.

Although all programs vary, we are not aware of any apprenticeship program, at least of an APA member, that is independent of state oversight. A state with an apprentice program typically

accepts and assigns applicants to the program, which is run by the pilot association. Thereafter, the pilot association or its members may be required to certify the progress of the apprentice in the program in order that the apprentice may move through the apprentice-deputy progression and receive increasingly broader state licenses. This process is not free from state oversight, however, and the state control is present from the start of the apprenticeship.

The real distinction lies primarily in the level of prior experience required and the resulting extent of training involved in the two programs.

5. Page 11 Pilot Liability

It is not true that "maritime law generally holds that pilots are not personally liable for damages caused to life, ship and facilities." In the absence of liability limiting or exculpatory provisions in statute, regulation or contract, pilots are always personally liable for their own negligence. The fact that until recently it was rare for pilots to be sued and have damages assessed against them was the result of two factors. First, the limited resources of a typical state pilot were considered as making a judgement against a pilot of dubious value and, under most circumstances, not worth the expense of the litigation. Also, because of the traditional maritime law principle that a vessel (in voluntary and compulsory pilotage settings) and a vessel owner (in a voluntary pilotage setting) is liable for the negligence of a pilot, it is not in the interest of vessel owners

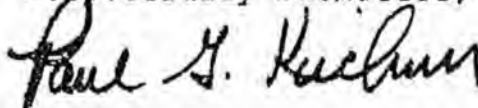
to obtain a finding of negligence on the part of the pilot.

The discussion in the Review Draft is correct in suggesting that the traditional liability situation may be changing. Pilots are being sued with increasing frequency; the noncompulsory/compulsory test for applying the master/servant rule for determining vessel owner liability is losing its rationale (the test really should be independent/employee rather than noncompulsory/noncompulsory); and state and federal oil pollution laws are creating increased uncertainty in this area. All these factors make limiting pilot liability more urgent than at any time in the past.

CONCLUSION

The APA appreciates the opportunity to comment on the Study. We look forward to continuing to work with the State of Alaska in improving its state pilotage system.

Respectfully Submitted,



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October 31, 1990

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DEPT OF
ECONOMY & BUDGET
10/31/90

STRATEGIC PLANNING

Re: Draft Legislation Amending the Marine Pilots Act

Dear Mr. Pierce and Ms. Madden:

The following is a response by the Southwest Alaska Pilots Association (SWAPA) to the draft legislation attached to Gary Amendola's October 8, 1990 memorandum and the Alaska Marine Pilotage Study ("OMB report").

The areas of most concern to SWAPA relate to (1) limited licenses, (2) grand-fathering of existing licenses, (3) specific training requirements for new licensees, and (4) antitrust protection. We recommend and comment as follows:

1. Board Powers and Duties. Sec. 08.62.040 (a) states the "board shall have authority to ... and (b) states the board, may by regulation, make other provisions ..."

Comment. The board should not only have authority but should be mandated to do all things listed in this section. The above underlined language should be changed to read the board shall. Although the past legislation has suffered from the lack of clarity as to the board's authority, there has also been a lack of initiative on the part of the board to exercise its authority. We believe that strong language should be inserted to require the board to exercise its powers and duties under 08.62.040.

2. Audit. Sec. 08.62.040 (7) states that the board shall have authority to "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".

Comment: This subsection requires further detail. SWAPA does not want routine and undirected audits of their books unless specifically required for compliance with state law. It is important that the board have the authority to check both Association financial records and those of pilots whose pilot fees are not collected by an association for compliance with published tariffs.

3. Tariffs. Sec. 08.62.040 (4) gives the board authority to "adopt regulations establishing pilotage regions ... and setting pilotage tariffs for each region, ~~provided that the board may adopt different tariffs within a region if justified.~~"

Comment: We recommend that the language that "the board may adopt different tariffs within a region" be deleted. The language is unclear and if interpreted to allow different tariffs within a region using different criteria, such a procedure would effectively gut a stable tariff system.

4. Endorsements. Sec. 08.62.080 (c) should be changed to read: "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." ~~The board shall establish criteria upon which to determine whether to issue or renew an endorsement. Among other factors, the board must consider local knowledge and recency of service in determining whether to issue or renew an endorsement.~~

Comment: Pilots should indefinitely retain endorsements to ports for which they are licensed at the time of enactment of this legislation subject to recency rules adopted by the board. This privilege, however, should extend only to a "grandfathered" pilot, so as not to perpetuate a multi-regional licensing system. Only then can the concept of licensing in exclusive regions be enforced without prejudice to existing license holders.

5. Entry Level Qualifications. The following changes should be made to Sec. 08.62.100(b):

(b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board of the following service or combination thereof:

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

(4) Two years service as commanding officer of United States government vessels of not less than ~~1,000~~ 1,600 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

(5) ~~Sec. 08.62.100 (5) two years of service as master of local vessels appropriate to the pilotage region in which the applicant seeks to be licensed, while holding a license as master of ocean steam or motor vessels of any gross tons.~~

Comment: Changes to (2) allow for experience on any vessel of 1,600 gross tons or more such as a fish processor ship, instead of confining such experience to freight and tow vessels only.

Changes to (4) make the experience requirement of 1,600 gross tons consistent with the vessel size experience requirements in (2) and (3).

Section (5) should be deleted in its entirety. This provision would, for example, allow captains of small fishing vessels in a pilotage region to qualify to master larger tonnage vessels. We do not feel this experience is appropriate for a license qualification. In the alternative, the added language is recommended.

6. Limitation of Licenses. A new section should be added as follows:
"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."

Comment: We feel that it is critical that the board limit the number of pilot licenses. As pointed out in the OMB report, all maritime states with the exception of Rhode Island, Hawaii, Virginia, and Washington limit the number of pilots. This is done for the very good reason that unlimited licensing has caused a surplus of pilots and cut-throat competition. Pilots are then at the mercy of agents and ship owners whose desire for meeting a schedule are more important than safety considerations. Another problem is with the training of deputy pilots. Pilots may simply refuse to train an unlimited number of competitors. Under a limited license system, a new trainee would be welcomed as a needed addition to the pilotage work force.

7. **Applicant Screening.** Another section should be added as follows:

- (a) If more applications are received than requested, the board will select the most qualified applicant, depending on:
 - (i) Documented sea time;
 - (ii) Time spent serving as master;
 - (iii) Formal maritime training;
 - (iv) Experience in the waters for which applying;
 - (v) Previous piloting experience.
- (b) The selected applicants will be given a written examination consisting of 40 questions on local knowledge, 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 6 years, and is not renewable.

Comment: The board should be given direction on how to select candidates should there be an excess of candidates over positions under a limited license system.

8. Training. A new section should be added to read as follows:
- (a) The deputy pilot will be sent to the association of that district 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. In Southwest, 25 dockings and undockings tug assisted; 25 dockings and undockings without tugs. 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.

Comment. The legislation should specify both entry level licensing and training requirements. The details of qualifying and training a pilot should not be left to the changeable discretion of the board.

9. Pilotage Regions. A new section should be added defining the pilotage regions as follows:

- (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:

- (i) "Southeastern Alaska Pilot Region" shall include all waters of Alaska from Dixon Entrance to Yakutat.
- (ii) "Southwestern Alaska Pilotage Region" shall include all waters of Alaska from Icy Bay to Demarcation Point, including Dutch Harbor and Captain's Bay.
- (iii) "Aleutian Island Pilotage Region" shall include all waters of the Aleutian and Alaska Peninsula.

Comment: Dutch Harbor and Captain's Bay have been included in the Southwestern Alaska Pilotage Region because SWAPA is the only association that can handle the larger tonnage ships in these areas and has a substantial investment in the pilot stations in these locations. SWAPA will continue to train deputy pilots to qualify for these areas.

10. **Antitrust Protection.** In addition to Sec. 08.62.175, allowing marine pilots to form a pilot association, Sec. 45.50.572 (a) should be amended to read: "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."

Comment: Merely approving the formation of pilot associations under Sec. 08.62.175 may not be enough to provide the anti-trust protection contemplated by the OMB report. Marine pilot associations should be specifically exempt from state anti-trust laws under Sec. 45.50.572(a).

11. **Penalties.** The minimum and maximum fines under Sec. 08.62.190(a) should be increased to "not less than \$5,000 nor more than \$15,000"; under (b) to "no less than \$1,000 nor more than \$5,000." The minimum and maximum fines should be doubled for the second conviction.

Comment: Some ship owners have taken the attitude that they are willing to pay a fine as a cheaper alternative to hiring a pilot. A higher fine will

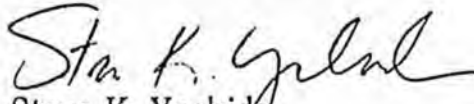
Brad Pierce/Mary Lou Madden
October 31, 1990
Page 7

make it uneconomic for such people to think that way. Doubling the fine for a second offense will deter intentional and systematic violations of the law.

If you have any questions about these comments and recommended changes to the draft legislation, please feel free to call me.

Very truly yours,

STEVE K. YOSHIDA, P.C.


Steve K. Yoshida

SKY/mw

cc: Charles Cloudy
SWAPA Members

Faxed to Brad Pierce/Mary Lou Madden at 465-2079 on 10/31/90

October 27, 1990

Mr. Brad Pierce
Ms. Marilon Madden
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OFFICE OF
MANAGEMENT & BUDGET

OCT 29 1990

STRATEGIC PLANNING

Dear Mr. Pierce and Ms. Madden:

I am a member of the Southeastern Alaska Pilots' Association and recently had the opportunity to review the Office of Management and Budget's Alaska Marine Pilotage Study.

You are to be highly commended on the thorough, methodical and impartial approach employed in this study. Your hard work and dedication has resulted in a study that provides a solid cornerstone from which to strengthen the Alaska State Pilotage Act.

I strongly concur with most of the conclusions and recommendations in the study. However, there are certain aspects of some of the recommendations that I believe warrant further study and action.

The following comments reflect my concerns, in this regard, and are submitted for consideration during the final review:

PILOT QUALIFICATIONS

Marine Experience

Marine experience is widely recognized as the paramount requirement for any pilot. Other states ensure their pilots possess this important ingredient by making extensive seagoing experience a prerequisite, and/or through long term pilot apprentice programs. It is my opinion that Alaska's Pilotage Act should have strong and firm experience requirements. Accordingly, it is suggested that a minimum of 8 years of licensed seagoing experience be specified as a basic entrance requirement for Alaska pilotage.

Docking/Undocking Requirements

Alaska's current piloting Statutes and Regulations requires entry level dockings and undockings for limited and unlimited licenses. At this requirement, as it now stands, to have little or no value. My experience has been that many of the people doing dockings/undockings are not ready for this level of training. This is not the fault of

the pilot trainee. After all, he is just trying to satisfy the Statute requirements.

I strongly suggest that the requirement for dockings and undockings be relegated to the final stages of the pilot qualification process. At this point, it would be more beneficial to the pilot trainee, and it would allow his proficiency to be more accurately and fairly evaluated. A requirement along the lines of the following sequence is recommended for insertion in the pilot qualification process:

- A minimum of 5 observed dockings and 5 undockings in every port (where there is a dock).
- Trainee is required to pass a comprehensive written examination.
- Trainees' progress is evaluated by the pilot board.
- Pilot board designate those trainees found ready to undergo ship docking/undocking training.

Even a requirement such as this would be conservative compared to corresponding requirements in other states' pilot statutes.

PILOT EVALUATION AND LICENSING.

Renewal Check-Ride Requirement

It is an unaware of any established precedence, or justified necessity, for check-ride proficiency testing of fully licensed marine pilots. By its nature, piloting does not lend itself to check-list evaluation or decline industry check-ride requirements. Changing factors make each docking or undocking different. Even among pilot peers, a variety of procedures and techniques are used in shiphandling. Thus, the only right way to dock or undock a ship is to do it as safely and expeditiously as possible. No check-off list will guarantee this result.

The expertise for any given piloting area is best represented by the fully licensed working pilot, who has a good record. A pilot's expertise is reproven everyday by doing another successful job. To subject a working licensed pilot to a proficiency test, or kibitzing from a peer, is clearly unproductive. In those cases where a pilot has a record of incidents/accidents, then some recertification requirement may indeed be appropriate. Such cases should be handled on an individual basis in accordance with procedures established by the pilot board.

LIMITING THE NUMBER OF PILOTS

The only rationale evidenced in the study for not limiting the number of pilots is that "----- the state's interest is served by ensuring that there is an adequate number of pilots in all regions to provide pilotage service". This reasoning seems more applicable to the regulation of businesses than it does for sustaining a public service. Further, it undermines what is perceived to be one of the primary responsibilities of the pilot board; that being, to ensure all ports and waters of the state are provided adequate pilot services. Maintaining pilot services on around the clock basis is a crucial part of any pilotage act, and should not be left to the choice of competition. Accordingly, it is believed that the pilot board should continually monitor and review pilot requirements for Alaska's ports and waters. Recruitment and licensing of pilots would then be authorized to meet defined requirements.

Not limiting the number of licenses in no way assures that the states new or unique pilot needs will be satisfied. Rather, it is more likely to promote unwarranted competition for the easier and more lucrative piloting work. This carries with it all the unsafe and unsavory acts that are contrary to safe piloting practices. Pilot regulations would be routinely violated in the heat of competition and collusion with shipping company interests. I strongly suggest that any new Alaska pilotage legislation have provisions for closely monitoring pilot requirements, and for only issuing licenses to satisfy defined requirements.

PILOT DISCIPLINE

Pilot Coordinator.

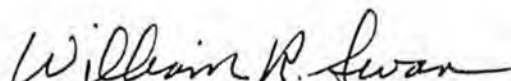
The study offers no justification for why the pilot board should be staffed with a person with this sort of centralized authority. The coordinator would easily become a dominant individual acting in the name of the pilot board rather than at its pleasure. If the coordinator position is filled by a person with a marine background, then the position would undoubtedly usurp the roles of the marine pilots on the pilot board. Furthermore, I believe it would be very unproductive to fill this position with anyone who may have preconceived ideas and prejudices obtained from previous Alaska piloting experience.

I fully support a strong pilot board that has specific responsibilities, duties and functions, and the authority to carry them out. Accordingly, such a board would require permanent administration and investigative support. The marine pilots on the board would be available to assist with any marine expertise or interpretation. Injecting a Pilot

Coordinator position into this organization, and having him function as a "Piloting Czar", seems to subvert the entire board/commission concept.

Thank you for your outstanding study and for being given the opportunity to comment on it. You have my continuing support.

Sincerely,


William R. Swan

Oct. 29, 1990

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Ms. Marilou Madden

Mr. Brad Pierce

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Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

After reviewing the draft legislation amending the Alaska State Marine Pilots 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 pilots statutes. For persons such as yourselves, who are not directly involved in pilots, 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 Capt. Eisensohn and Hodgman. 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 grapple 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 Hodgmen 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 (b): 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) 360 Days working as a pilot in a recognized pilotage area
(Under present wording, pilotage experience elsewhere is not even mentioned.)

(C) 3 Years as a Deck Officer on Vessels of 1600 Tons or more in Alaskan waters

(C) 3 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. Hodgmen 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. 08.62.040 - 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 lease 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 - Penalites.

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 grand-fathered, 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:

Mary Lou Madden
Brad Pierce

Following seven pages are
comments from Capt. Stuart Wood.
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.

Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

October 31, 1990

Ms. Marilou Madden and Mr. Brad Pierce
State of Alaska
Office of the Governor
Office of Management & Budget
Division of Policy
Post Office Box AD
Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

I have read your pilotage study and found it to be excellent. I have also read Mr. Amendola's draft legislation amending the Marine Pilotage Act. His draft is also very good.

The Southeastern Alaska Pilots' Association remains firmly committed to safe, reliable and efficient pilotage. To further this commitment, the Southeastern Alaska Pilots' accepts the challenge to assist in formulating proposed legislation to modify the Marine Pilotage Act, which we believe is long overdue.

Specifically, we are concerned with:

- (1) Intent. The ability to limit the number of licenses must be included in this pilotage act. ("The Board of Marine Pilots shall provide for a sufficient number of licenses to meet the requirements of the marine industry in the State of Alaska"). The state must recognize this requirement as a necessary evil to promote safe and efficient pilotage. The cost of the training programs proposed by your study will in itself place a financial burden on the marine industry. If the marine industry is to bear this cost, it is only reasonable to limit the number of pilot trainees required to be trained to meet the future demands of industry. Safety is compromised when too many pilots are required to train-up too fast or there is no perceived need for the trainee and training becomes a burden rather than a necessity. Training programs must be based on a need for additional pilots for the training program to be worthwhile and self-serving to industry and the individual pilot trainee. Pilot trainee and working pilots need to earn at least the average rate of pay for pilot trainee and working pilots on the West Coast of the United States to ensure the quality of applicant pilots and working pilots will be available.

- (2) Improved Pilot Qualification. An applicant must have a license as Master of vessels of 1600 tons or more, have a minimum of 2190 days of marine experience as a licensed deck officer, or a commissioned deck officer serving aboard a government vessel. In addition to the above requirements, the applicant must meet at least one of the following requirements or an equivalent combination of more than one. (All sea-time calculated using underway time only. One day underway equals one day of seetime.)
- A. 730 days service as Master of local, coastwise or oceangoing vessels.
 - B. 365 days working as a state-licensed pilot from another state.
 - C. 1095 days as a deck officer on vessels of 1600 tons or more in Alaskan waters.
 - D. 1095 days as a deck officer on ocean-going or coastwise vessels while holding an unlimited ocean (or Great Lakes) Chiefmate or Master's license.
- (3) Marine Pilot Coordinator shall also direct and assist in accident investigations as necessary. State pilotage acts are weak in this area and a coordinator would go a long ways to insure a timely investigation was made by a knowledgeable person (provided the coordinator has a marine background).
- (4) License Requirements. Port-specific-licensing outside the pilotage region for which a pilot is licensed is the same as not having pilotage regions. Your study shows regions are in the interest of pilot proficiency and safety. To deviate from this is not in the best interest of pilotage. This state has recognized Southeastern and Southwestern Alaska for years. As natural geographical regions, these two regions need to be further defined and regulated on a regional basis.
- (5) Renewal. Grandfathering seems to be the general consensus as it applies to meeting the minimum qualifications recommended by this draft proposal. We also recommend a pilot work on their license for a minimum of sixty days during the biannual renewal period or the license is considered lapsed. This proposal would insure a pilot is intent on working on the license and maintaining pilot proficiency in the pilotage region.
- (6) Mandatory Employment of Licensed Pilots. We recommend adding "A pilot will be on duty while underway directing the movement of the vessel at all times. The Master may relieve a pilot for cause, and shall submit a written report within ten days explaining the reason the pilot was relieved." (The State of Alaska recognizes the Master

Marilou Madden & Brad Pierce
October 31, 1990
Page 3

remains in command of the vessel at all times, and must relieve a pilot for cause when deemed necessary.)

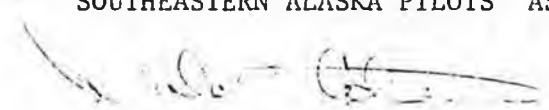
(6) Penalties. We recommend deleting the words "when a licensed pilot is available". This is a loophole that could be used to avoid the penalties of this section or when more than one group of pilots is working the same region. The owner, master or agent gives insufficient notice to either group to meet the pilotage call. The Association has over the years maintained a sufficient number of pilots to meet the demand for our services. However, as more pilot groups begin working in a region, which group will take the responsibility for providing the necessary pilots to meet the demand on a year-round basis. We believe this problem should be considered by the state and industry while developing this amended pilotage act. The penalties are too low for violating this act and should be increased to at least cover the cost to investigate the violation.

(7) Definitions. We recommend adding the following definitions:

- A. Seatime.
- B. Pilot Coordinator.

Sincerely yours,

SOUTHEASTERN ALASKA PILOTS' ASSOCIATION



Dale O. Collins
President

DOC:bjj

1610 Water Street,
Ketchikan,
Alaska 99901.

STRATEGIC PLANNING

October 29th 1990.

Mr. Brad Pierce
Ms. Marilou Madden
State of Alaska
Office of Management & Budget
Division of Policy
P.O. Box AD
Juneau, AK 99811-0199

Dear Mr. Pierce and Ms. Madden

As a member of the Southeastern Pilots' Association, I would like to highly commend you on the outstanding and impartial methods you took to make a study of "Alaskan Marine Pilotage", and the eventual results will surely help to make our state waters a better and safer place for all.

I agree with most of the conclusions of the study, but I believe there are certain aspects which need to be studied further.

Entry Level Qualifications:

In the State of Alaska the existing state entry levels are woefully inadequate and low, especially when compared to other states, or any other maritime country. If the state is not prepared to make the minimum license "Ocean Masters-Unlimited Tonnage", then it is suggested that entry level qualifications be set at a minimum of 6 years licensed seagoing experience. This would be fair to persons with local experience and those with offshore experience, and would help to ensure we get applicants with a good maritime background, which is not happening to-day.

Docking Requirements:

The existing regulation requirements for Limited and Unlimited Licenses require both dockings and undockings with no requirement for observations of dockings and undockings, which is like putting the "Cart before the horse".

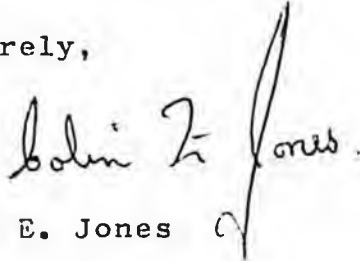
I would kindly suggest that applicants should have a minimum of 75 observed dockings and 75 observed undockings.

Pilot Performance:

I think that the idea of establishing a check-ride system for fully licensed pilots is completely unnecessary, every time a pilot performs a docking or undocking successfully his ability and expertise is proven especially in Southeastern waters with the strong winds and currents, many low horsepower tugs, and old and fragile piers. The only time a check-ride system should be necessary is when a pilot has a record of accidents.

I appreciate being able to comment on your study , and thanks for a job well done.

Sincerely,

A handwritten signature in cursive script that reads "Colin E. Jones". The signature is written in dark ink and is positioned above the typed name.

Colin E. Jones

CAPTAIN JAMES A. HODGMAN
415A Front Street
Ketchikan, Alaska 99901

October 29, 1990

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:

Captain Elsensohn has given me a copy of the Alaska Marine Pilotage Study and proposed legislation flowing therefrom and requested that I submit comments to you. I share his admiration for the work you have done.

My comments are based on thirty years experience as a Coast Guard officer and seventeen years as an Alaskan pilot, including four years on the State Board of Marine Pilots.

There is no question that the enactment of the draft legislation will result in major improvements in pilotage. I disagree with your study in that you conclude that by not limiting the number of pilots you ensure that there will be an adequate number of pilots available. In the past pilot organizations have ensured that pilots were available to meet all of the requirements of industry. These requirements change materially from year to year and day to day. It takes considerable time, effort, judgment and money to ensure that qualified pilots are always available. The benefits to the associations compensate for this in a non-competitive system.

This year for the first time there was competition in Southeast Alaska. Two (or three?) pilots obtained the business on one cruise ship. These pilots essentially remained on board and were one-company pilots subject to the pressures you mentioned in the study. They provided "competition", but was it fair? The company actually went to our pilot association to ensure that we would provide backup pilots if they so requested. The Southeastern Pilots' Association maintains a year-round office staff; keeps up-to-date information on charts, waterways, routes, ports; provides pilots to work with industry on local conditions; provides pilot board members and representatives to work with the pilot board; supervises dockings; assists pilots in training; provides extra pilots to meet peak work loads; provides pilots to handle extremely demanding assignments during slow winter months; etc. Will it be in our interests to continue this overhead that is essential to the state if

competition spreads and splinter pilots pick off vital cruise ship company business? Can the state expect us to perform these services when company pilots on the same pay scale operate with no overhead?

While we disagree on pilot competition, to be meaningful I have developed specific comments on the draft legislation that are based on your decision not to limit the number of pilots in a region.

COMMENTS ON DRAFT LEGISLATION BY SECTION:

Sec. 08.62.040 Powers and Duties

- (a)(4) Delete "provided that the board may adopt different tariffs within a region if justified."

Tariffs are different for different ports within a region. The above phrase seems redundant and confusing.
- (a)(6) Change to include pilot groups and independent pilots. All pilots should be subject to review equally.
- (a)(7) Same as (a)(6) above.
- (a)(8) Same as (a)(6) above.
- (b) Delete "conducted by pilot organizations."
All pilots in a region should have equal training programs.

Sec. 08.62.045 Marine Pilot Coordinator.

I agree that such a position is needed, but believe that the position should be subject to guidance by the pilot board and that this should be stated in the law. Otherwise, the board's functions are liable to be usurped. One additional thought--I believe it will be extremely difficult to find a qualified candidate who would take the job.

Sec. 08.62.080 License Requirements.

- (b) & (c) Paragraph (c) makes paragraph (b) meaningless. Alaskan pilotage regions are probably as large as any in the world and the goal should be for a pilot to operate in only one region. Yet abrupt implementation of paragraph (b) probably would create hardships and shortages. It is common maritime practice in such instances to grandfather existing licenses.

Sec. 08.62.100 Entry Level Qualifications

- (a)(1) Revise to require services as a master of ocean or coast-wise vessels of not less than 1600 gross tons as in (3). I'm sure this was intended.

- (a)(5) This section could negate the four prior sections and tie the board up in endless applications, arguments or legal actions.
- (b) The preceding requirements could be thwarted by giving time for shipyard overhauls, layups, vacations, etc. I suggest an additional section stating that all services will be calculated using Coast Guard methods.

Sec. 08.62.120 Renewal

- (b) One day's piloting would meet the requirement as written. I suggest a minimum of sixty (60) days service as a federal or state pilot.

Sec. 08.62.150 Enforcements Authority

- (2) I'm not sure what is meant by "chemically impaired". Does it mean an alcoholic who uses alcohol and a drug addict? Or does it mean a pilot that is under the influence of drugs including alcohol while on duty. I believe it should cover both cases.

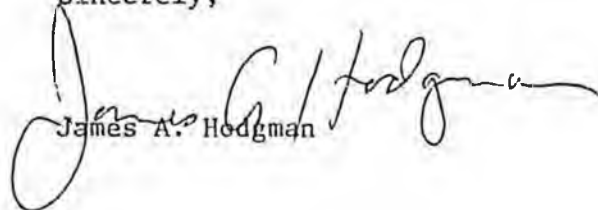
Sec. 08.62.160 Mandatory Employment of Licensed Pilots

I suggest further clarification by adding "who will be on duty at all times when the vessel is underway.

Sec. 08.62.190 Penalties

- (a) & (b) In the past vessels have delayed their requests for pilots sufficiently that a pilot was not available when desired. I suggest deletion of "when a licensed pilot is available". Further, penalties in both (a) and (b) are grossly inadequate; particularly when compared with the pilotage fees the vessel is avoiding. In the past the Attorney General's office has been unwilling to prosecute fully documented cases, presumably because they weren't worth the effort.

Sincerely,


James A. Hodgman

JAH:bjj

Bill Sharp

S.Z. Stewarding

be explicit in law w/ intent
industry doesn't want to pay full cost
of ↑ training
balance crucial

Capt Terry Bennett

Indep. Pilot
S.E.

just be tradeoff of safety for cost
board makeup - sb looked at
no evidence that tariff competition erodes
standards
companies don't control key
monopolies = higher cost to industry

Tommy Thery
support efforts to ↑ standards
concern about economic side
will create monopoly - won't help safety
or public policy

no standards for rate making
/ just limit liability

Joseph Farrell - (with H. Dispatchers)
wants all areas on the Board
wants no barriers to entry

what if pilot wants?
for company?

Steve Ashadz (sp?) . Swift Pilots org.
support but want more direction
needs to look like benefits public.

Dale S.E. AK Pilots Pres.
force only 1 organization in each area
limit # (S.F. does?)

Scott Jones AK Parttime
balance on board is crucial

Murphy Pres SWAKP
balance crucial
industry wants company pilots
↑ standards likes ongoing education

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF POLICY

STEVE COWPER, GOVERNOR

P.O. BOX AD
JUNEAU, ALASKA 99811-0199
PHONE: (907) 465-3568

October 15, 1990

Senator Druc Pearce
Rm. 510, Capitol
P.O. Box V
Juneau, 99811
Attn: Peg Cahill

Dear Senator Pearce:

Enclosed for your review are draft copies of "The Alaska Marine Pilotage Study" and proposed legislation to modify the Marine Pilots Act. These drafts are being distributed as widely as possible to gather comments from marine pilots, ships agents and other interested parties before a final study document and draft of proposed legislation are presented to the Board of Marine Pilots at its meeting on November 8 and 9 in Anchorage. Please address your comments to the Office of Management and Budget, Division of Policy no later than November 1, 1990 if you wish to have them incorporated into the presentation to the Board.

All interested parties should understand that this is only the beginning of an extensive public review process. There will be ample opportunity for all viewpoints to be considered as legislation is drafted and proceeds through the legislative hearing process. The regulatory changes proposed in the study will be considered by the Board of Marine Pilots in accordance with standard public notice and administrative procedures requirements.

Thanks very much for your attention.

Sincerely,

Brad Pierce

Brad Pierce
Senior Policy Analyst

Marilou Madden

Marilou Madden
Senior Policy Analyst

BP/MLM/dmc/91F-1142

Enclosure(s)

57% return on survey
interviewed all shipping agents
C.C.
Pd members
Asst. nda

ALASKA MARINE PILOTAGE STUDY

(REVIEW DRAFT)

explicit social contract
w/ state

state offers liability
+ anti-trust protection
state gets more control
+ people are
protected

By
Marilou Madden
and
Brad Pierce

tariffs also include
litigation expense.

October, 1990

Office of the Governor
Division of Policy
P.O. Box AD, Juneau, Alaska 99811

EXECUTIVE SUMMARY

In response to concerns about public and environmental safety in the maritime trade, Governor Cowper directed his Office of Management and Budget, Division of Policy, to conduct a study of Alaska's marine pilotage system and to make specific recommendations to strengthen the State Marine Pilotage Act.

1. FINDINGS

• *Pilotage serves an important public function.*

Government has the authority to protect life, property and the environment by insisting that ships operating in coastal waters carry pilots familiar with local conditions.

The current system in the United States splits 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 operating within the waters of the state.

• *Alaska's current pilotage statute has significant flaws.*

Although the current Marine Pilotage Act has several features in common with other maritime states' legislation, there are weaknesses and gaps in current statute.

Alaska's marine pilot statute is similar to its statutes governing other boards and commissions. The statute sets out only basic duties and responsibilities and was intended to delegate broad regulatory powers to the Marine Pilot Board. In recent years, various Assistant Attorney Generals and others have questioned the existing Act, maintaining that current language does not give the Board specific authority to set rates and establish regional licensing requirements. As a result, the Board has not reviewed the pilotage rate schedule for several years.

More important, weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.

The Act fails to mention several areas of growing concern. In particular, it does not address pilot liability or the role of pilot associations. These are areas of increasing contention in Alaska.

• Changing conditions in Alaska's maritime trade have caused tensions and strains within the pilotage profession.

For the first 10 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 to serve the Southeast and Southwestern regions of Alaska. The associations were responsible for hiring, training, and dispatching pilots and collecting fees from shippers. Occasional discipline problems with individual pilots were handled internally.

During the past 10 years, the marine pilotage system in Alaska has experienced considerable growing pains as shipping traffic in state waters has increased, particularly in the Southeastern and Aleutians regions. This growth has resulted in new tensions and opportunities

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.

Increased demand for pilotage services has created niches for new groups and configurations of pilots. During the past three years, splinter groups of pilots have broken off from the original Southeast (SEAPA) and Southwest (SWAPA) associations to offer competing pilotage services.

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.

2. CONCLUSIONS

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 antitrust litigation, the state should require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

3. RECOMMENDATIONS

The report makes the following specific recommendations for strengthening the State Pilotage Act and improving pilotage regulation in the state.

- *The Marine Pilotage Act should be amended to include an opening statement of intent, which establishes the fact that marine pilots are employed under state control for the purpose of protecting lives, property, vessels, and the marine environment.*

- *The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.*

- *The Board should establish an additional pilotage region in the Aleutian Chain.*

- *The Board should move towards exclusive licensing by region.*

- *The Board should establish increased standards for progressive licensing, including a formalized deputy pilot program. The Board should develop training criteria*

that provide all deputy pilots equal opportunity to perform the ship movements necessary to upgrade their licenses.

- The Board should establish a **check-ride system** for **fully-licensed pilots**, conducted by current senior pilots designated from each region by the Board.

- **Recency criteria** should be adopted for pilots to maintain endorsements for specific waters and ports.

- The Board should be authorized to conduct **random substance abuse testing**.

- Every pilot should be required to submit to a **complete annual physical exam**.

- The Board should develop an approved list of **continuing education** options and require that pilots complete a course between license renewals.

- The Division of Occupational Licensing should be authorized to hire a **full-time marine pilot coordinator** to investigate marine accidents, review training programs and participate in license examinations.

- All **complaints concerning pilotage service** should be directed to the State Board through the Marine Coordinator—not to pilot organizations.

- The state should pursue the possibility of establishing an **accord with the U.S. Coast Guard** to share information about accidents/incidents and to conduct joint investigations.

foundations
retirement
age?

- *The state should not place a specific limit on the number of pilot licenses issued.*

- *The Board should have authority to consider accident investigation and other state administrative costs in setting pilotage rates.*

- *Board meetings should be scheduled at least three times per year, with provision for emergency meetings at the request of the chair.*

- *The Department of Commerce and Economic Development Commissioner or designee position on the State Board should be reassigned to an active pilot from the Aleutians region. Non-pilot members should represent all regions of the state.*

- *The Board should either cease to require detailed information on ships' movements from individual pilots or should use the information to publish periodic management reports.*

- *Pilot organizations should be recognized in state law and chartered to provide state-approved training for deputy pilots.*

- *In return for limiting liability and providing protection from antitrust litigation, 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.*

• *In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to submit copies of their annual audits to the State Board or, in the case of individual contract pilots, to keep their books open for state audit.*

• *Individual pilot liability should be limited in statute to a specific dollar amount.*

• *Pilot license fees should be reviewed by the Board and increased substantially to reflect the increased costs of program administration.*

• *The tariff schedule should be reviewed by the Board and adjusted where necessary. The Board should consider special rates for unique circumstances.*

• *The Board should have the authority to include a training fee in the tariff schedule to provide partial support for training and continuing education programs.*

Alaska Marine Pilotage Study

1. INTRODUCTION

A. Study Background

In a January 1, 1990 letter to Governor Steve Cowper, Captain W.E. Murphy, a veteran Southwest Alaska marine pilot and former chairman of the State Board of Marine Pilots, expressed serious concerns about pilot training and performance standards in the state.¹ The main concerns expressed in his letter were that:

- Entry requirements into the marine pilotage profession in Alaska are too low and continuing education requirements are nonexistent.
- Local standards are failing to protect and maintain a high level of pilot competency.
- Alaska's practice of issuing an unlimited number of marine pilot licenses fosters competition among pilots, which allows steamship companies to exercise control over ship movements in compulsory pilotage waters and compromises safety.
- Under the current State Pilotage Act, the Board of Marine Pilots has great difficulty in developing regulations to improve standards and maintain a meaningful system of pilot discipline.

In response to Captain Murphy's letter, the Governor directed his Office of Management and Budget, Division of Policy, to conduct a study of Alaska's marine pilotage system and to make specific recommendations to strengthen the State Marine Pilotage Act and improve pilotage regulations. Under the provisions of Alaska's sunset law, legislation authorizing the Board of Marine Pilots is due to expire on June 30, 1991. The issues raised and discussed in this report are intended to provide focus to the executive and legislative review of the state's pilotage system.

B. Methodology

The first steps in the study methodology involved a review of marine pilotage literature and an analysis of pilotage statutes for the maritime states. Paul Kirchner, General Counsel to the American Pilots' Association, provided an extensive written opinion on the

¹See Attachment A for a copy of Captain Murphy's letter and Governor Cowper's response.

comparability of Alaska's standards to those in other states.² The bulk of information on the present status of marine pilotage in Alaska came from numerous discussions with individual pilots as well as responses to a written survey of all 94 licensed marine pilots. Meetings were held with representatives of the various pilot associations, Department of Law, Department of Commerce and Economic Development (Division of Occupational Licensing staff), and the U.S. Coast Guard. Members of the Board of Marine Pilots were interviewed by phone as were licensed ships agents from all of the shipping service companies operating in the state.

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

Copies of the draft report and legislation are being released to the Board of Marine Pilots and staff from the relevant state agencies in October for review before a final report is issued in November. Legislation to amend the existing State Pilotage Act is expected to be introduced during the First Session of the Seventeenth Legislature, which begins January 20, 1991.

C. Study Outline

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

²See Attachment B for a copy of Mr. Kirchner's letter.

2. HISTORICAL BACKGROUND

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

The Legislature recognizes that the waters, harbors and ports of the state are important resources, and it is deemed necessary in the interests of public health, safety and welfare to provide laws regulating the piloting of vessels utilizing the navigable waters of the state.³

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

the early pilotage records of the the colonies cover only sketchy accounts of the beginnings of the profession in America, and much has been lost or destroyed. Such scant records as exist seem to indicate a pattern of pilotage development progressing through stages of pure individual initiative, to periods of severe competitive practices resulting in a struggle for predominance and eventually government regulation..⁴

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

When the government of the union was brought into existence it found a system for the regulation of its pilots in full force in every state.⁵

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

Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be

³Florida Statutes §310.001

⁴Captain Earnest A. Clothier and Captain Hilton Lowe, Maritime Pilotage in America: Historical Outline with European Background, American Pilot's Association, 1979, p. 11.

⁵Gibbons v. Ogden, 9 Wheat 207

regulated in conformity with the existing laws of states, respectively, wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.⁶

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

...every coastwise sea-going steam-vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when underway, except on the high seas, be under the control of pilots licensed by the inspectors of steamboats.⁷

This act effectively established a dual piloting system in the United states: the historical state system and a new federal system. Generally speaking, vessels engaged in foreign trade (vessels sailing under register⁸ and foreign-flagged vessels) are under the authority of the states while American vessels engaged in domestic trade (enrolled vessels) are under federal authority. One exception to this general division of responsibility is Great Lakes traffic, which is under the exclusive regulatory control of the federal government through the Coast Guard. The exemption from state law of Great Lakes vessels was made pursuant to an international treaty with Canada which provides for piloting by persons having either U.S. Coast Guard or Canadian licensure.

The dual system of piloting has resulted in a dual system of pilots: federal or "voluntary" pilots, generally employees of the ship and state or "compulsory" pilots, who act as independent agents. The vast majority of working pilots in the United States are state pilots, numbering about 1,200 nationwide. By contrast, it is estimated that less than 50 federally licensed pilots are employed regularly, primarily on coastwise oil tankers.

The distinction between "voluntary" and "compulsory" used in legal texts and court decisions is somewhat misleading. The distinction is not one of freedom to employ or not to employ a pilot. Except on the high seas, all ships whether under register or enrolled, are

⁶46 United States Code §8501

⁷46 United States Code §364. The inspectors of steam vessels were employed by the Steamboat Inspection Service, created in 1852 as part of the Treasury Department. The service was transferred to the Coast Guard during WW II.

⁸Vessels sailing under register are American vessels granted permission by the U.S. Customs Service to engage in foreign trade.

required to have on board a pilot familiar with local conditions. In this sense, all pilots are "compulsory." Rather, the distinction refers to the terms of pilot employment. With enrolled ships, the pilot is considered voluntary in that he/she is an employee of the ship and in fact, often is actually the ship's master or other officer acting as pilot. With ships under registry, the pilot is considered "compulsory" in that the terms and condition of employment are set by state statute, not by the ship owner.

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

3. COMPARISON OF ALASKA STATUTES WITH THOSE OF OTHER STATES

During the course of U.S. history, a very large body of state law has developed around the marine pilotage profession.⁹ In several of the older states, marine pilotage practices, laws, regulations, and traditions have more than 200 years of development and refinement behind them. Currently, all 24 maritime states have established mechanisms for controlling the licensing of pilots, setting rates, and providing general oversight of the state pilotage system.

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

The Alaska State Pilotage Act (AS 08.62) was first enacted in 1970 and has been amended only slightly over the past 20 years. The original bill exempted all "vessels and tow boats of United States registry...engaged exclusively on the rivers of Alaska or in the coastwise trade on the west coast of the United States"¹⁰ from compulsory state pilotage. This section was amended in 1972 to exclude only those vessels of less than 300 gross tons. The 1973 legislature amended the act to give the Marine Pilot Board the authority to reexamine persons whose license had lapsed for less than two years if "the Board has reason to believe that the person applying for reinstatement of a license is incapable or incompetent to carry out the duties of a licensed marine pilot."¹¹ Section 08.62.185 of the Act was added in 1977, requiring that:

any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, when navigating in state waters beyond Alaska pilot stations either (1) employ a pilot licensed by the state under this chapter; or (2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.¹²

⁹Alex L. Parks, The Law of Tug, Tow and Pilotage, Second Edition Cornell Maritime Press, 1982.

¹⁰43 SLA 1970; "west coast" includes Alaska, Hawaii, and British Columbia, Canada

¹¹22 SLA 1973

¹²78 SLA 1977

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

Compared with other states, Alaska's Marine Pilotage statute appears quite sparse. It contains only three articles—addressing the Board of Marine Pilots, Licensing and General Provisions—and delegates broad rule-making responsibility to the Board. Such a practice is common in Alaska, where statutory language is often limited in favor of regulatory authority, which is presumed to provide more flexibility as conditions change. Thus, items which other states place in statute are left to the discretion of the Board. For this reason, consideration of other states' statutes in revising Alaska's law may not always be appropriate. However, common features of state pilotage need to be addressed in statute either directly or by explicitly delegating regulatory authority to the Board. These common features of the states' pilotage systems are discussed below.

A. System of regulation

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

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

Pilot boards may be housed in a state agency or created independent of agency oversight. Nine states, including Alaska, place their boards in an executive department, most commonly in the agency having responsibility for professional licensing. Alaska's Marine Pilot Board is housed in the Division of Occupational Licensing,

Department of Commerce and Economic Development. All such boards exercise statewide authority. Twelve states have established boards outside of any state agency. Of the states with independent boards, seven have boards established for each local port.

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

consists of two pilots licensed under [Chapter 62, Alaska Statutes] who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members...and the commissioner [of the Department of Commerce and Economic Development] or the commissioner's designee.¹³

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

B. Licensing

Because the essence of state piloting is knowledge of local waters and conditions, all states require training for person's wishing to become licensed. States have, in general, established two routes for qualifying for a state pilot license: apprenticeship or deputy pilot programs. In states opting for apprenticeship, local pilot associations usually employ and train the apprentices largely independent from state oversight. After the applicant has completed the apprenticeship to the satisfaction of association members, they present him/her to the state for examination. In states with deputy pilot programs, the deputy pilot is under the control of state licensure regulations from the beginning of the training. While the deputy often serves under an association pilot to gain the experience necessary to progress to full licensure, experience standards are set and examined by the board or state licensing official rather than the association. Alaska's system follows the deputy pilot form, although that term is not used in the statute.

¹³AS 08.62.010

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

assume public obligations in maintaining pilot stations and operating a pilotage system...[the state pilot] sees his duty and obligation as being owed to local political authority and the public, rather than to the shipowner.¹⁴

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

If the Board finds the applicant qualified to act as a branch pilot it shall issue him a license, and he shall thereupon become a state officer, to be known as a branch pilot and shall hold the office for one year next ensuing.¹⁵

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

The Board shall establish additional training requirements, including a program of continuing education, developed after consultation with pilot organizations.¹⁶

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

Thirteen state statutes either specify the number of pilots to be licensed or clearly delegate to the pilot board(s) the responsibility for setting the number of state licensed pilots. Two other states have statutory language which implies that the board(s) may limit the number of licenses issued. In effect, however, in those states without statutory provision for limiting the number of pilots but with mandated apprenticeship programs, the number of licenses is

¹⁴Quick, George A., "The Role and Function of a Pilot", paper presented to the National Academy of Sciences, 1979, pp. 8-10.

¹⁵Code of Virginia §54-1-905

¹⁶Washington Statutes §88.16.035)

limited *de facto* since pilot associations must recommend an apprentice for licensing. Alaska appears to be the only state without either a statutory limitation or a limitation through apprenticeship provisions. Thus, a recent Florida pilot study concludes that "Only Alaska issues licenses to anyone who qualifies and passes the examination."¹⁷

C. *Pilot Discipline*

All maritime states have instituted procedures for disciplining pilots. Where statewide boards or local commissions are used, this power generally has been delegated to such bodies. All states allow for suspension or revocation of a pilot's license for cause, generally incompetence, repeated negligence, or habitual substance abuse. A long-standing problem in pilot discipline has resulted from the dual pilotage system referenced above. Almost all states, including Alaska, require that a pilot hold an appropriate federal pilot license as a condition of state licensing. Thus, most state pilots hold both a state and federal license and may operate under either license, depending on the type of vessel being piloted. Since each license is issued under a different authority, this situation results in several anomalies. First, where a federal license is a precondition of state licensing, "when a state sees fit to discipline a pilot, perhaps even revoking his/her license, the federal license is untouched and remains valid."¹⁸

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

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

¹⁷Florida House of Representatives Committee on Regulatory Reform, *The 1989 Report on the Issues Associated with Mandatory Pilotage*, November, 1989

¹⁸*Report of the Pilotage Study Group* to the U. S. Coast Guard, September, 1989, p. 6

the power to act against a person who has been found incompetent by a federal authority.

In addition to the ultimate penalty of revocation, some state statutes institute a graduated system of penalties, beginning with reprimand or a fine. Washington State has recently amended its marine pilot act to grant the Board the ability to prescribe "disciplinary or corrective action, including training and treatment, that will be taken".¹⁹ Alaska's statute in this respect would appear to be a model. The Board has an impressive array of discipline options, including peer review and imposing "professional education requirements until a satisfactory degree of skill has been attained in those aspects of professional practice determined by the board to need improvement".²⁰

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

D. Pilotage rates

Of the states with pilot boards, fourteen charge the board with setting pilotage rates. Four states set rates by statute. Rates in the six remaining states are set by various persons or bodies. Alaska's statute is rather cumbersome in this regard. It gives the board the authority to "adopt regulations under the Administrative Procedures Act...establishing standards by which pilotage fees may be established."²¹

E. Pilot Liability

Maritime law generally holds that pilots are not personally liable for damages caused to life, ships, and facilities. However, past legal interpretations of the "master/servant" rule—where the pilot is considered to be the servant of the ship's captain—have come

¹⁹Washington Statute §88.16.100

²⁰AS 08.62.155 (a)

²¹AS 08.62.040 (4)

under increasing fire, based on the "compulsory" nature of state pilotage. If state pilots are indeed independent and not an employee of the ship's company, then the "master/servant" relationship should not hold.

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

To address these problems, several states have moved to limit pilot liability in statute. California statute clearly states that "when a pilot goes aboard a vessel, the pilot becomes a servant of the vessel and its owner and operator".²² South Carolina and Washington limit liability to \$5,000 in statute. Oregon has addressed the problem in a more complicated manner: it allows for pilots to purchase insurance on a 'trip' basis:

in an amount equal to the value of the vessel and its cargo, or such other amount as may be agreed upon between pilots and the vessel, its master, owners, agents or operators, insuring the pilots and the organization of pilots to which they belong against all claims or demands, arising from or based upon, directly or indirectly, pilotage of the vessel. The premium for such insurance shall be assessed in addition to the rates and charges specified [in statute].²³

Alaska statute does not speak to pilot liability.

F. Pilot Associations

Pilot associations are the traditional way in which pilots organize themselves to fulfill their duties. Pilots must be on call at all times to handle traffic into and out of pilotage waters. They must meet ships at pilot stations to offer services. They must be prepared to handle all types of ships in all conditions. Individually, pilots cannot offer the range and scope of services required. Therefore, associations of pilots have formed since the early years of compulsory pilotage in this country. Pilot associations offer centralized dispatch and clearance services. They either own or make arrangements for pilot boats to carry pilots to and from ships.

²²California Statute §1134

²³Oregon Statute 776.520

Through their members, they can offer 24 hour per day, year-round services. Together, the members provide the skills necessary to deal with all types of situations.

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

States have long recognized that pilotage lends itself to association among pilots, which is the reason behind state control over pilotage rates. However, few states have recognized associations formally. Without some form of state recognition, the traditional association has been challenged on antitrust grounds. Some states have sought to protect associations from such challenges. Florida, Hawaii, Louisiana, and North Carolina all explicitly recognize pilot associations.

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

Pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs the pilot's duties.²⁴

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

Table 1 outlines the provisions of each state's pilotage statute in some detail.

²⁴Hawaii Statutes §462A-15

TABLE 1: State Statutory Provisions Regulating Piloting

State	Level of Regulation	Limits on number of pilots	Requirements for license	Training	Duration of License	Residency Requirement
Alabama	State; State Pilotage Commission. Three members: official of steamship company, active bar pilot, professional or businessman licensed by state.	yes; "at no time shall there exist more pilots than are reasonably necessary to meet the demands or requirements of commerce." Number of pilots left to discretion of Commission (§33-4.30)	first class federal license; examined and certified to be competent: written exam, graded by three "fair, impartial and competent nautical men" (§33-4-35)	Apprenticeship—one year; apprentices must be selected and approved by state commission	not mentioned	yes
Alaska	State; Board of Marine Pilots. Seven members: 2 pilots, 2 industry, 2 general public, 1 commissioner of commerce or designee.	no	pass examination required by board; qualify under regulations adopted by board	no	not mentioned	no
California	State; Board of Pilot Commissioners. Seven members: 2 pilots, 2 industry reps, 3 public	yes; "The board shall appoint and license the number of pilots which is sufficient to carry out the purposes of this division". Number determined by board (§1170.1)	Board adopted licensing standards which "shall be equal to, or exceed, standards for obtaining federal endorsements and which shall conform with and support state policy" (§1171.5)	board to adopt training standards and training program; after program adopted, shall not issue license to anyone not completing program. Training conducted and supervised by a pilot evaluation committee of five active pilots each having at least ten year's experience in local waters. Training program to be funded by fees received under statute.	one year	no
Connecticut	State; Commissioner of Transportation Licenses	uncertain; "commissioner shall license as many residents of this state and any other state as said commissioner deems necessary and finds qualified to act as pilots". (§15-13)	federal license; twelve round trips as pilot of record or 24 round trips as observer	no; refresher passages must be made before inactive license can be renewed.	one year	no
Delaware	State; Board of Pilot Commissioners; 5 members—3 pilots, 1 industry, 1 public	yes; statutory limitation (42 first class, 10 total for second, third and fourth class)	must serve apprenticeship; examined by at least three members of Board	4-year apprenticeship; number of apprentices employed at any one time under control and within discretion of Board.	one year	no

Florida	State; Board of Pilot Commissioners; ten members: 5 pilots, 2 Industry, 3 general citizens	yes; "the board shall determine the number of pilots based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services." §310.071 Board determines number for each port. When vacancies occur in the number of required pilots, examinees are appointed on the basis of highest score on written exam.	state pilot must serve two years as deputy pilot; deputy pilot must have had maritime experience satisfactory to the board (detailed in statute); federal first-class unlimited license; written examination for both pilots and deputy pilots. Pilots licensed or certified for and appointed to specific ports (State pilots are "licensed"; deputy pilots are "certified")	licensed pilots in each port "shall submit to the Board for his approval a deputy pilot training program of not less than 2-years duration." §310.075 Training program includes progressive increases in size and tonnage of boats handled and comments of the pilot in charge on each training journey.	hold licenses no "so long as they possess the qualifications set out in [the] chapter and remain in active service in the ports for which they are appointed." §310.081	no
Georgia	local ports	yes; statutory limits at each port	determined by local port commissioners	no	not mentioned	no
Hawaii	State; director of the department of commerce and consumer affairs licenses	no	standards developed by director	no	all licenses expire on June 30 of even numbered years	no
Louisiana	local ports (Governor actually appoints pilots but on recommendation of local Board of Examiners)	unclear: "Whenever there exists a necessity for more...pilots, the board of examiners shall hold examinations for all applicants who have registered with them" (R.S. 34-945)	examination developed by local Board of Examiners; "steamship pilots" must have federal first class license	must have completed an approved apprenticeship program	not mentioned	must be voter of the state
Maine	State; Maine State Pilotage Commission. 5 members: 3 pilots, 1 Industry, 1 general public with marine background	yes; Commission shall "select only such number of pilots as would be necessary to permit adequate pilotage in these waters." §38.90 (H)	statute cites only federal first class endorsement; however, commission has authority to "establish and determine the qualifications of any person applying for a pilot's license and conduct examinations." §8.90 (C)	no	5 years	yes
Maryland	State; Board of Pilots. 9 members—1 department head, 1 president of pilots' association, 3 pilots, 2 Industry, 2 consumers	yes, indirectly by controlling number of apprentices; "from the list of qualified applicants, the Board may choose and appoint the number of apprentice pilots that the board considers necessary to protect the commercial interests of the State." §11.305	apprenticeship to get limited license; have limited license and provide pilotage for 3 years for other licenses.	apprenticeship	2 years	no

Massachusetts	local harbor districts	no	determined by local district commissioners	no	not mentioned	no
Mississippi	local port commissions	yes; "duty of the commissioners to appoint... a sufficient number of pilots... necessary for the protection of the harbor and the advancement of public shipping" §59-1-7	qualifications passed on by port commissioners	no	appointed for 4 years	no
New Jersey	State; Commissioners of Pilotage; six members "selected from among such persons as have been officers in our naval, revenue or merchant service, or such as have been commanders of vessels engaged in our coasting trade (§12:8-1)	not mentioned. Vessels sailing from any US port bound in or over bar of Sandy Hook must request a pilot in writing from commission; commission assigns pilots in rotation. (§12:8-8)	examination by commissioners in presence of one or more branch pilots of the state; qualifications and local knowledge	Deputy pilot: 4-year apprenticeship; examination by commissioners. Full branch pilot: 2 years of deputy pilot and examination by commissioners	not mentioned	no
New York	City of New York; Board of Commissioners of Pilots; six members, 3 elected by members of NY State Chamber of Commerce and Industry, 2 elected by presidents and vice presidents of Maine Insurance companies, 1 from among members or staff of the Albany port district commission	yes; commissioners "shall license for such terms as they may think proper, as many pilots as they deem necessary to pilot ships to and from the port of New York." (Art 6, Sec 90.) same provision for Hudson River and Long Island Sound pilots.	examination "in presence of one or more pilots licensed for the waters regarding which such applicant seeks to be examined."; shall be examined in particular on local knowledge. (Art 6, Sec 92),	Sandy Hook pilots must complete 4-year apprenticeship; "United New York Sandy Hook Benevolent Assoc... shall have sole control over all apprentices and be charged with the responsibility to instruct such apprentices in their duties... no other apprenticeship will be accepted by the commissioners" (Art 6 Sec 90)	not mentioned	"a license shall be denied any to any person holding any license or authority from or under the authority of the laws of any other state." Art. 6, Sec. 90)
North Carolina	local commissions	yes; commissioners shall govern the number of pilots necessary to maintain an efficient pilotage service, but at no time shall the number of active pilots exceed a statutory limit for each port. (exclusive of docking masters) Refers to holders of full licenses. Limited licenses may be issued in excess of statutory number.	may examine such persons as hold a federal pilot's license. Exam includes but not limited to personal interview before commission, contact of personal references and physical exam by licensed physician.	Commission may appoint apprentices when deemed necessary for the best interests of the state. Apprentices serve for a minimum of one year but no longer than 3 years in order to be eligible for limited license. "Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary" (§76A-7)	one year	no

Oregon	State; Oregon Board of Maritime Pilots; nine members; 3 general public, 3 pilots (representing different pilotage areas), 3 from industry.	yes; Board to "regulate and limit the number of pilots to be licensed...to the number found by the board to be required to render efficient and competent pilotage service." (§766.115)	satisfactory performance on written examinations prescribed by board together with practical knowledge; river pilots must have 6 months continuous service piloting ocean-going vessels over subject waters.	no	one year	no
Pennsylvania	State; Board of Commissioners of Navigation	yes; "no person shall receive a license as a first class pilot till the number of first class pilots be reduced to less than 42, and that the whole number of first class pilots shall not exceed 42." (55 P.S. §41)	examination by not less than three pilots of the first class called by the Board	4-year apprenticeship for fourth class license. Must have fourth class license to obtain other classes; apprentices must make at least 48 trips per year up or down the Delaware	one year	no
Rhode Island	State; State Pilotage Commission; 4 members, 1 licensed pilot, 2 state administrators	no	posses master's license of unlimited tonnage issued by US authority, first class federal endorsement for appropriate section of state waters, state pilot's license for waters of Block Island Sound, complete training in duties as pilot "over the route under supervision of the board of state licensed pilots appointed by the commission for this purpose." (§46-9-7)	see prior for training requirement for original license. Commission has authority to "appoint a special board of state licensed pilots to supervise the training and instructions of those persons seeking eligibility to apply for a pilot's license." (§46-9-7)	5 years	no
South Carolina	local port commissions	yes; number of pilots for each port limited by statute	examined by local board of examiners to consist of "three nautical men," one of whom is licensed for the port in question. Satisfactory completion of apprenticeship and recommendation by a majority of pilots licensed to the port; oral and written examination of general and local knowledge.	3-year apprenticeship; apprentices must be a graduate of an accredited 4-year college or hold an unlimited Third Mate's License.	not mentioned	no
Texas	7 independent boards; pilot members prohibited by statute; 7-member board in Houston, 5 on most other boards	yes; governor shall not appoint more than 4 or less than 2 for Matagorda; the Board in Houston appoints the number of pilots necessary to provide adequate services	be at least 25 and a U.S. citizen; have a federal pilot license for area in which applying; be in good mental and physical health	apprenticeship under supervision of one of the independent pilots' associations	not mentioned	no

Virginia	State Board for Branch Pilots; nine members appointed by Circuit Courts of port cities. Only 4 pilots may be appointed.	no	applicants must submit a certificate from the circuit court of their county/city stating that the applicant is of good moral character and a resident of the Commonwealth; complete apprenticeship; pass written and oral exam administered by Examining Committee of Board; federal license required for full branch pilot license.	2-year apprenticeship for Limited Branch Pilot license; 5-year apprenticeship for full branch pilot license.	*Every pilot who holds a license as a branch pilot shall appear before the Board every twelve months, and, if the Board deems him qualified, it shall renew his license.* §54.1-905	yes; circuit court of resident county or city must certify
Washington	State; Board of Pilotage Commissioners; 7 members: 1 assistant secretary of department of transportation, 2 licensed pilots, 2 industry, 2 persons with broad interests in maritime industry.	no	hold US gov't license as master of freight and towing vessels and first class federal endorsement for appropriate pilotage districts; pass written and oral examinations developed by board; complete familiarization trips.	Board shall establish additional training requirements, including a program of continuing education, developed after consultation with pilot organizations.* (§88.16.035.) *The board may prescribe vessel simulator training for a pilot applicant (or for the first three years as pilot) as it deems appropriate, taking into consideration the economic cost of such training, to enhance that person's ability to perform pilotage duties.* (§88.16.090)	five years	yes. resident of the state of Washington at the time of appointment (§ 88.16.090)

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

There are, however, weaknesses and gaps in current statute. As mentioned above, Alaska law generally sets out only basic duties and responsibilities but delegates broad regulatory powers to its boards and commissions. In recent years, the Attorney General and others have questioned the existing Act, maintaining that current language does not give the Board authority to set rates and establish specific licensing requirements. As a result, the Board has not reviewed the pilotage rate schedule for several years. More important, weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.

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

4. CURRENT STATUS OF MARINE PILOTAGE IN ALASKA

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

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

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

The erosion of the state board's ability to promulgate and enforce regulations for the industry took place at a time when newer pilots began to question the internal operations and politics of the traditional pilot associations. Impatient with what they perceived to be "old boy networks", preserving the income and prestige of long-term pilots, newer and younger pilots turned to the courts. Successive legal challenges raised the specter of group and individual liability for actions taken in the course of training.

disciplining, or dispatching of pilots and pilot trainees. Self-regulation of the profession through associations, which had served the state well in the early years, could no longer be relied upon.

The growth in demand for pilot services brought about by the rapid increase in shipping opened opportunities for disgruntled pilots to break with existing associations and to operate independently or to form new groups. For the first time in Alaska's marine pilotage history, competition between pilots and pilot groups entered the picture. While competition does bring with it increased responsiveness to industry needs, it also raises the question of pilot independence from shipowners. A basic tenant of state pilotage is that the pilot is first and foremost concerned with ensuring safety of life, property, and the environment and secondarily with the efficiency of trade. If unregulated competition between pilots is allowed, some argue, the above priorities are reversed: pilots act in the interests of shipowners first and only secondarily in the public interest.

Marine pilotage in Alaska at the present time reflects these new demands and tensions, each of which is discussed in more detail below.

A. Regional Characteristics

Alaska marine pilotage has rather significant regional characteristics, based both on the unique geography of the state and the general nature of shipping in each of the regions. At present, three distinct regions have formed, each with its own pilot association or group. As shipping activity increases in other parts of the state, additional regions may evolve. The salient characteristics of each existing region are described below.

1) Southeast Region—Southeastern Pilots Association (SEAPA)

The southeastern pilotage region extends from Ketchikan to Yakutat. The SEAPA office, which dispatches pilots and bills shippers, is located in Ketchikan. SEAPA does not have its own pilot boats; commercial vessels are chartered to deliver pilots to ships at the various pilot stations in the region. Approximately 80-90 percent of the ships moved by SEAPA pilots are cruise ships, with the rest being cargo ships. There are 21 members of SEAPA and 15-20 contract pilots are employed by the association during peak summer

months. Contract pilots can be broken into two categories, those who do not have an unlimited license (and therefore do not qualify for membership in the association), and others who have not been accepted into the association or are not interested in joining.

The Southeastern Pilots Association has experienced the most internal problems of the three major groups of marine pilots operating in the state. In the past few years the association has been beset by numerous legal difficulties. A letter²⁵ from SEAPA attorney, C.L. Cloudy includes a list of the types of legal claims that have been made against the association:

1. Assertions that because SEAPA permits use of its dispatch and income-expense pooling service by nonmembers, the non-member pilot is entitled to membership and if he is denied, then antitrust or monopoly violations have occurred.

2. Assertions that SEAPA as an association has a responsibility to arrange for and direct its membership to permit observer trips for license upgrade purposes by nonmembers.

3. Antitrust claims that SEAPA has no right to drop a non-member from a dispatch contract for navigational error, failure to report for assignment, or other causes.

4. Claims that SEAPA cannot lawfully limit its membership and to do so constitutes some sort of antitrust and monopolistic act.

5. Claims that income shifting as is practiced in most pilot associations is unlawful. Currently income shifting within SEAPA occurs only with respect to nonmember pilots as noted above, and year-round expenses are paid out of a summer income pool as an alternative to income shifting.

6. Claims that because SEAPA accepted a non-member for dispatch, the Association and entire membership warranted his qualifications and can be held liable for his negligence.

7. Claims that it is illegal for SEAPA to "selectively" dispatch by matching experience with the call for pilotage even though licensing may be equal.

During the past two years there have been two lawsuits brought against the association alleging that the association leadership covered up or failed to discipline members accused of alcohol abuse while on duty.²⁶ This spring two dissident pilots signed a contract with a cruise ship company to provide pilotage services directly, without going through the association.

²⁵A copy of Mr. Cloudy's letter is included in Attachment C.

²⁶"Marine Pilot Group, Member Tangle Over Accusations," Jurieu Empire, May 24, 1989.

There is little doubt that legal difficulties and internal squabbles within SEAPA have created a good deal of paranoia and discontent among a large segment of association and contract pilots in Southeast. Some were reluctant to answer the survey questionnaire because they worried that their comments could somehow become known to the SEAPA leadership. Several expressed concern that they could be forced out of work or labeled as troublemakers for their views. A number of Southeast pilots made personal visits to the Office of Management and Budget in Juneau to discuss their concerns—frequently because they did not want their opinions to be put into written form. Several stories were told of heavy-handed intimidation tactics on the part of the SEAPA leadership to quell dissent within the association. On the other hand, SEAPA officers encouraged project staff to meet with dissident pilots and incorporate their views into the study.

2) *Southcentral Region—Southwest Alaska Pilots Association (SWAPA)*

SWAPA organized in 1975, primarily to service the petroleum traffic out of Valdez. Currently, petroleum trade accounts for approximately 65 percent of association business. Cruise ship traffic has increased in recent years in the Prince William Sound area and now provides about 15 percent of the total, with general shipping accounting for the remainder.

The association has 17 full members, all of whom hold unlimited licenses. In addition, there are six associate members, with limited licenses, who are at various stages in the association's training program. As associate members successfully complete training and achieve unlimited licenses, they are elected to full membership.

The association handles centralized dispatch of pilots. A separate company, owned by the association, operates pilot boats for the area. Home office for the association is located in Homer. The association stations a pilot boat with three or four pilots 24 hours a day, year-round at Bligh Reef to service oil tankers. All pilots assigned to oil tanker traffic have completed a special training course sponsored jointly by the association and the oil companies.

Until three years ago, SWAPA handled all pilot service from Prince William Sound to the west and north, including the Aleutian Chain.

With the establishment of Alaska Marine Pilots in Dutch Harbor, SWAPA service in western Alaska has dropped off. Currently, it handles the larger ships operated by the American President Line and will be responsible for providing pilots for the newly-declared pilotage waters around the Kotzebue-Cominco Mine area. The association is currently having difficulties with the shipping company operating the ore ships out of Cominco, which has petitioned to Board to gain exemption from compulsory pilotage requirements. State action may be needed to enforce company compliance with state pilotage regulations.

The founder of AMP had been a member of SWAPA before he broke away and established his own agency to serve exclusively shipping in the Aleutian region. SWAPA members have expressed concern that AMP represents unfair competition with established associations. They also believe that AMP, as a sole proprietorship rather than the more traditional association, is far too dependent on ship's agents and therefore is in danger of falling under company control.

3) Aleutians Region—Alaska Marine Pilots (AMP)

AMP is unique among pilot groups in the state. It is operated as a sole proprietorship rather than an association of pilots. The sole proprietor contracts with additional pilots. Income is distributed in a manner similar to the associations, but contract pilots have no legal voice in company management. However, as pointed out by AMP contract pilots, the right to accept or reject contract terms serves as a powerful constraint on arbitrary decisions by the proprietor.

The company provides centralized dispatch of pilots for areas west of Kodiak. Company business is associated primarily with the bottom fish industry. As mentioned above, AMP pilots do not service the larger ships working in the area. Pilot boats are provided by a separate company, which has no fiscal or legal connection with AMP.

The founder of AMP describes his organization as a response to a market niche created by the expense and difficulty of servicing the growing Aleutian Chain fishing trade from Homer. He estimates that several millions of dollars have been saved in pilot travel costs by moving pilot dispatch to Dutch Harbor. AMP also stations a pilot in Sand Point.

AMP currently consist of five senior pilots and two pilot trainees. All the senior pilots have attended simulator training at Grenoble, France. Four of the senior pilots hold limited licenses. In order to upgrade their licenses to unlimited class, they must have experience in moving vessels of larger tonnage and of docking and undocking vessels under the supervision of a state licensed pilot. AMP members have expressed concern that they can not get this prerequisite experience because they are shut out by other pilot groups from access to trips on appropriate-sized vessels.

B. Identified Problem Areas

Captain Murphy, in his original letter, identified several pressing concerns: low entry level requirements, potential competition among pilots, and the inability of the State Board to adopt and enforce strong regulations governing the profession. An additional concern—that of individual and pilot association liability—surfaced during the course of this study. These problems are discussed at length below.

1. Entry Level Requirements

Alaska statute states that:

- a person is entitled to a license under this chapter if a person
- (1) is of good moral character
 - (2) is a citizen of the United States
 - (3) passes an examination given by the board; and
 - (4) qualifies under the regulations adopted by the board...²⁷

By regulation, the Board has established a progressive system of licenses based on increased tonnage. Limited licenses are issued in two steps: Step 1 for vessels of not more than 20,000 gross tons and Step 2 for vessels of not more than 40,000 gross tons. The series culminates in an unlimited license, which allows the holder to pilot ships of any gross tonnage, with the exception of very large crude carrier (VLCC) class vessels. Pilots wishing to pilot VLCC's must obtain a special endorsement from the Board. The Board also issues a channel pilot license for certain areas in the state, primarily Southeast. A channel pilot has limited authority; s/he may pilot vessels of 20,000 gross tons or less in main ship channels only

²⁷AS 08.62.100

and may perform dockings and undockings only under the supervision of a pilot with a limited or unlimited Alaska license.

Licenses of all classes are issued by geographic area. Currently, state regulations recognize two regions—Southeastern and Southwestern Alaska—although, as described above, pilotage in Alaska has evolved distinct characteristics in three separate regions. Pilots may operate only in the geographic area for which they are licensed; however, with the appropriate experience, pilots may be licensed in both areas.

Applicants for all classes of licenses must hold valid Coast Guard licenses both as a first-class pilot for vessels of any gross tons²⁸ upon the waters for which the applicant seeks state licensing and as a master of steam or motor vessels of 10,000 gross tons or greater. Progression from initial licensing through unlimited licensing requires actual experience in ship movements, usually dockings and undockings, of ships of increasing size. The original intent of the regulation appears to have been that this experience would be obtained in the area for which the applicant sought licensing. However, recent interpretations of the statute and regulations by the Attorney General's office has removed this geographical limitation. Therefore, applicants desiring to move from Step 1 to Step 2 limited or to unlimited licensing in one geographic area may obtain the necessary experience in ship movements anywhere in Alaskan waters.

Applicants for initial licensing must pass a written and oral examination covering international rules of the road, seamanship, chart navigation, local knowledge of individual geographic areas, and federal/state rules and regulations affecting pilotage. Examinations are given at least once a year. In order to provide some flexibility between exam periods, the Board may issue a temporary license to applicants who meet all requirements except for the written/oral exams. To obtain a temporary license, the applicant must pass a written temporary license examination. Temporary licenses are valid until the results of the applicant's permanent license examination are determined.

²⁸A license for "any gross tons" is an unlimited license, enabling the holder to work on ships of any size.

Alaska's licensing procedure has been criticized on several counts. First, statutory language states that "a person is entitled to a license" if s/he meets the criteria outlined. In most other states, licensing is a discretionary power of the Board or other licensing authority rather than an individual right. Critics of Alaska's language believe that it has forced state attention (particularly in the Attorney General's office) toward protection of individual rights at the expense of industry-wide regulation and control. The result, they contend, has been regulation by exception to such an extent that licensing requirements have ceased to have any meaning.

A parallel and even greater perceived problem is that the licensing requirements themselves, even if they were enforceable, are not sufficient to insure competency. Many survey respondents and others contacted in the course of this study pointed out several weaknesses. A strong concern was that Alaska does not require enough sea-going experience prior to licensing. Applicants for an initial limited license must either have been a Coast Guard licensed master or pilot on local waters for at least one year or execute a minimum of 20 dockings and undockings under the supervision of a state licensed pilot. Channel license applicants must document "all maritime experience in the waters for which he or she is applying."²⁹ Critics contend that hands-on experience gained at sea is perhaps the most important pre-requisite to efficient piloting. They believe that Alaska's requirements in this respect are woefully inadequate.

A second concern regarding licensing deals with the vessel movement requirements for the various steps of license. Limited licenses (Step 1) may be granted with as few as 10 dockings and undockings, if the applicant has experience as a Coast Guard licensed master or pilot. Upgrading to a Step 2 limited license requires evidence of 20 vessel movements and five dockings/undockings. To obtain the highest level of license—an unlimited license—the applicant must complete an additional 20 vessel movements and five additional dockings/undockings.

Critics of the system point to other states, which often require an apprenticeship or a period as deputy pilot for two years or more, during which time the apprentice/deputy engages in a combination of classroom instruction, observation of master pilots, and completion

²⁹12 AAC 56.050 (3)

of a variety of ship handling tasks under varying conditions and on vessels of increasing size. Alaska's requirements, on the other hand, can be met within a relatively short time period. Nothing in the regulations would prohibit a person from completing the required number of dockings in one or two days, all with the same ship at the same port. Indeed, there have been allegations that some applicants have done precisely this. Nor do the regulations define what is meant by a successful docking/undocking. One senior pilot facetiously responded in the survey that he could watch an applicant wipe out a dock and could still certify that he had observed a successful docking/ undocking.

If the intent of the regulations is to assure that state pilots have extensive local knowledge of the waters for which they are licensed, critics argue, the current requirements are a sham, particularly since the Board no longer has even the authority to require that dockings/undockings be performed in the geographic area for which licensing is sought.

Finally, the Board requirements for license renewal have come under attack by some members of the profession. Statute provides that "a license shall be renewed without examination upon the payment of the license fee."³⁰ Licenses are renewed biennially. The Board, by regulation, has added the requirement that:

a licensee who has not piloted the compulsory pilotage waters of Alaska during either of the last two biennial license periods cannot be granted a license renewal until the board has determined that the licensee has sufficient knowledge and recent experience to pilot safely in the areas for which the licensee is licensed.³¹

Critics cite problems with this renewal process. They contend that holders of licenses who pilot in even a very limited portion of Alaskan waters can continue to be licensed indefinitely for large geographic areas or even for the state as a whole. Numerous anecdotal accounts of pilots licensed for areas and ports they had not visited for years surfaced during the course of this study. A related concern is that a license holder could make one trip during a four-year period (two biennial license periods) and still be eligible for renewal without meeting any recency requirements.

³⁰AS 08.62.120

³¹12 AAC 56.080 (b)

2. Competition

One of the founders of the Southeastern Pilots Association, Captain Harley Clough, listed the priority of a marine pilot's responsibilities very succinctly:

- 1) to protect lives, property and the environment of the state;
- 2) to protect the underwriters of the ship; and
- 3) to move the vessel as expeditiously as possible.

A majority of Alaska's marine pilots feel that competition among pilots is absolutely incompatible with a safe pilotage system—a pilot's primary duty must be to the state and not to the shipowner. In their view, the purpose of a compulsory pilotage act is to ensure the safe movement of shipping in state waters regardless of the shipper's bottom line profit. This argument might seem self-serving, but the importance of maintaining the marine pilot's independence from shipowners is a clearly recognized principle in marine pilotage law. At issue is the order of the priorities listed by Captain Clough. If shipowners are able to hire and fire pilots, ships can get moved under marginal conditions and safety may be compromised to meet the owner's schedule. An independent pilot acting in the state's interest can order a ship to slow down or refuse to move a ship because of poor weather or other conditions.

The issue of competition is directly related to the number of pilots licensed for each region of the state. One pilot summed up the situation in his survey response:

If there are too many licenses issued, the association in the area cannot assimilate them all. This creates a competitive situation. If a pilot has to cut rates and follow the steamship company orders to the letter, he is no longer a state pilot. A state pilot is supposed to be concerned with the safety of the ship, but also about local problems such as the safety of fishermen, small boaters and the local ecology. If a pilot has to go to a company for his job he will never be able to tell them 'no'. We are at a fork in the road right now as far as state pilotage is concerned. Either we have state pilots working through an association or we have competition of independent pilots—we cannot have both.

From a public policy perspective, competition is one of the thorniest issues to address in state law. On one hand, the statements by pilots cited above are absolutely correct—the integrity of the state's marine pilotage system is based on the independence of its pilots. Direct competition among pilots, particularly tariff competition,

can compromise safety in the long-term. In a number of states, pilot associations require members to sign an anticompetition covenant before they can be accepted into the organization for training.³²

On the other hand, shipping traffic is increasing in Alaska and the state's interest is served by ensuring that there is an adequate number of pilots in all regions to provide pilotage services. If a group like AMP can provide more cost-efficient pilotage for the Aleutians without undercutting the tariff or compromising their ultimate independence as pilots, then they should be encouraged. In the future, it is quite possible that an additional pilot organization might be formed to service shipping in Western Alaska.

3. State Board . State Agency Support

Many persons contacted during the study attribute the current perceived problems with Alaskan marine pilotage to failures in the state's regulatory scheme. Most Alaskan pilots agree that state administrative and legal support of the pilotage system in recent years has been ineffectual and inconsistent. During the past five years there have been six DCED Commissioner's Designees and four Assistant Attorney General's assigned to the Board of Marine Pilots, which makes coherent policy and regulation development nearly impossible. Additionally, the Division of Occupational Licensing has very limited capability to investigate pilot misconduct accidents in a timely manner.

This administrative inconsistency, coupled with a weakly-worded state statute, are seen as having stripped the Board of most of its authority to regulate pilotage. The resulting combination of an enfeebled state board, increased industry demand for pilots, and the erosion of pilot association ability to train and discipline pilots has, according to many in the profession, rendered the state pilotage system out of control.

4. Pilot Liability

Basically, there are three kinds of potential liability of concern to marine pilots in Alaska. These are:

³²Judith L. Linfield, "A Survey of North American Pilot Training Programs," California Maritime Academy, 1990.

- personal liability of the pilot for accidents and damages.
- joint liability of a senior pilot who provides certification or endorsement of training to an incompetent or unfit pilot who subsequently has an accident.
- joint liability of the association or pilot organization for dispatching an incompetent or unfit pilot who subsequently has an accident.

The question of liability and how it is dealt with in other states was addressed in Section 3. In an extensive survey of the liability question in pilotage law, Paul Kirchner, APA legal council, describes the current situation with respect to individual pilots:

In the past, pilots were rarely sued. As self-employed, independent contractors, they were thought to be judgement proof. Although a potential damage award against an individual pilot is still of dubious value today, pilots are nevertheless being named in suits with increasing frequency, often while recovery from pilots is clearly not the objective of the plaintiff. It is virtually automatic now that in any maritime accident, if a pilot was aboard, he will be named a defendant in one or more lawsuits. Usually, the legal fees alone are beyond the limited resources of the pilot. As a result, pilots today confront the reality that every time they board a vessel, they face the prospect of financial ruin, regardless of how well they perform their services. That situation does not promote better, safer pilotage or provide any other benefit to a state or its citizens.³³

Mr. Kirchner's analysis is included in this report as Attachment D.

Summary: The consensus among senior pilots and state officials contacted in the course of this study is that for the first 10 years after the passage of the State Pilotage Act, the marine pilotage system in Alaska virtually ran itself. As in nearly all other states, pilots voluntarily organized themselves into associations to serve the Southeast and Southwestern regions of Alaska. Under the general oversight of the Board of Marine Pilots, the associations were responsible for hiring, training, and dispatching pilots and collecting fees from shippers. Occasional discipline problems with individual pilots were handled internally by the associations.

During the past 10 years, the marine pilotage system in Alaska has experienced considerable growing pains as shipping traffic in state waters (and demand for pilots) has increased, particularly in the Southeastern and Aleutians regions. This growth has caused

³³Paul Kirchner, Letter to C. L. Cloudy, July 27, 1990. See Attachment D.

tensions and strains within the pilotage profession. For example, as new and younger pilots have entered the profession, some have questioned the authority of the associations. Increasingly, pilots are turning to the courts to protest association action or to claim damages. As a result, the associations' control over pilot training and discipline—which assisted the state in regulating the quality of pilotage services—has been eroded by legal challenges and fears of potential liability.

Increased demand for pilotage services has created niches for new groups and configurations of pilots. During the past three years, splinter groups of pilots have broken off from the original Southeast (SEAPA) and Southwest (SWAPA) associations to offer competing pilotage services.

Finally, the Alaska Marine Pilot Statute, which was originally designed to give the Board the flexibility to respond to new conditions, has not provided the clear authority needed for the Board to act.

4. PILOT SURVEY

In order to obtain pilot opinion on both the issues raised in Captain Murphy's letter and other areas of pilot concern, project staff conducted a written survey of all 94 Alaska licensed marine pilots in early summer. The survey generated a 57 percent response rate, with respondents broadly representative of the group of state-licensed pilots as a whole. Respondents by region of the state and type of license are enumerated in Table 2. Because of the relatively small number of pilots in the Alaska Marine Pilots group, responses from AMP have been combined with SWAPA responses to maintain confidentiality. "Contract pilots" are generally those operating in Southeastern Alaska, although SWAPA does employ a few contract pilots.

TABLE 2: Survey Responses by License Type

Type	Contract	Southeast	SW/Chain	Sample Total	State Total
Unlimited	10	14	13	37	55
Limited-1	5		1	6	17
Limited-2	2		2	4	4
Limited-any GT					4
Channel	5			5	17
NR	2			2	
Total	24	14	16	54	94

A. Quantifiable Results

The survey contained two types of questions: those which could be answered by "yes", "no", or some other quantifiable response and open-ended questions which allowed respondents to elaborate. The survey instrument encouraged an anonymous response. Forms were not coded nor were pilots asked any information which could identify individual responses. Completed survey forms were destroyed once the data were compiled. Table 3 lists quantifiable results to close-ended questions in the survey. Responses to open-ended questions are summarized following Table 3. Every attempt has been made to give a general sense of what association and contract pilots operating in each region of the state think about the major issues affecting their profession.

TABLE 3: Survey Results

Question	Res	Contract	Southeast	SW/Chain	Total
Have you ever had a pilot license in another state?	Yes	5	3	1	9
	No	18	11	15	44
	NR	1			1
Does Alaska's pilot examination adequately test training, skill and experience?	Yes	12	8	14	34
	No	12	2	2	16
	NR		4		4
Are the state examination procedures fair and objective?	Yes	15	10	14	39
	No	7	2	2	11
	NR	2	2		4
Do you have adequate opportunities to upgrade your license?	Yes	13	11	13	37
	No	8		2	10
	NR	3	3	1	7
Should on-going training or exams be required for license renewal?	Yes	5	4	4	13
	No	16	9	11	36
	NR	3	1	1	5
Should simulator training be made available on the West Coast?	Yes	18	8	8	34
	No	5	5	7	17
	NR	1	1	1	3
Who should run a training program to up grade skills?	assoc	9	3	11	23
	state	8	5	2	15
	both	3	3	1	7
	NR	4	3	2	9
Do you feel that your professional concerns are adequately addressed by the Board of Marine Pilots?	Yes	10	3	5	18
	No	10	10	9	29
	NR	4	1	2	7
Do you feel your interests are adequately represented by your pilots' association?	Yes	7	10	11	28
	No	5	3	3	11
	NR	12	1	2	15
Do you favor limiting the number of licenses in the state?	Yes	11	11	14	36
	No	8	1	1	10
	NR	5	2	1	8
Are current evaluation practices adequate to maintain high standards?	Yes	8	4	7	19
	No	13	6	7	26
	NR	3	4	2	9
Should evaluation practices be reviewed periodically by an Independent 3-rd party?	Yes	16	6	5	27
	No	6	5	10	21
	NR	2	3	1	6
Do you think you have adequate liability insurance protection?	Yes	7		5	12
	No	14	12	10	36
	NR	3	2	1	6
How many years have you been a pilot in Alaska?	1 - 5	14	1	6	21
	6 - 10	5	4	2	11
	11 - 15	1	2	5	8
	16 - 20	1	6	2	9
	20 +	2		1	3
	NR	1	1		2
What is your age?	average	49	60	47	50

Although the data in Table 2 provide some information on the issues raised, the main thrust of the survey was to gain the broadest possible understanding of the issues of concern to pilots. The following summarizes pilot opinion on a variety of professional issues and concerns.

B. Training

Alaska's marine pilots come from a wide variety of backgrounds, with more than half of all respondents listing some formal maritime academy training. Within the survey sample, a greater proportion of contract pilots had maritime academy training than association pilots. A number of Southwest and Aleutian pilots cited commercial fishing or tugboat experience, while a large number of southeast pilots had experience on the state ferry system. A majority of pilots stated that they had attended simulator and/or radar training courses. (Note that the Coast Guard requires periodic recertification of Radar Observer status to maintain a federal pilot license, which is a prerequisite to obtaining an Alaska pilot license.)

C. Alaska's System of Examination and Licensing

Questions concerning the adequacy and objectivity of Alaska's system of examining and licensing pilots drew a mixed response. A majority of association pilots appear to be satisfied with the present system, while contract pilots are evenly split on the issue. As one pilot expressed an often repeated theme, "the license is like a driver's permit and the test is an adequate measure of a pilot's knowledge but not of his skill or experience."

Other concerns and ideas cited by respondents include:

- More emphasis should be placed on documented sea experience and certified local knowledge.
- A formal deputy pilot or apprenticeship program should be adopted for pilots to gain hands-on experience. Periodic evaluations could weed out those individuals not suited to the profession.
- Efforts to adopt meaningful docking requirements have been frustrated by the Attorney General's Office. Docking and observer trip requirements should be increased.
- Entrance procedures could involve a competitive examination for a limited number of available licenses set by the Board of Marine Pilots.

- Under the present system it is possible to be licensed for a particular port without ever having been there.
- The present system allows examiners to hand pick candidates and can be manipulated by SWAPA and SEAPA to control their turf.

D. Opportunities for Upgrading Licenses

A majority of pilots are satisfied with opportunities for upgrading their licenses, though many regarded the question to be irrelevant since they already have an unlimited license. AMP pilots complain they can't get check rides on larger vessels because "that end of the business is controlled by SWAPA" in their region. A large minority of contract pilot respondents are not satisfied with their opportunities to upgrade.

Several SEAPA and southeast contract pilots complained of favoritism within the association, i.e., personal connections allow some individuals to be "fast tracked" and given access to observer trips and dockings that others aren't. As one suggested, "favoritism can not be completely eliminated, but a formal training program run by the associations under state supervision could go a long way toward solving the problem."

E. Training and Examination for License Renewal

A majority of pilots feel that present requirements for license renewal are adequate. Some would require complete reexamination of pilots, while others think that only inactive pilots should be reexamined or required to take simulator/radar training. Several advocate rules of the road testing and a complete physical exam every two years prior to license renewal. A few respondents called for a mandatory retirement age (70 was the most commonly mentioned cut-off age).

There appears to be strong sentiment among association pilots that "the day-to-day practice of the profession is the most important test of competence." As one pilot put it "handling a variety of ships in a variety of conditions is the best possible training." Familiarization trips to areas a pilot doesn't transit regularly are advocated by several respondents. Others proposed a check ride system similar to airline pilots, where a "competent independent,

observer employed by the state" would grade each pilot's performance prior to license renewal or upgrade.

F. Simulator Training

Several pilots stated that simulator or radar training was most useful for those new to the profession and of marginal value to active pilots. As one pilot put it "the essence of pilotage is local knowledge and a practiced feel for how different forces affect the handling of a ship." A few referred to simulator training as "video games." However, most seemed to agree with the statement of one respondent that "as electronic controls and aids to navigation become more sophisticated, pilots need to keep up to date with the latest training methods."

A majority of pilots surveyed would like better access to simulator and radar training, preferably on the West Coast. Several said that the location of the training facility does not make much difference—a large number of Alaska's pilots have attended simulator training at Kings Point, Rhode Island, Southampton, England or Grenoble, France. Some pilots feel that if the state requires simulator training then the state should pay for it, while others think that pilots themselves should be responsible for their own training expenses. The most common response to the question of who should pay for increased training requirements was to place a "training surcharge on the tariff schedule."

G. Association vs. State-run Training

A majority of SWAPA pilots think that the associations should be in charge of pilot training, preferably under state guidelines. SEAPA and contract pilots are split on the issue. One respondent argued that "a state-run training program could remove internal association politics and favoritism from the present system." There appears to be widespread concern among contract pilots that giving the associations control of a formalized training program could provide them with "even more of a monopoly on the business than they already have."

Several respondents pointed out that the most experienced pilots belong to the associations, which makes them the logical choice to run pilot training programs, providing the state can limit their liability. One respondent stated that "a state-run training program

would just be unnecessary bureaucratic meddling in an area in which it possesses no expertise." The most common response was that the associations should provide state-approved training in their respective regions and that training should be jointly funded by the state and the pilots themselves.

H. Board of Marine Pilots

A majority of SEAPA and SWAPA respondents feel that their needs are not adequately addressed by the Board of Marine Pilots, while contract pilots are split on the issue. AMP pilots think that they "should have representation on the Board and be able to participate in licensing examinations." The most common complaints among all pilots are not with the Board itself but with Department of Law interference in Board decisions and weakness of the state's Pilotage Act. Other problems cited in the responses are: "low professional standards in regulations, poor investigation of accidents and the inability of the Board to meaningfully discipline pilots." Several respondents stated that the Board does not meet often enough, while others want "a more democratic process to choose the pilot representatives on the Board."

Several contract pilots complain that "the Board is an instrument of the associations, which act to protect their own interests under the guise of more stringent requirements." Association respondents charge that representation on the Board "is lopsided in favor of ships agents" and that "public members and the DCED representative are not knowledgeable enough about marine pilotage affairs to offer constructive contributions to Board decisions."

I. Associations

Not surprisingly, a majority of SWAPA and SEAPA pilots feel that their interests are adequately represented by their associations. A minority of association pilots who expressed dissatisfaction complained that their association "practices favoritism in choosing who is accepted into the association, that internal politics take precedence over professional standards, and that the association actively penalizes dissenters." On the whole, SWAPA pilots' responses seem to reveal a more sanguine attitude towards their association than SEAPA responses, though several complained about the length of time it takes to become a member. One response,

accuses SWAPA of being "slow to respond to the changing demands of the shipping industry in their region."

Half of contract pilot respondents did not answer questions about the associations. Of those that did respond, some expressed concern that there is "no objective criteria for determining who is allowed to become an association member."

J. License Limitation

A majority of pilots favor limiting the number of licenses in the state. However, a significant number of contract pilots think that market forces "supply and demand" should determine the number of pilots. Several ideas were offered for criteria to determine the appropriate number of licenses:

- each association determines the number of pilots needed to handle shipping for its region,
- based on the standard of living needed to attract and maintain a high quality professional pilotage service,
- based on the number of pilots needed to work a standard six months per year,
- a number mutually agreed upon by agents and associations,
- enough to cover jobs and allow for a proper vacation,
- should be determined on an annual basis by the Board of Marine Pilots,
- determined by the Governor's Office on the basis of an analysis of pilot hours per year and compensation,
- need to license only the best and keep the total number low enough that all are able to make a decent living,
- based on projected requirements during the busiest season of the year.

Several respondents made an analogy between limiting the number of pilots and limited entry in fisheries, implying that without some form of limitation, safety standards and professionalism would inevitably decline. One respondent said that the "state should either limit the number of pilots or charter the associations to screen new applicants and run training programs."

K. State Evaluation Standards

Questions about the state's pilot evaluation practices drew the longest and most impassioned responses in the survey. Obviously pilots feel very strongly about these issues. A majority of contract and SEAPA pilots feel that state evaluation practices are not sufficient to maintain high standards within their profession. As one SEAPA pilot pointed out "basically no evaluation process exists." Several stated that evaluations should include "hands on skills." One respondent stated that the current "docking and undocking sign-off is a joke. The sign-off should involve a true evaluation of skill before it can be counted towards a pilot's endorsement for a particular port." Again, the check-ride evaluation and a formal apprenticeship program feature prominently in pilot's responses.

Another recurring theme is that "pilotage is kept safe by industry regulation" and the "Board needs to pass evaluation regulations" that are "depersonalized, competitive, and impartial." As one pilot stated, "there needs to be some mechanism for pilot groups to police themselves—currently pilots cannot fire an association member for any reason." Along this same line were complaints about "local boys" being encouraged by association members to enter the profession with "little seagoing background." One contract pilot stated that "superior shiphandlers are being excluded because their docking experience was obtained outside Alaska. Why should 10 dockings in Ketchikan count, when 500 in San Francisco don't?"

SWAPA pilots are evenly split on the evaluation issue. As one pilot put it "you don't evaluate doctors after they have a license." Another complained that "bureaucratic meddling in pilotage affairs has made for less qualified people." Several respondents think nonactive pilots should be evaluated and that licenses should contain some kind of "use it or lose it" provision.

L. Third Party Review of Evaluation Practices

There was some confusion among respondents about this question. Most took it to mean independent review of pilots themselves, while others thought it meant review of association evaluation practices. A majority of SEAPA and contract pilots favor periodic evaluation by an independent third party, while a majority of SWAPA pilots do not. Several pilots commented in a similar fashion that "if a pilot is

working at his trade without having accidents or complaints of near-misses, then an evaluation is meaningless." The most common response was that the state should hire a qualified evaluator not affiliated with any association (such as a retired ship captain) to provide pilot evaluations and report to the Board. Others stated that the Board should adopt evaluation practices and have them reviewed by a member of the American Pilot's Association, professional maritime consultant, or panel of experts.

M. Liability Protection

A large majority of pilots feel that they do not have sufficient liability protection. Several commented that recently passed oil spill legislation increases their potential liability exposure. Others thought the question was ridiculous, i.e., "How can I be liable for \$2 billion—get real." Several pilots stated that if liability coverage was offered to pilots, it would just engender lawsuits. The most common response was that the state should limit pilots' liability or set up some kind of group insurance or bonding mechanism.

N. General Concerns

Space was provided on the survey questionnaire for pilots to offer comments on their general concerns about their profession. Comments that are not redundant with those listed above are summarized below:

SWAPA and AMP Comments:

- Public safety is not served by competition. That is why pilotage is a sanctioned monopoly.
- Pilot organizations should be chartered by the state and held to high standards.
- The state should urge the Coast Guard and NOAA to conduct more surveys and improve charting of state waters, some of which haven't been recharted since the '64 earthquake.
- Tariff adjustments should be made by region. Charges for Cook Inlet are too low—the same ship movement would be charged seven times as much in Puget Sound.
- Ship size and traffic have increased over the past 10 years without corresponding changes in dock size, configuration, and depth of berths.
- There should be an association policy about how large a vessel can be put into a particular dock.

- Pilots should not be licensed for more than one area of the state.
- The state needs to put more pressure on the associations to govern themselves.

SEAPA Comments:

- We need a change in attitude in the Attorney General's Office—they have stymied every attempt by the Board to increase standards.
- There should be a pilot station at the head of Chatham Strait and a summer station at Cape Spencer.
- The state needs to strengthen the State Pilotage Act and the Division of Occupational Licensing needs to hire a qualified full-time investigator to report to the Board.
- The present system allows power brokering by SEAPA and SWAPA. The associations should be combined and become state-controlled.
- Applicants for a limited number of licenses should be selected by interviews with the Board.
- We continue to have trouble with the cruise ship master-pilot relationship. If the pilot objects to some maneuver, he is told not to interfere or another pilot will be hired.
- The state needs to oversee an impartial evaluation process for new licenses and license upgrades, provide guidance to protect pilots from antitrust liabilities, and provide bonding to reduce liability.
- Pilots should be required to have some kind of work history in local waters before they can seek a license.
- There should be public members on the Board from each area of the state.
- The Administrative Procedures Act interferes with pilot discipline.
- There should be at least three Board meetings each year.
- There should be an inescapable apprentice period for all new pilots to weed out the bad ones.

Contract Pilots Comments:

- Unlimited pilots should have extensive sea experience on large vessels.
- The Board should conduct a stringent review of qualifications before applicants take the licensing exam and "yo yo" dockings should be disallowed.
- Except for a few areas, the present system is working well. The state should conduct a similar survey every few years to ensure that politics stay out of pilotage affairs.

- The state needs to get some qualified people involved in policing the associations.
- The state needs to take a more active role in the pilotage system and should appoint a three-member board of retired pilots/masters to give exams and set tariffs. The state could pay these people out of license fees so there would be no conflict of interest.
- The state should establish a cabinet position for maritime affairs to supervise all shipping activity including the Alaska Marine Highway System.
- The state needs to take a hard look at the way that SEAPA and SWAPA do business and make sure they aren't just controlling access in the guise of safety concerns. Some pilots have tried for two years to get dockings, while others are shepherded through in a few months.
- The state should make it illegal for the associations to charge nonmembers a greater than equitable share of expenses through their phony bylaws.

Summary: Pilot reaction to the points raised in Captain Murphy's letter was mixed. In general, pilots do not feel that entry level requirements in Alaska are too low. Nor do the majority of pilots believe that continuing education should be a condition of license renewal.

However, most pilots feel that simulator training should be available on the West Coast, even though many pilots question the benefits of such training for active, experienced pilots.

Contract pilots seem to agree that a third-party evaluation of active pilots would be beneficial, but that such evaluation should be left neither to ship captains nor to the associations. Pilots in associations, on the other hand, appear to be less concerned with evaluation of practicing pilots.

The overwhelming majority of pilots believe that the state should limit the number of licenses, even though they acknowledge that such limitation could cause problems with assuring an adequate supply of pilots.

Pilots indicate that the State Marine Pilot Board is experiencing difficulty in regulating the profession. Many feel that a combination of individual pilot pressure, association squabbles and the absence of a strong state policy regarding pilotage have seriously impaired the state's ability to exert adequate control.

Finally, most pilots feel that the current situation with respect to individual pilot liability is unacceptable. Most recommend that the state take some action to either limit liability or assure that pilots can obtain adequate insurance against claims for damages.

5. SHIPS' AGENT SURVEY

Telephone interviews were conducted with ships' agents in order to obtain industry's perspective on Alaska state pilotage. Representatives of the twelve ship's agent firms in the state were contacted. Four of the agents contacted operate exclusively in Southwest Alaska, one operates only in Southeast, and two service the Aleutian Chain. The remainder work statewide.

Five agents service all types of shipping. Three specialize in petroleum transport, one handles only coal shipments from the Seward port and two service only the fishing industry. One deals with both petroleum and fishing vessels. Five of the twelve agents reported that they provide a full range of services; the remainder provide a more limited range, with stevedoring and provisioning being the most commonly-provided services.

Frequency of agent requests for pilot services ranged from a high of two to three times a day during the peak season, tapering off to two or three days a week during the winter. Coal shipments require pilot services only two times a month. Agents reported that all of their pilots were requested through pilot associations or groups. Four agents worked with SEAPA, eleven with SWAPA and six with AMP (some agents use more than one association). Agents reported that their relationship with the association/group was "excellent" (3), "good" (7) or "OK" (2), although one agent did report "some problems with pilot association attitudes. Associations don't act like a service industry."

Agents were surveyed using a standardized questionnaire. Many of the same items contained in the pilot survey were asked of the ships' agents. Again, some questions called for a quantifiable response while others asked the agents to elaborate. Quantifiable responses to survey questions in tabular form are reported in Table 4. Additional comments by area follow the table.

Table 4: Ships' Agent Survey Results

Question	Yes	No	No Opinion
Do you have access to enough pilots?	11	1	
Are pilots dispatched in a timely manner?	10		1
Are pilots qualified for the duties and waters assigned?	11		1
Should Alaska limit the number of pilots?	3	7	2
Should pilots with unlimited licenses be allowed to pilot in all state waters?	4	7	1
Have you ever filed an accident report with the state?	3	9	
If so, did the Pilot Board take prompt action concerning the report?	2	4	
If you have ever reported negligence or incompetence, was the Board's action timely?	1	11	
Other than an accident, have you ever complained about the quality of pilot services?	3	9	
In general, do you and captains of the ships you represent have adequate means of reporting problems with pilotage?	9	3	
Would you favor a state-mandated pilot evaluation by masters/captains?	1	7	4
Is the present rate structure reasonable?	7	3	2
Is the present rate structure too complicated?	3	7	2
Do you have adequate opportunity to comment to the Board on proposed rate changes?	6	4	2
Do you feel that your concerns as a ship's agent are adequately addressed by the Board?	9	3	
Should agents be bonded for the payment of pilotage fees?	3	7	2
Should the state set a limit to pilot liability for damages?	2	3	7

Elaboration on or clarification of responses to the above questions are summarized below.

A. Pilots Accessibility and Dispatch

Several agents mentioned that it was sometimes difficult to secure a pilot during the peak season or for dispatch to an out-port. Three of the agents working in the Aleutian Chain commented that service was more sufficient and timely now that the Alaska Marine Pilots formed to service the Chain exclusively. Agents serving the petroleum industry had made arrangements with the appropriate association to have three or four pilots on call at all times.

B. Pilot Qualifications

Although all agents answered that pilots dispatched were qualified for the duties assigned, many had suggestions for improvement of the current system. Seven agents mentioned the need to strengthen entry level requirements. Suggestions ranged from an apprenticeship program to seeking persons with long time sea experience as a captain or master. Three mentioned the difficulty pilots in their area had in gaining experience on larger ships or in having opportunities to perform the required number of docking/undockings. Two mentioned the difficulties experienced by the State Board in establishing and maintaining entry standards. One mentioned that "licensing rules are being bent and misused", while one perceived an effort by the state "to water down qualifications", based on weak regulations and Attorney General opinions.

"Continuing education? Absolutely!" responded one agent. Two others specifically suggested that some education/experience requirements be met before pilots are re-licensed. Several mentioned that pilot associations needed to better police the quality of their members. One suggested check rides. One agent suggested a mandatory retirement age.

C. Evaluation

Agents voted down state-mandated pilot evaluation by ship captains or masters for a variety of reasons. Many pointed out that captains and masters of foreign vessels would have a language problem unless the evaluation form was translated into their native language. One agent felt that captains would not be candid, for fear of retaliation by the pilot association. Another agent felt that foreign captains and masters do not have enough knowledge to be capable evaluators. Other agents suggested that a system would just add more paperwork and that the state would probably not use the information anyway.

Most agents felt that the current system for lodging complaints against a particular pilot was sufficient. Several mentioned that masters and captains currently report problems to agents and that the agent works things out with the association by asking that the problem pilot not be dispatched to his/her ships again. While the system appears to work, it can be a two-edged sword: one agent mentioned that he was careful not to complain too often for fear of

being labeled a "trouble-maker" and having his supply of pilots cut off. One mentioned that there should be some mechanism for agents to report problems directly to the state rather than to the association: "Associations used to take care of problems internally—now they don't. Associations are political themselves." Another agent shared this view, and reported complaining to the association about a pilot, but "nothing happened."

D. Accidents and Pilot Discipline

Few agents had any direct involvement in reporting accidents, since this is the pilot's responsibility. However, those who had some knowledge of an accident and subsequent Board response did not feel that the disciplinary action was fair or timely. One mentioned that the state "swept the accident under the rug". Three agents called into question the state's ability to effectively investigate accidents and suggested a person with maritime experience be hired to investigate accidents and other incidents. One agent suggested turning investigation over to the state troopers. One suggested an 800 toll-free number for reporting accidents.

E. Limiting the Number of Pilots or the Areas for Which a Pilot is Licensed

More than half the agents were strongly opposed to limiting the number of licenses. One agent commented "limiting pilots will create a monopoly. It's much better to have highly qualified pilots by raising qualifications." Most felt that such a limitation would lead to a pilot shortage, particularly in the more difficult and less accessible areas of the state. One mentioned that the state may already be facing a pilot shortage: "If business increases at current rates, we won't have enough pilots as it is." Another felt that such a move would limit economic growth and cited the expansion of cruise and cargo ships in recent years.

One agent in favor of limiting the number of pilots suggested that the state "re-test all existing pilots—don't grandfather."

Although agents don't favor limiting the number of pilots, they do favor limiting the area in which a pilot is licensed. All stressed local knowledge as the primary attribute of an efficient pilot and commented that "Alaska is too big for a pilot to operate every-

where." Other agents commented that "there is too much difference in local conditions."

F. Pilotage Rates

Eight of the agents felt that the current rate schedule is reasonable. Three mentioned that it is uneven—too high for some areas, too low for others. Two mentioned that rates must be enforced across the board, with no undercutting by individual pilots or pilot groups. Only three found the current system too complicated. Although agents generally felt that they had opportunity to comment to the Board on proposed rate changes, several mentioned that they were not always informed in time to make comment.

G. State Board

Most agents feel that their concerns are adequately addressed by the State Board. One mentioned that both current lay members are from Southwest Alaska, leaving Southeast under-represented. The same agent also felt that the state should better educate the lay members so that they could take more active part in board deliberations. One agent mentioned that "there is lots of dissent in the pilot associations at present which spills over into Board activity." Two agents mentioned an "adversarial relations between the Attorney General's office and the Board" and the fact that the AG's assigned to the Board "lack understanding of the pilotage profession".

H. Bonding for Pilotage Fees/Pilot Liability for Damages

Most agents did not feel that agents needed to be bonded for pilotage fees. All responded that they paid up promptly, but several mentioned that associations may have problems with other agents.

Opinions on whether or not the state should address the question of pilot liability for damages caused by pilot error were mixed. Several agents felt that the current system worked well and that the state should stay out of the issue. One felt that the state should increase pilot exposure. Another felt that the state should perhaps limit pilot liability to a fixed amount.

I. Pilot independence from ship owner control

One agent felt that some ship agents firms were getting too large and "the agents want to control the pilots—this would be a mistake".

J. State deregulation

One agent commented that while it is "somewhat beneficial to have some deregulation, you cannot do away with regulation totally. The problem with pilotage is that it is difficult to deal with individuals. With doctors, the profession is somewhat self-regulating. Clients don't have to deal with the individual if they don't want to. In pilotage, you deal with an association. You must rely on existing pilots to police and control."

K. Alaska State Pilotage System

One respondent summed up well the present situation: "State pilotage in Alaska is in its infancy. When Alaska's pilotage regulations were adopted, the state didn't foresee how pilotage would develop. As circumstances change, current regulations don't work too well, but it is difficult to change the regulations."

Summary: As would be expected, ships' agents responses differed from pilot responses on several points. Agents are not in favor, for example, of limiting the number of pilots, expressing fears that such a limitation would make it more difficult to access a sufficient number of pilots for their needs. Nor do agents believe that the current situation with respect to pilot liability is unworkable.

On the other hand, agents are more ready than pilots to suggest that the state upgrade entry level qualifications for licensing. They are also generally in favor of limiting licenses to a specific geographic area, as long as this does not make unreasonable demands on the industry.

Agents agree with pilots that ship captains cannot effectively evaluate pilots. Agents see the State Board of Marine Pilots as more responsive to their concerns than do pilots. However, some agents would like more timely notification of proposed Board action, particularly with respect to rate setting, location of pilot stations, and determination of compulsory pilotage waters.

7. CONCLUSIONS AND RECOMMENDATIONS

This report accepts the premise that the state does have a compelling interest in maintaining a system of compulsory pilotage for state waters. The exponential increase in passenger ship traffic, the heavy state and local government investment in port facilities and the *Exxon Valdez* disaster all point to increasing rather than decreasing state involvement in the maritime industry to protect life, property and the environment. In light of this compelling state interest, the overall conclusion of this report is that state regulation of pilotage has not kept pace with changes in the industry.

The conclusions and recommendations embodied in this report amount to an explicit social contract between Alaska's marine pilots and state government. In return for limiting pilot liability and protecting pilot organizations from antitrust litigation, the state would require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

Based on the results of several surveys, meetings with involved parties and numerous conversations with State Board members, individual pilots and ships agents, the report finds the following with respect to the existing system:

A. Acknowledgement of the State's Interest in Pilotage

Most states include a statement on public policy and the state's interest in pilotage in the opening section of their marine pilot statute. Such statements generally include 1) protection of life, property, and the environment, 2) the importance of efficient shipping and 3) the public service nature of the pilot's role. A crucial element is the acknowledgement of the independence of pilots from steamship owners and agents. Such statements remove any ambiguity about the state's interest in and authority to control compulsory pilotage in its waters.

At present, the Alaska Marine Pilotage statute does not contain a section on public policy or state interest in the control of pilotage.

Recommendation:

1. The Marine Pilotage Act should be amended to include an opening statement of intent, which establishes the fact that marine pilots are employed as independent contractors under state control for the purpose of protecting lives, property, vessels, and the marine environment.

B. Pilot Qualifications

That state pilots hold extensive knowledge of local waters should be the foundation of and rationale for a compulsory pilotage system. However, the study finds that existing state entry level standards cannot assure that all licensed pilots have this special knowledge. Alaska's extensive coast line, difficult weather conditions and numerous ports of varying size and accessibility preclude one individual from gaining extensive local knowledge of the entire state. Thus, the Alaska situation appears to dictate regional licensing. Given both diverse physical characteristics and region-specific types of shipping traffic, qualifications and entry-level requirements may differ by region.

While some of the knowledge required for piloting can be acquired by traditional educational methods, local knowledge is best gained through hands-on experience under the direction of senior or master pilots. In this respect, the report questions whether or not the current sea-going experience and docking/undocking requirements are sufficient for licensure. All other maritime states require more extensive training and sea-going experience than does Alaska, although Alaska's size and diversity makes its compulsory pilotage waters among the most extensive and difficult in the country.

Based on information received, the report also questions whether or not pilots currently holding limited licenses have adequate opportunity to gain the experience necessary to upgrade their licenses.

The report finds that existing statutory and regulatory language is insufficient to allow the State Board to set up and enforce entry level qualification which can adequately ensure the required local knowledge on the part of state pilots.

Recommendations:

1. The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.
2. The Board should establish a third region in the Aleutian Chain in addition to the two current regions (Southeast and Southwest).
3. The Board should strongly consider setting requirements by region to accommodate differing physical conditions and shipping patterns. The Board should move towards exclusive licensing by region. A transition period should be established to allow existing pilots who are licensed for more than one region of the state to choose their licensing region. Pilots new to the system should be required to train in and be certified for only one region of the state. The Board should be given the authority to allow inter-regional endorsement for specific ports where such endorsement is essential for orderly and efficient transport of persons and goods. Strict recency requirements should be adopted for pilots who wish to maintain inter-regional endorsements.
4. The Board should be authorized to establish a formalized deputy pilot program, with substantial experience requirements (in addition to existing tonnage requirements) that must be completed before a pilot is allowed to take the exam for a higher license. Each pilot seeking a higher license should also be required to pass a check ride evaluation. The Board should require the pilot organization of each region to develop training procedures that enable all deputy pilots to have equal opportunity to perform ship movements, take observer trips, and perform the dockings/undockings necessary to upgrade their license.

C. Pilot Evaluation and Relicensing

Currently, the state has no system for evaluating pilots after they have been licensed. Once a person has obtained a license of any type (with the exception of a temporary license), s/he is free to operate under that license indefinitely upon the payment of a biennial license renewal fee and submission of a physical exam results. In theory—and allegedly, in practice—pilots can hold endorsements for, state waters and for ports which they have not visited for years.

Pilots can continue to renew licenses with only minimal actual pilotage within a two-year period. Finally, although new technologies are being introduced in the industry, the state currently requires no continuing education for licensed pilots.

Because the state has an interest in assuring the continued competency of the pilots to which it has granted licenses, the report concludes that the current system of virtually life-long licensure without periodic evaluation is insufficient.

Despite national concern about substance abuse, particularly in occupations of high importance to public safety, Alaska currently conducts no oversight of the marine pilots in this respect. This lack is particularly troubling in view both of Alaska's known high incidence of substance abuse and of several recent legal actions alleging abuse among pilots.

Finally, some persons contacted in the course of the study expressed concern that Alaska had no age limit for license renewal. A mandatory retirement age has been suggested. The study concludes that physical condition rather than age should be the main judgement criteria. In this respect, the existing general, biennial physical examination requirements are insufficient to ensure that pilots maintain the level of health and stamina required by the profession.

Recommendations:

1. The Board should establish a check-ride system for fully-licensed pilots, that would allow the skills of each pilot to be observed prior to license renewal. Check rides should be evaluated by current senior pilots (i.e., peer-review), designated from each region by the Board.
2. Recency criteria should be adopted for pilots to maintain endorsements for specific waters and ports. Some form of "use it or lose it" provision, such as a minimum number of ship movements between license renewals, should apply to all pilots.
3. The Board should be authorized to conduct random substance abuse testing.

4. Every pilot should be required in statute to submit to a complete annual physical exam administered by a fully-licensed, practicing physician.

5. The Board should develop an approved list of continuing education options, such as simulator or Automatic Radar Plotting Aids (ARPA) training, and require that pilots complete a course between license renewals. One option would be for the state to pay for the training (through an increase in license fees and the tariff schedule) and have the individual pilot pay for transportation and board.

D. Pilot Discipline

In the past, the state relied upon the pilot associations to handle pilot discipline within their own ranks. However, recent court cases allege that associations are no longer willing or able to fulfill this function. Therefore, the state must increase its ability to monitor the profession.

The study finds that Alaska's statute concerning pilot discipline is among the most comprehensive and modern of the maritime states. However, the study also finds that the statutory sanctions are seldom invoked. Major hindrances to the efficient policing of pilotage by the state appear to be the difficulty in obtaining timely information about accidents and incidents and the lack of trained marine investigation personnel to follow up on those which are reported.

Recommendations:

1. The Division of Occupational Licensing should be authorized to hire a full-time marine pilot coordinator, to be funded with program receipts from increased pilot license fees. Ideally, the coordinator would have no connection with any pilot organization in the state and would be approved by the Board of Marine Pilots. He/she should be qualified to review pilot organization training programs, participate in license examinations, and investigate accidents and incidents of pilot misconduct. The coordinator would report findings to the state Board for action. Allegations of pilot misconduct should be expeditiously handled by the board under the powers granted in AS 08.62.150-155.

The two public members on the Board are both from the same region. State representation on the Board (i.e., the DCED commissioner or designee position) appears to be of limited value in asserting state interests, primarily because of the high turn-over rate of designated members.

During the course of the study, it was found that the Board currently requires individual pilots to file frequent reports on ships' movements which they have handled. Study staff had intended to utilize this information to provide a more quantitative description of Alaska's shipping industry. However, the information received by the Board is not maintained in a useful format. The report concludes that existing reports are not being utilized by the State Board or the DCED. Yet, the state should have access to the management information necessary to efficiently regulate marine pilotage in the state.

Recommendations:

1. The Board must be given specific authority in statute to set pilot license fees and tariffs, impose experience and training requirements as it sees fit, set physical/health standards, and require drug and alcohol testing of pilots.
2. Since Board actions benefit the entire shipping industry, particularly with respect to pilot qualifications, accident investigation, and rate setting, the Board should have authority to consider state administrative costs in setting pilotage rates. A portion of the tariff would be returned to the state and could be used, on appropriation by the Legislature, to assist in funding program administrative costs.
3. Because of increased duties and responsibilities being recommended for the Board, meetings should be scheduled at least three times per year, with provision for emergency meetings at the request of the chair.
4. The DCED Commissioner or designee position should be reassigned to an active pilot from the Aleutians region. Additionally, public Board members should reside in different regions of the state.
5. The Board should either cease to require detailed information on ships' movements from individual pilots or should organize this

information in a database to be used to compile periodic management reports. If such reports are initiated and are determined useful, the Board should have the ability to require that individual pilots and pilot associations file the necessary information.

G. Pilot Organizations

Despite current internal problems within some pilot associations, the report concludes that associations and other voluntary organizations of pilots will continue to provide the core of mandatory pilotage services in Alaska, as is standard practice in all other maritime states. If the above recommendations concerning increased entry level requirements are adopted, the associations will be called upon to play the major role in training, since their members constitute the largest pool of senior pilots with unlimited licenses. Under the recommendations for pilot evaluation, association members will also take the responsibility for peer review. In performing these functions for the state, associations must have liability protection.

The report also concludes that pilot associations and groups are the most efficient mechanisms for providing comprehensive, 24-hour per day, year-round pilot services. Although individual pilots can and should be allowed to continue to operate independently to provide specific services, without some form of pilot association, portions of the state and the industry are very likely to be underserved. If associations are to continue to perform the services of pilot dispatch, they must be cleared of antitrust charges.

However, the report also finds that in return for recognition and protection from antitrust allegations, the state should more closely monitor association activities.

Based on U.S. maritime history and the experience of other states, as well as the testimony of most Alaskan pilots, the report concludes that unregulated competition among pilots can have a corrosive effect both on the quality of services provided and on the independence of state pilots from shipowner control. While nothing in state regulations should preclude individual pilots or groups of pilots from providing more efficient service to the industry by cutting down travel time and costs or by moving dispatch services closer to the point of ship traffic, competition based only on pilotage rates should be discouraged. Where such competition has

been allowed in other states³⁴, the result has been a cut-throat battle for lucrative shipping jobs while more difficult routes, remote ports and unusual vessels have been unable to obtain timely services. Additionally, to corner the most desirable assignments, pilots and pilot groups have apparently given up a large measure of independence and operate essentially as employees of the shipowners.

Recommendations:

1. Pilot organizations should be recognized in state law and chartered to provide state-approved training for deputy pilots.
2. In return for limiting liability and providing protection from antitrust litigation, the state should require that pilot organizations file their bylaws and operating rules with the Department of Commerce and Economic Development. The Board should have the authority in statute to veto bylaws and/or suspend the charter of organizations for practices that it feels do not serve the public interest.
3. In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to submit copies of their annual audits to the State Board or, in the case of individual contract pilots, to keep their books open for state audit.

Note: The charter of pilot organizations does not preclude individual pilots from offering their services independently, so long as they adhere to the tariff schedule.

H. Individual Pilot Liability

The study concludes that the traditional liability protection afforded pilots has been eroded by an increasing number of "nuisance suits" brought against pilots. This exposure is expected to increase as a result of recent federal anti-oil-spill legislation. Although pilots should continue to be held liable for wanton and reckless behavior, some dollar limitation on liability would relieve pilots

³⁴Only Florida (Tampa Bay Port) and Connecticut have experienced such competition. Both states are currently attempting to remedy the situation by law or regulation.

from being automatically included in any claim for damages arising from performance of their duties.

Recommendation:

1. Individual pilot liability should be limited in statute to a specific dollar amount. Most states which have enacted such protection set the amount at \$5,000.

I. Pilot License Fees and Tariffs for Ship Movements

The existing fee schedule for pilot licenses appears to be extremely low and has not been amended for several years. The report finds that a biennial fee of \$180 has little relation to either the administrative costs associated with renewal or the value of the license to the holder. Most other maritime states charge significantly higher fees.

The tariff schedule has been in effect since the early 1980's and does not reflect changes in cost of living or in the industry. In addition, as mentioned above, the Board's authority to set and enforce rates has been called into question.

Recommendations:

1. Pilot license fees should be reviewed by the Board and increased substantially to reflect the increased costs of program administration. It is recommended that the Legislature consider treating license fees as program receipts and authorize that they be used to fund a marine pilot coordinator and increased training requirements. Based on other states' rates, an annual license fee for pilots of \$1,500 appears to be reasonable.

2. The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.

3. The tariff schedule for ship movements should be reviewed by the Board and adjusted where necessary. The Board should consider special rates for unique circumstances, such as ferrying fisheries observers to vessels in Dutch Harbor.

4. The Board should be given the authority to include a training fee in the tariff schedule. The fee would be used by associations and individual pilots to provide partial support for training and continuing education. A portion of the fee should accrue to the state as program receipts which, if appropriated by the Legislature, would cover travel expenses for evaluation check rides.

Attachment A

Letter from Captain W.E. Murphy to Governor Cowper,
January 1, 1990

Letter from Governor to Captain W.E. Murphy,
March 21, 1990

Capt. W.L. Murphy, Inc.

P.O. BOX 597
HOMER, ALASKA 99603

(907) 235-8271

January 1, 1990

Wes
Cowper

Governor Steve Cowper
Capitol Building
Juneau, Alaska

Dear Governor:

I am writing to alert you to serious problems in state marine piloting which I believe should be of grave concern to you, to legislators and to the public. The following observations and conclusions have been reached after more than 15 years of piloting in Southwest Alaska and 4 years of service on the Alaska Board of Marine Pilots, 3 of them as chairman.

State pilotage in Alaska is in trouble in several ways. High standards of training and performance are legally nonexistent and those imposed by pilot associations are being eroded by legal action. Outside steamship agents are manipulating pilots and sponsoring competition to the detriment of safety and thereby striking to the heart of state pilotage. The Alaska Board of Marine Pilots faces an increasingly uphill battle to maintain and strengthen pilot training and performance standards. Alaska is the easiest state in this country in which to obtain a state pilots license.

ERODING AND NONEXISTENT STANDARDS OF TRAINING AND PERFORMANCE

Traditionally, pilot associations throughout the U.S. have set and maintained standards of training and performance for pilots. The pilot association of which I am a member, Southwest Alaska Pilots, typifies most pilot groups which maintain strict qualification and training standards. Our pilots have extensive seagoing backgrounds, have attended the best shiphandling simulators available in the world today and have passed a long training and check-ride system with veteran pilots. We have long recognized that the state license is entry level only and not an assurance of competency. Local association requirements such as ours should be the minimum a responsible pilot association should expect and be able to maintain. Sadly, however, pilot associations nationwide find it increasingly difficult to maintain high professional standards.

The traditional role of pilot associations as trainers and watchdogs over professional standards is being eroded by an alarming trend in today's legal climate. Locally imposed standards are failing to protect and maintain a high standard of piloting for at least two reasons:

1. Pilots have successfully sued their own associations claiming the group had no right to selectively dispatch or impose training on an individual because the pilot already had a Coast Guard and state license and, hence, a "certificate of competency."
2. Association lawyers are telling us these days that associations are probably liable if a pilot who has been trained and otherwise qualified by an association, absent some kind of statutory requirement, has an accident.

Today's dismal legal situation for pilot association training programs is combining, to the detriment of safety, with a weak state pilotage act which does not require high enough licensing standards to reinforce the association imposed requirements being eroded away by court decisions. Alaska's state pilotage act requires relatively minimal seagoing background and Coast Guard license and no apprenticeship training at all for beginning pilots. Not only are there virtually no state required training standards or training program for candidate pilots, neither are there recurrent training and continuing education requirements for practicing pilots. These low standards should be cause for grave concern.

The standards required for a Coast Guard pilotage endorsement, prerequisite for a state license, are even more paltry and inadequate than those imposed by the state.

It is an open question how long pilot associations, on their own, can hold the line on high professional standards. I submit the ultimate victim of today's worsening legal situation coupled with virtually nonexistent state and federal standards will be the professionalism and competency of piloting in Alaska and, ultimately, the safety of intra-state marine transportation. Could the state of Alaska be found liable if a serious maritime accident occurred at the hands of a state pilot whom a court determined was insufficiently qualified and trained?

Governor Steve Cowper
January 1, 1990
page two of seven pages

CONTROL AND MANIPULATION OF STATE PILOTS BY OUTSIDE STEAMSHIP AGENTS AND ITS EFFECT ON SAFETY

The problem of low entry standards coupled with Alaska's practice, unlike any of the other 22 maritime states, of issuing an unlimited number of licenses is creating a surplus of licensees, many of whom have had scant seagoing background and little or no training. I believe this system is being taken advantage of by Outside steamship agents who feel that competition among pilots is in their interest. The situation is beginning to cause accidents:

- When the SWALLOW grounded and polluted Dutch Harbor last year she was waiting for a pilot. There was a pilot ready and available but he was from an association not in favor with the steamship agency that represented the ship. Hence, the ship had to wait for a pilot from the preferred group. While waiting the mate on watch apparently fell asleep and the ship then went aground.

- In another more recent incident a pilot who was on duty in Dutch Harbor was contacted by an agent and asked to bring a ship, REEFER FRESH, into inner Iliuliuk Harbor. The pilot refused the job on grounds of safety: the ship was judged too large to enter Iliuliuk under the conditions then prevailing. The agent thereupon contacted a competing pilot group whose members had no such compunctions. That group dispatched a pilot to the job. Witnesses state the ship went aground maneuvering to enter the channel and had to be pushed off by tugs.

- Currently there is a movement afoot by some licensees to offer "through service" pilotage on cruise ships which transit both Southeastern and Southwestern Alaska during summer months. Their claim is, presumably, that such service will cost the operators less money. Veteran pilots from both geographic areas agree that there is no way an individual pilot can maintain the high degree of currency and local knowledge of both these huge areas necessary to do a credible and safe job of piloting. But rather than lose their livelihoods these veterans will offer the same service, despite their serious reservations, if they must in order to survive.

Unlike groceries or airline fares, for example, state pilotage should not be a commodity in the market place where competition is seen as good because it keeps prices down and service up. In piloting, there are public interest implications of safety which have a higher value than competition. That is why the maritime states control piloting and set rates much as they do with a publically regulated monopoly such as a utility company.

Competition between pilots for jobs totally violates the "guts" of state pilotage, the essence of which, as you know, is the independence of the state pilot from the interest and control of the shipowner or his agent. A pilot should make shiphandling decisions based on safety considerations only rather than on the shipowner's or agents' commercial interest. He is not free to do this if he is forced to hustle jobs and fend off other pilots who may be in favor with particular agents or who may offer a shipowner or agent a better "deal". Ideally, the state pilot sees his allegiance to the citizens of the state and to local political authority. He must be insulated from commercial demands, unrelated to safety, imposed by having to vye with other pilots for jobs. Only in this way can safety be served. It is important to note that of the 23 coastal states only Alaska permits competition between pilots.

If these concerns sound self serving they are not intended to be. The issue here is not individual pilots or pilot groups. Rather it is the integrity of Alaska's state pilotage scheme. A system which permits an unlimited number of licenses and requires little or no training is ripe for tampering by commercial interests. I submit that this is happening and safety will continue to suffer if a better system is not put in place.

PILOT BOARD DIFFICULTIES IN MAINTAINING AND UPGRADING STANDARDS

During my tenure on the pilot board the twin problems of getting regulations in place and maintaining a meaningful system of pilot discipline were almost intractable. This was largely because of what can only be termed an uncooperative, if not obstructionist, attitude by the department of law toward the pilot board and, indeed, perhaps toward all boards. For example, the department of law recently opined that the pilot board had to issue a pilot a license for Southeastern Alaska based on dockings and undockings he performed in Southwest Alaska!

Governor Steve Cowper
January 1, 1990
page four of seven pages

Law department attorneys claim that the way the pilot statute is written is responsible for those kinds of interpretations. If that is indeed the case, then the state pilotage act should be overhauled and rewritten so that sensible and meaningful regulations can be put in place in a timely way and not delayed and thwarted by state attorneys whose job it is, presumably, to help the board. This is manifestly not the case now.

PILOT DISCIPLINE

When pilots err, as they occasionally do, it is the pilot board's job to discipline them, when appropriate, after due process. The problem here is that due process is routinely taking between 2 and 3 years before a pilot discipline case ever comes before the board. During this hiatus, the pilot in question continues to hold his license and works on it with no restrictions. This makes pilots and the maritime public view the pilot board as a paper tiger that never takes prompt disciplinary action. Even worse, it is unfair to the public which rightfully expects errant pilots to be dealt with.

EASE OF ENTRY

Alaskans probably expect that their state government requires high standards for entry into the demanding profession of ship piloting where the consequences of failure can have a profound impact on them and the environment. Unfortunately, that is not the case. It is a fact that Alaska is the easiest state in which to obtain a pilot's license. In this state liquor licenses, taxi cab permits and commercial fishing entry permits are limited among individuals for the larger public good. Ironically, an unlimited number of pilot licenses can be issued. Biologists tell us that the fish resource cannot withstand unlimited pressure from too many fishermen. I submit that the "resource" of maritime safety cannot withstand the pressure of too many pilots, particularly when many of them are poorly qualified and trained.

RECOMMENDATIONS

Alaska's state pilotage act should be thoroughly overhauled and rewritten. Only in this way can the problems I have cited be properly and permanently dealt with. Specifically:

Governor Steve Cowper
January 1, 1990
page five of seven pages

1. The new pilotage act should require the highest standards of entry and training:

- Applicants for license should possess a minimum Coast Guard license as master of ocean, unlimited.

- A comprehensive training program should be established which would be funded by the state using monies from pilot fees. The program should include simulator, observer trips and lots of hands-on shiphandling under the guidance and instruction of experienced pilots. At the completion of his or her training the trainee must be capable of independent piloting on lower tonnage vessels, advancing to larger ships as experience and performance permits. California has a program very much like this and I believe it could become a model for the profession. Alaska's goal should be to have the most qualified, best trained pilots in the country.

2. The new pilotage act should tightly control the number of licenses issued and in force consistent with the needs of shipping. Those needs should be established by a representative pilot board. This is done in all other maritime states I am aware of. It is the only way to prevent the unsafe situation where too many pilots compete for jobs by bowing to the commercial pressures of shipowners and agents. To prevent individual pilots or pilot groups from discriminating about who may become a pilot, the pilotage act should provide for state selection of trainees for licensure based on need and an objective set of professional criteria.

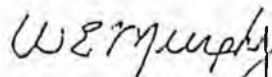
3. Working pilots should be required to complete recurrent training and ongoing education in the same manner as other professionals. Every 2 or 3 biennial license renewal cycles pilots should have to document completion of training at a shiphandling simulator previously approved by the pilot board.

4. The new pilotage act should be written so clearly and concisely and the pilot board's authority stated so specifically that there is no longer the possibility of conflicting and contradictory interpretation by staff attorneys. A way should be found in the Administrative Procedures Act to permit timely resolution of pilot disciplinary cases.

5. Finally, state pilots should be legal residents of Alaska. In many, many cases they are not. If one believes as I do that the state pilot license confers on the individual special obligations and responsibilities to the state then it follows that a licensee should live here.

The problems I have outlined are real, Governor. Alaska's system of mandatory state pilotage is in trouble. I urge you and your staff to examine the problems and find solutions. If I can help in any way I will gladly do so. Thank you for looking at this critical issue.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "W.E. Murphy".

Capt. W.E. Murphy

Governor Steve Cowper
January 1, 1990
page seven of seven pages

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1990

Captain W. E. Murphy
P.O. Box 597
Homer, AK 99603

Dear Captain Murphy:

Thank you for your thoughtful letter concerning marine pilotage in Alaska. The issues you raise are of definite concern to me. They are also issues that should be fully addressed by both the Executive and Legislative Branches. As you know, the Board of Marine Pilots is up for sunset review next year. It appears to me that the upcoming sunset review process will provide the State with the forum it needs to explore the matters you have raised.

In preparation for that process, I have instructed Mary Halloran, Director of Policy in my Office of Management and Budget, to coordinate work on this issue during the interim. Your letter clearly suggests that the administration needs to get up to speed on piloting issues nationwide, and Division of Policy research staff will be most helpful in exploring the potential implications of the direction you see piloting regulation taking in Alaska.

As part of that work, the Department of Commerce and Economic Development, Division of Occupational Licensing, will look closely at other pilot licensing boards, report on the relationship between those state boards and related private pilot associations and be prepared to offer suggestions that address the antitrust concerns that result from these considerations.

Finally, the Department of Law will review the legal ramifications of issues such as pilot experience and training in light of my concerns for the protection of both our environment and Alaska's important renewable resources.

We will keep the Board of Marine Pilots apprised of our progress. I have also asked that these agencies seek the advice and comment of the state's piloting and shipping interests during this process.

Captain W. E. Murphy

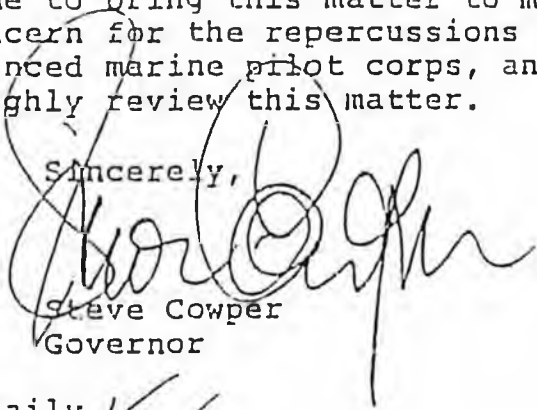
-1-

March 21, 1990

By involving all interested parties, I feel confident that the administration will be in a good position to focus legislative attention on those areas of piloting regulation in Alaska that we believe need public debate and perhaps significant change.

Thank you for taking the time to bring this matter to my attention. I share your concern for the repercussions of a poorly trained and inexperienced marine pilot corps, and you have my commitment to thoroughly review this matter.

Sincerely,



Steve Cowper
Governor

cc: Attorney General Doug Baily ✓
Commissioner Larry Mercurieff ✓
Board of Marine Pilots Members
Mary Halloran
Randall Burns

Attachment B

Letter from Paul Kirchner, Counsel to the American Pilots Association
to Marilou Madden, Senior Policy Analyst, Alaska Governor's Office,
Division of Policy, May 25, 1990

Kurrus & Kirchner
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OFFICE OF
MANAGEMENT & BUDGET

MAY 28 1990

STRATEGIC PLANNING

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RICHARD W. KURRUS *
PAUL G. KIRCHNER †
PETER N. KYROS #
JOHN R. MCKAY * †

* ALSO ADMITTED IN MASSACHUSETTS
† ALSO ADMITTED IN VIRGINIA
ALSO ADMITTED IN MAINE
* ALSO ADMITTED IN NEW YORK

May 25, 1990

Ms. Mary Lou Madden
Office of the Governor
State of Alaska
P.O. Box AD
Juneau, Alaska 99811

Dear Ms. Madden:

I am General Counsel to the American Pilots' Association (APA). Captain Pat Neely, President of the APA, has been participating in the Xth Congress of the International Maritime Pilots Association in Israel for most of this month. He has asked me to respond to your letter to him of May 2, 1990.

The following information and commentary is addressed to the questions raised in your letter and is organized and presented in the same order as the questions.

1. Entry Level Requirements.

Alaska's requirements are noteworthy in that the entry level requirements and the requirements for obtaining a full state pilot's license are the same. In other words, there is no significant training required. To my knowledge, no other state grants pilot licenses without some pre-license training program tailored to the needs and conditions of the particular areas for which licenses

Harris & Kirchner

Ms. Mary Lou Madden
May 25, 1990
Page Two

are given. In that respect, I believe that Alaska's requirements for obtaining a state pilot license are the lowest and least stringent of any state's requirements at the present time.

The existing entry level requirements of Alaska law do not approximate a pre-license training program. A federal pilot license is not a substitute for a training program. In all other states, it is either a precondition for admission to a training program or is one of the initial steps in the program. Unlike the typical state pilot license, a federal pilot license may be obtained without any prior training or service as a pilot.

Alaska's requirement of 10 docking and undocking jobs under the supervision of a state pilot is a similarly inadequate alternative to a training program. Trainee pilots in other states make hundreds and, under some programs, thousands of trips with instructing state pilots before they can receive a full state license. Not only is the 10 required jobs a relatively minimal number of such jobs, but a simple requirement for a specified number of jobs or trips lacks any assurance of the educational content and instructional value of the assignments. Although I am confident that a supervising state pilot would take his instructional duties seriously, such jobs should be part of an established training program.

2. Pre-License Training.

A) Need.

A distinguishing feature of the state pilotage system in this country is that in almost all cases, pilots learn their craft under the tutelage of master pilots. This is integral to the status and function of a a state-licensed pilot, which is significantly different than the status and function of someone with only a federal pilot license.

State pilots are, and should always be, independent of the owners, operators and agents of the ships on which they provide pilotage services. They serve and protect the interests of the state, not the shipowner. State pilots must be experts in navigation and in handling the different types and sizes of ships likely to be encountered. State pilots must know how to handle themselves on the bridge of a ship, often among crew members whom they have never met before. Finally, state pilots must have a detailed familiarity with the local waters and the various conditions and factors that affect navigation in the area covered by their license.

These skills and responsibilities can only be learned through locality-specific pilot training programs. No matter how much sea service an individual may have, no matter how many times an individual may have transited a particular body of water while

Hurris & Hirschner

Ms. Mary Lou Madden
May 25, 1990
Page Ten

3. Continuing Education.

You are correct that the emphasis on continuing education is a national trend. Although I have heard, as you have, that California and Washington may be considering mandatory continuing education for state-licensed pilots, I am not sufficiently familiar with those plans to comment on them.

The Coast Guard has required periodic recertification of Radar Observer status for federal pilot licenses for several years and has recently proposed adding training in Automatic Radar Plotting Aids (ARPA) to the qualifying courses leading to certificates of Radar Observer. State pilots, all of whom have federal pilot licenses, must, of course, take those courses and comply with that continuing education requirement. In addition, many state pilot associations have had their own continuing education programs for some time. Those programs have included periodic ship simulator courses and participation in shiphandling schools, most notably the one in Grenoble, France. Pilot participation in association programs is voluntary. The association's role is to disseminate information about the available courses and school programs and to pay all or some of the costs and expenses for some agreed number of pilots per year.

Even with the current trend emphasizing continuing education for pilots and other licensed mariners, there remains a

Hurkus & Kirchner

Ms. Mary Lou Madden

May 25, 1990

Page Eleven

considerable amount of disagreement within the maritime community over the value of simulator courses and shiphandling schools for continuing education. Without taking sides in that dispute, I believe that it is safe to say that the value is not the same for all pilots. Some pilotage areas are not covered by any simulator program. Some may never be because of the difficulty of replicating the conditions of the areas. Some pilotage tasks are not approximated in any simulator exercise or ship-handling model.

The expansion of continuing education for the pilotage profession is therefore limited by the availability and utility of instructional programs and exercises. A state that would want to establish continuing education requirements should first carefully examine what continuing education is available and what benefits it might provide. It has been my experience that state pilots have been in the forefront of the maritime industry in educating themselves in the latest changes in technology and in pursuing ways to maintain and improve their skills. For that reason, I would consider the primary benefit of a state-mandated continuing education program to be to formalize and give official sanction to what pilots themselves would consider appropriate. I would also support such a program if it would facilitate including the substantial costs of continuing education in the

license. That understanding is relevant to your question regarding possible liability concerns of pilot associations.

D) Types of Programs.

Apprenticeship or training programs vary considerably from state to state. There are two general models, however.

Most of the East Coast states have lengthy apprenticeship/deputy pilot programs. Prior sea service or equivalent service on a tug under a federal license is generally not required for entry into the apprenticeship program. Service on ships or tugs with or without a license is typically accepted in lieu of an otherwise required degree from college or a maritime school, however, and, in fact, many apprentices have both prior service and a degree. These apprenticeship programs receive approval from the Coast Guard so that time spent in the program may be accepted in lieu of licensed service for purposes of qualifying for a federal pilot license. The programs feature classroom and shipboard instruction in general shiphandling and navigation and in local conditions and requirements.

Following completion of the apprenticeship program, which may last between two and six years, a trainee becomes a deputy pilot and is issued a limited state license. The deputy then is permitted to pilot ships within the size limits and other

conditions of the license. During this period, the deputy also makes many trips on larger ships, receiving "hands-on" experience under the supervision of a full licensed pilot. Limits on the deputy's license are removed on a gradual, step-by-step progression based on the period of time or the number of such trips. The deputy pilot period may last from two to four years at the end of which the trainee is eligible for a full pilot license.

Most states outside of the East Coast require licensed service on ships or tugs, and usually a federal pilot license, for entry into their training programs. As a result, their training programs are of shorter duration. Because the trainees entering such programs have experience in shiphandling and general navigation requirements, much of the curriculum of the typical East Coast apprenticeship program is not necessary. Rather, these other programs concentrate on the development of local knowledge and the pilotage skills required in the particular area. Generally, there is a purely instructional period of between six months and a year followed by a deputy pilot period of hands-on training and limited but progressively broader pilotage authority. Trainees in these programs are usually referred to as deputies throughout the process and until they receive a full pilot license.

Kunus & Kirchner

Ms. Mary Lou Madden
May 25, 1990
Page Six

have a role, of varying degrees, in the selection of trainees; in other states, pilots are excluded from the selection process. All states have certain stated eligibility requirements for applicants.

There is no one training program or selection process that the APA endorses as the best or most effective and fair. Each state's requirements should be based on the particular needs of that state. In general, we would recommend that a training and licensing program satisfy two criteria. First, the program should not discriminate either for or against any individual or class on the basis of race or gender. Second, the requirements of the program should be concerned solely with achieving the primary objective of state pilotage regulation, which the Court in Kotch stated, "is to secure for the State and others interested the safest and most efficiently operated pilotage system obtainable." In my opinion, it would be a serious mistake for a state to allow other factors unrelated to that objective to dictate a training and selection process. For example, I do not believe that creating employment opportunities or encouraging competition are appropriate or prudent goals of this aspect of pilotage regulation.

C) Legal Status.

Some training programs are set out in detail in the state pilotage statute. An example would be the Florida training and license eligibility requirements, which are provided in Fla. Stat. Ann. §§310.071 - 310.081 (West 1989). In other states, the statute directs the Pilot Commission or Board or some other licensing body to prescribe by regulation training and licensing criteria. See, e.g., Cal. Harb. & Nav. Code, §1171.5 (West 1990) (San Francisco Bay pilots). Finally, in some states, the pilot associations develop the training programs, which are then submitted to the licensing body for approval and adoption as the official training programs required by the state. New York and Pennsylvania are examples of such states.

In all states, pilots have a role in the training process, most commonly as instructors on training trips. In that capacity, the pilot not only instructs the trainee during the trip but also records the trip, often with comments on the instructional content of the trip and on the trainee's performance.

In administering training programs, pilots and pilot associations act as instrumentalities of the state. It must always be understood that the state issues the license and, by doing so, certifies that the trainee/applicant has met the training requirements and possesses the other necessary qualifications for the

Hunnus & Kirchner

Ms. Mary Lou Madden
May 25, 1990
Page Four

a member of a ship's crew, and no matter how long an individual may have had a federal pilot license for that body of water, the individual should not be allowed to walk into a licensing office and be given a state pilot license.

B) Legal Authority and Policy Considerations.

Your letter suggests that there may be some concern that a requirement for pre-license training may pose illegal or inappropriate restraints on entry into the pilotage profession. Such a concern is unwarranted.

It is well established that, as a legal matter, a state may limit the right to pilot vessels subject to state jurisdiction to individuals who have been licensed by the state. To do so does not violate either the United States Constitution or the federal antitrust laws. Olsen v. Smith, 195 U.S. 332, 49 L. Ed. 224 (1904). Further, a state has considerable discretion under its licensing authority in restricting the number of licenses issued, in establishing training requirements and in selecting individuals for training -- notwithstanding the fact that such features of pilotage regulation necessarily restrain entry into the profession. Kotch, et al. v. Board of River Port Pilot Commissioners for the Port of New Orleans, et al., 330 U.S. 552, 91 L.Ed. 1093 (1947); Brechtel, et al. v. Board of Examiners of

Hurrous & Kirchner

Ms. Mary Lou Madden

May 25, 1990

Page Five

Bar Pilots for the Port of New Orleans, 230 F.Supp. 18 (E.D. La. 1964).

Of course, what a state may legally do and what it should do are two different matters. Even without considering the latitude of state legal authority, however, it is generally accepted that it is entirely appropriate for a state to set up training or apprenticeship programs designed to assure, as much as possible, that only competent, knowledgeable persons are issued pilot licenses. I am aware of no recent instance in which a state's pre-license training requirement has been attacked on the ground that it unfairly restricts entry into the profession.

To be sure, there have been complaints on some occasions that the method of selecting individuals for certain training programs is unfair or illegal. I do not know of any successful legal challenges of that sort, however. Indeed, both the Kotch and Brechtel cases upheld a training and licensing system that, according to the plaintiffs' allegations, limited pilot licenses to relatives and other persons acceptable to existing state pilots.

The states regulate entry into their training programs in a variety of ways. Some states have a competitive exam procedure; some rely on a screening process that is competitive but does not involve an examination. In many states, the pilots

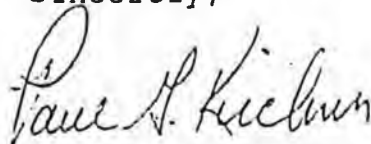
Hurmus & Kirchner

Ms. Mary Lou Madden
May 25, 1990
Page Thirteen

occurs or an allegation of incompetence or misconduct is made. My own personal view is that pilot boards or other bodies responsible for disciplining pilots should be part of a state agency or department. The benefit of that connection is that the disciplinary body would have access to the resources and capabilities of the state government, such as investigatory personnel and technology and legal assistance. Some pilot disciplinary bodies simply do not have on hand or readily available the expertise or resources to investigate accidents or to conduct disciplinary proceedings in a meaningful fashion. Where that is the case, action is often too slow, and neither the state nor the pilot is well served.

I hope that this information and my comments are helpful. The APA intends to follow with great interest Alaska's review of its pilotage system. If there is any additional information or assistance that Captain Neely or I can provide, please do not hesitate to ask.

Sincerely,


Paul G. Kirchner

PGK/wmm
cc: Captain Pat J. Neely, Jr.

the pilotage rate base.

4. Pilot Discipline.

I do not know of any state disciplinary system that would allow for a more speedy removal of an incompetent pilot than the power that you describe Alaska has to summarily suspend a license if it finds a clear and present danger to health or safety. In fact, I do not think any state could have a system that would be more speedy and still meet minimal due process requirements. A danger in a summary suspension procedure such as the one Alaska and some other states have is that, as a practical matter, the decision to suspend the license may often be based more on the extent of damage and loss from the accident than on an objective review of the license-holder's conduct. A quick, summary procedure is more likely to be influenced by public opinion and political considerations. Speed should not be the overriding objective in disciplinary actions.

There are, however, certain features of a disciplinary system that facilitate purposive, fair action that serves the interests of the state and protects the rights of the accused. For example, investigative and hearing procedures should be clearly established and published. The capability to conduct a disciplinary procedure should be in place before an accident

Attachment C

Letter from C.L. Cloudy, Counsel to Southeast Alaska Pilots
Association to Brad Pierce, Senior Policy Analyst, Alaska Governor's
Office, Division of Policy, June 25, 1990

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June 25, 1990

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
Post Office Box AD
Juneau, Alaska 99811

Re: Sunset Pilotage Act
Our File 29.039.48

Dear Brad:

Thank you for taking the time to stop off in Ketchikan and visit with the SEAP Board members and myself on Sunset and overhaul of the Pilotage Act. Although somewhat disjointed in our enthusiasm to speak up, I feel the presentation covered all of the basic problems confronting pilotage in Southeast Alaska from SEAP's standpoint. The critical points of discussion are hereinafter summarized as I recall them.

Limitation on Licenses

My personal opinion is that if entry level qualifications are increased, this of itself would serve as a limitation upon the number of licenses issued, because not everyone will be willing to make the investment required to meet the higher standards of entry. (This is borne out by the number of channel pilots who are dispatched in the summer who evidence no interest at all in training up because they would have to invest in winter-time activities in Southeast.)

As I understand SEAP's position, however, SEAP would also want the Pilot Board to have the authority to open and close entry into the pilotage profession. Thus far, either or both concepts have been poorly received by both the Pilot Board and its advisors, principally upon grounds related to monopoly and anti-trust. However, as pointed out

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STRATEGIC PLANNING

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 2

by Paul Kirchner in his letter on behalf of APA, the power and authority of the State to so regulate has never, ever been successfully questioned in the courts of the United States.

Opening and closing license entry into pilotage, of course, is directed related to economic concerns, and appropriate mechanisms must be set in place to fairly address those matters.

Training Up

You have raised the question of whether or not the associations would commit to provide training access in order that increased entry level requirements could be met. As I pointed out, this question of itself suggests that SEAP has carried on the practice of withholding training access, which SEAP denies.

Since its organization in December of 1970, and through the 1990 season, SEAP will have dispatched 213 non-member pilots during the summer tour season. Excluding seasonal repeat dispatch, SEAP will have dispatched 67 individual non-member pilots during this time frame.

Almost all of these non-member pilots came to SEAP with little more than entry level qualifications, and without exception, anyone who wanted to train up was given the opportunity to do so. For the most part, however, these non-members have been content to skim off the cream in the summer and very reluctant to come back in the winter and avail themselves of training up opportunities. SEAP has stated to you that they would continue this practice companion to an increase in entry level license requirements and limitations on the number of licenses. SEAP's performance to date should constitute assurance that the commitment would be honored.

Notwithstanding the above, without some sort of statutory or regulatory involvement, training up creates and will continue to create unacceptable risks. Training up suggests warranty if the pilot is then dispatched to a position which requires the experience he has gained in

ZIEGLER, CLOUDY, KING & PETERSON

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 3

the training program, and even more so if he is admitted to membership in the association on that basis. Under an obligatory program, I would assume that the members of the association would be acting in a quasi-public capacity on behalf of the State of Alaska and thus not open to individual warranty claim. In any event, this question needs to be explored and resolved.

Training up also raises tariff problems. As currently practiced, the non-member pilot is charged for using SEAP's dispatch and pooling services which charge ranges between 25% and 10% of the tariff receipts generated by the non-member pilot depending upon his license level. These funds are passed through the income-expense pool and are shared equally by the member pilots. My contacts with other pilotage states reveals that such an arrangement is not unusual, save that in other states statutory or regulatory provision is made for the practice. Consideration should therefore be given to such approval.

The tariff question above noted also creates a liability problem. The income shifting raises a question of whether or not the non-member pilot is "working for" the members. If so, respondeat superior comes into play. This question should also be put to bed by statutory or regulatory coverage.

Tariffs

Over the years, the Pilot Board has vacillated over the matter of tariffs. There is current thought within the State administration that the Board lacks authority to establish tariffs. I disagree and have engaged in unfruitful communication with one or more attorneys in the Department of Law on the subject. In addition, although AS 08.62.170 creates a lien in favor of the pilot for the tariff charge, no effective measure of enforcement is provided. Presumably, the statutory lien is to supplement the maritime lien which automatically arises. However, the maritime lien cannot be enforced without seizure of the vessel at

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 4

extreme cost. In times past, we have sought to involve the Attorney General's Office with regard to enforcement of the statutory lien without success.

The Pilot Board should therefore be clearly vested with authority to set maximum and minimum tariffs, if it does not already have such authority. In addition, some means of simple enforcement of the statutory lien should be developed.

Penalties

The penalties available for imposition upon a vessel under AS 08.62.190 are less than adequate.

Entry Level Licensing

SEAP is in accord with Paul Kirchner's advice on this subject given on behalf of APA.

Admission to membership in SEAP requires more than Alaska's entry level qualifications at all license levels because SEAP believes Alaska entry level requirements are woefully inadequate, and they do not choose to associate on a membership level with those who barely possess licensing qualifications. Historically, pilotage has been based upon local knowledge and experience. With 40,000 or more miles of coastline, Alaska is simply too large to safely license a pilot for one area based upon his experience in another area. It would make just as much sense to give an Alaska license to a British Columbia pilot based upon British Columbia experience.

The administration must accept the premise that without site specific experience, even the best all-around pilot is not competent to pilot into an area he has not been before in a pilotage capacity. From time to time, representatives of the Department of Law have advised the Pilot Board that a regulation calling for site specific licensing would be illegal without "proof" of the need, such proof to consist of lengthy hearings over the differences between one port and another. I do not

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Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 5

know of any pilotage state which has approached the question in this manner, and given the historical background of pilotage and the practices of other states which have withstood attack, there is no valid reason for Alaska to do so. As voiced by Captain Collins and Captain Elsensohn, they themselves and others like them continually reacquaint themselves from time to time with ports or areas they have not regularly transitted by making observer trips even though they are fully licensed for all of Southeast Alaska.

Pilot Liability

As discussed, some pilotage states have adopted a dual tariff so as to provide funds adequate to cover liability insurance premium costs. If the vessel opts for the lesser tariff, the event is exculpatory of the pilot as between the vessel, its owners and the pilot, and the pilot is considered to be the servant of the vessel. I have yet to receive a satisfactory answer from anyone involved with such legislation as to why the master-servant relationship is critical, and lacking such, I have always viewed the creation of such a relationship as a fiction. If the stated relationship enables the vessel to include the pilot as an assured on the vessel's insurance policy, there is a better way to make provision for that. I have asked APA to consider giving some guidance in this area. At present, the only protection the members of SEAP have is the exculpatory clause on the pilotage ticket. However, the extent to which it is effective as to content is lost with regard to non-English speaking foreign masters.

Pilot Performance

You have expressed interest in developing some sort of plan which would provide for a check on pilot performance. As discussed, SEAP does not believe any such effort would work if it depended upon participation by the vessel masters. Experience over the years has shown that the masters will not involve themselves in evaluating a pilot's

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 6

performance. SEAP sometimes will selectively dispatch around a master's concern, much to my dismay, because the master will not produce anything in writing to conform his concern. To my knowledge, the Pilot Board has experienced similar problems. If there is to be a watchdog program of any sort, it must revolve around random observer check rides by a fully licensed pilot. Even then, I personally question either or both the effectiveness and the need for such a program. The best watchdog of all is the membership of any particular association whose own survival and success depends upon weeding out the incompetents or training them up to the required level. Here, again, stiffer entry level license requirements will go a long way toward elimination of any need for such a program.

Associations

The question of whether or not membership in a pilot association should be voluntary or mandatory was touched upon. As you are aware from the materials you have under review, some associations are a creature of the legislature, some are a creature of a particular pilot board; some are voluntary but "recognized", and others, as in Alaska, are voluntary and "unrecognized".

There is little question but that many of the legal problems which have confronted SEAP over the years would not have arisen but for the fact that it is a voluntary "unrecognized" association. At this point in time, however, I am ambivalent over resolution of the question raised. I personally have a natural reluctance to have SEAP move away from what has existed for twenty years if the desired goals can be achieved by other means. As matters progress, I may be able to come up with something I can advance to my clients.

Legal Environment

You have asked for a summary of the type of legal claims which have confronted SEAP over the years. The following listing

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Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 7

encompasses most of these claims:

1. Assertions that because SEAP permits use of its dispatch and income-expense pooling service by non-members, the non-member pilot is entitled to membership and if he is denied membership, then anti-trust or monopoly violations have occurred.

2. Assertions that SEAP as an association has a responsibility to arrange for and direct its membership to permit observer trips for license upgrade purposes by non-members.

3. Anti-trust claims that SEAP has no right to drop a non-member from dispatch contract for navigational error, failure to report for assignment, or other causes.

4. Claims that SEAP cannot lawfully limit its membership and to do so constitutes some sort of anti-trust and monopolistic act.

5. Claims that income shifting as is practiced in most pilot associations is unlawful. Currently, income shifting within SEAP occurs only as to non-member pilots as above noted, and year-round expenses are paid out of a summer income pool as an alternative to income shifting.

6. Claims that because SEAP accepted a non-member for dispatch, the Association and the entire membership warranted his qualifications and can be held liable for his negligence.

7. Claims that it is illegal for SEAP to "selectively" dispatch by matching experience with the call for pilotage even though licensing may be equal.

Admiralty Attorney

You have asked whether or not it would be helpful to the cause of better regulation and understanding of marine pilotage for the Department of Law to assign an admiralty attorney to advise the Pilot Board. My answer was and is "No." The law of marine pilotage, although of admiralty derivation, is not the common weal of admiralty. In 1952,

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 8

when I was admitted to the practice of law, I was admitted as a "proctor in admiralty". From the very start, I actually practiced admiralty law and was paid a proctor's fee by the Admiralty Court for every admiralty appearance. However, in 1970, when I organized SEAP, and later on SWAPA, my admiralty experience was not particularly helpful to me as counsel for a pilots association. Any competent attorney in the Department of Law who will take the time to fully familiarize himself with and accept the law of pilotage will fill the bill. My problems with those assigned to the Pilot Board over the years have arisen from their complete lack of knowledge in the pilotage area--not from their general lack of competency.

What the State Can Do

As stated at the meeting, I believe it to be essential that the Administration accept marine pilotage for what it is and has been recognized as being since the formation of the United States. Congress has seen fit to leave the regulation of pilotage to the individual states, principally because the marine pilotage needs of the several states are different one to the other and because marine pilotage is a site-specific profession. The State must also 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. Without acceptance of these predicates, there isn't much the State can do to achieve any measure of betterment in the pilotage world. Once these predicates have been accepted, sound statutory and regulatory controls will easily follow to the benefit of all concerned.

Miscellaneous

During the course of our discussions, I referenced you to the LaMoureaux case which creates difficulty with regard to dispatch and

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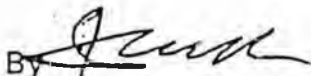
Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
June 25, 1990
Page 9

training up of lesser qualified pilots. The citation for that is LaMoureaux v. Totem Ocean Trailer Express, 651 P.2d 839 (Alaska 1982).

You have asked how SEAP views the advice of Paul Kirchner on behalf of the American Pilot Association to the OMB. Both myself and my clients are in full accord with the points he makes and are extremely pleased to have these shortcomings pointed out by someone remote from the Alaska pilotage scene.

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

BY 
C. L. Cloudy

CLC:ce

cc: Paul G. Kirchner, Esq.
Kurrus & Kirchner, P. C.
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Attachment D

Letter from Paul Kirchner to C.L. Cloudy, July 27, 1990

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July 27, 1990

Mr. C.L. Cloudy
Ziegler, Cloudy, King &
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301 Bawden Street
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Dear Mr. Cloudy:

Thank you for your recent letter and materials concerning the State of Alaska's review of its pilotage laws.

You have suggested that the APA might be able to offer some input on the matter of liability limitation in general and the dual tariff system and master-servant relationship issues in particular. I am not sure that the APA has a formal position on those subjects, but I am happy to provide my own views and research, as follows.

PILOT LIABILITY LIMITATION GENERALLY

According to our information and research, five states (Washington, Oregon, Louisiana, Texas and South Carolina) have adopted some form of limited liability/exculpatory provisions in their pilotage statutes. Copies of these statutory provisions are enclosed. Pilots in other states claim similar protection through

Huxus & Kirchner

Mr. C.L. Cloudy
July 27, 1990
Page Two

pilot commission regulations, tariff provisions or contract language in pilotage tickets or source forms. The enforceability of such non-statutory liability limiting mechanisms is questionable. See, e.g. Gulf Towing Co. Inc. v. Steam Tanker Amoco New York, 648 F. 2d 242 (5th Cir. 1981); Getty Refining and Manufacturing Co. v. Puerto Rico Ports Authority, 531 F. Supp. 396 (D.P.R. 1982). It is generally agreed that an enforceable limitation of pilot liability and corresponding vessel owner responsibility for third party claims requires either specific statutory direction or circumstances or practices that would indicate a knowing and voluntary acceptance by the vessel owner in a non-compulsory pilotage setting, United States v. SS President Van Buren, 490 F. 2d 504 (9th Cir. 1973).

The trend is definitely in favor of liability limitation for pilots. In addition to the five states that already have it, several others are considering it. I would expect that three or four more states will adopt limited liability provisions within the next three years.

Although a detailed discussion of the arguments in support of limiting pilot liability is beyond the scope of this letter, I should mention some of the reasons why the trend has developed over the last few years. In the past, pilots were rarely sued. As self-employed, independent contractors, they were thought to

Harold S. Kirchner

Mr. C.L. Cloudy
July 27, 1990
Page Three

be judgment proof. Although a potential damage award against an individual pilot is still of dubious value today, pilots are nevertheless being named in suits with increasing frequency, often where recovery from the pilot is clearly not the objective of the plaintiff. It is virtually automatic now that in any marine accident, if a pilot was aboard, he will be a named defendant in one or more lawsuits. Usually, the legal fees alone are beyond the limited resources of the pilot. As a result, pilots today confront the reality that every time they board a vessel, they face the prospect of financial ruin, regardless of how well they perform their services. That situation does not promote better, safer pilotage or provide any other benefit to a state or its citizens.

In every place where a pilot liability limitation statute has been adopted, the shipping industry has supported it. Vessel owners and operators have made the judgment that it is in their economic interest to have liability shifted from the pilot to the vessel and its owner and operator. Standard marine hull and P&I insurance policies have always covered loss or damage due to pilot negligence. Assuming that pilotage rates would have to reflect either the cost of meaningful liability insurance for the pilot (such insurance, in fact, is not available) or the financial risks to the pilot of the uninsured liability, it is economically inefficient for a vessel to pay such rates when its own insurance already provides coverage at little or no additional cost.

Mr. C.L. Cloudy
July 27, 1990
Page Four

DIFFERENT FORMS OF LIABILITY LIMITATION

Limited liability statutes take several forms. The first state to adopt limited liability was Oregon. In 1959, that state enacted the dual rate system that you describe. At the current time, it is the only state with that type system, which offers the vessel the option of two rates. The higher rate would include the cost to the pilot of obtaining reasonable trip insurance covering the pilot's potential liability for that pilotage assignment. Alternatively, a vessel may elect a lower rate. In return for the lower rate, the vessel agrees not to assert any personal liability against the pilot or pilot association and to defend, indemnify and hold harmless the pilot and his association from third party claims. Additionally, each pilot must obtain a surety bond in the amount of \$250, which amount is the exclusive, total limit of a pilot's liability to third parties unless the act or omission was in connection with the pilotage of a vessel electing to pay the higher rate. Or. Rev. Stat. §§776.510.540 (1989).

In 1981, the State of Washington adopted a dual rate system virtually identical to that of Oregon. That statute was replaced in 1986, however, by a simple statement that a pilot's liability for damages or loss occasioned by the pilot's errors, omissions, fault, etc. in the performance of pilotage services, will not

Harris & Hirschner

Mr. C.L. Cloudy
July 27, 1990
Page Five

exceed \$5,000 except in the case of willful misconduct or gross negligence. The Washington statute also declares, as does the Oregon statute, that the vessel and its owner and operator are liable to third parties for the pilot's negligence. Wash. Rev. Code §88.16.118 (1989 Pocket Part).

In 1988, South Carolina adopted a statute virtually identical to Washington's. S.C. Code Ann. §§54-15-350, -360 (Law. Co-op. 1989 Pocket Part). A similar, simple limit on liability was enacted for pilots in Houston (Harris County), Texas in 1987, although the limit there is \$1,000. Tex. Stat. Ann. art. 8280a (Vernon Pamphlet, 1990). In 1989, identical limitations were provided for pilots in Galveston, Freeport (Brazoria County), and the Sabine River (Jefferson and Orange Counties), *id*, arts. 8280b-8280d. The Texas statutes differ from those of South Carolina, Washington and Oregon in that they do not contain the declaration of a master-servant relationship, which you have mentioned and which is discussed below. They do, however, state that the vessel and its owner and operator are liable to third parties for a pilot's negligence.

Louisiana has taken a somewhat different approach. Pilots operating between Pilottown and New Orleans on the Mississippi River (the Crescent River Pilots) are covered by a provision added to their pilotage statute in 1986 stating that any person seeking

Mr. C.L. Cloudy
July 27, 1990
Page Six

to hold a pilot liable for damages or loss occasioned by the pilot's error, omission, fault or neglect must prove by clear and convincing evidence that the damages arose from the pilot's gross negligence or willful misconduct. Rev. Stat Ann. §34:1011 (1990 Pocket Part). This standard of care/liability exclusion was extended to the other two groups of pilots operating on the Mississippi River in 1988. Id §§ 34:966 (Associated Branch [Bar] Pilots), 34:1005 (New Orleans - Baton Rouge Pilots).

ANALYSIS OF THE DIFFERENT FORMS OF LIABILITY LIMITATION

Although I understand that you have been discussing the dual-rate system with the Alaska OMB, it is my opinion that the Washington, South Carolina, and Texas model may be the preferable limitation of liability mechanism. To me, the Oregon statute has troubling features that are the product of the legal uncertainties attendant to that "first generation" experiment in liability limitation and of the unique circumstances surrounding its adoption and subsequent revisions.

The dual rate system created in the statute is somewhat illusory. It was designed to impart at least the appearance of consideration and bargaining to the "agreement" required in the statute by which a vessel and its owner and operator assumes the risks of the pilot's negligence. The unstated belief was that, in fact, no

Hurris & Hirschner

Mr. C.L. Cloudy
July 27, 1990
Page Seven

vessel would elect the higher rate. It is my understanding that the pilots have contracted with an insurer who will offer trip insurance but that such trip insurance has only been purchased in a handful of instances over the years involving vessels (primarily drydocks) that do not regularly engage in shipping activities and that do not have their own P&I insurance. Those vessels purchased the trip insurance as an alternative to their own P&I policy. They paid a very high premium that was acceptable only because it was the only insurance carried. That was not the circumstance envisioned by the statute.

The Oregon statute also has a number of declarations, characterizations and certain repeated phrases designed to bolster the sense that the vessel's waiver of claims against the pilot and its indemnification of the pilot are either freely assumed or are derived from the employment of the pilot rather than from the statutory mandate. I question the need for these items and am concerned that they may have unwanted consequences in other, non-liability areas. The master-servant predicate that you have mentioned is one example. Another would be the statement that "the services of any individual pilot...have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510." Although a similar statement in a municipal tariff was found by the court in United States v. President Van

Mr. C.L. Cloudy
July 27, 1990
Page Eight

Buren, supra, to be a significant factor supporting the enforceability of immunity provisions in the tariff, I am not sure, as discussed below, that such language is necessary for the validity of a statutory provision.

Additionally, the statute reflects the view that noncompulsory pilotage is also essential to the enforceability of the dual rate system. When the Oregon statute was first enacted in 1959, the state did not have a compulsory pilotage law. In 1973, however, the state adopted a compulsory pilotage requirement. A number of observers, including the late Alex Parks, the author of the 1959 statute as well as the treatise, The Law of Tug, Tow, and Pilotage, felt that the switch to compulsory pilotage eviscerated the theory of voluntary election on which the dual rate system depended. Parks discussed this subject in the 1982 edition of his treatise, pages 1035-1039 (copy enclosed). I should caution that Parks' views expressed there were naturally affected by his authorship of the 1959 legislation, a fact not disclosed in the treatise.

Ironically, by 1982 Parks had taken the position that a monetary limit on pilot liability, without the dual rate mechanism, could survive legal challenges, even in a compulsory pilotage setting, so long as it was presented as deriving from a state's authority to maintain reasonable pilotage fees. He suggested a \$250

Murphy & Kirchner

Mr. C.L. Cloudy
July 27, 1990
Page Nine

limit with the requirement that each pilot post a bond in that amount.

The uncertainties resulting from the 1973 compulsory pilotage requirement were addressed in 1983 amendments to the Oregon statute. At the urging of the Columbia River Pilots, the compulsory pilotage provision was replaced by one that allows a ship to decline to take a state pilot upon payment of 3/4 of the otherwise applicable pilotage fee. At the urging of the Columbia River Bar Pilots, however, the \$250 liability limit/bond requirement suggested by Parks was also adopted. Whatever the relative merits of a dual rate system versus a simple liability limit may be, the presence of both in the same statute would seem to present additional questions and concerns.

It is not clear to me that non-compulsory pilotage is essential to the validity of a dual rate system. If it is, that would be an important factor favoring a liability limit instead. The prevailing view today is that a "take or pay" pilotage requirement, such as that presently used in Oregon and a few other states, is no longer an acceptable substitute for a clear, affirmative pilotage requirement. This is a subject to which the APA and this firm have devoted substantial attention in the past year. It cannot be adequately covered in this letter. I should mention, however, that the Coast Guard has expressed the belief that "take

Mr. C.L. Cloudy
July 27, 1990
Page Ten

or pay" provisions and certain other perceived shortcomings in the language of some state pilotage requirements are a serious problem. This assessment may not be justified by the facts. Nevertheless, the Coast Guard's view and the potential for a federal "remedy" must be acknowledged. For that and other reasons, a number of states are currently reviewing the language of their pilotage requirements to see if they can be expanded and strengthened. I would hate to see a state move in the opposite direction.

A liability limitation of the type adopted by Washington, South Carolina, and Texas has obvious advantages over a dual rate system. It is more simple and direct. Also, because such a limitation is not based on a theory of voluntary election by the vessel owner, compulsory pilotage should not be a problem.

Of course, the concern with a liability limitation is with its enforceability and constitutionality. The courts tend to look with disfavor on efforts to shield professionals and others from the consequences of their own negligence. Nevertheless, there are many forms and types of liability limitation that not only pass constitutional and judicial scrutiny but are in the public interest as well.

The important consideration in this area is that innocent people who have suffered damage through the actions of others must be able to secure compensation for that damage. So long as an

Harris & Hinchner

Mr. C.L. Cloudy
July 27, 1990
Page Eleven

injured party's right to recover for damages from some source is not jeopardized, the placement of liability can be treated as essentially an economic matter. Shifting liability from one party to another occurs frequently whether by law or by private contract. For example, a standard ship repair contract will require the vessel owner to waive consequential and incidental damages arising out of faulty workmanship and to indemnify the shipyard against third party claims arising out of the yard's performance of the repair work, even claims involving negligence by the yard. This is acceptable to a vessel owner, in most cases, because it is much cheaper to have the vessel's insurance cover those claims. As with a pilotage assignment, the potential damages and the resulting cost of insuring against the damages would far outweigh the value of the repair job if the yard were to assume liability for its negligence.

I believe that it is a legitimate exercise of state power to limit a pilot's liability. It is a rational feature of a comprehensive system designed to assure that an adequate number of well-trained pilots are available to handle all vessels moving in the state's waters and that pilotage rates are maintained at reasonable levels.

A statutory limitation should have the following features, each of which can be found in one or more of the existing statutes:

Mr. C.L. Cloudy
July 27, 1990
Page Twelve

1. a statement of legislative findings and intent justifying the limitation;
2. a clear, simple, monetary limitation;
3. an exclusion from the limitation for wanton and reckless acts (the use of the term "gross negligence should be avoided if possible); and
4. a statement that the vessel, its owner and operator remain liable for damage or loss occasioned by the vessel as a result of any act by the pilot in the performance of his pilotage duties.

An additional consideration in this area is that the limitation should not only fix the pilot's potential liability for damages, it should provide a disincentive for suing the pilot or otherwise protect the pilot from the staggering legal fees that accompany these types of suits. I have no specific recommendations on that point, although I am familiar with many of the ideas and suggestions from various pilot attorneys and other interested observers. The state statutes enclosed handle this in different ways. For example, the Oregon and Texas statutes provide that in the event that a pilot is named in a suit for which the limitation would be applicable, the pilot can pay the limitation amount into the court and have the proceeding dismissed as to him.

Finally, I must acknowledge that the law in this area is neither extensive nor certain. No case of which I am aware has directly addressed the enforceability or validity of any of the five limitation statutes. The liability exclusion in the Oregon

Harris & Kirchner

Mr. C.L. Cloudy
July 27, 1990
Page Thirteen

statute was applied in the well-known HALCOUSSI case, Olympia Sauna Compania S.A. v United States, 604 F Supp. 1297 (D. Or. 1984). To my knowledge, the validity of the liability exclusion in that statute was not challenged, however, I have also been told that the Louisiana (Crescent River) standard of care statute was determined by a court to be procedural rather than substantive and was applied to an accident that occurred prior to the enactment of the statute.

While there is no case that can be cited as directly upholding the enforceability of a liability limiting statute, I do think that the trend in adopting such statutes can be seen as reflecting a growing level of comfort in the legal and policy justifications for limiting pilot liability. Until such time as the courts give specific, contrary direction, this trend should continue.

Master/Servant Relationship and Liability Limitation

A declaration of a pilot's status as the servant of a vessel and of its owner and operator is not common to all statutory liability limitation schemes. The Texas statutes, for example, do not contain any such declaration, although they do state that a vessel its owner and operator are liable for the acts of a pilot. Ironically, one state, California, has such a declaration but does not have liability limitation. Cal. Harb. & Nav. Code §1134 (West

Mr. C.L. Cloudy
July 27, 1990
Page Fourteen

1990 Com. Pocket part).

I have never seen an explanation of why the master/servant declaration is in those statutes that have it. It is my belief, however, that they all, including the one in the California statute, can be traced back to the original 1959 Oregon dual rate statute. My impression is that it was considered as another feature contributing to the enforceability of the liability limitation. I would guess that Alex Parks took it from the standard "pilotage clause" in towing contracts. These clauses are used to apply the borrowed servant doctrine to the provision by a towing company of a docking pilot for a vessel. They typically state that when a docking pilot boards the vessel, he is the servant of the vessel and its owner and that the towing company will not be responsible for his actions. In contrast to liability exclusion/limitation clauses in pilotage tickets, "pilotage clauses" in towing contracts have been repeatedly upheld in court. Sun Oil Co. v. Dalzell, 287 U.S. 291 (1932); see also, Parks, Law of Tug, Tow and Pilotage, 1057-1065.

Whatever the reason for including the master-servant provision in the Oregon statute, I believe that the other states simply copied it without a great deal of thought.

In the case of the 1959 Oregon statute, the master-servant provision did not make a change in law. As you know, the

Harris & Kirchner

Mr. C.L. Cloudy
July 27, 1990
Page Fifteen

traditional maritime principle is that in a non-compulsory pilotage setting, the ship is liable in rem and the shipowner is liable in personem for the negligence of a pilot. The theory is that the pilot in those cases is a voluntarily hired employee of the vessel and its owner or operator, and, under the rule of respondeat superior, the owner or operator is responsible for damages caused by the pilot's negligence just as much as they would be for any member of the crew. See, e.g. Homer Ramsdell Trans Co. v. Compagnie Generale Transatlantique, 128 U.S. 406, (1901); California v. Norfolk, 435 F. Supp 1039 (N.D. Cal. 1978). Since Oregon had a non-compulsory pilotage system in 1958, the statutory recitation that the pilot is the servant of the vessel and its owner and operator would have merely codified existing maritime law.

In the case of compulsory pilotage, the pilot is deemed an independent contractor. There is no master-servant relationship between the vessel owner and operator, on the one hand, and the pilot, on the other. As a consequence, the vessel owner or operator is not personally liable for damage caused by the pilot's negligence. People of California v. Italian Motorship Ilice, 534 F. 2d 836 (9th Cir. 1976); Matteria v. Commercial Cable Co., 137 F. Supp. 472 (S.D.N.Y. 1956); New York Dock Co. v. New York and Cuba Mail S.S. Co., 1931 A.M.C. 1349, aff'd. 1932 A.M.C. 1984 (N.Y. Sup. Ct.) In compulsory pilotage, the vessel, however, is

Mr. C.L. Cloudy
July 27, 1990
Page Sixteen

liable in rem for damages caused by the negligence of the pilot.
The China v. Walsh, 74 U.S. (7 Wall.) 53, 19 L. Ed. 67
(1868). The Barnstable. 181 U.S. 464 (1900).

Washington, California (San Francisco Bay only), South Carolina, and Louisiana all have compulsory pilotage. As a consequence, it would appear that the master-servant declarations in their statutes make a substantive change of law. I have expressed previously, however, my own opinion that a statement extending liability for a pilot's negligence to a vessel and its owner and operator is a desirable and perhaps necessary feature of a system for limiting a pilot's liability. A substantive change of law to accomplish that would therefore be required by statute in compulsory pilotage states.

It seems to me that such a statutory change need not be in the form of a declaration of a master-servant relationship. A direct statement of vessel owner and operator liability without the master-servant language, such as that found in the Texas statutes, should be sufficient. There are some unfortunate, non-legal consequences to declaring a pilot to be a servant of the vessel and its owner and operator. Wherever possible, both the state and the pilots should be careful to promote the importance of the state pilot's independence of the vessel and its owner. When a state pilot boards a vessel, his primary obligation is to

Huis & Huchner

Mr. C.L. Cloudy
July 27, 1990
Page Seventeen

protect the state, its citizens and its environment. Any unnecessary diminution of the state pilot's status should be avoided.

Federal Legislation Affecting Vessel Owner/Operator
Liability for Pilot Negligence

An issue that has not yet been considered in any depth, to my knowledge, is the effect that the federal oil spill liability and prevention legislation may have on liability for pilot negligence. That legislation will soon be completed. It will provide that a vessel owner and operator, and perhaps the owner of the cargo, will be liable, up to the limits set in the bill, for damages from oil spills caused by the vessel owner or operator, its employees, agents, and others in a "contractual relationship, existing directly or indirectly, with the [vessel owner or operator]." Although the question has not been addressed during consideration of the bills in Congress, I would assume that a pilot, compulsory or non-compulsory, would be treated as a party in a contractual relationship with the vessel owner or operator.

If that will indeed be the case, the effect of the federal legislation would be to assure a deep pocket for oil spill damages caused by the acts of a pilot. As a consequence, there should be even less hesitancy over excluding or limiting a pilot's liability. Retaining pilot liability would provide no benefit to

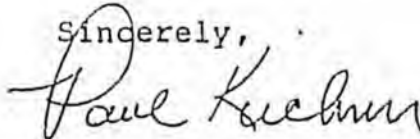
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Mr. C.L. Cloudy
July 27, 1990
Page Eighteen

the public in terms of preserving useful sources for compensation. Once vessel owners are made responsible for a pilot's acts by this legislation, I am sure that they would much rather have restrained pilotage fees than pay higher fees required to cover a pilot's potential liability.

I hope that this information and these views are helpful.

Sincerely,



Paul G. Kirchner

Enclosures
PGK/aes

COMMENTS

STUDY RECOMMENDATIONS

• *The Marine Pilotage Act should be amended to include an opening statement of intent, which establishes the fact that marine pilots are employed under state control for the purpose of protecting lives, property, vessels, and the marine environment.*

Comments:

SEAPA

- tie board duties and responsibilities back to legislative intent
- state that it is intent of legislature to limit number of pilot licenses

• *The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.*

Comments:

Coast Guard:

- entry level qualifications too stringent
- would exclude marine ferry employees
- State should have same qualifications as Coast Guard
- use Coast Guard nomenclature, where appropriate, to avoid confusion

Alaska Maritime Agencies

- should keep provision for two years as Master in local region

SEAPA

- 1600 tons or more
- calculate time same as Coast Guard
- minimum service time

- refine wording re: experience appropriate to specific region to preclude charter fishing boat, pleasure boat, etc.
- set requirement at "six years licensed seagoing experience"
- set specific hour requirements under different types of Coast Guard licenses

AMP

- 1600 gross ton or more
- add two years service as active pilot in an association
- allow pilots who do not meet entry level requirements to enter training program, but to undergo additional training (similar to an apprenticeship program)

SWAPA

- allow for experience on any vessel of 1600 gross tons
- delete section concerning appropriate to region or require that person gain experience while holding master's license

Other pilot (unidentified region)

- 1600 gross tons

• *The Board should establish an additional pilotage region in the Aleutian Chain.*

• *The Board should move towards exclusive licensing by region.*

Comments:

SWAPA

- define regions but keep Dutch Harbor and Captain's Bay in Southwest Region
- allow port endorsement outside region only for those pilots so licensed at effective date of legislation

AMP

- don't allow port endorsements outside region
- allow transition period, based on recency experience

SEAPA

- don't allow port endorsements outside region
- grandfather, but make new requirements mandatory at next renewal

Alaska Maritime Agencies

- regions a good idea, but agents must maintain right to employ any qualified pilot in region regardless of group with which they are affiliated

Other

- don't allow port endorsements in other regions
- grandfather existing licenses

•The Board should establish increased standards for progressive licensing, including a formalized deputy pilot program. The Board should develop training criteria that provide all deputy pilots equal opportunity to perform the ship movements necessary to upgrade their licenses.

Comments:

Other

- current docking/undocking requirements inadequate

SWAPA

- detail steps of deputy pilot program
- require simulator training
- set limits for training period
- state that deputy must complete training to be eligible to take exam for limited license, not over 20,000 gross tons

SEAPA

- current docking requirements inadequate
- give associations sufficient leeway to allow them to train new pilots and to take in new members according to internal criteria so long as criteria reasonably adhere to guidelines set forth and are equitably administered by association
- give board explicit authority to oversee training programs

Coast Guard

- require simulator training
- recurrent training for working pilots to deal with new technology (similar to airplane pilots)
- consider establishing a separate "docking pilot" license

• *The Board should establish a **check-ride system for fully-licensed pilots**, conducted by current senior pilots designated from each region by the Board.*

Comments:

Other

- check ride evaluation not appropriate for marine pilots

SEAPA

- check ride evaluation not appropriate for marine pilots

• ***Recency criteria** should be adopted for pilots to maintain endorsements for specific waters and ports.*

• *The Board should develop an approved list of **continuing education** options and require that pilots complete a course between license renewals.*

Comments: (includes comments on renewal as well as recency)

SEAPA

- require 60 days service in last biennium as federal or state pilot as condition for renewal
- grandfather existing pilots from meeting entry level requirements

AMP

- define familiarization trips

Coast Guard

- for each year that license has lapsed, require two round trips on vessels over 1600 GT to each major port and waterway in pilotage region, with at least one trip made at night

**The Board should be authorized to conduct random substance abuse testing.*

**Every pilot should be required to submit to a complete annual physical exam.*

Comments:

Coast Guard

- require that pre-employment physical exam include chemical test for dangerous drugs
- follow Coast Guard requirements for physical exams prior to license renewal
- consider having state appointed physicians establish minimum physical standards relating to vision, hearing and general physical condition and possibly review and/or administer general physicals
- use Coast Guard terminology for "chemically impaired"

SEAPA

- define chemically impaired to cover both habitual substance abuse and intoxication/drug use while on duty

• The Division of Occupational Licensing should be authorized to hire a full-time marine pilot coordinator to investigate marine accidents, review training programs and participate in license examinations.

• All complaints concerning pilotage service should be directed to the State Board through the Marine Coordinator—not to pilot organizations.

• The state should pursue the possibility of establishing an accord with the U.S. Coast Guard to share information about accidents/incidents and to conduct joint investigations.

Comments:

Alaska Maritime Agencies

- good concept as long as individual performs investigative and clerical support functions for board
- must not assume operational or administrative control of policy

SEAPA

- assure that coordinator operates subject to guidance and oversight of Board
- Board must maintain primary authority
- will be difficult to find qualified person to take job
- Coordinator should also be specifically empowered to direct and assist in accident investigations

Other

- coordinator could become dominant individual, usurping Board authority

Coast Guard

-agree that accord between Coast Guard and state should be established

• *The state should not place a specific limit on the number of pilot licenses issued.*

Comments:

SEAPA

-limit number of licenses

Other

-new pilotage act should have provisions for closely monitoring pilot requirements and for only issuing licenses that satisfy those requirements

SWAPA

-Board should be authorized to limit number of licenses

American Pilots Association

-Board should be authorized to limit number of licenses

• *The Board should have authority to consider accident investigation and other state administrative costs in setting pilotage rates.*

Comments:

Alaska Maritime Agencies

-expenses of state Board in conducting the state's business should be part of the tariff

inequitable to cover program receipts w/ license fees
less spent
afford what
not pilots
can

• Board meetings should be scheduled at least three times per year, with provision for emergency meetings at the request of the chair.

• *The Department of Commerce and Economic Development Commissioner or designee position on the State Board should be reassigned to an active pilot from the Aleutians*

region. Non-pilot members should represent all regions of the state.

*• The Board should either cease to require detailed information on ships' movements from individual pilots or should use the information to **publish periodic management reports.***

Comments:

SEAPA

- replace "may" with "shall" when referring to powers and duties of Board

SWAPA

- Board should not only have authority in statute but should be mandated to perform listed duties and responsibilities

*• **Pilot organizations should be recognized in state law and chartered to provide state-approved training for deputy pilots.***

Comments:

SEAPA

- give board authority to review both associations and independent pilots
- section recognizing associations is meaningless as written. Should state that state will sanction pilot associations as long as their bylaws and operating procedures are approved by the state
- The state should consider some of the more abstract aspects of the regulated monopoly issue before it embraces that concept completely.
- Marine pilots as a class should not be denied the protection offered to all other citizens under existing antitrust laws?
- a lack of competition does not assure competence

SWAPA

- amend antitrust laws to exclude marine pilot organizations

American Pilots' Association

- clearly state legislative intent to remove pilot organizations from antitrust law

AMP

- include "independent contractor" after pilot associations to make clear that pilots are independent within their association for liability purposes

• In return for limiting liability and providing protection from antitrust litigation, pilot organizations should have their bylaws and operating rules approved by the Board.

Comments:

Federal Trade Commission

- make board authority over pilot associations more explicit
- make non-competition agreements illegal
- allow board to hear antitrust or monopoly complaints brought against pilot organizations

Alaska Maritime Agencies

- Board should have statutory authority to approve all dispatching and working rules employed by association

SEAPA

- Association policies do not promote enhanced professionalism or competent pilotage
- The State must investigate disciplinary policies of the Pilot Associations and safeguard them from being merely a vehicle for advancing the views of an empowered minority.
- The State must accomplish a vigorous and comprehensive review of the bylaws, operating rules, articles and other documents of the

associations with regard to establishing and maintaining the rights of pilots to due process, free speech and freedom to pursue a livelihood in their chosen profession.

-Associations cannot be watchdogs over themselves

• *The Board should be authorized in statute to establish an enforceable tariff schedule.*

Comments:

SWAPA

-don't create special tariffs by region

SEAPA

-don't create special tariffs by region
-state that tariff schedule is to insure safe, efficient and year-round pilotage service

AMP

-current inequities in state tariffs need to be addressed

• *In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to submit copies of their annual audits to the State Board or, in the case of individual contract pilots, to keep their books open for state audit.*

Comments:

Alaska Maritime Agencies

-board should be able to conduct audits of financial records for purposes of tariff adjustment and approval/rejection of items claimed by pilot associations that impact tariff

SEAPA

-the State must look into the practice of spreading liability for litigation costs and legal settlements against association among contract pilots who have no voice in Association business

-the State must assure that income and expensing procedures are equatable and equal to the work performed.

• *Individual pilot liability should be limited in statute to a specific dollar amount.*

• *Pilot license fees should be reviewed by the Board and increased substantially to reflect the increased costs of program administration.*

• *The tariff schedule should be reviewed by the Board and adjusted where necessary. The Board should consider special rates for unique circumstances.*

• *The Board should have the authority to include a training fee in the tariff schedule to provide partial support for training and continuing education programs.*

Comments:

Alaska Maritime Agencies

-any expense not directly related to shipboard operations should not be recovered through the tariff; for example, legal and travel costs associated with restraint of trade cases pending against pilot groups

MEMORANDUM

State of Alaska

Department of Law

TO: Marine Pilot Working Group,
Interested Parties

DATE: October 8, 1990

FILE NO.: 465-3600

TEL. NO.: Draft Legislation

SUBJECT: amending the Marine
Pilots Act

FROM:

Gary I. Amendola
Gary I. Amendola
Assistant Attorney General

Cruise lines against.

On September 13--14, 1990 individuals representing the State of Alaska and varying interests related to marine pilotage met in Juneau to discuss possible changes to AS 08.62, the Marine Pilots Act. During that meeting the state agreed to take the first cut at drafting those changes. Attached is a first draft of that legislation. We have attempted to incorporate in this draft those ideas and concepts that were discussed and were at least generally acknowledged to warrant further consideration. I will leave it to you to decide how close to doing so we came.

All of the interested parties to this project are well aware that there are a number of legal and policy choices that must be made. Those choices will certainly affect the substance of legislation that may be proposed or enacted. Although to some extent this draft may reflect the legal and policy choices that will ultimately be made by the State, the draft should not be taken, and may not be taken as doing so already. We are simply acting as the recording secretary of this group's efforts. The document is intended only to stimulate the processes by which those choices will be made. We expect that it will.

If you have any questions, please contact me at your convenience.

GIA/prm

Attachment

cc: Douglas B. Baily
Ron Lorensen
Jeff Bush
Ron Clarke

*Foster - Bd has had problems exercising
authority - statute ? variety of
other reasons.*

CHAPTER 62.
MARINE PILOTS.

Article

1. Board of Marine Pilots (08.62.005--08.62.045)
2. Licensing (08.62.080 -- 08.62.155)
3. General Provisions (08.62.160 -- 08.62.210)

ARTICLE 1.
BOARD OF MARINE PILOTS.

Section

05. Intent
10. Creation and membership of the board
20. Appointment and term of office
30. Meetings
40. Powers and duties
45. Marine pilot coordinator

ARTICLE 2.
LICENSING.

Section

80. License requirements
90. Application
100. Qualifications
120. Renewal
130. Lapsed license
140. Fees
150. Enforcement authority
155. Disciplinary sanctions

ARTICLE 3.
GENERAL PROVISIONS.

Section

160. Mandatory employment of licensed pilots
165. Allocation of liability
170. Pilot's lien
175. Pilot organizations
180. Exemptions
185. Certain licensed pilots required for oil tankers
187. Registration of agents required
190. Penalty
200. Definitions
210. Short title

"An Act relating to Marine Pilots . . ."

* Section 1. AS 08.62 is amended by adding a new section to read:

local knowledge

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 ^{bro-dee than present} 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. 2. AS 08.62.010 is repealed and reenacted to read:

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 5 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. yes

Handwritten notes:
 suggested
 AS 08.62.010
 AS 08.01.025
 Admin
 RE

* 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

s/b
murray

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;

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direction.

(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, provided that the board may adopt different tariffs within a region if justified [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 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.

²
(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 (If this provision is accepted, AS 39.25.120 will also have to be amended).

* 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) 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.

allows exceptions s/b??
(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. The board shall establish criteria upon which to determine whether to issue or renew an endorsement. Among other factors, the board must consider local knowledge and recency of service in determining whether to issue or renew an endorsement.

(d) 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

*Needs clarification
to give
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different.*

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, qualifies in accordance with regulations adopted by the board, and meets the qualifications in (b) - (d) of this section.

more specific?

(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 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

*How many?
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- just into written*

*hand just
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where get written

*if all public
reference
provide policy*

any gross tons; or

(4) Two years service as commanding officer of United States government vessels of not less than 1,000 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

Too broad
~~(5) Two~~ years of service as the master of local vessels appropriate to the pilotage region in which the applicant seeks to be licensed.

(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.

* 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 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) 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. 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;

(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.

AS 08.62.140 is unchanged.

Sec. 08.62.140. FEES. The department shall set fees under AS 08.01.065 for applications, licenses, and agent registrations.

*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

failure to
file accident
report? (5?)

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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

new
C.G.
regs
J.T.S.B.

determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

* 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 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 is unchanged.

Sec. 08.62.170. PILOT'S LIEN [FOR COMPENSATION]. Each vessel, its tackle, apparel and furniture and the 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.

* 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.

AS 08.62.180 is unchanged.

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

(1) vessels 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 tugboats and towboats 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.

AS 08.62.185 is unchanged.

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 stations either

(1) employ a pilot licensed by the state under this chapter; or

(2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.

(b) The pilot required in (a) of this section shall control the vessel during all docking operations.

AS 08.62.187 is unchanged.

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. 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 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 \$1,000 nor more than \$5,000.

(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 \$500 nor more than \$1,000.

AS 08.62.200 is unchanged.

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.

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

Not high enough?
Class A or B

AS. 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

* Sec. 19. TRANSITION.

Sec. 1. The membership of the board as it is 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.

* Sec. 20. EFFECTIVE DATE. This Act takes effect

_____, 1991.

MEMORANDUM

Reg
State of Alaska
Office of the Governor
Division of Policy

TO: Senator Lloyd Jones
Representative Richard Foster
Transportation Committee Chairs

DATE: August 10, 1990

PHONE: 465-3568

FROM: Brad Pierce/Marilou Madden *BP*
Senior Analysts *MLM*

FILE NO. 91D-580

SUBJECT: Marine Pilotage Study

At the request of the Governor, the Division of Policy is conducting a study of Alaska's marine pilotage system to be released in October. The intent of the study is to provide focus for a legislative sunset review of the Board of Marine Pilots during the 1991 session. The study will recommend changes to the Marine Pilotage Act and supporting regulations. A meeting of attorneys from the Department of Law and the various pilot's associations as well as the president of the American Pilots Association is planned for late September in Juneau to draft a new Act.

As you may know, a recent National Transportation Safety Board (NTSB) study of the *Exxon Valdez* oil spill criticized the state for its relaxed marine pilotage standards. Preliminary study of Alaska's pilotage system and commentary from the American Pilots' Association has revealed that Alaska has some of the weakest pilotage laws and lowest professional standards for marine pilots in the nation. In the wake of the *Exxon Valdez* disaster, several states are reexamining and upgrading their pilotage laws. The Governor believes strongly that it is in Alaska's best interest to have a new Marine Pilotage Act that is at least as good as any in the country.

If you or your staff have questions about the study or wish to provide input, please contact Brad Pierce or Marilou Madden at the number listed above.

BP/MLM/dnrc/91D-580

cc: Alaska Legislature

Bob Evans, Legislative Liaison
Mary Halloran, Director, OMB/Policy
Office of the Governor