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Improving Alaska's Marine Pilotage System



Office of the Governor
Division of Policy
November 1990



IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

(Final Report)

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November, 1990

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EXECUTIVE SUMMARY

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

1. FINDINGS

• *Pilotage serves an important public function.*

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

The current system in the United States splits responsibility for pilotage between the federal government and the maritime states. The federal government exercises control over vessels engaged in domestic trade. Individual states have the authority to require compulsory pilotage for foreign ships and for United States flag ships on foreign voyages operating within the waters of the state.

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

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

Alaska's statute, unique among the maritime states, treats licensing as an individual right rather than as a franchise to perform a public service. This emphasis on rights has embroiled the Board of Marine Pilots in controversies with individual pilots, diverting time and attention away from larger issues facing state pilotage.

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

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

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

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

For the first 10 years after the passage of the State Pilotage Act in 1970, the marine pilotage system in Alaska virtually ran itself. Pilots voluntarily organized themselves into two associations to serve the Southeast and Southwestern regions of Alaska. The associations were responsible for hiring, training, and dispatching pilots and collecting fees from shippers. Occasional discipline problems with individual pilots were handled internally.

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

Challenged by pilots new to the system, traditional association control over pilot training and discipline has been eroded by legal actions and fears of potential liability.

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

The Alaska Marine Pilot Act—originally designed to give the Board the flexibility to respond to new conditions—has not provided the Board the clear authority it needs to deal with the current situation.

2. CONCLUSIONS

The state has a compelling interest in maintaining a system of compulsory pilotage for state waters. To secure this interest, the report proposes an explicit social contract between Alaska's marine pilots and state government.

In return for limiting pilot liability and protecting pilot organizations from antitrust litigation, the state should require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

3. RECOMMENDATIONS

Specific recommendations for strengthening the State Pilotage Act and improving pilotage regulation in the state are summarized below:

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

- The Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more **extensive entry-level requirements** for state pilots.
- The Board should establish an **additional pilotage region** in the Aleutian Chain/Western Alaska region.
- The Board should move towards **exclusive licensing** by region.
- The Board should establish increased **standards for progressive licensing**, including a formalized deputy pilot program. The Board should develop training criteria that provide all deputy pilots equal opportunity to perform the ship movements necessary to upgrade their licenses.
- The Board should establish a **check-ride system for fully-licensed pilots**, conducted by senior pilots designated from each region by the Board.
- **Recency criteria** should be adopted for pilots to maintain endorsements for specific waters and ports.
- The Board should be authorized to conduct **random substance abuse testing**.
- Every pilot should be required to submit to a **complete annual physical exam**.
- The Board should develop an approved list of **continuing education** options and require that pilots complete a course between license renewals.
- The Division of Occupational Licensing should be authorized to hire a **full-time marine pilot coordinator** to investigate marine accidents, review training programs and participate in license examinations.
- **All complaints concerning pilotage service** should be directed to the State Board through the Marine Coordinator—not to pilot organizations.
- The state should pursue the possibility of establishing an **accord with the U.S. Coast Guard** to share information about accidents/incidents, conduct joint investigations and to coordinate mutual requirements.
- The state **should not place a specific limit** at this time on the number of pilot licenses issued.
- In order to trace the future effects of increased entry-level and training requirements on the supply of pilots, the Board should **compile the information on ship movements**, currently filed with the Division of Occupational Licensing, into a form which is usable for management purposes.
- Over a period of time, if the Board determines from its management reports that there is a **shortage or an overage of pilots** relative to the demands of shipping, it should take the steps necessary to relieve the situation. Such steps may include requesting legislative authority to limit the number of licenses
- The Board should have authority to consider accident investigation and other state

administrative costs in setting pilotage rates.

- Board meetings should be scheduled at least **three times per year**, with provision for emergency meetings at the request of the chair.
- The Board of Marine Pilots should be enlarged to include **pilot, ship agent and public representation from the Aleutian Region** of the state.
- **Pilot organizations should be recognized** in state law and chartered to provide state-approved training for deputy pilots.
- In return for limiting liability and providing protection from antitrust litigation, pilot organizations should have their **bylaws and operating rules approved by the Board**.
- The Board should be authorized in statute to establish an **enforceable tariff schedule**.
- In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to **submit copies of their annual audits to the State Board** or, in the case of individual contract pilots, to keep their books open for state audit.
- Individual **pilot liability should be limited** in statute to a specific dollar amount.
- **Pilot license fees should be reviewed** by the Board and **increased substantially** to reflect the increased costs of program administration.
- The tariff schedule should be reviewed by the Board and adjusted where necessary. The Board should consider **special rates for unique circumstances**.
- The Board should have the authority to include a **training fee in the tariff schedule** to provide partial support for training and continuing education programs.

IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

1. INTRODUCTION

A. STUDY BACKGROUND

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

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

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

B. METHODOLOGY

The first steps in the study methodology involved a review of marine pilotage literature and an analysis of pilotage statutes for the maritime states. Paul Kirchner, General Counsel to the American Pilots' Association, provided an extensive written opinion on the comparability of Alaska's standards to those in other states.² The bulk of information on the present status of marine pilotage in Alaska came from numerous discussions with individual pilots as well as responses to a written survey of all 94 licensed marine pilots. Meetings were held with representatives of the various pilot associations, Department of Law, Department of Commerce and Economic Development (Division of Occupational Licensing staff), and the U.S. Coast Guard. Members of the Board of Marine Pilots were interviewed by phone as were licensed ships' agents from all of the shipping service companies operating in the state.

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

Copies of the draft report and legislation were released to the Board of Marine Pilots, staff from relevant state agencies, pilot groups, and other interested parties in October for review. Comments received as a result of the review process are appended to this report³. The study authors presented the report and comments from reviewers to the Board of Marine Pilots at its November meeting in Anchorage.

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

C. STUDY OUTLINE

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

2. HISTORICAL BACKGROUND

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

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

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

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

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

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

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

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

Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of states, respectively, wherein such pilots may be, or with such laws as the states may respectively enact for the purpose.⁷

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

...every coastwise sea-going steam-vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when underway, except on the high seas, be under the control of pilots licensed by the inspectors of steamboats.⁸

This act effectively established a dual piloting system in the United States: the historical state system and a new federal system. Generally speaking, vessels engaged in foreign trade (vessels sailing under register⁹ and foreign-flagged vessels) are under the authority of the states while American vessels engaged in domestic trade are under federal authority. One exception to this general division of responsibility is Great Lakes traffic, which is under the exclusive regulatory control of the federal government through the Coast Guard. The exemption from state law of Great Lakes vessels was made pursuant to an international treaty with Canada which provides for piloting by persons having either U.S. Coast Guard or Canadian licensure.

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

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

3. COMPARISON OF ALASKA STATUTES WITH THOSE OF OTHER STATES

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

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

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

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

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

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

A. SYSTEM OF REGULATION

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

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

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

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

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

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

B. LICENSING

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

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

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

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

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

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

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

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

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

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

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

C. PILOT DISCIPLINE

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

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

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

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

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

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

D. PILOTAGE RATES

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

E. PILOT LIABILITY

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

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

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

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

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

Alaska statute does not speak to pilot liability.

F. PILOT ASSOCIATIONS

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

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

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

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

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

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

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

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

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

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

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Delaware	State; Board of Pilot Commissioners; 5 members—3 pilots, 1 industry, 1 public	yes; statutory limitation (42 first class, 10 total for second, third and fourth class)	must serve apprenticeship; examined by at least three members of Board	4-year apprenticeship; number of apprentices employed at any one time under control and within discretion of Board.	one year	no
Florida	State; Board of Pilot Commissioners; ten members: 5 pilots, 2 industry, 3 general citizens	yes; "the board shall determine the number of pilots based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services." §310.061 Board determines number for each port. When vacancies occur in the number of required pilots, examinees are appointed on the basis of highest score on written exam.	state pilot must serve two years as deputy pilot; deputy pilot must have had maritime experience satisfactory to the board (detailed in statute); federal first-class unlimited license; written examination for both pilots and deputy pilots. Pilots licensed or certified for and appointed to specific ports (State pilots are "licensed;" deputy pilots are "certified")	licensed pilots in each port "shall submit to the Board for its approval a deputy pilot training program of not less than 2-years duration." §310.075 Training program includes progressive increases in size and tonnage of boats handled and comments of the pilot in charge on each training journey.	hold licenses "so long as they possess the qualifications set out in [the] chapter and remain in active service in the ports for which they are appointed." §310.081	no
Georgia	local ports	yes; statutory limits at each port	determined by local portcommissioners	no	not mentioned	no
Hawaii	State; director of the department of commerce and consumer affairs licenses	no	standards developed by director	no	all licenses expire on June 30 of even numbered years	no
Louisiana	local ports (Governor actually appoints pilots but on recommendation of local Board of Examiners)	unclear: "Whenever there exists a necessity for more...pilots, the board of examiners shall hold examinations for all applicants who have registered with them." (R.S. 34-945)	examination developed by local Board of Examiners; "steamship pilots" must have federal first class license	must have completed an approved apprenticeship program	not mentioned	must be voter of the state

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Maine	State; Maine State Pilotage Commission. 5 members: 3 pilots, 1 industry, 1 general public with marine background	yes; Commission shall "select only such number of pilots as would be necessary to permit adequate pilotage in these waters." §38.90 (H)	statute cites only federal first class endorsement; however, commission has authority to "establish and determine the qualifications of any person applying for a pilot's license and conduct examinations." §8.90 (C)	no	5 years	yes
Maryland	State; Board of Pilots. 9 members—1 department head, 1 president of pilots' association, 3 pilots, 2 industry, 2 consumers	yes, indirectly by controlling number of apprentices; "from the list of qualified applicants, the Board may choose and appoint the number of apprentice pilots that the board considers necessary to protect the commercial interests of the State." §11.305	apprenticeship to get limited license; have limited license and provide pilotage for 3 years for other licenses.	apprenticeship	2 years	no
Massachusetts	local harbor districts	no	determined by local district commissioners	no	not mentioned	no
Mississippi	local port commissions	yes; "duty of the commissioners to appoint... a sufficient number of pilots...necessary for the protection of the harbor and the advancement of public shipping" §59-1-7	qualifications passed on by port commissioners	no	appointed for 4 years	no
New Jersey	State; Commissioners of Pilotage; six members "selected from among such persons as have been officers in our naval, revenue or merchant service, or such as have been commanders of vessel engaged in our coasting trade." (§12:8-1)	not mentioned. Vessels sailing from any US port bound in or over bar of Sandy Hook must request a pilot in writing from commission; commission assigns pilots in rotation. (§12:8-8)	examination by commissioners in presence of one or more branch pilots of the state; qualifications and local knowledge	Deputy pilot: 4-year apprenticeship; examination by commissioners. Full branch pilot: 2 years of deputy pilot and examination by commissioners	not mentioned	no

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New York	City of New York; Board of Commissioners of Pilots; six members, 3 elected by members of NY State Chamber of Commerce and Industry, 2 elected by presidents and vice presidents of Maine insurance companies, 1 from among members or staff of the Albany port district commission	yes; commissioners "shall license for such terms as they may think proper, as many pilots as they deem necessary to pilot ships to and from the port of New York." (Art 6, Sec 90.) same provision for Hudson River and Long Island Sound pilots.	examination "in presence of one or more pilots licensed for the waters regarding which such applicant seeks to be examined." Shall be examined in particular on local knowledge. (Art 6, Sec 92),	Sandy Hook pilots must complete 4-year apprenticeship; "United New York Sandy Hook Benevolent Assoc...shall have sole control over all apprentices and be changed with the responsibility to instruct such apprentices in their duties...no other apprenticeship will be accepted by the commissioners." (Art 6 Sec 90)	not mentioned	"a license shall be denied any to any person holding any license or authority from or under the authority of the laws of any other state." Art. 6, Sec, 90)
North Carolina	local commissions	yes; commissioners shall govern the number of pilots necessary to maintain an efficient pilotage service, but at no time shall the number of active pilots exceed a statutory limit for each port (exclusive of docking masters). Refers to holders of full licenses. Limited licenses may be issued in excess of statutory number.	may examine such persons as hold a federal pilot's license. Exam includes but not limited to personal interview before commission, contact of personal references and physical exam by licensed physician.	Commission may appoint apprentices when deemed necessary for the best interests of the state. Apprentices serve for a minimum of one year but no longer than 3 years in order to be eligible for limited license. "Commission shall adopt rules and regulations to monitor the progress of apprentices on a regular basis to assure the progressive development of knowledge and skill necessary." (§76A-7)	one year	no
Oregon	State; Oregon Board of Maritime Pilots; nine members: 3 general public, 3 pilots (representing different pilotage areas), 3 from industry.	yes; Board to "regulate and limit the number of pilots to be licensed...to the number found by the board to be required to render efficient and competent pilotage service." (§766.115)	satisfactory performance on written examinations prescribed by board together with practical knowledge; river pilots must have 6 months continuous service piloting ocean-going vessels over subject waters.	no	one year	no

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State	Level of Regulation	Limits on Number of Pilots	Requirements for License	Training	Duration of License	Residency Requirement
Pennsylvania	State; Board of Commissioners of Navigation	yes; "no person shall receive a license as a first class pilot till the number of first class pilots be reduced to less than 42, and that the whole number of first class pilots shall not exceed 42." (55 P.S. §41)	examination by not less than three pilots of the first class called by the Board	4-year apprenticeship for fourth class license. Must have fourth class license to obtain other classes; apprentices must make at least 48 trips per year up or down the Delaware	one year	no
Rhode Island	State; State Pilotage Commission; 4 members, 1 licensed pilot, 2 state administrators	no	posses master's license of unlimited tonnage issued by US authority, first class federal endorsement for appropriate section of state waters, state pilot's license for waters of Block Island Sound, complete training in duties as pilot "over the route under supervision of the board of state licensed pilots appointed by the commission for this purpose." (§46-9-7)	see prior for training requirement for original license. Commission has authority to "appoint a special board of state licensed pilots to supervise the training and instructions of those persons seeking eligibility to apply for a pilot's license." (§46-9-7)	5 years	no
South Carolina	local port commissions	yes; number of pilots for each port limited by statute	examined by local board of examiners to consist of "three nautical men," one of whom is licensed for the port in question. Satisfactory completion of apprenticeship and recommendation by a majority of pilots licensed to the port; oral and written examination of general and local knowledge.	3-year apprenticeship; apprentices must be a graduate of an accredited 4-year college or hold an unlimited Third Mate's License.	not mentioned	no
Texas		yes; governor shall not appoint more than 4 or less than 2 for Matagorda;	be at least 25 and a U.S. citizen; have a federal pilot license for area in which	apprenticeship under supervision of one of the independent pilots' associations	not mentioned	no

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

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

4. CURRENT STATUS OF MARINE PILOTAGE IN ALASKA

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

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

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

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

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

the picture. While competition does bring with it increased responsiveness to industry needs, it also raises the question of pilot independence from shipowners. A basic tenant of state pilotage is that the pilot is first and foremost concerned with ensuring safety of life, property, and the environment and secondarily with the efficiency of trade. If unregulated competition between pilots is allowed, some argue, the above priorities are reversed: pilots act in the interests of shipowners first and only secondarily in the public interest.

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

A. REGIONAL CHARACTERISTICS

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

1. Southeast Region—Southeastern Pilots Association (SEAPA)

The southeastern pilotage region extends from Ketchikan to Yakutat. The SEAPA office, which dispatches pilots and bills shippers, is located in Ketchikan. SEAPA does not have its own pilot boats; commercial vessels are chartered to deliver pilots to ships at the various pilot stations in the region. Approximately 80-90 percent of the ships moved by SEAPA pilots are cruise ships, with the rest being cargo ships. There are 21 members of SEAPA, all of whom hold unlimited licenses, and 15-20 contract pilots are employed by the association during peak summer months. Contract pilots can be broken into two categories, those who do not have an unlimited license (and therefore do not qualify for membership in the association), and others who have not been accepted into the association or are not interested in joining.

The Southeastern Pilots Association has experienced the most internal problems of the three major groups of marine pilots operating in the state. In the past few years the association has been beset by numerous legal difficulties. A letter²⁹ from SEAPA attorney, C.L. Cloudy includes a list of the types of legal claims that have been made against the association:

1. Assertions that because SEAPA permits use of its dispatch and income-expense pooling service by nonmembers, the non-member pilot is entitled to membership and if he is denied, then antitrust or monopoly violations have occurred.
2. Assertions that SEAPA as an association has a responsibility to arrange for and direct its membership to permit observer trips for license upgrade purposes by non-members.

3. Antitrust claims that SEAPA has no right to drop a non-member from a dispatch contract for navigational error, failure to report for assignment, or other causes.
4. Claims that SEAPA cannot lawfully limit its membership and to do so constitutes some sort of antitrust and monopolistic act.
5. Claims that income shifting as is practiced in most pilot associations is unlawful. Currently income shifting within SEAPA occurs only with respect to nonmember pilots as noted above, and year-round expenses are paid out of a summer income pool as an alternative to income shifting.
6. Claims that because SEAPA accepted a non-member for dispatch, the Association and entire membership warranted his qualifications and can be held liable for his negligence.
7. Claims that it is illegal for SEAPA to "selectively" dispatch by matching experience with the call for pilotage even though licensing may be equal.

During the past two years there have been two lawsuits brought against the association alleging that the association leadership covered up or failed to discipline members accused of alcohol abuse while on duty.³⁰ This spring two dissident pilots signed a contract with a cruise ship company to provide pilotage services directly, without going through the association.

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

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

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

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

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

Until three years ago, SWAPA handled all pilot service from Prince William Sound to the west and north, including the Aleutian Chain. With the establishment of Alaska Marine Pilots in Dutch Harbor, SWAPA service in western Alaska has dropped off. Currently, it handles the larger ships operated by the American President Line and will be responsible for providing pilots to service the Red Dog Mine ore shipments. The Marine Pilot Board recently defined the compulsory pilotage waters for the Kavalina area with the intention that ore ships carry a state-licensed pilot in designated waters. Over the past summer, the association experienced difficulties with the shipping company operating the ore ships out of Cominco port. State action may be needed to enforce company compliance with state pilotage regulations.

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

3. Western Alaska/Aleutians Region—Alaska Marine Pilots (AMP)

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

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

The founder of AMP describes his organization as a response to a market niche created by the expense and difficulty of servicing the growing Aleutian Chain fishing trade

from Homer. He estimates that several millions of dollars have been saved by industry in pilot travel costs by moving pilot dispatch to Dutch Harbor. AMP also stations a pilot in Sand Point.

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

B. IDENTIFIED PROBLEM AREAS

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

1. Entry Level Requirements

Alaska statute states that:

- a person is *entitled* to a license under this chapter if a person
- (1) is of good moral character
 - (2) is a citizen of the United States
 - (3) passes an examination given by the board; and
 - (4) qualifies under the regulations adopted by the board...³¹

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

Licenses of all classes are issued by geographic area. Currently, state regulations recognize two regions—Southeastern and Southwestern Alaska—although, as described above, pilotage in Alaska has evolved distinct characteristics in three separate regions.

Pilots may operate only in the geographic area for which they are licensed; however, with the appropriate experience, pilots may be licensed in both areas.

Applicants for all classes of licenses must hold valid Coast Guard licenses both as a first-class pilot for vessels of any gross tons³² upon the waters for which the applicant seeks state licensing and as a master of steam or motor vessels of 10,000 gross tons or greater. Progression from initial licensing through unlimited licensing requires actual experience in ship movements, usually dockings and undockings, of ships of increasing size. The original intent of the regulation appears to have been that this experience would be obtained in the area for which the applicant sought licensing. However, recent interpretations of the statute and regulations by the Attorney General's office has removed this geographical limitation. Therefore, applicants desiring to move from Step 1 to Step 2 limited or to unlimited licensing in one geographic area may obtain the necessary experience in ship movements anywhere in Alaskan waters.

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

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

A parallel and even greater perceived problem is that the licensing requirements themselves, even if they were enforceable, are not sufficient to insure competency. Many survey respondents and others contacted in the course of this study pointed out several weaknesses. A strong concern was that Alaska does not require enough sea-going experience prior to licensing. Applicants for an initial limited license must either have been a Coast Guard licensed master or pilot on local waters for at least one year or execute a minimum of 20 dockings and undockings under the supervision of a state licensed pilot. Channel license applicants must document "all maritime experience in the waters for which he or she is applying."³³ Critics contend that hands-on experience gained at sea is perhaps the most important pre-requisite to efficient piloting. They believe that Alaska's requirements in this respect are woefully inadequate.

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

Critics of the system point to other states, which often require an apprenticeship or a period as deputy pilot for two years or more, during which time the apprentice/deputy engages in a combination of classroom instruction, observation of master pilots, and completion of a variety of ship handling tasks under varying conditions and on vessels of increasing size. Alaska's requirements, on the other hand, can be met within a relatively short time period. Nothing in the regulations would prohibit a person from completing the required number of dockings in one or two days, all with the same ship at the same port. Indeed, there have been allegations that some applicants have done precisely this. Nor do the regulations define what is meant by a successful docking/undocking. One senior pilot facetiously responded in the survey that he could watch an applicant wipe out a dock and could still certify that he had observed a successful docking/undocking.

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

Finally, the Board requirements for license renewal have come under attack by some members of the profession. Statute provides that "a license shall be renewed without examination upon the payment of the license fee."³⁴ Licenses are renewed biennially. The Board, by regulation, has added the requirement that:

a licensee who has not piloted the compulsory pilotage waters of Alaska during either of the last two biennial license periods cannot be granted a license renewal until the board has determined that the licensee has sufficient knowledge and recent experience to pilot safely in the areas for which the licensee is licensed.³⁵

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

2. Competition

A long-time member of the Southeastern Pilots Association, Captain Harley Clough, listed the priority of a marine pilot's responsibilities very succinctly:

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

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

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

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

From a public policy perspective, competition is one of the thorniest issues to address in state law. On one hand, the statements by pilots cited above are absolutely correct—the integrity of the state's marine pilotage system is based on the independence of its pilots. Direct competition among pilots, particularly tariff competition, can compromise safety in the long-term. In a number of states, pilot associations require members to sign an anticompetition covenant before they can be accepted into the organization for training.³⁶

On the other hand, shipping traffic is increasing in Alaska and the state's interest is served by ensuring that there is an adequate number of pilots in all regions to provide pilotage services. If a group like AMP can provide more cost-efficient pilotage for the Aleutians without undercutting the tariff or compromising their ultimate indepen-

dence as pilots, then they should be encouraged. In the future, it is quite possible that an additional pilot organization might be formed to service shipping in Northwestern Alaska.

Presently, there is no objective information available on the supply and demand of pilots in Alaska. Such information is needed in order to make an informed judgement as to whether or not there is an appropriate number of licensed pilots in the state. Until the state has definite information that the current number of licenses is creating conditions detrimental to the safety of life, facilities or the marine environment, the study recommends that no action be taken to directly limit the number of licenses issued.

3. State Board and State Agency Support

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

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

4. Pilot Liability

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

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

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

In the past, pilots were rarely sued. As self-employed, independent contractors, they were thought to be judgement proof. Although a potential damage award against an individual pilot is still of dubious value today, pilots are nevertheless being named in suits with increasing frequency, often while recovery from pilots is clearly not the objective of the plaintiff. It is virtually automatic now that in any maritime accident, if a pilot was aboard, he will be named a defendant in one or more lawsuits. Usually, the legal fees alone are beyond the limited resources of the pilot. As a result, pilots today confront the reality that every time they board a vessel, they face the prospect of financial ruin, regardless of how well they perform their services. That situation does not promote better, safer pilotage or provide any other benefit to a state or its citizens.³⁷

Mr. Kirchner's analysis is included in this report as Appendix E.

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

During the past 10 years, the marine pilotage system in Alaska has experienced considerable growing pains as shipping traffic in state waters (and demand for pilots) has increased, particularly in the Southeastern and Aleutians regions. This growth has caused tensions and strains within the pilotage profession. For example, as new and younger pilots have entered the profession, some have questioned the authority of the associations. Increasingly, pilots are turning to the courts to protest association action or to claim damages. As a result, the associations' control over pilot training and discipline—which assisted the state in regulating the quality of pilotage services—has been eroded by legal challenges and fears of potential liability.

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

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

5. PILOT SURVEY

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

A. QUANTIFIABLE RESULTS

The survey contained two types of questions: those which could be answered by "yes", "no", or some other quantifiable response and open-ended questions which allowed respondents to elaborate. The survey instrument encouraged an anonymous response. Forms were not coded and completed survey forms were destroyed once the data were compiled. Table 3 lists quantifiable results to close-ended questions in the survey. Responses to open-ended questions are summarized following Table 3. Every attempt has been made to give a general sense of what association and contract pilots operating in each region of the state think about the major issues affecting their profession.

TABLE 2: SURVEY RESPONSES BY LICENSE TYPE

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

TABLE 3: SURVEY RESULTS

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

* NR=No Response

B. TRAINING

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

C. Alaska's System of Examination and Licensing

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

Other concerns and ideas cited by respondents include:

- More emphasis should be placed on documented sea experience and certified local knowledge.
- A formal deputy pilot or apprenticeship program should be adopted for pilots to gain hands-on experience. Periodic evaluations could weed out those individuals not suited to the profession.
- Efforts to adopt meaningful docking requirements have been frustrated by the Attorney General's Office. Docking and observer trip requirements should be increased.
- Entrance procedures could involve a competitive examination for a limited number of available licenses set by the Board of Marine Pilots.
- Under the present system it is possible to be licensed for a particular port without ever having been there.
- The present system allows examiners to hand pick candidates and can be manipulated by SWAPA and SEAPA to control their turf.

D. OPPORTUNITIES FOR UPGRADING LICENSES

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

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

E. TRAINING AND EXAMINATION FOR LICENSE RENEWAL

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

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

F. SIMULATOR TRAINING

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

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

G. ASSOCIATION VS. STATE-RUN TRAINING

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

Several respondents pointed out that the most experienced pilots belong to the associations, which makes them the logical choice to run pilot training programs, providing the state can limit their liability. One respondent stated that "a state-run training program would just be unnecessary bureaucratic meddling in an area in which it possesses no expertise." The most common response was that the associations should provide state-approved training in their respective regions and that training should be jointly funded by the state and the pilots themselves.

H. BOARD OF MARINE PILOTS

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

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

I. ASSOCIATIONS

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

towards their association than SEAPA responses, though several complained about the length of time it takes to become a member. One response accuses SWAPA of being "slow to respond to the changing demands of the shipping industry in their region."

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

J. LICENSE LIMITATION

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

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

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

K. STATE EVALUATION STANDARDS

Questions about the state's pilot evaluation practices drew the longest and most impassioned responses in the survey. Obviously pilots feel very strongly about these issues. A majority of contract and SEAPA pilots feel that state evaluation practices are not sufficient to maintain high standards within their profession. As one SEAPA pilot pointed out "basically no evaluation process exists." Several stated that evaluations

should include "hands on skills." One respondent stated that the current "docking and undocking sign-off is a joke. The sign-off should involve a true evaluation of skill before it can be counted towards a pilot's endorsement for a particular port." Again, the check-ride evaluation and a formal apprenticeship program feature prominently in pilot's responses.

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

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

L. THIRD-PARTY REVIEW OF EVALUATION PRACTICES

There was some confusion among respondents about this question. Most took it to mean independent review of pilots themselves, while others thought it meant review of association evaluation practices. A majority of SEAPA and contract pilots favor periodic evaluation by an independent third party, while a majority of SWAPA pilots do not. Several pilots commented in a similar fashion that "if a pilot is working at his trade without having accidents or complaints of near-misses, then an evaluation is meaningless." The most common response was that the state should hire a qualified evaluator not affiliated with any association (such as a retired ship captain) to provide pilot evaluations and report to the Board. Others stated that the Board should adopt evaluation practices and have them reviewed by a member of the American Pilot's Association, professional maritime consultant, or panel of experts.

M. LIABILITY PROTECTION

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

N. GENERAL CONCERNS

Space was provided on the survey questionnaire for pilots to offer comments on their general concerns about their profession. Comments that are not redundant with those listed above are summarized below:

SWAPA and AMP Comments:

- Public safety is not served by competition. That is why pilotage is a sanctioned monopoly.
- Pilot organizations should be chartered by the state and held to high standards.
- The state should urge the Coast Guard and NOAA to conduct more surveys and improve charting of state waters, some of which haven't been recharted since the '64 earthquake.
- Tariff adjustments should be made by region. Charges for Cook Inlet are too low—the same ship movement would be charged seven times as much in Puget Sound.
- Ship size and traffic have increased over the past 10 years without corresponding changes in dock size, configuration, and depth of berths.
- There should be an association policy about how large a vessel can be put into a particular dock.
- Pilots should not be licensed for more than one area of the state.
- The state needs to put more pressure on the associations to govern themselves.

SEAPA Comments:

- We need a change in attitude in the Attorney General's Office—they have stymied every attempt by the Board to increase standards.
- There should be a pilot station at the head of Chatham Strait and a summer station at Cape Spencer.
- The state needs to strengthen the State Pilotage Act and the Division of Occupational Licensing needs to hire a qualified full-time investigator to report to the Board.
- The present system allows power brokering by SEAPA and SWAPA. The associations should be combined and become state-controlled.
- Applicants for a limited number of licenses should be selected by interviews with the Board.
- We continue to have trouble with the cruise ship master-pilot relationship. If the pilot objects to some maneuver, he is told not to interfere or another pilot will be hired.
- The state needs to oversee an impartial evaluation process for new licenses and license upgrades, provide guidance to protect pilots from antitrust liabilities, and provide bonding to reduce liability.
- Pilots should be required to have some kind of work history in local waters before they can seek a license.

- There should be public members on the Board from each area of the state.
- The Administrative Procedures Act interferes with pilot discipline.
- There should be at least three Board meetings each year.
- There should be an inescapable apprentice period for all new pilots to weed out the bad ones.

Contract Pilots Comments:

- Unlimited pilots should have extensive sea experience on large vessels.
- The Board should conduct a stringent review of qualifications before applicants take the licensing exam and "yo yo" dockings should be disallowed.
- Except for a few areas, the present system is working well. The state should conduct a similar survey every few years to ensure that politics stay out of pilotage affairs.
- The state needs to get some qualified people involved in policing the associations.
- The state needs to take a more active role in the pilotage system and should appoint a three-member board of retired pilots/masters to give exams and set tariffs. The state could pay these people out of license fees so there would be no conflict of interest.
- The state should establish a cabinet position for maritime affairs to supervise all shipping activity including the Alaska Marine Highway System.
- The state needs to take a hard look at the way that SEAPA and SWAPA do business and make sure they aren't just controlling access in the guise of safety concerns. Some pilots have tried for two years to get dockings, while others are shepherded through in a few months.
- The state should make it illegal for the associations to charge nonmembers a greater than equitable share of expenses through their phony bylaws.

Summary: Pilot reaction to the points raised in Captain Murphy's letter was mixed. In general, pilots do not feel that entry level requirements in Alaska are too low. Nor do the majority of pilots believe that continuing education should be a condition of license renewal.

However, most pilots feel that simulator training should be available on the West Coast, even though many pilots question the benefits of such training for active, experienced pilots.

Contract pilots seem to agree that a third-party evaluation of active pilots would be beneficial, but that such evaluation should be left neither to ship captains nor to the associations. Pilots in associations, on the other hand, appear to be less concerned with evaluation of practicing pilots.

The overwhelming majority of pilots believe that the state should limit the number of licenses, even though they acknowledge that such limitation could cause problems with assuring an adequate supply of pilots.

Pilots indicate that the State Marine Pilot Board is experiencing difficulty in regulating the profession. Many feel that a combination of individual pilot pressure, association squabbles and the absence of a strong state policy regarding pilotage have seriously impaired the state's ability to exert adequate control.

Finally, most pilots feel that the current situation with respect to individual pilot liability is unacceptable. Most recommend that the state take some action to either limit liability or assure that pilots can obtain adequate insurance against claims for damages.

6. SHIPS' AGENT SURVEY

Telephone interviews were conducted with ships' agents in order to obtain industry's perspective on Alaska state pilotage. Representatives of the twelve ships' agent firms in the state were contacted. Four of the agents contacted operate exclusively in Southwest Alaska, one operates only in Southeast, and two service the Aleutian Chain. The remainder work statewide.

Five agents service all types of shipping. Three specialize in petroleum transport, one handles only coal shipments from the Seward port and two service only the fishing industry. One deals with both petroleum and fishing vessels. Five of the twelve agents reported that they provide a full range of services; the remainder provide a more limited range, with stevedoring and provisioning being the most commonly-provided services.

Frequency of agent requests for pilot services ranged from a high of two to three times a day during the peak season, tapering off to two or three days a week during the winter. Coal shipments require pilot services only two times a month. Agents reported that all of their pilots were requested through pilot associations or groups. Four agents worked with SEAPA, eleven with SWAPA and six with AMP (some agents use more than one association). Agents reported that their relationship with the association/group was "excellent" (3), "good" (7) or "OK" (2), although one agent did report "some problems with pilot association attitudes. Associations don't act like a service industry."

Agents were surveyed using a standardized questionnaire. Many of the same items contained in the pilot survey were asked of the ships' agents. Again, some questions called for a quantifiable response while others asked the agents to elaborate. Quantifiable responses to survey questions in tabular form are reported in Table 4. Additional comments by area follow the table.

TABLE 4: SHIPS' AGENT SURVEY RESULTS

Question	Yes	No	No Opinion
Do you have access to enough pilots?	11	1	
Are pilots dispatched in a timely manner?	10		1
Are pilots qualified for the duties and waters assigned?	11		1
Should Alaska limit the number of pilots?	3	7	2
Should pilots with unlimited licenses be allowed to pilot in all state waters?	4	7	1
Have you ever filed an accident report with the state?	3	9	
If so, did the Pilot Board take prompt action concerning the report?	2	4	
If you have ever reported negligence or incompetence, was the Board's action timely?	1	11	
Other than an accident, have you ever complained about the quality of pilot services?	3	9	
In general, do you and captains of the ships you represent have adequate means of reporting problems with pilotage?	9	3	
Would you favor a state-mandated pilot evaluation by masters/captains?	1	7	4
Is the present rate structure reasonable?	7	3	2
Is the present rate structure too complicated?	3	7	2
Do you have adequate opportunity to comment to the Board on proposed rate changes?	6	4	2
Do you feel that your concerns as a ship's agent are adequately addressed by the Board?	9	3	
Should agents be bonded for the payment of pilotage fees?	3	7	2
Should the state set a limit to pilot liability for damages?	2	3	7

Elaboration on or clarification of responses to the above questions are summarized below.

A. PILOTS ACCESSIBILITY AND DISPATCH

Several agents mentioned that it was sometimes difficult to secure a pilot during the peak season or for dispatch to an out-port. Three of the agents working in the Aleutian Chain commented that service was more sufficient and timely now that the Alaska Marine Pilots formed to service the Chain exclusively. Agents serving the petroleum industry had made arrangements with the appropriate association to have three or four pilots on call at all times.

B. PILOT QUALIFICATIONS

Although all agents answered that pilots dispatched were qualified for the duties assigned, many had suggestions for improvement of the current system. Seven agents mentioned the need to strengthen entry level requirements. Suggestions ranged from an apprenticeship program to seeking persons with long time sea experience as a captain or master. Three mentioned the difficulty pilots in their area had in gaining experience on larger ships or in having opportunities to perform the required number of docking/undockings. Two mentioned the difficulties experienced by the State Board in establishing and maintaining entry standards. One mentioned that "licensing rules are being bent and misused", while one perceived an effort by the state "to water down qualifications", based on weak regulations and Attorney General opinions.

"Continuing education? Absolutely!" responded one agent. Two others specifically suggested that some education/experience requirements be met before pilots are re-licensed. Several mentioned that pilot associations needed to better police the quality of their members. One suggested check rides. One agent suggested a mandatory retirement age.

C. EVALUATION

Agents voted down state-mandated pilot evaluation by ship captains or masters for a variety of reasons. Many pointed out that captains and masters of foreign vessels would have a language problem unless the evaluation form was translated into their native language. One agent felt that captains would not be candid, for fear of retaliation by the pilot association. Another agent felt that foreign captains and masters do not have enough knowledge to be capable evaluators. Other agents suggested that a system would just add more paperwork and that the state would probably not use the information anyway.

Most agents felt that the current system for lodging complaints against a particular pilot was sufficient. Several mentioned that masters and captains currently report problems to agents and that the agent works things out with the association by asking that the problem pilot not be dispatched to his/her ships again. While the system appears to work, it can be a two-edged sword: one agent mentioned that he was careful not to complain too often for fear of being labeled a "trouble-maker" and having his supply of pilots cut off. One mentioned that there should be some mechanism for agents to report problems directly to the state rather than to the association: "Associations used to take care of problems internally—now they don't. Associations are political themselves." Another agent shared this view, and reported complaining to the association about a pilot, but "nothing happened."

D. ACCIDENTS AND PILOT DISCIPLINE

Few agents had any direct involvement in reporting accidents, since this is the pilot's responsibility. However, those who had some knowledge of an accident and subsequent Board response did not feel that the disciplinary action was fair or timely. One mentioned that the state "swept the accident under the rug." Three agents called into question the state's ability to effectively investigate accidents and suggested a person with maritime experience be hired to investigate accidents and other incidents. One agent suggested turning investigation over to the state troopers. One suggested an 800 toll-free number for reporting accidents.

E. LIMITING THE NUMBER OF PILOTS OR THE AREAS FOR WHICH A PILOT IS LICENSED

More than half the agents were strongly opposed to limiting the number of licenses. One agent commented "limiting pilots will create a monopoly. It's much better to have highly qualified pilots by raising qualifications." Most felt that such a limitation would lead to a pilot shortage, particularly in the more difficult and less accessible areas of the state. One mentioned that the state may already be facing a pilot shortage: "If business increases at current rates, we won't have enough pilots as it is." Another felt that such a move would limit economic growth and cited the expansion of cruise and cargo ships in recent years.

One agent in favor of limiting the number of pilots suggested that the state "re-test all existing pilots—don't grandfather."

Although agents don't favor limiting the number of pilots, they do favor limiting the area in which a pilot is licensed. All stressed local knowledge as the primary attribute of an efficient pilot and commented that "Alaska is too big for a pilot to operate everywhere." Other agents commented that "there is too much difference in local conditions."

F. PILOTAGE RATES

Eight of the agents felt that the current rate schedule is reasonable. Three mentioned that it is uneven—too high for some areas, too low for others. Two mentioned that rates must be enforced across the board, with no undercutting by individual pilots or pilot groups. Only three found the current system too complicated. Although agents generally felt that they had opportunity to comment to the Board on proposed rate changes, several mentioned that they were not always informed in time to make comment.

G. STATE BOARD

Most agents feel that their concerns are adequately addressed by the State Board. One mentioned that both current lay members are from Southwest Alaska, leaving

Southeast under-represented. The same agent also felt that the state should better educate the lay members so that they could take more active part in board deliberations. One agent mentioned that "there is lots of dissent in the pilot associations at present which spills over into Board activity." Two agents mentioned an "adversarial relations between the Attorney General's office and the Board" and the fact that the AG's assigned to the Board "lack understanding of the pilotage profession."

H. BONDING FOR PILOTAGE FEES/PILOT LIABILITY FOR DAMAGES

Most agents did not feel that agents needed to be bonded for pilotage fees. All responded that they paid up promptly, but several mentioned that associations may have problems with other agents.

Opinions on whether or not the state should address the question of pilot liability for damages caused by pilot error were mixed. Several agents felt that the current system worked well and that the state should stay out of the issue. One felt that the state should increase pilot exposure. Another felt that the state should perhaps limit pilot liability to a fixed amount.

I. PILOT INDEPENDENCE FROM SHIP OWNER CONTROL

One agent felt that some ship agents firms were getting too large and "the agents want to control the pilots—this would be a mistake."

J. STATE DEREGULATION

One agent commented that while it is "somewhat beneficial to have some deregulation, you cannot do away with regulation totally. The problem with pilotage is that it is difficult to deal with individuals. With doctors, the profession is somewhat self-regulating. Clients don't have to deal with the individual if they don't want to. In pilotage, you deal with an association. You must rely on existing pilots to police and control."

K. ALASKA STATE PILOTAGE SYSTEM

One respondent summed up well the present situation: "State pilotage in Alaska is in its infancy. When Alaska's pilotage regulations were adopted, the state didn't foresee how pilotage would develop. As circumstances change, current regulations don't work too well, but it is difficult to change the regulations."

Summary: As would be expected, ships' agents responses differed from pilot responses on several points. Agents are not in favor, for example, of limiting the number of pilots, expressing fears that such a limitation would make it more difficult to access a sufficient number of pilots for their needs. Nor do agents believe that the current situation with respect to pilot liability is unworkable.

On the other hand, agents are more ready than pilots to suggest that the state upgrade entry level qualifications for licensing. They are also generally in favor of limiting licenses to a specific geographic area, as long as this does not make unreasonable demands on the industry.

Agents agree with pilots that ship captains cannot effectively evaluate pilots. Agents see the State Board of Marine Pilots as more responsive to their concerns than do pilots. However, some agents would like more timely notification of proposed Board action, particularly with respect to rate setting, location of pilot stations, and determination of compulsory pilotage waters.

7. CONCLUSIONS AND RECOMMENDATIONS

This report accepts the premise that the state does have a compelling interest in maintaining a system of compulsory pilotage for state waters. The exponential increase in passenger ship traffic, the heavy state and local government investment in port facilities and the *Exxon Valdez* disaster all point to increasing rather than decreasing state involvement in the maritime industry to protect life, property and the environment. In light of this compelling state interest, the overall conclusion of this report is that state regulation of pilotage has not kept pace with changes in the industry.

The conclusions and recommendations embodied in this report amount to an explicit social contract between Alaska's marine pilots and state government. In return for limiting pilot liability and protecting pilot organizations from antitrust litigation, the state would require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

Based on the results of several surveys, meetings with involved parties and numerous conversations with State Board members, individual pilots and ships agents, the report finds the following with respect to the existing system:

A. ACKNOWLEDGEMENT OF THE STATE'S INTEREST IN PILOTAGE

Most states include a statement on public policy and the state's interest in pilotage in the opening section of their marine pilot statute. Such statements generally include 1) protection of life, property, and the environment, 2) the importance of efficient shipping, and 3) the public service nature of the pilot's role. A crucial element is the acknowledgement of the independence of pilots from steamship owners and agents. Such statements remove any ambiguity about the state's interest in and authority to control compulsory pilotage in its waters.

At present, the Alaska Marine Pilotage statute does not contain a section on public policy or state interest in the control of pilotage.

RECOMMENDATION:

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

B. PILOT QUALIFICATIONS

That state pilots hold extensive knowledge of local waters should be the foundation of, and rationale for, a compulsory pilotage system. However, the study finds that existing state entry level standards cannot assure that all licensed pilots have this special knowledge. Alaska's extensive coast line, difficult weather conditions and numerous ports of varying size and accessibility preclude one individual from gaining extensive local knowledge of the entire state. Thus, the Alaska situation appears to dictate regional licensing. Given both diverse physical characteristics and region-specific types of shipping traffic, qualifications and entry-level requirements may differ by region. However, documented, extensive sea-going experience should be a basic entry-level requirement of prospective pilots in all regions.

While some of the knowledge required for piloting can be acquired by traditional educational methods, local knowledge is best gained through hands-on experience under the direction of senior or master pilots. In this respect, the report questions whether or not the current sea-going experience and docking/undocking requirements are sufficient for licensure. All other maritime states require more extensive training and sea-going experience than does Alaska, although Alaska's size and diversity makes its compulsory pilotage waters among the most extensive and difficult in the country.

Based on information received, the report also questions whether or not pilots currently holding limited licenses have adequate opportunity to gain the experience necessary to upgrade their licenses.

The report finds that existing statutory and regulatory language is insufficient to allow the State Board to set up and enforce entry level qualification which can adequately ensure the required local knowledge on the part of state pilots.

RECOMMENDATIONS:

1. The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.
2. The Board should establish a third region in Western Alaska in addition to the two current regions (Southeast and Southwest).
3. The Board should strongly consider setting additional requirements by region to accommodate differing physical conditions and shipping patterns. The Board

should move towards exclusive licensing by region. A transition period should be established to allow existing pilots who are licensed for more than one region of the state to choose their licensing region. Pilots new to the system should be required to train in and be certified for only one region of the state. The Board should be given the authority to allow inter-regional endorsement for specific ports to allow for a smooth transition between current regulation and exclusive licensing by region. Strict recency requirements should be adopted for pilots who wish to maintain inter-regional endorsements and no new inter-regional endorsements should be issued.

4. The Board should be authorized to establish a formalized deputy pilot program, with substantial experience requirements (in addition to existing tonnage requirements) that must be completed before a pilot is allowed to take the exam for a higher license. Each pilot seeking a higher license should also be required to pass a check ride evaluation. The Board should require the pilot organization of each region to develop training procedures that enable all deputy pilots to have equal opportunity to perform ship movements, take observer trips, and perform the dockings/undockings necessary to upgrade their license.

C. PILOT EVALUATION AND RELICENSING

Currently, the state has no system for evaluating pilots after they have been licensed. Once a person has obtained a license of any type (with the exception of a temporary license), s/he is free to operate under that license indefinitely upon payment of a biennial license renewal fee and submission of a physical exam results. In theory—and allegedly, in practice—pilots can hold endorsements for state waters and for ports which they have not visited for years. Pilots can continue to renew licenses with only minimal actual pilotage within a two-year period. Finally, although new technologies are being introduced in the industry, the state currently requires no continuing education for licensed pilots.

Because the state has an interest in assuring the continued competency of the pilots to which it has granted licences, the report concludes that the current system of virtually life-long licensure without periodic evaluation is insufficient.

Despite national concern about substance abuse, particularly in occupations of high importance to public safety, Alaska currently conducts no oversight of the marine pilots in this respect. This lack is particularly troubling in view both of Alaska's known high incidence of substance abuse and of several recent legal actions alleging abuse among pilots.

Finally, some persons contacted in the course of the study expressed concern that Alaska had no age limit for license renewal. A mandatory retirement age has been suggested. The study concludes that physical condition rather than age should be the main judgement criteria. In this respect, the existing general, biennial physical

examination requirements are insufficient to ensure that pilots maintain the level of health and stamina required by the profession.

RECOMMENDATIONS:

1. The Board should establish a check-ride system for fully-licensed pilots, that would allow the skills of each pilot to be observed prior to license renewal. Check rides should be evaluated by current senior pilots (i.e., peer-review), designated from each region by the Board. The check-ride evaluator should be considered an employee of the state at the time s/he performs the evaluations and should be insulated from liability exposure and peer pressure in the performance of the evaluation duty.
2. Recency criteria should be adopted for pilots to maintain endorsements for specific waters and ports. Some form of "use it or lose it" provision, such as a minimum number of ship movements between license renewals, should apply to all pilots.
3. The Board should be authorized to conduct random substance abuse testing.
4. Every pilot should be required in statute to submit to a complete annual physical exam administered by a fully-licensed, practicing physician.
5. The Board should develop an approved list of continuing education options, such as simulator or Automatic Radar Plotting Aids (ARPA) training, and require that pilots complete a course between license renewals.

D. PILOT DISCIPLINE

In the past, the state relied upon the pilot associations to handle pilot discipline within their own ranks. However, recent court cases allege that associations are no longer willing or able to fulfill this function. Therefore, the state must increase its ability to monitor the profession.

The study finds that Alaska's statute concerning pilot discipline is among the most comprehensive and modern of the maritime states. However, the study also finds that the statutory sanctions are seldom invoked. Major hindrances to the efficient policing of pilotage by the state appear to be the difficulty in obtaining timely information about accidents and incidents and the lack of trained marine investigation personnel to follow up on those which are reported.

RECOMMENDATIONS:

1. The Division of Occupational Licensing should be authorized to hire a full-time marine pilot coordinator, to be funded with program receipts from increased pilot license fees and a portion of tariff receipts. Ideally, the coordinator would have no connection with any pilot organization in the state and would be approved by the Board of Marine Pilots. S/he should be qualified to review pilot organization training programs, participate in license examinations, and investigate accidents and incidents of pilot misconduct. The coordinator would report findings to the state Board for action. Allegations of pilot misconduct should be expeditiously handled

by the board under the powers granted in AS 08.62.150-155.

2. All complaints concerning pilotage service should be directed to the State Board through the Marine Coordinator—not to pilot organizations.
3. The state should pursue the possibility of establishing an accord with the U.S. Coast Guard to share information about accidents/incidents, conduct joint investigations, and coordinate mutual requirements (e.g., for physical examinations, substance-abuse testing, etc.). Study staff have made preliminary contact with the Coast Guard on this issue and believe that additional discussions would be fruitful.

E. LIMITING THE NUMBER OF PILOTS

Every other state places a limit on the number of pilots either by explicitly setting a limit in statute, delegating responsibility to set a number to a Board(s), or through an apprenticeship program where piloting associations must recommend an apprentice for licensing. Sentiment among pilots and pilot groups in Alaska is strongly in support of granting the Board of Marine Pilots similar authority to limit the number of licenses issued. However, as mentioned in the body of the report, Alaska's compulsory pilotage system differs in significant respects from that of other maritime states. Compulsory pilotage waters in the state cover substantially larger areas than those of other states, where pilotage is generally limited to specific ports. The size of Alaska's regions impose travel costs and potential time delays on industry associated with bringing qualified pilots from their home location to the ship to be serviced. As the shipping industry evolves in the state, the pilotage system must maintain the flexibility to form new associations and groups closer to the point of shipping activity. The desires of some pilots and pilot groups to limit the number of licenses must be weighed against the larger issue of efficient service to the industry and, ultimately, to the consumer of shipped goods. The study concludes that at the present time there is no objective information that too many pilots have been licensed by the State of Alaska. Study findings suggest that ease of entry rather than absolute number of licenses is the problem to be addressed.

If the recommendations in this report are accepted, the number of pilots in each region will be controlled indirectly through increased entry-level qualification requirements, extended deputy pilot training, increased license fees, an enforceable tariff schedule, and increased requirements for license renewal. In addition, the capacity of regional training programs to accept new entrants will be limited by virtue of the fact that the suggested training will require much greater participation and oversight by senior pilots. The effect of the new licensing requirements on reducing the number of active pilots in the state is as yet unknown.

RECOMMENDATIONS

1. In order to trace these effects, this report recommends that the Board compile the information on ship movements, currently filed with the Division of Occupational Licensing, into a form which is usable for management purposes. Over a period of

time, if the Board determines from these management reports that there is a shortage or an overage of pilots relative to the demands of shipping, it should take the steps necessary to relieve the situation. Such steps may include requesting legislative authority to limit the number of licenses issued.

F. BOARD OF MAINE PILOTS

The study concludes that during the past few years, the Board of Marine Pilots has been thwarted in attempts to adopt and enforce higher standards for pilots, largely because of inconsistent policy direction from various DCED commissioner's designees on the Board and conflicting legal advice from the Attorney General's Office. The report finds that current statutory language defines a state pilot license as an individual right and not as a franchise granted by the state to perform a public service. This language has led to a situation whereby state efforts appear to be directed at meeting individual pilot interests rather than asserting the state's interests in protecting life, property, and the environment.

The current make-up of the Board does not recognize changes that have taken place in the industry. Currently, the Board has heavy representation from two regions and none from the Aleutian region. The two public members on the Board are both from the same region. State representation on the Board (i.e., the DCED commissioner or designee position) appears to be of limited value in asserting state interests, primarily because of the high turn-over rate of designated members.

During the course of the study, it was found that the Board currently requires individual pilots to file frequent reports on ships' movements which they have handled. Study staff had intended to utilize this information to provide a more quantitative description of Alaska's shipping industry. However, the information received by the Board is not maintained in a useful format. The report concludes that existing reports are not being utilized by the State Board or the DCED. Yet, the state should have access to the management information necessary to efficiently regulate marine pilotage in the state.

RECOMMENDATIONS:

1. The Board must be given specific authority in statute to set pilot license fees and tariffs, impose experience and training requirements as it sees fit, set physical/health standards, and require drug and alcohol testing of pilots.
2. Since Board actions benefit the entire shipping industry, particularly with respect to pilot qualifications, accident investigation, and rate setting, the Board should have authority to consider state administrative costs in setting pilotage rates. A portion of the tariff would be returned to the state and could be used, on appropriation by the Legislature, to assist in funding program administrative costs.
3. Because of increased duties and responsibilities being recommended for the Board, meetings should be scheduled at least three times per year, with provision for emergency meetings at the request of the chair.

4. Board membership must be increased to encompass all three of the state's pilotage regions. In order to preserve balance of representation, it is recommended that an additional pilot, ships' agent and public member be appointed to the Board to represent the Aleutian region.
5. Given the emphasis in the proposed legislation on regional licensing and entry-level requirements, no action on setting regional requirements should be taken until Board membership has been altered to include all affected regions.
6. The DCED Commissioner or designee position should be reassigned to accommodate the membership changes set out in Recommendation Number 4. The fact that the Board operates under the aegis of the Department of Commerce and Economic Development appears to be sufficient to assure that state administration concerns are taken into consideration by the Board.
7. In its review of association by-laws, the Board should require that procedures by which the associations recommend representatives to the State Board allow equal participation from all association members.
8. The Board should organize the detailed information on ships' movements currently submitted by individual pilots into a form which can be used in making management decisions. Where additional information is determined to be necessary for the regulation of pilotage, the Board should have the ability to require this information from individual pilots and pilot associations.

G. PILOT ORGANIZATIONS

Despite current internal problems within some pilot associations, the report concludes that associations and other voluntary organizations of pilots will continue to provide the core of mandatory pilotage services in Alaska, as is standard practice in all other maritime states. If the above recommendations concerning increased entry level requirements are adopted, the associations will be called upon to play the major role in training, since their members constitute the largest pool of senior pilots with unlimited licenses. Under the recommendations for pilot evaluation, association members will also take the responsibility for peer review. In performing these functions for the state, associations must have liability protection.

The report also concludes that pilot associations and groups are the most efficient mechanisms for providing comprehensive, 24-hour per day, year-round pilot services. Although individual pilots can and should be allowed to continue to operate independently to provide specific services, without some form of pilot association, portions of the state and the industry are very likely to be under-served. If associations are to continue to perform the services of pilot dispatch, they must be cleared of antitrust charges.

However, the report also finds that in return for recognition and protection from antitrust allegations, the state should more closely monitor association activities.

Based on U.S. maritime history and the experience of other states, as well as the testimony of most Alaskan pilots, the report concludes that unregulated competition among pilots can have a corrosive effect both on the quality of services provided and on the independence of state pilots from shipowner control. While nothing in state regulations should grant monopoly rights to associations or preclude individual pilots or groups of pilots from providing more efficient service to the industry by cutting down travel time and costs or by moving dispatch services closer to the point of ship traffic, competition based only on pilotage rates should be discouraged. Where such competition has been allowed in other states,³⁹ the result has been a cut-throat battle for lucrative shipping jobs while more difficult routes, remote ports and unusual vessels have been unable to obtain timely services. Additionally, to corner the most desirable assignments, pilots and pilot groups have apparently given up a large measure of independence and operate essentially as employees of the shipowners.

RECOMMENDATIONS:

1. Pilot organizations should be recognized in state law and chartered to provide state-approved training for deputy pilots.
2. In return for limiting liability and providing protection from antitrust litigation, the state should require that pilot organizations file their bylaws and operating rules with the Department of Commerce and Economic Development. The Board should have the authority in statute to veto bylaws and/or suspend the charter of organizations for practices that it feels do not serve the public interest.
3. In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to submit copies of their annual audits to the State Board or, in the case of individual contract pilots, to keep their books open for state audit.

Note: The charter of pilot organizations does not preclude individual pilots from offering their services independently, so long as they adhere to the tariff schedule.

H. INDIVIDUAL PILOT LIABILITY

The study concludes that the traditional liability protection afforded pilots has been eroded by an increasing number of "nuisance suits" brought against pilots. This exposure is expected to increase as a result of recent federal anti-oil-spill legislation. Although pilots should continue to be held liable for wanton and reckless behavior, some dollar limitation on liability would relieve pilots from being automatically included in any claim for damages arising from performance of their duties.

RECOMMENDATION:

1. Individual pilot liability should be limited in statute to a specific dollar amount. Most states which have enacted such protection set the amount at \$5,000.

I. PILOT LICENSE FEES AND TARIFFS FOR SHIP MOVEMENTS

The existing fee schedule for pilot licenses appears to be extremely low and has not been amended for several years. The report finds that a biennial fee of \$180 has little relation to either the administrative costs associated with renewal or the value of the license to the holder. Most other maritime states charge significantly higher fees.

The tariff schedule has been in effect since the early 1980's and does not reflect changes in cost of living or in the industry. In addition, as mentioned above, the Board's authority to set and enforce rates has been called into question.

RECOMMENDATIONS:

1. Pilot license fees should be reviewed by the Board and increased substantially to reflect the increased costs of program administration. It is recommended that the Legislature consider treating license fees as program receipts and authorize that they be used to partially fund a marine pilot coordinator and evaluation requirements. Based on other states' rates, an annual license fee for pilots of \$1,500 appears to be reasonable.
2. The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.
3. The tariff schedule for ship movements should be reviewed by the Board and adjusted where necessary. The Board should consider special rates for unique circumstances, such as ferrying fisheries observers to vessels in Dutch Harbor.
4. The Board should be given the authority to include a training fee in the tariff schedule. The fee would be used by associations and individual pilots to provide partial support for training and continuing education. A portion of the fee should accrue to the state as program receipts which, if appropriated by the Legislature, would cover expenses for evaluation check rides.

FOOTNOTES

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

² See Appendix C for a copy of Mr. Kirchner's letter.

³ See Appendix A for a summary of public comment.

⁴ Florida Statutes §310.001

⁵ Captain Earnest A. Clothier and Captain Hilton Lowe, *State Pilotage in America: Historical Outline with European Background*, American Pilot's Association, 1979, p. 11.

⁶ Gibbons v. Ogden, 9 Wheat 207

⁷ 46 United States Code §8501

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

⁹ Vessels sailing under register are American vessels engaged in foreign trade or in any trade other than that requiring a coastwise, Great Lakes or fisheries license.

¹⁰ According to Paul Kirchner, counsel for APA, "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." Telefax communication from Paul Kirchner, "Comments of the American Pilots' Association on Review Draft of The Alaska Marine Pilotage Study", November 5, 1990.

¹¹ Alex L. Parks, The Law of Tug, Tow and Pilotage, Second Edition Cornell Maritime Press, 1982.

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

¹³ 22 SLA 1973

¹⁴ 78 SLA 1977

¹⁵ AS 08.62.010

¹⁶ Quick, George A., "The Role and Function of a Pilot", paper presented to the National Academy of Sciences, 1979, pp. 8-10.

¹⁷ Code of Virginia §54-1-905

¹⁸ AS 08.62.100

¹⁹ See Massachusetts Statute Chapter 103 §3 and Maryland Statute §11-305 for examples of discretionary language.

²⁰ Washington Statutes §88.16.035)

²¹ Florida House of Representatives Committee on Regulatory Reform, *The 1989 Report on the Issues Associated with Mandatory Pilotage*, November, 1989.

²² *Report of the Pilotage Study Group* to the U. S. Coast Guard, September, 1989, p. 6.

²³ Washington Statute §88.16.100

²⁴ AS 08.62.155 (a)

²⁵ AS 08.62.040 (4)

²⁶ California Statute §1134

²⁷ Oregon Statute 776.520

²⁸ Hawaii Statutes §462A-15

²⁹ A copy of Mr. Cloudy's letter is included in Appendix D.

³⁰ "Marine Pilot Group, Member Tangle Over Accusations," Juneau Empire, May 24, 1989.

³¹ AS 08.62.100 (emphasis added)

³² A license for "any gross tons" is an unlimited license, enabling the holder to work on ships of any size.

³³ 12 AAC 56.050 (3)

³⁴ AS 08.62.120

³⁵ 12 AAC 56.080 (b)

³⁶ Judith L. Linfield, "A Survey of North American Pilot Training Programs," California Maritime Academy, 1990.

³⁷ Paul Kirchner, Letter to C. L. Cloudy, July 27, 1990. See Appendix E.

³⁸ Only Florida (Tampa Bay Port) and Connecticut have experienced such competition. Both states are currently attempting to remedy the situation by law or regulation.

Appendix A

Summary of Public Comments
on Review Draft of Study

**APPENDIX A:
Summary of Public Comment
on Review Draft of Study**

Copies of the review draft of the Alaska Marine Pilot Study, together with proposed legislation, were widely distributed to concerned parties for review and comment. Written comments were received from pilots, ship agents and state agency staff, analyzed by study staff, and presented to the State Board of Marine Pilots at its November meeting. Where possible, comments have been incorporated into the final draft. Comments addressed to particular study recommendations are summarized below:

STUDY RECOMMENDATIONS

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

Comments:

SEAPA

- tie board duties and responsibilities back to legislative intent
- state that it is intent of legislature to limit number of pilot licenses

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

Comments:

Coast Guard:

- entry level qualifications too stringent
- would exclude marine ferry employees
- State should have same qualifications as Coast Guard
- use Coast Guard nomenclature, where appropriate, to avoid confusion

Alaska Maritime Agencies

- should keep provision for two years as Master in local region

SEAPA

- 1600 tons or more
- calculate time same as Coast Guard
- minimum service time
- refine wording re: experience appropriate to specific region to preclude charter fishing boat, pleasure boat, etc.
- set requirement at "six years licensed seagoing experience"
- set specific hour requirements under different types of Coast Guard licenses

AMP

- 1600 gross ton or more
- add two years service as active pilot in an association
- allow pilots who do not meet entry level requirements to enter training program, but to undergo additional training (similar to an apprenticeship program)

SWAPA

- allow for experience on any vessel of 1600 gross tons
- delete section concerning appropriate to region or require that person gain experience while holding master's license

Other pilot (unidentified region)

- 1600 gross tons

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

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

Comments:

SWAPA

- define regions but keep Dutch Harbor and Captain's Bay in Southwest Region
- allow port endorsement outside region only for those pilots so licensed at effective date of legislation

AMP

- don't allow port endorsements outside region
- allow transition period, based on recency experience

SEAPA

- don't allow port endorsements outside region
- grandfather, but make new requirements mandatory at next renewal

Alaska Maritime Agencies

- regions a good idea, but agents must maintain right to employ any qualified pilot in region regardless of group with which they are affiliated

Other

- don't allow port endorsements in other regions
- grandfather existing licenses

• *The Board should establish increased standards for progressive licensing, including a formalized deputy pilot program. The Board should develop training criteria that provide all deputy pilots equal opportunity to perform the ship movements necessary to upgrade their licenses.*

Comments:

Other

- current docking/undocking requirements inadequate

SWAPA

- detail steps of deputy pilot program
- require simulator training
- set limits for training period
- state that deputy must complete training to be eligible to take exam for limited license, not over 20,000 gross tons

SEAPA

- current docking requirements inadequate
- give associations sufficient leeway to allow them to train new pilots and to take in new members according to internal criteria so long as criteria reasonably adhere to guidelines set forth and are equitably administered by association
- give Board explicit authority to oversee training programs

Coast Guard

- require simulator training
- recurrent training for working pilots to deal with new technology (similar to airplane pilots)
- consider establishing a separate "docking pilot" license

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

Comments:

Other

- check ride evaluation not appropriate for marine pilots

SEAPA

- check ride evaluation not appropriate for marine pilots

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

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

Comments: (includes comments on renewal as well as recency)

SEAPA

- require 60 days service in last biennium as federal or state pilot as condition for renewal
- grandfather existing pilots from meeting entry level requirements

AMP

- define familiarization trips

Coast Guard

- for each year that license has lapsed, require two round trips on vessels over 1600 GT to each major port and waterway in pilotage region, with at least one trip made at night

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

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

Comments:

Coast Guard

- require that pre-employment physical exam include-chemical test for dangerous drugs
- follow Coast Guard requirements for physical exams prior to license renewal
- consider having state appointed physicians establish minimum physical standards relating to vision,

- hearing and general physical condition and possibly review and/or administer general physicals
- use Coast Guard terminology for "chemically impaired"

SEAPA

- define chemically impaired to cover both habitual substance abuse and intoxication/drug use while on duty

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

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

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

Comments:

Alaska Maritime Agencies

- good concept as long as individual performs investigative and clerical support functions for board
- must not assume operational or administrative control of policy

SEAPA

- assure that coordinator operates subject to guidance and oversight of Board
- Board must maintain primary authority
- will be difficult to find qualified person to take job
- coordinator should also be specifically empowered to direct and assist in accident investigations

Other

- coordinator could become dominant individual, usurping Board authority

Coast Guard

- agree that accord between Coast Guard and state should be established

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

Comments:

SEAPA

- limit number of licenses

Other

- new pilotage act should have provisions for closely monitoring pilot requirements and for only issuing licenses that satisfy those requirements

SWAPA

- Board should be authorized to limit number of licenses

American Pilots Association

- Board should be authorized to limit number of licenses

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

Comments:

Alaska Maritime Agencies

- expenses of state Board in conducting the state's business should be part of the tariff

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

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

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

Comments:

SEAPA

- replace "may" with "shall" in proposed legislation when referring to powers and duties of Board

SWAPA

- Board should not only have authority in statute but should be mandated to perform listed duties and responsibilities

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

Comments:

SEAPA

- give board authority to review both associations and independent pilots
- section recognizing associations is meaningless as written. Should state that state will sanction pilot associations as long as their bylaws and operating procedures are approved by the state
- The state should consider some of the more abstract aspects of the regulated monopoly issue before it embraces that concept completely.

- Marine pilots as a class should not be denied the protection offered to all other citizens under existing antitrust laws?
- a lack of competition does not assure competence

SWAPA

- amend antitrust laws to exclude marine pilot organizations

American Pilots' Association

- clearly state legislative intent to remove pilot organizations from antitrust law

AMP

- include "independent contractor" in proposed legislation after pilot associations to make clear that pilots are independent within their association for liability purposes

• In return for limiting liability and providing protection from antitrust litigation, pilot organizations should have their bylaws and operating rules approved by the Board.

Comments:

Federal Trade Commission

- make board authority over pilot associations more explicit
- make non-competition agreements illegal
- allow board to hear antitrust or monopoly complaints brought against pilot organizations

Alaska Maritime Agencies

- Board should have statutory authority to approve all dispatching and working rules employed by association

SEAPA

- Association policies do not promote enhanced professionalism or competent pilotage

- The State must investigate disciplinary policies of the Pilot Associations and safeguard them from being merely a vehicle for advancing the views of an empowered minority.
- The State must accomplish a vigorous and comprehensive review of the bylaws, operating rules, articles and other documents of the associations with regard to establishing and maintaining the rights of pilots to due process, free speech and freedom to pursue a livelihood in their chosen profession.
- Associations cannot be watchdogs over themselves

• *The Board should be authorized in statute to establish an enforceable tariff schedule.*

Comments:

SWAPA

- don't create special tariffs by region

SEAPA

- don't create special tariffs by region
- state that tariff schedule is to insure safe, efficient and year-round pilotage service

AMP

- current inequities in state tariffs need to be addressed

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

Comments:

Alaska Maritime Agencies

- Board should be able to conduct audits of financial records for purposes of tariff adjustment and approval/rejection of items claimed by pilot associations that impact tariff

SEAPA

- the State must look into the practice of spreading liability for litigation costs and legal settlements against association among contract pilots who have no voice in Association business
- the State must assure that income and expensing procedures are equitable and equal to the work performed.

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

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

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

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

Comments:

Alaska Maritime Agencies

- any expense not directly related to shipboard operations should not be recovered through the tariff; for example, legal and travel costs associated with restraint of trade cases pending against pilot groups

Appendix B

Letter from Captain W.E. Murphy to Governor Cowper,
January 1, 1990

Letter from Governor to Captain W.E. Murphy
March 21, 1990

Capt. W.E. Murphy, Inc.

P.O. BOX 597
HOMER, ALASKA 99603

(907) 235-8271

January 1, 1990

*Hand del. by
Wes
Coyner*

Governor Steve Cowper
Capitol Building
Juneau, Alaska

Dear Governor:

I am writing to alert you to serious problems in state marine piloting which I believe should be of grave concern to you, to legislators and to the public. The following observations and conclusions have been reached after more than 15 years of piloting in Southwest Alaska and 4 years of service on the Alaska Board of Marine Pilots, 3 of them as chairman.

State pilotage in Alaska is in trouble in several ways. High standards of training and performance are legally nonexistent and those imposed by pilot associations are being eroded by legal action. Outside steamship agents are manipulating pilots and sponsoring competition to the detriment of safety and thereby striking to the heart of state pilotage. The Alaska Board of Marine Pilots faces an increasingly uphill battle to maintain and strengthen pilot training and performance standards. Alaska is the easiest state in this country in which to obtain a state pilots license.

ERODING AND NONEXISTENT STANDARDS OF TRAINING AND PERFORMANCE

Traditionally, pilot associations throughout the U.S. have set and maintained standards of training and performance for pilots. The pilot association of which I am a member, Southwest Alaska Pilots, typifies most pilot groups which maintain strict qualification and training standards. Our pilots have extensive seagoing backgrounds, have attended the best shiphandling simulators available in the world today and have passed a long training and check-ride system with veteran pilots. We have long recognized that the state license is entry level only and not an assurance of competency. Local association requirements such as ours should be the minimum a responsible pilot association should expect and be able to maintain. Sadly, however, pilot associations nationwide find it increasingly difficult to maintain high professional standards.

The traditional role of pilot associations as trainers and watchdogs over professional standards is being eroded by an alarming trend in today's legal climate. Locally imposed standards are failing to protect and maintain a high standard of piloting for at least two reasons:

1. Pilots have successfully sued their own associations claiming the group had no right to selectively dispatch or impose training on an individual because the pilot already had a Coast Guard and state license and, hence, a "certificate of competency."
2. Association lawyers are telling us these days that associations are probably liable if a pilot who has been trained and otherwise qualified by an association, absent some kind of statutory requirement, has an accident.

Today's dismal legal situation for pilot association training programs is combining, to the detriment of safety, with a weak state pilotage act which does not require high enough licensing standards to reinforce the association imposed requirements being eroded away by court decisions. Alaska's state pilotage act requires relatively minimal seagoing background and Coast Guard license and no apprenticeship training at all for beginning pilots. Not only are there virtually no state required training standards or training program for candidate pilots, neither are there recurrent training and continuing education requirements for practicing pilots. These low standards should be cause for grave concern.

The standards required for a Coast Guard pilotage endorsement, prerequisite for a state license, are even more paltry and inadequate than those imposed by the state.

It is an open question how long pilot associations, on their own, can hold the line on high professional standards. I submit the ultimate victim of today's worsening legal situation coupled with virtually nonexistent state and federal standards will be the professionalism and competency of piloting in Alaska and, ultimately, the safety of intra-state marine transportation. Could the state of Alaska be found liable if a serious maritime accident occurred at the hands of a state pilot whom a court determined was insufficiently qualified and trained?

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January 1, 1990
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CONTROL AND MANIPULATION OF STATE PILOTS BY OUTSIDE STEAMSHIP AGENTS AND ITS EFFECT ON SAFETY

The problem of low entry standards coupled with Alaska's practice, unlike any of the other 22 maritime states, of issuing an unlimited number of licenses is creating a surplus of licensees, many of whom have had scant seagoing background and little or no training. I believe this system is being taken advantage of by Outside steamship agents who feel that competition among pilots is in their interest. The situation is beginning to cause accidents:

- When the SWALLOW grounded and polluted Dutch Harbor last year she was waiting for a pilot. There was a pilot ready and available but he was from an association not in favor with the steamship agency that represented the ship. Hence, the ship had to wait for a pilot from the preferred group. While waiting the mate on watch apparently fell asleep and the ship then went aground.

- In another more recent incident a pilot who was on duty in Dutch Harbor was contacted by an agent and asked to bring a ship, REEFER FRESH, into inner Iliuliuk Harbor. The pilot refused the job on grounds of safety: the ship was judged too large to enter Iliuliuk under the conditions then prevailing. The agent thereupon contacted a competing pilot group whose members had no such compunctions. That group dispatched a pilot to the job. Witnesses state the ship went aground maneuvering to enter the channel and had to be pushed off by tugs.

- Currently there is a movement afoot by some licensees to offer "through service" pilotage on cruise ships which transit both Southeastern and Southwestern Alaska during summer months. Their claim is, presumably, that such service will cost the operators less money. Veteran pilots from both geographic areas agree that there is no way an individual pilot can maintain the high degree of currency and local knowledge of both these huge areas necessary to do a credible and safe job of piloting. But rather than lose their livelihoods these veterans will offer the same service, despite their serious reservations, if they must in order to survive.

Unlike groceries or airline fares, for example, state pilotage should not be a commodity in the market place where competition is seen as good because it keeps prices down and service up. In piloting, there are public interest implications of safety which have a higher value than competition. That is why the maritime states control piloting and set rates much as they do with a publically regulated monopoly such as a utility company.

Competition between pilots for jobs totally violates the "guts" of state pilotage, the essence of which, as you know, is the independence of the state pilot from the interest and control of the shipowner or his agent. A pilot should make shiphandling decisions based on safety considerations only rather than on the shipowner's or agents' commercial interest. He is not free to do this if he is forced to hustle jobs and fend off other pilots who may be in favor with particular agents or who may offer a shipowner or agent a better "deal". Ideally, the state pilot sees his allegiance to the citizens of the state and to local political authority. He must be insulated from commercial demands, unrelated to safety, imposed by having to vie with other pilots for jobs. Only in this way can safety be served. It is important to note that of the 23 coastal states only Alaska permits competition between pilots.

If these concerns sound self serving they are not intended to be. The issue here is not individual pilots or pilot groups. Rather it is the integrity of Alaska's state pilotage scheme. A system which permits an unlimited number of licenses and requires little or no training is ripe for tampering by commercial interests. I submit that this is happening and safety will continue to suffer if a better system is not put in place.

PILOT BOARD DIFFICULTIES IN MAINTAINING AND UPGRADING STANDARDS

During my tenure on the pilot board the twin problems of getting regulations in place and maintaining a meaningful system of pilot discipline were almost intractable. This was largely because of what can only be termed an uncooperative, if not obstructionist, attitude by the department of law toward the pilot board and, indeed, perhaps toward all boards. For example, the department of law recently opined that the pilot board had to issue a pilot a license for Southeastern Alaska based on dockings and undockings he performed in Southwest Alaska!

Governor Steve Cowper
January 1, 1990
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Law department attorneys claim that the way the pilot statute is written is responsible for those kinds of interpretations. If that is indeed the case, then the state pilotage act should be overhauled and rewritten so that sensible and meaningful regulations can be put in place in a timely way and not delayed and thwarted by state attorneys whose job it is, presumably, to help the board. This is manifestly not the case now.

PILOT DISCIPLINE

When pilots err, as they occasionally do, it is the pilot board's job to discipline them, when appropriate, after due process. The problem here is that due process is routinely taking between 2 and 3 years before a pilot discipline case ever comes before the board. During this hiatus, the pilot in question continues to hold his license and works on it with no restrictions. This makes pilots and the maritime public view the pilot board as a paper tiger that never takes prompt disciplinary action. Even worse, it is unfair to the public which rightfully expects errant pilots to be dealt with.

EASE OF ENTRY

Alaskans probably expect that their state government requires high standards for entry into the demanding profession of ship piloting where the consequences of failure can have a profound impact on them and the environment. Unfortunately, that is not the case. It is a fact that Alaska is the easiest state in which to obtain a pilot's license. In this state liquor licenses, taxi cab permits and commercial fishing entry permits are limited among individuals for the larger public good. Ironically, an unlimited number of pilot licenses can be issued. Biologists tell us that the fish resource cannot withstand unlimited pressure from too many fishermen. I submit that the "resource" of maritime safety cannot withstand the pressure of too many pilots, particularly when many of them are poorly qualified and trained.

RECOMMENDATIONS

Alaska's state pilotage act should be thoroughly overhauled and rewritten. Only in this way can the problems I have cited be properly and permanently dealt with. Specifically:

Governor Steve Cowper
January 1, 1990
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1. The new pilotage act should require the highest standards of entry and training:

- Applicants for license should possess a minimum Coast Guard license as master of ocean, unlimited.

- A comprehensive training program should be established which would be funded by the state using monies from pilot fees. The program should include simulator, observer trips and lots of hands-on shiphandling under the guidance and instruction of experienced pilots. At the completion of his or her training the trainee must be capable of independent piloting on lower tonnage vessels, advancing to larger ships as experience and performance permits. California has a program very much like this and I believe it could become a model for the profession. Alaska's goal should be to have the most qualified, best trained pilots in the country.

2. The new pilotage act should tightly control the number of licenses issued and in force consistent with the needs of shipping. Those needs should be established by a representative pilot board. This is done in all other maritime states I am aware of. It is the only way to prevent the unsafe situation where too many pilots compete for jobs by bowing to the commercial pressures of shipowners and agents. To prevent individual pilots or pilot groups from discriminating about who may become a pilot, the pilotage act should provide for state selection of trainees for licensure based on need and an objective set of professional criteria.

3. Working pilots should be required to complete recurrent training and ongoing education in the same manner as other professionals. Every 2 or 3 biennial license renewal cycles pilots should have to document completion of training at a shiphandling simulator previously approved by the pilot board.

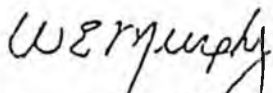
4. The new pilotage act should be written so clearly and concisely and the pilot board's authority stated so specifically that there is no longer the possibility of conflicting and contradictory interpretation by staff attorneys. A way should be found in the Administrative Procedures Act to permit timely resolution of pilot disciplinary cases.

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5. Finally, state pilots should be legal residents of Alaska. In many, many cases they are not. If one believes as I do that the state pilot license confers on the individual special obligations and responsibilities to the state then it follows that a licensee should live here.

The problems I have outlined are real, Governor. Alaska's system of mandatory state pilotage is in trouble. I urge you and your staff to examine the problems and find solutions. If I can help in any way I will gladly do so. Thank you for looking at this critical issue.

Sincerely yours,

A handwritten signature in cursive script that reads "W.E. Murphy".

Capt. W.E. Murphy

Governor Steve Cowper
January 1, 1990
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 21, 1990

Captain W. E. Murphy
P.O. Box 597
Homer, AK 99603

Dear Captain Murphy:

Thank you for your thoughtful letter concerning marine pilotage in Alaska. The issues you raise are of definite concern to me. They are also issues that should be fully addressed by both the Executive and Legislative Branches. As you know, the Board of Marine Pilots is up for sunset review next year. It appears to me that the upcoming sunset review process will provide the State with the forum it needs to explore the matters you have raised.

In preparation for that process, I have instructed Mary Halloran, Director of Policy in my Office of Management and Budget, to coordinate work on this issue during the interim. Your letter clearly suggests that the administration needs to get up to speed on piloting issues nationwide, and Division of Policy research staff will be most helpful in exploring the potential implications of the direction you see piloting regulation taking in Alaska.

As part of that work, the Department of Commerce and Economic Development, Division of Occupational Licensing, will look closely at other pilot licensing boards, report on the relationship between those state boards and related private pilot associations and be prepared to offer suggestions that address the antitrust concerns that result from these considerations.

Finally, the Department of Law will review the legal ramifications of issues such as pilot experience and training in light of my concerns for the protection of both our environment and Alaska's important renewable resources.

We will keep the Board of Marine Pilots apprised of our progress. I have also asked that these agencies seek the advice and comment of the state's piloting and shipping interests during this process.

Captain W. E. Murphy

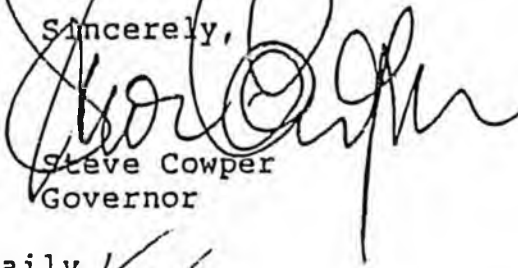
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March 21, 1990

By involving all interested parties, I feel confident that the administration will be in a good position to focus legislative attention on those areas of piloting regulation in Alaska that we believe need public debate and perhaps significant change.

Thank you for taking the time to bring this matter to my attention. I share your concern for the repercussions of a poorly trained and inexperienced marine pilot corps, and you have my commitment to thoroughly review this matter.

Sincerely,



Steve Cowper
Governor

cc: Attorney General Doug Baily ✓
Commissioner Larry Mercurieff ✓
Board of Marine Pilots Members
Mary Halloran
Randall Burns

Appendix C

Letter from Paul Kirchner, Counsel to the American Pilots Association
to Marilou Madden, Senior Policy Analyst, Alaska Governor's Office,
Division of Policy, May 25, 1990

Kirkus & Kirchner
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Washington, D.C. 20007
(202) 342-0204

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MANAGEMENT & BUDGET

MAY 28 1990

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RICHARD W. KURKUS *
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* ALSO ADMITTED IN MASSACHUSETTS
† ALSO ADMITTED IN VIRGINIA
‡ ALSO ADMITTED IN MAINE
° ALSO ADMITTED IN NEW YORK

May 25, 1990

Ms. Mary Lou Madden
Office of the Governor
State of Alaska
P.O. Box AD
Juneau, Alaska 99811

Dear Ms. Madden:

I am General Counsel to the American Pilots' Association (APA). Captain Pat Neely, President of the APA, has been participating in the Xth Congress of the International Maritime Pilots Association in Israel for most of this month. He has asked me to respond to your letter to him of May 2, 1990.

The following information and commentary is addressed to the questions raised in your letter and is organized and presented in the same order as the questions.

1. Entry Level Requirements.

Alaska's requirements are noteworthy in that the entry level requirements and the requirements for obtaining a full state pilot's license are the same. In other words, there is no significant training required. To my knowledge, no other state grants pilot licenses without some pre-license training program tailored to the needs and conditions of the particular areas for which licenses

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May 25, 1990
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are given. In that respect, I believe that Alaska's requirements for obtaining a state pilot license are the lowest and least stringent of any state's requirements at the present time.

The existing entry level requirements of Alaska law do not approximate a pre-license training program. A federal pilot license is not a substitute for a training program. In all other states, it is either a precondition for admission to a training program or is one of the initial steps in the program. Unlike the typical state pilot license, a federal pilot license may be obtained without any prior training or service as a pilot.

Alaska's requirement of 10 docking and undocking jobs under the supervision of a state pilot is a similarly inadequate alternative to a training program. Trainee pilots in other states make hundreds and, under some programs, thousands of trips with instructing state pilots before they can receive a full state license. Not only is the 10 required jobs a relatively minimal number of such jobs, but a simple requirement for a specified number of jobs or trips lacks any assurance of the educational content and instructional value of the assignments. Although I am confident that a supervising state pilot would take his instructional duties seriously, such jobs should be part of an established training program.

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2. Pre-License Training.

A) Need.

A distinguishing feature of the state pilotage system in this country is that in almost all cases, pilots learn their craft under the tutelage of master pilots. This is integral to the status and function of a state-licensed pilot, which is significantly different than the status and function of someone with only a federal pilot license.

State pilots are, and should always be, independent of the owners, operators and agents of the ships on which they provide pilotage services. They serve and protect the interests of the state, not the shipowner. State pilots must be experts in navigation and in handling the different types and sizes of ships likely to be encountered. State pilots must know how to handle themselves on the bridge of a ship, often among crew members whom they have never met before. Finally, state pilots must have a detailed familiarity with the local waters and the various conditions and factors that affect navigation in the area covered by their license.

These skills and responsibilities can only be learned through locality-specific pilot training programs. No matter how much sea service an individual may have, no matter how many times an individual may have transited a particular body of water while

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Ms. Mary Lou Madden

May 25, 1990

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a member of a ship's crew, and no matter how long an individual may have had a federal pilot license for that body of water, the individual should not be allowed to walk into a licensing office and be given a state pilot license.

B) Legal Authority and Policy Considerations.

Your letter suggests that there may be some concern that a requirement for pre-license training may pose illegal or inappropriate restraints on entry into the pilotage profession. Such a concern is unwarranted.

It is well established that, as a legal matter, a state may limit the right to pilot vessels subject to state jurisdiction to individuals who have been licensed by the state. To do so does not violate either the United States Constitution or the federal antitrust laws. Olsen v. Smith, 195 U.S. 332, 49 L. Ed. 224 (1904). Further, a state has considerable discretion under its licensing authority in restricting the number of licenses issued, in establishing training requirements and in selecting individuals for training -- notwithstanding the fact that such features of pilotage regulation necessarily restrain entry into the profession. Kotch, et al. v. Board of River Port Pilot Commissioners for the Port of New Orleans, et al., 330 U.S. 552, 91 L.Ed. 1093 (1947); Brechtel, et al. v. Board of Examiners of

Hurrous & Kirchner

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Bar Pilots for the Port of New Orleans, 230 F.Supp. 18 (E.D. La. 1964).

Of course, what a state may legally do and what it should do are two different matters. Even without considering the latitude of state legal authority, however, it is generally accepted that it is entirely appropriate for a state to set up training or apprenticeship programs designed to assure, as much as possible, that only competent, knowledgeable persons are issued pilot licenses. I am aware of no recent instance in which a state's pre-license training requirement has been attacked on the ground that it unfairly restricts entry into the profession.

To be sure, there have been complaints on some occasions that the method of selecting individuals for certain training programs is unfair or illegal. I do not know of any successful legal challenges of that sort, however. Indeed, both the Kotch and Brechtel cases upheld a training and licensing system that, according to the plaintiffs' allegations, limited pilot licenses to relatives and other persons acceptable to existing state pilots.

The states regulate entry into their training programs in a variety of ways. Some states have a competitive exam procedure; some rely on a screening process that is competitive but does not involve an examination. In many states, the pilots

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have a role, of varying degrees, in the selection of trainees; in other states, pilots are excluded from the selection process. All states have certain stated eligibility requirements for applicants.

There is no one training program or selection process that the APA endorses as the best or most effective and fair. Each state's requirements should be based on the particular needs of that state. In general, we would recommend that a training and licensing program satisfy two criteria. First, the program should not discriminate either for or against any individual or class on the basis of race or gender. Second, the requirements of the program should be concerned solely with achieving the primary objective of state pilotage regulation, which the Court in Kotch stated, "is to secure for the State and others interested the safest and most efficiently operated pilotage system obtainable." In my opinion, it would be a serious mistake for a state to allow other factors unrelated to that objective to dictate a training and selection process. For example, I do not believe that creating employment opportunities or encouraging competition are appropriate or prudent goals of this aspect of pilotage regulation.

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C) Legal Status.

Some training programs are set out in detail in the state pilotage statute. An example would be the Florida training and license eligibility requirements, which are provided in Fla. Stat. Ann. §§310.071 - 310.081 (West 1989). In other states, the statute directs the Pilot Commission or Board or some other licensing body to prescribe by regulation training and licensing criteria. See, e.g., Cal. Harb. & Nav. Code, §1171.5 (West 1990) (San Francisco Bay pilots). Finally, in some states, the pilot associations develop the training programs, which are then submitted to the licensing body for approval and adoption as the official training programs required by the state. New York and Pennsylvania are examples of such states.

In all states, pilots have a role in the training process, most commonly as instructors on training trips. In that capacity, the pilot not only instructs the trainee during the trip but also records the trip, often with comments on the instructional content of the trip and on the trainee's performance.

In administering training programs, pilots and pilot associations act as instrumentalities of the state. It must always be understood that the state issues the license and, by doing so, certifies that the trainee/applicant has met the training requirements and possesses the other necessary qualifications for the

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license. That understanding is relevant to your question regarding possible liability concerns of pilot associations.

D) Types of Programs.

Apprenticeship or training programs vary considerably from state to state. There are two general models, however.

Most of the East Coast states have lengthy apprenticeship/deputy pilot programs. Prior sea service or equivalent service on a tug under a federal license is generally not required for entry into the apprenticeship program. Service on ships or tugs with or without a license is typically accepted in lieu of an otherwise required degree from college or a maritime school, however, and, in fact, many apprentices have both prior service and a degree. These apprenticeship programs receive approval from the Coast Guard so that time spent in the program may be accepted in lieu of licensed service for purposes of qualifying for a federal pilot license. The programs feature classroom and shipboard instruction in general shiphandling and navigation and in local conditions and requirements.

Following completion of the apprenticeship program, which may last between two and six years, a trainee becomes a deputy pilot and is issued a limited state license. The deputy then is permitted to pilot ships within the size limits and other

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Ms. Mary Lou Madden
May 25, 1990
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conditions of the license. During this period, the deputy also makes many trips on larger ships, receiving "hands-on" experience under the supervision of a full licensed pilot. Limits on the deputy's license are removed on a gradual, step-by-step progression based on the period of time or the number of such trips. The deputy pilot period may last from two to four years at the end of which the trainee is eligible for a full pilot license.

Most states outside of the East Coast require licensed service on ships or tugs, and usually a federal pilot license, for entry into their training programs. As a result, their training programs are of shorter duration. Because the trainees entering such programs have experience in shiphandling and general navigation requirements, much of the curriculum of the typical East Coast apprenticeship program is not necessary. Rather, these other programs concentrate on the development of local knowledge and the pilotage skills required in the particular area. Generally, there is a purely instructional period of between six months and a year followed by a deputy pilot period of hands-on training and limited but progressively broader pilotage authority. Trainees in these programs are usually referred to as deputies throughout the process and until they receive a full pilot license.

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3. Continuing Education.

You are correct that the emphasis on continuing education is a national trend. Although I have heard, as you have, that California and Washington may be considering mandatory continuing education for state-licensed pilots, I am not sufficiently familiar with those plans to comment on them.

The Coast Guard has required periodic recertification of Radar Observer status for federal pilot licenses for several years and has recently proposed adding training in Automatic Radar Plotting Aids (ARPA) to the qualifying courses leading to certificates of Radar Observer. State pilots, all of whom have federal pilot licenses, must, of course, take those courses and comply with that continuing education requirement. In addition, many state pilot associations have had their own continuing education programs for some time. Those programs have included periodic ship simulator courses and participation in shiphandling schools, most notably the one in Grenoble, France. Pilot participation in association programs is voluntary. The association's role is to disseminate information about the available courses and school programs and to pay all or some of the costs and expenses for some agreed number of pilots per year.

Even with the current trend emphasizing continuing education for pilots and other licensed mariners, there remains a

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considerable amount of disagreement within the maritime community over the value of simulator courses and shiphandling schools for continuing education. Without taking sides in that dispute, I believe that it is safe to say that the value is not the same for all pilots. Some pilotage areas are not covered by any simulator program. Some may never be because of the difficulty of replicating the conditions of the areas. Some pilotage tasks are not approximated in any simulator exercise or shiphandling model.

The expansion of continuing education for the pilotage profession is therefore limited by the availability and utility of instructional programs and exercises. A state that would want to establish continuing education requirements should first carefully examine what continuing education is available and what benefits it might provide. It has been my experience that state pilots have been in the forefront of the maritime industry in educating themselves in the latest changes in technology and in pursuing ways to maintain and improve their skills. For that reason, I would consider the primary benefit of a state-mandated continuing education program to be to formalize and give official sanction to what pilots themselves would consider appropriate. I would also support such a program if it would facilitate including the substantial costs of continuing education in the

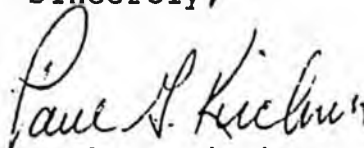
Hurmus & Kirchner

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occurs or an allegation of incompetence or misconduct is made. My own personal view is that pilot boards or other bodies responsible for disciplining pilots should be part of a state agency or department. The benefit of that connection is that the disciplinary body would have access to the resources and capabilities of the state government, such as investigatory personnel and technology and legal assistance. Some pilot disciplinary bodies simply do not have on hand or readily available the expertise or resources to investigate accidents or to conduct disciplinary proceedings in a meaningful fashion. Where that is the case, action is often too slow, and neither the state nor the pilot is well served.

I hope that this information and my comments are helpful. The APA intends to follow with great interest Alaska's review of its pilotage system. If there is any additional information or assistance that Captain Neely or I can provide, please do not hesitate to ask.

Sincerely,


Paul G. Kirchner

PGK/wmm
cc: Captain Pat J. Neely, Jr.

Hurkus & Kirchner

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May 25, 1990
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the pilotage rate base.

4. Pilot Discipline.

I do not know of any state disciplinary system that would allow for a more speedy removal of an incompetent pilot than the power that you describe Alaska has to summarily suspend a license if it finds a clear and present danger to health or safety. In fact, I do not think any state could have a system that would be more speedy and still meet minimal due process requirements. A danger in a summary suspension procedure such as the one Alaska and some other states have is that, as a practical matter, the decision to suspend the license may often be based more on the extent of damage and loss from the accident than on an objective review of the license-holder's conduct. A quick, summary procedure is more likely to be influenced by public opinion and political considerations. Speed should not be the overriding objective in disciplinary actions.

There are, however, certain features of a disciplinary system that facilitate purposive, fair action that serves the interests of the state and protects the rights of the accused. For example, investigative and hearing procedures should be clearly established and published. The capability to conduct a disciplinary procedure should be in place before an accident

Appendix D

Letter from C.L. Cloudy, Counsel to Southeast Alaska Pilots
Association to Brad Pierce, Senior Policy Analyst, Alaska Governor's Office,
Division of Policy, June 25, 1990

LAW OFFICES OF
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ROBERT H. ZIEGLER, SR.

June 25, 1990

Mr. Brad Pierce, Senior Policy Analyst
Division of Policy
Office of Management and Budget
Office of the Governor
Post Office Box AD
Juneau, Alaska 99811

Re: Sunset Pilotage Act
Our File 29.039.48

Dear Brad:

Thank you for taking the time to stop off in Ketchikan and visit with the SEAP Board members and myself on Sunset and overhaul of the Pilotage Act. Although somewhat disjointed in our enthusiasm to speak up, I feel the presentation covered all of the basic problems confronting pilotage in Southeast Alaska from SEAP's standpoint. The critical points of discussion are hereinafter summarized as I recall them.

Limitation on Licenses

My personal opinion is that if entry level qualifications are increased, this of itself would serve as a limitation upon the number of licenses issued, because not everyone will be willing to make the investment required to meet the higher standards of entry. (This is borne out by the number of channel pilots who are dispatched in the summer who evidence no interest at all in training up because they would have to invest in winter-time activities in Southeast.)

As I understand SEAP's position, however, SEAP would also want the Pilot Board to have the authority to open and close entry into the pilotage profession. Thus far, either or both concepts have been poorly received by both the Pilot Board and its advisors, principally upon grounds related to monopoly and anti-trust. However, as pointed out

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by Paul Kirchner in his letter on behalf of APA, the power and authority of the State to so regulate has never, ever been successfully questioned in the courts of the United States.

Opening and closing license entry into pilotage, of course, is directed related to economic concerns, and appropriate mechanisms must be set in place to fairly address those matters.

Training Up

You have raised the question of whether or not the associations would commit to provide training access in order that increased entry level requirements could be met. As I pointed out, this question of itself suggests that SEAP has carried on the practice of withholding training access, which SEAP denies.

Since its organization in December of 1970, and through the 1990 season, SEAP will have dispatched 213 non-member pilots during the summer tour season. Excluding seasonal repeat dispatch, SEAP will have dispatched 67 individual non-member pilots during this time frame.

Almost all of these non-member pilots came to SEAP with little more than entry level qualifications, and without exception, anyone who wanted to train up was given the opportunity to do so. For the most part, however, these non-members have been content to skim off the cream in the summer and very reluctant to come back in the winter and avail themselves of training up opportunities. SEAP has stated to you that they would continue this practice companion to an increase in entry level license requirements and limitations on the number of licenses. SEAP's performance to date should constitute assurance that the commitment would be honored.

Notwithstanding the above, without some sort of statutory or regulatory involvement, training up creates and will continue to create unacceptable risks. Training up suggests warranty if the pilot is then dispatched to a position which requires the experience he has gained in

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the training program, and even more so if he is admitted to membership in the association on that basis. Under an obligatory program, I would assume that the members of the association would be acting in a quasi-public capacity on behalf of the State of Alaska and thus not open to individual warranty claim. In any event, this question needs to be explored and resolved.

Training up also raises tariff problems. As currently practiced, the non-member pilot is charged for using SEAP's dispatch and pooling services which charge ranges between 25% and 10% of the tariff receipts generated by the non-member pilot depending upon his license level. These funds are passed through the income-expense pool and are shared equally by the member pilots. My contacts with other pilotage states reveals that such an arrangement is not unusual, save that in other states statutory or regulatory provision is made for the practice. Consideration should therefore be given to such approval.

The tariff question above noted also creates a liability problem. The income shifting raises a question of whether or not the non-member pilot is "working for" the members. If so, respondeat superior comes into play. This question should also be put to bed by statutory or regulatory coverage.

Tariffs

Over the years, the Pilot Board has vacillated over the matter of tariffs. There is current thought within the State administration that the Board lacks authority to establish tariffs. I disagree and have engaged in unfruitful communication with one or more attorneys in the Department of Law on the subject. In addition, although AS 08.62.170 creates a lien in favor of the pilot for the tariff charge, no effective measure of enforcement is provided. Presumably, the statutory lien is to supplement the maritime lien which automatically arises. However, the maritime lien cannot be enforced without seizure of the vessel at

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extreme cost. In times past, we have sought to involve the Attorney General's Office with regard to enforcement of the statutory lien without success.

The Pilot Board should therefore be clearly vested with authority to set maximum and minimum tariffs, if it does not already have such authority. In addition, some means of simple enforcement of the statutory lien should be developed.

Penalties

The penalties available for imposition upon a vessel under AS 08.62.190 are less than adequate.

Entry Level Licensing

SEAP is in accord with Paul Kirchner's advice on this subject given on behalf of APA.

Admission to membership in SEAP requires more than Alaska's entry level qualifications at all license levels because SEAP believes Alaska entry level requirements are woefully inadequate, and they do not choose to associate on a membership level with those who barely possess licensing qualifications. Historically, pilotage has been based upon local knowledge and experience. With 40,000 or more miles of coastline, Alaska is simply too large to safely license a pilot for one area based upon his experience in another area. It would make just as much sense to give an Alaska license to a British Columbia pilot based upon British Columbia experience.

The administration must accept the premise that without site specific experience, even the best all-around pilot is not competent to pilot into an area he has not been before in a pilotage capacity. From time to time, representatives of the Department of Law have advised the Pilot Board that a regulation calling for site specific licensing would be illegal without "proof" of the need, such proof to consist of lengthy hearings over the differences between one port and another. I do not

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know of any pilotage state which has approached the question in this manner, and given the historical background of pilotage and the practices of other states which have withstood attack, there is no valid reason for Alaska to do so. As voiced by Captain Collins and Captain Elsensohn, they themselves and others like them continually reacquaint themselves from time to time with ports or areas they have not regularly transitted by making observer trips even though they are fully licensed for all of Southeast Alaska.

Pilot Liability

As discussed, some pilotage states have adopted a dual tariff so as to provide funds adequate to cover liability insurance premium costs. If the vessel opts for the lesser tariff, the event is exculpatory of the pilot as between the vessel, its owners and the pilot, and the pilot is considered to be the servant of the vessel. I have yet to receive a satisfactory answer from anyone involved with such legislation as to why the master-servant relationship is critical, and lacking such, I have always viewed the creation of such a relationship as a fiction. If the stated relationship enables the vessel to include the pilot as an assured on the vessel's insurance policy, there is a better way to make provision for that. I have asked APA to consider giving some guidance in this area. At present, the only protection the members of SEAP have is the exculpatory clause on the pilotage ticket. However, the extent to which it is effective as to content is lost with regard to non-English speaking foreign masters.

Pilot Performance

You have expressed interest in developing some sort of plan which would provide for a check on pilot performance. As discussed, SEAP does not believe any such effort would work if it depended upon participation by the vessel masters. Experience over the years has shown that the masters will not involve themselves in evaluating a pilot's

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performance. SEAP sometimes will selectively dispatch around a master's concern, much to my dismay, because the master will not produce anything in writing to conform his concern. To my knowledge, the Pilot Board has experienced similar problems. If there is to be a watchdog program of any sort, it must revolve around random observer check rides by a fully licensed pilot. Even then, I personally question either or both the effectiveness and the need for such a program. The best watchdog of all is the membership of any particular association whose own survival and success depends upon weeding out the incompetents or training them up to the required level. Here, again, stiffer entry level license requirements will go a long way toward elimination of any need for such a program.

Associations

The question of whether or not membership in a pilot association should be voluntary or mandatory was touched upon. As you are aware from the materials you have under review, some associations are a creature of the legislature, some are a creature of a particular pilot board, some are voluntary but "recognized", and others, as in Alaska, are voluntary and "unrecognized".

There is little question but that many of the legal problems which have confronted SEAP over the years would not have arisen but for the fact that it is a voluntary "unrecognized" association. At this point in time, however, I am ambivalent over resolution of the question raised. I personally have a natural reluctance to have SEAP move away from what has existed for twenty years if the desired goals can be achieved by other means. As matters progress, I may be able to come up with something I can advance to my clients.

Legal Environment

You have asked for a summary of the type of legal claims which have confronted SEAP over the years. The following listing

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encompasses most of these claims:

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

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

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

4. Claims that SEAP cannot lawfully limit its membership and to do so constitutes some sort of anti-trust and monopolistic act.

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

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

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

Admiralty Attorney

You have asked whether or not it would be helpful to the cause of better regulation and understanding of marine pilotage for the Department of Law to assign an admiralty attorney to advise the Pilot Board. My answer was and is "No." The law of marine pilotage, although of admiralty derivation, is not the common weal of admiralty. In 1952,

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when I was admitted to the practice of law, I was admitted as a "proctor in admiralty". From the very start, I actually practiced admiralty law and was paid a proctor's fee by the Admiralty Court for every admiralty appearance. However, in 1970, when I organized SEAP, and later on SWAPA, my admiralty experience was not particularly helpful to me as counsel for a pilots association. Any competent attorney in the Department of Law who will take the time to fully familiarize himself with and accept the law of pilotage will fill the bill. My problems with those assigned to the Pilot Board over the years have arisen from their complete lack of knowledge in the pilotage area--not from their general lack of competency.

What the State Can Do

As stated at the meeting, I believe it to be essential that the Administration accept marine pilotage for what it is and has been recognized as being since the formation of the United States. Congress has seen fit to leave the regulation of pilotage to the individual states, principally because the marine pilotage needs of the several states are different one to the other and because marine pilotage is a site-specific profession. The State must also realize that competition is not the goal of marine pilot regulation and that, to the extent monopoly promotes the goals of marine pilotage (e.g., safety and a reasonable return for professional effort expended), such should be recognized and accepted as legal and appropriate. Without acceptance of these predicates, there isn't much the State can do to achieve any measure of betterment in the pilotage world. Once these predicates have been accepted, sound statutory and regulatory controls will easily follow to the benefit of all concerned.

Miscellaneous

During the course of our discussions, I referenced you to the LaMoureaux case which creates difficulty with regard to dispatch and

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training up of lesser qualified pilots. The citation for that is LaMoureaux v. Totem Ocean Trailer Express, 651 P.2d 839 (Alaska 1982).

You have asked how SEAP views the advice of Paul Kirchner on behalf of the American Pilot Association to the OMB. Both myself and my clients are in full accord with the points he makes and are extremely pleased to have these shortcomings pointed out by someone remote from the Alaska pilotage scene.

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

By 
C. L. Cloudy

CLC:ce

cc: Paul G. Kirchner, Esq.
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Appendix E

Letter from Paul Kirchner to C.L. Cloudy, July 27, 1990

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July 27, 1990

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Dear Mr. Cloudy:

Thank you for your recent letter and materials concerning the State of Alaska's review of its pilotage laws.

You have suggested that the APA might be able to offer some input on the matter of liability limitation in general and the dual tariff system and master-servant relationship issues in particular. I am not sure that the APA has a formal position on those subjects, but I am happy to provide my own views and research, as follows.

PILOT LIABILITY LIMITATION GENERALLY

According to our information and research, five states (Washington, Oregon, Louisiana, Texas and South Carolina) have adopted some form of limited liability/exculpatory provisions in their pilotage statutes. Copies of these statutory provisions are enclosed. Pilots in other states claim similar protection through

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pilot commission regulations, tariff provisions or contract language in pilotage tickets or source forms. The enforceability of such non-statutory liability limiting mechanisms is questionable. See, e.g. Gulf Towing Co. Inc. v. Steam Tanker Amoco New York, 648 F. 2d 242 (5th Cir. 1981); Getty Refining and Manufacturing Co. v. Puerto Rico Ports Authority, 531 F. Supp. 396 (D.P.R. 1982). It is generally agreed that an enforceable limitation of pilot liability and corresponding vessel owner responsibility for third party claims requires either specific statutory direction or circumstances or practices that would indicate a knowing and voluntary acceptance by the vessel owner in a non-compulsory pilotage setting, United States v. SS President Van Buren, 490 F. 2d 504 (9th Cir. 1973).

The trend is definitely in favor of liability limitation for pilots. In addition to the five states that already have it, several others are considering it. I would expect that three or four more states will adopt limited liability provisions within the next three years.

Although a detailed discussion of the arguments in support of limiting pilot liability is beyond the scope of this letter, I should mention some of the reasons why the trend has developed over the last few years. In the past, pilots were rarely sued. As self-employed, independent contractors, they were thought to

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

In every place where a pilot liability limitation statute has been adopted, the shipping industry has supported it. Vessel owners and operators have made the judgment that it is in their economic interest to have liability shifted from the pilot to the vessel and its owner and operator. Standard marine hull and P&I insurance policies have always covered loss or damage due to pilot negligence. Assuming that pilotage rates would have to reflect either the cost of meaningful liability insurance for the pilot (such insurance, in fact, is not available) or the financial risks to the pilot of the uninsured liability, it is economically inefficient for a vessel to pay such rates when its own insurance already provides coverage at little or no additional cost.

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DIFFERENT FORMS OF LIABILITY LIMITATION

Limited liability statutes take several forms. The first state to adopt limited liability was Oregon. In 1959, that state enacted the dual rate system that you describe. At the current time, it is the only state with that type system, which offers the vessel the option of two rates. The higher rate would include the cost to the pilot of obtaining reasonable trip insurance covering the pilot's potential liability for that pilotage assignment. Alternatively, a vessel may elect a lower rate. In return for the lower rate, the vessel agrees not to assert any personal liability against the pilot or pilot association and to defend, indemnify and hold harmless the pilot and his association from third party claims. Additionally, each pilot must obtain a surety bond in the amount of \$250, which amount is the exclusive, total limit of a pilot's liability to third parties unless the act or omission was in connection with the pilotage of a vessel electing to pay the higher rate. Or. Rev. Stat. §§776.510.540 (1989).

In 1981, the State of Washington adopted a dual rate system . . . virtually identical to that of Oregon. That statute was replaced in 1986, however, by a simple statement that a pilot's liability for damages or loss occasioned by the pilot's errors, omissions, fault, etc. in the performance of pilotage services, will not

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exceed \$5,000 except in the case of willful misconduct or gross negligence. The Washington statute also declares, as does the Oregon statute, that the vessel and its owner and operator are liable to third parties for the pilot's negligence. Wash. Rev. Code §88.16.118 (1989 Pocket Part).

In 1988, South Carolina adopted a statute virtually identical to Washington's. S.C. Code Ann. §§54-15-350, -360 (Law. Co-op. 1989 Pocket Part). A similar, simple limit on liability was enacted for pilots in Houston (Harris County), Texas in 1987, although the limit there is \$1,000. Tex. Stat. Ann. art. 8280a (Vernon Pamphlet, 1990). In 1989, identical limitations were provided for pilots in Galveston, Freeport (Brazoria County), and the Sabine River (Jefferson and Orange Counties), id, arts. 8280b-8280d. The Texas statutes differ from those of South Carolina, Washington and Oregon in that they do not contain the declaration of a master-servant relationship, which you have mentioned and which is discussed below. They do, however, state that the vessel and its owner and operator are liable to third parties for a pilot's negligence.

Louisiana has taken a somewhat different approach. Pilots operating between Pilottown and New Orleans on the Mississippi River (the Crescent River Pilots) are covered by a provision added to their pilotage statute in 1986 stating that any person seeking

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to hold a pilot liable for damages or loss occasioned by the pilot's error, omission, fault or neglect must prove by clear and convincing evidence that the damages arose from the pilot's gross negligence or willful misconduct. Rev. Stat Ann. §34:1011 (1990 Pocket Part). This standard of care/liability exclusion was extended to the other two groups of pilots operating on the Mississippi River in 1988. Id §§ 34:966 (Associated Branch [Bar] Pilots), 34:1005 (New Orleans - Baton Rouge Pilots).

ANALYSIS OF THE DIFFERENT FORMS OF LIABILITY LIMITATION

Although I understand that you have been discussing the dual-rate system with the Alaska OMB, it is my opinion that the Washington, South Carolina, and Texas model may be the preferable limitation of liability mechanism. To me, the Oregon statute has troubling features that are the product of the legal uncertainties attendant to that "first generation" experiment in liability limitation and of the unique circumstances surrounding its adoption and subsequent revisions.

The dual rate system created in the statute is somewhat illusory. It was designed to impart at least the appearance of consideration and bargaining to the "agreement" required in the statute by which a vessel and its owner and operator assumes the risks of the pilot's negligence. The unstated belief was that, in fact, no

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vessel would elect the higher rate. It is my understanding that the pilots have contracted with an insurer who will offer trip insurance but that such trip insurance has only been purchased in a handful of instances over the years involving vessels (primarily drydocks) that do not regularly engage in shipping activities and that do not have their own P&I insurance. Those vessels purchased the trip insurance as an alternative to their own P&I policy. They paid a very high premium that was acceptable only because it was the only insurance carried. That was not the circumstance envisioned by the statute.

The Oregon statute also has a number of declarations, characterizations and certain repeated phrases designed to bolster the sense that the vessel's waiver of claims against the pilot and its indemnification of the pilot are either freely assumed or are derived from the employment of the pilot rather than from the statutory mandate. I question the need for these items and am concerned that they may have unwanted consequences in other, non-liability areas. The master-servant predicate that you have mentioned is one example. Another would be the statement that "the services of any individual pilot...have been voluntarily accepted and are voluntarily rendered pursuant to the election authorized by ORS 776.510." Although a similar statement in a municipal tariff was found by the court in United States v. President Van

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Buren, supra, to be a significant factor supporting the enforceability of immunity provisions in the tariff, I am not sure, as discussed below, that such language is necessary for the validity of a statutory provision.

Additionally, the statute reflects the view that noncompulsory pilotage is also essential to the enforceability of the dual rate system. When the Oregon statute was first enacted in 1959, the state did not have a compulsory pilotage law. In 1973, however, the state adopted a compulsory pilotage requirement. A number of observers, including the late Alex Parks, the author of the 1959 statute as well as the treatise, The Law of Tug, Tow, and Pilotage, felt that the switch to compulsory pilotage eviscerated the theory of voluntary election on which the dual rate system depended. Parks discussed this subject in the 1982 edition of his treatise, pages 1035-1039 (copy enclosed). I should caution that Parks' views expressed there were naturally affected by his authorship of the 1959 legislation, a fact not disclosed in the treatise.

Ironically, by 1982 Parks had taken the position that a monetary limit on pilot liability, without the dual rate mechanism, could survive legal challenges, even in a compulsory pilotage setting, so long as it was presented as deriving from a state's authority to maintain reasonable pilotage fees. He suggested a \$250

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limit with the requirement that each pilot post a bond in that amount.

The uncertainties resulting from the 1973 compulsory pilotage requirement were addressed in 1983 amendments to the Oregon statute. At the urging of the Columbia River Pilots, the compulsory pilotage provision was replaced by one that allows a ship to decline to take a state pilot upon payment of 3/4 of the otherwise applicable pilotage fee. At the urging of the Columbia River Bar Pilots, however, the \$250 liability limit/bond requirement suggested by Parks was also adopted. Whatever the relative merits of a dual rate system versus a simple liability limit may be, the presence of both in the same statute would seem to present additional questions and concerns.

It is not clear to me that non-compulsory pilotage is essential to the validity of a dual rate system. If it is, that would be an important factor favoring a liability limit instead. The prevailing view today is that a "take or pay" pilotage requirement, such as that presently used in Oregon and a few other states, is no longer an acceptable substitute for a clear, affirmative pilotage requirement. This is a subject to which the APA and this firm have devoted substantial attention in the past year. It cannot be adequately covered in this letter. I should mention, however, that the Coast Guard has expressed the belief that "take

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or pay" provisions and certain other perceived shortcomings in the language of some state pilotage requirements are a serious problem. This assessment may not be justified by the facts. Nevertheless, the Coast Guard's view and the potential for a federal "remedy" must be acknowledged. For that and other reasons, a number of states are currently reviewing the language of their pilotage requirements to see if they can be expanded and strengthened. I would hate to see a state move in the opposite direction.

A liability limitation of the type adopted by Washington, South Carolina, and Texas has obvious advantages over a dual rate system. It is more simple and direct. Also, because such a limitation is not based on a theory of voluntary election by the vessel owner, compulsory pilotage should not be a problem.

Of course, the concern with a liability limitation is with its enforceability and constitutionality. The courts tend to look with disfavor on efforts to shield professionals and others from the consequences of their own negligence. Nevertheless, there are many forms and types of liability limitation that not only pass constitutional and judicial scrutiny but are in the public interest as well.

The important consideration in this area is that innocent people who have suffered damage through the actions of others must be able to secure compensation for that damage. So long as an

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injured party's right to recover for damages from some source is not jeopardized, the placement of liability can be treated as essentially an economic matter. Shifting liability from one party to another occurs frequently whether by law or by private contract. For example, a standard ship repair contract will require the vessel owner to waive consequential and incidental damages arising out of faulty workmanship and to indemnify the shipyard against third party claims arising out of the yard's performance of the repair work, even claims involving negligence by the yard. This is acceptable to a vessel owner, in most cases, because it is much cheaper to have the vessel's insurance cover those claims. As with a pilotage assignment, the potential damages and the resulting cost of insuring against the damages would far outweigh the value of the repair job if the yard were to assume liability for its negligence.

I believe that it is a legitimate exercise of state power to limit a pilot's liability. It is a rational feature of a comprehensive system designed to assure that an adequate number of well-trained pilots are available to handle all vessels moving in the state's waters and that pilotage rates are maintained at reasonable levels.

A statutory limitation should have the following features, each of which can be found in one or more of the existing statutes:

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1. a statement of legislative findings and intent justifying the limitation;
2. a clear, simple, monetary limitation;
3. an exclusion from the limitation for wanton and reckless acts (the use of the term "gross negligence should be avoided if possible); and
4. a statement that the vessel, its owner and operator remain liable for damage or loss occasioned by the vessel as a result of any act by the pilot in the performance of his pilotage duties.

An additional consideration in this area is that the limitation should not only fix the pilot's potential liability for damages, it should provide a disincentive for suing the pilot or otherwise protect the pilot from the staggering legal fees that accompany these types of suits. I have no specific recommendations on that point, although I am familiar with many of the ideas and suggestions from various pilot attorneys and other interested observers. The state statutes enclosed handle this in different ways. For example, the Oregon and Texas statutes provide that in the event that a pilot is named in a suit for which the limitation would be applicable, the pilot can pay the limitation amount into the court and have the proceeding dismissed as to him.

Finally, I must acknowledge that the law in this area is neither extensive nor certain. No case of which I am aware has directly addressed the enforceability or validity of any of the five limitation statutes. The liability exclusion in the Oregon

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statute was applied in the well-known HALCOUSSI case, Olympia Sauna Compania S.A. v United States, 604 F Supp. 1297 (D. Or. 1984). To my knowledge, the validity of the liability exclusion in that statute was not challenged, however, I have also been told that the Louisiana (Crescent River) standard of care statute was determined by a court to be procedural rather than substantive and was applied to an accident that occurred prior to the enactment of the statute.

While there is no case that can be cited as directly upholding the enforceability of a liability limiting statute, I do think that the trend in adopting such statutes can be seen as reflecting a growing level of comfort in the legal and policy justifications for limiting pilot liability. Until such time as the courts give specific, contrary direction, this trend should continue.

Master/Servant Relationship and Liability Limitation

A declaration of a pilot's status as the servant of a vessel and of its owner and operator is not common to all statutory liability limitation schemes. The Texas statutes, for example, do not contain any such declaration, although they do state that a vessel its owner and operator are liable for the acts of a pilot. Ironically, one state, California, has such a declaration but does not have liability limitation. Cal. Harb. & Nav. Code §1134 (West

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1990 Cum. Pocket part).

I have never seen an explanation of why the master/servant declaration is in those statutes that have it. It is my belief, however, that they all, including the one in the California statute, can be traced back to the original 1959 Oregon dual rate statute. My impression is that it was considered as another feature contributing to the enforceability of the liability limitation. I would guess that Alex Parks took it from the standard "pilotage clause" in towing contracts. These clauses are used to apply the borrowed servant doctrine to the provision by a towing company of a docking pilot for a vessel. They typically state that when a docking pilot boards the vessel, he is the servant of the vessel and its owner and that the towing company will not be responsible for his actions. In contrast to liability exclusion/limitation clauses in pilotage tickets, "pilotage clauses" in towing contracts have been repeatedly upheld in court. Sun Oil Co. v. Dalzell, 287 U.S. 291 (1932); see also, Parks, Law of Tug, Tow and Pilotage, 1057-1065.

Whatever the reason for including the master-servant provision in the Oregon statute, I believe that the other states simply copied it without a great deal of thought.

In the case of the 1959 Oregon statute, the master-servant provision did not make a change in law. As you know, the

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traditional maritime principle is that in a non-compulsory pilotage setting, the ship is liable in rem and the shipowner is liable in personem for the negligence of a pilot. The theory is that the pilot in those cases is a voluntarily hired employee of the vessel and its owner or operator, and, under the rule of respondeat superior, the owner or operator is responsible for damages caused by the pilot's negligence just as much as they would be for any member of the crew. See, e.g. Homer Ramsdell Trans Co. v. Compagnie Generale Transatlantique, 128 U.S. 406, (1901); California v. Norfolk, 435 F. Supp 1039 (N.D. Cal. 1978). Since Oregon had a non-compulsory pilotage system in 1958, the statutory recitation that the pilot is the servant of the vessel and its owner and operator would have merely codified existing maritime law.

In the case of compulsory pilotage, the pilot is deemed an independent contractor. There is no master-servant relationship between the vessel owner and operator, on the one hand, and the pilot, on the other. As a consequence, the vessel owner or operator is not personally liable for damage caused by the pilot's negligence. People of California v. Italian Motorship Ilice, 534 F. 2d 836 (9th Cir. 1976); Matteria v. Commercial Cable Co., 137 F. Supp. 472 (S.D.N.Y. 1956); New York Dock Co. v. New York and Cuba Mail S.S. Co., 1931 A.M.C. 1349, aff'd. 1932 A.M.C. 1984 (N.Y. Sup. Ct.) In compulsory pilotage, the vessel, however, is

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Mr. C.L. Cloudy
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liable in rem for damages caused by the negligence of the pilot.

The China v. Walsh, 74 U.S. (7 Wall.) 53, 19 L. Ed. 67

(1868). The Barnstable. 181 U.S. 464 (1900).

Washington, California (San Francisco Bay only), South Carolina, and Louisiana all have compulsory pilotage. As a consequence, it would appear that the master-servant declarations in their statutes make a substantive change of law. I have expressed previously, however, my own opinion that a statement extending liability for a pilot's negligence to a vessel and its owner and operator is a desirable and perhaps necessary feature of a system for limiting a pilot's liability. A substantive change of law to accomplish that would therefore be required by statute in compulsory pilotage states.

It seems to me that such a statutory change need not be in the form of a declaration of a master-servant relationship. A direct statement of vessel owner and operator liability without the master-servant language, such as that found in the Texas statutes, should be sufficient. There are some unfortunate, non-legal consequences to declaring a pilot to be a servant of the vessel and its owner and operator. Wherever possible, both the state and the pilots should be careful to promote the importance of the state pilot's independence of the vessel and its owner. When a state pilot boards a vessel, his primary obligation is to

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protect the state, its citizens and its environment. Any unnecessary diminution of the state pilot's status should be avoided.

Federal Legislation Affecting Vessel Owner/Operator
Liability for Pilot Negligence

An issue that has not yet been considered in any depth, to my knowledge, is the effect that the federal oil spill liability and prevention legislation may have on liability for pilot negligence. That legislation will soon be completed. It will provide that a vessel owner and operator, and perhaps the owner of the cargo, will be liable, up to the limits set in the bill, for damages from oil spills caused by the vessel owner or operator, its employees, agents, and others in a "contractual relationship, existing directly or indirectly, with the [vessel owner or operator]." Although the question has not been addressed during consideration of the bills in Congress, I would assume that a pilot, compulsory or non-compulsory, would be treated as a party in a contractual relationship with the vessel owner or operator.

If that will indeed be the case, the effect of the federal legislation would be to assure a deep pocket for oil spill damages caused by the acts of a pilot. As a consequence, there should be even less hesitancy over excluding or limiting a pilot's liability. Retaining pilot liability would provide no benefit to

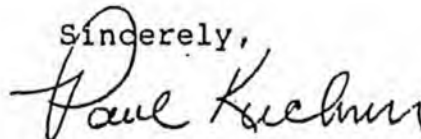
Hurkus & Kirchner

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Page Eighteen

the public in terms of preserving useful sources for compensation. Once vessel owners are made responsible for a pilot's acts by this legislation, I am sure that they would much rather have restrained pilotage fees than pay higher fees required to cover a pilot's potential liability.

I hope that this information and these views are helpful.

Sincerely,

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

Paul G. Kirchner

Enclosures
PGK/aes

Section 9: Pilot must file application for exam 60 days before exam date.
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)

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.
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.

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.

Section 18: Penalties for not employing a pilot.
Same as In Davis Section 20.

Section 19: Short title.
Davis Section 21.

Section 20: Technical add to statute.
Davis Section 22.

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.

AK STEAMSHIP OPERATORS

SB 218
 SENATE TRANSPORTATION COMMITTEE
 MAY 2, 1991

AMEND. NO.	PG.	SEC.	LINES	PROPOSED CHANGES	COMMENTS
One	1	1	7	DELETE: "certain water of and adjacent to" INSERT: " <u>the inland and coastal waters of</u> "	This substitute language offers a clearer definition of waters requiring pilotage. The existing language implies pilotage requirements for offshore areas.
Two	1	1	11	(Same as amendment number one.)	Same as amendment number one.
Three	1	1	13	DELETE: "tariffs" INSERT: " <u>rates for basic pilotage services</u> "	Reference to establish authority of the Board to establish tariffs at this point should be under powers and duties of the Board.
Four	2	1	1	DELETE: "independently of the shipping industry" INSERT: " <u>as independent contractors</u> "	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.
Five	2	1	5-7	REWRITE IN ENTIRETY AS FOLLOWS: <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>	This language better reflects the responsibility of the marine pilot organizations to the state and shipping industry.

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
Six	2	5	25	DELETE: "all water [WATERS] covered by this chapter" INSERT: " <u>the inland and coastal waters of the state</u> "	Same as amendment number one.
Seven	3	5	3	DELETE: "the criteria by which pilotage tariffs are established" INSERT: " <u>maximum rates for basic pilotage services</u> "	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	DELETE: "pilotage tariffs for each region" INSERT: " <u>rates to be charged by pilots for basic pilotage services within each pilotage region and</u> "	Same as amendment number seven.

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
				<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.

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
				<u>port."</u>	
Fourteen	4	7	4	DELETE: "an active" INSERT: " <u>a</u> "	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

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
				INSERT: " <u>conduct</u> "	pilot. The master is ultimately liable for any movement or control of his vessel.
Nineteen	6	16	28	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> "	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 make 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.

<u>AMEND.</u> <u>NO.</u>	<u>PG.</u>	<u>SEC.</u>	<u>LINES</u>	<u>PROPOSED CHANGES</u>	<u>COMMENTS</u>
Twenty-two	8	21 22	29-31 1-4	DELETE Section 21.	Anti-trust implications.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
P.O. BOX WF
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

RECEIVED
SEP 24 1990
OFFICE OF THE
COMMISSIONER

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,

A handwritten signature in dark ink, appearing to read "Mike Greany", written over the word "Sincerely,".

Mike Greany, Director
Legislative Finance Division

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR ^R

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.

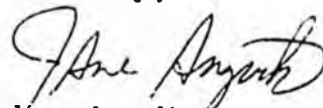
As you know, in preparing a draft response to a letter to Governor Cowper from former board chair Captain Ed Murphy, the Division of Occupational Licensing last spring urged Governor Cowper to ask his Office of Management and Budget, Division of Policy (hereinafter "policy"), to undertake a comprehensive 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.

December 3, 1990

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

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

DRAFT

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

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 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.

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 work "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.

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 8502(g), 'the Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed' by the CG.

Licensing of State pilots

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

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

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

CG licensing procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

Report of the Alaska Oil Spill Commission
Executive Summary

SPILL

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.

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

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.

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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						
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REVENUE	0	240.1	0	240.1	0	240.1
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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, \$72.3
Range 22A

Travel: 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.

Contractual Services: 5.0

This funding will provide for communications, postage, printing and advertising costs.

Supplies: 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.

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

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
September 5, 1975
Page 2

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." 1/ 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

1/ 2 A Sutherland Statutory Construction §47.11 (4th ed.)

COMMITTEE TESTIMONY SUPPORTING S.B. 218
CAPTAIN MICHAEL J. O'HARA

Mr. Chairman and members of the committee, thank you for the opportunity to testify in support of S.B. 218.

I am Michael J O'Hara. I reside near Palmer, have been a marine pilot since 1979, and have lived in Alaska since 1974. I have extensive experience piloting ships ranging from VLCCs to cruise ships, bulkers, and fishing related freezer ships. I am also a member of the Alaska Board of Marine Pilots.

The staff study, commissioned in response to Captain WE Murphy's letter regarding the shortcomings of the present pilotage act, stressed local knowledge, increased entry standards, adequate training, continuing education, pilot board authority, pilot discipline, and liability.

Training and local knowledge ensure safety. Regionalization of piloting ensures local knowledge.

Training should be progressive. When I was eighteen years old I decided that I wanted to pilot ships. Fourteen years later I worked my first pilot job. Five years afterwards, after schools and tutelege, study and examinations, I piloted the largest ship in Alaska.
I am not an unusual case.

Regionalization reduces the scope and increases the focus of knowledge.

Local knowledge is a continuous process. One cannot reside nine months a year in Washington and waltz into Prince William Sound as pilot and expect no changes or be proficient. Local knowledge is gleaned from a wide variety of sources, professional and personal. The Exxon Valdez had traversed Prince William Sound frequently, yet with some glacial ice, darkness, and who knows what else, a disaster occured. Add other problems too numerous to mention, and an unfamiliar mariner could precipitate another grounding or collision, even though that mariner has a pilots license but is familiar only with the routine.

Alaska has the lowest standards for entry into the piloting field. Alaska has some of the most arduous piloting jobs as well as an extremely sensitive and unspoiled environment. Alaska should have the highest standard to protect what is as yet pristine.

The pilot board needs clout. Marine accidents must be rigously investigated and the board should not be hesitant to take action for fear of being sued. At present each individual on the board is being sued for not issuing a license waiver to an unqualified pilot. Hence an ambiguous word like "may" should be replaced with "shall", as in pg. 2, line 23 under Powers and Duties.

COMMITTEE TESTIMONY ON SB 218

Captain Michael J.. O'Hara

One particular industry would like company pilots who pilot from Ketchikan throughout Alaska. This desire is understandable from their stand point. It's cheaper. No pilot boats or travel fees would be involved, and rates would be secret and negotiable. This industry also hires whoever is cheapest on the world market. Frequently the only American wage earner on the ship is the pilot. However this arrangement would not be in the best interest of Alaska, because the pilot's first interest is company policy, which leads to compromising safety in the name of expediency.

The state should not depend on a shipping company to hire and train pilots, nor provide the services an association of pilots provide.

As we saw two years ago, shipping companies don't always hire the most competent mariners. A navigational mistake at sea may go unnoticed but a navigational error near Bligh Reef (or any land) won't.

Thank You

Alaska State Legislature

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



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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

Alaska State Legislature

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

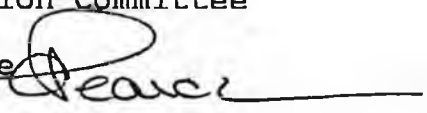


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SENATE LABOR AND COMMERCE COMMITTEE

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

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WALTER J. HICKEL, GOVERNOR

May 3, 1991

BILL NUMBER: SB 218

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

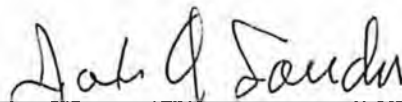
DEPARTMENT POSITION: Support

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".



John A. Sandor, Commissioner
Alaska Department of Environmental Conservation

Captain Michael C. Spence
P.O. Box 20251
Juneau, Alaska 99801

Honorable Curt Menard
Chairman
Senate Transportation Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

May 1, 1991

Dear Chairman Menard:

The following comments and testimony are submitted in the event that they may be useful in your consideration of SB 218, a bill related to Marine Pilotage.

I am a licensed marine pilot who has practiced in Alaska waters since 1976, and have held an unlimited State of Alaska pilot's license since 1981. I have been a member of the Southeastern Alaska Pilots' Association since 1980, and served four terms as a Director and two terms as an elected officer of that organization. I am a 1975 graduate of the U.S. Merchant Marine Academy at King Point, New York.

I believe that my situation can offer your committee a valuable perspective on certain aspects of SB 218, particularly the proposed immunity from the antitrust laws for pilot organizations.

Despite more than ten years of excellent and incident-free service, in 1989 I was the subject of the most intensive internal disciplinary procedure conducted in the history of the Southeastern

Honorable Curt Menard
May 1, 1991
Page 2

Alaska Pilots' Association. Were it not for the intervention of the U.S. District Court in granting a restraining order, I would have received the severest penalty ever given to any member pilot in the Association.

The offense alleged was not the grounding of a vessel or the damage to a wharf or the pollution of waters, nor was it related in any remote way to professional competence. The alleged offense was that I "brought discredit" to the Southeastern Alaska Pilots' Association.

In the summer of 1988, I was asked by the Master of a cruise ship to relieve a colleague who was piloting under the influence of alcohol (or other drugs). As required by law, I reported this incident to the State of Alaska, Board of Marine Pilots. The following year, when this individual was serving as president of the Association, he was told by State officials that he was under investigation due to my report of his intoxication on the bridge. Three days later, he filed charges against me of having "brought discredit" to the Association.

An elaborate effort was then made by officers and counsel of the Association to present a case against me which would not be easily challenged in any other tribunal. The charges that were brought against me included allegations that I had "solicited"

Honorable Curt Menard
May 1, 1991
Page 3

pilotage work outside the auspices of the Association. It is clear to me that these proceedings were intended to make an example of me and deter others from "bucking the system," from competing with the Association, from reporting instances of professional misconduct to the State, and from otherwise acting to undermine the absolute monopoly enjoyed and perpetuated by the Association.

These and other questions of the anticompetitive policies of the Association have arisen in the lawsuit I filed and will continue to be addressed by the federal court. The State of Alaska must not, through this proposed legislation, deny access to legal remedies available under the antitrust laws to those who are wronged by the anticompetitive actions of pilot associations in Alaska.

Furthermore, before empowering pilot organizations with statutory authority to "police" themselves, the committee must examine the record and determine if indeed these marine pilots are or can be fair and effective jurists. Have the priorities of these associations in disciplinary actions been directed at enhancing professional competence and promoting the public safety?

The record of pilot association actions in cases of ship groundings and wharf damage would suggest that they have not. In virtually all cases of which I have knowledge, including the 1979

Honorable Curt Menard
May 1, 1991
Page 4

grounding of the "Brewster" at Klawock, the 1980 grounding of the "Mannheim" at Ketchikan, the 1986 grounding of the cruise ship the "North Star" near Klawock, and damage to wharves at Hobart Bay in 1987 and Skagway in 1989, most of which, it is my understanding, were wholly or in part due to pilot error, the Southeastern Alaska Pilots' Association has never disciplined the pilots.

In considering this bill, your committee must consider another aspect of the pilotage monopoly: the monopoly on information. A statistical analysis would reveal that for every incident such as a ship grounding, there have likely been at least 100 near misses. For every infraction of the pilotage statutes reported to authorities, there have been many that are unreported. The "monopoly of information" plays a significant part in the standard practice of not reporting incidents of errors in judgment or acts of incompetence that do not result in major casualties.

Over those less visible, but serious incidents is thrown a cloak of internal secrecy, and a capricious system of internally negotiable accountability prevails. Because of the absolute control by the associations over entry and continued access to the profession, witnesses are discouraged from reporting acts of incompetence or intoxication to authorities. A witness who, like myself, testifies against his peers, risks financial ruin from internal retaliatory actions. In this sense, the monopoly is a

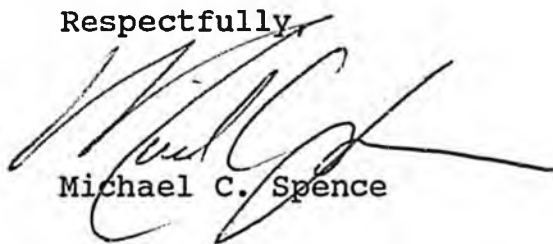
Honorable Curt Menard
May 1, 1991
Page 5

deterrent to accountability, and thus has a negative effect on the maintenance of high professional standards.

The concept that competition in marine pilotage is synonymous with erosion of standards is unsupported and in fact contrary to principles accepted in other industries. Lively competition exists in the marine pilotage profession in many other states and has served, as in other industries, to raise performance standards of pilots and efficiencies to industry.

Thank you for your attention to these important matters for the marine pilotage profession in Alaska.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael C. Spence", written over a horizontal line.

Michael C. Spence

Parker Shields Title Insurers From FTC Attack On Collective Rate Setting: Invoking recent Supreme Court teachings in *Town of Hallie* and *Southern Motor Carriers Rate Conference* on the scope and applicability of the state action doctrine, the U.S. Court of Appeals for the Third Circuit decides that the collective setting of rates charged by five major national title insurance companies for title search and examination services in six states is immune from antitrust attack under FTC Act §5 by virtue of the *Parker* doctrine. ... pages 97, 119

Cooperation Is Theme Of Federal And State Antitrust, Deception Enforcement: As officials from both federal agencies and state attorneys general's offices continue to harmonize on the theme of cooperation to enforce competition and deceptive trade practice laws, they indicate that occasional differences of perspective or case selection with a novel approach should not cause any discordant note in the cooperative enforcement chorus. ... pages 103, 133

EC Remains On Steady Course Toward Integration By 1992: Sir Leon Brittan, Vice President of the Commission of the European Communities and the commissioner responsible for competition policy and financial services, assures U.S. audiences that the EC Member States remain committed to integration by 1992, free trade, and keeping the Common Market "accessible to the rest of the world" and that the Commission is pursuing the prospect of a treaty or accord with the U.S. on antitrust cooperation and enforcement. ... page 115

Counsel's Assessment Of Antitrust Claim Isn't Admissible In Malpractice Case: An attorney's statements about the merits of a claim under state antitrust law should not have been admitted in a subsequent malpractice action to prove the validity of the antitrust claim, the Idaho Supreme Court rules. ... page 109

Marine Pilots Association Can't Invoke *Parker*, Labor Exemption: An association of marine pilots licensed by Alaska can find no safe harbor in the *Parker* doctrine or its status as a labor organization to avoid the reefs of antitrust litigation instigated by a member challenging his discipline by the association, the U.S. District Court for the District of Alaska determines. ... page 98

Auto Maker's Field Vehicle Is Covered By State Lemon Law: Chrysler Motors Corp. must repurchase a defective vehicle sold to a consumer after one of its employees already had driven it more than 20,000 miles, the Washington Supreme Court rules, because an automobile driven extensively as a manufacturer's field vehicle is "new" for purposes of the state's lemon law. ... page 110

Other provisions require a mechanism for judicial review of arbitrary or capricious regulatory actions.

The FCC would have to develop minimum customer service and picture and sound quality standards. States and franchising authorities would be authorized to impose higher standards for customer service and picture/sound quality.

Cable TV systems would have to carry all local programming by incorporating "must carry" provisions as a condition of cable's compulsory license of broadcast television signals. "Cable draws a substantial benefit from the compulsory license, which allows it to obtain CBS, NBC, and ABC for a nominal charge," Lieberman declared. "It should be required to carry small, local independent and public stations as a condition of receiving this benefit."

MARINE PILOT ASSOCIATION ISN'T IMMUNE UNDER STATE ACTION DOCTRINE, LABOR LAW

An association of marine pilots licensed by Alaska may not invoke the state action doctrine or its status as a labor organization to sink an antitrust claim floated by a member disciplined by the group, the U.S. District Court for the District of Alaska decides. (*Spence v. Southeastern Alaska Pilots' Ass'n*, DC Alaska, No. J90-004 Civil, 12/11/90)

The defendant, the court explains, is not the state and failed to show "how the immunity of the state might extend to a private association of pilots organized for the purpose of dispatch and pooling resources." The association also fails to qualify as a "labor organization" because its members are independent contractors, not employees, and the group does not "deal with" employers on the pilots' behalf.

Background

Southeastern Alaska Pilots' Association (SEAP) is a voluntary, unincorporated association of persons licensed by the State of Alaska to perform marine pilotage in the waters of southeast Alaska.

The membership of SEAP is limited to 21 marine pilots. When a vacancy occurs, a new member is admitted by vote of the membership. Members are classified into categories based on experience and availability for dispatch. The income and expenses of members are pooled and the net income is distributed to members in proportion to each pilot's classification. Members must use the association as their means of access to employment in southeastern Alaska and are limited for a period of 10 years from competing in southeastern Alaska following retirement or expulsion from SEAP.

This dispute results from disciplinary action taken by SEAP against one member, Michael C. Spence. According to the complaint, Spence was required to relieve another pilot from duty because the other pilot was intoxicated. When SEAP failed to respond to Spence's efforts to launch a disciplinary action against the other pilot, Spence reported the incident to the state, which has scheduled a disciplinary hearing. The other pilot then filed a complaint with SEAP charging Spence with defamation. After a hearing and submission of vote to

the other members, Spence was suspended from SEAP dispatch for 30 days to run from June 1, 1990 through June 30, 1990.

Spence's complaint alleged that SEAP is a combination in restraint of trade and that its members agree to written and oral agreements in restraint of trade.

The disciplinary action has been stayed pending final judgment in this action.

The court currently is considering SEAP's motion for partial summary judgment based on the state action doctrine and its alleged status as a labor organization.

State Action

Judge James A. Von Der Heydt rejects SEAP's assertion that it is shielded from antitrust attack because states have authority to regulate pilots.

Spence does not dispute the authority of the state to regulate or demand compulsory pilotage, the court notes, but he "has not brought suit against the state," and the defendants have not shown "how the immunity of the state might extend to a private association of pilots organized for the purpose of dispatch and pooling resources."

Therefore, the court holds that summary judgment cannot be granted based on an affirmative defense of state action immunity.

Labor Organization

Turning to SEAP's claim that it is exempt from antitrust attack as a "labor organization," the court notes precedent suggesting that pilot associations, such as SEAP, are not "easily legally defined."

In this case, however, neither the language of the statute, 29 USC 152(5), nor case law relied on by the association supports the contention that SEAP qualifies as a "labor organization," the court explains.

The statute, the court observes, spells out that the organization must deal with *employers* (emphasis added). In the circumstances present here, SEAP members are not employees but independent contractors. While the court acknowledges that the term "deals with" in the statute has been interpreted not to be limited to "bargain with," it finds that SEAP does not "deal with" employers on the pilots' behalf. The complaint alleged "that the pilots are responsible for all dealings with the vessel."

The cases cited by SEAP, the court continues, "involved situations of employee committees or unions specifically organized to deal with employer-employee relationships." See *General v. Pilots Ass'n for Bay and River Delaware*, 254 FSupp 447 (DC Del 1966); *O'Hare v. U.S.*, 150 AMC 182 (DC WWash 1949); and *Murphy Tugboat Co. v. Shipowners & Merchants Tugboat Co.*, 467 FSupp 841 (DC NCalif 1979), *aff'd* 658 F2d 1256 (CA 9 1981).

Since the court finds that SEAP is not a labor organization and that its members cannot fit within the employee classification, it declines to reach the question whether there is a labor dispute in this case.

Testimony
to the
House Committee on Transportation
from
Captain Mark Nichols
of Lewis & Clark Pilotage, Inc.

February 7, 1991

Mr. Chairman, Members of the Committee, my name is Mark Nichols and I am secretary of Lewis & Clark Pilotage.

Our company was founded in October, 1989. My partner, Captain Gordon Howe, and I have spent our entire working lives in the maritime industry. Captain Howe, the president of Lewis & Clark, is the sixth most senior pilot on the Columbia River. He is a former two-time president of the Columbia River Pilots Association and served as a board member of the Oregon Board of Maritime Pilots from 1986 through 1990.

I obtained my federal license as first class pilot for the Columbia and Willamette River pilotage grounds in 1962. In 1974 I became licensed as a Columbia River pilot by the Oregon Board of Maritime Pilots. I, too, am a former president of the Columbia River Pilots Association.

Both Captain Howe and myself are members of the Masters, Mates and Pilots Union.

Since the formation of Lewis & Clark Pilotage, we have primarily provided pilotage services to vessels calling at the Peavey Grain facility in Kalama, Washington.

We have no objection to House Bill 2074 from the Oregon Board of Maritime Pilots and would be pleased to provide any background information to this Committee which would be helpful in your consideration of the bill. Thank you for this opportunity to testify.

DRAFT

TESTIMONY BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION
FROM CAPTAIN MARK NICHOLS
OF
LEWIS & CLARK PILOTAGE, INC.

March 12, 1991

Mr. Chair, members of the Committee, my name is Mark Nichols. With me today is my partner, Captain Gordon Howe. Together, we make up the state-licensed Columbia River pilots employed by Lewis & Clark Pilotage, Inc.

My purpose today is to testify in favor of the -3 amendments to House Bill 2074 and the additional amendments which the chairman has authorized to be considered today.

The purpose of our testimony is to make two basic points. First, if the benefits of competition on the pilotage grounds of Oregon are to be preserved, the Legislature should adopt either the federal pilotage option in the -3 amendments or the separate amendment prohibiting the Oregon Board of Maritime Pilots from adopting a rule which reinstates the monopoly of the Columbia River Pilots Association on the Columbia River.

Second, if there is ever to be serious change to what has been a closed "old boys club" on every ^{of Oregon} pilotage ground, there must be change in the status quo: modification of how the Oregon Board of Maritime Pilots operates; the development of a more fair and open apprenticeship program for pilots; and an affirmative action plan for the recruitment and licensing of minority and women pilots.

Before discussing each of these points in more detail, let me tell you a little bit about the background of Lewis &

Clark Pilotage. Prior to October, 1989, both Capt. Howe and I were members of the Columbia River Pilots Association. Both of us were voted into the CRPA in 1974 after having spent more than a decade apiece in the commercial towboat industry on the Columbia River.

In October, 1989, Peavey Grain Company's terminal in Kalama, Washington, became involved in a labor dispute. Following a threat of physical violence to the one of the CRPA's pilot members, the CRPA met at its Portland headquarters and, in an unprecedented move, decided to refuse to serve neutral foreign flag vessels calling at Peavey's Kalama dock. Gordie Howe and I were worried about the consequences to the CRPA, and to state pilotage in Oregon generally, if the pilotage service at the Peavey dock was delayed indefinitely. Early one morning, we called a special meeting of the CRPA. However, following a heated four-hour meeting, we were the only two pilots who disagreed with the decision to refuse service to vessels calling at the Peavey dock.

Following that meeting, between October 16 and October 26, 1989, six foreign flag vessels stacked up the river waiting to call at Peavey's grain elevator. In addition, two more vessels were in route and scheduled to arrive in the Columbia River just two days later, on October 29, 1989.

During the course of the dispute, Peavey Grain Company advertise' for available pilots to move the ships. Gordie Howe, who was then a member of the Oregon Board of Maritime Pilots,

myself and other CRPA members knew that Peavey was looking throughout the world for any pilot with a federal license for the Columbia River who could be found to move those ships. We also know that they found a pilot, Mr. Joe Angel, with the license for the Columbia River bar and he was in the process of taking the necessary tests to obtain the endorsement for the Columbia River. We were very worried that the grain company was close to obtaining the necessary federal pilots and that unless those vessels were moved, we would see federal pilotage on the Columbia River.

Following a whirlwind series of negotiations, on October 27, 1989, my partner Gordon Howe and I resigned from the CRPA and entered into a long-term contract with Peavey Grain Company to be the exclusive provider of pilotage services to vessels calling at their grain terminal. For my part, I made the difficult decision to resign from the CRPA for two reasons. First, I vehemently disagreed with the organization's decision to capitulate^{to} the threats and intimidation and I was not going to allow anyone -- certainly not either side of a labor dispute to which I was not a party -- to prevent me from pursuing my livelihood as a Columbia River Pilot. Second, with the escalating crisis of vessels stacking up in the river, both Gordie Howe and I feared that either Peavey Grain or the U.S. Coast Guard would find a way to set up a system of federal pilotage and destroy more than a century of state control over pilotage in Oregon waters.

We are now in the ironic position of supporting the provision in the -3 amendments which would allow a federal pilotage option to vessels calling in the Columbia River. Our support for that change is a function of our experience over the last 16 months since we formed Lewis & Clark Pilotage. We have been subjected to a series of anti-competitive activities by our former partners which are designed to accomplish one of two things: either destroy our small company's ability to survive or force us back into the CRPA.

Our competitor's anti-competitive tactics, which include threats of economic coercion directed to the providers of service to our company and to the steamship agents who order the pilots for vessels calling in the Columbia River, caused us to file a major anti-trust case under both federal and Oregon law in January of this year. A trial before a jury in federal court in Portland is scheduled for mid-June.

Unfortunately, the courtroom is not the only battlefield on which we face the Columbia River Pilots Association. Just last week, the officers of the CRPA filed complaints against Capt. Howe and myself before the Oregon Board of Maritime Pilots alleging that our contract with Peavey Grain is illegal. But most incredibly, the CRPA has petitioned the Oregon Board of Maritime Pilots to make a policy determination and adopt a rule requiring that "each pilotage ground shall have one and only one pilotage group." There can be no doubt that the objective of this Petition for Policy Determination and

Rulemaking is to re-establish the CRPA's monopoly, which was fractured for the first time in approximately 30 years when we formed Lewis & Clark Pilotage some 16 months ago.

The Columbia River Pilots Association will claim that reinstatement of their monopoly is vital to safe and efficient pilotage on the Columbia River. But there is nothing about the mere existence of competition which in and of itself undermines safety. Professional pilots should be able to do their job regardless whether there are one, two or three pilotage companies on a particular waterway. We have had no accidents in the 16 months since our formation. Further, competition has existed for decades at the mouth of America's busiest waterway, the Mississippi River. In addition, competition between different state pilotage organizations or between organized groups of federal pilots and state pilot organizations exists on Chesapeake Bay, Delaware Bay, New York Harbor and in Hawaii and Alaska.

Just like other segments of the transportation industry, free and open competition promotes quality and service. On the Columbia River, for example, we have competition between different towboat companies, barge companies, steamship agents, ship's handlers and a host of other elements of the maritime industry. The CRPA claims that we don't really have competition for pilotage on the Columbia River because state law prohibits pilots from charging vessels any different rate than that set out in a designated tariff. But to argue that the lack of price competition means there is no competition is to suggest that

restaurants or taxi cab companies, which may have the same rates for particular products, do not compete for customers on the basis of service and quality is ridiculous.

Our attorney has advised us that the Oregon Board of Maritime Pilots has no authority to adopt rules or regulations which would have the effect of creating a pilotage cartel or monopoly on the Columbia River where one does not exist today. In our counsel's opinion, a rule establishing such a monopoly would violate Oregon's antitrust statute, which was passed in 1953 with the express purpose "to encourage free and open competition in the interest of the general welfare and economy of the state, by preventing monopolistic and unfair practices." ORS 646.715. Oregon's pilotage statute, which is set out in ORS Chapter 776, may give the board the power to adopt rules which "provide for efficient and competent pilotage service on all pilotage grounds," but the Board's authority to adopt rules for the effective administration and enforcement of Chapter 776 is subject to the limitation that such rules cannot be "inconsistent with law." Lewis & Clark will vigorously assert its position in any proceeding before the Oregon Board of Maritime Pilots that adoption of the rule requested by the CRPA will be flatly inconsistent with another Oregon law -- Oregon's antitrust statute, which embodies Oregon's longstanding policy against monopolies in all segments of trade and commerce.

We will fight our battle before the Pilot Board against the CRPA's proposed monopoly rule, but this potentially expensive

and protracted dispute will not be necessary if the Oregon Legislature will adopt one of the two amendments before this Committee today. If you were to adopt the amendment at line 15 and 16 on page four of the -3 amendments, Gordie Howe and I will survive because we would have the right to pilot under our federal licenses for the Columbia River.

Alternatively, if that amendment is not adopted, we will survive if the Legislature enacts a very simple amendment to ORS Chapter 776 prohibiting the Oregon Board of Maritime Pilots from adopting any rule which hinders free and open competition between pilot organizations. Adopting such an amendment will make it crystal clear that the Pilot Board has no authority to even consider a rule creating or reinstating a monopoly on any pilotage ground.

In addition, if Lewis & Clark is to survive and add new pilots over time to replace Gordie Howe and myself (Gordie is 58 and I am 53), we need a provision allowing pilot trainees to ride aboard ocean-going vessels on Oregon pilotage grounds in order to gain the necessary trip experience to obtain a pilot's license. Right now, the CRPA is promoting Senate Bill ___ which would enact as legislation their own training rules. Because the CRPA also takes the position that Lewis & Clark's trainees are not allowed to ride aboard vessels being piloted by the CRPA, our trainees are prevented from gaining the trips necessary over the whole length of the Columbia River to obtain a license. We are perfectly willing to allow the CRPA's trainees to ride with us

aboard the deep draft vessel we pilot to and from Kalama, Washington. We don't ask for our competitor to train our personnel, but only for the opportunity to be aboard these vessels to train our trainees ourselves.

In support of our position on the importance of free and open competition, it is worth pointing out the recent experience in Alaska and Hawaii. In both states, the largest pilot associations sought legislation creating statutory monopolies. In each case, the states have refused to grant statutory monopolies to particular pilot organizations. In Alaska, Governor Walter Hickel decided not to introduce monopoly legislation in the face of opposition from the Alaska's small independent pilotage organizations and from a broad coalition within the maritime industry.

In Hawaii, a bill to grant an exclusive franchise to the Hawaii Pilots Association has been defeated. The Hawaiian experience is worth examining. In 1985, the state auditor, following an extensive investigation, recommended that the Hawaii Board of Pilot Commissioners be abolished because of abuses in rate setting, possible antitrust violations, multiple conflicts of interest and the failure to protect the interests of the public in cases of discipline and enforcement. The Hawaii Legislature followed the auditor's recommendations and in 1985 abolished the Hawaii Board of Maritime Pilots, which like Oregon's Board contained pilot, shipping industry and public members. Instead, regulatory responsibility for pilots was

placed in the Department of Commerce and Consumer Affairs. The Hawaiian Legislature has since rejected efforts to re-establish the pilot board and to grant a monopoly to the Hawaii Pilots Association. That state has concluded that its waters are better served by two competitive pilot organizations: the Hawaii Pilots Association and the Port Pilots of Hawaii. Those two organizations compete on the open market for pilotage business in the Hawaiian Islands.

A partial copy of the Hawaii State Auditor's 1985 report is being submitted with this testimony. We will secure a full copy of that report for filing with this committee as soon as possible.

The Hawaiian Auditor's report serves as a good transition to our second major point: the Oregon Legislature should take affirmative steps to open up the closed and "old boy" character of the pilotage system in Oregon. We support the -3 amendment^s which place the Oregon Board of Maritime Pilots under the jurisdiction of the Oregon Transportation Commission, provide for nomination of all board members by that Commission and require apprenticeship and affirmative action programs developed by the Bureau of Labor, these are all important first steps toward opening up a very challenging and lucrative occupation to the broadest possible range of capable applicants. Gordie Howe and I were first licensed as Columbia River Pilots in 1974. During our 15 years within the CRPA, we both served as president and Gordie was a member of the Oregon Board of Maritime Pilots from

1986 through 1990. During our tenure with the CRPA, it was a monopoly. The last of the independent pilots on the Columbia River retired sometime in the 1950's. And it is clear that Oregon pilots generally have benefitted from the existence of monopoly power on their particular pilotage ground. Each member of the CRPA works a very favorable schedule: 22 days on, followed by 17 days off. Studies over the years have shown that the average number of hours of work per day "on the board" for dispatch to vessels is seven hours per day. And then, there is the ~~three~~ ^{two} and a half weeks off, salaries during the last several years have averaged between \$120,000 and \$140,000.

We are no longer members of the CRPA. Instead, we compete with our ex-partners through Lewis & Clark Pilotage, Inc. We are working harder now than we did when we were with the CRPA, but that is a function of the battles we are fighting with the CRPA and the intense effort that must be devoted to ensure the survival of any start-up company. We believe ^{that} the competition is best for the waterway. Unlike the CRPA's efforts to obtain legislation that will favor that organization and assist it in its efforts to eliminate our company from the Columbia River, the amendments we support here are neutral: they will only ensure that free and open competition can continue and that much needed sunlight comes to a very unique niche in maritime commerce. The citizens of Oregon will be well served by the amendments we support today.

Thank you for this opportunity to testify. Captain Howe and I as well as our admiralty lawyer, Mike Haglund, are available now for questions.

MEHr7125

M E M O R A N D U M

TO: Representative Cedric Hayden (District 38)
House-393
State Capitol Building
Salem, Oregon 97310

FROM: Lewis & Clark Pilotage, Inc.
Capt. Mark Nichols
Capt. Gordon Howe
Michael E. Haglund, Counsel

DATE: March 7, 1991

RE: Recent Developments and Proposed Amendments
to H.B. 2074

I. INTRODUCTION.

On March 6, 1991, the Columbia River Pilots Association, until October, 1989, the monopoly provider of pilotage services on the Columbia River pilotage ground, filed a Petition for Rulemaking before the Oregon Board of Maritime Pilots which seeks a policy determination by the Board and a proposed rule requiring that there be only one pilotage organization on each Oregon pilotage ground. The effect of this proposed policy and rule would be to eliminate the CRPA's only competitor, Lewis & Clark Pilotage, Inc. The CRPA also filed the separate complaints against the two state licensed pilots employed by Lewis & Clark: Captain Mark Nichols and Captain Gordon Howe. The complaints were filed without any supporting documentation and seek to invalidate the contract which Lewis & Clark holds with Peavey Grain Company and to discipline Captains Nichols and Howe for alleged violations of Oregon law.

There is nothing in current Oregon law which requires there to be more than one pilotage organization on the Columbia River or any of Oregon's four pilotage grounds. Indeed, the Oregon Legislature long ago passed its own antitrust statute with the express purpose "to encourage free and open competition in the interest of the general welfare and economy of the state, by preventing monopolistic and unfair practices." ORS 646.715. The amendments suggested below are designed to affirm the Legislature's position that there is no legal requirement that there be only one pilot organization on a pilotage ground and to ensure that there can be free and open competition in this segment of the transportation industry.

II. PROPOSED AMENDMENTS TO H.B. 2074-3.

A. Regarding the Powers of the Oregon Board of Maritime Pilots.

ORS 776.115 is amended to add an additional section:

"(10) Where multiple pilot organizations exist on a pilotage ground, the Oregon Board of Maritime Pilots shall make no rule which hinders fair and open competition between pilot organizations."

B. Eliminating Outdated Training Requirements.

Amend ORS 776.325(2) as follows:

"An applicant for a license over any river pilotage ground must have at least six

months' [continuous] experience piloting ocean-going vessels [in the domestic trade] over the pilotage ground for which application is made, prior to making an application for a license, [and must have had the necessary experience in handling ocean-going vessels through the bridges, under varying conditions with and without towboats].

C. Pilotage Trainee's Right to Train.

Adopt new provision ORS 776.310:

"Any pilot or pilot trainee is entitled to ride aboard ocean-going vessels on Oregon pilotage grounds to obtain recency trips or the trip experience necessary to obtain a pilot license. The pilot or pilot trainee must have means available for boarding and leaving vessels on which the pilot or pilot trainee wishes to ride.

D. Repeals Prohibition Against Price Competition.

ORS 776.415 is repealed:

"[No pilot shall demand or receive any greater, lesser or different compensation for piloting the vessel upon any of the pilotage grounds than is allowed by law.]

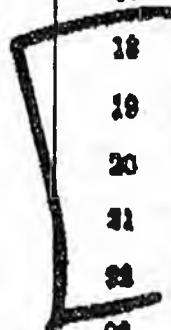
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*Version now promoted
by Democrats.*

SB 907-AMRS
(LC 3037)
4/1/91 (SH/le)

**PROPOSED MINORITY AMENDMENTS TO
A-ENGROSSED SENATE BILL 907**

- 1 On page 2 of the printed A-engrossed bill, after line 27, insert:
- 2 "SECTION 8. (1) The Oregon Board of Maritime Pilots shall:
- 3 "(a) Conduct a study of the need for a limitation, as required under ORS
- 4 776.115, on the number of pilots licensed under ORS chapter 776 and of the
- 5 degree to which free and open competition among pilot organizations should
- 6 be the future policy of the State of Oregon. In conducting this study, the
- 7 board shall seek comments from port districts, shipping interests and all pi-
- 8 lot associations in this state.
- 9 "(b) Prepare an affirmative action plan for the recruitment, training, li-
- 10 censing and employment of minority and women pilots on all pilotage
- 11 grounds under the jurisdiction of the board.
- 12 "(c) Complete the requirements of paragraphs (a) and (b) of this sub-
- 13 section by September 30, 1992, and make proposals for any statutory changes
- 14 it deems necessary to ORS chapter 776.
- 15 "(d) Report to the Speaker of the House of Representatives, the President
- 16 of the Senate and the Governor on the study and plan prepared under this
- 17 subsection by September 30, 1992.
- 18 "(e) Not adopt any rule, before July 1, 1993, that has the effect of limiting
- 19 the business of or terminating any pilot organization existing in this state
- 20 on January 1, 1991, unless the rule is determined by the board to be neces-
- 21 sary to preserve the public safety, welfare or commerce or to protect the
- 22 marine environment.
- 23 "(2) As used in this section, 'affirmative action' means a program designed
- 24 to insure equal opportunity in employment and business for persons other-



Version which passed
Transp. Comm. on Thurs
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SB 907-A6
(LC 3037)
3/27/91 (SH/mm)

PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 907

and the degree to
which free and open
competition should be
The future policy
of the State
of Oregon.

- 1 On page 2 of the printed A-engrossed bill, after line 27, insert:
- 2 "SECTION 2. (1) The Oregon Board of Maritime Pilots shall:
- 3 "(a) Conduct a study of the need for a limitation, as required under ORS
- 4 775.115, on the number of pilots licensed under ORS chapter 775. In con-
- 5 ducting this study, the ~~commission~~ ^{Board} shall seek comments from port districts,
- 6 shipping interests and all pilot associations in this state.
- 7 "(b) Prepare an affirmative action plan for the recruitment, training, li-
- 8 censing and employment of minority and women pilots on all pilotage
- 9 grounds under the jurisdiction of the board.
- 10 "(c) Complete the requirements of paragraphs (a) and (b) of this sub-
- 11 section by September 30, 1992, and make proposals for any statutory changes
- 12 it deems necessary to ORS chapter 775.
- 13 "(d) Report to the Speaker of the House of Representatives, the President
- 14 of the Senate and the Governor on the study and plan prepared under this
- 15 subsection by September 30, 1992.
- 16 "(e) Not adopt any rule, before July 1, 1993, that has the effect of limiting
- 17 the business of or terminating any pilot organization existing in this state
- 18 on January 1, 1991.
- 19 "(2) As used in this section, 'affirmative action' is a program designed to
- 20 insure equal opportunity in employment and business for persons otherwise
- 21 disadvantaged by reason of race, color, religion, sex or national origin."
- 22 In line 28, delete "5" and insert "8".
- 23

1 “(8) Adopt any rule or make any order, not inconsistent with law, for the
2 effective administration and enforcement of this chapter.

3 “(9) Establish rates pursuant to subsection (6) of this section for a period
4 of not less than two years, that continue in effect until a subsequent hearing
5 process. Rates may include automatic adjustment provisions to reflect
6 changing economic conditions. All rates, and adjustments thereto, shall be-
7 come effective on the same date specified by the board for all pilotage
8 grounds.

9 “(10) Where multiple pilot organizations exist on a pilotage ground,
10 make no rule that hinders free and open competition among pilot or-
11 ganizations.

12 “SECTION 8. ORS 776.520 is amended to read:

13 “776.520. Pilots are authorized to limit their liability and the liability of
14 any organization of pilots to which they belong by tariffs approved by the
15 board containing substantially the terms and provisions of the following
16 form:

17 “ _____ ”

18 “The provisions of ORS 776.510 and 776.540 hereby are incorporated into
19 and made a part of this tariff. By reason of the option granted by ORS
20 776.510, the rates and charges named in this tariff do not include the cost
21 of marine insurance insuring the pilot and any organization of pilots to
22 which the pilot belongs, the vessel, its owners, agents or operators from the
23 consequences of negligence or errors in judgment of the pilots or organiza-
24 tions of pilots.

25 “However, upon reasonable notice to the pilots in writing from the vessel,
26 its master, owners, agents or operators, the pilots parties hereto will procure
27 such insurance on a ‘trip’ basis in an amount equal to the value of the vessel
28 and its cargo, or such other amount as may be agreed upon between the pi-
29 lots and the vessel, its master, owners, agents or operators, insuring the pi-
30 lots and the organization of pilots to which they belong against all claims

IN RESPONSE TO
PROPOSED CHANGES
TO HAWAII REVISED
STATUTES 462A
"PILOTAGE"

January 3, 1991

Recommendations by:

PORT PILOTS OF HAWAII
PIER 32
HONOLULU, HAWAII 96817
(808)-531-6248

JANUARY 1991

Memorandum:

TO: Concerned and affected parties

FROM: PORT PILOTS OF HAWAII

SUBJECT: Opposition to proposed legislation by Hawaii Pilots Association regarding port pilotage; (exhibit 1)

INTRODUCTION

The PORT PILOTS OF HAWAII, is a professional association of State licensed port pilots. We are registered with the State of Hawaii as a trade organization who's purpose is to provide safe, professional, and well trained pilots to meet the needs of commerce as it relates to pilotage. Each pilot in our group has been authorized by the D.C.C.A. to provide our pilotage services independently of the Hawaii Pilots Association. We have documents on file which show that Hawaii Revised Statutes allow us to provide pilotage services independently of any existing pilot association.

The PORT PILOTS OF HAWAII has provided a totally safe and reliable pilotage service and has given the Shipping Agents a viable alternative without compromising Safety. Our Safety record will show that there is nothing to dispute this.

BACKGROUND OF TWO ASSOCIATIONS

In Mid 1987 Captain LePendu attempted to establish a pension plan, but was warned by the C.P.A. for Hawaii Pilots that the pension plan he wanted to establish may not be qualified under I.R.S. rules. While investigating this it was discovered that there was uncertainty surrounding the precise legal status of the various Hawaii Pilot organizations. It was apparent that restructuring of the Organization was a necessity. Captain Geronimo and LePendu were removed as directors of Hawaii Pilots and not made part of the restructuring process and were ostracized for having discovered these serious business irregularities. We believe that we were made scapegoats for these irregular business practices established by the majority of the Hawaii Pilots.

It became very apparent that Captain Geronimo and Captain LePendu were no longer welcome in the Hawaii Pilots. We eventually left the Hawaii Pilots in hopes of providing our pilotage service to all shipping agents. Our reputations and professionalism have never been questioned by the Hawaii Pilots until it became apparent that we were becoming successful in our endeavors to provide quality pilotage. Our success was measured by the loss of business suffered by the Hawaii Pilot Association.

OBJECTIVE #1

This report will show cause why legislation to establish a single pilot association is:

1. Not in the best interest of the People of the State of Hawaii;
2. Will promote a Privately Owned Monopoly for the Hawaii Pilot Association;
3. Has no basis in fact that Public Safety will be better served by only one pilot association;
4. The Support System of the Hawaii Pilots Association is not economically efficient;
5. An attempt to circumvent ongoing mediation and pending litigating between former members of Hawaii Pilot Association and the HPA.

OBJECTIVE #2

This report will also seek to determine that legislation for the reestablishment of the Board of Pilot Commissioners will further the MONOPOLY interests of a single pilot association:

1. 1985 Legislative Auditors Report to the Governor and the Legislature is highly critical of the Pilot Commission; (exhibit 2)
2. 1985 Legislative Auditors Report is highly critical of pilots on the Commission;
3. Commission acted in the interests of the pilots and not the interest of the public;
4. 1990 Legislative Auditors Report to the Governor and the Legislature is supportive of DCCA responsibilities since 1985; (exhibit 3)
5. 1990 Legislative Auditor Report determined that regulations have improved under the Director of DCCA;
6. 1990 Legislative Auditor Report critical of exams for Deputy Port Pilots because test takers and scorers were in the same pilot association;

TESTIMONY

I. Legislation proposed by the Hawaii Pilot Association: (Exhibit 1)

MONOPOLY:

This legislation seeks to create a PRIVATELY OWNED MONOPOLY which is clearly not in the best interest of public safety nor in the best interest of the State. This legislation would, however, be in the best financial interest of the Hawaii Pilots Association, by guaranteeing them total control of the financial market and control of the supply of licensed pilots.

The PORT PILOTS OF HAWAII opposes these proposed legislative changes to Hawaii Revised Statutes 462A-Pilotage.

"ASSOCIATIONS OF SHIPOWNERS AND OPERATORS ARE NOT PLEASED WITH THE BENEVOLENT MONOPOLY OF STATE PILOT ASSOCIATIONS. SOME HAVE STATED THAT INCREASED COMPETITION WOULD BE GOOD FOR THE MARITIME INDUSTRY." Quote from The Pilotage study Group, 1989, for the U.S. Coast Guard

The 1985 Legislature was correct in Sunsetting the Board of Pilot Commissioners. The 1985 Legislative Auditor's Report was overwhelming in its criticism of the Commission and the Hawaii Pilot Association.(Exhibit 2) The 1990 Legislative Auditor's Report (Exhibit 3) is very favorable of the present direction of the D.C.C.A. Going back to the "old days" of the MONOPOLY and the Pilot Commission would be a 5 year leap backward in the progress toward the improvement of pilotage regulations.

The proposed legislation is misleading and contradictory in that it assumes that there should be a "return" to a single pilotage system. There is already a single pilotage system in effect since all pilots are required by Statute and Regulations to provide the same pilotage service in all Ports. Hawaii Administrative Rules under the direction of the Department of Commerce and Consumer Affairs has created a STATEWIDE PILOTAGE SYSTEM with the adoption in 1990 of Subchapter 12 of the Rules.(exhibit 4) The STATEWIDE PILOTAGE SYSTEM is exactly what the Hawaii Pilots Association is attempting to establish with their proposed legislation. The only differences is that the Hawaii Pilots Association is attempting to establish themselves as the single and only pilot association. The contradiction is that the Single Pilotage System does not mean a single Pilot Association.

Neither the Hawaii Pilot Association nor the Board of Pilot Commissioners acted responsibly on safety matters. "In many cases, board actions furthered the financial interests of licensed pilots and not those of the State." Auditor's Report 1985, (Exhibit 2)

The pilotage act with all its rules and regulations is a State authorized monopoly. At present it is under the control of the DCCA and operating with the best interests of people of the State of Hawaii, and this is where the control must remain for the system to work. Allowing the Hawaii Pilot Association to control all State Pilots under one association with Legislative sanction would create a privately owned monopoly. This could have grave implications, possibly violating Anti-trust laws, and certainly not representing the best interest of the State.

The proposed legislation would require all pilots to financially contribute to the pilot support system of the Hawaii Pilots Association without any study or determination that their system is economically efficient or cost effective. We seriously doubt that the Hawaii Pilots Association can come close to matching our Dispatch and Pilot Boat Service.

II. Legislation proposed by the Hawaii Pilot Association:

"Reestablishment of the Board of Pilot Commissioners."
Parts A. and Parts B.

The PORT PILOTS OF HAWAII opposes these proposed changes to Hawaii revised Statutes 462A-Pilotage.

"IN ALMOST ALL AREAS REVIEW, THERE WAS EVIDENCE OF THE INFLUENCE OF THE PILOT ASSOCIATION ON THE BOARD'S DECISION MAKING PROCESS. IN MANY CASES, BOARD ACTIONS FURTHERED THE FINANCIAL INTERESTS OF LICENSED PILOTS AND NOT THOSE OF THE STATE." Quote from Legislative Auditor's Report 1985.

Hawaii Administrative Rules Title 16, Chapter 96, Port Pilots, which were approved by the Governor of the State of Hawaii on August 9, 1990, specifically provide for a central scheduling system. This central system will guarantee that "pilotage services will be available at all times". The proposed changes to HRS 462A-Pilotage would conflict with Hawaii Administrative Rules and specifically the new rules in SUBCHAPTER 12 the STATEWIDE PILOTAGE SYSTEM. (Exhibit 4)

The Sunset Evaluation Update: Pilotage 1990, by the Legislative Auditor, is highly favorable of the Department of Commerce and Consumer Affairs in its regulatory responsibilities since assuming the conn in 1985. The report also states that the regulation of pilotage has improved under the D.C.C.A. The Report's conclusion is that the "public interest is best served by the reenactment of the statute." ... "The State should continue to regulate pilotage."

The Report does not make recommendations for changes to a single pilot association. The Report does not make recommendations that a Board of Pilot Commissioners be reestablished.

SUMMARY AND RECOMMENDATIONS

"The concentration of MONOPOLISTIC power ... heavily influenced by nine licensed pilots, leaves the State in a vulnerable position. Because of these concerns, we strongly believe that pilots should continue to be regulated, not by the board, but by the Department of Commerce and Consumer Affairs."

Legislative Auditor's report 1985

Attempts to create legislation to sanction a single pilot association and to reestablish the board of pilot commissioners would seriously undermine the authority and progress that the D.C.C.A. has accomplished in the past 5 years. The Legislative Auditor's Report of 1985 was highly critical of the Board of Pilot Commissioners and of the Hawaii Pilots. "In almost all areas covered the commission acted in the interest of the pilots and not the Public"

We believe that the Hawaii Pilot Association is deliberately trying to scuttle the progress made by the Director of D.C.C.A. with the pretext that public safety is in jeopardy. The speculation and assumption that the Director of D.C.C.A. or the PORT PILOTS OF HAWAII are less caring about safety is unfounded in fact.

There is doubt that the Hawaii Pilots Association is a nonprofit Association. It has never been confirmed with the D.C.C.A. that this corporation was ever incorporated and registered with the State either as a profit or as a nonprofit corporation. There are serious I.R.S. problems with the pilots' pension plans, and an uncertainty surrounding the precise legal status of Hawaii Pilots, Inc. and its related organizations.

1. We recommend that the proposed legislation not be supported.
2. We recommend that the Director of DCCA continue with his powers and duties as provided for in HRS 462A-3.
3. We recommend that Hawaii Administrative Rules title 16, chapter 96, Subchapter 12, STATEWIDE PILOTAGE SYSTEM, be implemented without delay.
4. We seek your support in opposing the proposed legislation by the Hawaii Pilots Assn., and ask that you write and express your concerns to:

Hawaii State Legislature
Consumer Protection and Commerce committees

PROPOSED CHANGES
HAWAII REVISED STATUTES 462A
PILOTAGE
1991

- I. Legislation for the return of the State of Hawaii to a single Pilotage System in the interest of public safety by requiring that all Hawaii State Licensed Port Pilots be members of the Hawaii Pilots Association and take part in their Pilot Support System.
- II. Reestablishment of the Board of Pilot Commissioners.
- A. Composition of the Board will be seven members.
1. 2 members licensed pilots.
 2. 2 members shall represent commercial interests.
 3. 2 members shall represent the public.
 4. 1 member shall represent the interests of safety of waterfront workers.
- B. The Board will act as administrators for the Port Pilot Program within the Department of Commerce and Consumer Affairs.
1. The Board will establish Rules for the regulation of Port Pilots and the Hawaii State Pilotage System.
 2. The Board will set the standards for, will examine, and will issue licenses to Hawaii Port Pilots and Deputy Port Pilots.
 3. The Board will set the number of Hawaii Port Pilots required to maintain the Hawaii State Pilotage System.
 4. The Board will deny, remove, or suspend any Hawaii Port Pilot license it deems necessary in the interest of public safety.
 5. The Board will hold hearings on marine casualties within the pilotage waters of the State of Hawaii where a Hawaii State Licensed Pilot is involved.
 6. The Board will not set Pilotage Rates.
 - a. The setting of Pilotage Rates will remain with the Director of the Department of Commerce under rules established within that Department for fair setting of Pilotage Rates.
- III. The Position of Hawaii Port Pilot shall be by appointment of the Governor of the State of Hawaii after being examined, licensed, and selected by the Board of Pilot Commissioners.

EXHIBIT 1

1985 AUDITOR'S REPORT

Chapter 3

EVALUATION OF THE REGULATION OF PILOTAGE

This chapter contains our evaluation of the regulation of pilotage under Chapter 462A, Hawaii Revised Statutes. It includes our assessment of the need for regulation, the scope of regulation, and the effectiveness and efficiency of operations under the Board of Pilot Commissioners.

Summary of Findings

1. There is a need for regulation of pilotage. However, regulation by the Board of Pilot Commissioners has not met the purposes intended by the Legislature.

2. Chapter 462A, HRS, creates a monopoly by empowering the board to set pilotage rates and to limit the number of licenses to nine. The board has abused these powers by acting in the interests of the pilots and not in the interests of the people of this State.

3. The board is not an appropriate body for regulating pilotage rates. Its rate setting operations have placed pilot board members in serious conflict of interest situations.

4. The board's licensing program is deficient in several respects. The board's examination largely duplicates that given by the U.S. Coast Guard for federal licensure. Other board requirements are vague, subjective, subject to charges of discrimination, and restrictive.

5. The board has not acted to protect the interests of the public in cases of discipline and enforcement. Thus, there is no assurance that all currently licensed pilots are sufficiently competent.

The Need for Regulation

The practice of pilotage presents significant potential dangers to life, property, and the economic well being of a community dependent on maritime commerce.

Serious harm can result from improper pilotage. Some of the consequences of improper pilotage are vessel groundings and collisions with other vessels or objects in or around pilotage waters. A vessel grounded or sunk in the wrong place can block a harbor and prevent the free transit of commerce in and out of a community. Such accidents could result in significant economic impact in Hawaii since some of the islands have only a single port facility for commercial maritime traffic.

An incompetent pilot can place the lives of both crew and passengers in jeopardy. In addition to losses or damages to ships, cargo aboard can be lost or damaged as well. Improper pilotage can also result in damage to major structures such as piers, wharfs, bridges, and navigational aids.

Another significant hazard is the possible spillage of contaminating products such as oil. Such spillage could have grave environmental and economic impact on the State.

Accidents are not uncommon. Table 3.1 presents data on the extent nationally of accidents due to pilotage error. The data show that there is substantial danger even with licensing. In 1980, the majority, or 66 percent, of pilots at fault were state licensed pilots.

Table 3.1
Accidents Due to Personal Fault of Pilot*
United States

Year	State Licensed Pilots	Federal Licensed Pilots	Total
1978	116 (71%)	48 (29%)	164 (100%)
1979	139 (67%)	69 (33%)	208 (100%)
1980	78 (66%)	40 (34%)	118 (100%)

*Criteria for recording an accident by the U.S. Coast Guard is (1) death; (2) injury if the individual is incapacitated for 72 hours or longer; and (3) damage that is \$25,000 or greater.

Source: U.S. Coast Guard, Merchant Marine Investigations, Statistics Section, Washington, D.C.

In 1980, the U.S. Coast Guard changed its reporting format for accidents. It discontinued the determination of fault and presented data on total number of accidents per year in waters under state jurisdiction or under federal jurisdiction. Table 3.2 presents this data.

Table 3.2
All Accidents with Port Pilots Aboard

<i>Year</i>	<i>State Licensed Pilots</i>	<i>Federal Licensed Pilots</i>	<i>Total</i>
1981	213 (39%)	332 (61%)	545 (100%)
1982	128 (25%)	390 (75%)	518 (100%)
1983	65 (12%)	460 (88%)	525 (100%)

Source: U.S. Coast Guard, Merchant Marine Investigations, Statistics Section, Washington, D.C.

If data from Tables 3.1 and 3.2 are extrapolated and compared, it can be seen that vessels with federal pilots were involved in more accidents. This is probably because, in total numbers, there are more federally piloted vessels. However, it seems clear that where blame can be pinpointed, the rate of accidents is higher for state licensed pilots.

U.S. Coast Guard officials report that Hawaii pilots have been found negligent in one accident in the past four years.¹ Sources outside of the U.S. Coast Guard report at least one other major accident. Because of the many dangers posed by the practice of pilotage, it should continue to be regulated. However, the Board of Pilot Commissioners is not the appropriate agency in which to vest responsibility for ensuring public protection against improper pilotage.

As will be shown in this report, regulation by the board has not accomplished the objectives intended by the Legislature of providing for the maximum safety of vessels navigating in state waters, or maintaining a highly efficient state pilotage system, or insuring an adequate supply of qualified pilots. On the contrary, board operations have contravened the attainment of these objectives by inadequate review and follow up of accidents and violations of board rules, by failing to conduct critical and objective analysis of requests for increases in pilotage rates, and by restricting the number of pilots in the State.

1. Interview with Lt. Jonathan Surubbi, Chief of Investigations Section, Marine Safety Division, U.S. Coast Guard, 14th U.S. Coast Guard District, Honolulu, October 18, 1984.

Scope of Regulation

Although regulation is clearly warranted, there are several serious problems with the current regulation of pilotage. Of particular concern is the extent of the board's power over pilotage and its abuse of this power.

State authorized monopoly. Chapter 462A sanctions a state monopoly in pilotage. The Board of Pilot Commissioners is the only state professional and occupational licensing board that is empowered to limit the number of licenses to a specific number, which currently is nine, and to set rates for the occupation. Without Chapter 462A, the board's exclusive control over the practice of pilotage would be in clear violation of both federal and state antitrust laws.

The restriction on the number of licensees has kept the number of pilots in the State at an artificially low level. Rate setting by the board has resulted in government maintained price levels instead of pilotage charges based on market forces. The net effect is to guarantee a higher level of income to pilots in the State while increasing costs to the public. There is little evidence that pilots warrant this special treatment which is granted to no other profession or occupation in Hawaii.

Board members and pilots defend this state authorized monopoly by saying that it is necessary to attract and retain qualified pilots. They say that Hawaii must keep pay levels comparable to that paid to pilots in other states. A second argument extended is that most states have similar provisions in their laws and that opening up licensure would result in chaos in state pilotage.

There is little evidence to support either of these arguments. It does not appear that qualified pilots are in short supply or that regulation by the board has resulted in attracting and retaining qualified pilots. Moreover, this is a misperception of the proper role of a licensing board, which is to license for competency and not to set pay incentives for licensees.

It should be noted that Alaska has no restrictions on the number of pilots it licenses. This has not resulted in the chaos predicted by some, and to date, it does not appear to have had any impact on Alaska's ability to attract qualified pilots.²

2. Interview with Gerald Wilkerson, Division of Legislative Audit, Juneau, Alaska, November 16, 1984.

The concentration of monopolistic power in the hands of a board of five commissioners has not made the board more conscious of its responsibilities to the general public. The board is strongly influenced by the two pilot board members and by Hawaii Pilots (HP), the professional association that represents eight of the nine licensed pilots in the State. Most of the board's decisions further the protective and financial interests of the pilots.

Abuses in rate setting. Chapter 462A gives the board the authority to increase, lower, or alter pilotage rates after a public hearing and due notice to specified individuals in the maritime industry. The board is required to set the rate at a "fair charge" for services rendered. In establishing the fair charge, the board is supposed to consider necessary operating expenses, maintenance, depreciation, and return on investment of property used, and comparable charges at other U.S. ports.

In carrying out its rate setting responsibilities, the board may conduct its own investigation or use state auditors or private certified public accountants. The board is further authorized to conduct audits of the financial records of port pilots and the pilot association. Rate increases may be requested by any individual, association, or company.

Since the board was established in 1978, all requests for rate increases have been proposed and supported by HP. Table 3.3 outlines the proposals made by HP and the board's actions. HP first proposed an increase in June 1981. This proposal was modified by the board in July 1981 and approved for public hearing. A compromise proposal was finally adopted in October of that year. HP submitted a second request for a rate increase in April 1984. This proposal was approved by the board and is now awaiting public hearing.

In submitting the 1981 request, HP stated that pilots had not received an adjustment since 1977 and that the rates were inadequate. The adjustment was said to be needed for the following reasons:

- To accommodate increased expenses due to increased workload and inflation as the pilots could no longer support their operating expenses and to achieve an adequate return on investment.
- To bring each pilot's gross income closer to the accepted industry standard. Pilots in comparable mainland ports were said to be earning \$20,000 to \$30,000 more than Hawaii licensed pilots. HP said that each pilot earned \$63,000 after expenses in 1979 and \$78,000 in 1980.

Table 3.3

Requests for Rate Increase for Pilotage
1981-1984

Length of Vessel	A	B	C	D	E	F	G	H	I
	Base Rate 1977	Pilots Original Proposal 06/26/81	Percent Increase Over 1977 Base	Board Revised Proposal 07/06/81	Percent Increase Over 1977 Base	Compromise Approved 10/30/81	Percent Increase Over 1977 Proposal	HP Current Proposal 04/19/84	Percent Increase Over 1981 Base
0-200	80	120	50	110	38	102	28	120	18
200-350	100	150	50	140	40	127	27	133	5
350-400	125	190	52	180	44	161	29	169	5
400-450	155	235	52	225	45	200	29	210	5
450-500	205	310	51	300	46	263	28	276	5
500-550	255	385	51	375	47	327	28	343	5
550-600	315	475	51	465	48	404	28	424	5
600-650	385	580	51	570	48	493	28	518	5
650-700	450	675	50	665	48	574	28	603	5
700-750	490	735	50	725	48	625	28	656	5
750-800	520	780	50	770	48	663	28	696	5
800-850	555	835	50	825	49	710	28	745	5
850-900	585	880	50	870	49	748	28	785	5
900-over	620	930	50	920	48	790	27	830	5
Separate Charges									
Anchorage									
Under 500'	90	100	11	100	11	100	11	200	100
Over 500'	90	200	122	200	122	200	122	400	100
Travel Fee	-	variable				-		variable	
Boat Fee	-	-		-		-		5	100

The two pilot board members had been instrumental in developing the rate proposal. They were part of a three member Rate Adjustment Committee established by HP to devise the proposal. The HP committee was assisted in this task by a mainland consultant who had succeeded in getting a rate increase for the Alaska pilots.

The proposed increases in pilotage charges are shown in column B of Table 3.3. HP stated that although the request represented a 50 to 60 percent increase in rates, it still fell short of rates assessed at comparable ports.

Although the executive secretary of the Department of Commerce and Consumer Affairs (DCCA) informed the board that it could retain any state auditors or private accountants to assist it in reviewing the rate adjustment request, it chose not to do so. Instead, the board decided to rely on HP. The board said that HP had provided sufficient factual and relevant data for the board to conduct a fair and thorough investigation.

The board allowed HP to be its sole source of information on what constitutes a fair charge and its relation to operating expenses, maintenance, depreciation, and return on investment. HP's own minutes made note of the fact that the board would "not be soliciting information from other associations or commissions regarding rates. They will instead await the presentation from us (the pilots) and do any investigation based on that information."³

Consequently, no independent assessment was made of the accuracy and adequacy of the information presented by HP, and no audit was performed of the financial records of HP or of any of the pilots. As a result, even as some of the board members approved the rate proposal as a "fair charge," they had no idea of how much the pilots were actually earning. This information should have played a basic part in determining what was a fair charge.

In July 1981, the board met and discussed the rate proposal introduced in June (See Table 3.3, Columns B and C). The board made a few adjustments to the original proposal but these were deletions that represented only 1.3 percent of the total proposed revenue requirements submitted by the HP or a \$10 reduction in each rate

3. Minutes of the Hawaii Pilots Association, May 14, 1981, p. 2.

category (See Table 3.3, Columns D and E). After some discussion, the board decided to approve the rate proposal and schedule it for public hearing.

The State Consumer Advocate testified in a public hearing that the methodology used by HP in justifying the increase was deficient in several ways. It did not project growth or include any projected revenues from delays and cancellations. He stated that although HP's proposal said the increase would allow each pilot to earn \$90,000 annually in 1981, he determined that the actual amount each pilot would earn would be \$135,700 per year.

The Consumer Advocate recommended that: (1) the proposed rates be suspended until a full analysis is completed; (2) the board engage the services of an *independent* certified public accounting firm to conduct a financial and managerial audit of Hawaii Pilot Boat Service Inc., HP, and each port pilot's corporation; and (3) the pilots initiate a cost-of-service study to determine the proper basis for formulating each component of its costs so that the commission can develop cost-based rates.

In closing his testimony, the Consumer Advocate told the board, ". . . your decision whether to approve, suspend, dismiss or revise the proposed rates must be made on the basis that the pilots and their association have persuasively presented their justifications, and that they have carried their burden of proving their rates to be just and reasonable. Consumer Advocate is of the opinion they have not done so."⁴

In retrospect, the findings of the Consumer Advocate are confirmed in the following respects:

- HP's proposal did not consider any growth in operations. Actual data for 1981 indicates that workload increased by 3.1 percent over 1980.
- HP's proposal did not take into consideration revenues from delays and cancellations thereby underestimating income to the pilots.
- Actual support operations costs have been approximately \$380,000 to \$390,000 annually since 1980, substantiating the estimate of \$380,000 by the Consumer Advocate. HP had estimated support operations costs at \$520,520 annually, an overestimation by 33.5 percent.

4. Testimony of the Consumer Advocate before the State of Hawaii Board of Pilot Commissioners, September 4, 1981, p. 8.

- HP stated that pilots needed a 50 percent increase to bring up their annual incomes to a "reasonable" level of \$90,000. However, the rate increase of 28 percent which was eventually approved by the board gave each pilot an annual gross income of \$88,500. An increase of 50 percent would have resulted in an annual income close to the Consumer Advocate's estimate of \$135,000.

Although the Consumer Advocate raised these issues, the board failed to address them at subsequent meetings. The board's rate setting process has not improved since 1981. It still relies on HP for information. On April 19, 1984, the board approved and scheduled for public hearing a request for rate increase from HP. The proposal was approved even though HP submitted no documentation to support the rate increase proposal. A maritime industry board member noted his concern on the absence of supporting information.

The pilot board members indicated that the increase was minimal. However, this is not quite correct. The proposed increase is shown in columns H and I of Table 3.3. It would mean a 5 percent increase in most of the categories. However, there would be a 17.5 percent increase for vessels under 200 feet and a significant increase in separate charges. Anchorage fees would increase 100 percent for vessels under 500 feet in length as well as a 100 percent increase for vessels over 500 feet. New charges for pilot travel expenses and a separate boat fee would be instituted.

Based on actual expenditures for 1983, the separate charges would conservatively increase anchorage revenues by \$11,400 and free approximately \$41,000 formerly earmarked to cover the annual expenses of travel and boat costs.

Since support operations costs have been relatively stable, the estimated \$53,000 annual savings could be distributed as additional income to the individual pilots.

It is clear that the proposal to increase rate is intended to benefit the pilots and not the general public. The primary purpose of the rate proposal from HP is to bring the pilots' income to what they consider to be an adequate level. This purpose is clearly revealed in HP's minutes of September 20, 1982, which said:

"A discussion followed of the best strategy to follow when approaching the Board for an increase in pilotage compensation. . . . The consensus was that pilot income must be the first consideration in setting the rate tariff. Support services expense must be covered, but those expenses should not be allowed to dictate the pilot's incomes."⁵

Possible antitrust violations. In reviewing pilotage rates, it came to our attention that the pilots may be in violation of federal antitrust laws relating to price fixing. The pilots' logs show that they charge the same rate for exempt vessels or vessels requiring a federal license as they do for those vessels requiring a state license.

The pilots, who are independent contractors, agreed to charge the same rate to all vessels of the same length regardless of whether they are under state or federal jurisdiction. In doing so, they may be in violation of Title 15, U.S. Code, Section 1, relating to restraint of trade and resale price maintenance.

Unlike vessels subject to Chapter 462A, a pilot operating under a federal license is not required to charge according to a specified rate. The only apparent restriction the federal government has on pilotage charges is that the charge cannot be more than the customary or legally established rate charged in the state that the pilotage is performed. While state pilotage rate setting is immune from antitrust activities, there is a question that this immunity extends to vessels under federally licensed pilotage.

The staff of the Federal Trade Commission has indicated that there is an appearance of an antitrust violation and that additional study may be warranted.

Inappropriate Assignment of Regulatory Responsibilities

It is apparent that the board is not the proper body for reviewing and setting rates. The board's composition prevents it from analyzing such rates objectively. With two pilot board members, two industry representatives, and one public member, the board is a partisan battlefield. In the matter of rate increases and

5. Minutes of the Hawaii Pilots, September 20, 1982.

other items affecting the interests of pilots, the two pilot board members vote together. The issue is often deadlocked as the two industry members usually vote together, and the public member is sometimes absent.

During deliberations on proposed increases in 1981, the two port pilot members submitted written comments to the board supporting the position of HP and criticizing the comments made by the Consumer Advocate. They questioned the need for involvement by the Consumer Advocate. The industry member also submitted written comments to the board on his reasons for voting against the rate increases. He noted, "I believe the crux of the matter is this. In direct testimony before this commission the attorney for the Pilots Association stated that originally the Pilots wanted to increase the pilotage rates so as to render each Pilot an annual income of \$100,000. This amount was apparently felt to be excessive so their proposal was scaled down so as to render only \$90,000 per year for each Pilot. I feel that this approach to rate settling (sic) is improper."⁶

The rate that was finally approved was based on a compromise proposed by the remaining industry member and approved by the two port pilots. The public member was absent.

The balance of power is on the side of the pilots. Pilot board members are usually joined at meetings by the business agent for HP and sometimes the attorney for HP. Other port pilots usually attend the meetings as well. At one meeting on rate increases, all nine of the licensed pilots were in attendance. During the period when a pilot board member was chairman of the board, these observers would be given the opportunity to participate in board discussions on rate increases.

The position statement submitted by the pilot board members; their participation and interest in HP, the organization submitting rate requests; and their advocacy of the pilots' position raise questions as to their objectivity in reviewing rates.

The marine industry members may have the knowledge and background necessary for reviewing the rates, but their commitment to the public might also be questioned. Additional costs due to pilotage rate increases would merely be passed

6. Written testimony by K.H. Bowman, Commissioner to the Board of Pilot Commissioners, October 30, 1981.

on to the public. The public member has little or no experience in reviewing rate proposals, and there is no requirement that he be knowledgeable in this area.

In addition, the time needed for a proper review of rates would conflict and be burdensome for board members with other full-time occupations. Staff for such a task is also inadequate. The board's executive secretary is its only staff. The executive secretary also serves as staff to other boards in DCCA. Moreover, the executive secretary has neither the time nor the expertise needed for a thorough review of rate proposals.

There is doubt whether rates should be set at all. There is no issue here of consumers who are not able to protect themselves or who are at a disadvantage in dealing with providers of the service. In this case, the direct consumers are the shipping lines and their agents. They would be quite able to negotiate with pilots on rates without state intervention.

Conflicts of interest. The State Code of Ethics for public officers and employees prohibits employees or members of boards and commissions from taking official actions affecting directly any business or undertaking in which the employee or board member has a substantial financial interest or to secure any unwarranted privileges for themselves.

Because of the small number of pilots in the State, the requirement that two of the five board members be licensed port pilots and the extent of the board's powers, conflicts of interest have been inevitable.

The two pilot board members are members of HP as well as shareholders and directors of HPBS, a corporation consisting of eight of the nine licensed pilots in the State. One pilot board member was also an officer of HPBS while on the board. The majority of operating costs incurred by pilots go to HPBS which owns and maintains pilot vessels and other items needed for pilotage. After HPBS expenses are covered, the pilots' agent distributes funds to pilots according to a schedule.

Corporate documents show that each pilot owns 2,000 shares in HPBS. The buy-in cost for a new pilot is estimated to be \$30,000.

Clearly, any two pilot board members selected from HP would be voting on issues with direct impact on their financial interests. However, to achieve a quorum of four required by the board, the pilot board members must participate in discussions and vote on issues that have a direct financial impact on HPBS. In the past, the two pilot board members have participated in the following activities:

- In 1984, the pilots on the board voted on rule changes that would create new fees for travel and pilot boat operations as well as increasing pilotage and anchorage fees. The additional fees would have a direct impact on HPBS operating costs.
- In 1981 and 1982, pilots on the board participated in discussions and decisions on rate adjustments submitted by HP. At the same time, the two pilot board members were assigned by the president of HP to a Rate Adjustment Committee. This committee met with the business agent of the Alaska pilots for assistance in developing and presenting the association's proposed rates to the Board of Pilot Commissioners.
- The pilot board members who were actively involved in developing the written examination also conducted oral interviews of applicants in 1980 and 1984 and selected applicants to fill deputy pilot vacancies. The newly licensed pilots then become members of both HP and HPBS.

The Licensing Program

The board's licensing practices are seriously deficient. The board lacks objective and valid licensing standards; its written examination is of questionable value; its selection practices are subjective, based on irrelevant criteria, and without any documentation.

These problems are compounded by allowing the board to set a limit of nine licensees. Since the statute was enacted in 1978, only three applicants have been licensed as a result of vacancies in the number of available slots. Although the board has the power to increase the number of licensees, it has chosen not to do so. This means that the board is denying licenses to applicants who may be just as competent or more competent than those who are already licensed.

Because there are a number of applicants, all equally qualified, the board makes its decisions on the basis of irrelevant or arbitrary factors. The board's selection decisions have no bearing on an applicant's ability to pilot a vessel, and they are not in the interests of the general public.

The written examination. All applicants must first pass a state written examination. The examination consists of two parts, one part on rules of the road and the second on seamanship and shiphandling. The written examination adds little to the protection already provided by the U.S. Coast Guard's federal licensure program for pilots.

As a prerequisite for state licensure, applicants must possess a current U.S. Coast Guard master's license for a steam or motor vessel or any gross tonnage. The applicant must also have U.S. Coast Guard endorsements as a first class pilot for all deep draft harbors in which the State provides pilotage services. To acquire a U.S. Coast Guard master's license, applicants must pass a federal examination.

An applicant for state licensure, therefore, must pass two sets of examinations: first, to obtain a master's license and federal pilot's endorsement; and secondly, the state pilots examination.

The U.S. Coast Guard reviewed the written state pilots examination, comparing it against the U.S. Coast Guard examinations. The U.S. Coast Guard found that the examinations were substantially the same in many areas. The section on the rules of the road in the federal examination is somewhat more difficult than the state examination. The state examination does cover state pilotage laws which are not included in the federal examination, and it contains some practical or situational local knowledge questions. However, some of the questions are out of date.

The U.S. Coast Guard recommended that redundant portions of the state examination be eliminated since the U.S. Coast Guard pilot's license is a prerequisite for state licensure and that the local knowledge portion of the examination be expanded.⁷

7. Letter from the U.S. Department of Transportation, U.S. Coast Guard, Marine Safety Office, Honolulu, to the Office of the Legislative Auditor, dated September 12, 1984.

Arbitrary selection practices. Applicants who pass the written examination are placed on an eligibility list until there is a vacancy. They remain eligible for two years from the date of the examination. After that, they must reapply and start all over again.

Should there be a vacancy, applicants must undergo an interview by board members. Although the interviews play a large part in the decision, the board has no criteria or standardized questions or procedures for the oral interview. As a result, the final selection is based largely on subjective factors that have little to do with the applicant's ability as a port pilot.

In June 1984, the board conducted oral interviews to select a deputy pilot to fill a vacancy. The board was supposed to use an evaluation form to reduce some of the subjectivity in the oral interviews. However, the forms served only as a guide, and board members asked questions which were not on the form. The questions asked by the board have no basis in either the statutes or the rules, and they have no relevance to competence as a pilot. Among these were questions about the applicant's willingness to work at reduced wages, the applicant's commitment to staying in the islands, and the applicant's age. Interviews with board members and tapes of the board's oral interviews of applicants reveal the following:

- Board members reported that they were concerned about an applicant's willingness to work at reduced wages. The applicant was questioned and informed that he would be receiving reduced wages for most of three years. The required time as a deputy before promotion to full pilot is six months, although the board is considering changing this to two and one-half years. Payment of reduced wages to deputy pilots is a policy of HP, not of the board.
- An applicant was questioned on whether he lived in Hawaii and his length of residence here. Some board members reported that they were concerned about the applicant's commitment to staying in the islands. The applicant was finally eliminated from consideration because the board felt that he did not have the "commitment" to piloting if things did not go well for pilots in Hawaii.

- The age of another applicant appeared to play a significant role in his rejection by the board. The board was aware that the use of age as a basis for rejection is discriminatory and invalid. One board member asked the executive secretary about the role of age in the selection process and was informed that it had no role at all. The applicant's physical condition was then considered as a basis for denial. However, there was no suggestion that the applicant's physical condition be assessed to determine the applicant's capability for piloting. There is no evidence of incapacity as the applicant is currently a pilot in the San Francisco Bay area. During the discussion, one of the board members admitted that if selection was to be based on experience, then it was clear that this particular pilot was the most qualified. He added, however, that if the concern is how the association operates and how long the pilot will pilot in Hawaii then another selection may be necessary.

- Finally, the board solicited from HP its choice on who should receive licensure. The candidate finally selected was one of two recommended by HP.

J. L. LEPENDU

In June 1984, the board selected one of four applicants to fill the deputy port pilot position. Although the pilot evaluation forms were supposedly used in making this decision, these were not retained.

Rules inadequate for ensuring competency. Although the rules are restrictive, they do not restrict on the basis of competency. This is readily apparent from reviewing the board's rules on deputy port pilots.

The rules require all applicants to serve as deputy port pilots for six months prior to promotion to full pilot. Other than time spent as a deputy port pilot, there is no difference between the requirements for deputy port pilots and port pilots. There are no standards of performance as a deputy port pilot before promotion to full pilot.

There is no recognition of the skills necessary for the pilotage of longer, deeper draft, and heavier vessels. And, there are no requirements for deputy port pilots to report on the different types of vessels piloted or conditions that may have been encountered. Thus, the board does not have the information necessary for evaluating a pilot's training and progression in the occupation, and it has no indicators for determining if promotion to full pilot is warranted. Consequently, there is no assurance that all licensed pilots are fully qualified.

To make matters worse, the board has deferred to HP in its promotion decisions. It has allowed HP to determine qualifications for promotions. The board accepted unstandardized and unverified evaluations of deputy pilots submitted in the past by the pilot organization. No documents verifying performance were submitted to the board except for the pilot's logs. In June 1981, the board considered the promotion of two deputy pilots to full pilot status. Although the board had stated that there would be an examination evaluating their performance, the board had no criteria and the examination was actually an oral interview of the two deputy pilots.

HP presented an oral statement attesting to satisfactory performance, but no documentation was submitted. Three months later, one of the two pilots promoted ran a vessel aground at a port in Kauai.

In June, the board adopted proposed changes to the regulations. One major change proposed is to restructure the deputy pilot classification by establishing three deputy pilot categories. This would limit the length, draft, and type of vessel each deputy category is allowed to pilot and extend the total time required as a deputy pilot from six months to two and one-half years. Table 3.4 provides a breakdown of the restrictions and minimum time proposed for each of the three categories.

Table 3.4
Proposed Deputy Port Pilot Classification
(As Adopted by the Board of Pilot Commissioners on June 12, 1984)

Deputy Port Pilot	Current	Proposed		
		I	II	III
Allowed to Pilot:				
Vessels authorized length	Under 500'	Under 500'	Under 600'	Any length
Vessels authorized draft	Under 30'	Under 30'-8"	Under 30'-8"	Any draft
Vessels exempted		Tanker and passenger	Tanker and passenger	Tanker and passenger
Minimum Time In Each Category	6 months	6 months	12 months	12 months
Total Time Required	6 months			2 1/2 years

The proposed rule is significantly more restrictive as it extends the total time as a deputy port pilot from six months to two and one-half years. However, it provides no greater assurance of competency since there are still no performance standards or requirements for experience on different types of vessels under varying conditions at different ports.

The pilots defend the proposed rule saying that a prolonged orientation period of two and one-half years is needed to insure that an individual is thoroughly familiar with Hawaii pilotage. However, without more specific performance criteria or identification of specific skills needed, the almost two years of additional time as a deputy at reduced pay serves primarily as a restrictive device and as a disincentive.

The proposed rule would place Hawaii in a distinctively disadvantageous position in attracting qualified pilots as there are no provisions for reciprocity, or waivers, or for credit due to experience. All applicants must begin as deputy port pilots with restrictions for two and one-half years. There is no provision for individuals who are already knowledgeable or who have demonstrated an ability to pilot in Hawaii waters. Even experienced pilots must begin as apprentices.

This presents an obstacle to any experienced pilot coming to Hawaii since it requires that the pilot begin again as an apprentice for an extended period of time. This is contrary to the intent of the original legislation, which was to insure an adequate supply of qualified pilots in Hawaii. Instead, it stifles the movement of experienced pilots to Hawaii and attracts primarily those newly entering the pilot profession. Some board members have stated that if they find an individual who is particularly skilled or experienced, the board may make an exception to the rule. However, the current and proposed regulations are explicit on the minimum time required as a deputy port pilot, and there are no provisions for the board to make an exception.

The absurdity and restrictiveness of the current and proposed rule is demonstrated by the following example. A retired pilot who piloted in Hawaii for 20 years and also served as a chief pilot of the State for a number of years would still have to reapply, wait for a vacancy, and if selected, would have to serve as a deputy for six months before becoming a full pilot again. Under the proposed rule, he would have to serve a two and one-half year apprenticeship.

I GOT SCREWED
OUT OF
\$130,000.00

The extension of time to two and one-half years would benefit primarily those pilots already licensed. Since pilotage rates are set regardless of whether the vessel is piloted by a deputy or full pilot, an extended time at reduced wages would mean more income to the full pilots since all income is shared.

Deficiencies in Discipline and Enforcement

The major purpose of state licensure is to "provide maximum safety for vessels navigating in state waters."⁸ This purpose is largely contravened by the board's failure to take timely and appropriate disciplinary actions against pilots who are incompetent, its selective enforcement of the law and the rules, and its failure to develop adequate rules for disciplinary actions.

The following case illustrates the problems in discipline and enforcement.

In September 1981, a pilot licensed both by the U.S. Coast Guard and the State ran a coastwise vessel aground at Kauai. Since the pilot was piloting the vessel under his federal license, the U.S. Coast Guard immediately opened an investigation into the accident. In November 1981, the U.S. Coast Guard determined that the pilot was negligent and suspended his federal license for two months.

No complaint was filed by the injured party or any of the board members. A complaint was initiated by staff of DCCA. One of the pilot board members was highly critical of the independent action taken by the staff.

A representative of the shipowner of the grounded vessel approached the board voicing concern about the pilot continuing to work on his ships. The pilot board members did not respond as impartial board members but as pilots by saying that the shipowner did not have a choice in pilots because "the pilots work on a pool or rotation system so that their income can be shared equally. Therefore, *the pilots* may not be able to grant Mr. _____ the privilege of selecting a pilot under their rules."⁹ [Emphasis added.]

The board decided to allow HP to work out the issue. It said that if the shipowner was not satisfied, he could make a formal request for "review and determination."

8. Conference Committee Report 15-78 on S.B. No. 893, Senate Journal, 1978, p. 754.

9. Minutes of the Board of Pilot Commissioners, October 30, 1981, p. 3.

In January 1982, the representative informed the board that the company would no longer accept the pilot in question for pilotage aboard its vessels. Instead of taking action, the board again decided to close the matter.

In discussing this problem, an industry board member expressed concern that the pilot could continue to pilot under his state license even though his federal license had been suspended.

In March 1982, the board again discussed the complaint filed against the pilot. The industry board members again expressed concern about the "loophole" enabling a pilot to continue to operate when his federal license was suspended. They suggested that legislation should be introduced to prevent this from occurring. The pilot board members opposed such legislation and supported the concept of maintaining the separation between the federal and state licensure. The board then decided to dismiss the complaint, subject to a written opinion from the State Attorney General on whether the board had jurisdiction in the complaint.

A year later, in March 1983, the board was notified that the Attorney General's office had determined that they had jurisdiction to revoke or suspend the license of the pilot involved in the grounding of the vessel at Kauai in 1981, even though he was piloting under his federal license. The board decided to defer action until the board could review the case.

At its meeting on November 22, 1983, the board decided to dismiss the case against the pilot. The board was informed that the pilot in question had resigned from HP on October 20, 1983. On this basis, the board assumed that the pilot would no longer be actively piloting and the board gave the individual until January 20, 1984, to decide what he was going to do. The individual decided to continue to pilot as an independent contractor.

On March 15, 1984, HP filed a complaint with DCCA questioning the competency of the independent pilot. The organization enclosed two letters from shipowners pointing to the pilot's substandard performance. Both letters were dated prior to the pilot's resignation from HP in October 1983. The board finally initiated an investigation in April 1984.

The board's failure to conduct an unbiased, comprehensive, and timely review of a serious incident is irresponsible.

First, although board members knew about the accident (some on the same day it had occurred) no action was initiated by the board.

Second, the board ignored its own rule requiring accidents of significance to be reported in writing to the board within seven working days.

Third, the pilot board members acted in the interests of the profession rather than the public by failing to take positive action when they were notified of the accident, by opposing the initiation of the complaint by DCCA staff, by advocating HP's position when the cruise company expressed concern about the pilot's competence, and by opposing the closing of the "loophole" in the dual licensure program.

Fourth, even after the cruise company expressed concern about the competency of the pilot, the board failed to take action, deciding instead to refer the company to HP to "work things out." As before, the board relinquished its authority to HP.

Fifth, the one year delay for a legal opinion is unconscionable. All parties share equal blame for the delay. It took over three weeks for the letter requesting a written opinion to be forwarded to the Attorney General's office. The Attorney General's office took eight months to reply. Finally, it took another three months for the Attorney General's reply to be submitted to the board. This placed the board in an awkward position since they had already sent the pilot a letter almost a year earlier informing him that the case had been tentatively dismissed.

Sixth, some board members based their decision to dismiss the complaint on the pilot's resignation from HP, thinking that the pilot would no longer continue piloting once he resigned from the professional association. While this reveals their view of the importance of HP, it has little to do with assessing the pilot's responsibility for the accident.

It is important to note that interest and concern by the board and HP developed only after the pilot in question began to operate and succeed on his own. HP questioned the pilot's competency only after the pilot resigned from the organization even though letters of complaint from shipowners were submitted to the organization before the pilot's resignation. It should also be noted that the board dismissed the concerns of the cruise company when it was presented to them in January 1982 but accepted it when HP presented it in March 1984.

Meanwhile, the case continues. At its meeting in October 1984, the board initiated a complaint requesting DCCA to investigate whether the pilot in question is actively piloting as required by Chapter 462A. If the pilot is not in active service, it would be grounds for revocation of the pilot's state license.

Ironically, the board has never defined what constitutes active service as a pilot. When an applicant for a deputy pilot position once asked the board what constituted active service as a pilot, the board told him that it was pretty loose and that there was nothing in writing. The chairman of the board stated that it was basically left to the discretion of the board. The board has never established any standards to define active service and it appears to be selective and subjective in applying it to the pilot in question.

While the board and HP continue to pursue the independent pilot, it has ignored violations by two HP pilots who have damaged piers and also failed to report these accidents. This is in violation of Section 16-96-46 which requires the pilot to "file a written report to the board within seven working days if the incident or collision involved injury, death, extensive damage or running aground."

The board has not investigated or noted either of the following incidents:

An HP pilot and a board member collided with a pier twice at Nawiliwili Harbor on Kauai. Repair to the dock was \$175,000 not including consultant fees. This accident was never reported to the board nor the U.S. Coast Guard which has a \$1,000 fine for failure to report major accidents. The damage, according to harbor officials, was quite extensive and readily apparent.

On July 25, 1984, an HP pilot collided with a dock at Honolulu Harbor. The U.S. Coast Guard estimated \$15,000 damage to the ship and about \$500,000 to the dock. This accident was never reported to the board by either the pilot or the deputy pilot who was accompanying him.

The board has paid little attention to monitoring accidents, even those that are extremely serious and of substantial magnitude. It is unlikely that the pilot board members and HP could be unaware of these accidents as there are only nine pilots in the State. Since these accidents are costly to the State, they should be investigated to determine if the pilots were at fault and whether disciplinary action should be taken.

As it is, the State and shipowners have no recourse against damages incurred by pilots. In 1980, the law was amended to delete the requirement for the pilot association to maintain liability insurance to protect the State. Thus, even should the pilot be determined to be negligent, it could be difficult for the injured party to collect as pilots do not have to carry liability insurance to cover the cost of damages incurred.

This was the case in at least two accidents involving pilots. Accidents in 1981 and in 1983 resulted in costly damage. However, the complainants were not able to or decided not to pursue recovery from pilots because of their insufficient resources.

Problems of dual licensure. The case of the pilot operating with a suspended federal license points to a loophole in the law that should be closed to ensure the safety of vessels. Although the board has discussed this on occasion, it has taken no positive action. As noted earlier, licensure of pilots is shared by both the federal and state governments. The federal government licenses pilots for pilotage on vessels involved in interstate and intrastate trade. The states have jurisdiction for the licensure of pilots piloting foreign vessels or American vessels involved in foreign trade.

As a result of this distinction, the U.S. Coast Guard cannot act on an individual's federal license if the violation occurred while the pilot was operating under the pilot's state license. However, the U.S. Coast Guard may investigate accidents involving pilots operating under their state license but may only seek civil penalties.

Conversely, it is not clear if the State can take action against a pilot operating under the pilot's federal license, although as we noted earlier, the Attorney General believed that the State does have such authority. The lack of clarity is because Chapter 462A has no provision for the board to revoke or suspend a state license based on action taken by the U.S. Coast Guard against a federal license. The statutes should be changed to require a current federal license in good standing as a condition for continued state licensure.

Inadequate rules. The board has failed to develop adequate rules for taking effective disciplinary action. The current regulatory basis for disciplinary actions can only be described as weak, considering the potential for loss of life and property.

Chapter 462A-11, HRS, states that the board may deny, suspend, or revoke a license upon *satisfactory proof* that the pilot or applicant:

- "(1) Has *wilfully* disobeyed the chapter or any rules of the board;
- "(2) Has negligently lost or damaged any vessel which *he was piloting*;
- "(3) Is *habitually intoxicated* rendering him unfit to be entrusted with a vessel;
- "(4) Is physically or mentally incapable of performing as a pilot; or
- "(5) Is no longer actively serving as a pilot. [Emphasis added.]"

As mentioned previously, the board has not defined in its rules what constitutes active service as a pilot. The board has also failed to define *any* of the statutory provisions for disciplinary actions. For example, the board has never defined what constitutes "satisfactory proof" that a violation has occurred or what constitutes "wilful" disobedience or "unfit to be entrusted with the charge of a vessel." As in the case of the question of active pilotage, the failure to define these provisions can lead to subjective and selective enforcement of the law.

Some of the statutory provisions need to be strengthened. For example, the statutes require "wilful" disobedience of the chapter or regulations before a license can be denied, revoked or suspended. This would require a determination of intent which might be difficult.

In another example, the statutes provide for denial, suspension, or revocation of a license if the pilot caused the negligent loss or damage of a vessel that he was piloting. The statutes are silent on death, or injury, or any damage that the pilot may cause to other vessels or structures. Theoretically, if a pilot in control of a large container vessel rams and sinks a pleasure boat, the pilot would be subject to no disciplinary action if there is no damage to the container vessel.

It should be noted that the pilots had considerable input into the development of the statutes and regulation. Yet, the rules are vague and do not reflect professional knowledge of the dangers of pilotage and fail to adequately address disciplinary provisions for unsafe or incompetent practices.

Summary

We recognize the considerable skill of the state licensed pilots and the dedication and the sense of responsibility they bring to their chosen profession. We also recognize the hazards of pilotage and the potential loss of life, property, and economic well-being that require the need to insure that pilots are competent at all times.

It is evident, however, that the board is not the appropriate body for ensuring the competency of pilots or for assuring the public that charges for pilotage services are fair.

In almost all areas reviewed, there was evidence of the influence of the pilot association on the board's decisionmaking processes. In many cases, board actions furthered the financial interests of licensed pilots and not those of the State.

Many of the problems are also due to the excessive power delegated to the board. The concentration of monopolistic power in the hands of a five-member board, which in turn is heavily influenced by nine licensed pilots, leaves the State in a vulnerable position.

Because of these concerns, we strongly believe that pilots should continue to be regulated, not by the board, but by the Department of Commerce and Consumer Affairs. In regulating pilots, the department should establish clear standards which are related specifically to minimum performance skills. All those who meet these standards should be permitted to become licensed. The restriction on the number of licenses serves no purpose and should be lifted.

Since the purchasers of pilotage services are generally shipping companies or agents who are knowledgeable about the business, they should be allowed to negotiate pilotage rates with the pilots without state intervention. However, should the Legislature decide that the State should continue to set a pilotage rate, this authority should be assigned to DCCA with assistance from the Public Utilities Division.

Recommendations

We recommend as follows:

1. Chapter 462A, Hawaii Revised Statutes, be reenacted but amended in the following ways:

- to delete the board and assign regulatory responsibility to the Department of Commerce and Consumer Affairs;**
- rescind the limit on the members of licensees;**
- rescind provisions relating to establishing rates of pilotage;**
- establish clear, valid, and reasonable standards for licensure as deputy port pilots and full pilots;**
- require a current federal license in good standing for continued state licensure.**

2. The Department of Commerce and Consumer Affairs adopt methods to improve the disciplinary and enforcement program against violations of Chapter 462A.

OVERVIEW

THE AUDITOR
STATE OF HAWAII
1990

Sunset Evaluation Update: Pilotage

Summary

We evaluated the regulation of pilotage under Chapter 462A, *Hawaii Revised Statutes*, and conclude that the public interest is best served by reenactment of the statute.

The State should continue to regulate pilotage. The practice has significant potential to harm life and property and compromise the economic well-being of the state. It involves directing a vessel through channels, harbors, and other areas where navigation is difficult. Improper pilotage can result in oil spills, vessel groundings and collisions, and damage to ships, piers, and cargo.

Since assuming regulatory responsibility in 1985, the Department of Commerce and Consumer Affairs has improved the regulation of pilotage. Our review, however, found weaknesses in the examination program and in the regulations. The examination for deputy port pilots does not meet some of the standards of a good testing program, particularly in the way the exam was documented and scored. Scorers and test takers belonged to the same professional association, and in one case, examination security may have been breached.

The regulations do not include specific physical standards for pilots. They also leave to pilot discretion those accidents serious enough to warrant reporting. Because the regulations are not specific, the department could not be certain that all serious incidents came to its attention.

Recommendations and Response

The department should document the development of the port pilot examination and take steps to ensure its validity and security. To be fair, representatives from both pilot associations should score the exam. The department should develop physical standards for the licensure of port pilots, specify these standards on the certificate of medical examination, and consider following guidelines from other jurisdictions on drug or alcohol testing programs.

Finally, the department should toughen the regulations by requiring pilots to report *all* incidents and accidents to the director within seven days. To verify serious accidents, the department should arrange to receive ship captain's reports from the Department of Transportation and investigative reports from the U.S. Coast Guard.

The department agrees that the statute should be reenacted and concurs with most of our recommendations. It notes, however, that all pilots licensed in Hawaii are already required to participate in a federal drug testing program.

Background

Twenty-four states regulate pilotage. In Hawaii, virtually every vessel involved in trade or commerce that enters or departs pilotage waters must employ a state-licensed pilot. From 1986 through 1989, an average of 4,164 vessel "movements" per year required port pilots. Over 90 percent of these movements occurred in Honolulu Harbor.

In 1985 the Legislature followed the recommendations of our sunset evaluation, abolishing the Board of Pilot Commissioners and vesting responsibility for the program in the director of the Department of Commerce and Consumer Affairs. The department now regulates the nine state-licensed pilots.

The State licenses pilot applicants first as deputy port pilots then as port pilots. All applicants must hold a U.S. Coast Guard license as master of steam and motor vessels and also be endorsed as first-class pilots for deep-draft harbors in the state. In addition, applicants must meet experience requirements, submit a certificate of physical examination, and pass a written examination.

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, repeals occupational licensing statutes according to a specified timetable. The law directs the auditor to evaluate each occupational licensing statute prior to its repeal to determine if the public interest is best served by reenactment, modification, or repeal of the statute.

This report evaluates the regulation of pilotage under Chapter 462A, *Hawaii Revised Statutes*, to determine compliance with policies for occupational regulation in the Sunset Law.

Background on Pilotage

Pilotage is the work of directing a vessel's movement in channels, harbors, restricted waters, or other areas where navigation is deemed difficult or dangerous.¹ Although only a small portion of a ship's voyage is spent in these areas, most ship casualties occur there. Ships are likely to encounter increased traffic and pass closer to natural hazards in shallow waters.

A pilot is either a member of a ship's crew or an individual brought aboard the ship specifically to direct it through pilotage waters. A pilot normally takes navigational control and direction of a ship outside designated pilotage waters. The pilot then directs the vessel to a safe berth, avoiding potential hazards and adapting to such changing conditions as currents, depths, and weather. The pilot provides shiphandling skills combined with up-to-date knowledge of the local geography and weather and the port's navigational requirements and regulations. The time needed to pilot a vessel to and from a berth varies from port to port.²

Federal and state regulation

The federal government has jurisdiction over vessels engaged in domestic trade between ports in the United States or its possessions. These "coastwise" vessels require a federally licensed pilot who is endorsed for the pilotage waters that the ship plans to enter. The U.S. Coast Guard enforces the federal laws and issues federal licenses to pilots who meet its requirements. The Coast Guard is also empowered to suspend, revoke, or deny licensure if a pilot is negligent,

unskillful, inattentive to pilotage duties, or willfully violates any maritime law or regulation. It investigates incidents involving pilots operating under federal licenses.

The 24 states that regulate pilotage have jurisdiction over vessels granted permission by the United States Customs Service to engage in foreign trade. These "registered" vessels must take on a state-licensed pilot when entering that state's designated pilotage waters.³ Vessels that sail under the flag of a foreign country must also be piloted by a state-licensed pilot.

Public vessels, such as fireboats, police boats, and warships owned by municipalities, state, or federal governments are exempt from state and federal pilotage laws. They may, at their option, use the services of a federal or state pilot. Pleasure boats or other miscellaneous motor powered vessels do not require a port pilot.

Pilotage in Hawaii

With certain exceptions,⁴ every vessel involved in trade or commerce that enters or departs any port designated as pilotage waters must employ a state-licensed pilot. Pilotage waters include those around Port Allen, Nawiliwili, Honolulu, Kahului, Hilo, Kawaihae, and Barbers Point.⁵

From 1986 through 1989, an average of 4,164 vessel movements per year required port pilots.⁶ Over 90 percent of these movements occurred in Honolulu Harbor and ranged from movements of foreign fishing boats of less than 200 feet, to automobile container vessels of 900 feet or more.

1985 sunset evaluation

Our 1985 sunset evaluation report found a need to regulate pilotage. However, the Board of Pilot Commissioners had not met the purposes intended by the Legislature, nor had the board acted in the interests of the State. The report recommended that Chapter 462A be amended to delete the board and assign regulatory responsibility to the Department of Commerce and Consumer Affairs (DCCA).⁷

In 1985, the Legislature abolished the Board of Pilot Commissioners and vested in the director of the DCCA all the responsibilities once held by the board. The director now has full responsibility for the program.

Current regulation

The nine state-licensed port pilots are private contractors regulated by the director of the DCCA. Chapter 462A, HRS, allows them to organize into nonprofit associations to provide pilotage services. Six of the nine pilots belong to the Hawaii Pilots Association and three to the Port Pilots of Hawaii. Shipping agents and companies that need port pilots contact the associations, which then assign pilots to vessels according to each association's own rules.

Applicants are licensed first as deputy port pilots and then as port pilots. Applicants for deputy port pilots must be at least 18 years of age. They must have a current U.S. Coast Guard license as master of steam and motor vessels of any gross tonnage and also possess a U.S. Coast Guard endorsement as a first-class pilot for all deep draft harbors where pilot services are provided in the state. In addition, applicants are required to have specified years of experience on vessels of a minimum tonnage. Applicants must submit a certificate of physical examination and pass a written examination.

Applicants for port pilots must meet all the above requirements and serve a minimum of 18 months as a deputy port pilot directing vessels of a certain size. They must provide a summary of all pilotage work and evaluation forms completed by ship captains and licensed port pilots who have accompanied the deputy pilots. Applicants must hold a current Hawaii license for deputy port pilots and must submit a certificate of physical examination. The director of the DCCA may waive all or part of the 18 months service requirements if applicants present proof that they have met all of the experience requirements.

New rules

The department recently adopted new rules, effective August 20, 1990, to enable the director to carry out responsibilities more effectively. The new rules make some significant changes. The two private pilot associations will no longer make pilotage assignments. Instead, a new central scheduling office, to be created by the director, will handle the requests for services and make the necessary assignments. The director will also establish a program to train deputy port pilots. A fee on vessel movements will offset the cost of the program. All pilots will be required to accept training assignments.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of pilotage complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate pilotage to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations relating to the above.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on pilotage and its regulation. We examined current developments in federal regulation and regulation in other states, and we also examined statutes and rules on pilotage in Hawaii and the changes that have taken place in these since 1985.

To determine the appropriateness of current regulatory provisions and the effectiveness of regulatory operations, we interviewed state-licensed port pilots, shipping agents, and personnel of the U.S. Coast Guard, the Department of Commerce and Consumer Affairs, and the Department of Transportation. At the Department of Commerce and Consumer Affairs, we reviewed correspondence and other files relating to the regulation of pilotage.

Fieldwork on the project, including research, interviews, and the review of files, was performed between February 1990 and July 1990.

Chapter 2

Findings and Recommendations

The Department of Commerce and Consumer Affairs (DCCA) has improved the regulation of the pilotage program after assuming regulatory responsibility in 1985. A few improvements are still needed in certain areas.

Findings

1. Chapter 462A should be reenacted to continue the regulation of pilotage.
 2. The examination program for deputy port pilots, including test development, test administration, and scoring, does not yet conform with national standards for occupational and licensing examinations.
 3. The regulations do not specify physical standards for port pilots. As a result, the biennial physical exams do not ensure that all pilots are physically able to carry out their duties.
 4. The regulation on the reporting of pilotage incidents and accidents in the harbors of the state should be clarified and include reports from ship captains and the U.S. Coast Guard.
-

State Should Continue to Regulate Pilotage

The State should reenact Chapter 462A and continue to regulate pilotage. The practice has a significant potential for harm to life, property, and the economic well-being of Hawaii. Accidents due to pilot error have occurred in the past. Oil spills, vessel groundings and collisions, damage to ships, piers, and cargo--these are some of the hazards posed by improper pilotage. Because 95 percent of the goods for Hawaii arrive by ship, blockage of Honolulu Harbor could jeopardize the economy of the state. Oil spills pose grave environmental consequences. For these reasons, regulation should be continued.

Examination Program Should Conform to National Standards

The department has substantially improved its examination program by shifting responsibility for examination development from its boards to neutral professional testing authorities. Examinations are now more valid and defensible. Some areas, however, need improvement.

The department should ensure that the examination program for pilots complies with national standards for occupational licensing tests issued jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.¹ The basic standards of a good testing program should include the following:

- The examination should reflect a detailed plan that specifies the qualities (knowledges, skills, abilities) to be tested, the relative importance of these, and the format and other characteristics of the examination.
- The qualities to be tested should be clearly necessary for the functions assumed by licensees.
- Examination questions should be consistent with the nature of the regulated practice and should be carefully constructed and reviewed to ensure fairness to candidates.
- The passing score should distinguish between those who have a minimally acceptable level of skill and those who do not.
- Examinations should be administered under standardized and uniform procedures.
- Scoring should be objective, free from error, and reliable.
- Security must be guaranteed through adherence to appropriate confidentiality procedures in examination development, administration, scoring, and storage of the examination.²

The department's written examination for deputy port pilots does not meet all of these standards. We found no evidence that the deputy port pilot test was developed according to a detailed plan or resulted from a technically sound analysis of pilotage practices. There was no information on the basis for

the passing score or how it was established. Finally, the security of the test could have been breached.

Documentation on examination development

The department did not adequately document the development of the port pilot examination or the activities of the contractor hired to develop the exam. In October 1985, the department contracted with American Community Services, Inc., now known as the National Assessment Institute (NAI), a professional testing organization, to develop and revise licensing examinations for deputy port pilots and several other occupations. That same year, an examination was developed for deputy port pilots but was never used. The department has no documentation on how the examination was developed--we found no test development plan or evidence of a job analysis.

In December 1988, the DCCA licensing administrator asked NAI for information on the validity of the 1985 examination. Although the NAI noted that the examination appeared to have both face and content validity and that the test developer had consulted with port pilots, it offered no supporting evidence.

The department has little documentation about NAI's activities under contract. Even though the examinations are the property of the department, DCCA has no copy of either the original exam developed in 1985 or the revised 1989 version.

Security

More consideration should be given to the security of the examination. In January 1989, NAI held a "task analysis/content outline workshop" for an upcoming 1989 deputy port pilot examination. The purpose of the workshop was to discuss tasks performed by pilots and the knowledge, skills, and abilities needed to perform the tasks. The workshop included a representative of NAI, two port pilots, a representative of the Department of Transportation, a shipping agent, and representatives of the DCCA. According to the NAI representative who conducted the workshop, the DCCA made arrangements for the participants.

A deputy port pilot, who subsequently took the 1989 examination, was present for part of this meeting. This pilot was excused when it was discovered that he was to take the test. However, he may have been exposed to certain aspects of the exam.

Scoring

The scoring of the 1989 examination for deputy port pilots raises questions of bias because applicants and scorers belonged to the same association. The examination included job simulations and questions on the laws and rules of pilotage and the physical features and conditions of Hawaii ports. The NAI paid two licensed port pilots to score the examination, that is, assign points to answers. One pilot belonged to the Hawaii Pilots Association and the other was a former member of that association. The two applicants taking the examination were associated with and are now members of the same organization.

The two port pilot associations, Hawaii Pilots Association and Port Pilots of Hawaii, are competitors and not on good terms. The director has attempted to mediate their differences in the past. While it is a common practice to have persons scoring exams who are knowledgeable in the subject, the choice of scorers should avoid any appearance of bias. The use of pilots to score applicants who are members of their own association raises questions of bias, particularly since the department lacks an answer key or documentation on how the passing score was established.

In the future, the department should have representatives from *both* pilot associations scoring the examination. In addition, the point values should be based on clear criteria for each answer and for the passing score.

Regulations Should Include Physical Standards for Pilots

The work of port pilots requires a high degree of skill, proficiency, and technical training. Pilots must be able to adapt to changing conditions and be prepared to act appropriately. The regulations should help ensure that pilots are in good physical condition.

Physical examinations for port pilots are required every two years when the license fees are due. All nine port pilots, ranging in age from 43 to 69, were relicensed after submitting certificates of medical examination signed by their physicians. The medical examination certificates, however, do not require pilots to meet any physical standards. They contain no basis for judging the applicant's fitness for the position, nor do they require the physician to certify the person's ability to carry out the job. Without physical standards and the physician's statement of a candidate's fitness for the job, the purpose of the examination is not clear.

It should be noted that the U.S. Coast Guard requires an annual physical examination for a pilot to maintain the federal license. All of the state-licensed pilots currently hold federal licenses and take the annual physical examination. Although the standards are general, the physician is required to certify in the Coast Guard's medical examination report whether, in the physician's opinion, the applicant is physically competent to perform duties on a U.S. merchant vessel.

The department should specify the physical standards for performance of pilot duties. The physician can then use these standards to determine whether pilots are qualified to perform their duties.

Drug and alcohol use

Section 462A-8, HRS, provides that the license of a port pilot may be denied, suspended or revoked for "habitual use of any substance rendering a pilot unfit to be entrusted with the charge of a vessel." The department has not developed regulations relating to drug and alcohol use. The department should consider following guidelines from other jurisdictions on drug or alcohol testing programs.

The U.S. Coast Guard has specific guidelines and requirements for carrying out its alcohol and drug testing programs. Currently, marine employers with more than 150 crew members may not employ any individual as a crew member unless that individual passes a chemical test for dangerous drugs. By December 21, 1990, this will be required of all marine employers with 10 or fewer employees.

Federal regulations say that crew members must pass a pre-employment test or a periodic chemical test for dangerous drugs within the previous six months, or they must have been subject to a random testing program during the previous 12 months. They must not have failed a chemical test for dangerous drugs or have refused to take a required test.

Reporting of Incidents and Accidents Should Follow Clear Procedures

The department's regulation requires pilots to notify the director in writing of serious incidents and accidents but does not provide the means for verifying that pilots do so. The regulation says that pilots are to notify the director "as soon as practicable" of any "incident of significance" in the harbors of the state and to file a written report to the director within seven working days if the incident involves injury, death, extensive damage, or running aground. However, such key terms as "injury" and "extensive damage" are not defined,

allowing a pilot to be the sole judge of whether a written report is needed. As a result, there is no way of verifying that all serious incidents and accidents come to the department's attention.

Instead of relying solely on reports from the pilot, the department should arrange to receive damage reports from ship captains to the state Department of Transportation and reports from the U.S. Coast Guard on its investigations of incidents and accidents.

The Commercial Harbors and Tariff regulations of the Department of Transportation require a ship's captain to file a prompt and full written report to the harbor master of any damage to state property or facilities. The report includes the date and hour of the incident, the names, addresses, and descriptions of the witnesses and other persons, vessels, or instrumentalities involved in the damage, and other pertinent information and facts. The DCCA should arrange to receive copies of ship captains' damage reports from the Department of Transportation.

The Coast Guard is authorized to investigate any incident, accident, or act involving the loss, destruction, or damage to any structure that affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. The Coast Guard investigates incidents and accidents, such as oil spills and oil fires, that cause environmental damage and involve all types of commercial vessels. The department should arrange to receive copies of these reports from the Coast Guard.

The regulation should be changed to require pilots to report *all* incidents and damage to the director within 7 days of occurrence. The report should also include an estimate of the damage and/or injury. This would provide information and guidance to the executive secretary about the severity of the accident and whether further investigation is warranted.

Recommendations

1. Chapter 462A should be reenacted to continue the licensing of port pilots.
2. The Department of Commerce and Consumer Affairs should have documentation on the development of the port pilot examination and its validity. The department should also have a copy of the examination, the answer

key, and relevant instructions for administering the examination. Further, the department should ensure that the examination is secure and that the testing situation is without bias. The scoring of the examination should be done by representatives of both pilot associations.

3. The Department of Commerce and Consumer Affairs should develop physical standards for the licensure of port pilots. It should include the standards on the certification of medical examination forms. The department should amend its regulations to require physical examinations based on these standards and certification from a physician that the pilot is physically able to perform the job based on the established standards. The department should develop regulations on drug and alcohol use by port pilots.
4. The Department of Commerce and Consumer Affairs should change its regulation to require state licensed pilots to report *all* incidents to the director within 7 days of occurrence with an estimate of the cost of the damage and/or injury. The department should also arrange with the Department of Transportation to receive ship captains' reports of incidents of damage to state property and facilities.
5. The Department of Commerce and Consumer Affairs should arrange with the U.S. Coast Guard to receive its investigative reports on accidents affecting the safety of Hawaii pilotage waters or the environment.

Notes

Chapter 1

1. Hawaii Pilots Association, *Information Relating to Hawaii Port Pilots*, prepared for the Honorable Jack Suwa, Chairman, House Finance Committee, no date.
2. American Institute of Merchant Shipping, "Position Paper on Marine Pilotage," received from J.C. Kitchener, AIMS West Coast Pilotage Committee, no date.
3. Alex L. Parks, *Law of Tug, Tow and Pilotage*, Cambridge, Md., Cornell Maritime Press, 1971, p. 476.
4. Exempt vessels are (1) vessels required by law to be under the direction and control of a federally licensed pilot, (2) public vessels of the United States of America, (3) motor boats (repealed in 1988, Act 131 SLH), and (4) fishing vessels issued a fishery license or appropriately endorsed registry under the Laws of the United States of America, as amended, in Act 111, SLH 1984.
5. Section 462A-17, HRS.
6. Data compiled from reports from the Hawaii Pilots Association and Port Pilots of Hawaii.
7. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Pilotage*, Report No. 85-9, Honolulu, January 1985.

Chapter 2

1. See American Educational Research Association, American Psychological Association, National Council on Measurement in Education, *Standards for Educational and Psychological Testing*, Washington, D.C., 1985.
2. Werner, Eric, "Achieving Better Licensing Examinations: What Policy Makers Should Know," NCEI, Volume VII, Number 3, December 1989, p. 25.

the information already contained in the application or petition. [Eff and
comp 12/2/89; comp] (Auth: HRS §462A-3) (Imp:
HRS §462A-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 §462A-3) (Imp: HRS §462A-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:

- (1) Assure that all needed pilotage services will be available at all times and for all designated pilotage waters;
- (2) Address in a reasonable manner any request for a particular pilot or group of pilots or the refusal to use any particular pilot;
- (3) Assure 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;
- (4) Assure equitable distribution of pilotage work to all licensed pilots;
- (5) Establish a method of financing for the proposed central scheduling system;
- (6) Establish a method for dealing with pilotage requests for exempt vessels; and
- (7) Establish a method for dealing with the availability of support facilities at reasonable rates for pilots at the various harbors.

(c) All requests for pilotage services shall be made through the central scheduling office and no pilot may engage in any pilotage service that is not assigned through the central scheduling system; provided that this section shall not apply to pilotage of vessels that are exempt from this chapter.

(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)

§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.

(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)

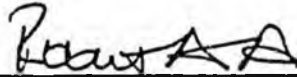
§16-96-64 Work rules. All pilots shall adhere to the work rules of the central scheduling system that is established by the director pursuant to section 16-96-62 or adopted pursuant to subchapters 2 and 3 of this chapter." [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

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.

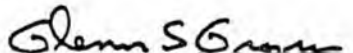
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 9, 1990, and filed with the Office of the Lieutenant Governor.



ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED AS TO FORM:


Deputy Attorney General



CAPTAIN J.L. LE PENDU

PORT PILOT

OFFICE
Pier 32
Honolulu, Hawaii 96813
(808) 531-6248

RESIDENCE
3320 Herbert Street
Honolulu, Hawaii 96815
(808) 732-6238

December 10, 1990

NATIONAL TRANSPORTATION SAFETY BOARD
Marine Division
800 Independence Avenue
Washington D.C. 20594

Gentlemen,

The PORT PILOTS OF HAWAII, a private association of State licensed Port Pilots in Hawaii, is seeking information concerning any studies or findings relating to SAFETY in respect to pilot associations in America. Specifically we are interested to know if there are any studies by the N.T.S.B. which have found that having only one pilot association in a Port to be the best means of addressing safety in pilotage.

Here in Hawaii we have two separate pilot associations. Both groups comprised of State licensed port pilots. Neither association is mandated by State Statutes or State Pilotage Regulations to regulate safety in pilotage. All State licensed port pilots are independent contractors by Statute, however may form a nonprofit association in order to reduce each pilots overhead (expenses). The association, by law, shall have no control or direction over the manner in which a pilot performs his duties. Past experience has shown that when there was only one association, the association did nothing to address concerns and complaints by shipping agents dealing with an association pilot. The previous monopoly of one pilot association protected the pilot rather than deal with the concerns which were safety related.

The PORT PILOTS OF HAWAII is an association of professional port pilots licensed by the State of Hawaii, not by an association. We are proud of our safety record and of our efforts to deal directly with the State of Hawaii on issues of Safety in Pilotage. We also favor the existence of more than pilot association within a State Pilotage jurisdiction.

We would be pleased to receive any information you may have regarding studies or rulings relating to safety in relation to pilot associations.

Yours truly,

Jean-Louis LePendu
Vice President,
PORT PILOTS OF HAWAII

TESTIMONY WE PRESENTED + READ AT HOUSE HEARING ON BILL 1693

To: Consumer Protection and Commerce/Finance, Committees
Representative Mazie Hirono/Representative Joseph Souki

From: Captain Lou Geronimo, Port Pilot
2734 Booth Road
Honolulu, Hawaii 96813

Re: H.B. 1693, Relating to Pilotage
Date: February 20, 1991
Time: 2:00 PM

Testimony opposing amendments to HB 1693

Committee Members,

I am Captain Lou Geronimo a State licensed port pilot. I have been a port pilot for 20 years, before that I sailed in the Merchant Marine for 32 years and got my Unlimited Masters License. I survived my ship being sunk during World War II by the Germans. I survived being a prisoner of war. For forty years I have been a good member of the Masters, Mates and Pilots Union, my record is clean. I learned the hard way how to work and to know respect for the law.

I urge you to deny the proposed amendments to this Bill. They are nothing but a scheme by the Hawaii Pilot Association to create a Monopoly for themselves. I used to be part of this association, but they got rid of me because I found out that they were working illegally. When we first became independent contractors in 1980 things were OK, but then in 1984 some of the pilots reorganized the business and I did not agree with or understand what was going on. I refused to sign the new documents, and was told in writing that if I did not sign them I would not be allowed to pilot. I finally signed under protest because I needed the work to support my kids and my wife. Then in 1987 I found out that my pension plan was no good because of the way the Hawaii Pilot Association was organized. A letter from Richard Saas CPA said, that if the I.R.S. investigated the pension plans of the individual pilots, the plans would not be qualified. I tried to get the Hawaii Pilot Association to reorganize and get things right, but they didn't do anything but make trouble to us who wanted to reorganize, even Richard Saas's letter said we should reorganize. The rest of the association didn't want to make the changes because they were afraid that the I.R.S. would see what was going on and would audit them. The only thing the pilot association did was to oust me and remove me as a director of the

association's

Page 2

corporations. Then they found some phony reason to refuse to dispatch me on the grounds that I worked outside of the corporations work rules. What about the other pilots who refused to work for Honolulu Agency vessels. They broke the rules too. But that was OK because they were in the click. The Hawaii Law 462A-15 says that we may form an association, but that the association has no direction over the way a pilot performs his duties. A pilot's duty is to provide his skills to any vessel requiring his services. For two months the association wouldn't let me work, finally I had to do something to make a living so I started working as an independent pilot. A year after I was independent, another pilot joined me and we formed an association called the PORT PILOTS OF HAWAII now there are 3 pilots in our association and things are going pretty good for us. The Hawaii Pilot Association sees their "Golden Egg" cracking apart and want to patch it up by making themselves a Monopoly. Because the Hawaii Pilot Association ousted me, the Union won't accept my dues anymore.

"Safety" seems to be a big concern to the Hawaii Pilot Association, or is it just an excuse to gain the control over pilotage that they once had, along with all the money.

The other part of the proposed changes to HRS 462A is to reestablish a Board of Pilot Commissioners. Well, I've seen the previous Board in action and all they did was what the pilots wanted. Whenever a Board member said anything that did not please the pilots, the pilots would convince him to change his mind. That was easy for them to do because they all belonged to the same social clubs. I remember what a Board member said to the Director of the D.C.C.A. when the board was Sunset back in 1985. It happened at the last commissioners meeting, the board member called the director's department "Slimy Bureaucrats". The pilots have no shame because once back in our pilot quarters they all laughed about it in agreement.

Page 3

For the last 5 years the Director of the D.C.C.A. has done a good job of regulating pilotage. He has been fair and open to the needs of the pilots as well as the industry. The Director has also adopted new rules under Hawaii Administrative Rules, Subchapter 12, entitled Statewide Pilotage System. I believe these to be good rules and possibly the best solution to ensuring that all pilotage services and requests are equally taken care of. It will also, over a period of time, weed out any bad pilots that would otherwise be covered up by an association interested in protecting their image.

I would like to see the new rules which were approved of and signed by the Governor be put into effect as soon as possible. It is time that we go on with the business of piloting and stop the feuding over who will control pilotage. It is clearly in the State's best interest as well as the interest of the Public that we Pilots remove ourselves from the notion that we know what is best for the Public's interest when all we really know is how to pilot ships.

Please do not let the proposed amendments become law. Thank you.

Lou Geronimo



CAPTAIN J.L. LE PENDU

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(808) 732-6238

READ AT HEARING ON BILL 1693

To: Consumer Protection and Commerce/Finance, Committees
Representatives: Mazie Hirono/Joseph Souki, Chairpersons

From: Captain Jean-Louis LePendu
J.L. Pilot Service, President
PORT PILOTS OF HAWAII, Vice President

Re: H.B. 1693, Relating to Pilotage
Date: February 20, 1991
Time: 2:00 PM

Testimony in opposition to proposed amendments to H.B. 1693

1. Creation of a single pilot association
2. Reestablishment of a Board of Pilot Commissioners

Committee Members,

This proposed legislation seeks to create a monopoly for the Hawaii Pilots Association by compelling all port pilots to become members thereof. Under the current system, all vessels which require pilotage service are offered the option of hiring pilots from one of two existing pilot associations. The question of Safety, under the current system, is a non-issue. All pilots, regardless of their affiliations, are required to undergo stringent examinations and offer proof of their experience and skills in piloting safely any vessel. A Pilot's only purpose is to provide safety to all vessels. To suggest that this can only be accomplished through a single pilot association is ludicrous. The National Transportation Safety Board (NTSB) letter dated January 29, 1991, has no studies or conclusions which support the premise that a single pilot association is safer than two competing pilot associations. The NTSB does however conclude in a marine accident report, NTSB/MAR-88/01, that of the 27 findings by the NTSB 9 were critical of the pilot association and/or of the Board of Pilot Commissioners. Of the 8 recommendations of that same report 7 recommended improvement in the Board of Pilot Commissioners.

A contributing factor to the "Probable Cause" of the collision "was the failure of the State pilotage oversight system," ie (Board of Pilot Commissioners). This NTSB report very closely parallels the State of Hawaii Legislative Auditor's report for 1985. The similarities of both reports are not coincidences since commissions usually tend to be self serving.

The Board of Pilot Commissioners was "Sunset" in 1985 due to overwhelming criticism by the State Auditor. The Auditor's report said in part, "regulation by the board has not accomplished the objectives intended by the Legislature of providing for the maximum safety of vessels navigating in state waters, or maintaining a highly efficient state pilotage system..." The 1985 Auditor's concluded in it's summary "In almost all areas reviewed, there was evidence of the influence of the pilot association on the board's decision making process. In many cases, board actions furthered the financial interests of licensed pilots and not those of the State."

A return to the old system of a single pilot association and a Board of Pilot Commissioners would seriously undermine the regulatory responsibility of the Director of the Department of Commerce and Consumer Affairs. The Auditor's report of 1990 states, "Since assuming regulatory responsibility in 1985, the Department of Commerce and Consumer Affairs has improved the regulation of pilotage." The Director of D.C.C.A. has established a Statewide pilotage system to guarantee pilot services to all vessels regardless of pilot associations. I would like to recommend that these new rules, which were adopted, be put into effect as soon as possible. I agree with the 1990 Auditor that the public interest is best served by reenactment of the Statute 462A-Pilotage.

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I am strongly opposed to the amendments to the Statute proposed by the Hawaii Pilot's Association for the creation of a single pilot association, and for the return of the pilot commission. I urge you to deny these proposed amendments. Thank You.

Jean-Louis LePendu

enclosures: 3

1. 1985 Auditor's Report
2. 1990 Auditor's Report
3. Subshapter 12, Statewide Pilotage System

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
Staff 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 Ciancaglino directed in your meeting with him, I am offering the following comments on the 4/4/91 draft of this bill:

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*

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. *OK*

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). *OK*

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? *Boles*

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. *Boles*

April 10, 1991

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?

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.

6 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.

6 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.

6 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."

6 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."

Adopt 11" 112
6 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.

6 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.

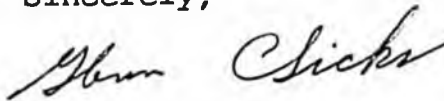
Sec. 08.62.190(a): The phrase "when a licensed pilot is available" seems too vague as stated. Recommend that some time frame and effort-to-obtain criteria be added to avoid each company making their own decision as to the availability of a licensed pilot.

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

PILOTAGE ORGANISATION FOR PORT EMPLOYED PILOTS

Captain Jim Varney, FNI, FIMH, MCIT

Immediate Past-President, International Maritime Pilots' Association

Lately Marine Services Manager/Harbour Master, Ports of Auckland Ltd

This chapter is taken from the new major book The Nautical Institute on Pilotage and Shiphandling, published this month, and serves well to introduce the book.

THE PUBLICATION of this book on Pilotage is timely, given the changes that are taking place in various parts of the world with regard to the employment of pilots.

As president of IMPA, and a member of the maritime safety committee of the International Association of Ports and Harbours (IAPH) I was recently given the task of reviewing and updating the chapter dealing with 'Pilots and Pilotage' in the IAPH publication *Guidelines on Port Safety and Environmental Protection*.

I am pleased to record that all recommendations were accepted in full, and the revised chapter was reprinted and published in June 1989. At the time I recommended to all IMPA members that *regardless of how they were employed; private, State, or port, every pilot station should obtain a copy*. While they are not mandatory, but simply 'Guidelines' for IAPH members, the observance and fair implementation of them should ensure better working relationships with all those concerned in the efficient operation of any port regardless of its size or complexity. The unknown (to me) authors of the original chapter are to be congratulated on the manner in which they addressed this topic.

To this end I make no apology for including the following extract from the 'Guidelines' with the hope that their wider publication will assist pilots of all persuasions as well as other members of the seagoing profession and those whose job it is to administer pilotage services.

PILOTS AND PILOTAGE

PILOTAGE IS A UNIQUE SERVICE based upon local knowledge and special conditions prevailing in the pilotage area. It may be performed in coastal waters, estuarial waters, rivers, ports, harbours, lakes or enclosed dock systems or any combination of these areas which may come within a port's jurisdiction.

A pilot's function is to combine technical knowledge concerning the operation of a vessel with local knowledge concerning special conditions which exist in the port area and with which the master of the vessel cannot be expected to be conversant. In this respect, pilots must first of all be technically capable of piloting vessels of all types which call at the port. They must be well versed in the latest equipment and navigational aids as well as the regulatory and environmental requirements.

The second and perhaps most important part of the pilot's function, however, is an overall appreciation due to his local knowledge of the special regulations and unique conditions which exist in the port area.

Administration

The rules governing pilotage should be designed to meet the special conditions and needs of each port area. In order to maintain a safe and efficient pilotage service and for this service to meet the special conditions of the port area, an authority must be established which will have the ultimate regulatory control over the pilotage service. Essentially, this system is now in operation throughout many ports in the world. Such a body is ordinarily a group of maritime-oriented people, having interests in the port area, who make regulations to cover the following considerations.

- The eligibility of pilots to perform pilotage services within its jurisdiction;
- The requirements for obtaining a licence or other type of operating authority for pilots;
- The administration of the examination procedures necessary in order to ensure that applicants for pilot licences are properly trained, qualified and have the requisite local knowledge;
- The requirement that pilots keep themselves abreast of the latest technological developments and the latest navigational aids;
- The investigation of casualties, accidents and alleged transgressions by pilots, and the conduct of any necessary disciplinary measures;
- The fixing of the proper number of pilots necessary to ensure a satisfactory traffic flow;
- The fixing of fair and reasonable rates for pilotage services;
- The requirements to ensure that pilots receive proper and fair treatment, timely remuneration, and any other action necessary to ensure that an efficient pilotage service is rendered;
- Determine the necessary equipment (boats, accommodation, etc.) and manning scales for its efficient and safe operation; and
- The requirement that pilots report breaches of ratified international conventions (overloading, faulty pilot boarding/disembarking systems, pollution by oils or other noxious substances, etc.) and breaches of national and port regulations, etc.
- For the bond to limit the liability of a pilot, in those countries where there is no legal protection. (The level of pilotage fee charged must to some extent be reflected in the insurance costs of the service. Therefore, the introduction of 'limited liability' should lower insurance premiums and thus costs);
- Pilots should meet the medical and eye-sight requirements prescribed by their national administration.

Training

Pilot training covers two major aspects—viz., technical training in vessel operations and in the use of

the latest vessel equipment and navigational aids and the training and acquisition of experience with respect to the special and unique conditions which exist in the port area. These background skills for pilots have been developed in two principal ways.

Pilots with experience as deep-sea mariners possessing a master's or mate's licence or as licensed tugboat officers: these pilots have acquired their technical background skills through actual vessel operations and their training as pilots in a particular port area requires them to become thoroughly familiar with and aware of the conditions which exist in the port area. The amount of training and the length of training period for a prospective pilot whose technical skills have been acquired through actual vessel operations will depend upon a number of factors, such as the complexities of the special conditions in the port area and the amount and type of traffic in the port. The initial training period would probably be from six months to a year.

Pilots train under what was historically known as the guild system and which is now commonly described as the apprenticeship system. This training programme is used by some State pilot associations in the United States and elsewhere in the world and has proved to be successful and effective. The apprenticeship system takes a relatively young person with a good educational background, who is physically qualified to be a pilot and who then undergoes a period of apprenticeship with the licensed pilots in the port area. Such an apprenticeship or learning period usually lasts between five and ten years. The apprentice pilot simultaneously learns technical skills concerning vessel operations and the conditions of the port area during a period of actual on-the-job training. This training also involves a programme of study for the apprentice, who must acquire adequate technical background, skills and knowledge.

There is also a system of training which is a combination of the other two systems. A candidate for a pilot's licence spends alternating periods as an apprentice pilot and at sea, qualifying for his mate's and/or master's certificates or licences.

Pilotage of any type of vessel would be possible only after a pre-determined number of years, during which a pilot would progress to vessels of increasing tonnage and/or draught. In some circumstances it may be required that an upper age limit be imposed on pilots for certain types or classes of ships.

Enrichment of skills

It must be recognised that pilots are learning and reinforcing their skills every day. They are continuously finding different combinations of weather, current, traffic and of course, different standards of vessels and crews. This requires a variation in their approach to the manoeuvres they have to make, which in turn adds to their store of knowledge. Pilots should be encouraged to attend one or more of the many training establishments located throughout the world. These include radar simulators, bridge simulators and model basins for both day and/or night-time scenes and ship-handling.

Some pilot associations promote this improvement of skills by having 'sounding trips'—trips on which a

pilot is observed by a more senior colleague who assesses his ability and performance and his suitability for advancement to piloting ships of a greater size or draught. In other districts, on vessels of unusual size, shape and/or manoeuvring characteristics, a second pilot is put aboard to observe the pilotage and perhaps assist with such tasks as communications.

Prevention of the one-man error

The pilot must take into account not only the safe conduct of the vessel he is piloting, but also the safety, protection and well-being of other vessels and users of the port, the port itself and the environment. The effective utilisation of pilots depends most critically upon the effectiveness of the communications developed between the pilot and the master and upon the mutual respect which each has for the functions and duties of the other, also the effectiveness of communications to the VTS and the masters of attending tugs.

When a pilot boards a vessel, he is given the conduct or the charge of piloting the vessel while the master remains in command. The pilot's function is to manoeuvre the vessel within the port area so that local hazards, special regulations, environmental requirements and any other unique local conditions existing in the port area are brought to the attention of the master for adherence or avoidance, as the case may be. Problems of so-called one-man error may arise in situations due to a lack of communication between the pilot, the master, the harbour information control organisation or the tugs. Communication by the pilot to all involved should be relatively standardised and it should always be complete.

The pilot would usually undertake the following procedure:

- Inform the master of the instructions the pilot had received concerning the vessel with respect to docking, time of arrival, assistance of tugs, whether port or starboard docking is to be effected and any other pertinent information such as manoeuvres to be carried out;
- Inform the master of any special conditions that may be expected during the passage;
- Inform the master of the traffic anticipated (through traffic systems in ports where such systems exist), especially if the traffic is expected to be unusual; and
- Inform the master of the known weather conditions and the weather expected on the intended route.

The master should inform the pilot:

- The characteristics of the vessel: length, beam, height of mast, draught of vessel fore and aft, type of engines, number of propellers and rudders, bow and stern thrusters, whether the propellers are right handed or left handed, whether the pitch is fixed or controllable.
- The manoeuvring characteristics of the vessel: number of revolutions at each speed, maximum number of revolutions astern, time response of the engine and of the rudder, turning ability, minimum speed at which the vessel will steer under normal circumstances, maximum time that the engine can run continuously astern.
- Any unusual characteristics or defects or problems that could affect the safe manoeuvring of the vessel, number of crew available for mooring.

All pilots should be familiar with the IMO vocabulary, especially in countries in which the English language is not the first language.

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Control of tugs and other craft

A programme of close co-ordination and communication with operators of tugs and other craft is an integral part of pilotage practice. A uniform practice and procedure is essential to assure absolute compliance with all instructions and orders given from the bridge. Tug and other craft operators assisting the vessel must at all times be under the control of the pilot. Past instances on record, when disaster or damage was caused or nearly caused, could probably have been averted had there been closer co-operation and better communication between the bridge and the assisting craft. This could be effected by ensuring that in the port area certain VHF channels are reserved exclusively for ships, tugs and mooring craft, etc. The master, upon the advice of the pilot, shall determine the number of tugs to be employed but the port authority may stipulate a minimum number. The pilot shall determine the positioning, speeds and how the tugs are to be made fast.

Port practice and policies

The personnel infrastructure of a port area includes many different elements such as tugboat operators, stevedoring companies, waterside labour, local coast guard authorities, customs officials, pilots and others. In a port, pilots may operate in any of the following areas: sea and estuaries, rivers, docks, canals and lakes. Some pilots may only perform berthing/unberthing functions and in addition some of senior status may be required for VLCCs and similar large vessels.

The achievement of safe, efficient and pollution-free operations within a port area obviously depends upon the effective co-ordination of all these elements. A pilot certainly has an essential role in the achievement of this objective but not the only role. Port co-ordination must be achieved through some authoritative form of co-operative effort, between all the groups which operate within the port area.

In some ports where there is not already one co-ordinating body, it may be advisable to have a port/marine liaison committee, made up of representatives of organisations charged with the establishment, maintenance and protection of the port's aids to navigation, vessel traffic services and port facilities. In addition, the committee should also include representatives of other services necessary for the safe movement of vessels within the port area. This committee would advise on matters such as (but not restricted to):

- Draught limitations.
- When and where tugboat escort and/or assistance is needed.
- Suggested time for movements under various tidal conditions.
- Regulations governing movement of marine traffic in the ports.
- A review of all matters affecting the safe and efficient operation of the port and the promulgation of such guidelines as are warranted to achieve these purposes. These should include consideration of the different types of accident that could occur and a review of the means at the disposal of the port in case of an accident, especially one involving a vessel carrying oil, gas, chemicals or other noxious and/or hazardous cargo. This would enable a decision to be made about the most appropriate measures to be taken to safeguard the safety of lives,

vessels, installations and the environment, in turn determining what additional equipment is needed to cope with potential emergencies.

- An advisory role in port development and renovation.

VTS is a service provided for the purpose of: enhancing the safety of the vessels navigating or moored in the area, of the harbour installations and the protection of the environment; and co-ordinating, expediting and maintaining an orderly flow of traffic. The VTS will provide information, advice and instructions mainly based on the rules and regulations promulgated by the port marine liaison committee.

It is obvious that a VTS can only be properly operated if there is close co-operation between all the parties involved and more particularly between the VTS operators and the pilots who are the direct link between the VTS centre and the vessels and who are fully conversant with the local rules, regulations and procedures.

The presence of a pilot on board a vessel will enable the VTS to simplify its procedures and interventions as far as that vessel is concerned. Pilots may also be called upon by the operators of the VTS to participate in its operation, where their particular knowledge of local conditions and expertise in handling various sizes and types of ships can be invaluable. □

FURTHER TO THIS I would add.

1. The ultimate objective for any pilot service, no matter how the pilots are employed, must be to provide a pilot as and when required for every vessel requesting such a service.
2. The person provided should be properly qualified and experienced in handling the size and type of vessel to which they are allocated.
3. They should be physically fit and mentally alert to enable them to carry out the duties of a pilot throughout the pilotage act.
4. This can vary greatly, and is not only dependent upon distance; harbour, dock work, river, or estuary pilotage or combination of these, but is also subject to the vagaries of weather; tide; traffic patterns, and last but not least, equipment failure, all of which can play havoc with rosters and duty turns in a busy pilotage district.

Basic qualification

This may differ from country to country, but, in the main, the government or State will be responsible for setting the basic qualification that a candidate for a pilot's licence must hold. The vast majority today insist on the master foreign-going certificate or its equivalent, with or without command time. In many ways this is an advantage to port authorities who employ pilots, as they can then utilise the skills of these people more fully for a greater range of work. This again is dependent upon the size and nature of the port and its workforce.

To those of you who are intent on joining the profession—I wish you well. After 26 years as a pilot, I still think that one of the most pleasurable moments is to arrive on the bridge of a ship and be greeted by a firm handshake, a friendly and sometimes mightily relieved master, and the magical words 'she's all yours, pilot'. As long as you don't take this too literally you can then settle down to enjoy your work—i.e., the sheer pleasure of controlling, in most cases, the largest objects built by mankind capable of being moved, which will require your undivided attention. Just be sure that they are also capable of being stopped. □

STATE OF ALASKA

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PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

April 8, 1991

The Honorable Cheri Davis
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Davis:

The Board of Marine Pilots is pleased to support House Bill 194. The board appreciates your efforts and shares your concerns about the seriousness of enacting a modern pilotage law for the State of Alaska.

If there is any way that the Board of Marine Pilots can be of any assistance to you in this fight, please call upon me.

Very truly yours,



M. Paul Taylor, P.E., Chairman
BOARD OF MARINE PILOTS

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