

S B

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# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

September 5, 1975

H. Phillip Hubbard  
Deputy Commissioner  
Department of Commerce  
Pouch D  
Juneau, Alaska 99811

Re: Tariffs for licensed pilots on  
enrolled ships (AS 08.62.040,  
AS 08.62.180, 12 AAC 56.160(j))

Dear Deputy Commissioner Hubbard:

You have requested an opinion from the Attorney General whether or not the Board of Marine Pilots has statutory authority to regulate tariffs charged by licensed pilots employed on enrolled ships. It is the opinion of this department that the board does have such authority. The rationale for this conclusion is set out below.

The powers and duties of the board are set out in AS 08.62.040(a), which reads in part as follows:

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

\* \* \* \* \*

(4) regulate pilotage fees; . . . .

This statute then gives the board authority to regulate services by licensed pilots on specified waterways to assure protection of shipping, the safety of human life and property, and to regulate tariffs charged by licensed pilots for their services.

Under AS 08.62.180(1), "vessels under enrollment" are explicitly excepted from the requirements of AS 08.62. However, the board has promulgated regulation 12 AAC 56.160(j) which reads as follows:

When a pilot licensed under AS 08.62 is employed on an enrolled ship, the same regulations [as for ships not excepted from the requirements of AS 08.62] apply.

H. Phillip Hubbard  
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It is generally held that an express exception in a statute "comprises the only limitation on the operation of the statute and no other exception will be implied." <sup>1/</sup> In the matter at hand, the fact that AS 08.62.180(1) provides an express exception for enrolled vessels does not require an implied exception from the board's tariff regulations for licensed pilots employed on those vessels.

The enrolled ship exception in AS 08.62.180(1) does not expressly extend to licensed pilots employed on such vessels. That is, the board is authorized and has the duty to establish qualifications of licensed pilots to provide for examination of pilots and their licensing, and to provide for efficient and competent pilot service, as well as, to regulate pilotage fees for licensed pilots regardless of whether the vessel in question is enrolled. One might at first view this result as indirect regulation of the enrolled vessels themselves, in violation of AS 08.62.180(1). However, owners of enrolled vessels are not required to take on licensed pilots while in Alaskan waters. These owners are free to go elsewhere for pilotage advice.

Therefore, it is the opinion of this department that the board is authorized under AS 08.62.040 to regulate tariffs charged by licensed pilots employed on enrolled ships. And so, 12 AAC 56.160(j) is a valid regulation pursuant to this authority.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By: Wilson Condon  
Deputy Attorney General

WC:chp

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<sup>1/</sup> 2 A Sutherland Statutory Construction §47.11 (4th ed )



Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Rep. Andre Marrou  
Pouch V  
Juneau, Alaska 99811

February 14, 1985

MEMORANDUM

TO: Representative Andre Marrou

FROM: Heidi Borson Paine <sup>HBP</sup>  
Legislative Analyst

RE: Forms of Limited Entry in Alaska Society  
Research Request 85-139

You requested information on limited entry in Alaska society, which you defined as areas in which limits are imposed on the number of participants. You also asked this agency to determine if Alaska's collective experience with limited entry has been good and whether or not the legislature should extend this concept to other areas.

Entrance into many occupations is based on an applicant's ability to meet the qualification standards of various boards and commissions. According to Harry Traeger, Director of the Division of Occupational Licensing, out of the 98 disciplines his division licenses, only guiding involves licenses issued on a quota system. (See Attachment A for a list of occupations licensed by the division.) This memorandum focuses on five areas of limited entry: big game guiding, fisheries, alcoholic beverage sales, utilities, and the Anchorage taxicab industry.

Big Game Guiding

Alaska Statute 8.54.040(a)(8) directs the Guide Licensing and Control Board to "establish a quota of licensed operating guides who may operate within designated geographic game units or subunits of the state" and requires that preference be given to qualified guides residing within the game area. Consequently, Alaska was divided into 27 guide areas or districts. To limit the number of guides allowed to guide in a particular area, the board regulates entry by issuing permits for exclusive or joint use of the area. The board has not set a limit on the total number of guides statewide, nor on the maximum number of guides who may be certified for each guide area. However, according to Nancy Ferguson, Licensing Examiner, the board is considering limiting the total number of guides allowed in some Southeast areas.

Under 12 AAC 38.040(d), guides may be certified for no more than three areas. Currently, a total of approximately 430 permits are distributed throughout the 27 units. (See Attachment B for a breakdown of permits by unit.) The Division of Occupational Licensing was unable to provide information of the number of applicants denied entry into each guiding area at this time. However, such information can be collected if necessary.

According to Harry Traeger, Director of the Division of Occupational Licensing, limited entry in guiding is intended to allow for only the number of guides the resource can accommodate. As such, the concept of limited entry is employed to protect a resource. The permit process is also designed to favor residents of a given area and to protect the livelihood of persons already guiding in a given area.

#### Salmon, Herring and Crab Fisheries

Alaska Statute 16.43.010, which was passed in 1973, created the Commercial Fisheries Entry Commission (CFEC) and introduced the concept of limited entry to Alaska's fisheries. A Supreme Court decision established the constitutionality of limiting entry based on the following purposes: 1) to enhance the economic benefit to fishermen (because too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration); 2) to conserve the fishery; and 3) to avoid unjust discrimination in the allocation of a limited number of entry permits (Commercial Fisheries Entry Commission v. Apokedak, 1980). According to the CFEC, entry limitation in the fisheries is based on a balance of biological, economic and equitable considerations, with entry permits initially awarded to those with greatest historical participation in and economic dependence on the fisheries.

Initially, nineteen fisheries were limited. However, that number has since increased to 26 salmon fisheries and 7 herring fisheries. The maximum number of entry permits was established in 20 AAC 05.320 as a total of 11,827 permits for all limited salmon fisheries and 501 permits for the limited herring fisheries. As of January 1, 1985, the Commercial Fisheries Entry Commission had issued a total  
175 - 12,218 entry permits for the limited salmon fisheries and 420 entry permits for the limited herring fisheries. The commission has denied  
225 - a total of 3,470 entry permit applications for the limited salmon and 104 applications for entry into the limited herring fisheries.

205 - According to Frank Glass, Hearing Officer for the CFEC, the number of entry permits issued exceeds the maximum number of permits in some salmon fisheries because of several factors. First, AS 16.43.270 (a) provides that no person with a priority classification specified in

AS 16.43.250(b) may be denied an entry permit regardless of the maximum number of permits established in regulation. The priority classification established in AS 16.43.250(b) includes persons who would suffer significant economic hardship by exclusion from the fishery. In addition, after the permit issuance point level had already been set, the Alaska Supreme Court in Isakson v. Rickey (1976) allowed all persons holding gear licenses in 1973 and 1974 to apply for limited entry permits. The initial cutoff date was January 1, 1973.

In 1984, after conducting public hearings, the Commercial Fisheries Entry Commission determined that three crab fisheries in Southeast had reached levels of participation requiring entry limitation. The regulations approving the limited entry of these Southeast crab fisheries were adopted on November 25, 1984. Under 20 AAC 05.320 (d), the maximum number of permits for each fishery was set as follows:

<u>Fisheries</u>	<u>Maximum Number of Entry Permits</u>
Southeastern Alaska:	
red and blue king crab pot fishery	----- 61
brown king crab fishery	----- 57
tanner crab pot fishery	----- 83

Limited entry permits will not be issued until the CFEC develops a point system for ranking all eligible applicants. However, in the interim, all persons who may ultimately qualify for an entry permit because of participation in the fishery prior to January 1, 1984 are issued interim-use permits.

According to Kurt Schelle, Director of Research and Planning for the commission, limited entry in the fisheries is unique because it involves a common property resource. Limited entry in the fisheries is motivated both by conservation and economic goals. He points out that in other industries where property rights are private, limited entry often results in the availability of less service at a higher price. However, he maintains that limited entry (as it applies to fisheries) does not limit the amount of resource which is permitted to be harvested. Consequently, limited entry has little effect on the availability or the price of the product.

Mr. Schelle notes that in fisheries, a trade-off occurs when trying to sustain the maximum yield of the fisheries. If limits are not placed on the number of participants, then other restrictions must be

imposed to maintain the maximum yield, such as limiting the length of fishing seasons, efficiency of the gear, and areas open for fishing, measures which often result in higher harvesting costs. On the other hand, if the number of participants is limited, then State fishery managers do not have to employ as many other methods of reducing efficiency in order to conserve the resource.

According to Commissioner Bruce Twomley of the Entry Commission, limiting entry in fisheries is appropriate, the question is how best to limit entry. He maintains that there may be more economic ways of limiting the fisheries, but concludes the current form of limited entry is better than none at all. In addition, he points out that the current system of limited entry encourages access to the fisheries in that permits may be bought and sold. On the other hand, access is limited to those who can afford to purchase the permits.

#### Alcoholic Beverages

According to Patrick Sharrock, Director of the Alcoholic Beverage Control Board (ABC Board), the sale of alcoholic beverages has been regulated in Alaska since the turn of the century. The ABC Board was created to regulate the sales and distribution of alcohol in Alaska shortly after statehood. Alaska Statute 4.11.010 provides that a person may not "manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage" without a license or permit issued by the ABC Board. Under AS 4.11.400(a), the ABC Board is authorized to issue one license of each type for each 1,500 persons or a fraction thereof. (See Attachment C for a list of license types.)

Inside established villages, incorporated cities and unified municipalities, the population count is based on the total population within the organized area's boundaries. In unorganized areas, population is based on the total population within a five-mile radius circle from the premise seeking licensure. The ABC Board is also authorized to approve licenses for beverage dispensary or to a restaurant or eating place without regard to population if it appears the issuance or transfer of the license will encourage the tourism trade by encouraging the construction or improvement of a hotel, motel, resort, or an airport terminal [AS 4.11.400(g)].

Currently, there are 1,652 alcoholic beverage licenses in Alaska, 36 of which were approved under the "tourism provision." In addition, the ABC Board has issued 41 duplicate licenses. Duplicate licenses are issued to license holders and allow them to open a second sales outlet at a previously approved premise. For example, a hotel which already has a permit to sell alcohol at its restaurant may apply for

Representative Marrou  
February 14, 1985  
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a duplicate license to open a cocktail lounge. According to Mr. Sharrock, data on the number of applications the ABC Board has denied since its inception is not available. However, during 1983 and 1984, the ABC Board received 408 new applications for permits, 138 of which were denied. 759. 759.

According to Mr. Sharrock, the intent of limiting entry in the alcoholic beverage industry is "to ensure that there is an orderly scheme of operating businesses dealing with the sale of controlled substances." He contends that limited entry in the alcoholic beverage industry is good because of the controversial nature of alcohol. He maintains that limited entry protects the public interest by regulating the kinds of establishments distributing alcohol. In addition, Mr. Sharrock notes that limited entry helps ensure that businesses selling alcohol are not involved in illegal activities often associated with alcohol consumption (such as gambling and prostitution).

On the other hand, limited entry is problematic because it creates a property value for the license. According to Anchorage Municipal Assemblyman John Wood, Anchorage can no longer expect any small restaurants to open there because of the high price of liquor licenses, which currently sell for approximately \$500,000 in Anchorage. Mr. Wood also contends that limited entry in the alcoholic beverage business is ineffective in that it does not address the intended goal of controlling consumption. Although limited entry may affect consumption because it raises the price of alcohol, the price of alcohol could also be raised by increasing liquor taxes without limiting entry.

#### Public Utilities

According to Commissioner Marv Weatherly of the Alaska Public Utilities Commission (APUC), regulation of public utilities in Alaska dates back to statehood. However, the APUC was not established as a full-time regulatory commission until July 1, 1970. The APUC was created under AS 42.05.010 to regulate every public utility engaged in or proposing to engage in business in Alaska. Two of the commission's goals are preventing unnecessary duplication of facilities, and assuring that public convenience and necessity are met. Consequently, before operating in Alaska, a public utility must obtain a certificate from the commission declaring that public convenience and necessity require or will require the service [AS 42.05.221(a)].

According to Commissioner Weatherly, the statutes and regulations do not establish a quota limiting the number of utilities in each area. However, in practice, the APUC usually certifies no more than one utility of each kind in a given area. Currently, 257 utilities are

certified to operate in Alaska. A list of the number and kind of certified utilities follows:

- 57 - Electric
- 3 - Natural Gas
- 23 - Cable Television
- 7 - Radio Common Carriers
- 26 - Telephone
- 59 - Water
- 33 - Wastewater
- 33 - Refuse
- 1 - Steam Heat
- 13 - Crude Oil Pipelines
- 2 - Natural Gas Pipelines

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Total: 257 certified public utilities

According to Commissioner Weatherly, the APUC does not maintain records of the number of applications denied. He pointed out that in public utilities, acceptance of one application does not necessarily mean rejection of another. Instead, contracts may be split between several utility companies. In addition, Commissioner Weatherly noted that utilities are capital intensive. Consequently, the number of applicants is usually small.

When asked to judge the efficacy of limited entry, Commissioner Weatherly cautioned that limited entry as applied in public utilities is much different than limited entry in other areas, such as fisheries. First, as indicated above, most utilities are capital intensive and require significant amounts of up-front capital. Consequently, competition for certification to provide services is limited, unlike the demand for entry into the fisheries. Second, the APUC regulates a service industry rather than a renewable resource.

Jack Farleigh, Executive Director of the APUC, argues limited entry in utilities is beneficial because it prevents unnecessary duplication of facilities which could result in undue costs to the consumer. In addition, limited entry protects the public by requiring companies to prove their services meet public necessity and convenience. Furthermore, he indicated that the precedent and legal principles for limited entry in utilities are set in federal courts.

#### Anchorage Taxicab Industry

The concept of limited entry is also applied on the local level in Alaska, as illustrated by the taxicab industry in Anchorage. In

1975, the Municipal Assembly of Anchorage passed an ordinance basing the number of available taxicab permits on two factors: 1) a quota of one taxicab for every 1,500 persons, and 2) the public's convenience and necessity. The Transportation Commission was charged with the issuance of permits. On January 31, 1984, the Assembly amended the ordinance by dropping the population quota thereby basing the issuance of permits solely on public convenience and necessity and establishing a sealed bid process for permits.

Decisions on the issuance of additional permits are based on four criteria: the existence of public demand for additional cabs; whether or not the request for service is filled; the current waiting time for service; and the economic impact of additional permits on the cab industry. If the need for additional permits is proven, the permits are now opened up to a sealed bid process and issued to the highest bidder. Prior to the 1984 amendments, the Transportation Commission awarded permits for a fee of \$250 per year. The 1984 amendments raised the permit fee to \$750 per year in addition to establishing the sealed bid process.

According to Bud Macatee, Manager of the Municipality's Transportation Inspection Office, 163 taxicab permits have been issued to date, five of which are limited permits for the Eagle River area. Mr. Macatee indicated that records on the number of applicants have not been kept until recently. He estimated that from September 1983 through when the ordinance was amended on January 31, 1984, approximately 250 applications were submitted for taxicab permits. Mr. Macatee explained that the number of applicants during this time was exaggerated by two factors: 1) knowledge of the impending law change; and 2) a court case in which one person was awarded 12 taxicab permits.

According to Mr. Macatee, only five limited permits have been issued since the 1984 ordinance went into effect. The five limited permits sold for a total of \$27,000. He notes that permit holders may also sell their permits. The last two permits sold on the market sold for \$32,500 each.

Mr. Macatee points out that limited entry has worked against persons wishing to enter the taxicab business, while benefiting those already holding permits. Consequently, current permit holders do not favor opening entry into the Anchorage taxicab industry. He also notes that the sealed bid process limits entry to persons with access to significant capital assets and often prevents taxicab drivers from participating in the taxicab industry in Anchorage.

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According to John Wood of the Anchorage Municipal Assembly, five entities currently control 55 percent of the taxicab permits in Anchorage. These companies lease the permits for between \$750 and \$1,300 per month. Mr. Wood maintains that the permit owners earn more per shift than the taxicab driver. He estimates that the average driver leasing a permit must make 390 trips per month before "putting a dime in his/her pocket." As such, limited entry harms the consumer who pays unnecessarily high fares.

The Anchorage Municipal Assembly recently concluded public hearings on a proposal to deregulate the taxicab industry. The proposal failed with a 6-2 vote on February 12, 1985. However, Assemblyman John Wood, sponsor of the measure, hopes to put the question before the voters this fall. The Transportation Commission, which is charged with regulating the taxicab industry, was split concerning whether or not to deregulate the taxicab industry. Some of the members favored maintaining the current system with the addition of a lottery system to distribute permits instead of a sealed bid process, while others favored opening entry.

### Conclusion

Each area of limited entry discussed in this memorandum was designed to meet a specific goal such as to protect the public, conserve resources, or protect persons already participating in an industry. Determining whether or not those goals are beneficial or should be the function of government will vary according to one's personal convictions and philosophy of government.

Many economists do not recommend limited entry, maintaining that the market should be allowed to determine the number of participants in a given industry. Exceptions may be limited entry as it applies to public utilities and to the harvesting of public resources. Public utilities are generally accepted as an industry that functions best as a regulated monopoly. By limiting the number of participants, service can be improved and costs of providing service can decrease. In addition, consumer costs are regulated in order to limit the profits of the service providers. In an industry such as fishing, limited entry serves to maintain the life of an industry, protect the resource, and ensure a steady supply to the consumer.

Limited entry in a service industry can limit the availability of the service and lead to increased prices for consumers. As discussed in the sections on the taxicab and alcoholic beverage industries, limiting entry by providing a limited number of permits is problematic because it creates a property value for the permits. The inflated cost of these permits often prevents persons trained in an industry from participating because of the inability to purchase permits.

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The difference between service industries and resource industries is that limiting entry does not appear to benefit consumers either by lowering costs (as in utilities) or by aiding the management of a depletable resource (as in fisheries). The primary beneficiaries of limited entry in service industries appear to be the permit holders. Although one can argue strongly against extending limited entry in the service sector, it is difficult to revoke an existing system of limited entry permits because of the significant investment current permit holders have already made.

\* \* \* \* \*

I hope the information provided in this memorandum is of use to you. Please contact me if you have any additional questions.

HBP

Attachments

INTERNATIONAL



ORGANIZATION

OF

# MASTERS MATES & PILOTS

ROBERT J. LOWEN  
International President  
ALLEN C. BOOTT  
International Executive Vice President  
LLOYD M. MARTIN  
International Secretary-Treasurer  
GEORGE A. QUICK  
Vice President

J. ALFRED ELLIS JR.  
East Coast Regional Representative  
DAVID C. WHEAT  
Gulf Coast Regional Representative  
BERT HOLMES  
West Coast Regional Representative  
EMIL F. BOWERMAN  
Panama Canal Regional Representative

October 3, 1989

Mr. John Tamashiro  
Executive Secretary, Pilot Program  
Department of Commerce and Consumer  
Affairs  
State of Hawaii  
Post Office Box 541  
Honolulu, Hawaii 96809

Dear Mr. Tamashiro:

It has come to our attention that one of our members, Jean Louis Lependu, is advocating competition among pilots in Hawaii. Such a position is contrary to the stated policy of this Organization. We recognize only one branch or affiliate in each area to provide pilotage service to shipping.

Experience has shown that competition among pilots does not serve the public interest. The inefficiencies inherent in maintaining duplicate services; the lack of a central dispatching system to assure the availability of pilots at all times; the failure of having a single pilot administrative entity to represent all pilots and be collectively accountable for the administration and quality of the pilotage system, inevitably leads to a service with inadequate equipment, low standards and chaos.

The most recent example of the problems that exist, in permitting pilots to operate independently, occurred in San Juan, Puerto Rico.

Pilots were separately licensed with no provision to form an Association to jointly provide service. Each pilot had his own boat and operator. Individually no one pilot could afford a boat capable of working outside the harbor in moderately rough sea conditions. There was no joint responsibility to be available for service or a central dispatching system. Vessels routinely entered the harbor without a pilot when they could not be properly boarded outside the entrance due to poor equipment that could not operate under moderate wind and sea conditions. In addition, even under good weather conditions, a high percentage of ships entered and left without pilots because none could be found without a dispatch office and an organizational



structure that could be held accountable for maintaining an orderly pilotage system.

A large container ship recently attempted to enter the port when a pilot was not available and grounded in the entrance channel. The ship blocked the entrance to San Juan Harbor, the second largest passenger cruise ship port in the world. The consequences were disastrous with thousands of passengers trapped in the port aboard ships unable to sail and thousands of others diverted to alternate ports due to the inability of ships to enter San Juan Harbor. The ship remained aground for several days. The supply of fuel for the electric power plant that furnishes electricity to the City of San Juan was down to the point that the National Guard was put on alert to maintain order in the event there was a blackout. The channel was reopened and fuel supplied to the power plant only hours before a shut down would have been necessary.

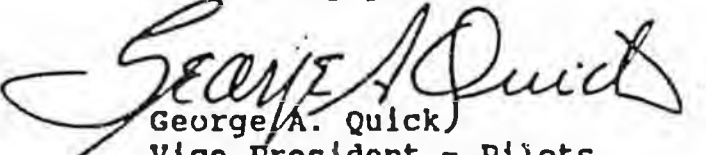
The incident caused the Governor of Puerto Rico to appoint a Committee to study pilotage in Puerto Rico. New regulations are in the process of being enacted to force the pilots into an Association to jointly maintain a pilotage service, and funded at a level that the Association can maintain proper equipment for all weather operations with a central dispatch and administrative office.

It is interesting to note that while the Governor's Committee was holding meetings, a second ship grounded under the same circumstances and closed the port. The move to bring the San Juan Harbor pilots under a single Association is strongly supported by management, represented by the Shipping Association, and by the Port Authority of Puerto Rico. The pilots are being offered financial incentives to form an Association and collectively maintain a pilotage system.

Any attempt to foster individual or independent pilotage services in Hawaii will only lead to a situation similar to that which occurred in San Juan and require remedial efforts in the future to undo the damage.

If I can be of any assistance in furnishing more information, please call me at (301) 557-8757 or (301) 850-8700.

Very truly yours,

  
George A. Quick  
Vice President - Pilots

the information already contained in the application or petition. [Eff and comp 12/2/89; comp ] (Auth: HRS 5462A-3) (Imp: HRS 5462A-3)

## SUBCHAPTER 12

### STATEWIDE PILOTAGE SYSTEM

§16-96-61 Statewide pilotage system. All pilots shall be required to participate in assuring the maintenance of the pilotage services in all pilotage waters of the State. Such participation shall require that each pilot:

- ✓ (1) Remain in active service;
- ~~(2) Participate in the central scheduling system as set forth in section 16-96-62;~~
- (3) Participate in the pilot training program as set forth in section 16-96-63; and
- (4) Adhere to the work rules adopted pursuant to this chapter. [Eff and comp ] (Auth: HRS 5462A-3) (Imp: HRS 5462A-3)

~~§16-96-62 Central scheduling system. (a) All pilots shall participate in the central scheduling system that is established by the director. The director may contract with any person or entity, including any existing pilotage system, to establish and operate a central scheduling office for all pilotage services in the State.~~

~~(b) Any person or entity that seeks to operate the central scheduling system shall submit a proposal to the director that shall include, but is not limited to, work rules that assure the following:~~

- ~~(1) All needed pilotage services will be available at all times and for all designated pilotage waters;~~
- ~~(2) Any request for a particular pilot or group of pilots shall be accommodated to the greatest extent possible;~~
- ~~(3) The refusal to use any particular pilot shall always be honored;~~
- ~~(4) An expeditious grievance process for the resolution of all complaints including a pilot's complaint that the central scheduling system has been operated to the disadvantage of that pilot;~~
- ~~(5) Equitable distribution of pilotage work to all licensed pilots; and~~
- ~~(6) Method of financing for the proposed central scheduling system.~~

~~(c) All requests for pilotage services shall be made through the central scheduling office. No pilot may engage in any pilotage service that is not assigned through the central scheduling system.~~

*Contrary to Law*

(d) All operating costs for the central scheduling office shall be borne by all licensed pilots on an equal basis. [Eff and comp ] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

*DELETED*  
§16-96-63 Training program. (a) All pilots shall participate in a program to train deputy port pilots which shall be established by the director. The director may contract with any person or entity to establish and operate such a training program. There shall be only one training program in existence at any one time.

(b) All deputy port pilots shall receive their training under the program established pursuant to this section provided that any deputy port pilot licensed prior to the effective date of this section may complete training outside of this program.

*DELETED*  
(c) All pilots shall accept training assignments made by the program unless the pilot is physically or mentally impaired or unless the pilot is unable to obtain the necessary support facilities at reasonable rates in the port involved.

(d) The costs of operating the training program shall be offset by a fee to be assessed per vessel movement during any period when a deputy pilot is being trained. The fee shall be assessed on all vessel movements whether or not the particular vessel involved is carrying a deputy port pilot. [Eff and comp ] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-65 Work rules. All pilots shall adhere to the work rules of the central scheduling system that is established by the director pursuant to section 16-96-62 or adopted pursuant to subchapters 2 and 3 of this chapter." [Eff and comp ] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

*THAT ARE APPROVED BY THE DIRECTOR*

*REVISIONS OF 1/14/14*

2. Material, except source notes, to be repealed are bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments and compilation of chapter 16-96, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Report of the Alaska Oil Spill Commission  
Executive Summary

# SPIII

The Wreck of the Exxon Valdez  
Implications for Safe Marine Transportation

January 1990

Recommendation 20  
*Marine pilot qualifications*

*Training and experience standards for marine pilots in Alaska should be upgraded to require actual experience in Alaska operations of vessels at thresholds of 60,000 and 150,000 deadweight tons.*

Training and experience requirements have been reduced for pilots of large tankers in Prince William Sound and Cook Inlet since the late 1970s, allowing pilots to qualify for very large ship operations on insufficient experience. While no accidents have been caused by this circumstance, a system with multiple thresholds is inherently safer.

Recommendation 21  
*State as co-insured*

*Insurance policies should identify the State of Alaska as an additional insured or named beneficiary.*

The shipping industry is responsive to economic incentives. Insurance premiums and premium requirements create incentives. The insurance industry is responsive to the needs of co-insureds. Such practices were required during construction of the trans-Alaska pipeline. There is every reason to revive them.

Recommendation 22  
*Remote spill response*

*The state should set rigorous requirements for private oil spill prevention and response capability in remote locations. The state also should develop response plans for major spills and articulate a prevention program from the Aleutian Islands to the Arctic.*

Despite the state's obligation to respond to major spills, only if private resources are committed to prevention systems and response can an acceptable reduction in risk be achieved.

Marine traffic in arctic Alaska already poses unacknowledged risk. Fuel provisions delivered by sea and vessels fueled by oil create risks of damage in these hazardous and environmentally fragile waters. Spills are usually impossible or much more difficult to contain and collect in arctic waters. Immediacy of response is the key to cleanup if a spill occurs.

Measures should be undertaken to reduce spill risk in the arctic, including better vessel tracking and contingency plan requirements for all large vessels transiting the arctic, and for smaller vessels carrying oil or major fuel supplies.

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

RECEIVED  
SEP 24 1990  
OFFICE OF THE  
COMMISSIONER  
FINANCE DIVISION  
P.O. BOX WF  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

September 24, 1990

The Honorable Jane Angvik  
Commissioner  
Department of Commerce and  
Economic Development  
Box D  
Juneau, AK 99811-0800

Dear Commissioner Angvik:

RE: Interim Letter No. 1  
Board of Marine Pilots

It is the policy of the Division of Legislative Finance to inform the Board of any significant findings noted during the course of our review. We would appreciate receiving a written response from you to help us evaluate the findings and recommendations presented below.

Since the review has not yet been completed, information included in this letter should be considered confidential. A preliminary report which may or may not contain these findings will later be sent to you for your comments.

In order to facilitate the completion of the review, please furnish this Division with your written reply within 10 working days after the receipt of this letter.

### Recommendation No. 1

The Division of Occupational Licensing should review the role of pilot associations in the training and regulation of pilots and recommend statutory or regulatory clarification as necessary.

Pilot associations have performed a valuable role in training and upgrading the skills of their members. Associations provide for familiarization with new piloting areas and certify that members have made the appropriate dockings and undockings for adding endorsements to pilots' licenses. They also, however, limit membership and dispatch only their own members. Recently there have been a number of suits filed against the associations alleging restraint of trade and violations of anti-trust statutes. The associations are not currently regulated by Occupational Licensing.

While the basic purpose of the associations, i.e., to dispatch pilots, will doubtless remain, they may well be reluctant to assist in training or any other area of pilotage which might extend their liability.

It would appear that a more direct and specific role for the state in training and examining pilots may be necessary and appropriate. Statutory or regulatory changes may be required, perhaps with a knowledgeable state employee dedicated to these tasks.

The Division of Management, Office of the Governor is preparing an in-depth study of marine piloting. The study may serve as the basis for legislative changes.

If you have any questions regarding this letter please contact me at 465-3795.

Sincerely,



Mike Greany, Director  
Legislative Finance Division



**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 challengable.
- 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

# 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  
Assistant Attorney General

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

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:

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

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

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

\* Sec. 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.

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

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

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

Sec. 08.62.030. MEETINGS. The board shall hold at least

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

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

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

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

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

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

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region, 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.

(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.

(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 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.

(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

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

(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

the board finds that the person

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

(2) is chemically impaired [HABITUALLY INTOXICATED];

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

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

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

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

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT] ;or

(8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff established by the board.

(b) [Repealed, sec. 4, ch. 60, SLA 1987.]

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

Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

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

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS.

A vessel subject to this chapter navigating certain [THE INSIDE COASTAL] waters in, around, and adjacent to the State of Alaska as

determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

\* 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:

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.

October 25, 1990

OFFICE OF  
MANAGEMENT & BUDGET

OCT 29 1990

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

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 debate.

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. In view of 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 RELICENSING.

##### Renewal Check-Ride Requirement

I am 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 airline 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 he does 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.

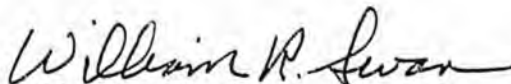
The study offers no justification for why the pilot board should be staffed with a person with this sort of centralized authority. The coordinator could easily become a dominant individual acting in the name of the pilot board rather than at its pleasure. If the coordinator position is filled by a person 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

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 JAMLS 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 Enforcement 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.

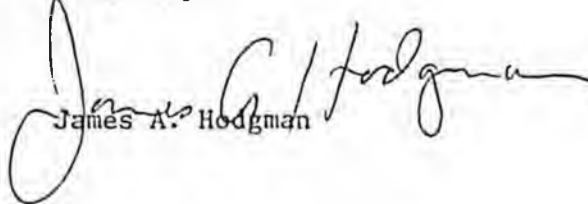
Sec. 08.62.160 Mandatory Employment of Licensed Pilots

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

001 3-1990

STRATEGIC PLANNING

1610 Water Street,  
Ketchikan,  
Alaska 99901.

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

SUITE 315  
300 ELLIOTT AVENUE WEST  
SEATTLE, WASHINGTON 98119-4151



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TELEX 3724362 (GRAPHNET,  
CABLE ALAMAR)

October 31, 1990

OFFICE OF THE GOVERNOR  
Division of Policy  
P.O. Box AD  
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.

2711


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 experiance 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 preceeding 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

U.S. Department  
of Transportation

United States  
Coast Guard



Commander  
Seventeenth  
Coast Guard District

P.O. Box 1-5000  
Juneau AK 99802-1217  
Phone (907) 586-2215  
(mvs)

OFFICE OF 16711  
MANAGEMENT AND BUDGET  
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 an 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 an 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 (c)(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

LAW OFFICES OF  
ZIEGLER, CLOUDY, KING & PETERSON

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(1919-1972 DECLARED)  
A. H. ZIEGLER  
RETIRED  
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  
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State of Alaska  
Officer of the Governor  
October 31, 1990  
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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.

ZIEGLER, CLOUDY, KING & PETERSON

Ms. Marilou Madden  
Mr. Brad Pierce  
State of Alaska  
Officer of the Governor  
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Page 3

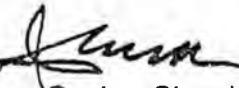
*new*  
00.62.190(a). This section should also provide for a separate violation for each vessel movement to which a separate tariff has been assigned. In Southeastern Alaska, at least, the draft is susceptible of a reading of a single misdemeanor for each 7-10 day cruise transit of the involved vessel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

*2100*  
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.

*2*  
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  
Z1CLC

## 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 working pilots on the West Coast of the United States to ensure 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

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

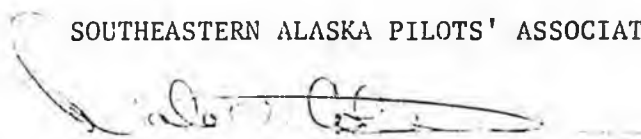
(6) Penalties. We recommend deleting the words "when a licensed pilot is available". This is a loophole that could be used to avoid the penalties of this section or when more than one group of pilots is working the same region. The owner, master or agent gives insufficient notice to either group to meet 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

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October 31, 1990

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14 8 5  
10 9 27  
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.

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Page 2

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 on ships 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 4 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

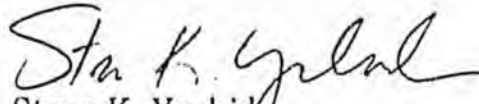
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make it uneconomic for such people to think that way. Doubling the fine for a second offense will deter intentional and systematic violations of the law.

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

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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KURRUS & KIRCHNER  
Counsel to the American  
Pilots' Association

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

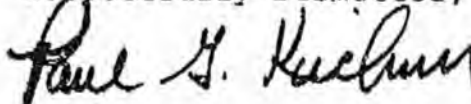
to obtain a finding of negligence on the part of the pilot.

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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KURRUS & KIRCHNER  
Counsel for the American  
Pilots' Association

Captain Mitchell Cloudy  
PO Box 20251  
Juneau, Alaska 99801

Mr. Brad Pierce, Ms. Marilou Madden  
Pilot Study Group/Governor's Policy Office  
Office of Management and Budget  
PO Box AD  
Juneau, Alaska 99811-3568

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 those 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, 92 "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.

c) Mr. Cloudy's letter, p 5, ¶3, p6, ¶1 "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 present provisions in the Operating Rules and Bylaws of SEAP pertaining to this type of professional misconduct reflect 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:

"Lobbying the Board of Marine Pilots or the Alaska legislature in pilorage matters without the prior authorization of the Board of Directors. First 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.

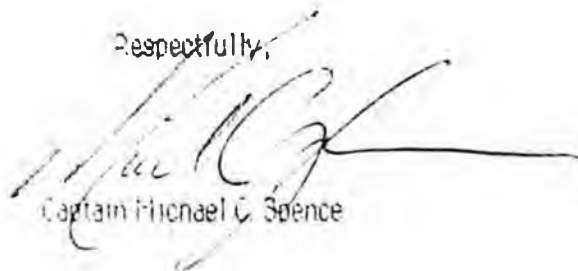
The issue of group liability for ship accidents is appropriately stated as a primary concern among pilots, but other areas of group liability should also be addressed. For example, liabilities for litigation costs and legal settlements of SEAP have been spread upon contract pilots who have no vote or 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 pilorage 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

INTERNATIONAL ORGANIZATION



ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
International Secretary-Treasurer  
GEORGE A. QUICK  
Vice President

OF  
**MASTERS  
MATES &  
PILOTS**

J. ALFRED ELLIS JR.  
East Coast Regional Representative  
DONALD L. 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

## ZIEGLER, CLOUDY, KING &amp; PETERSON

MEMO November 19, 1990  
 TO SEAP Board of Directors  
 FROM C. L. Cloudy  
 RE Pilot Board Meeting, November 19, 1990  
 Kotzebue Sound - Cominco Question  
 Our File 29.039.47

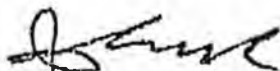
STATE OF ALASKA  
 DEPARTMENT OF COMMERCE  
 & ECONOMIC DEVELOPMENT  
 NOV 29 1990  
 DIV. OF OCCUPATIONAL LICENSING

A review of the U.S. v. Alaska case cited by Gary Amendola as well as prior U. S. Supreme Court cases on the same subject, discloses that the decision is not in point. The Alaska case involved an interpretation of the Submerged Lands Act, and who, as between the United States and Alaska, had control of oil and gas deposits in the Cook Inlet area. The Submerged Lands Act gave several states title to submerged lands in their "inland waters". A previous U. S. Supreme Court submerged lands case had determined that the question of whether or not a particular body of water was "inland waters", would be determined by reference to the Convention on the Territorial Sea and the Contiguous Zone. Under these definitions, a bay with headlands in excess of 24 miles apart would be considered inland waters if and only if it was a "historic bay". The court found that the area of Cook Inlet involved did not qualify as a "historic bay", and therefore held against Alaska with regard to the oil and drilling rights in question.

Consequently, neither the Alaska case nor prior cases on the same subject dealt with the question of who has navigational control over waters which may fall outside the definition of inland waters. Historically, states have controlled navigation beyond their inland waters through the territorial seas out to the high seas line. This right is recognized in Article 17 of the above-referenced Convention. As pointed out in the Alaska case, this right is a characteristic of territorial seas and exercise of that control by a state will not serve to convert the area into an historic bay for submerged land purposes.

In my opinion, the answer to the question posed by Cominco involves a consideration of not only the limits of the territorial seas and the control of navigation thereon, but a consideration of the Russian Convention Line (1867 Treaty of Cession) running north from the mid-point between Little and Big Diomedes at about 168° latitude well outside of the headlands of Kotzebue Sound. In any event, the answer will not be found in cases dealing with submerged lands under the Submerged Lands Act.

Sincerely,

  
 C. L. Cloudy

CLC:cz  
 ZICLC

DEAR ED,

THIS LETTER MIGHT  
 INTEREST YOU!





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**AMERICAN PRESIDENT LINES, LTD.**

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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

STRATEGIC PLANNING

**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.

Ltr to Ms. Mary Lou Madden, Mr. Brad Pierce  
PILOTAGE ACT DRAFTING GROUP - STATE OF ALASKA  
Page two

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.

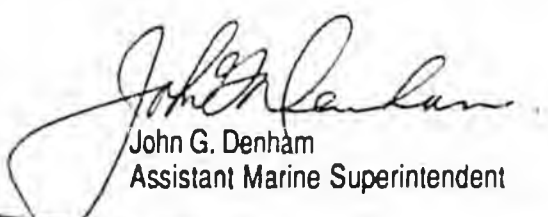
The premise of pilotage is to provide safe, efficient and reliable service for visiting ships that are not familiar with the port; in most cases state pilotage laws support this premise. To guarantee this service and maintain quality, states must be involved in some form of monitoring the quality of 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

MARINE PILOTING

Telephone (907) 225-8888  
(907) 225-8887

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

November 23, 1990

Mr. Russell Sell  
1727 W. 11th Avenue  
Anchorage, AK 99501

Dear Russell:

Please find enclosed the only information I have on Deputy Pilot Programs. At this time, Mr. Bill Schechter is listed as a contact for the Sandy Hook Pilots on this news release. The American Pilot Association might be able to provide additional information on other Deputy Pilot Programs. Their address is 1055 Thomas Jefferson Street N. W., Suite 404, Washington D. C., phone 202-333-9377.

A Pilot Training Program for Southeastern Alaska Pilots' should include the following as minimum requirements:

1. Each port in Southeast Alaska must have been observed at least three times prior to docking or undocking a ship at that port.
2. Has 50 docking and undockings at ten different docks in Southeast Alaska, with a state licensed pilot.
3. Has conned a ship transiting Wrangell Narrows three times north and south bound.
4. Has conned a ship transiting Peril Straits three times east and west bound.
5. Has conned a ship transiting Olga and Neva Straits three times north and southbound.
6. Has conned a ship transiting Tracy Arm Bar three times inbound and outbound.
7. Has attended at least one simulated shiphandling course and A.R.P.A. course.

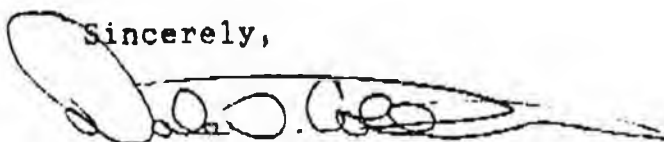
The three step tonnage license system the state has now should be maintained and all pilot

trainees must go through the step system. This proposed training system would take a pilot trainee 3 to 5 years with the exception of the conning transits in narrow channels. These transits would require a pilot additional time and would be endorsed as they were completed.

The proposed training program would be a good start, and will take some refining and a broader consensus before being adopted by the Pilot Board.

If I can be of further assistance, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale O. Collins". The signature is written in a cursive style with a large, prominent initial "D".

Dale O. Collins

# SAN FRANCISCO BAR PILOTS

P.O. BOX 26409  
SAN FRANCISCO, CALIFORNIA 94126  
415-362-5436  
FAX 415-982-4721

STREET ADDRESS:  
NORTH BULKHEAD PIER 7  
SAN FRANCISCO, CA 94111

November 28, 1990

Mr. Bob Pierce  
Ms. Marion Madden  
State of Alaska  
Office of the Governor  
Division of Policy  
P. O. Box AD  
Juneau, AK 99811

Dear Mr. Pierce and Ms. Madden:

Thank you for the copy of the Alaska Marine Pilotage Study and the draft legislation amending the Marine Pilots Act. We found the Review Draft extensively well researched and informative.

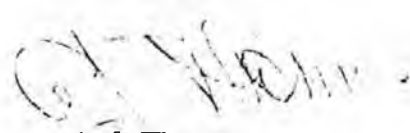
In Section 175 Pilot Organizations it states that marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

We have found through our history that it is a requirement for pilots to belong to pilot associations, with attendant working rules, you are inviting individuals to work outside organized groups. These independent pilots, in our past experience are more directly controlled by; the shipping companies whose interests may not always be safety to the public and the marine environment. We have concerns that these individuals may place economic security above safety.

The specific number of pilots issued licenses is not addressed in the legislation. After establishing the expected traffic volume for each area, the number of pilots needed to provide service with adequate rest, attrition rate among pilots, and other factors involved, a sufficient number of state licenses can be issued. While not immediately important under conditions in Alaska now, we think that failure to address these issues could bring problems to your pilot system in the future.

If we can be of any assistance to you in the future, please feel free to call on us.

Sincerely,

  
A. J. Thomas  
President

AJT:fmb



## ALASKA MARINE PILOTS & DISPATCHING SERVICE

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

November 29, 1990

State of Alaska  
Board of Marine Pilots  
P.O. Box D  
Juneau, Alaska 99811-0800

STATE OF ALASKA  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT

DEC 4 1990  
DIV. OF OCCUPATIONAL LICENSING

To Whom It May Concern,

We appreciate the opportunity to provide comments and input about and into the proposed modifications to the State Marine Pilotage Statute. We anticipate that we can participate in a constructive manner during the Board's public meeting on December 17th. We expect that the format of the meeting will be such that we shall have adequate time to discuss the specifics and language of the proposed legislation.

We offer the following comments regarding the proposed modifications to the marine pilotage statute.

General Comments:

- 1) We agree that any real or perceived ambiguities as to the Board's authority should be clarified by statute.
- 2) We agree that the make-up of the Board should be re-constituted to include a pilot from each regional functioning pilot organization. If the State is represented on the Board we'd suggest the position be filled by a representative from the Office of Management and Budget.
- 3) We agree that pilots should be required to have some form of continuing education requirement. As a minimum we would suggest a peer-evaluation requirement.
- 4) We agree that licensing should be done on a regional-specific basis. We suggest that the exception to the exclusive region license should only include general ports that are the destination or starting point for ships that generally transit between regions on a regular basis. This would prevent the need for a particular ship to have to change pilot groups enroute.

Consideration should be given to those who presently have licenses for more than one region so that they don't lose what has been expensive and difficult to obtain. Perhaps a way can be found to allow them to designate one of the

regions as their working region for a license period - i.e. two years. When they elect to work in another region they must present evidence of having refamiliarized themselves with that region but not have to re-license for the region. Such a provision can accomplish the goal of localized expert knowledge and the restriction of only working in one region at a time.

5) We agree that tariffs should be based upon regions and the operating costs of the regional pilot organizations. We suggest that since all pilots are required to charge the tariff that those pilots who choose not to be part of a regional pilot organization be required to contribute an "overhead contribution" out of each tariff collected to the pilot organization on whose operating costs the tariff was based. We will support other alternatives that resolve the problem of balancing the constraint of trade arguments when a qualified pilot can not get into a pilot organization and yet is faced with the reality that piloting is best done through an organization and central regional dispatch service.

6) We agree that pilot organizations should have training obligations. We do not agree that the organization needs to bear any costs for such training unless allowed for in the tariff or done on a voluntary basis.

7) We agree that the Board (after reconstituted) should have the power to approve the operating rules and training program of each regional pilot organization. We suggest that statutory language be approved that specifies the criteria to be used in the approval process. There also needs to be an appeal process if the Board does not approve the pilot organizations rules, etc.

8) We agree that organization training should begin after a candidate has a Coast Guard license for enough of a region to allow meaningful training and after passing a State Board examination.

We suggest that language be put into the proposed statute to incorporate the following concept.

The Board in consultation with the regional pilot organizations and agents knowledgeable about shipping needs in the region determine the number of trainees reasonably expected to be needed in each region. After meeting the pre-training requirements the individuals selected by the Board would be assigned to the regional organization for training. During the training program the evaluations prepared, the trainee would be sent to the Board. On the basis of the evaluation the Board would have the authority to cancel an individual's training. Once an individual has completed the training in a satisfactory manner and licensed the individual that person would be eligible to join the pilot organization

for dispatching. The organization would have the right to charge a buy-in, or affiliation, fee and to pro-rate on the basis of coverage, tonnage etc., subject to the Board's approval of the organization's operating rules. However, the newly licensed individual would be free not to associate with the organization.

9) We agree with the proposal for the Board to hire a pilot coordinator.

10) We agree that minimum standards for entry into the profession should be written into the statute providing that the variation in regional shipping and pilotage needs is adequately provided for.

11) We agree that pilots should, by statute, be protected with a limit of liability.

The limit of liability statute should also specifically address pilots in training and pilots engaged in supervising of trainees.

12) We agree that the law should provide that there can be no cross-over liability from one pilot to another and from one pilot to the organization.

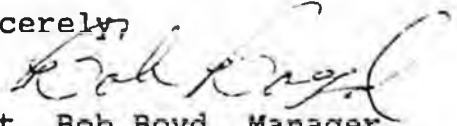
13) In general we agree with the concepts underlying the new statute but feel that specific terms and phrases in the proposed statute need to be clarified and made more specific.

If the above concepts are too difficult to get into statutory language we suggest that the changes to the statute be limited to the following.

- a) Reconstituting the membership of the Board to include a pilot from the dominant organization serving western Alaska.
- b) Clarify the powers of the Board to set tariffs by region.
- c) Direct the Board to regionalize the waters of the state.
- d) Allow the Board to have different entry and licensing standards by region.

Again, thank you for the opportunity to comment.

Sincerely,

  
Capt. Bob Boyd, Manager  
Alaska Marine Pilots

UNITED NEW YORK SANDY HOOK PILOT'S BENEVOLENT ASSOCIATION  
AND  
UNITED NEW JERSEY SANDY HOOK PILOT'S BENEVOLENT ASSOCIATION

201 EDGEWATER STREET  
STATEN ISLAND, N. Y. 10305

CABLE ADDRESS  
"HOOKPILOTS" - NEW YORK  
TEL. (718) 448-3900  
FAX. (718) 447-1582

**NEWS RELEASE  
FOR IMMEDIATE RELEASE**

Contact: Bill Schechter  
(212) 751-4532

**SANDY HOOK PILOTS -- LONG APPRENTICESHIP  
PRECEDES TRAINING THAT NEVER STOPS**

STATEN ISLAND, N.Y., June 27, 1990 ... No Sandy Hook pilot achieves the rank of Full Branch Pilot before completing 14 1/2 years of rigorous, formal training -- following a college degree, (including some from the merchant marine academies). This means that the typical Sandy Hook pilot does not complete maritime training until age 37.

But it doesn't end there. Once a Sandy Hook pilot attains the highest branch license, there's further training at the expense of the Pilots Association. It's off to Grenoble, France to a school for pilots and captains of large vessels via scaled models in a controlled environment. And other schools, such as the MITAGS (Maritime Institute of Technology and Graduate Studies) in Maryland and the Seaman's Church Institute in New York, provide updated training on the bridge of commercial vessels. All such schools offer state-of-the-art simulation courses.

(more)

### Sandy Hook Pilots Training - 2

The process begins aboard a 45 foot motorboat, learning to follow the pilot boat at sea in all weather conditions. Within four years, the candidate is expected to earn several licenses and certificates, including a Coast Guard motorboat-operator's license and a Federal license (master and pilot first class). In the following two years, he must earn at least 10 endorsements to the Federal licenses which enable him to extend his geographical reach for pilotage.

At this point, the candidate still must pass an extensive State examination to become a State pilot.

The Sandy Hook Pilots Association maintains a training program at its Staten Island headquarters, conducted by a maritime veteran, a retired sea captain. The training system was accredited in 1974 as a "Program on Non-Collegiate Sponsored Instruction" by the New York Board of Regents.

The apprenticeship phase lasts seven and one-half years, under constant supervision of senior, fully-qualified pilots. Learning is based on practical experience -- actual on-the-bridge training, seeing and experiencing port conditions and ship characteristics, supplemented by classroom work on the latest developments and techniques.

Knowledge gradually passes from a senior Pilot to the apprentice -- first with smaller ships, finally with the largest.

(more)

### Sandy Hook Pilots Training - 3

Trainees must also meet all requirements of the State Board of Commissioners, before attaining the rank of State Pilot. During that time, trainees ride more than 500 vessels through waters they hope to pilot.

Before reaching Full Branch Pilot status, Sandy Hook pilots must ride more than 1,200 vessels through waters under the Association's jurisdiction. They work their way up through classifications of increasing ship draft and tonnage. They must hold New York or New Jersey State certification as well as Federal licensing. They must be a fully-qualified Master Pilot.

While seven-year phases may seem long to the uninformed, there's a lot to learn and a heavy responsibility to bear. Each applicant who completes the apprenticeship and deputy Pilot training comes through with a gut feel for the tricky geography, wind and weather of the entire harbor area, including Long Island Sound. They are able to draw complex, color-coded maritime charts from memory -- hundreds of depth lines, buoys, aids to navigation and obstructions for waters stretching from the northern Hudson River through New York harbor to Block Island -- in the most intricate detail.

Factual knowledge is multiplied by a sense of the harbor that comes from first-hand experience with the port's subtleties -- which can be critical when handling high-value, sometimes hazardous cargoes, near a densely populated area.

(more)

Sandy Hook Pilots Training - 4

The training actually never stops, because even fully-accredited Full Branch Pilots work under the day-to-day pressure of a loss of license and livelihood for a single infraction or display of unprofessionalism. It's a welcome challenge for the Sandy Hook Pilots.

#####

LAW OFFICES  
STEVE K. YOSHIDA  
A PROFESSIONAL CORPORATION

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FAX  
(907) 235-8126

3665 BEN WALTERS LANE, SUITE A  
HOMER, ALASKA 99603

TELEPHONE  
(907) 235-5255

November 30, 1990

Ms. Marilou Madden and Brad Pierce  
State of Alaska, Office of Governor  
Office of Management and Budget  
Division of Policy  
P.O. Box AD  
Juneau, AK 99811-0164

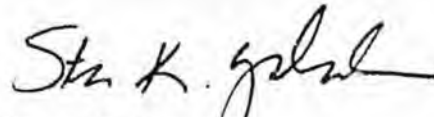
Dear Marilou & Brad:

This is to express Southwest Alaska Pilots Association's complete concurrence with the opinions expressed in the letter by George Quick, dated November 15, 1990 in regards to the limitation of pilot licenses and exclusive associations for each region.

I have accordingly made changes to our last recommendations for the new legislation consistent with Mr. Quick's opinions. see Sec. 08.62.005(d) and AS 08.662.175(b), which I enclose for consideration by the Marine Pilot's Board.

Very truly yours.

STEVE K. YOSHIDA, P.C.



Steve K. Yoshida

/kpo  
Enclosure  
cc: Captain Murphy

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR <sup>R</sup>

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500

December 3, 1990

Mr. Randy S. Welker  
Legislative Auditor  
Audit Division  
Legislative Budget &  
Audit Committee  
P.O. Box W  
Juneau, AK 99811-3300

Dear Mr. Welker:

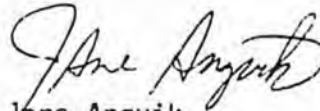
This letter is in response to the preliminary "sunset" audit findings of the Audit Division (hereinafter "audit") regarding the Board of Marine Pilots (hereinafter "board"). Your review of the board's performance has resulted in the recommendation to the Department of Commerce and Economic Development (hereinafter "department") that the extensive report on the marine pilotage industry prepared by the Governor's Division of Policy provides a "framework for legislative review of the Marine Pilotage Act." We concur in this recommendation.

As you know, in preparing a draft response to a letter to Governor Cowper from former board chair Captain Ed Murphy, the Division of Occupational Licensing last spring urged Governor Cowper to ask his Office of Management and Budget, Division of Policy (hereinafter "policy"), to undertake a comprehensive review of the state of marine pilotage in Alaska. The Governor agreed to this proposal and policy staff Brad Pierce and Mary Lou Madden have been significantly involved in a thorough review of marine pilotage issues since May of this year. The Department of Commerce and Economic Development is very much aware of growing concern for both the piloting profession and the ability of the board to deal effectively with increasingly complex piloting issues.

Policy staff have prepared a detailed, thorough report that addresses a variety of relevant marine pilotage issues. Accompanying the report is draft legislation to correct the problems identified by the administration and others intimately involved in the pilotage industry. The board recently held a meeting to review the recommendations contained in the report, and in mid-December is holding a special one-day meeting to thoroughly review the proposed legislation.

The department believes that the findings and recommendations of the Governor's Division of Policy would be an effective guide to the division, the board, the Legislature, and the pilotage industry during the seventeenth Legislature's hearings on continuation of the Board of Marine Pilots, as those entities focus on the many complex matters facing the marine piloting profession in Alaska.

Sincerely,



Jane Angvik  
Commissioner

JA/RPB/bkt3209c  
120390b

cc: Randall P. Burns, Director  
Division of Occupational Licensing

All Members  
Board of Marine Pilots



Holland America Line  
Westours Inc.

December 5, 1990

Board of Marine Pilots  
P. O. Box D, Mail Stop 0800  
Juneau, AK 99811

Gentlemen:

The draft legislation amending the Marine Pilot's Act has more to do with the economics of pilotage than with the safety of coastal shipping. While we support efforts to upgrade Alaska pilotage standards and to strengthen the Board's role in achieving that worthy goal, we do not believe that creating a monopoly situation for existing pilot organizations and their members is either necessary or justified. There is simply no evidence that by legalizing restraint of trade, either good public policy or water borne safety will be served.

What is so unique about piloting that requires its practice to be treated exceptionally? The state licenses numerous other practitioners concerned with the public well-being and safety -- doctors, engineers, architects, to name but a few -- without limiting entry or prescribing fees. Fixing pilotage tariffs not only violates a fundamental principle of the free market economy, it runs counter to public policy in virtually every other commercial endeavor in the state. No other business or profession whose practice affects public health or safety is afforded anti-competitive protection: Not hospitals, not air carriers, not doctors, not lawyers, not even communication companies.

Moreover, there are in the proposed legislation no standards for rate making as in the case of private utilities and other monopolies that have a valid reason for existence.

Board of Marine Pilots  
Page 2

Limiting pilot liability to a piddling \$5,000 is, in our view, blatantly anti-safety. Relieving a pilot of the economic consequences for his errors and omissions can only breed carelessness and indifference. The state provides no such safe harbor for doctors or lawyers or engineers, or even the ordinary citizen who drives a car. They are all financially responsible for their actions. Why are pilots -- and their associations -- to be singled out to be free of this otherwise universal responsibility?

The provision in the draft that would authorize the expulsion of a pilot from an association for failing to charge full tariff for his services is clearly intended to discourage the direct employment of pilots by shipping companies. This is an obvious violation of an individual's right to work for the employer of his choice. If a pilot is qualified and licensed by the board, who his employer is and the terms of that employment are of no concern to the state and in no way affect the safety of the vessels he pilots. After all, the captain of the ship is an employee of the shipping company and by law and tradition he has the final authority to determine where, when and how his ship will operate. This draft specifically permits state-operated vessels to engage pilots directly. Private shippers should have the same right.

Finally, if authority for pilot training is to be vested in the pilot associations, specific provision must be made in the law to give non-members unimpeded and equal access to training and upgrading opportunities.

To repeat, the proposed legislation is seriously flawed in that it would create a monopoly, fix prices, and limit liability, none of which contribute an iota to the safety of Alaska coastal marine traffic or to the public weal, but do contribute to the enrichment of a favored few at the expense of the many.

Cordially,



Anthony E. Thein  
Governmental Liaison

# SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977  
Homer, Alaska 99603

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Fax: (907) 235-6119

December 5, 1990

Alaska Board of Marine Pilots  
Division of Occupational Licensing  
Pouch D  
Juneau, Alaska 99811

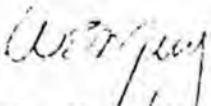
Dear Board Members:

Enclosed for your consideration is SWAPA's proposal for draft legislation to rewrite Alaska's Marine Pilotage Act.

We believe the language of our rewrite, if adopted, will address and solve the problems identified by the pilotage study group and does not threaten the license or status of those currently holding a state pilot license. At the same time it serves the public interest by protecting the pilotage system from competitive pressures fostered by shipping companies and agents and it provides the organizational structure to administer an efficient and highly trained pilotage service throughout the state. Finally, our draft recommends language which clearly establishes the primary duty of pilots to the state, its citizens and the environment.

Thank you for this opportunity to comment. I look forward to the meeting on December 17.

Sincerely yours,

  
Capt. W.E. Murphy  
President

enc.

STATE OF ALASKA  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT

DEC 10 1990

Div.

ALASKA MARINE PILOTS ACT

11/30/90

(As Recommended by Southwest Alaska Pilots Association)

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.

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& ECONOMIC DEVELOPMENT

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D.

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;

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- (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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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:

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(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

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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

STATE OF ALASKA  
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INDUSTRY AND COMMERCE  
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(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

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

(6) pleasure craft.

Sec. 08.62.185 CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. (a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot states either

(1) employ a pilot licensed by the state under this chapter; or

(2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.

(b) the pilot required in (a) of this section shall control the vessel during all docking operations.

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

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

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

Sec. 08.62.200. DEFINITIONS. In this chapter

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under AS 08.62.180.

AS 08.62.210 SHORT TITLE. This act may be cited as the Alaska Marine Pilotage Act.

TRANSITION. Sec. 1. The membership of the board as it exists on the effective date of this Act shall continue to conduct the affairs of the board in accordance with this Act until such time as the membership of the board is appointed in accordance with sections 2 and 3 of this Act, provided that the membership of the board is appointed in accordance with sections 2 and 3 of this Act on or before \_\_\_\_\_, 1991.

Sec. 2. A pilot licensed under AS 08.62 on the effective date of this Act will remain licensed under this chapter until required for the second time to renew his or her license in accordance with section 9 of this Act. Upon renewal, each pilot must then qualify for the license in accordance with the criteria in this Act and any implementing regulations. In addition, after the effective date of this Act, any pilot applying for a change in, an amendment to, or an endorsement for his or her license must qualify in accordance with the criteria in this Act and any implementing regulations.

EFFECTIVE DATE. This Act takes effect \_\_\_\_\_, 1991.

Antitrust Protection. With the change to Section 08.62.175 allowing marine pilots to form a pilot association, Sec. 45.50.572 (a) should be amended to read as follows:

AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural or marine pilot organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50 562-45.50.596.

STATE OF ALASKA  
DEPARTMENT OF REVENUE  
& ECONOMIC DEVELOPMENT

DEC 10 1990

Div. 10-100

LAW OFFICES  
STEVE K. YOSHIDA  
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December 6, 1990

Brad Pierce/Mary Lou Madden  
Senior Analysts  
Office of the Governor  
Division of Policy  
P.O. Box AD  
Juneau, Alaska 99811-0164

Re: Marine Pilot Legislation  
Our File No. 90-0219

Dear Ms. Madden and Mr. Pierce:

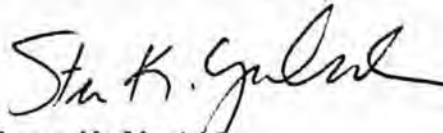
Enclosed is correspondence between George A. Quick, Vice President of Masters Mates and Pilots Organization documenting the problems in Puerto Rico and Hawaii with excessive competition among pilots.

This material is submitted in support of Southwest Alaska Pilot Association's recommendation that there be a limitation on pilot licenses and representation of each region by one pilot association.

Please submit these additional materials for review by the Pilot Board. Thank you.

Very truly yours,

STEVE K. YOSHIDA, P.C.

  
Steve K. Yoshida

SKY/mw

cc: Captain W. E. Murphy, Southwest Alaska Pilots Association  
George A. Quick, Masters Mates & Pilots Organization

INTERNATIONAL

ORGANIZATION

OF

**MASTERS  
MATES &  
PILOTS**

ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
International Secretary-Treasurer  
GEORGE A. QUICK  
Vice President

J. ALFRED ELLIS, JR.  
East Coast Regional Representative  
DONALD L. HOFFMANN  
Gulf Coast Regional Representative  
HEX F. GILLY  
West Coast Regional Representative  
EMIL F. BOWENMAN  
Panama Canal Regional Representative

June 29, 1990

TO: ALL REGIONAL REPRESENTATIVES AND BRANCH AGENTS

RE: Report on Hawaii Pilot Situation

Some time ago, two former members of the Hawaii Pilots Association began offering independent pilotage services in Hawaii.

Our letter of October 3, 1989 (Attachment "A") stated the position of this Organization at that time. I believe the State of Hawaii accepts the view that competition in pilotage is not in the public interest.


The State tried to bring the runaway pilots back into the Association through the process of mediation. That attempt failed.

In a well intentioned, but misguided, effort to eliminate competition, the State is proposing regulations to create a "Statewide Pilotage System" with "Central Scheduling" under a State sponsored system of dispatching with State mandated work rules (Attachment "B").

Our position on those proposed regulations is contained in the letter of June 28, 1990 (Attachment "C").

Hopefully, any action on the proposed regulations will be held in abeyance until the next session of the Hawaii Legislature. At that time, remedial legislation could be introduced to force a unified pilotage system under one Association.

Fraternally,



George A. Quick  
Vice President - Pilotage

GAQ:kae

Enclosures

cc: Captain R.J. Lowen  
Captain F.E. Kyser  
Captain R.O. Elsensohn



RICHARD W. COCHINOS, INC.

7711 DELRIDGE CIRCLE  
ANCHORAGE, ALASKA 99507  
0071349-0858

MARINE PILOTAGE      MASTER MARINER      PILOTAGE CONSULTANT

DEC 10 1990  
DIVISION OF  
OCCUPATIONAL LICENSING

12-6-90

MARINE PILOT WORKING GROUP, DRAFT LEGISLATION

BOARD OF MARINE PILOTS

P.O. BOX D-LIC, JUNEAU, AK 99811-0800

GENTLEMEN:

I WISH TO ADDRESS MY COMMENTS TO SECTION 08.62.185, CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. THIS SECTION SHOULD BE CHANGED TO REQUIRE STATE PILOTS ONLY, AS FOLLOWS.

" SEC. 08.62.185. CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS.

ANY OIL TANKER, WHETHER ENROLLED OR REGISTERED OF 20,000 DEADWEIGHT TONS (DWT) OR GREATER SHALL WHEN NAVIGATING IN STATE WATERS BEYOND ALASKA PILOT STATIONS EMPLOY A PILOT LICENSED BY THE STATE UNDER THIS CHAPTER WHO SHALL CONTROL THE VESSEL DURING ALL DOCKING & UNDOCKING OPERATIONS. "

REASONS FOR THE CHANGE,

(a)(1) THE DEADWEIGHT TONNAGE (DWT) SHOULD BE CHANGED TO 20,000 INSTEAD OF 50,000 AS THIS IS A VESSEL OF SIGNIFICANT SIZE & SHOULD REQUIRE A STATE PILOT WHO IS AN EXPERIENCED SHIP-HANDLER FOR DOCKING & UNDOCKING. A 20,000 DWT TANKER CARRIES APPROXIMATELY 7 MILLION GALLONS OF PRODUCT.

(a)(2) THIS SECTION SHOULD BE ELIMINATED. JUST BECAUSE A SHIP'S OFFICER HAS A FEDERAL LICENSE DOES NOT MEAN THAT HE HAS EITHER THE PRACTICAL EXPERIENCE, LOCAL KNOWLEDGE OR RECENT TRIPS IN ALASKAN WATERS TO SAFELY PILOT A TANKER.

RICHARD W. COCHINOS, INC.

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MARINE PILOTAGE      MASTER MARINER      PILOTAGE CONSULTANT

2.

U.S. DEPARTMENT OF COMMERCE  
& ECONOMIC AFFAIRS  
DEC 10 1990  
DIVISION OF OCCUPATIONAL LICENSING

A JUNIOR OFFICER (3<sup>RD</sup> OFFICER) COULD BE THE ONE WHO HOLDS THE PILOT LICENSE. ONLY A STATE PILOT MEETS THE NEEDS OF SAFETY AS DEFINED IN THE INTENT SECTION OF THIS ACT.

ADDITIONALLY, I WISH TO COMMENT ON SECTION 08.62.150 ENFORCEMENT AUTHORITY. SECTION (A)(8) SHOULD HAVE THE WORDS "AND EXPENSES" INSERTED AFTER SERVICES. THIS SECTION IS AMBIGUOUS. PILOTS COULD CHARGE THE CORRECT TARIFF FOR PILOTING BUT ABSORB A PORTION OR ALL OF THEIR EXPENSES IN ORDER TO "GET THE BUSINESS."

SINCERELY,

Richard W. Cochinos  
Pilot # 073.

P.S. ONE LAST COMMENT. GAS CARRIERS, BECAUSE OF THE EXTREME HAZARDOUS NATURE OF THEIR CARGOS, SHOULD BE INCLUDED WITH THE DEFINITION OF TANKERS IN SECTION 08.62.185.

RWC

SUITE 215  
1600 A STREET  
ANCHORAGE, ALASKA 99501



Board of Marine Pilots  
State of Alaska  
Dept. of Commerce and Economic Development  
Division of Occupational Licensing  
PO Box D  
Juneau, Alaska 99811-0800

December 7, 19.

Gentlemen:

This letter is in response for a request for comments concerning draft legislation for AS 08.62, the marine pilotage act. The proposed changes are great and represent a total reversal of direction that we have followed since 1959. Accordingly my comments cannot address each specific section, as such a substantive change deserves more consideration than this letter can or should address. I would like to make my comments in three general areas: Pilot training/safety, Organizational responsibility and structure, and economic issues.

**Pilot Training/safety:**

We agree with all of the proposed ideas for increased pilot training and safety; in fact, we recommend that the State go farther in some areas. Standards for progressive licensing should be supported, as should a program for continuing education. We encourage the Board to formally enlist the University of Alaska in this regard and make them part of the ongoing development of continuing education as well as having a formally recognized role in administering annual, biennial, and renewal requirements. We believe that a complete written and oral exam be required every five years to ensure that the acuity required of a licensed pilot is constant throughout a career, from first license to last. Recency requirements should be increased for all licenses and areas. The concept of a "check-ride" is supported. Entry level requirements should be raised and they should be tailored to specific regional demands. In all cases it should be recognized that no "cook book" will be allowed to exist in statute; education and training demand constant revision in order to maintain effectiveness. We support chemical testing pre-license, random, and post-accident. We support thorough physical examinations annually and believe that reference to height /weight standards or body-fat standards, similar to those of the military or other national transportation systems should be adopted.

As boarding vessels can be a physically demanding task fitness should be encouraged, and a modest test of physical strength and endurance should be performed in concordance with the annual exam. Based on all of the above standards, then, pilots should not be excluded on the basis of age. Costs of these programs should be supported from the tariff.

#### Organizational Responsibility and Structure:

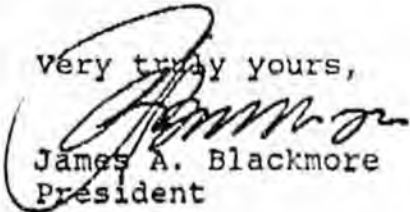
We disagree completely and wholeheartedly with all aspects of the proposed changes to existing legislation with regard to Board responsibility and structure, concepts of "approved monopolies", pilotage "regions", limit on number of licenses, and limit of pilot liability. The structure of the Pilot Board at present, including its present symmetry is excellent; frankly, it is difficult to imagine improvement. The primary purpose of members is to fairly represent a general position; not to become a voice for a special interest group. We understand that comments have been made that indicate that different groups want representation on the Board in order to "take positions". Board symmetry will not be improved by adding positions, if change is demanded --perhaps the Board should become smaller. A position for the Commissioner of Commerce should not be sacrificed. We do not agree that the Board should become more powerful and assume prerogatives of the Executive Branch; these should remain in government and the Board should remain an instrument of policy and regulation only. The concepts of pilotage regions, limits on the number of licenses, Board authority over pilot organizations serve no useful purpose under the broadest interpretation of the stated intent of the law. What they do, is only to offer economic protection to existing pilots. Access to the profession is further diminished as well. We believe that the State should have the highest possible standards for licensing, control and supervise the tariff in order that "competition" focuses only on performance and service. The draft legislation proposes that pilots become quasi-employees of the State, strictly supervised by a volunteer appointed Board. This concept is in opposition to the business culture of our nation and is so flawed that I cannot conceive of how it could actually function.

#### Economic issues:

The concept of a Board approved tariff is the heart and soul of a fairly regulated public utility like the pilots. As we have stated earlier, State control of the tariff and the power to review, is the protection against unfair competition and the ensuing dangers that are created. We feel that in order to maintain high standards of professionalism, the tariff and financial records of all licensed pilots be reviewed annually. Concepts of monopolies, closed shops, do not augment public safety, they conspire against it.

Thank you for this opportunity to express our views; we hope that that these comments will provide the Board with useful information for their deliberations.

Very truly yours,

  
James A. Blackmore  
President

cc: offices, file

INTERNATIONAL



ORGANIZATION

ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
International Secretary-Treasurer  
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EMIL F. BOWLEMAN  
Panama Canal Regional Representative

December 7, 1990

Ms. Marilou Madden and Mr. Brad Pierce  
State of Alaska, Office of the Governor  
Office of Management and Budget  
Division of Policy  
P.O. Box AD  
Juneau, Alaska 99811-0164

Dear Ms. Madden and Mr. Pierce:

It has been suggested that I follow up my letter of November 15, 1990, to you with factual examples of problems that have developed in other ports where laws or regulations have failed to require an unified pilots association or limit the number of licenses.

In the port of San Juan, pilots were licensed under the common laws of Puerto Rico but were not required to maintain service through an association. The licensed pilots worked independently with 12 pilots maintaining and operating nine pilot boats, either independently or individually, as co-owner with another pilot. Work was divided by watch system and whatever fees that were earned by pilots during their duty period belonged to them individually.

If two pilots were on duty and more than two ships required pilots at the same time, a frequent occurrence at a cruise ship port, ships were forced to wait or proceed without a pilot. Duty pilots would not call in other pilots to handle peak traffic loads; without pooling of fees through an association, it would reduce the earnings of the duty pilots. The ships that proceeded without pilots were billed by the duty pilots creating a source of unearned income.

The boats that could be maintained from the revenues earned by individual pilots were substandard and incapable of all weather operation. Even under moderate sea conditions, pilots refused to go outside the harbor and board ships at the designated pilot boarding area prior to reaching a harbor entrance channel. In many cases, ships transited the approach channel without pilots and were boarded or disembarked by pilots





Ms. Madden and Mr. Pierce  
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only in the sheltered waters of the harbor. Without an association there was no central dispatch system. Duty pilots carried beepers and it was the task of ships agents to try to find the pilot when their services were needed. Not infrequently a pilot could not be located and ships proceeded without them.

The above combination of factors - a failure to pool revenues, substandard equipment, the lack of a central dispatch system with work rules ensuring the availability of pilots, resulted in a situation where about half the ships calling in San Juan were not provided pilotage service as required by laws and regulation.

An effective and reliable pilots system ceased to exist in San Juan. Without an association to provide for the administration of the service with seaworthy equipment, dispatching with effective work rules that assured the availability of pilots, the pooling of revenues and expenses that eliminated the personal advantage of working shorthanded and funded the needs of the service on a collective basis, the system failed. It fell into a state of anarchy with each pilot operating as he saw fit.

There was no consensus among the licensed pilots that an association was desirable. They cherished their autonomy and independence and distrusted the other pilots. The industry and the government were frustrated in trying to deal with the situation, as there was no representative authorized to speak for the pilots as a group. Any dialogue was only an expression of individual opinion almost certain to be opposed by others.

The problem came to a head when a pilot was not available to board a ship outside the harbor entrance and the ship attempted the approach unassisted. It grounded on one side of the channel and swung around to block the entire entrance to the San Juan harbor, the second largest passenger ship port in the world. It remained aground for several days trapping a number of large cruise ships with thousands of passengers aboard in the harbor, as well as shutting out several cruise ships with passengers to discharge and new passengers waiting on the dock in San Juan. It stopped all cargo operations that Puerto Rico's Island economy depends upon. The worst potential consequence was that a tanker carrying fuel to the electric generating plant supplying the city of San Juan was shut out. The city of San Juan was only hours away from a black out with the National Guard



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on standby to prevent rioting and looting when the entrance channel was cleared.

The Governor of Puerto Rico appointed a special committee of port authority, shipping industry, and pilot representatives to address the problem and rewrite the regulations governing pilots.

It was apparent from the beginning that the problem lay with the lack of a unified pilot association to administer the routine operation of the pilot service in an effective manner, and the lack of a regulatory board composed of industry and pilots to establish policy and have oversight over the association as well as perform the usual regulatory functions of rate setting, licensing, discipline, etc.

I participated in drafting some of the regulations that were finally adopted. They addressed the issues discussed above and are in the initial stages of being implemented. Due to aspects of the regulatory and administrative system that are unique to Puerto Rico, they contain provisions that may be inappropriate for other jurisdictions. If you have not obtained copies in your review of pilotage in other states, I can send them to you.

Unfortunately, the situation in Puerto Rico reached crisis proportions before any effective intervention occurred. The circumstances that created the crisis are not unique to Puerto Rico. Where it is not compulsory to work through an association, there is always the possibility that strong personal differences among pilots can lead to a fracture in the association structure. Where the option is not available, personal differences get resolved and eventually are forgotten with no lasting damage.

In recent years we have had associations split by dissident pilots in Washington, Oregon, Hawaii and two ports in Florida. The results have been very disruptive to the maintenance of an orderly pilotage service and have led to abuses cutting safety standards, illegal rebates and kickbacks, piloting by unlicensed personnel, etc.

After a great deal of time, effort, and pressure, the situation in Washington and Florida has returned to normal. The situation in Hawaii and Oregon is still unresolved with the potential to worsen.



Ms. Madden and Mr. Pierce  
December 7, 1990  
Page Two

I would urge you at this time to address the issues of administering the pilotage service through an association and providing for a compliment of licensed pilots that is in balance with the needs of maritime commerce.

To enact appropriate laws and regulations at this time, when the situation is stable and under control, is relatively easy. After the problems develop, finding a solution is much more difficult. You will then be dealing in an emotionally charged atmosphere with license holders claiming property rights in their licenses that cannot be amended, vested economic interest cannot associate personal animosities that have developed from competition, individuals seeking personal advantage amidst the confusion, lawsuits challenging the boards authority, etc.

I wish you well in your efforts and if I can be of any assistance please contact me.

Very truly yours,

George A. Quick  
Vice President - Pilots

GAQ:kae

DEC 10 1990

DIVISION OF OCCUPATIONAL LICENSING

Capt. Stuart E. Mork  
Alaska Marine Pilots  
P.O. Box 730  
Dutch Harbor, AK 99592

Board Of Marine Pilots  
Division of Occupational Licensing  
P.O. Box D  
Juneau, AK 99811

Sirs:

This letter is in response to your solicitation of public comment for your meeting scheduled December 17, 1990. Please note that these comments are strictly my own and do not necessarily represent the views of all members of Alaska Marine Pilots, though they are naturally written with the intent of maintaining AMP's position in western Alaska. I have organized them by Sec. number in the event that the board works within the framework of Mr. Amendola's proposed changes to the statutes.

Sec. 08.62.010 CREATION AND MEMBERSHIP OF BOARD

As far as AMP is concerned, there are several problems in this regulation. 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 AMP. Many members have only 3 years service--an ample amount to understand the problems of piloting--but not enough to meet the requirement. To make access to the board membership more equitable for AMP I would recommend either changing the requirement to read "pilots of record on 1-1-88"; or to begin the 5 year rule effective 1-1-93; or to eliminate the service requirement until the next sunset review.

As currently written, this regulation does nothing to prohibit a member of SWAPA from representing the western Alaska region, thereby giving them unequal representation by having two pilot members on the board.

Finally, by not defining what constitutes a resident, many members of AMP are discriminated against by requiring them to be "residents" of Alaska in order to be eligible for board membership. A review of the Madden/Pierce study shows that only 4 of the 23 maritime states even require pilots to be residents of the state where they work.

Sec. 08.62.040 POWERS AND DUTIES (a) (5)

In the implementation of any body of regulation there are going to be interpretations of the regulations which result in Standard Operating Procedures. In effect, these SOP's become regulations. In the past these SOP's have not been explicitly acknowledged by the board with the result that

7

applicants have wasted much time and money by not being fully acquainted with the requirements to obtain a license. To solve this problem, the statutes should state that the board has the authority to use SOP's in fulfilling its duties and that the SOP's have the force of regulation. Paragraph (5) seems a good place to give notice of the existence of the board's SOP's.

Sec. 08.62.040 POWERS AND DUTIES (a) (6)

This paragraph gives the board the power to review and approve the bylaws and operating procedures of pilot associations. This is a very broad abrogation of the association's autonomy and is very unclearly defined in this paragraph. First of all, there are no criteria mentioned as to what the state will consider acceptable bylaws and operating procedures and how they are to be met. Secondly, the issue of appeal of the board's disapproval of a bylaw or operating procedure is not mentioned. A capricious ruling by the board could have a very detrimental effect on an association whose only recourse would be through the courts.

This paragraph has the profound effect of modifying the state of Alaska's entire approach to regulation. Prior to this proposal the state enacted statutes giving the board broad powers to regulate pilots through regulations the board adopted. Under this proposal the state is inserting another level of regulation, namely the association, by requiring bylaws approved by the board. However, the question of bylaws and operating procedures for pilots outside the three established associations is not addressed in this paragraph, thereby creating two classes of pilot--those governed by the approved bylaws of the association, and those not belonging to associations who are without the additional layer of regulation imposed on pilots in the associations.

To be consistent, the state should require all pilots to belong to one of the three established associations. The associations would then be responsible--through their approved bylaws--for admitting new members and determining classes of membership in the association (and their voting rights), based upon area coverage, experience, capital requirements, etc. By approving or disapproving the association bylaws the board would resolve any restraint of trade issues.

There is ample precedence for requiring membership in an association. What, after all is limited entry fishing, but a requirement for fishermen to belong to a group of fishermen in a geographical area--with ADF&G providing the bylaws? In Colorado, real estate salesmen are required by their board to work under the authority of a real estate broker (who fulfills the role of the association in our case). In Washington state, pilots who leave the association are required by their bylaws to surrender their state license to the state.

Additionally, only the associations can provide the training required in paragraph (B). An independent pilot does not have access to the variety of vessels under the variety of conditions necessary to fully train a new pilot. Once again, the burden of following the regulations falls on the pilots in the established associations.

In Washington, where pilots are required to belong to an association, the pilots have helped in the evolution of the trainee selection procedure. Once potential trainees have their federal pilotage, they take a state examination. From the pool of examinees that pass, the association takes trainees in order of their exam score for further training. Upon completion of this training period, the trainees are eligible for membership in the association. In this way, restraint of trade arguments are nullified and the number of pilots is maintained at an optimal level.

#### Sec. 08.62.080 LICENSE REQUIREMENTS (b) (c)

From the perspective of AMP these are two of the crucial paragraphs of the proposed changes. Paragraph (b) very clearly creates the concept of distinct regional pilotage areas. Paragraph (c) negates paragraph (b), allowing a pilot to work anywhere in the state provided he can show local knowledge and recency. As Capt. Murphy states in his letter to Gov. Cowder "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". While I believe Capt. Murphy was referring to southeastern and southwestern Alaska, the same situation exists in western Alaska.

This section directly relates to the issue of competition among pilots, and the state and the board should not be hesitant to fulfill their duty to protect lives and property as well as the marine environment by skirting the issue. There are three distinct geographical regions in the state, with distinct types of traffic in each one, and the state should acknowledge them in statute. There is some overlap, of course, between the areas: Yakutat between southeast and southwest; Alitak and Chignik between southwest and western Alaska, and these ports can be dealt with in the statutes, but other than these ports there is no need for granting exemptions to the one-geographic-area license concept.

At this point it must be emphasized that adoption of paragraph (b) without (c) does not regulate a certain class of pilot out of work. The pilots most effected by this change, the small number of pilots in SWAPA who have been willing to work in Dutch Harbor, will still have an ample amount of work in their primary region of southwest Alaska.

Sec. 08.62.100 ENTRY LEVEL REQUIREMENTS

As currently written, this proposed statute does not address the area of pilot competency. It takes the step of increasing the entry level requirements for pilot trainees, but does not distinguish between a trainee and a fully licensed pilot. Paragraph (a) should be rewritten to state "the board will issue a deputy pilot license to a person...". Then, a paragraph (e) should be added stating that a pilot license will be granted to a deputy pilot upon completion of a board-approved association training program.

Paragraph (b) needs work. It is very similar to the entry requirements for the observer program for the Port Angeles Pilots, but is not as comprehensive. For example, (1) does not specify the size vessel the unlimited master must work on for one year; in (2), the wording is garbled to read master of freight on a towing vessel (master of freight and towing no longer exists as a Coast Guard license).

Paragraph (5) is far too vague. Not only is the size of vessel not specified, but the clause "while holding a license as 1,600 ton master" should be included. An appropriate size vessel for purposes of this paragraph should be about 300 gross tons.

I would add a sixth paragraph to part (b) similar to the Port Angeles Pilots which states that pilots with two years experience would be able to enter the training program for an Alaska license.

As an administrative matter I would add a seventh paragraph stating that a combination of the requirements in 1 through 6 is acceptable in meeting the requirements.

Finally, I would add an eighth paragraph, for potential pilots not meeting the above requirements, that would create a substantially longer board-approved training period at the association level. This would be comparable to the current practice of requiring ten dockings for a pilot's license unless the applicant has less than one year sea time as master, in which case 20 dockings are required. After all, the purpose of these requirements is to provide better pilots, not to limit the number of pilots in Alaska.

Sec. 08.62.120 RENEWAL (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 and going back to sea. The inclusion of paragraph (6) giving credit for time served as a pilot as I mentioned above would solve this problem as would grandfathering pilots of record as of a certain date.

Sec. 08.62.150 (a) (9)

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 rather than pay a standby day of \$600. This must be addressed before changing this clause from its present wording.

Sec. 08.62.165 ALLOCATION OF LIABILITY (a)

This paragraph must be rewritten to specify very clearly that the \$5,000 limit is per incident, not per claim.

Sec. 08.62.175 PILOT ORGANIZATIONS

This paragraph should be rewritten to read "Marine pilots may form themselves into associations of independent contractors..." in order to give statutory authority to the fact that pilots are independent within their associations as to liability.

This might be an appropriate place to require that all pilots belong to one of the three board-approved pilot associations.

Sec. 19 TRANSITION

This 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 to meet the requirements without leaving the piloting profession.

Thank you for the opportunity to comment on the proposed changes. If you have any questions concerning these comments, you may reach me at Alaska Marine Pilots, Dutch Harbor.

Sincerely,



Captain Stuart Mork



Page 2  
12/10/90

pilots in the off-season, leading to possible migration to other regions.

We would request that no limitation by region be placed on the pilot license. This would allow individual pilots the opportunity to build their skills and coverage of various regions to allow maximum flexibility of movement which is necessary to provide services for vessels as the demand requires so that development of the State of Alaska's resources are not overly restricted by this level of regulation.

**REPRESENTATION ON THE BOARD OF MARINE PILOTS BY A PILOT IN GOOD STANDING FROM EACH REGION.**

With the current number of board members set at a total of seven, having three pilot members on the board could lead to imbalance on key decisions. We would therefore request that if this additional seat be made available, the Board be restructured to include a total of 9 members, of which also 3 members from shipping industry be included.

**RESTRICTION OF DIRECT CONTRACT BETWEEN INDIVIDUAL PILOT AND VESSEL OPERATOR.**

In certain situations where constant service on a particular route or area may best be served by specific contract with an individual pilot, the vessel operators need that option to consider when making arrangements. If this is not allowed, it may result in undue burden on the operator causing delays and other problems.

Thank you for your time and consideration of these matters and we will be looking forward to further discussions in the proposed revisions.

Sincerely,

North Star Maritime Agencies



Tom W. Rueter  
Vice President/  
General Manager

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

Board of Marine Pilots

December 16, 1990

Gentlemen:

Based on the premise that the State has a compelling interest in maintaining a compulsory pilotage system for its coastal waters, the S.E. Alaska Pilots Association recommends the Board of Marine Pilots adopt the recommendations noted in the study compiled by Ms. Madden and Mr. Pierce on improving Alaska's marine pilotage system. We concur with their findings with the exception of limiting the number of licenses and recognizing one pilot association per region. To regulate pilotage in the state of Alaska and not recognize the need to complete the regulatory process will only compound the problems to date. The Board must consider the control they have now and the recommended control being considered, and in vision the complete pilotage act being formulated.

With one association within each region the State would be assured of the following: 24 hour a day service, 365 days a year. All ships would be assured a pilot is available upon request. A highly qualified pilot would board each vessel as a truly independent pilot with the State's interest concerning safety a top priority. Economic pressures would not influence the pilot's decisions. A pilot with current recency trips to all ports and waterways in the region would be provided. A pilot with a wide variety of experience on all ships transiting the region, in all weather conditions would be dispatched.

The above list could be expanded upon and is submitted only as a partial example.

With more than one group of pilots in a region the State could be subjected to the following: No one group providing year round service or even 24 hour a day service. That any one group would assure the State or industry they would have a pilot available at all times upon request. Will the pilot be truly independent if he only worked for a small segment of the industry? Pilots might consider using one tug instead of two to save money and gain an economic advantage over another pilot, or use no tugs! Push their speed in fog, or gillnetter areas, and close glaciers to unsafe distances to gain further advantages. Will the pilot have the necessary recency trips on all waterways and ports in his region if he worked for one or two shipping companies? The S.E. Pilots Association has reviewed the two approaches and has concluded one association per pilot region is by far the best system.

Board of Marine Pilots  
December 16, 1990 Page two


If one pilot association per pilot region is accepted, the association would then allow the State to review and revise our Article's of Association, bylaws and operating rules to assure equal opportunity and access to all State licensed pilots for our region.

The S.E. Alaska Pilots Association is proud of its service to the State of Alaska and industry for the past twenty years, and has a good safety record, and has always provided pilots in a timely and efficient manner. We have been the only pilot association in our region and have trained every pilot with a State license for S.E. Alaska to date, including Captain Homer and Captain Bennett, and we stand ready to complete their training upon request by the State, or by mutual agreement.

We do not know of any shipping companies or agents in our area that have not had the service we recommended in this letter. This system is not new to our area as it has been working for the past twenty years. We do know shipping companies will hire novice pilots if there is a cost saving to them. Seasoned Alaska Marine Highway Captains were contracted by the S.E. Alaska Pilots Association to pilot cruise ships through Wrangell Narrows and Peril Straights to assist our association in meeting the high standards we require of ourselves and industry should demand. We were told by one cruise ship company, after several transits, our pilotage service would not be required and their reasons given were the high costs of services in Alaska and they needed to cut costs wherever possible. We were asked if we could meet or beat the other pilotage bid being offered and we offered to meet the non-tariff cost such as pilot boats, travel and per diem. Our offer was declined and we were told this was strictly a business decision. This is a good example of seasoned pilots being passed over for a bargain. We ask this Board to restore common sense to our State pilotage system and our association will continue to do our part by providing highly trained and seasoned marine pilots to meet the requirements of industry and the State of Alaska.

Thank you for your attention and consideration to these recommendations.

Sincerely,



Captain Dale O. Collins  
President

PROPOSED LEGISLATION  
AS APPROVED BY THE  
BOARD OF MARINE PILOTS  
DECEMBER 17, 1990

DRAFT

CHAPTER 52.  
MARINE PILOTS.

Article

1. Board of Marine Pilots (08.62.005--08.62.045)
2. Licensing (08.62.080--08.62.155)
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DRAFT

"An Act relating to Marine Pilots . . ."

\* Section 1. AS 08.62 is amended by adding a new section to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) audit a pilot association or individual as considered necessary to 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, and for the efficient administration of this chapter, including establishing different licensing criteria in pilotage regions if justified by regional differences in piloting, establishing a mandatory random drug and alcohol testing program for marine pilots, and adopting criteria for trainee selection and for training programs conducted by pilot organizations.

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

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

Sec. 08.62.045 MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and enforce the provisions of this chapter. The 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) A pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(b 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.

(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 within 60 days.

(b) The application shall provide the information and be made on a form prescribed by the board.

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

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

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

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

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

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

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

(4) Two years 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; or

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

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

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

\* 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 by an M.D. within 60 days prior of the date of renewal, on a form approved by the board; and

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

(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.

\* 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 complete written and oral examination if the license has been lapsed one year 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 the board finds that the person

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

(2) is chemically impaired (HABITUALLY INTOXICATED);

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

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

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

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

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked (SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT); or

(8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff established by the board.

(b) (Repealed, sec. 4, Ch. 60, SLA 1987)

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

Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

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

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating certain (THE INSIDE COASTAL) waters in, around, and adjacent to the State of Alaska as determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

\* 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 per incident.

(b) Nothing in this section exempts the vessel, cargo, its owner or its operator from liability for damage or loss occasioned by that vessel to another person or other property on the ground that (1) the vessel was piloted by a pilot licensed by the State of Alaska, or (2) the damage or loss occurred as a result of that pilot's error, omission, fault, or neglect.

(c) An organization of pilots is not liable for any claims arising from acts or omissions of a pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. The limitation in this subsection does not apply to acts or omissions relating to the ownership or operation of pilot boats or the transportation of pilots to and from the vessel to be piloted.

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, 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.

(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.

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;

(5) United States Coast Guard accounting of time;

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

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

AS. 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

\* Sec. 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 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.

## Pilotage—State or Federal

IN A PREVIOUS COLUMN, the terms 'State' and 'Federal (CG)' pilot were used. Mariners of many other countries embark State pilots in the USA without really knowing the legal basis of the pilot's authority nor without any awareness that an approaching US ship may not have a separate pilot aboard. This column will attempt to explain the differences, provide some background to the present situation and highlight some current problems.

Basically, a Federal pilot is one who is licensed by the US Coast Guard (CG) to pilot US ships in a specific area and who is acting under the authority of that licence. A State pilot, who will, in almost all cases, concurrently hold Federal pilotage, is licensed by a State to pilot foreign ships upon that State's waters.

In many instances, the required Federal pilot is the master or one of the ship's mates who also hold the appropriate pilotage endorsement. The State pilot, however, is not a member of the crew, but a 'servant of the vessel,' engaged to advise the master about the waters to be transited. In actual practice, as most mariners around the world know, the pilot assumes the conn (while legally cloaked as 'adviser'). Occasionally, the term 'docking pilot' will be heard. This does not necessarily mean that person holds any pilotage endorsement, but refers to the master of the assisting tug(s) who comes aboard the ship to control his tug(s) and perform the berthing/unberthing.

The First Congress (1789) recognised that the individual States would be better qualified to know the conditions of their ports and channels. Thus, the authority and basis for State regulation of pilots was established, in the words of the present statute: 'Except as otherwise provided . . . pilots in the bays, rivers, harbors and ports of the United States shall be regulated only in conformity with the laws of the States' [46 USC 8501(a)]. This not only meant that States would license pilots, but that they could determine where and when their pilots were required to be employed. States where a pilot is required are referred to as compulsory pilotage. Some States do not require a pilot to be employed (non-compulsory), but a pilotage fee must still be paid. Most masters, having to pay the pilotage fee anyway, will usually opt for the pilot.

### Federal pilotage

In the mid-1800s, Congress inadvertently threatened the State pilotage system, enacting two separate laws intended to provide greater safety in the operation of steamships by requiring Federal licensing of masters, mates, engineers and pilots. The situation was corrected by further legislation which effectively established the concept of Federal pilotage. The present statute requires that ' . . . a coastwise seagoing vessel shall be under the direction and control of a pilot licensed (by the CG) if the vessel is: not sailing on register (i.e., foreign trade); underway; not on the high seas; and, propelled by machinery and subject to inspection' [46 USC 8502 (a)].

The effect of this law was to allow US-flag ships in

domestic trade to utilise CG-licensed pilots; US-flag ships in foreign trade and all foreign ships continued to be piloted by State-licensed pilots. Even many US mariners do not understand that the law thus *requires* pilots on subject vessels on *all* navigable waters of the US, including territorial seas. Practically speaking, it would be nearly impossible to comply with the law literally—i.e., pilotage endorsements for all waters—and the CG has long recognised that ' . . . there are many large portions of our coastline where there are no navigational risks to vessels proceeding along the coast within territorial seas. In view of this, the CG has a long history of only licensing individuals as pilots for a portion of the navigable waters of the US, primarily harbor areas, high traffic areas, rivers and the Great Lakes.' (FR, V. 53, N.108, p.20655)

It is interesting to note, in view of the brouhaha over pilotage in the *Exxon Valdez* casualty, that Congress intended to exempt parts of Prince William Sound from Federal pilotage requirements. As per 46 USC 3502(g), 'the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed' by the CG.

### Licensing of State pilots

As one might expect, the various procedures employed by the different States for licensing their pilots are as varied as their waters and conditions are unique. Some States restrict the number of State licences issued. Applicant entry varies from a four year apprenticeship (with no prior seagoing experience) to a competitive examination while holding a second mate's licence (with one year's sea time as second mate) to two years' experience as master on large ships and 50 round trips on the waters applied for.

Some States require a Federal licence as a prerequisite—others only require this licence after completion of training. Virtually all States require State-licensed pilots to progress through 'steps' in tonnage/length/draft of ships handled to ensure adequate experience is gained; often, part of this is under the supervision of a senior, more experienced pilot. Some State pilot associations further require simulator training.

State pilotage laws, including licensing, are administered by a State pilot commission or board. Typically, this body will include one or two serving pilots, thus ensuring that the applicants, examinations and continuing qualifications of State-licensed pilots benefit from the 'real world' experience of State pilots who really know what skills the job requires.

### CG licensing procedures

While the CG is the present government agency charged with the authority to examine for and issue Federal pilotage licences/endorsements, their execution is a mixed bag. Qualification is simpler than for State licences—a specified number of qualifying round-trips (r/t) on certain-size vessels gains entrance to the examination. No actual shiphandling experience need be demonstrated, the CG apparently 'assuming'

that observation of same is adequate. The dichotomy here is that 'pilotage' is composed of 'local knowledge' and 'shiphandling,' yet the CG requirements seemingly confuse the two—local knowledge is generally gained independently of vessel size; shiphandling is a function of ship size, but ability cannot be determined solely in the examination room.

The trip requirements vary with the licence held and position on board. In some CG Districts (CGD), holding an unlimited master's licence gains qualification in six r/t—in other CGDs, one must hold the same licence and be serving as master to qualify in 12 r/t! No prior licence must be held for an original pilot (only) licence, but three years on deck is required and, usually, the initial number of r/t required are much greater (up to 20 or more). Once the original endorsement or original pilot licence is obtained, the r/t requirements for 'extension of route' (additional pilotage) are lessened.

The initial exam is comprehensive (piloting, chart navigation, weather, shiphandling, pollution, etc.)—subsequent exams for extension of route usually only cover local knowledge, chart sketch, aids to navigation and a rules of the road section. The thoroughness and expediency by which r/t are evaluated, the exam graded and the content of the exam, itself, also vary widely, depending on the CG personnel in the Regional Examination Center (REC). As the CG is first a military organisation, the 'generalist' idea prevails, and the service rotates personnel through a variety of billets to diversify their experience.

Applicants for pilotage and other licences are seldom comforted by the thought that their livelihood is merely a step on the promotion ladder for CG personnel, rather than being judged by a professional mariner. Theoretically, one benefit to this scheme is preventing too much familiarity with the maritime community which might lead to less than scrupulous practices in issuance of licences and seamen's papers—it hasn't always prevented abuses, however.

Except as noted above (non-compulsory pilotage), there are few exemptions to pilotage in the USA. Generally, only US ships under 1,600 grt (self-certified) and foreign ships under 300 grt are exempt from pilotage. Recent regulations have added an additional exemption for vessels towing tank barges totalling not more than 10,000 grt. In these vessels, as well as vessels up to 1,600 grt, the master (or mate) is a 'self-certified' pilot. 'Self-certified' pilots must have four r/t (up to 1,600 grt) or 12 r/t (tank barges to 10,000 grt), with a quarter of the required trips made at night. No exam is required.

There are some troubling aspects to the 'self-certified' pilotage. Small vessels *do* get into collisions with much larger vessels and a 10,000 grt barge loaded with toxic chemicals is not something to be 'exempted'! Without a 'recency of service' requirement, the requisite four/12 r/t could have been made at any time in the past. No vessel size is stipulated—it could legally be an outboard-equipped skiff! With the CG trying to justify authority over State pilots, it is interesting to note that these exemptions are granted, apparently without similar concern.

Increasingly, in recent years, a conflict has developed between the CG and State pilots. Basically,

the CG desires to exert direct control over the actions of State pilots (no attempt will be made here to address how CG control of State pilots might contravene the 'sense of Congress' that States should control their own pilots!). The CG may also, rightfully, be concerned about the lack of any pilot aboard a foreign vessel in 'non-compulsory' areas. Although not unlikely, most masters would think twice about the consequences of this act, especially on a first call! In any case, the CG already has authority to require a Federal pilot in any area where a State does not—i.e., non-compulsory areas [46 USC 8503(a)].

The scenario concerning the CG, which is not rare, would see a State pilot, acting on that licence, involved in a casualty. The State could suspend the pilot's licence, but he would still be free to pilot on the authority of his *Federal* licence. The reverse is also true, although in States where a State licence is predicated upon possession of a Federal licence, revocation and/or suspension (R&S) of the latter would automatically result in R&S of the former. The CG has taken action against State pilots by indirect means—i.e., violations of the Federal Boat Safety Act of 1971 (negligence), Ports and Waterways Safety-Act of 1972 (pollution), etc.

Other than the 'normal' bureaucratic urge to expand jurisdiction, the CG seems to feel that State boards and associations may be lax in policing their own ranks. Perhaps, on occasion, this is so—but is CG control the best way to remedy this problem? Like other professional associations (physicians, lawyers, etc.), State pilots may be reluctant in policing their own due to the unspoken fear of being in the same position themselves at a later time (there, but for the grace of God, go!!). It is also very true that State pilots, are fully aware of the difficulties of the job, more so than the CG, and are thus reluctant to respond to well-intentioned, but uninformed pressure.

Some States/associations have apparently been lax in responding to some deficiencies. Certainly, when one pilot has had four or five casualties some action is warranted. This, of course, is where the CG would wish to impose their heavy-handed punishment of R&S, which is somewhat misleadingly referred to as 'remedial.' Is this the proper course? The CG apparently feels that putting a pilot (or other mariner) on the beach is going to improve his or her skills. This is wrong-headed thinking! The State pilots are in a much better position to impose (truly) 'remedial' measures—and many *have* done so—such as simulator courses, renewed supervision or other additional training.

If State pilot boards/associations are reluctant to impose discipline or require additional training, how can the problem be resolved? One proposal is that a separate pilot certification board, perhaps affiliated with the American Pilots Association (APA), could be empowered to review all accidents involving State pilots. This board would have the authority to impose appropriate remedial measures, where necessary, revoking or suspending State licences, when required. Much the same as with medical board certification, such a board could also certify pilots to minimum standards and would go a long way toward removing the only criticism by the CG of the State pilot system. □



CSHB 194, Sec. 2 explicitly states that the governor appoints public members (in addition to pilot and agent members) and retains restrictions on consecutive terms. This provision clears up confusing language in the current statute (AS 08.62.020), which does not mention the appointment of public members. SB 218, Sec. 2 changes the termination date for the Board of Marine Pilots to 1995. Note that another bill introduced in the House, HB 162, would also extend the Board until 1995. SB 218, Sec. 3, APPOINTMENT AND TERM OF OFFICE eliminates terms of office and existing restrictions on the number of consecutive terms that a Board member may serve. We can't tell whether this provision is a drafting oversight or deliberate. However, terms and restrictions of Board members should be included somewhere, preferably referencing AS 08.01.035, which specifies staggered four year terms.

One study finding was that the current practice of two Board meetings per year is not enough to adequately respond to problems encountered in regulating the industry. If either or a combination of these bills is passed, the Board's workload is likely to increase substantially for at least a year after enactment as it considers and adopts supporting regulations. SB 218, Sec. 4 specifies at least three Board meetings per year, while CSHB 194 specifies up to four meetings per year. Both bills provide for more meetings as needed. Over the long-term, three meetings with provision for more if needed is probably sufficient.

#### **Powers and Duties of the Board**

Both bills give the Board the authority to establish pilotage regions and to set regional tariffs and licensing criteria. Both allow the Board to recognize pilot organizations and to review and approve their training programs, articles, bylaws and operating rules. SB 218 states that the Board may require an audit of pilot organizations or individual pilots, while CSHB 194 does not mention audits of the records of individual pilots. In order to maintain an enforceable tariff and to close potential loopholes for independent pilots to charge something other than the tariff set by the Board, provision for audits of individual pilots should be included in the powers and duties of the Board.

Other important provisions contained in both bills allow the Board to impose disciplinary sanctions on pilots and to require mandatory random drug and alcohol testing. Both bills say that the Board may suspend or revoke a pilot's license if the person's U.S. Coast Guard pilot license is revoked but the language in SB 218 appears stronger. This was an important recommendation of the National Transportation Safety Board investigation of the *Exxon Valdez* accident and we recommend it be included in the final legislation.

#### **Marine Pilot Coordinator**

Both bills authorize the Department of Commerce and Economic Development, with Board approval, to hire a marine pilot coordinator to assist in administering the pilotage system, review the operations of pilot organizations and investigate incidents/accidents. SB 218 specifies that the marine pilot coordinator be a partially exempt employee. If this person is to serve at the pleasure of the Board, he/she must be in partially exempt service. The fiscal note to CSHB 194 assumes that the marine pilot coordinator will be hired at Range 18A (\$40,728 annual salary), the same as executive secretaries to other Boards and Commissions. This may be too low of a

salary range to attract a retired ship master or other qualified individual. We suggest a Range 21A (\$49,860) starting salary might be more appropriate.

### **Licensing**

The intent of both bills is to allow the Board to substantially increase qualifications for obtaining a license and to set up a two step licensing procedure, whereby a person must serve as a deputy pilot for an extended period before becoming a fully licensed marine pilot. The provisions of CSHB 194 spell out the restrictions on deputy pilots in detail, while SB 218 is more ambiguous, leaving licensing criteria up to the discretion of the Board. The study found that ambiguity in the existing Marine Pilotage Act allowed professional standards to become eroded over time and invited legal challenge. Therefore we recommend the CSHB 194 approach. Both bills state that a pilot may not be licensed for more than one region at a time. This is an extremely important provision that the Board feels should not be watered down. We concur with the Board. The study found that local knowledge is the essence of mandatory state pilotage and that the coastal waters of Alaska are much too extensive for pilots to have intimate knowledge of more than one region.

### **Training and License Renewal**

Both bills authorize the Board to review and approve the training programs of pilot organizations. Again, CSHB 194 provides detail on standards the Board may require for deputy pilot training and clearly ties training requirements to licensure. Both bills contain a "use it or lose it" provision for renewal of licenses and require a physical exams. CSHB 194 has stronger requirements for reactivating a lapsed license, including familiarization trips. Because local knowledge is a primary criterion for judging the professionalism of pilots, the study found that lapsed license renewal requirements should include familiarization trips. Neither bill authorizes the Board to impose continuing education requirements for license renewal. We think this is an important oversight that needs to be corrected. Both bills have transition language that allows existing pilots to maintain their license status.

### **Pilot Discipline**

The bills have nearly identical provisions for pilot discipline. In fact, the study found that Alaska's existing marine pilot discipline statutes, if enforced, are a model for other states. One important additional provision in both bills allows the Board to discipline pilots who charge something other than the tariff schedule established by the Board. The study found that a fixed enforceable tariff is essential to maintain efficient pilotage service.

### **Limited Liability and Antitrust Protection**

The study found that there is a basic inconsistency in state policy which requires mandatory pilotage on one hand and on the other imposes unlimited liability for persons responsible for an oil spill. Additionally, the study found that marine pilots are increasingly exposed to liability for accidents, even though the pilot is covered under the ship's insurance. Because pilots provide a service to the public by protecting lives, property and the marine environment, the state has an obligation to provide some liability protection so that pilots may obtain insurance. Likewise pilot organizations need protection for their training and dispatch operations. Neither bill specifically mentions liability protection for organizations who train pilots, which

should be clarified if not covered under the broader language of liability protection. The exact amount of protection is relatively unimportant--both bills adopt the \$5,000 convention used by Washington State. Note that neither bill protects pilots from liability for acts of gross negligence.

Pilots have traditionally formed themselves into organizations to provide 24-hour a day, all-weather, year-round dispatch service and pilot organizations provide the core of mandatory pilotage service in Alaska and every other state. The study found that these organizations are increasingly the target of antitrust litigation and that in order to maintain the efficiency of the present system, some type of protection by the state is warranted. Antitrust protection is provided in both bills. While the bills substantially increase the Board's ability to regulate and control the operations of pilot organizations, there is nothing in either bill that gives the existing organizations an exclusive monopoly on pilotage services for a particular region. This is in line with study findings.

### **Funding**

There is no question that the marine pilotage system should pay for the cost of its administration and operation and the study found that pilot license fees could be significantly increased to defray the costs of administering the pilotage system. However, it must be recognized that there is a wide disparity in the incomes of individual pilots and their ability to pay. The biennial license fee of \$2,040 assumed in the fiscal note to CSHB 194 is not unreasonable, but if either or a combination of these bills is passed, administration costs are likely to be substantially higher than the \$96,000 estimate for FY 92 and \$89,000 annually for FY 93-96. Thus license fees are not likely to cover the entire cost of administering the system. The study found that there should be some means for the Board to collect program receipts from the tariff to pay for increased administration costs such as check rides for pilots and investigations of incidents/accidents. The language of SB 218, Sec. 5, POWERS(4)(C), could be amended to include an administration and investigation fee or tariff surcharge instead of a training fee, which is a misnomer. Training expenses are the individual pilot's responsibility.

Please feel free to call if we can be of further assistance.

cc: Shelby Stastny, Director  
Bob Bulmer, Chief of Operations  
Representative Cheri Davis  
Ann Boudreaux, Director, Division of Occupational Licensing

Captain Badron  
United States Coast Guard  
17th Coast Guard District  
P.O. Box 3-5000  
Juneau K 99802

January 21, 1991

Dear Captain Badron:

Commander Edward Page indicated that you would most probably be the spokesperson for the Coast Guard on marine pilotage issues in the State of Alaska. One of the critical issues that will be addressed by the Alaska State Legislature this session will be the sunset of the Board of Marine Pilots. As chair of the Senate Committee on Labor and Commerce, I will be actively involved with this legislation.

The review of this board will include a significant review of the policies and procedures of the board and an evaluation of the status of marine pilotage in Alaska. There is a probability that this process will result in legislation being offered. The Governor's Office, Division of Policy, has recently completed a study of Alaska's Marine Pilotage System. I have enclosed a copy of that report for your review. When draft legislation is available, I will forward a copy also.

I welcome any comments that you might have regarding this report and the subsequent legislation. If you would like to meet and discuss this topic or any others areas of concern that would fall under the committee's responsibilities, let me know. I can be reached at 465-4993.

Sincerely,

Senator Drue Pearce  
Chair

DP:rrm  
Enclosure

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Curt Menard, Chairman  
Senate Transportation Committee

FROM: Senator Drue Pearce 

DATE: April 3, 1991

RE: Senate Bill 218

I respectfully request that Senate Bill 218 be scheduled for a hearing before the Senate Transportation Committee at the committee's earliest convenience after April 11th.

Senate Bill 218 makes the first major changes to the Marine Pilotage statutes in nearly twenty years. This legislation is the result of an intensive study of the state's Marine Pilotage System by the Office of the Governor. It also addresses the concerns that the Alaska Oil Spill Commission had with the trend to relax the qualification standards for pilots in the state.

Senate Bill 218 is important to the safety and health of the people of the State of Alaska and to the protection of their environment. This legislation has received an affirmative vote by the Board of Marine Pilots and addresses all of their major concerns. As a result, some aspects of the Marine Pilotage System study were not included in this bill.

Thank you in advance for the early opportunity to present this important legislation.

DP:rrm

April 7, 1991

To: Geoff

From: Dale

Enclosed is a complete list of ships that have transited S.E. Alaska.

Cruise ships fuel capacities vary from 1.1 million gallons to lesser amounts depending on diesel or steam propulsion systems, and size of ship. Cargo ships fuel capacities vary also with a 500,000 gallon estimate being in the ball park.

The definitions you asked for are as follows:

Channel Pilot: Is defined in 12 AAC56.050. A channel pilot license is a license to pilot vessels of 20,000 gross tons or less in main ship channels only, or to perform docking and undocking only under the supervision of a pilot with an Alaska limited or unlimited license.

Limited Pilot of 20,000 gross tons or a Step 1 license: Is licensed to pilot ships on the waters listed on the license without supervision from another licensed pilot, and dock and undock ships of 20,000 gross tons or less.

Limited Pilot of 40,000 gross tons or a Step 2 license: The same as a Step 1 license except the limit on the gross tonnage is 40,000 gross tons.

Unlimited Pilot: Is licensed to pilot ships on the waters listed on the license without tonnage restrictions.

Note: Once a pilot has a 20,000 gross ton license the pilot can upgrade the license without the assistance of another pilot, as defined in AAC56.045, for increased tonnage.

Main Ship Channel: In S.E. Alaska the term has generally been defined to mean Clarence Strait, Sumner Strait, Chatham Strait, Frederick Sound, Lynn Canal, Icy Strait, Cross Sound, Sitka Sound and Lower Glacier Bay. Waters not considered main ship channels are Snow Pass, Wrangell Narrows, Tongass Narrows, Peril Strait, Olga Strait, Neva Strait, Tlevak Narrows, San Christoval Channel, Bocas de Finas, Tracy Arm, and Upper Glacier Bay. The above are given as examples only. In short, open inside waters that are on the main shipping track lines set out by Hansen's Handbook.

U.S. Department  
of Transportation  
**United States  
Coast Guard**



Commander  
Seventeenth  
Coast Guard District

P O Box 3-5000  
Juneau, AK 99802-1217  
Phone (907) 463-2213  
Stall Symbol mfvs

16637  
April 10, 1991

Representative Cheri L. Davis  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davis:

Thank you for meeting with us this week and for giving us the opportunity to review your draft of House Bill No. 194. The safety of Marine Pilots and the vessels they serve is very important to the Coast Guard. Uniformity between state and federal pilotage requirements is also desired to promote equal treatment for similar vessel operations.

As Rear Admiral Ciancaglini directed in your meeting with him, I am offering the following comments on the 4/4/91 draft of this bill:

DAVIS

REGS!  
OK!

1. Sec. 08.62.040(a)(6): If a mandatory random drug and alcohol testing program is established for state pilots, I recommend that it agree with the federal testing programs in 46 CFR Part 16. This will avoid duplicate testing requirements and confusion since all state pilots also hold a federal pilot license.

OK

2. Sec. 08.62.040(a)(9): It should be clarified that a regional pilot organization is prohibited from operating before its bylaws etc. are approved if it is the intent of the legislature that only approved organizations are to be allowed the privilege of functioning.

CG MON-R ADMIN THAN PILOTAGE

OK

3. Sec. 08.62.040(a)(12): When marine pilotage regions are established by regulation, it is desirable that the boundaries of the regions be similar, to the extent possible, to those established for federal pilotage waters in 46 USC 8502(a).

DC APPROVED BY BOARD

OK

4. Sec. 08.62.050: It is recommended that the duties of the Marine Pilot Coordinator be defined more explicitly; e.g. does he investigate accidents and misconduct of pilots?

Board (step licenses)

5. Sec. 08.62.080(a): Will regulations be issued to clarify a license structure for various types and sizes of vessels? It appears desirable to use the same license structure as now contained in federal regulations for uniformity. This could be accomplished by requiring that the pilot hold a federal license for the service and size of vessels operated.

DMS

grossly inadequate

at least 100 hrs per yr for 3 yrs

OK

OK

OK? but define 3 mile in coastal water

OK

11(a) (streamline this language)

OK

pg 50, #17 in handbook has OK language that would work

6 Sec. 08.62.080(b): Would establishing a currency of knowledge provision, similar to the federal requirement in 46 CFR 10.713, achieve the same safety concern that is addressed by restricting pilots to only one pilotage region?

7 OK Sec. 08.62.100(3): The words "three years experience" should be clarified to indicate if calendar years or actual time, e.g. 1095 8-hour days, are required.

8 Sec. 08.62.150(a)(3): Possession of narcotic or hallucinogenic drugs should be included with use and selling as prohibited activities. All of these activities, if proved, will be grounds for revocation of the pilot's federal license. ✓

9 Sec. 08.62.150(a)(8): Suspension of the pilot's federal pilot license should be addressed in addition to full revocation of the license. ✓

10 ?? Sec. 08.62.160: The terms "inland" and "coastal" have different meanings in many legal applications. Recommend that these terms be changed to read "state waters inside the 3-mile Territorial Sea Line." -def? ✓

11 Sec. 08.62.180(1): The words "except as provided in AS 08.62.185" should be deleted from this section as it violates 46 USC 8501(d) and 8502(c). (Also, the words "vessels under enrollment" should be changed to read "vessels subject to federal pilot requirements in 46 USC 8502.") ✓

Look up

12 Sec. 08.62.180(2): We assume that you are using the term "fishing vessels" in the same context as defined in 46 USC 2101(11a) and are not exempting "fish processing" and "fish tender" vessels, as defined in 2101(b) and 2101(c), from pilotage. Some very large tenders and processors, some over 600 ft and 5,000 gross tons, are now operating in and out of Alaskan ports. When not subject to federal pilotage requirements, such large vessels should be subject to state pilotage.

13 (NO) Sec. 08.62.185(a)(2): For the above reason, the words "whose duty station has been on that tanker throughout that specific voyage" should also be deleted from this existing statute.

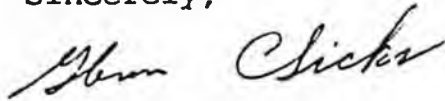
This would eliminate state pilotage by cert.

14 Sec. 08.62.190(a): The phrase "when a licensed pilot is available" seems too vague as stated. Recommend that some time frame and effort-to-obtain criteria be added to avoid each company making their own decision as to the availability of a licensed pilot. ✓

16637  
April 10, 1991

The above comments are based upon my quick review of this draft bill. I am enclosing copies of federal statutes and regulations cited above for your quick reference. Also enclosed please find a copy of Captain Bodron's letter to Senator Drue Pearce concerning the improvement of Alaska's marine pilotage system. As he states in that letter, we are available to assist you in drafting state standards, participating in Pilot Review Boards, and advising on federal standards. We look forward to working with you and your staff in the development of this bill.

Sincerely,



Glenn C. Sicks  
Lieutenant Commander, U. S. Coast Guard  
Chief, Fishing Vessel Safety Branch  
By direction of the District Commander

Enclosures: As stated above

→ check for  
regulations  
See Florida statute  
→ now compare  
subjective  
can compare  
big picture  
proposed  
confer

Coast Guard Amendments

Working from CSHB 194(L&C) :

1. Pg 3 Ln 9 - Insert following "program" : "consistent with 46 CFR Part 16".
2. Pg 9 Ln 8 - Insert following "approval" : "prior to commencing operations".
3. Pg 3 Ln 25 - Insert following "regions" : "to the extent possible similar with those established for federal pilotage waters in 46 USC 8502(a)."
4. Covered in SB218(Trans) sec 23.
5. Covered in section 9 but : Pg 4 Ln 9 - Insert following "region" : "and possesses a federal license with the same endorsement".
6. Pg 4 Ln 10 - Insert following "time" : unless possessing currency of knowledge provisions consistent with 46 CFR 10.713".
7. Pg 6 Ln 10 - The intent is three calendar years of experience. Not to mean 1095 actual days of active service. *CSHB 218 (11/11) - Pg 5 Ln 12*
8. Pg 7 Ln 15 - Insert following "illegally" : "possesses".
9. Pg 7 Ln 22 - Insert following "suffered" : "suspension".
10. The board will determine the proper definition.
11. Pg 9 Ln 22 - delete and insert : "(1) vessels subject to federal pilot requirements in 46 USC 8502;"
12. Pg 9 Ln 23 - Insert following "vessels" : "including fish processing and fish tender vessels"
13. Insert a new section to read : Sec. 08.62.185 (a)(2) "utilize a federally licensed pilot [whose duty station has been on that tanker through out the specific voyage]."
14. Pg 10 Ln 11 - Intent is to limit the definition of "when a licensed pilot is available" to a reasonable and responsible definition. Perhaps insert phraseology from Marine Pilot handbook pg 50 #17 or insert "as defined in regulation"

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

April 18, 1991

Hon. Dave Donley  
Alaska House of Representatives  
Room 122, Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

Re: CS for HB 194 (L&C)

Dear Representative Donley:

On your behalf, Laurie Otto asked this office to review and comment on CS for HB 194 (L&C), a bill currently in the House Judiciary Committee that would amend the laws pertaining to marine pilotage in Alaska. More specifically, we understand that you want to know whether there are any potential legal problems with the bill, including how state and federal antitrust laws may be implicated.

For at least the past couple of years, questions have been raised with increasing frequency about whether certain components of the existing marine pilotage system violate state or federal antitrust laws. The targets of those questions have for the most part been related to (1) the authority of the Board of Marine Pilots (the Board) to establish and enforce mandatory tariffs for pilotage services in particular areas or ports, and (2) the requirements for advancement within the profession being in the control of the currently licensed marine pilots and existing marine pilot associations, the most notable of these requirements being the one that allows a pilot to upgrade an entry level license only after completing a certain number of dockings and undockings under the supervision of a state licensed marine pilot. 1/

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1/ The Board of Marine Pilots, and the individual members of the Board are currently defendants in a lawsuit filed in federal court wherein the Plaintiff, Captain Joseph Homer, has generally accused the Board of allowing the Southeastern Alaska Pilots' Association (SEAPA) to monopolize the profession by, among other  
(continued...)

To the extent that these antitrust concerns arise in the existing statutes, it is our opinion that this legislation addresses those problems. 2/ The public interest of the state, which may at any time be significantly impacted by the quality of marine pilotage, is served only when marine pilotage is safe, efficient, and, except under very unusual circumstances, always available to those who are required to use it. For that reason alone, marine pilotage has been, and should continue to be, a heavily regulated profession. 3/

In CS for HB 194 (L&C), a part of that heavy regulation includes (1) giving the Board broad and express authority (A) to adopt and enforce pilotage tariffs and (B) to approve the by-laws and operating rules of pilot organizations, and (2) establishing statutory standards for licensure and training. In our opinion, those provisions pave the way for the state to avoid antitrust concerns with its marine pilotage system. Why we only say "pave the way" is explained below.

1/ (...continued)

things, establishing a pilotage tariff and allowing SEAPA to control advancement in the profession through the dockings/undockings requirement.

The Plaintiff recently filed a Motion for Partial Summary Judgment against the Board on the basis that the dockings and undockings requirement was beyond the Board's authority to adopt and that the manner in which it is being implemented is a violation of antitrust laws. In the next month or so, this office will respond to that motion. By the middle of June, the Plaintiff's reply, if any, must be filed with the court. If requested, oral argument will be scheduled sometime after that. After oral argument, the court will rule on the motion.

2/ As you are probably well aware, SEAPA also is the defendant in lawsuits alleging that it has monopolized the marine pilotage business in Southeast Alaska. Although we believe that this legislation also addresses some antitrust concerns of SEAPA, in this memorandum we are only discussing the antitrust concerns of the state directly, except to the extent that those issues necessarily overlap.

3/ The amount of regulation and the significance of the public interest in the endeavor makes the regulation of pilotage in some ways analogous to that of a public utility.

In general, antitrust laws prohibit a variety of monopolistic, anti-competitive activities. However, in addition to certain statutory (state and federal) exemptions, under certain circumstances, the courts have recognized a state action exemption to a claim that activities violate antitrust laws. In California Liquor Dealers v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), the United States Supreme Court described the exemption as follows:

These decisions establish two standards for antitrust immunity under Parker v. Brown. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy"; second, the policy must be "actively supervised" by the State itself. City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of Brennan, J.).

Midcal, 495 U.S. at 105. (Footnote omitted.)

In order for the state action exemption to be valid, there must first be a clearly articulated policy and law authorizing what otherwise might be anticompetitive behavior. In this bill, we believe such a clearly articulated policy and law exists. Secondly, for the exemption to be validly invoked, the state must actively supervise the otherwise anticompetitive conduct. This bill certainly contains provisions to effect that active supervision, e.g., employment of marine pilot coordinator and the generally clear and increased regulatory authority of the Board. If those provisions are implemented, we think that the active supervision standard will be met. 4/

Although other legal issues were discussed and considered during the process that began last fall on drafting a bill on this subject, we think that those issues have been dealt with in such a way in this bill so that we find none outstanding. 5/

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4/ It is not perfectly clear to what extent a state must supervise for that supervision to be "active." Recent caselaw indicates that the courts are not making the standard a rigorous or onerous one for a state to meet.

5/ For example, the bill does not contain a provision limiting the number of licenses that would be issued.

Hon. Dave Donley  
Alaska House of Representatives

April 18, 1991  
Page 4

Recognizing that this letter is somewhat conclusory, if you have any questions or wish further details, please let me know.

Sincerely yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By:



Gary I. Amendola

Assistant Attorney General

GIA:jf

cc: Ann P. Boudreaux, Director  
Division of Occupational Licensing, DCED

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

### MEMORANDUM

April 22, 1991

**SUBJECT:** Captain Joseph W. Homer v. Southeastern Alaska  
Pilots Association, et al. (Work Order No. 7-LS1220)

**TO:** Senator Drue Pearce, Chair  
Senate Labor and Commerce Committee

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to the request of Rod Mourant of your staff, for an explanation of the meaning and implications of the Complaint filed in a civil action in federal District Court entitled Captain Joseph W. Homer v. Southeastern Alaska Pilots Association, et al.

A complaint merely contains concise statements of the claims made by the person filing the complaint and the demands for relief that the person considers appropriate. A complaint is not a detailed explanation of the law or facts underlying the person's claims or demands for relief. A complaint only serves to give reasonable notice to the opposing parties of the claims being made and the relief being sought.

The Complaint alleges that Captain Joseph W. Homer has been injured by the actions of the Alaska State Board of Marine Pilots, the members of the Alaska State Board of Marine Pilots, the Southeastern Alaska Pilots Association, and other named individuals who are members of the association. The Complaint alleges that the association constitutes a monopoly engaged in an illegal conspiracy and in restraint of trade in interstate marine commerce in order to eliminate competition among marine pilots and to set tariffs for marine pilot services. The Complaint further alleges that the marine pilot licensing regulations of the board furthers the monopoly of the association and that the board lacks authority to set marine pilot tariffs. As the result of the actions of the association, the board, and the members of the association, the Complaint alleges that Captain Homer has been deprived of an unlimited pilot license, has not been allowed to compete with other marine pilots, has been the subject of acts intended to destroy his business and good will, has suffered serious damage and losses in being lost profits of at least \$200,000, and has been deprived of prospective business opportunities. The Complaint seeks relief for

Senator Drue Pearce

April 22, 1991

Page 2

Captain Homer under provisions of federal and state constitutions and statutes and under state common law.

Captain Homer makes 17 claims for relief. Nine claims for relief are against the association and/or its members. Eight claims for relief are against the board and/or members of the board.

#### CLAIMS AGAINST THE STATE.

Captain Homer seeks the following relief from the State of Alaska for the actions of the Board of Marine Pilots. As part of each specific claim for relief against the board, Captain Homer is also seeking an injunction to prevent further harmful actions by the board, as well as attorneys' fees.

**EIGHTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board further the monopolistic and restraint of trade practices engaged in by the association and its members and as a consequence the regulations and practices are violative of the Sherman Anti-Trust Act<sup>1/</sup> and the Clayton Act<sup>2/</sup>. Captain Homer seeks to have the regulations and practices of the board declared null and void. Captain Homer also seeks an injunction stopping the board from acting in furtherance of the monopoly and restraint of trade in the future and treble damages against the state.

**NINTH CLAIM FOR RELIEF.** Captain Homer claims that the regulations and practices of the board unduly burden interstate and foreign commerce<sup>3/</sup> and thus are null and void. Captain Homer seeks an injunction against the board preventing future undue burdens on interstate commerce. Captain Homer also seeks damages under 42 U.S.C. 1983<sup>4/</sup> for violating his rights under the federal constitution.

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<sup>1/</sup> 15 U.S.C. §§ 1 - 2.

<sup>2/</sup> 15 U.S.C. §§ 12 - 27.

<sup>3/</sup> Constitution of the United States, Art. I, sec. 8.

<sup>4/</sup> 42 U.S.C. 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

TENTH CLAIM FOR RELIEF. Captain Homer claims that the regulations and practices of the board violate his federal due process and equal protection rights<sup>5/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his federal due process and equal protection rights by the board. Captain Homer also seeks damages under 42 U.S.C. 1983 for violating his rights under the federal constitution.

ELEVENTH CLAIM FOR RELIEF. Captain Homer claims the regulations and practices of the board violate the privileges and immunities clause of the federal constitution<sup>6/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his privileges and immunities rights by the board. Captain Homer also seeks damages under 42 U.S.C. 1983 for violating his rights under the federal constitution.

TWELFTH CLAIM FOR RELIEF. Captain Homer claims that the regulations and practices of the board violate his right to equal protection under the state constitution<sup>7/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his equal protection rights under the state constitution. Captain Homer is also seeking unspecified damages.

THIRTEENTH CLAIM FOR RELIEF. Captain Homer claims that the regulations and practices of the board violate his right to due process under the state constitution<sup>8/</sup> and thus are null and void. Captain Homer seeks an injunction preventing future violations of his due process right under the state constitution. Captain Homer is also seeking unspecified damages.

FOURTEENTH CLAIM FOR RELIEF. Captain Homer claims that the regulations and practices of the board are contrary to the public policy generally expressed by the statutes of the state and thus are null and void. Captain Homer seeks an injunction preventing future violations of the public policy expressed in state statutes. Captain Homer is also seeking unspecified damages.

FIFTEENTH CLAIM FOR RELIEF. Captain Homer seeks an injunction against the board to prevent the board from violating his rights under the federal and state constitutions. Captain Homer also seeks an injunction to require the board to repeal its regulations requiring that applicants for an unlimited pilot license complete

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<sup>5/</sup> Constitution of the United States, 14th Amendment, sec. 1.

<sup>6/</sup> Constitution of the United States, Article IV, sec. 2, cl. 1.

<sup>7/</sup> Constitution of the State of Alaska, Article I, sec. 1.

<sup>8/</sup> Constitution of the State of Alaska, Article I, sec. 7.

a specified number of supervised dockings and undockings<sup>9/</sup> and to rescind any of its policies that have the effect of suppressing or eliminating competition among marine pilots. Captain Homer also requests the court to require the board to issue an unlimited marine pilot license for Southeastern Alaska to him. Captain Homer is also seeking unspecified damages.

CLAIMS AGAINST THE ASSOCIATION AND OTHER PRIVATE PARTIES.

Captain Homer is seeking the following relief from the actions of the Southeastern Alaska Pilots Association and certain named persons who are members of the association. As part of each specific claim for relief against the association and its members, Captain Homer is also seeking an injunction to prevent further harmful actions by the parties, as well as reasonable attorneys' fees.

**FIRST CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have created a monopoly in restraint of trade and commerce in marine pilot services in violation of sec. 1 of the Sherman Anti-Trust Act.<sup>10/</sup> Captain Homer claims that his damages and lost profits will be at least \$200,000 and seeks treble damages.

**SECOND CLAIM FOR RELIEF.** Captain Homer claims that the association and its members are a monopoly engaged in a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of sec 2 of the Sherman Anti-Trust Act<sup>11/</sup>. Captain Homer claims that his damages and lost profits will be at least \$200,000 and seeks treble damages.

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<sup>9/</sup> 12 AAC 56.030.

<sup>10/</sup> 15 U.S.C. § 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

<sup>11/</sup> 15 U.S.C. § 2.

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

THIRD CLAIM FOR RELIEF. Captain Homer claims that the association and its members entered into a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of the Federal Trade Commission Act<sup>12/</sup> and that under the Act he is entitled to recover damages and lost profits in the amount of at least \$200,000.

FOURTH CLAIM FOR RELIEF. Captain Homer claims that the association and its members entered into a contract, combination, or conspiracy in restraint of trade and commerce in marine pilot services in violation of the state monopolies and restraints of trade statutes<sup>13/</sup> and that under state law he is entitled to recover damages and lost profits in the amount of at least \$200,000. Under state law a person injured by a monopoly or restraint of trade may be entitled to treble damages if the court finds that offending conduct was willful.<sup>14/</sup>

FIFTH CLAIM FOR RELIEF. Captain Homer claims that unless the association and its members are prevented from continuing their monopolistic and restraint of trade practices his business and good will will be irreparably damaged. Captain Homer seeks an injunction against the association and its members to prevent them from continuing to violate the Sherman Anti-Trust Act, the Clayton Act, and the state monopolies and restraints of trade statutes and to require the association and its members to supervise the dockings and undockings required for him to obtain a state unlimited marine pilot license.

SIXTH CLAIM FOR RELIEF. Captain Homer claims that the association and its members have engaged in unfair methods of competition and unfair or deceptive acts or practices that are violative of state law relating to unfair trade practices and consumer protection.<sup>15/</sup> Captain Homer claims damages and losses in excess of \$200,000.

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<sup>12/</sup> 15 U.S.C. §§ 41 - 58.

<sup>13/</sup> AS 45.50.562 - 45.50.596.

<sup>14/</sup> AS 45.50.576(a).

(a) A person who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages sustained by the person, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was willful, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, the plaintiff may be awarded the costs of the suit, including reasonable attorney fees.

<sup>15/</sup> AS 45.50.471 - 45.50.561.

**SEVENTH CLAIM FOR RELIEF.** Captain Homer claims that unless the unfair methods of competition and unfair or deceptive practices of the association and its members are stopped his business and good will will be destroyed or at least seriously damaged. Captain Homer seeks an injunction to stop the association and its members from engaging in these activities.

**SIXTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have intentionally interfered with his prospective contractual relationships with ship owners, ship masters, and ship agents by inducing or otherwise causing ship owners, ship masters, and ship agents not to enter into contracts with him. Captain Homer seeks an injunction stopping interference with his prospective contractual relationships and appropriate damages for losses suffered as the result of past interference.

**SEVENTEENTH CLAIM FOR RELIEF.** Captain Homer claims that the association and its members have made false statements to ship owners, ship masters, and ship agents implying that he was not qualified to act as a marine pilot. Captain Homer seeks an injunction stopping these activities and damages for pecuniary harm suffered as the result of these false statements.

#### IMPLICATIONS OF THE COMPLAINT FOR THE REGULATION OF MARINE PILOTS.

Captain Homer alleges that the regulations and practices of the Board of Marine Pilots have violated his rights under the federal and state constitutions. The allegations are, for the most part, stated only in general terms in the Complaint, so it is not possible to identify all the regulations and practices that Captain Homer intends to challenge. If Captain Homer does prevail in any of his constitutional challenges, the affected regulations and/or practices of the board will have to be revised to conform to constitutional requirements.

One regulation which Captain Homer specifically challenges is 12 AAC 56.030(c)(2) relating to the requirement for supervised dockings and undockings as a condition of obtaining a state unlimited marine pilot license. Because all of the licensed marine pilots who are qualified to supervise the required dockings and undockings are members of either the southeast or southwest marine pilot association and because the members of these associations will not supervise his required dockings and undockings, Captain Homer claims that he is unfairly being denied the opportunity to obtain the license. Captain Homer proposes to overcome this obstacle by one of two alternative solutions: either by having the court order the board to repeal the requirement for supervised dockings and undockings and then issue an unlimited license to him; or by having the court order the board and the marine pilots to supervise the required trips so that he can qualify for the unlimited license. The requirement for supervised dockings and undockings seems to be a reasonable

qualification for obtaining a marine pilot license and may well survive the challenge. On the other hand, the manner in which the requirement is implemented by the board or by the other licensed marine pilots may have the effect of denying Captain Homer a reasonable opportunity to obtain an unlimited marine pilot license. If that is the case, the court may require the board to establish a procedure to allow applicants for the unlimited license to satisfy the supervised dockings and undockings requirement that cannot be frustrated by the unwillingness of the other marine pilots to supervise the dockings and undockings. The court could also prohibit the associations and the other marine pilots from conspiring to refuse to supervise the dockings and undockings of qualified applicants for an unlimited marine pilot license.

Other regulations that are specifically challenged by Captain Homer are 12 AAC 56.130 and 12 AAC 56.140 relating to the rates to be charged for piloting services. Captain Homer claims that the board lacks the statutory authorization to adopt regulations setting tariffs for piloting services. If Captain Homer prevails, the board will not be able to set tariffs for piloting services until the legislature authorizes the board to do so by statute.

The concept of regional pilotage is not at issue in the Complaint. The Complaint does not challenge the requirement for regional pilot licenses. The Complaint does not challenge either the authority of the board to license marine pilots for certain regions of the state or the authority of marine pilots to form associations within regions of the state.

What the Complaint does specifically challenge is the monopolistic practices and restraint of trade practices of the Southeastern Alaska Pilots Association. If Captain Homer prevails in his challenge to the practices of the association, the association will have to bring its practices into conformance with the law. The association may have to significantly alter its practices and membership qualifications if Captain Homer can establish that the association is as monopolistic and as violative of free trade as he alleges. On the other hand, if the regional marine pilot associations do not violate federal and state anti-trust and restraint of trade laws, there should be nothing arising from the Complaint that would interfere with the continuance of the regional associations in their present form. It is far too early in the proceeding to determine what will be the effect of the Complaint on the regional marine pilot associations.

#### IMPLICATIONS FOR CURRENT LEGISLATION.

There are currently two bills before the legislature relating to the licensing of marine pilots: SB 218 and HB 194. Both bills incorporate the substance of current regulations into statute and relate to several issues raised by the Complaint. First, both bills authorize the Board of Marine Pilots to establish tariffs for marine pilotage services. This would overcome the claim that the current regulations relating to tariffs are not authorized by statute. Second, both bills authorize the board to

Senator Drue Pearce

April 22, 1991

Page 8

require supervised dockings and undockings as part of the qualification for a marine pilot license. These provisions will clarify the authority of the board to require supervised maneuvers as part of the licensing procedure. Third, both bills authorize the board to establish marine pilotage regions. Fourth, both bills exempt marine pilot organizations from state anti-trust laws (AS 45.50.562 - 45.50.596). These provisions would overcome the claim that the existing marine pilot organizations violate state anti-trust laws. Fifth, both bills provide for a close and continuing relationship between regional marine pilot organizations and the board, and authorizes the board to approve the by-laws and training programs of recognized regional marine pilot organizations. The Senate bill authorizes the board to recognize one marine pilot organization for each pilotage region; the latest version of the House bill (CSHB 194 (Labor & Commerce)) authorizes the board to recognize one or more marine pilot organizations for each pilotage region.

The Complaint generally challenges the regulations and practices of the board on state and federal constitutional grounds. To the extent that one of the current regulations or practices of the board that is incorporated into the bills and is invalidated on constitutional or federal statutory grounds as the result of Captain Homer's complaint that portion of the bills will also be invalidated. However, currently there is nothing contained in either of the bills that is obviously unconstitutional. The challenges to the regulations and practices of the board raised by Captain Homer cannot be addressed in more detail until he sets out his specific claims and legal arguments on why the regulations and practices are invalid.

If I may be of further assistance, please advise.

GU:mi:pl  
91-075.mai

# AK Steamship Operators

SB 218 - NOT TRANS CS

SENATE TRANSPORTATION COMMITTEE

MAY 2, 1991.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
1/2 One	1	1	7	<p>DELETE: "certain water of and adjacent to"</p> <p>INSERT: <u>"the inland and coastal waters of"</u></p>	<p>This substitute language offers a clearer definition of waters requiring pilotage. The existing language implies pilotage requirements for offshore areas.</p>
✓ Two	1	1	11	(Same as amendment number one.)	Same as amendment number one.
✓ Three	1	1	13	<p>DELETE: "tariffs"</p> <p>INSERT: <u>"rates for basic pilotage services"</u></p>	<p>Reference to establish authority of the Board to establish tariffs at this point should be under powers and duties of the Board.</p>
✓ Four	2	1	1	<p>DELETE: "independently of the shipping industry"</p> <p>INSERT: <u>"as independent contractors"</u></p>	<p>As long as the pilots have the proper license for the geographic area in which a ship is operating, there is no reason why they should not be able to be employed directly by the shipping industry. The issue is one of qualifications, not employer. Provided the Board acts correctly, only qualified people will get licenses.</p>
✓ Five	2	1	5-7	<p>REWRITE IN ENTIRETY AS FOLLOWS:</p> <p><u>"(5) properly run pilot organizations can provide important services on behalf of marine pilots and can further the policy of protecting lives and property and the marine environment in the waters of the state."</u></p>	<p>This language better reflects the responsibility of the marine pilot organizations to the state and shipping industry.</p>

<u>AMEND. NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
✓ Six	2	5	25	<p>DELETE: "all water [WATERS] covered by this chapter"</p> <p>INSERT: "<u>the inland and coastal waters of the state</u>"</p>	Same as amendment number one.
✓ Seven	3	5	3	<p>DELETE: "the criteria by which pilotage tariffs are established"</p> <p>INSERT: "<u>maximum rates for basic pilotage services</u>"</p>	By requiring vessels to use pilots, the State has a duty to insure that pilots do not use this power to exact excessive rates for services. Therefore, it is incumbent upon the State to make sure that rates for pilotage services do not exceed a maximum level authorized by the Board. Below that maximum, pilots and vessel owners should be able to negotiate rates based upon a multitude of factors such as, for example, guaranteeing a minimum number of engagements. To prohibit pilots and vessel owners from negotiating lower rates is really an attempt to protect pilots from competing with each other. That is not a proper matter for the State to involve itself in. This amendment also makes it clear that it is the pilots and applicants for pilot licenses who pay for training and licensing fees.
✓ Eight	3	5	6	<p>DELETE: "pilotage tariffs for each region"</p> <p>INSERT: "<u>rates to be charged by pilots for basic pilotage services within each pilotage region and</u>"</p>	Same as amendment number seven.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
				<u>charges to be paid for by persons licensed or applying for licenses under this chapter for training, licensing and other purposes"</u>	
✓ Nine	3	5	17	DELETE: "pilot organizations"  INSERT: " <u>pilots licensed under this chapter</u> "	We have no problem with pilot organizations. We do object to the State granting certain organizations special status. All this will do is inhibit the right of free association by discouraging pilots from joining any organization other than recognized ones.
✓ Ten	3	5	20	DELETE: "water [WATERS] covered by this chapter"  INSERT: " <u>inland and coastal waters of the state</u> "	Same as amendment number one.
✓ Eleven	3	5	27	INSERT AT END OF SENTENCE: " <u>and by pilots licensed under this chapter</u> "	Same as amendment number nine.
✓ Twelve	3	5	27	INSERT NEW CLAUSE (4):  " <u>(4) establish standards by which a marine pilot may receive licensing and endorsements to pilot vessels in more than one pilotage region.</u> "	This is compromise language designed to deal with the regionalization concept. Instead of limiting a pilot to one region, it would allow licenses for multiple regions, specify the waterways and ports for which the license is valid.
✓ Thirteen	3	5	27-28	INSERT NEW SUBSECTION (c):  " <u>(c) For purposes of this chapter, the term "basic pilotage services" is intended to refer to the conduct of a vessel over or within a specific waterway or into or out of a specific</u>	The intent of this change is to limit the rate setting authority of the Board to matters directly related to movement of the vessel. All other charges would be left to negotiation between the pilots and vessel owners.

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
OK Fourteen	4	7	4	port." DELETE: "an active" INSERT: "a"	This language avoids conflict of interest.
Fifteen	4	8	9	DELETE: Line 9 INSERT: " <u>(b) A person may be licensed to pilot vessels in more than one region. A license shall identify the specific waterways and ports in each region within which a person is authorized to pilot vessels based upon the persons compliance with the training and other qualification requirements established by the board.</u> "	Same as amendment number twelve.
Sixteen	6	13	10-11	DELETE: all of (8) on Lines 10 and 11. INSERT: " <u>charges, collects or receives an amount in excess of the maximum rate for past pilotage services established by the board</u> "	Same as amendment number three.
Seventeen	6	15	18	DELETE: "certain water of or adjacent to" INSERT: " <u>inland and coastal waters of the state</u> "	Same as amendment number one.
Eighteen	6	15	21	DELETE: "direction and control"	This language clarifies the relationship between master and

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
✓ Nineteen	6	16	28	INSERT: " <u>conduct</u> "  INSERT AT END OF SENTENCE: " <u>or when the pilot's error, omission, fault or neglect would entitle the board to impose disciplinary action against the pilot under AS 08.62.050(a) (2), (3), (4) or (5).</u> "	pilot. The master is ultimately liable for any movement or control of his vessel.  It is correct that a marine pilot organization should not be liable for errors or omissions of its individual members occurring in the performance of pilotage services. If the organization itself acts improperly, it should be held to the same standard as any other private business. For example: an organization should be held liable if it breaches a contract with another party whether or not that breach was wilful. Furthermore, if the organization itself acts negligently, the organization should be held accountable whether or not that negligence constitutes gross negligence. All this change does is mke sure that pilot organizations, when acting as organizations, are held to the same level of accountability as any person in business is held to.
✓ Twenty	7	16	6	DELETE: "or organization of pilots that relate, directly or indirectly,"  INSERT: " <u>that relate directly</u> "	Same as number nineteen.
✓ Twenty-one	7	16	8	DELETE: "or organization of pilots"	Same as number nineteen.

AMEND.

NO.

PG.

SEC.

LINES

PROPOSED CHANGES

COMMENTS

✓ Twenty-two

8

21

29-31

DELETE Section 21.

Anti-trust implications.

22

1-4

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

May 3, 1991

**BILL NUMBER:** SB 218

**TITLE:** An act relating to the Board of Marine Pilots, marine pilots, and marine pilots organizations.

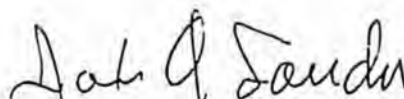
**DEPARTMENT POSITION:** Support

**ANALYSIS:** This bill is intended to clarify and strengthen the authority of the Board of Marine Pilots through an expansion of the Board's duties. This expansion includes establishing qualifications and approval of training programs, and establishing pilot regions to name a few.

The Department of Environmental Conservation believes that the mandatory use of local marine pilots with knowledge of the area in which they operate is an integral part of oil spill prevention. Well qualified, state licensed pilots was a major recommendation of both the Alaska Oil Spill Commission (Recommendation #20) and the States/British Columbia Oil Spill Task Force (Recommendation #15).

**PROPOSED AMENDMENTS:** The Department would propose that the legislation be amended to include the parameters for the training programs. For marine pilots in the crude oil tanker trade, the Board should be required to consult with DEC in establishing the training standards.

In addition, the Department recommends that the word "may" on page 2, line 23 and page 5, line 31 be changed to "shall".



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John A. Sandor, Commissioner  
Alaska Department of Environmental Conservation

May 6, 1991

Senator Fred Zharoff  
Chairman, Senate Rules Committee  
Capitol, Room 121

Dear Senator Zharoff;

I appreciate your letter of support in behalf of my appointment to the Board of Marine Pilots.

I also request your help in getting SB 218 (and HB 194) to the floor this session. The new law regulating marine pilots is important to your district and any help you can give SB 218 will be appreciated.

Thank you for your efforts.

Sincerely,



Captain Bob Boyd  
Alaska Marine Pilots Dispatch Services  
P.O. Box 730  
Dutch Harbor, Alaska 99692

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

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

### MEMORANDUM

May 7, 1991

**SUBJECT:** Relationship of AS 08.62.185(a) to certain provisions of federal law (HB 194)

**TO:** Representative Dave Donley, Chair  
House Judiciary Committee

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to the query by Laurie Otto, of your staff, as to whether AS 08.62.185(a) violates 46 U.S.C. 8501(d) or 46 U.S.C. 8502(c).

AS 08.62.185(a) provides that an oil tanker, whether enrolled (engaged in coastwise trade, i.e. trade between the states) or registered (engaged in trade with foreign countries), of a certain size, must, when navigating in state waters beyond Alaska pilot stations either employ a state licensed marine pilot, or utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.<sup>1/</sup>

Under federal law states are authorized to regulate pilots in bays, rivers, harbors, and ports.<sup>2/</sup> However, the states are prohibited from requiring coastwise (enrolled)

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<sup>1/</sup> AS 08.62.185(a):

(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.

<sup>2/</sup> 46 U.S.C. 8501(a):

(a) Except as otherwise provided in this subtitle [46 U.S.C. 2101-13110], pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.

vessels, including tankers, to engage state licensed pilots.<sup>3/</sup> Those coastwise vessels that are exempted from state pilot requirements are required to be under the control of a federally licensed pilot when the vessels are in coastal waters and not on the high seas.<sup>4/</sup> A state may not require a federally licensed pilot to obtain a state license or adopt any other requirement that would impede the performance of the duties of a federally licensed pilot.<sup>5/</sup>

Part of a statute enacted by the State of Washington that was similar to AS 08.62.-185(a) was struck down by the United States Supreme Court, because it violated federal pilot laws. In Rav v. Atlantic Richfield Co.<sup>6/</sup>, the Supreme Court struck down a mandatory state pilot requirement for enrolled tankers entering Puget Sound, because federal pilot laws (46 U.S.C. 364 and 46 U.S.C. 215; predecessors to current 46 U.S.C. 8502(a) and (c), respectively) give "the federal government exclusive authority to regulate pilots on enrolled vessels and . . . preclude a State from

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<sup>3/</sup> 46 U.S.C. 8501(d):

(d) A State may not adopt a regulation or provision that requires a coastwise vessel to take a pilot licensed or authorized by the laws of a State if the vessel--

(1) is propelled by machinery and subject to inspection under part B of this subtitle [46 U.S.C. 3101-4504]; or

(2) is subject to inspection under chapter 37 of this title [46 U.S.C. 3701-3718].

46 U.S.C. 3701-3718 applies to tank vessels, which are vessels constructed or adapted to carry, or that carry, oil or hazardous material in bulk as cargo.

<sup>4/</sup> 46 U.S.C. 8502(a):

(a) Except as provided in subsection (g) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title [46 U.S.C. 7101] if the vessel is--

(1) not sailing on register;

(2) underway;

(3) not on the high seas; and

(4)(A) propelled by machinery and subject to inspection under part B of this subtitle [46 U.S.C. 3101-4504]; or

(B) subject to inspection under chapter 37 of this title [46 U.S.C. 3701-3718].

46 U.S.C. 8502(g):

(g) The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title [46 U.S.C. 7101].

<sup>5/</sup> 46 U.S.C. 8502(c):

(c) A State or political subdivision of a State may not impose on a pilot licensed under this subtitle [46 U.S.C. 2101-13110] an obligation to procure a State or other license, or adopt any other regulation that will impede the pilot in the performance of the pilot's duties under the laws of the United States.

<sup>6/</sup> 435 US 151, 55 L.Ed.2d 179, 98 S.Ct. 988 (1978).

Representative Dave Donley  
May 9, 1991  
Page 3

imposing its own pilotage requirements on them."<sup>7/</sup> The Supreme Court did uphold the Washington law as it applied to registered tankers, so tankers engaged in foreign commerce are required to engage the services of a state licensed pilot while in Puget Sound.<sup>8/</sup>

Though the federal laws relating to pilots were rewritten in 1984, they are similar in all significant respects to those applied in Ray. Under the federal law applied in Ray and under current federal law, a coastwise seagoing tanker must be under the control of a federally licensed pilot when the vessel is not sailing under register, underway, and not on the high seas. Under the holding of the Ray decision, the State of Alaska is precluded by federal law from requiring enrolled tankers to engage a state licensed pilot. To the extent that AS 08.62.185(a) attempts to impose such a requirement on enrolled tankers, it is invalid.

Likewise the requirement under AS 08.62.185(a)(2) that an enrolled tanker must have a federally licensed pilot on board throughout the voyage if it does not engage the services of a state licensed pilot is probably invalid because the federal government has exclusive jurisdiction to regulate federal pilots on enrolled vessels. If the federal government has exclusive jurisdiction, then the state cannot impose additional requirements on enrolled vessels or additional duties on federal pilots.<sup>9/</sup>

In summary, the state may require that registered tankers engage the services of a state licensed marine pilot while Alaska bays, rivers, harbors, and ports. However, 46 U.S.C. 8501(d) and 46 U.S.C. 8502(c) preclude the state from requiring enrolled tankers to obtain a state licensed marine pilot or to engage a federal pilot throughout its voyage.

If I may be of further assistance, please advise.

GU:mi  
91-090.mai

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<sup>7/</sup> 55 L.Ed.2d at 189.

<sup>8/</sup> 55 L.Ed.2d at 189-190.

<sup>9/</sup> 46 U.S.C. 8502(c). See footnote 5.

**Capt. W.E. Murphy, Inc.**P.O. BOX 597  
HOMER, ALASKA 99803

(907) 235-8271

8 May 1991

Senator Fred Zharoff  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Zharoff;

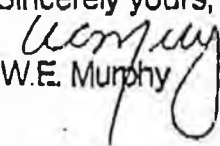
I am writing to you to ask for your assistance in passing some form of state pilot legislation this session.

As I am sure you are aware, last year Governor Cowper ordered his research staff to study all aspects of Alaska's state pilotage system. The result was a remarkably thorough and insightful report entitled Improving Alaska's State Pilotage System. Based on the recommendations in the report, Representative Cheri Davis offered H.B. 194 on the House side, and Senator Drue Pearce offered S.B. 218 on the Senate side. Both of these bills call for higher entry standards to the piloting profession, better pilot training, better local knowledge, and other features in the public interest.

Unfortunately, Rep. Davis bill seems to be stuck in the House Judiciary committee. Senator Pearce's bill, however, is moving through the Senate committee process and should come to your attention soon. When you examine this bill, I am confident you will find it to be legislation you can proudly support because it is a safety bill, based on the recommendations of independent researchers. If you agree this is good legislation for the people of Alaska, I urge you to support S.B. 218.

Thanks for your interest and assistance.

Sincerely yours,

  
W.E. Murphy

Faxed 5/8/91; hard copy to follow

ANTITRUST DISCUSSION

The proposed legislation (SB 218/HB 194) would amend AS 45.50.572 for the purpose of placing pilot organizations into the same status as non-profit labor, agricultural and horticultural organizations for purposes of Alaska's antitrust laws, AS 45.50.562 -- 45.50.596. The inappropriateness of this becomes obvious when one appreciates the fact that a pilot organization is a for-profit enterprise capable of engaging in the types of conduct that Alaska's antitrust laws were specifically designed to prohibit. There is little, if any, similarity between pilot organizations and the other organizations presently exempted by AS 45.50.572.

A pilot organization is effectively a corporation in a different form. The members are the owners. Although the member-owners provide pilotage services, the organization also hires non-members to pilot ships (commonly referred to as "contract pilots"). The organization contracts directly with shippers for the payment of pilotage fees. Accordingly, when a member pilot or a contract pilot is dispatched to a ship, the shipper pays the amount owing directly to the organization rather than to the individual pilot. The receipts are pooled by the organization and expenses paid. The largest expense is the salaries of contract pilots which are always substantially below the amounts paid by the shippers for the services of the contract pilots. As a result, a profit results which is allocated among the member owners on such basis as they have agreed. The net result is that the member pilots receive not only the fees related to the pilotage services they performed but also a share of the revenues realized from the efforts of the contract pilots.

As is readily apparent, this is not even close to the way in which a labor, agricultural or horticultural organization operates. A pilot organization is a business created to make money for its member-owners, plain and simple.

As a business, a pilot organization could enter into an agreement with a shipping company that would be the type of contract prohibited by AS 45.50.566. For example: the agreement could specify that the pilot organization will not service the ships of competing shippers or that the pilot organization will charge competing shippers a higher rate. This type of agreement would clearly be inconsistent with the public interest. For that reason, Alaska has prohibited all for-profit businesses from entering into them. We cannot see why these agreements are any less objectionable when they occur in the pilotage industry.

Under existing Alaska pilotage law, a pilot is only able to upgrade and maintain his or her license by having other pilots give them the opportunity to pilot and dock ships. Effectively, Alaska has an apprenticeship system such that persons desiring to become pilots require the cooperation of existing pilots. The

members of a pilot organization could conspire together to prevent others from becoming pilots and thereby monopolize pilotage work among themselves. In fact, at least one lawsuit is now pending in Alaska alleging just that. By conspiring to prevent others from becoming pilots, the effect is to artificially keep pilotage rates and compensation high by limiting pilot supply. This type of conduct is and should be prohibited by AS 45.50.564. It is not in the public interest to create an exemption that would change this.

Competing pilot organizations serve the public interest by making sure that shippers and others using pilotage services are afforded an opportunity to select who they will deal with. Alaska, in its antitrust laws, recognizes that competition is fundamental to the American economic system. Therefore, if two competing pilot organizations were to merge, the public interest ramifications of that merger are an appropriate consideration. AS 45.50.568 permits the courts to make decisions in this area. The exemption sought in this legislation eliminates this ability on the part of the courts.

For the above reasons, there is no plausible reason to accord pilot organizations a special status not afforded to any other for-profit business.

91-D/PILOT.ANT  
5/8/91



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: JOE MERRILL Fax: 248-2567

Attn: \_\_\_\_\_ Phone: \_\_\_\_\_

Transmitted by: ROD MOURANT Date: 5/9/91

Re: SB 218

Comments: JOE - THE TELECONFERENCE ON

FRIDAY IS LISTEN ONLY BUT MONDAY'S

WILL BE A FULL HEARING

*Rod*

Number of Pages: 7 Including Cover Sheet.



# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



## SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

TO: George Utermohle, Legal Counsel  
Legal Services Division

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

DATE: May 10, 1991

RE: SB 218

A handwritten signature in cursive script, appearing to read "Rod", positioned to the right of the "FROM:" line.

Using CSSB 218 (TRANS) work draft 7-LS0923\D as the document, please draft each of the fourteen Coast Guard proposed amendments and each of the twenty-two AK Steamship Operators amendments as individual, stand-alone amendments.

This legislation is on the Labor & Commerce Committee agenda for Monday, May 13th.

Thank you.

Attachment

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

WALTER J. HICKEL, GOVERNOR

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

May 10, 1991

Senator Drue Pearce

Dear Senator Pearce:

If the Board of Marine Pilots would advocate an assessment on Marine Pilot licensees sufficient to implement SB218 for FY '92, then the Department of Commerce and Economic Development would have no objection to such an assessment. I understand that this type of assessment has occurred twice within recent years for other boards with sweeping changes. Both times this assessment was done through Statutes and I understand that would be the proper procedure in the case of Marine Pilots.

Sincerely,

*Ann Boudreaux*

Ann Boudreaux  
Director

MAY 13, 1991

DRUE -

RE: SB 218

I SPOKE WITH BILL HUDSON.

HE SUGGESTS A FOUR STEP APPROACH TO TARIFFS:

1. DEFINE WHAT EXPENSE ITEMS ARE INCLUDED IN A TARIFF.  
HE BELIEVES IT SHOULD COVER ACTUAL HOURS ON VESSEL AS WELL AS DIRECT ASSOCIATED COSTS. (DISPATCH AND TRANSPORTATION EXPENSES.)
2. ESTABLISH MAXIMUM ALLOWABLE TARIFFS.
3. ALLOW TARIFFS TO BE MODIFIED NO MORE THAN BIANNUALLY.
4. REQUIRE ADOPTION OF TARIFFS IN A PROCEDURE IN ACCORD WITH REGULATION ADOPTION PROCEDURES IN AS 44.62.

May 14, 1991

Drue -

RE: SB 218 Exxon Comments

Dave Parrish reviewed the bill and have these comments:

Pg 6 Ln 7 may cause problem if its retroactively applied.

pG 6 Ln 20 "certain waters" is too vague.

*copy file to me  
at 3:00 PM*

*T. Rod*

*Red. bill files* MAY 14 1991

# SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977  
Homer, Alaska 99603

Tel: (907) 235-8783  
Fax: (907) 235-6119

Senator Drue Pearce,  
Representative Cheri Davis,  
Alaska State Legislature  
Juneau, Alaska 99811

Dear Senator Pierce and Represenative Davis,

This is to advise you that the South West Alaska Pilots Association supports a one time assesment of every Alaska state pilot, to fund costs associated with House Bill 194 and Senate Bill 218.

Sincerely yours  
*R.L. Hendricks*  
R.L. Hendricks Pres.

INTERNATIONAL

ORGANIZATION

ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
International Secretary/Treasurer  
GEORGE A. QUICK  
Vice President

OF  
**MASTERS  
MATES &  
PILOTS**

J. ALFRED ELLIS JR.  
East Coast Regional Representative  
DAVID C. WHELAN  
Gulf Coast Regional Representative  
REX POLLITT  
West Coast Regional Representative  
EMIL F. BOWERMAN  
Panama Canal Regional Representative

June 28, 1990

Mr. John Tamashiro  
Executive Secretary, Pilot Program  
Dept. of Commerce and Consumer Affairs  
State of Hawaii  
Post Box 541  
Honolulu, Hawaii 96809

Dear Mr. Tamashiro:

At a recent hearing on proposed amendments to Hawaii Administrative Rules concerning Port Pilots, a participant, Captain Jean Louis Lependu, submitted a statement that this Organization supported the proposed changes. His statement is erroneous, and we would like to correct the record before any final determination is made by the Department.

We are opposed to a "Statewide Pilotage System" and a "Central Scheduling System" as these terms are used and defined in the proposed amendments.

We are in favor of a unified pilotage system under a single association responsible for all facets of administering and operating the pilotage service.

We have very strenuous objections to a number of features of the proposed amendments.

1) The provision that requests for particular pilots shall be accommodated, or that particular pilots may be refused, gives a shipowner or operator the ability to reward or penalize a pilot on the basis of the decisions he has to make that often involve balancing the needs of public safety against the economic interests of the shipowner. Such a provision would pressure a pilot to put the shipowner's business interests ahead of public safety and the protection of the environment in assessing the level of acceptable risk in any contemplated ship movement. One of the key elements in ensuring the safe movement of ships is insulating the pilot from this type of pressure.

2) Permitting selection of particular pilots by the agents of the shipowner in a system where fees are regulated and





the individual pilot benefits financially by being selected will inevitably lead to solicitation of illegal kick backs by the party responsible for ordering the pilot. In the unregulated federal pilotage sector, such corrupt practices are an everyday fact of life.

3) A Central Scheduling System established by the Director and operated by his designee under work rules imposed upon the pilots with the approval of the Director changes the nature of compulsory pilotage in a very drastic way. The laws governing liability for the acts of compulsory pilots is well established. He is solely responsible for his own actions so long as there is no element of control over his actions by another party. It would seem that the proposed regulations envision a great deal of control over the actions of pilots by the Director through his designee by enforcing work rules that are not the product of mutual agreement between the pilots. With millions of dollars in potential liability at stake, there is little doubt that the issue of control over pilot work rules and assignments by a "deep pocket" state agency will be litigated. Anyone attempting to draft work rules that avoid this potential problem will be walking an exceedingly fine and treacherous line.

4) The requirement that pilots train deputy pilots under compulsion is not practical. The primary means of training any pilot in any port is "hands on" experience gained under the tutelage of an experienced senior pilot who acts as trainer. It requires the trainer to turn the ship over to an inexperienced "pilot in training" and permit him to handle the ship under the senior pilots supervision and responsibility. In every pilotage system there are pilots who feel uncomfortable with this indirect control and responsibility and refuse to act as trainers. In all cases, acceptance of the role of trainer depends upon an assessment of the trainee and the type of ship involved. It is not a relationship that should be imposed by operation of law.

The implementation of the proposed rules would codify and write into the rules a stop-gap solution to a bad situation that has developed in Hawaii. It would accept and establish a precedent for a fragmented pilotage system with needless duplication of services and equipment.

We strongly support action to create a unified pilotage system in a single entity. The problem should be addressed with that goal in mind, rather than cobbling together partial solutions that can create unknown consequences.

Means should be explored to create a single unified pilot association by statute or regulation. Conditions could be



imposed on licensing or service requirements that can be met only through working within the Association. Such laws could vary from an outright requirement that the license is conditional on membership in the recognized Association, to coercive regulations requiring equipment, service requirements, or billing and financial arrangements that can only be met by membership in the Association.

If we can be of any assistance in explaining or clarifying our views in greater detail, please do not hesitate to contact us.

Sincerely,

George A. Quick  
Vice President - Pilotage

GAQ:kae

SECTION ANALYSIS  
SB 218

The following is a section by section analysis of SB 219.

Section 1. Purpose of sections 16, 18, and 19.

Section 2. Changes the period covered by the reemployment benefits report submitted by the administrator. Adds to the administrator's duty to monitor the disclosure of the medical manager created in Section 9.

Section 3. Provides the administrator with the authority to review the file and determine whether an employee is eligible for an eligibility evaluation. The purpose of this amendment is to codify the rehabilitation administrator's current practice.

Section 4. For purposes of vocational rehabilitation benefits eligibility this section adds authority for para-medical personnel to determine physical capacities of employees in the case of muscular, skeletal or neurological injuries.

Section 5. Requires the rehabilitation specialist to certify that the reemployment plan meets the requirements imposed under AS 23.30.041(h). Requires amendment of a plan that does not meet statutory requirements, and prohibits an additional charge by the rehabilitation specialist for amending the plan unless approved by the rehabilitation administrator.

Section 6. This section provides for payment of 60 percent of the employee's spendable weekly wage for the time between reaching medical stability but before receiving an impairment rating. Payments during this time, except for the first 30 days, will be offset against the permanent impairment rating.

In addition, if a controversion or appeal of the employees claim delays completion of rehabilitation, the employer shall pay 60 percent of the spendable weekly wage during this period and the two year limit is tolled. This payment will not be offset against the permanent impairment rating.

Section 7. This section provides that the cost of the reemployment specialist shall be paid by the employer, may not be included in the cost of the reemployment plan, and allows the board to compare fees and determine the reasonableness of changes by the reemployment specialist.

Section 8. This section adds the definition of a medical manager.

Section 9. This section requires the medical manager to send a notice to the employee, employer, and the employee's physician defining the medical managers role.

Section 10. Employers who provide health insurance to employees and covered dependents will reimburse injured employees for replacement coverage or an amount equal to the employer's contribution, whichever amount is less. However, the employee must provide continued proof of coverage.

The employer will start payment when current coverage ceases and cease payments when employee is no longer receiving compensation for the injury or 18 months whichever is shorter. It provides a penalty for failure to make the required payment.

Section 11. This section establishes a civil penalty that the board may impose if the employer fails to obtain the required insurance.

Section 12. This section requires that all attorney fees and costs awarded a prevailing employer disputing compensation with another employer be reasonable.

Section 13. This section corrects conflicting language regarding procedure and clarifies the method of determining employee's minimum weekly compensation rate. The purpose is to codify the board's current practice.

Section 14. This section requires an impairment rating be determined by a licensed physician or in some cases by paramedical personnel.

Section 15. This section clarifies the right to compensation that survives the death of the employee.

Section 16. This section limits the civil liability of an insurer, insurance service agent, or trade association for performing or failing to perform a safety inspection or safety advisory service.

Section 17. This section provides that a person acting as a volunteer emergency medical technician is considered an employee of the state for purposes of workers' compensation and specifies the calculation of gross weekly earnings.

Section 18. This section amends the definition of "gross weekly earnings" to include temporary disability compensation.

Section 19. This section amends the definition of "medical stability" to include lack of deterioration, as well as lack of improvement from the effects of an injury.

Section 20. This section provides definition of volunteer emergency medical technician.

Section 21. This section requires the division of insurance to prepare a report on implementation of a contracting classification premium adjustment program.

Section 22. This section provides a transition section for reporting on reemployment benefits.

Section 23. This section establishes an effective date.

CS FOR SENATE BILL NO. 218 (TRANSPORTATION)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Offered: 5/10/91  
Referred: Labor and Commerce

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

8 (b) The legislature finds that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) adopt regulations establishing  
2 (A) pilotage regions in the state;  
3 (B) the criteria related to a training and investigation fee to be  
4 remitted to the board;  
5 (C) the criteria by which pilotage tariffs are established; and  
6 (D) pilotage tariffs for each pilotage region [UNDER THE  
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS  
8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS  
9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED  
10 TO APPLY THE STANDARDS IN THE REGULATIONS];

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

13 (6) review and approve the bvlaws and the operating rules of pilot  
14 organizations;

15 (7) audit a pilot organization or an individual pilot as considered necessary  
16 by the board; and

17 (8) review and approve training programs conducted by pilot organizations  
18 [IT].

19 (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20 upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21 chapter, including establishing

22 (1) different licensing criteria in pilotage regions if justified by regional  
23 differences in piloting;

24 (2) a mandatory random drug and alcohol testing program for pilots licensed  
25 under this chapter; and

26 (3) criteria for trainee selection and for training programs conducted by pilot  
27 organizations.

28 \* Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:

29 (c) For good cause, the board may require a pilot licensed under this chapter to submit  
30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a  
31 pilot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (a) The board shall [MAY] impose a disciplinary sanction on a person licensed under  
3 this chapter when the board finds that the person

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

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

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

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

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

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

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

11 suspended, or revoked; or

12 (8) charges, collects, or receives an amount for pilotage services that is  
13 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF  
14 FEDERAL LICENSURE AS A PILOT].

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

16 Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action  
17 under AS 08.01.075.

18 \* Sec. 15. AS 08.62.160 is amended to read:

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

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

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

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

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

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

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

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

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

16 \* Sec. 18. AS 08.62.190 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

20 \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28 \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

**CS FOR SENATE BILL NO. 218 (TRANSPORTATION)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the Board of Marine Pilots, marine pilots, marine pilot organizations,  
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6 loss of lives and property, and to protect the marine environment of the state by requiring compulsory  
7 pilotage in certain water of and adjacent to the state.

8 (b) The legislature finds that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) adopt regulations establishing  
2 (A) pilotage regions in the state;  
3 (B) the criteria related to a training and investigation fee to be  
4 remitted to the board;  
5 (C) the criteria by which pilotage tariffs are established; and  
6 (D) pilotage tariffs for each pilotage region [UNDER THE  
7 ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS  
8 BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS  
9 WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED  
10 TO APPLY THE STANDARDS IN THE REGULATIONS];

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

13 (6) review and approve the bylaws and the operating rules of pilot  
14 organizations;

15 (7) audit a pilot organization or an individual pilot as considered necessary  
16 by the board; and

17 (8) review and approve training programs conducted by pilot organizations  
18 [IT].

19 (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20 upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21 chapter, including establishing

22 (1) different licensing criteria in pilotage regions if justified by regional  
23 differences in piloting;

24 (2) a mandatory random drug and alcohol testing program for pilots licensed  
25 under this chapter; and

26 (3) criteria for trainee selection and for training programs conducted by pilot  
27 organizations.

28 \* Sec. 6. AS 08.62.040 is amended by adding a new subsection to read:

29 (c) For good cause, the board may require a pilot licensed under this chapter to submit  
30 to a physical or mental examination to determine the pilot's fitness to perform the duties of a  
31 pilot.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (a) The board shall [MAY] impose a disciplinary sanction on a person licensed under  
3 this chapter when the board finds that the person

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

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

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

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

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

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

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

11 suspended. or revoked; or

12 (8) charges, collects, or receives an amount for pilotage services that is  
13 different from the pilotage tariff established by the board [SUFFERED REVOCATION OF  
14 FEDERAL LICENSURE AS A PILOT].

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

16 Sec. 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action  
17 under AS 08.01.075.

18 \* Sec. 15. AS 08.62.160 is amended to read:

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

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

26 Sec. 08.62.165. LIMITATION OF LIABILITY. (a) A pilot licensed under this chapter  
27 is not liable for damages in excess of \$5,000 per incident for damages or loss occurring as a  
28 result of the error, omission, fault, or neglect of the pilot in performing pilotage services, <sup>4</sup>except  
29 that the limitation does not apply in a case where the pilot is either grossly negligent or guilty  
30 of wilful misconduct.

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

4 (1) the vessel was piloted by a pilot licensed under this chapter; or

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

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

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

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

16 \* Sec. 18. AS 08.62.190 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

20       \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28       \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

7-LS0923D  
Utermohle  
5/8/91

**CS FOR SENATE BILL NO. 218 (TRANSPORTATION)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE TRANSPORTATION COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATE LABOR AND COMMERCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

8 (b) The legislature finds that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1                   (4) adopt regulations establishing  
2                                (A) pilotage regions in the state;  
3                                (B) the criteria related to a training and investigation fee to be  
4                   remitted to the board;  
5                                (C) the criteria by which pilotage tariffs are established; and  
6                                (D) pilotage tariffs for each pilotage region [UNDER THE  
7                   ADMINISTRATIVE PROCEDURE ACT (AS 44.62) ESTABLISHING STANDARDS
- 8                   BY WHICH PILOTAGE FEES MAY BE ESTABLISHED, AND PAY FOR AUDITS
- 9                   WHENEVER AN AUDIT IS NECESSARY TO COLLECT INFORMATION NEEDED
- 10                   TO APPLY THE STANDARDS IN THE REGULATIONS];
- 11                   (5) make available, upon request, copies of this chapter and the regulations
- 12                   adopted under this chapter;
- 13                                (6) review and approve the bylaws and the operating rules of pilot  
14                   organizations;
- 15                                (7) audit a pilot organization or an individual pilot as considered necessary  
16                   by the board; and
- 17                                (8) review and approve training programs conducted by pilot organizations  
18                   [IT].

19                   (b) The board may, by regulation, make any other provision for proper and safe pilotage  
20                   upon the water [WATERS] covered by this chapter and for the efficient administration of this  
21                   chapter, including establishing

22                                (1) different licensing criteria in pilotage regions if justified by regional  
23                   differences in piloting;

24                                (2) a mandatory random drug and alcohol testing program for pilots licensed  
25                   under this chapter; and

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27                   organizations.

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29                   (c) For good cause, the board may require a pilot licensed under this chapter to submit  
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31                   pilot.

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

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9           (b) A pilot may not be licensed in more than one pilotage region at one time, unless the  
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18           Sec. 08.62.100. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a pilot  
19 license to a person if the person is a citizen of the United States, passes the examinations given  
20 by the board, qualifies under regulations adopted by the board, and meets the qualifications in  
21 (b) - (d) of this section.

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

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

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

29                   (3) two years of service as a chief officer on ocean or coastwise vessels of not  
30 less than 1,600 gross tons while holding a license as the master of ocean steam or motor vessels  
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1 (4) two years of service as commanding officer of United States government  
2 vessels of not less than 1,600 gross tons while holding a license as the master of ocean steam  
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4 (5) three years of experience as a member of an organized professional pilots  
5 association during which the candidate was actively engaged in piloting while holding a  
6 minimum license as a master of freight or towing vessels of not more than 1,600 gross tons.

7 (c) An applicant for a license under this section shall possess an endorsement of first  
8 class pilotage on the applicant's United States Coast Guard license with no tonnage restrictions  
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30 of wilful misconduct.

31 (b) Nothing in this section exempts a vessel, a vessel's cargo, or the owner or operator

1 of a vessel or cargo from liability for damage or loss caused by the vessel, the vessel's cargo,  
2 or the owner or operator of the vessel or cargo to the vessel, the vessel's cargo, another person,  
3 or other property on the ground that

4 (1) the vessel was piloted by a pilot licensed under this chapter; or

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

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

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

14 Sec. 08.62.175. PILOT ORGANIZ. TIONS. Marine pilots may organize themselves into  
15 organizations, to the extent that the organizations are permitted under state and federal law.

16 \* Sec. 18. AS 08.62.190 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

20 \* Sec. 23. INVESTIGATION OF MARINE ACCIDENTS. The marine pilot coordinator of the Board  
21 of Marine Pilots shall cooperate with federal and state agencies responsible for regulation of marine  
22 pilots and the investigation of marine accidents to develop guidelines for, and a system of timely,  
23 thorough, and fair investigations of, marine accidents involving death or injury to a person or damage  
24 to property. The marine pilot coordinator shall submit a report on the guidelines and system developed  
25 to investigate marine accidents and on recommendations for legislation necessary to provide for the  
26 investigation of marine accidents to the legislature on the first legislative day of the Second Regular  
27 Session of the Seventeenth Alaska State legislature.

28 \* Sec. 24. This Act takes effect immediately under AS 01.10.070(c).

STRAIT 9/11/91

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 1, line 7:

Delete "certain water of and adjacent to"  
Insert "the inland and coastal water of"

Page 1, line 11:

Delete "certain water of and adjacent to"  
Insert "the inland and coastal water of"

Page 2, line 3, following "in the":

Insert "inland and coastal"

Page 2, line 7, following "in the":

Insert "inland and coastal"

Page 2, line 11, following "in the":

Insert "inland and coastal"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 1, line 7:

Delete "ertain"

Insert "the inland and coastal"

Page 1, line 11:

Delete "ertain"

Insert "the inland and coastal"

Page 2, line 3:

Delete "water of"

Insert "inland and coastal water of and adjacent to"

Page 2, line 7:

Delete "water of"

Insert "inland and coastal water of and adjacent to"

Page 2, line 11:

Delete "water of"

Insert "inland and coastal water of and adjacent to"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 1, line 13:

Delete "tariffs"

Insert "rates for basic pilotage services"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 2, line 1:

Delete "independently of the shipping industry"

Insert "as independent contractors"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 2, lines 5 - 7:

Delete all material and insert:

"(5) properly run pilot organizations can provide important services on behalf of marine pilots and can further the policy of protecting lives and property and the marine environment in the water of the state."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 2, line 25:

Delete "all water [WATERS] covered by this chapter"

Insert "the inland and coastal water of the state [ALL WATERS COVERED BY THIS CHAPTER]"

Page 3, line 20:

Delete "water [WATERS] covered by this chapter"

Insert "inland and coastal water of the state [WATERS COVERED BY THIS CHAPTER]"

Page 6, line 20:

Delete "certain water of or adjacent to"

Insert "the inland or coastal water of"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 2, line 25:

Delete "water [WATERS] covered by this chapter"

Insert "the inland and coastal water of and adjacent to the state [ALL WATERS COVERED BY THIS CHAPTER]"

Page 3, line 20:

Delete "water [WATERS] covered by this chapter"

Insert "inland and coastal water of and adjacent to the state [WATERS COVERED BY THIS CHAPTER]"

Page 6, line 20:

Delete "certain"

Insert "the inland or coastal"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 5:

Delete "the criteria by which pilotage tariffs are established"

Insert "maximum rates for basic pilotage service"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 3, lines 5 - 6:

Delete "and

(D) pilotage tariffs for each pilotage region"

Insert

"(D) rates to be charged by pilots for basic pilotage services within  
each pilotage region; and

(E) charges to be paid by persons licensed or applying for a license  
under this chapter for licensing and other purposes"

ALSO ASSESSMENTS FOR AUDITS

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 17:

Delete "pilot organizations"

Insert "pilots licensed under this chapter"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 27, after "organizations":

Insert "and by pilots licensed under this chapter"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 25:

Delete "and"

Page 3, line 27, after "organizations":

Insert ": and

(4) standards under which a pilot may receive a license and endorsements to pilot vessels in more than one pilotage region"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 7, following line 25:

Insert a new bill section to read:

\*\* Sec. 19. AS 08.62.200 is amended by adding a new paragraph to read:

(5) "basic pilotage service" means the conduct of a vessel over or within a specific waterway or into or out of a specific port."

Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 4, line 4:

Delete "an active"

Insert "a"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 4, lines 9 - 11:

Delete all material.

Insert new subsections to read:

"(b) A person may be licensed to pilot vessels in more than one pilotage region.

(c) A license must identify the specific waterways and ports in each pilotage region in which a licensee is authorized by the board to pilot vessels. The board shall authorize a licensee to pilot vessels in a specific waterway or port in a pilotage region upon the licensee satisfying the training and other qualifying requirements required by the board to pilot vessels in that waterway or port."

Reletter the following subsection accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 6, lines 12 - 13:

Delete "for pilotage services that is different from the pilotage tariff"

Insert "in excess of the maximum rate for basic pilotage services"

AMENDMENT

OFFERED IN THE SENATE

TO: CSB 218 (TRANSPORTATION)

Page 6, line 23:

Delete "direction and control"

Insert "conduct"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 6, line 30, following "misconduct":

Insert "or in a case where the pilot's error, omission, fault, or neglect is grounds for imposition of a disciplinary sanction on the pilot by the board under AS 08.62.150(a)(2) - (5)"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 7, line 8:

Delete "or organization of pilots that relate, directly or indirectly,"

Insert "that relate directly"

Page 7, line 10:

Delete "or organization of pilots"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 7, line 31, through page 8, line 6:

Delete all material.

Renumber the following bill sections accordingly.

CG

7-LS0923D.19  
Cook/Utermohle  
05/11/91

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 24, after "program":

Insert "consistent with 46 C.F.R. Part 16"

COVER IN PRGS

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, lines 14 - 15:

Delete all material and insert:

"Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the extent permitted under federal and state law, persons licensed under this chapter may form organizations of marine pilots within each marine pilotage region.

(b) The board may recognize organizations of marine pilots within each marine pilotage region.

(c) An organization of marine pilots recognized by the board shall promote a safe and reliable system of marine pilotage for the region in which the organization is recognized, including dispatching and training of marine pilots and deputy marine pilots and other functions that the organization may assume. An organization of marine pilots recognized by the board may not begin operating until the articles, bylaws, and rules of the organization are approved by the board on the basis of

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

(2) compliance with applicable laws; and

(3) effectiveness in

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

(B) maintaining a sufficient number of qualified pilots available for dispatch to serve the needs of vessels visiting the region during each hour of the day and each day of the year;

(C) maintaining a training program for marine pilots and deputy marine pilots that is approved by the board."

ORGANIZATIONS MUST BE APPROVED  
BY BOARD

7-LS0923ND.20  
Utermohle  
05/13/91

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, lines 14 - 15:

Delete all material and insert:

"Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the extent permitted under federal and state law, persons licensed under this chapter may form organizations of marine pilots within each marine pilotage region.

(b) The board ~~may~~ <sup>SHALL</sup> recognize organizations of marine pilots within each marine pilotage region.

(c) An organization of marine pilots recognized by the board shall promote a safe and reliable system of marine pilotage for the region in which the organization is recognized, including dispatching and training of marine pilots and deputy marine pilots and other functions that the organization may assume. An organization of marine pilots recognized by the board may not begin operating until the articles, bylaws, and rules of the organization are approved by the board on the basis of

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

(2) compliance with applicable laws; and

(3) effectiveness in

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

(B) maintaining a sufficient number of qualified pilots available for dispatch to serve the needs of vessels visiting the region during each hour of the day and each day of the year;

(C) maintaining a training program for marine pilots and deputy marine pilots that is approved by the board."

Page 8, following line 19:

Insert a new bill section to read:

**"\* Sec. 23. TRANSITION: REGIONAL ORGANIZATIONS OF MARINE PILOTS.** Notwithstanding AS 08.62.175(c), added by sec. 17 of this Act, an organization of marine pilots recognized by the Board of Marine Pilots may operate until July 1, 1992, without having its articles, bylaws, and rules approved by the board under AS 08.62.175(c)."

Renumber the following bill sections accordingly.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 3, line 2, after "state":

Insert "that are, to the extent possible, similar to those established for federal pilotage waters under 46 U.S.C. 8502(a)"

"AT LEAST AS STRINGENT AS"

Pg 6 LN 20 <sup>Delaware</sup> "INLAND, + COASTAL WATERS"  
<sup>ADJACENT</sup> "CENTRAL WATERS"  
INSET

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 281 (TRANSPORTATION)

Page 4, line 11, after "region":

Insert "and that the pilot possesses currency of knowledge consistent with requirements of 46 C.F.R. 10.713"

N/O

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 6, line 6:

After "illegally"

Insert "possesses;"

After "uses"

Insert ";

YES

A M E N D M E N T

*JW*

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, after line 15:

Insert a new bill section to read:

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

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

(1) vessels subject to federal pilot requirements in 46 U.S.C. 8502 [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 United States registry of less than 300 gross tons and towboats 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, built in Canada and manned by Canadian citizens 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."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, after line 15:

Insert a new bill section to read:

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

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

(1) vessels subject to federal pilot requirements in 46 U.S.C. 8502 [UNDER ENROLLMENT,] except as provided in AS 08.62.185;

(2) fishing vessels, including fish processing and fish tender 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 United States registry of less than 300 gross tons and towboats 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, built in Canada and manned by Canadian citizens 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."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE  
TO: CSSB 281 (TRANSPORTATION)

BY SENATOR PEARCE

Page 7, after line 15:

Insert a new bill section to read:

"\* Sec. 18. AS 08.62.180 is amended to read:

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, including fish processing and fish tender 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 United States registry of less than 300 gross tons and towboats 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, built in Canada and manned by Canadian citizens 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."

Re-number the following bill sections accordingly.

A M E N D M E N T



OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

12

Page 7, after line 15:

Insert a new bill section to read:

"\* Sec. 18. AS 08.62.185(a) is amended to read:

(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?"~~

Renumber the following sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, after line 15:

Insert a new bill section to read:

"\* **Sec. 18.** AS 08.62.185(a) is amended to read:

(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]."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 7, after line 25:

Insert a new subsection to read:

"(c) For purposes of (a) of this section, the board shall adopt regulations defining the phrase "when a licensed pilot is available.""

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 6, line 22, following "chapter.":

Insert "The board, where appropriate, shall define the mandatory pilotage water of the state, to be the same as federal pilotage waters established under 46 U.S.C. 8502(a)."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PEARCE

TO: CSSB 218 (TRANSPORTATION)

Page 2, lines 8 - 11:

Delete all material and insert:

"(c) It is the intent of the legislature that the Board of Marine Pilots

(1) exercise jurisdiction over pilotage and marine pilots in the inland and coastal water of and adjacent to the state to the maximum extent allowed under federal and state law;  
and

(2) work with

(A) marine pilots to ensure that safe pilotage is maintained in the state;  
and

(B) pilot organizations in a cooperative effort to enhance the policy of protecting lives and property and the marine environment."

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 218 (TRANSPORTATION)

Page 4, lines 3 - 4:

Delete "administer and enforce"

Insert "assist the board in administering and enforcing"

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 218

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: Relating to the Board of Marine Pilots, marine pilots, and .... BRU: Occupational Licensing  
 Component: Administration  
 Sponsor: Senate Labor & Commerce  
 Requestor: Senate Transportation COMPONENT SERIAL NO. 

0	3	5	6
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	72.3	72.3	72.3	72.3	72.3	72.3
TRAVEL	20.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	108.3	98.3	98.3	98.3	98.3	98.3
:						
CAPITAL						-
REVENUE	0	240.1	0	240.1	0	240.1

FUNDING: (Thousands of Dollars)

GENERAL FUND	108.3					
FEDERAL FUNDS						
OTHER GF/PR		98.3	98.3	98.3	98.3	98.3
TOTAL	108.3	98.3	98.3	98.3	98.3	98.3

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)  
(SEE ATTACHED)

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144  
 Division: Occupational Licensing Date: April 25, 1991  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Commerce and Economic Development Date: 4-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE ANALYSIS

SB 218

The bill makes a number of amendments to the Marine Pilotage Act. The expenses identified in this fiscal note result from increasing the mandatory number of meetings to at least three as required by Section 4 of the bill, and the employment of a Marine Pilot Coordinator established by Section 7. The Marine Pilot Coordinator is placed in the partially exempt service of State government and is charged with the responsibility to administer and enforce the provisions of the chapter. The costs identified are based on a similar Executive Director position, Range 22.

Personal Services:

Marine Pilot Coordinator, XE, 12 months, Range 22A	\$72.3	:
---	--------	---

<u>Travel:</u>	20.0	:
----------------	------	---

Section 4 of the bill increases the number of meetings to at least three each year. Currently the board is required to meet once a year and it is often difficult to fund an additional meeting. Funding of \$10.0 will provide for two additional meetings in addition to the one already included in the FY 92 budget request.

Funding of \$10.0 will cover travel and per diem expenses for the marine pilot coordinator to travel to each marine pilotage region to audit regional marine pilot organizations, review training programs, and to enforce compliance with the marine pilotage act.

<u>Contractual Services:</u>	5.0	:
------------------------------	-----	---

This funding will provide for communications, postage, printing and advertising costs.

<u>Supplies:</u>	1.0	:
------------------	-----	---

Funding will provide for daily operating supplies for the Marine Pilot Coordinator position.

Equipment:

10.0

Funding will provide one-time equipment costs for the Marine Pilot Coordinator position. This funding will also provide for on-going office space costs.

TOTAL COSTS:

\$108.3

Revenues:

There are approximately 123 licensed marine pilots whose licensing fees must be increased to cover the new costs provided in the bill. In addition, current expenses of the Board of Marine Pilots exceed revenues generated through licensing fees to support its program. Therefore, licensing fees will have to be increased substantially in order for the licensing program to support its costs.

Licensing fees must be raised to cover an additional \$240.0 (\$206.6 new costs identified in this fiscal note for the first two years and the current deficit of \$33.4). A biennial licensing fee of \$1,952 (\$976 per year) will be necessary to cover program costs. Marine Pilot licensees currently pay a biennial fee of \$180 (\$90 per year). If licensing fees are not increased to cover program costs, the program must then be supported by the general fund.

Since marine pilot licenses are due for renewal on December 31, 1992 (FY 93), revenues will not be collected in the first year of operation under provisions of HB 194. Funding in the first year must therefore be covered by general funds, unless a special one time assessment fee is made to licensees in FY 92.

The revenues identified in this fiscal note are based on the assumption that licensees will be willing to increase their fees to fully cover the costs of its licensing program beginning in FY 93 in conjunction with the license renewal period.

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
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ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Curt Menard, Chair  
Senate Transportation Committee

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

A handwritten signature in cursive script that reads "Rod".

Senator, thank you for scheduling SB 218 Marine Pilots legislation for a hearing. It has been over a decade since the legislature has updated the statutes dealing with marine pilotage in Alaska.

To assist the committee in its deliberations Senator Pearce has requested that I provide copies of Improving Alaska's Marine Pilotage System, copies of Senate Bill 218, copies of an article on marine pilotage from Seaways magazine, copies of proposed legislation approved by the Board of Marine Pilots, and a copy of a memorandum from the Office of the Governor on the topic. A fiscal note and position paper has been requested from the Department of Commerce & Economic Development.

Thank you again for considering this legislation.

Attachments

COMMITTEE TESTIMONY IN SUPPORT OF S.B. 218  
BY CAPT. W.E. MURPHY, SOUTHWEST ALASKA PILOTS

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of Senate Bill 218. My name is Edward Murphy. I reside in Homer and I've been a marine pilot in Alaska since 1974. I pilot ships throughout Southwest Alaska including very large crude carriers and other tankers, cruise ships, container ships, bulk carriers and fisheries related vessels. I served on the Alaska Board of Marine Pilots for four years, three of them as chairman.

In January of last year I wrote Governor Cowper a letter concerning grave safety problems I saw emerging in Alaska's state pilotage system. Among them:

- The lowest entry standards for licensing in the country.
- No state mandated standards or requirements for pilot training.
- Control and manipulation of state pilots by Outside steamship companies and agents.
- Pilot Board difficulties in maintaining and upgrading pilot standards.
- Inordinate delays in pilot discipline cases.
- Legal problems for pilot associations in training pilots and maintaining high standards in the absence of state requirements.

Governor Cowper responded to the concerns expressed in my letter by ordering his Office of Management and Budget to conduct an independent study of Alaska's state pilotage system and to make recommendations for improvement based on the study findings. The result of the staff study is a booklet entitled Improving Alaska's Marine Pilotage System. This document is a remarkably thorough and thoughtful look at pilotage in Alaska written by researchers who have no ax to grind except the public interest. If you have not already done so, I urge you to read the study. It will tell you far better than I can the problems with our state's pilotage system and the need for legislative change to the marine pilot statutes.

Senate Bill 218 is legislation which the pilots who live and work in Alaska believe in. It is legislation you can all proudly support because it is, ultimately, a safety bill. Consider the following:

1. The "FINDINGS" section makes clear for the first time the public service nature of a pilot's work in terms of protecting lives and property and protecting the marine environment. It recognizes that to properly fulfill that public service function marine pilots must operate independently of the shipping industry. That is, be free from the shipowner's interest and control. This is a crucial element of safety long recognized by state pilots and identified by the study staff. The federal government recognized this essential element of piloting in the Oil Pollution Act of 1990 by requiring state licensed pilots who are not a member of the ships crew to pilot tankers in certain sections of Prince William Sound.
2. The bill clearly establishes the powers and duties of the Board of Marine Pilots. The ambiguity of the existing law in this regard has long been the cause of conflicting interpretation by staff attorneys from the A.G.'s office. The result has often been Board confusion, frustration, failure to act in the public interest, and law suits.
3. The Bill raises the entry standards for pilot license applicants. The staff study, pages 15 through 17, clearly illustrates how remarkably low Alaska's standards are. The American Pilot Association says they are the lowest in the country.
4. The Bill declares that the pilot board may establish standards for training programs. Incredibly, pilot training is not addressed at all under current statute.
5. The staff study pointed out the essential element of local knowledge in all piloting and recommended that Alaska's vast coastline be divided into pilot regions where pilots would be restricted to piloting in one region only.

In addition to the features of the Bill previously listed, there is one additional area of concern which is equally crucial to a workable and professional piloting system. That is limiting pilot liability. The Bill limits a pilot's liability and that of pilot organizations. Every time a pilot steps on a ship he faces the possibility of financial ruin. This is in addition to possible criminal penalties he may suffer in the event the vessel he is piloting suffers an accident. Criminal penalties are called for in House Bill 315 passed by the legislature in 1990. Piloting is a high risk profession and few, if any, pilots can stand the sort of twin liabilities now emerging in this state. Some sort of liability limitation is reasonable as the legislatures of other maritime states have found.

Washington is an example: its pilot act also sets a liability limit of \$5,000. Note that S.B. 218 does not limit liability if the pilot's error or negligence was gross or wilful.

Liability is also a major problem for pilot organizations because they are caught in a "Catch-22" situation. The state doesn't require any pilot training. Yet all mariners, and probably laymen too, know that pilots have to be well trained. Yet when we train new pilots, as we must, we can be sued if that pilot has an accident. But if we failed to train a new pilot who then had an accident we would be sued for negligence. It's an impossible situation and another compelling reason why the state must both require pilot training and limit the liability of pilot organizations in their training function.

The Bill gives pilots the explicit authority to organize themselves, which of course they do now. It is important to recognize that the state cannot realistically maintain its own pilot training and dispatch service. Pilots form themselves into organizational structures called associations for this purpose. The associations provide pilots, central dispatching, employees, boats, equipment, pilot stations, radio and communications equipment, transportation, training and administration of the whole as a system. We do this with Alaska resident pilots 24 hours a day, 365 days a year in every kind of weather. The Bill does not franchise any pilot group or require membership in any pilot group.

While this is an excellent bill, there are a couple of areas I would recommend the committee add. These are:

1. Page 1, line 5 under POLICY, FINDINGS AND INTENT, add:

"The first and paramount duty of marine pilots licensed by the state is to provide for the public safety and the protection of the marine environment." This is an important declaration of legislative intent and obligation of state pilots.

2. Page 2, line 23 under POWERS AND DUTIES: substitute the word "shall" for "may". This wording change is important because of continuous past difficulties for the pilot board in doing its job with vague language now in statute. It is very important to make the pilot board's duties and obligations specific and required.

3. Page 5, line 11 insert a new section entitled "DEPUTY PILOTS AND DEPUTY PILOT TRAINING". It is extremely important to spell out in statute a progressive training program where an applicant gains training and obtains a deputy pilot license, then serves under that limited license for a period of time before progressing to higher tonnage and, eventually, an unlimited license. I have some suggested language if you would like to consider adding this suggested new section.

Alaska's original state pilotage act of 1970 has changed little since it was enacted. Yet shipping in the state has increased many fold with larger and faster ships carrying more dangerous cargoes and an ever increasing number of passengers. Often these ships ply the waters of Alaska with only one United States citizen aboard; that person is the ship's pilot who is licensed by this state. The consequences of the pilot's failure to adequately meet the demands placed upon him can have profound consequences for the marine environment and the citizens of Alaska. The pilot's role is a public service one. Alaska's citizens have a right to expect that state pilots have met high entry standards, have undergone rigorous training and possess extensive local knowledge. As the study group recognized, safety demands that pilots be independent and free of the shipowner or his agent's interest and control. Senate Bill 218 is long overdue. I urge you to consider it favorably.

Thank you

Senate Bill 218

My name is Mike Williams. I am Vice President, Environment & Contingencies, at Alyeska Pipeline Service Company. Alyeska is concerned about the quality of pilots because that can have a significant effect on the safety of tankers serving the Valdez Terminal.

Pilots are an essential part of tanker safety. Their knowledge and expertise is recognized. But as with any profession there is the need to ensure that the quality of the individuals in the organizations remains high. It is essential that the individual pilots retain their skills, are physically and mentally capable of performing their very important job.

The profession must therefore be regulated. Regulation can be through the free market where the pilot would be liable for his negligence or by statute where a balanced committee of fellow pilots and users of pilotage services can judge the competence of a pilot.

The general thrust of Senate Bill 218 is therefore to be applauded. However, it is apparent that on some major areas it is still weak.

The Bill should be strengthened in the area concerning drug and alcohol usage. Currently, as written, the board may introduce a drug and alcohol testing program. This should be changed to shall introduce these programs.

A similar use of the word "may" emasculates the section on disciplining sanctions. Too many pilotage authorities throughout the world are toothless tigers. A license should automatically be revoked if a pilot has breached any of the conditions listed in Section AS 08.62.150(a), viz:

- (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 the person's United States Coast Guard pilot license conditioned, suspended, or revoked; or
- (8) charges, collects, or receives an amount for pilotage services that is different from the pilotage tariff established by the board [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT].

Simply stated, this legislation must ensure that Alaska has first class pilots by clearly delineating and requiring sanctions for certain unacceptable actions.

Finally, one section that is not covered in the proposed Bill is the composition of the Board. Currently the Alaskan Pilotage is made up prominently of pilots and shipping agents. If a profession is self-monitored in this way, it is most difficult for the disciplining of pilots to be objective. The Board must have representation of both ship owners and the general public to ensure that the best monitoring of the profession is carried out.

Thank you for considering these recommendations. I would be happy to respond to questions, if any.

SB 218 (Transportation)  
and  
HB 194 (L & C)  
Comparison

- Section 1: Ok
- Section 2: Ok
- Section 3: Ok, but public members are not in statute.
- Section 4: Three meetings versus four.
- Section 5: (1) Ok  
(2) Ok  
(3) Ok  
(4, 5, 6, 7, 8) Ok.
- Section 6: Ok.
- Section 7: Ok.
- Section 8: Ok.
- Section 9: 60 days versus 45.
- Section 10: SB 218 has one section relating to licensing, HB 194 has 3 because of the new Deputy Marine Pilot.
- Section 11: Ok.
- Section 12: Ok.
- Section 13: Ok.
- Section 14: Ok.
- Section 15: Ok.
- Section 16: Ok.
- Section 17: Ok.
- Section 18: Ok.
- Section 19: Ok.

Section 20: Ok.

Section 21: Ok.

Section 22: Ok, but will need to be amended with inclusion of Deputy Marine Pilot.

Section 23: Ok.

Section 24: Ok.

NOTE: HB 194, Section 16 PILOT'S LIEN FOR COMPENSATION, is not included in SB 218.

HB 194, Section 18 EXEMPTIONS, is not included in SB 218.

Side by Side Comparison  
Pearce Bill/Davis Bill

Because sections do not correspond numerically, Senator Pearce's bill will be used for reference.

Section 1: Policy, Findings, and Intent.  
Mentions need of Marine Pilots, wants to give board broad statutory authority.  
*Basically the same.*

TITLE QUESTION

Section 2: Extends sunset clause of the Board of Marine Pilots to 6/30/95.  
*Not mentioned.*

Section 3: Appointment and terms of office.  
*Same.*

START UP TAKEN TAPER

Section 4: Hold at least three meetings or with vote of board majority.  
*Up to four or with a vote of board majority.*

Section 5: Powers. (1) is in Davis Section 1, Findings.  
(2) is in Davis Section 4, (1)  
(3) is in Davis Section 4, (4)  
(4) is in Davis Section 4, (12 and 5)  
(5) is in Davis Section 4, (8)  
(6) is in Davis Section 4, (9)  
(7) is in Davis Section 4, (10)  
(8) is in Davis Section 23, Training  
Davis Section 4, (7)  
(b1) is in Davis Section 4, (2)  
(b2) is in Davis Section 4, (6)  
(b3) is in Davis Section 4, (7 except for selection criteria)

BY BD REQ +  
REGULATIONS PHYSICALS

Section 6: Pilot Board requiring a pilot to submit to a physical or mental exam.  
*Davis Section 4, (11c).*

Section 7: The department, with the approval of the board, is authorized to hire the Marine Pilot Coordinator. The Coordinator is partially exempt.  
*Davis Section 5. Coordinator is hired by the department and is approved by the board. Coordinator is not partially exempt (no mention).*

DEF. SUPPORTS

Section 8: Licensing a pilot in only one region. Public notice of exam dates.  
*Davis Section 6.*

DEFINITION  
OF LOCAL KNOWLEDGE.  
3 REGIONS AT FIRST

Section 9: Pilot must file application for exam 60 days before exam date.

BOARD SUPPORTS

*Davis Sections 7 and 8. Pilot must apply for exam 15 working days before exam date.*

Section 10: Qualifications.  
(a) in Davis Section 10 (1 and 2)  
(b) in Davis Section 10 (4b)  
(1-5e) in Davis Section 10 (1-5e)

DAVIS SUPPORTS  
SENATE BILL  
BOARD SUPPORTS  
HOUSE BILL

NOTE:

*Davis Bill sets up a Deputy Pilot which the requirements in Senator Pearce's Section 10 are. Furthermore, Davis' bill contains a whole new section on training.*

Section 11: Renewal.  
(a) Davis Section 6, (b)  
(1) Davis Section 11, (1)  
(2) Davis Section 11, (2)  
(3) Davis Section 11, (3)  
(4b) Davis Section 11, (4a,b)

Section 12: Lapsed License.  
Meets requirements in AS 08.01.10-120 and passes a written and oral exam if the license has lapsed one year or more.

it → *Same Section, plus fam trips.*

Section 13: Disciplinary Actions.  
*No significant differences.*

Section 14: Allows board to take disciplinary sanctions.  
*No reference.*

Section 15: Lists water adjacent to the state for pilotage. Ship in state waters must have a pilot during movement of the ship.  
*Davis Section 14 requires pilots on board vessels navigating the inland and coastal waters of Alaska as determined by the board.*

SITUATION  
DEFINITION  
OF CALAMITARY  
INCIDENT  
Pg 6 LN 3

Section 16: Liability:  
(a) \$5,000.00 per incident except if pilot is either grossly negligent or guilty of wilful misconduct.  
*Technically the same as in Davis' Section 14, except potential for a higher liability.*

Section 17: Pilots may organize themselves into organizations as permitted under state and federal law.  
*Davis Section 17. Technically the same. However, Davis Bill has more guidelines as to the organizations goals, training, etc.*

BETTER

Section 18: Penalties for not employing a pilot.  
*Same as in Davis Section 20.*

*Per* *CONRAD*  
*DAV*

Section 19: Short title.  
*Davis Section 21.*

Section 20: Technical add to statute.  
*Davis Section 22.*

*ONLY APPLICABLE  
TO STATE  
ANTI-TRUST*

Section 21: Anti-trust.  
*Davis Section 23 and adds "licensed."*

Section 22: Transition.  
*Davis Section 24, plus additional information.*

Section 23: Immediate effective Date.  
*Davis Sections 25, 26, 27; breaks down effective date to specific sections.*

ADDITIONAL SECTIONS IN DAVIS BILL:

Section 10: Qualifications for Deputy Marine Pilot License – Includes section "Training."

Section 16: Pilot's Lien for Compensation.

Section 18: Exemptions.



**By Capt. Ed Murphy**

*Founding member of Southwest Alaska Pilots Assn.*

## Attacks are assault on pilot profession

Last year then-Governor Steve Cowper directed his research staff to study Alaska's marine pilot system and report back to him. The staff studied other states' pilot licensing boards and the relationship between other states' boards and pilot associations. In addition, the researchers examined antitrust concerns, legal issues relevant to pilot experience and training and the necessity of state pilots operating independently of shipping industry control.

Nine months of research and study by the Governor's staff resulted in a booklet entitled "Improving Alaska's State Piloting System." This document presents a remarkably thorough and thoughtful look at pilotage in Alaska written by independent researchers who started out hardly knowing a marine pilot from an airline pilot. Notable among their many findings and recommendations are:

- Amend the state pilotage act to establish the fact that marine pilots are independent contractors under state control for the purpose of protecting lives, property, vessels and the marine environment.
- Give the pilot board clear and unambiguous authority to promulgate and enforce more extensive entry level requirements to the profession, now the lowest of any of the maritime states.
- Move to exclusive licensing by regions. The staff determined that the customary practice of pilots holding vast tracts of pilotage on their licenses and piloting throughout such large areas is inappropriate given the local knowledge requirement implicit in providing a pilot service. Hence they recommended exclusive licensing by region to insure local knowledge.
- Establish a formalized deputy pilot training program with substantial training and experience requirements before deputies can be advanced to higher tonnage limits.

## PERSPECTIVES



**By Scott Jones**

*Vice President  
Alaska Maritime Agencies*

## Monopolies do not mean safer transits

The following thoughts concern whether or not competition in marine pilotage will result in safety compromises in Alaska, and is also relevant to the position that industry has shown to the Alaska legislature concerning HB194.

It is apparent to most in the maritime industry that pilotage monopolies do not necessarily equal safer transits for vessels within pilotage waters. In Alaska, which presents some of the widest ranges of piloting requirements, it has been our experience that having a system in which it is possible for licensed pilots to compete based on skill and service is best.

Competition for piloting jobs enhances safety when there is strong regulatory oversight. The same holds true for areas where no competition exists. Without firm discipline in response to instances of poor judgment, safety will suffer, no matter what the competitive situation is. Competition amongst pilot groups does nothing to change this fact. If a state wants good pilots then it should see to it that poor piloting results in economic sanctions through disciplinary action. This is the proper weapon for states to wield in pilotage policy, not monopolies.

In Alaska there has been a need for stronger statutory authority for the pilot board for some time. Industry and pilots are in agreement on this. Uncertainty in its authority and mandate hurts a state's ability to provide the best pilotage possible. Recent events on the Columbia River point out the inherent danger of allowing this to happen. If indeed, as has been reported, radio requests for speed and position are being ignored, then the Oregon board should see to it that the offenders are terminated. The reports should be investigated immediately and thoroughly, including the monitoring of VHF traffic. Perhaps it is time to mandate a single channel for pilotage purposes so that such monitoring is feasible. The real cause for alarm in this case is not that there is competition, but rather that poor

**Murphy** CONTINUED FROM PAGE 10

- Establish better recency criteria; some sort of a "use it or lose it" provision such as a minimum number of ship movements between license renewals.
- Give the pilot board specific authority to establish and enforce pilot tariffs.
- Exempt pilot associations from antitrust exposure. The staff determined that pilot associations provide the core of pilotage service and training in Alaska (as well as in all the other maritime states) and that pilot associations are the most efficient mechanisms for providing comprehensive, 24-hour per day, year-round pilot services.
- Recognize pilot organizations in state law and charter them to provide state approved training for deputy pilots.

As a result of the study and the obvious and glaring ineffectiveness of Alaska's present pilot statute, Ketchikan Rep. Cheri Davis introduced House

Bill 194, a complete overhaul of the pilotage act. This started some hurried action by the cruise ship industry, apparently led by Holland America Line. Industry has mounted an impressive lobbying campaign in Juneau which Alaska pilots would describe as disinformation. Industry claims to support HB 194 while at the same time offering in committee last minute amendments apparently designed to delay passage until the legislature adjourns and the bill dies. These foreign flag operators have made no bones about their opposition to regional licensing, their desire to contract with their own pilots and their preference for a competitive pilotage system with no fixed tariff where the lowest bidder gets the piloting job.

The lobbying efforts of the cruise industry are being assisted by a small new group of so-called Alaska pilots led by individuals who do not reside in Alaska, do not hold full and unlimited state pilotage licenses, and who were involuntarily disassociated from the

Southeastern Alaska Pilots Association (SEAPILOTS), the former longtime provider of pilot services to Holland America . . .

This is enormously frustrating to Alaska pilot associations because, in the past, representatives of the cruise industry have complained to the state pilot board about the low caliber of some pilots. Yet when associations terminate a pilot for cause . . . that same person shows up as a competitor on the ships of one of the complaining companies! I believe this is a powerful example of bad faith on the part of the industry.

The opposition to the new Alaska pilot act by wealthy and powerful cruise ship companies is viewed by Alaska resident pilots as an assault on their profession, their independence as public pilots and, certainly, their livelihoods. If industry manages to defeat HB 194, a difficult future lies ahead. Alaska pilots face a situation where non-resident, part time pilots

**Murphy** CONTINUED ON PAGE 12

**PERSPECTIVES**

**Jones** CONTINUED FROM PAGE 10

piloting is being allowed to continue.

Therefore, under the best scenario, the better the pilot, the more work that pilot gets. This was the situation in San Francisco Bay prior to the forced amalgamation that the California legislature allowed in 1985. There were several inland pilots who were simply better than others and were frequently employed for trickier maneuvers at the request of agents serving vessels headed for such areas. Among them were Capt. Ken Hulme and Capt. Sam Davies, both now deceased, and we made frequent use of their skills. Their ability was such that the Coast Guard would frequently lift fog related shut downs once either captain started moving from anchorage! However, since 1985, the situation has deteriorated significantly which is widely acknowledged in the industry. Since a mandatory rotation system is now used (a frequent result in non-competitive areas), often times pilots are not suitably matched to the task at hand and the risk of an incident is greatly increased.

We won't go into the tremendous cost increases that have resulted because this article is related to safety issues, but I'm sure those whose task it is to approve the extra pilot and tug bills that now occur will be nodding agreement on this point!

*Any system that allows competition for jobs and innovation is innately superior to one that does not.*

Another example of competition benefitting safety is the current situation that exists in the Bering Sea and Bristol Bay. Prior to 1988, there was no competition for piloting jobs in this entire vast region. In that year a group of pilots in the existing organization broke away and formed their own association. Before this, feeder vessels calling Alaska in the fisheries trade often were forced to enter Alaskan

pilotage waters without a pilot at all! Then, when requesting to make the frequent inter-port shifts that the fish processors require of them, they often had to wait the required 36 hours for a pilot before they could proceed, on their own, to deep water destinations, where prudence mandated a pilot regardless of the wait, they were forced to sit idle much longer. In a place where weather, wind and tides are at such extremes, it is not very safe to force vessels to wait 36 hours for anything! It seemed that in the summer, when the salmon were running and the big fisheries push was on, vessels plying the Gulf of Alaska would get preference on available manpower. Despite our repeated protests and innumerable meetings, this went on for years. Into this frustrating void came the new association and now the trade is well served, year round, by a group dedicated to it. Safety is vastly improved. All vessels have a pilot when and where they need them (Alaska weather permitting of course!)

**Jones** CONTINUED ON PAGE 12



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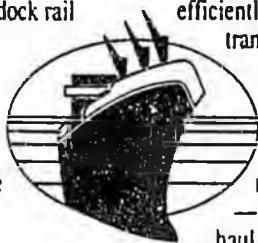
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**Murphy** CONTINUED FROM PAGE 11

come to Alaska in the summer and take the "cream" jobs at a cut rate.

Instead, pilots will be forced into inappropriate employer/employee relationships with shipowners where a pilot's independent navigational judgment on the bridge will be clouded by the financial and competitive interests of his shipowner employer. Pilots will worry more about keeping their jobs than performing their proper public service role of insisting that shipmasters follow the rules in Alaska waters. In short, Alaska pilots are worried about industry control of state piloting. Such a scenario is in no way far fetched.

Finally, if Holland America, that fine old company now under new ownership, and others in the cruise ship industry of similar persuasion get their way and realize a short term financial gain by advancing a system of cut rate pilotage with company pilots, they will create a future good for no one. Industry itself will come to regret the days of cut rate pilotage and industry will truly get what it pays for in the pilot profession. When that happens I predict the cruise ship operators will be back in Juneau. But this time they will be the ones asking for a better and safer state pilot system with independent pilots and a fixed tariff. ■

**Jones** CONTINUED FROM PAGE 11

and the practice of convoying several vessels at a time by a single pilot has stopped. The skill level and requisite familiarity that are so vital in the ever-changing harbors of western Alaska are improved.

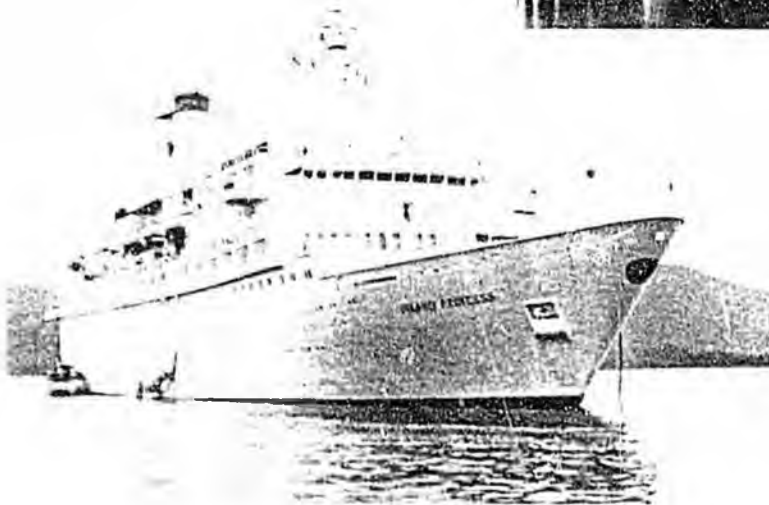
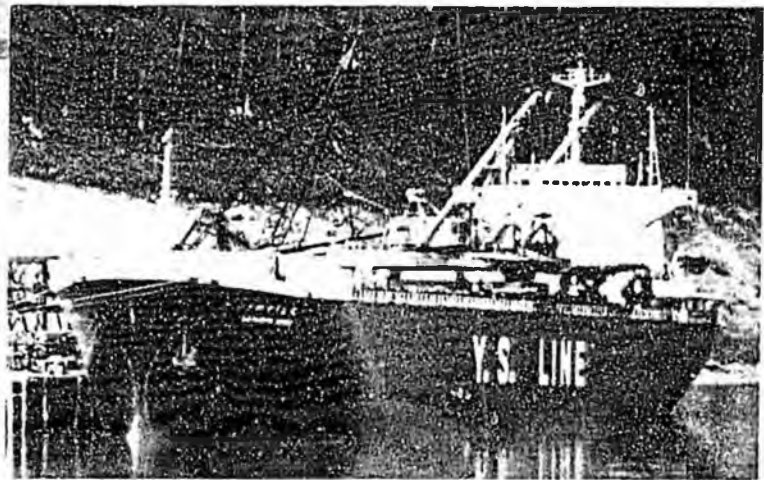
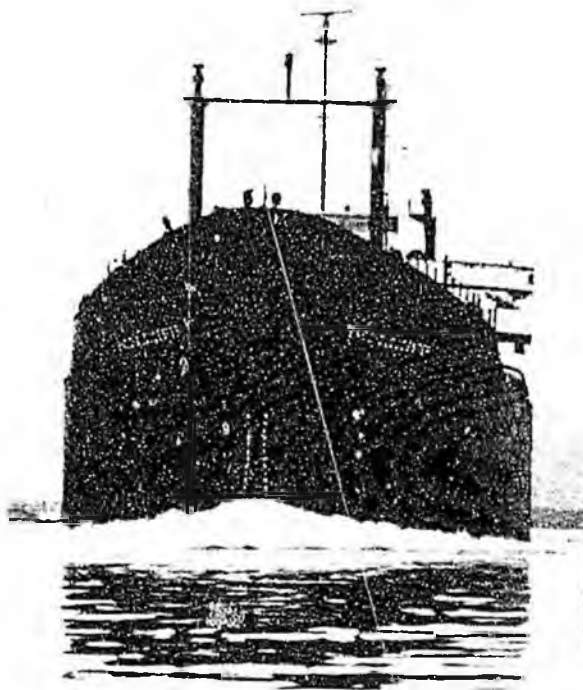
In conclusion, the benefits of competition are a positive force toward safety, especially when a strong pilot board is diligently exercising its prerogative. Any system that allows competition for jobs and innovation is innately superior to one that does not. That is why we so strongly favor the maintenance of such a system in Alaska. It is far more responsive to real issues of vessel safety instead of philosophical ones. Those that are opposed to this are either ill-informed or else do not truly have safety at the core of their concern. ■

**THE FOLLOWING DOCUMENT  
HAS NOT BEEN FILMED  
BUT IS AVAILABLE IN THE  
ORIGINAL FILE**

*SEE SENATE TRANSPORTATION Comm.  
SB 218 FOR A COPY OF THIS DOCUMENT  
ON MICROFICHE*

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

# Improving Alaska's Marine Pilotage System



Office of the Governor  
Division of Policy  
November 1990

