

SB

35

HFIN

FILE

Alaska State Legislature

During Interim: (June - Dec.)
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During Session: (Jan - May)
State Capitol
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Senator Drue Pearce

CS for SB 35 (L&C) Sponsor Statement

The Board of Marine Pilots was originally created in 1970. The associated authority of the Board was then significantly broadened with the Marine Pilot Act of 1991. The Marine Pilot Act stated, "It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state."

The 1995 amendments to the State's marine pilot statutes changed the BMP's role in setting how much pilot organizations could charge for services. The process allows the flexibility of negotiated rates between the pilots and the shippers. It also fosters competition between pilot organizations while giving shippers an avenue of appeal and review when they believe rates may be excessively high in regions of the state where there is no competition.

The regulation and licensing of qualified marine pilots benefits the safety and welfare of the public. The BMP has begun improved training and continuing education of Alaska marine pilots which is becoming increasingly important with the steady increase in tourist passenger ships in recent years.

The board provides reasonable assurance that the pilots of cargo and passenger ships are qualified to do so. The board has successfully worked with the pilot associations in resolving many problems identified in the 1994 audit and continues to improve the safety of Alaska's marine waters. The BMP is currently finishing a 5-year extension. The 1998 legislative audit, recognizing the public importance of the BMP, recommended another 5-year extension with a termination date of June 30, 2004.

Senator Leman amended the proposed termination date of June 30, 2004 in the Senate Labor & Commerce Committee to a 4-year extension of June 30, 2003.

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 17, 1999

FURTHER REFERRALS:

Date of Committee Action: 2/22/99

The FINANCE Committee considered:

CSSB 35(L&C)

CSSB FOR SENATE BILL NO. 35(L&C)

EXTEND BOARD OF MARINE PILOTS

"An Act extending the termination date of the Board of Marine Pilots."

recommends it be replaced with the following committee substitute 3 the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____ fiscal note(s) ced 2/5/99

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Therriault, G	X			
<i>Bob Bunde</i>	Bunde	X			
<i>Eric Kohring</i>	Kohring	X			
<i>Alan Austerman</i>	Austerman	X			
<i>Al Davies</i>	Davies	X			
<i>Ben Grussendorf</i>	Grussendorf	X			
<i>Paul Moser</i>	Moser	X			
<i>W. K. Williams</i>	Williams	X			
<i>[Signature]</i>	Foster	X			

CHAIR'S SIGNATURE *Gene Theriault*

FISCAL NOTE

No. 1
 Bill Ver. on: CSSB 35(L&C)
 (S) Publish Date: 2/5/99

**STATE OF ALASKA
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ Dev.
 Title An Act extending the termination of the BRU Occupational Licensing
Board of Marine Pilots. Component Occupational Licensing
 Sponsor Senator Pearce
 Requester Senate Labor and Commerce Component Serial No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 112.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 CSSB 35(L&C) extends the Board of Marine Pilots to June 30, 2003. Funding for continuation of the board in the amount of \$112.0 is included in the department's FY 2000 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by Jennifer Strickler, Administrative Manager *JS* Phone 465-2144
 Division Occupational Licensing Date/Time 2/4/99 4:10 PM
 Approved by Commissioner Deborah B. Sedwick *DBS* Date 2/4/99
 Agency Commerce & Economic Development

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BOARD COSTS
INFORMATION

CSSB 35(L&C)
#1

CSSB 35(L&C)				
DIRECT COSTS			Total	AVG
FY:	97	98	DIRECT	ANNUAL
COSTS				
Personal Services	76.1	63.9	140.0	70.0
Travel	11.6	10.0	21.6	10.8
Contractual Services	36.3	25.2	61.5	30.8
Commodities	0.6	0.1	0.7	0.4
Equipment	0.2	0.0	0.2	0.1
	124.8	99.2	224.0	112.0

Page 2 of 2

FISCAL NOTE

No. 1
 Bill Version: CSSB 35(L&C)
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**STATE OF ALASKA
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 Sponsor Senator Pearce
 Request of Senate Labor and Commerce Component Serial No. 2360

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	124.8	99.2	224.0	112.0

Page 2 of 2

SOUTHWEST ALASKA PILOT ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

Tel: (907) 235-8783
Fax: (907) 235-8119

February 5th, 1999

Senator Drue Pearce, President
Alaska State Senate

Dear Senator Pearce,

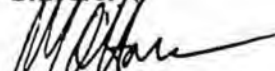
On behalf of the member pilots of SWAPA, I want to thank you for sponsoring legislation to extend the Alaska Board of Marine Pilots. We support the bill exactly as you have written it - a simple extension of the Board for 5 years without amending our current statutory structure. Our current structure was the result of very difficult negotiations 4 years ago, and we all hoped it would work to reduce and level of strife in the marine pilotage industry. It has worked.

We have finally had 4 years of peace between pilot groups, the industry and the administration. This kind of stability is very important to our industry and allows us to focus clearly on safety of operations and keeping commerce moving rather than fighting each other and the industry on a regular basis over political issues.

We will be present at hearings to testify and answer questions throughout the process, but we also wanted you to have this written statement of our position, so that you could include it with the bill packet.

Thanks again for your continuing support of marine pilotage issues in Alaska.

Sincerely,


Mike O'Hara
President, SWAPA

LAW OFFICE OF
BRUCE B. WEYHRAUCH, LLC

whyrock@ptialaska.net

114 S. FRANKLIN ST.
SUITE 200

JUNEAU, ALASKA 99801

TELEPHONE: (907) 463-5566 FAX: (907) 463-5858

RECEIVED
FEB 03 1999

Ans'd.....

February 3, 1999

HAND DELIVERED

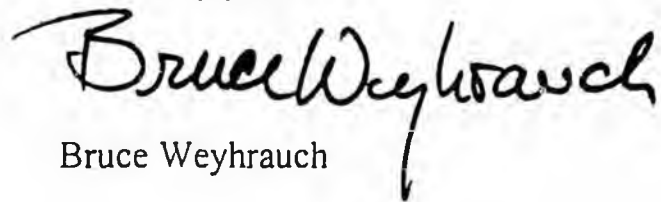
Senator Drue Pearce
Senate President
State Capitol
Room 111
Juneau Alaska 99801

Dear Senator Pearce:

The Southeast Alaska Pilots' Association has no objection to Senate Bill 35 as it is presently written, which would extend the termination date of the Board of Marine Pilots to June 30, 2004.

Please let me know if you have any questions.

Very truly yours,


Bruce Weyhrauch

SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

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

February 5th, 1999

Senator Dave Donley
Alaska State Legislature

Dear Senator Donley,

I am responding to the issue of a differential license fee between resident and non-resident marine pilots in Alaska which you raised during the State Labor and Commerce Committee hearing yesterday. The way the Department of Commerce occupational licensing is set up, our licensing fees pay for the operation of the Board of Marine Pilots and also pay a reasonable administrative overhead fee paid to the Division. If non-resident marine pilot license fees were raised, it would have the effect of lowering the fees of resident pilots. No money would be saved by the state.

The Southwest Alaska Pilots Association's 24 member pilots are all Alaska residents so we would be a significant beneficiary of such a policy change. However, we are opposed to making such a differentiation. I doubt it would have any impact on a non-resident being unwilling to buy an Alaska Marine Pilots license just because of additional fees. We have recently paid as high as \$4500 for a Pilot's license and our current fees are \$2000. These differences did not cause any pilot to reject paying the fee.

Given the fact that pilots make a huge financial commitment to their profession by paying for up to 4 years of training, I doubt an additional license fee would help make for more Alaska resident pilots. The vast majority of Alaska marine pilots are Alaskan residents. We are currently training Alaska residents to become pilots and one of the toughest hurdles is getting people to make the kind of training and expense commitment it takes to become a marine pilot.

We oppose creating differential license fees for resident and non-resident marine pilot licenses. To be effective at all, the differences would have to be huge and from a legal point of view, the higher the difference in fees, the more difficult it will be to meet an equal protection standard in the courts. More importantly, it is lawsuits over issues such as this, and other forms of confrontation we are seeking to avoid through continuing the current marine pilotage legislative and regulatory structure. We have finally had 4 years of peace between pilot groups, the industry and the administration. This kind of stability is very important to our industry and allows us to focus clearly on safety of operations and keeping commerce moving rather than fighting each other and the industry on a regular basis over political issues.

I hope you will please consider these thoughts as you contemplate whether you want to get into this issue or not. We urge you to let the current system keep working.

Sincerely,

Captain Mike O'hara

A handwritten signature in black ink, appearing to read "M O'hara". The signature is written in a cursive style with a long horizontal stroke at the end.

Pres. SWAPA



Alaska Steamship Association

234 Gold Street • Juneau, Alaska 99801
(907) 586-3107 • Fax (907) 586-1001

January 29, 1999

Representative Norm Rokeberg
Chairman, House Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska

Re: *House Bill 32; An Act extending the termination date of the Board of Marine Pilots*

Dear Representative Rokeberg:

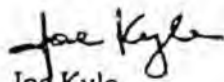
The Alaska Steamship Association (ASA) is pleased to endorse HB - 32. The association represents the collective interests of the majority of foreign flag, marine transportation companies operating in the waters of the State of Alaska, and their Alaska based agents. The membership includes all the Northwest Cruise Ship Association, Tesoro, Marathon Oil Company, American President Lines, Alaska Maritime Agencies, Cruise Line Agencies of Alaska, Southeast Stevedoring, North Star Maritime Services, and ANP Shipping.

The Board of Marine Pilots has performed a valuable function for state licensed pilots, the maritime industry, and the public since its last extension. ASA appreciates the fact that committee has scheduled HB - 32 for a hearing this early in the session, and hopes that you can move it promptly — without amendment.

The public, pilots, and industry are currently being well served by the Board and the Marine Pilot Statutes (AS 08.62). Stability and cooperative working relationships are the norm. Any amendment that changes any aspect of HB - 32, other than the extension date, would likely disrupt the current harmony we enjoy.

Once again, thank you for your attention to HB -32.

Sincerely,


Joe Kyle

SOUTHWEST ALASKA PILOT ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

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

February 5th, 1999

Representative Gene Therriault
Co-Chairman, House Finance Committee
Alaska State Legislature

Dear Representative Therriault,

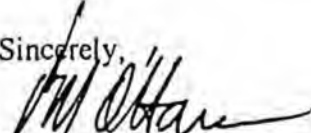
On behalf of the member pilots of SWAPA, I want to thank you for sponsoring legislation to extend the Alaska Board of Marine Pilots. We support the bill exactly as you have written it - a simple extension of the Board for 5 years without amending our current statutory structure. Our current structure was the result of very difficult negotiations 4 years ago, and we all hoped it would work to reduce and level of strife in the marine pilotage industry. It has worked.

We have finally had 4 years of peace between pilot groups, the industry and the administration. This kind of stability is very important to our industry and allows us to focus clearly on safety of operations and keeping commerce moving rather than fighting each other and the industry on a regular basis over political issues.

We will be present at hearings to testify and answer questions throughout the process, but we also wanted you to have this written statement of our position, so that you could include it with the bill packet.

Thanks again for your support of marine pilotage issues in Alaska.

Sincerely,


Captain Mike O'Hara
President, SWAPA

November 18, 1998

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

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

November 18, 1998

Audit Control Number

08-1458-99

The objective of this review is to advise the legislature as to whether the Board of Marine Pilots should be extended or terminated in statute. Currently, AS 08.03.010(c)(10) has the board scheduled for termination on June 30, 1999. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 2000. We recommend that the legislature extend the board's termination date to June 30, 2004.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we conducted a review of the activities of the Board of Marine Pilots (BMP).

Objectives

The primary objective of our review was to advise the legislature as to whether the board should continue in existence. As required by statute, the legislative committee of reference is to consider this report as part of its oversight process and determine whether the board should be reestablished. The law currently specifies that the board will terminate on June 30, 1999 and will have one year from that date to conclude its affairs.

Scope

We focused primarily on the activities of the board over the most recently completed three fiscal years of operation — FY 96 through FY 98. Of specific concern to our review are the actions of BMP in carrying out the extensive changes the legislature made to the marine pilotage statutes in 1995. Additional concerns addressed in our review involved board proceedings, examination, licensing, and investigations.

Methodology

We engaged a contractor, Parker and Associates, to conduct most of this review. We supervised the activities of the contractor, as required by auditing standards. Additionally as required by auditing standards, we confirmed independence of the contractor and that the work was competent and sufficient.

To accomplish the audit objectives, the following documents were reviewed and the following interviews were conducted:

- Applicable sections of state statutes and regulations.
- Interviews with employees of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
- Interviews with various board members, shipping agents, selected licensed marine pilots, and U.S. Coast Guard officials regarding various concerns and issues involving marine pilotage in Alaska. The topics covered included the activities of BMP, and the impact of the extensive revisions made to marine pilot statutes in 1995 have had on board operations and pilotage in Alaska.
- Minutes of board meetings and annual reports.
- Licensing files for marine pilots.

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ORGANIZATION AND FUNCTION

The Board of Marine Pilots (BMP) was created by Chapter 106 SLA 1970, which became effective May 7, 1970. The statutes were significantly changed with the passage of the Marine Pilot Act of 1991 which broadened BMP's authority. At that time the legislature felt it necessary to give BMP broad statutory authority, which included establishing pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. All but one section of that act went into effect on July 2, 1991. That section, which required a pilot to be a member of a pilot association, did not go into effect until January 1, 1993. The policy, findings, and intent of the Marine Pilot Act stated, "*It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state.*"

Membership on the board

BMP is composed of seven members. Membership consists of two pilots licensed under the statute who are actively engaged in that profession, two agents or managers of vessels subject to the statutes, two public members, and the commissioner of the Department of Commerce and Economic Development (DCED) or designee. All members must be residents of Alaska. By statute, not more than one pilot member and one agent may be from any one pilotage region established by the board.

Members of the Board of Marine Pilots

Jeffrey W. Bush, DCED Deputy
Commissioner, Chair
Robert M. Berto, Agent, Vice-Chair

Peter S. Garay, Pilot
Bernie R. Smith, Agent
Michael C. Spence, Pilot
Barbara J. Huff Tuckness, Public Member
Michael N. White, Public Member

The public members cannot be engaged in the piloting profession, have a legal contract with a pilot, or have a direct financial interest in the piloting profession.

Duties of BMP

BMP's statutory responsibilities include:

1. Adopting regulations establishing qualifications of, and required training for pilots and providing for examination of pilots.
2. Maintaining a register of licensed pilots, licensed deputy pilots, and agents.
3. Adopting regulations establishing pilotage regions, professional fees, and criteria to recognize pilot organizations.

4. Reviewing and approving the articles, bylaws, and rules of pilot organizations.
5. Auditing a pilot organization or an individual pilot as necessary to implement the board's statutory mandates.
6. Making copies of the statute and regulations available upon request.
7. Developing training programs conducted by pilot organizations.
8. Establishing and publishing the dates of future license examinations.
9. Arbitrating rates for pilotage services in a manner provided for in the marine pilot statutes.

Duties of the Department of Commerce and Economic Development

The Department of Commerce and Economic Development provides administrative and investigatory assistance to BMP. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, DCED may conduct an investigation if it appears an individual has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the individual stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of a licenseholder, and issue subpoenas for the attendance of witnesses and records.

Marine Pilot Coordinator

The department has hired a marine pilot coordinator. The duties of this position, whose hiring is subject to approval of BMP, are set out at AS 08.62.050. The coordinator assists the board in fulfilling its statutory duties. The marine pilot coordinator cannot work as a pilot, be an active member of a pilot association, or have a financial interest in a pilot association or the equipment that it uses.

Role of pilot associations

Pilots usually form associations to provide services to the shipping industry. Pilot associations offer centralized dispatch of services to industry through its pilot members. The associations either own pilot boats, or have agents who make arrangements for pilot boats, to carry pilots to and from vessels. Pilot associations sponsor candidates by providing access to a training officer and vessels with which the association or their agent has a contract. The pilot fees are collected by the association and pilots receive a portion of the revenue collected.

BMP has established four pilotage regions in the State of Alaska and has recognized five pilot associations.

Region	Association	Number of Marine Pilots	Number of Deputy Marine Pilots	Number of Trainees
Southeast	Southeast Alaska Pilot Association	24	3	3
	Alaska Coastwise Pilot Association	15	2	0
Western	Alaska Marine Pilots	10	1	1*
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	3	2
Kuskokwim River	Kuskokwim Pilots Association	0	1	0
Totals		<u>69</u>	<u>10</u>	<u>6</u>

* - One individual to become a deputy marine pilot as of January 1, 1999.

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BACKGROUND INFORMATION

Piloting is the act of directing a vessel into and out of areas where navigation has been determined to be dangerous or difficult. The difficulties can include restricted waterways, such as channels, ports or harbors; tides, currents and water depths; and type and nature of traffic. A pilot can either be a member of the ship's crew or he can be independent of the crew and brought onto the ship solely for the purpose of guiding the vessel through designated pilotage waters. The pilots' knowledge of the local geography and weather of the waters they are piloting makes them invaluable to the vessel. The safety of the lives aboard the vessel and for the marine environment is the pilot's responsibility.

History of pilotage in the United States

Prior to the formation of the United States, many maritime states had already started regulating pilotage. The First Congress of the United States had to determine which functions would be administered by the federal government and which functions would be administered by state governments. The Commerce Clause of the U.S. Constitution grants the power to regulate interstate and foreign commerce to the federal government. To enable the states to continue regulating pilotage, an amendment was made to the Lighthouse Act of August 7, 1789, which stated:

That 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 the States respectively wherein such pilots may be, or with such laws as the States may respectively hereafter enact for the purpose, until further legislative provision shall be made by Congress.

Since the passage of the Lighthouse Act, congress enacted very few laws to impact the states' authority over pilotage. A law was passed in 1852 which provided for federally-licensed pilots to be in charge of vessels propelled in whole or in part by steam and carrying passengers.

Since 1871, responsibility for the regulation of marine pilots and pilotage is shared by federal and state governments. In general terms the federal government, through the United States Coast Guard (USCG), regulates pilotage on enrolled vessels. Enrolled vessels are registered in the United States and engaged in commerce between American ports. However, individual states are given the right to regulate pilotage on registered vessels. Registered vessels are those engaged in foreign trade. The U.S. Customs Service determines in which trade a vessel is operating.

Requirements for federal licensing

The USCG enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, if not all, an applicant must have a USCG pilot license in order to obtain a state license. The USCG license is usually referred to as a minimum standard of

competence license. The requirements for a USCG license include a required number of months of sea service, a certain number of round trips, and passing a written examination. The USCG appointed a Pilotage Study Group to make recommendations on pilotage in U.S. waters. The report issued on September 15, 1989 recommended increasing the sea service time and tightening record-keeping requirements to document service qualifications.

A federal license is valid for a period of five years. For renewal of the license, a pilot has to submit evidence of one year of sea service within the previous five years. Pilotage endorsements on the license do not expire, but every five years the pilot must make one round trip familiarization trip over the route for which they receive an endorsement. For long or extended routes, the pilot does not have to physically make the familiarization trip, the pilot can be certified based on his review of publications and charts.

Requirements for state licensing

Since knowledge of local geography is an essential aspect of the pilotage profession, state licensing procedures require intensive on-the-job training to gain the necessary experience. Some states have apprenticeship programs that provide on-the-job training. Entry into an apprenticeship program often requires little or no previous experience, but the training may last up to seven years.

Other states, including Alaska, have deputy pilot programs that provide on-the-job training. Training for deputy marine pilot programs is often for a two-year duration, which is considerably less time than the apprenticeship program. This is because the entry requirements for the deputy pilot include considerably more sea service experience than the apprentice. Alaska's deputy marine pilot qualifications could take from one to three years to attain. All training programs require the trainee to ride a ship with a fully licensed pilot, observing their handling of the ship. Over time the trainee begins to handle the ship himself under the pilot's guidance.

Licenses granted by the states are for a set period and must be renewed at intervals ranging from one to five years. Alaska has a biennial renewal. According to the American Pilots' Association, several states have continuing training programs or requirements. Alaska has also incorporated renewal requirements for marine pilots. Below is an excerpt from the statute on Alaska's continuing training program.

AS 08.62.120. Renewal of License. (a) In order to renew a marine pilot license, a person who is licensed under [statutory requirements] shall . . .

(4) submit proof satisfactory to the board that the person has
(A) engaged in piloting vessels subject to this chapter in the marine pilotage region for which the license is to be renewed during at least 60 days of each calendar year in the licensing period immediately preceding the licensing period for which renewal is sought; or

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

Vessels subject to Alaska marine pilotage regulations

A pilot is required to be employed by vessels navigating in the inland and coastal waters of or adjacent to the State, as defined by the board. However, certain vessels are exempt as detailed below.

AS 08.62.180 Exemptions. This chapter does not apply to

(1) vessels subject to federal pilot requirements under 46 U.S.C. 8502 except as provided in AS 08.62.185 (see below);

(2) fishing vessels, including fish processing and fish tender vessels, registered in the United States or in British Columbia, Canada;

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

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

(A) on the rivers of Alaska; or

(B) in the coastwise trade on the west or north coast of the United States including Alaska and Hawaii, and including British Columbia, Yukon Territory, and Northwest Territories, Canada;

(5) vessels of Canada, built in Canada and manned by Canadian citizens, engaged in frequent trade between:

(A) British Columbia and Southeastern Alaska south of 58 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; or

(B) northern Alaska north of 68 degrees, 7 minutes North latitude and Yukon Territory or Northwest Territories;

(6) pleasure craft of United States registry; and

(7) pleasure craft of foreign registry of less than 300 gross tons as measured under 46 C.F.R. 69.51 – 69.75.

AS 08.62.185. Certain licensed pilots required for oil tankers. (a) Any oil tankers, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when

navigating in state water beyond Alaska pilot stations employ a pilot licensed by the state under this chapter.

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

Pilot discipline

The USCG investigates shipping accidents and other navigational incidents involving marine pilots operating under its federal license. The USCG has the authority to issue a letter of warning or reprimand, levy a fine, or seek criminal prosecution. The USCG may suspend or revoke a pilot's federal license if the pilot violated maritime law or regulation or was negligent or inattentive to his pilotage duties. At the present time, the USCG has no jurisdiction over a pilot's state license if the pilot was operating under that license at the time an incident took place. Both the National Transportation Safety Board and the USCG Pilotage Study Group recommend that federal law be changed so the USCG can take action on a pilot's federal license, even if an incident occurred when the pilot was acting on their state license.

All 24 maritime states have procedures for disciplining pilots when incidents occur while the pilot is operating on their state license. In most states, the pilot is required to report in writing an incident to the oversight organization. In Hawaii the oversight organization is a state department, but in the other 23 states the oversight organization is a board or commission that may or may not include pilot members. In many states, incidents are investigated and findings presented to the oversight organization by a state agency. If just cause is shown, the oversight organization can suspend or revoke the pilot's state license. In Alaska, reports are investigated by DCED, but BMP has the authority to suspend or revoke a pilot's license. BMP also has the statutory power to suspend or revoke a pilot's state license if their USCG license has been conditioned, suspended, or revoked.

Marine Pilot Act of 1991 changes Alaska's pilotage statute

The former Division of Policy in the Office of the Governor, issued a report in November 1990 titled, *Improving Alaska's Marine Pilotage System*. The report stated that Alaska's statute treated licensing as an individual right rather than recognizing its importance as a regulatory oversight organization charged with public protection. The emphasis on individuals' rights had diverted BMP's attention from public safety issues facing state pilotage as BMP was constantly dealing with controversies with individual pilots. The report pointed out the Department of Law questioned whether existing statutory language granted BMP the broad discretionary power intended by the legislature. The report stated, "*weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime*

In response to the report, the legislature drafted a bill that came to be known as the Marine Pilot Act of 1991. The act made significant changes to Alaska's pilotage statute. A policy, findings, and intent section emphasized safety by requiring compulsory pilotage on the inland and coastal waters of the State to prevent the loss of lives and property and to protect the marine environment. The

legislature gave BMP broad statutory authority, including setting pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. The effectiveness of BMP's use of this authority is discussed on page 29, in the Analysis of Public Need section.

However, two aspects of the act created a competitive economic structure for pilotage in Alaska, which was directly contrary to recommendations made in the report. The report had a section on competition and its potentially adverse impact on safety. But the legislature allowed a competitive economic structure by stating the board could not adopt a regulation or take any other action resulting in anti-competitive activities. The report had recommended, "*The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.*" Instead, the legislature empowered BMP only to adopt maximum tariffs. This means pilot associations can compete with other associations in their region based on price, as long as the maximum tariff is not exceeded.

Impact of economic structures on the pilotage profession

Of the 24 maritime states, rate competition exists mainly in 4 states: Connecticut, Oregon, Hawaii, and Alaska. However, we understand that certain ports in California and some East coast areas also have competition. Traditionally, the pilotage profession has been handled by states as a publicly-regulated monopoly, in much the same manner as a utility company. This is usually accomplished by setting fixed tariffs that pilot associations can charge for their services and, in many states, by limiting the number of licenses granted.

The reason advanced for a state endorsing a regulated monopoly is to protect the state's interests by creating pilot independence from the shipping industry. Most pilots and their national association have long argued that pilots are not free to base their piloting decisions solely on safety considerations if they have to solicit jobs from the industry. If acting in an employee or contractee situation, a pilot may decide to move a vessel in marginal situations to meet a shipowner's schedule.

Proponents of competition argue the shipping industry is unlikely to place pilots in a position of having to compromise their independent decision-making, because the shipowner has the most to lose if there was an accident in terms of money for cargo, vessel, and insurance premiums. Pilots in favor of competition also allege that incidents go unreported and uninvestigated when there are no competing pilot associations.

The Federal Trade Commission (FTC) has performed several reviews of various states' statutory and regulatory policies to determine if they are too restrictive or anti-competitive. Reviews were performed on the State of Florida Board of Pilot Commissioners and the State of

South Carolina on the Commissioners of Pilotage for the Port of Charleston. FTC has stated in these reviews that:

"We have no reason to believe that harbor pilotage is a natural monopoly. For that reason, price regulation likely represents a response to entry restrictions, which may enable incumbent pilots to charge higher than competitive prices."

The FTC also stated in its review that a direct approach through vigorous safety regulations and enforcement is more effective in promoting safety than the indirect method through economic regulation. Interviews with FTC staff in Washington D.C. and the Seattle Regional Office have confirmed that these statements reflect the current attitude of the FTC regarding marine pilotage.

1995 amendments to the Pilot Statutes allowed for competition and general BMP oversight

Competition between piloting organizations and the role of BMP in setting piloting rates continued to be at the center of the public policy debate. In 1995, in conjunction with the last sunset extension of BMP, the legislature again amended the marine pilot statutes. One of the more significant changes the legislature made involved the responsibilities of BMP in the area of rate-setting for piloting services.

Under the revised statute local associations could set rates either through negotiation with shippers, or by providing due notice to all enterprises utilizing pilot services. Upon due notice of increased rates, affected parties could appeal the proposed rates to BMP. The board then could solicit information from the association in support of the higher rates, evaluate the information presented, and determine whether the increased pilot rates were reasonable. Due to this change, BMP no longer established rates, but rather let local market forces do so, and acted as a final arbiter in the instances where there was a dispute.

According to testimony presented to legislative committees considering the bill, this process was a result of negotiations involving the administration, shippers, and marine pilots and represented a compromise of how to deal with regulation and competition involving piloting services in state waters.

REPORT CONCLUSIONS

Under AS 08.03.010 (10) the Board of Marine Pilots (BMP) will terminate on June 30, 1999. If the legislature does not take action to reestablish the board, AS 08.03.020 provides the board one year in which to conclude its affairs. Consequently if no action is taken by the legislature, BMP will be dissolved June 30, 2000.

During the period covered by this review (July 1, 1993 to June 30, 1998) BMP has substantially improved its performance at operating in the public interest compared to the previous review period (1990-93). The issues of competition versus monopoly, training, and tariff-setting have not been totally resolved, but there is a great deal more consensus between BMP, marine pilots, and shippers that are subject to the board's oversight. There is a greater acceptance of BMP's rulings, and this has almost eliminated the continual legal confrontations that hampered the board's activities from 1990 to 1994. This has enabled BMP to concentrate more on the public safety aspects of its mandate. The board was able to work with the pilot associations in reaching satisfactory solutions to the controversial issue of whether tariffs should and could be set by BMP, or whether pilotage fees should be set by the competitive market.

The 1995 amendments to the State's marine pilot statutes changed much pilot organizations could charge for services. The approach developed, as set out at AS 08.62.046, allows local pilot organizations flexibility to negotiate rates with shippers operating out of their local ports. The process allows for competition between organizations where it might exist, while giving shippers an avenue of appeal and review when they believe rates may be excessively high in regions of the State where there is no competition.

BMP has carried out the intent behind this amendment, although the current semi-competitive environment is significantly different from the situation that existed at the time of the 1995 amendments. See the Auditor Comments section for our discussion regarding the current competitive situation related to marine piloting in the State. The board is also carrying out the legislative directives related to training and licensing qualifications, which were also an important part of the 1995 amendments.

The regulation and licensing of qualified marine pilots benefit the public's safety and welfare. The steady increase in tourist passenger ships in recent years has made BMP's role increasingly more important. The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so. Extension of the board will take it through a period that, prospectively, appears to be one of intensive activity. BMP has begun improving training and continuing education of Alaska marine pilots. The board has successfully worked with the pilot associations in resolving many of the problems identified in the 1994 audit and has contributed to improving marine safety in Alaskan waters.

In our opinion, the Board of Marine Pilots serves an important public purpose. It should be continued in statute and its termination date extended to June 30, 2004.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Marine Pilots (BMP) should work with the pilot associations, the U.S. Coast Guard (USCG), the shippers, and other maritime interests to develop a database against which the competency of both trainees and licensed pilots can be better measured.

It was difficult to find databases that would aid in reaching recommendations or conclusions about marine pilotage. Indeed, it is difficult to find adequate databases anywhere in the maritime industry. Worldwide statistics are often used because there are not sufficient numbers in regional data to identify trends, problem areas, the effects of introducing new technology, or new operating or training practices. The four-year study undertaken by the National Research Council's Marine Board Committee on Pilotage and Navigation could not find adequate data sources. The Alaska Oil Spill Commission had the same problem.

There are two types of data that need to be accumulated. The first is a database that would capture a historical record of piloted shipping history within state waters. The other would be a database that reflected the human factors involved in regulated maritime shipping activity. The board is launching an ambitious program to utilize simulators in determining the competency of marine pilots. Lack of a good universal database upon which regulators or training pilots can rely in evaluating performance norms hampers this effort. The USCG has been working on its system for several years and has made some advances through a continued examination of human factors that may have an impact on navigational operating safety. These are somewhat general as yet and probably not specific enough to meet the needs of the new BMP program.

We recognize the board must move cooperatively to develop such information. In the area of developing a history of maritime shipping, we suggest the board give priority to establishing standard reporting forms reflecting pilot activity. Such forms can then be used by the various pilotage associations in the State to report activity in their region. Such information can then be accumulated for future reference and consideration when making board policy.

Recommendation No. 2

BMP should consult the Department of Law regarding the practicality of enforcing the current piloting exemption statutes. After such consultation, the board should develop proposed statutory changes for the consideration by the legislature.

Under state law (AS 08.62.180) many seagoing vessels are exempted from the requirement that they take on a marine pilot in state waters. For example, fishing vessels, certain types of tugboats and towboats are not required to use a marine pilot. Also exempted are yachts [or pleasure craft as they are described at AS 08.62.180(6)] that are registered in the United

States. However, exemptions for pleasure craft of foreign registry are limited to vessels of less than 300 gross tons – larger foreign-flagged yachts are required to use a pilot in state waters.

Enforcement of the current law is difficult

Enforcement of the piloting requirement for large recreational yachts of foreign registry has proven difficult. In recent years, only a few non-exempt yacht operators have voluntarily complied with the law requiring they obtain a pilot services. Further, it is reported that the yacht operators complied only after registering numerous, strident protests. However, when the operators of large yachts refuse to comply, there is no practical way to enforce pilotage requirements. Enforcement has been impractical largely due to difficulties and protocol of apprehending ocean-going vessels.

This situation is discussed in the *1997 BMP Annual Report*. The report points out that violation of state pilotage laws is a criminal misdemeanor whereas the federal pilotage law provides only for civil penalties. There is no prior notification required by the State, the U.S. Coast Guard, or U.S. Customs for foreign recreational vessels. The requirement is to report upon arrival, by which time the vessel has violated the statute, as pointed out in BMP's annual report. The report states, "*[t]he current system encourages non-compliance with the law, especially when the chances of detection and, therefore, enforcement are remote.*"

No consensus on BMP regarding advisability of current law or its effective enforcement

As reflected in the discussion presented in its annual report, the board has discussed this situation at various meetings. The board has considered possibly seeking statutory changes to address the situation by:

1. imposing pilotage requirements on all yachts, foreign and domestic;
2. exempting all yachts from pilotage requirements;
3. establishing a waiver process and related criteria;
4. establishing an enforcement mechanism whereby civil or administrative penalties are assessed rather than prosecuting violations as criminal misdemeanors; or,
5. seeking statutory authority for the marine pilot coordinator and other state investigators to board foreign flag yachts in order to enforce the State's pilotage requirements.

As noted, each enforcement strategy considered by the board would require a change in state law. Without a BMP consensus on the action needed, it would be difficult for the board to approach the legislature with any proposed legislation.

All indications are that the number of large recreational vessels subject to piloting requirements is going to increase. There are yachts currently being built that are very large and well exceed the 300 gross ton statutory limitation. A vessel almost 800 feet in length arrived in Anchorage in August 1998. Many of the large yachts are of foreign registry. Some may be owned by U.S. citizens but registered outside of the country. Very large domestic registered

yachts would offer the same public safety problem – a large ship with a crew of unknown quality in pilotage waters.

Consult the Department of Law, and if necessary propose change in law

In our view, if statutes are impractical to enforce in a consistent manner, consideration should be given to amending or eliminating the law involved. We suggest BMP seek advice from the Department of Law regarding public policy reasoning behind exempting certain types of vessels from pilot requirements, and the enforceability problems related to the current statute. After obtaining the advice and perspective of the attorney general, BMP should develop proposed legislation for consideration by the legislature. Such legislation should structure statutes to permit improved enforcement of the pilotage requirements.

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STATUS OF PRIOR AUDIT RECOMMENDATIONS

In the prior sunset review of the Board of Marine Pilots (BMP) issued in 1994, ten audit recommendations were made relating to sunset extension date, board operations, and industry regulatory responsibilities. Included in this sunset review, we followed-up on the current status of those prior audit recommendations.

Prior Audit Recommendation No. 1

The legislature should extend BMP termination date to June 30, 1998.

This recommendation was implemented. The legislature extended the board's termination date one year beyond the suggested date to June 30, 1999. Most likely this was because BMP was not extended until it was into its one-year wrap-up period. Our recommendation regarding this year's sunset extension is set out in the Report Conclusions section.

Prior Audit Recommendation No. 2

Statutes and regulations should be revised and strictly enforced to adequately protect the best interest of the State.

This recommendation was partially implemented. Three problems were identified in our 1994 review that led to this recommendation. These three problems involved:

1. Access to pilotage training. Legislation was adopted in 1995 (SB 130, enrolled as Chapter 74, SLA 95) which addressed, in part, the training problems. Under the revised statute local pilotage associations are required to submit training programs to BMP for review and approval. Local associations were also required to lay out guidelines for apprenticeship programs. We continue to have concerns about the length of the current apprenticeship program and recommend a review of the training statutes and regulations to determine if the progress from apprentice through deputy pilot to pilot can be shortened without compromising the quality of training programs.
2. Dispatch of pilots. No evidence came to our attention that pilot associations were operating their dispatch systems in any manner other than in an efficient, equitable, and nondiscriminatory way as required by statute. The easing of the problems caused by intense competition in the Western Region seems to have alleviated this problem. Except for the exemption issue discussed further in the Findings and Recommendation section, we were not aware of any situation where pilotage of a vessel was not consistently dispatched where required.

3. Proportionality of discipline. Our prior audit recommendation also discussed our concerns regarding allegations of pilot misconduct by the Division of Occupational Licensing and whether BMP levied appropriate sanctions that were proportional to the infraction involved. It appears that BMP has, over the past four years, steadily improved and gotten more consistent in handling misconduct on the part of marine pilots. It appears much of the credit for the improvement in the consistency of disciplinary process resulted from the settling of the acrimonious debate between competing piloting organizations which was going on at the time of our last review.

Prior Audit Recommendation No. 3

The legislature should remove the responsibility of setting tariffs from BMP.

This recommendation has been partially implemented – the role of BMP in setting tariffs has been changed. The aforementioned 1995 legislation, SB 130 (Chapter 74, SLA 95), reduced the role of BMP in setting tariffs. Rather than setting the tariffs, now BMP acts as an arbitrator of tariff disputes and provides guidelines to pilots and shippers for reviewing disputes. To date, this system appears to be working well.

Prior Audit Recommendation No. 4

The examination process for marine pilots needs to be revised.

This recommendation has been partially implemented. There were two subsections to the prior recommendation:

1. The written examination should be more objective. The written examination has been worked on extensively to achieve the goal of objectivity. The pilot associations have worked with BMP on questions designed to remove the objections that led to the above recommendation. The quality of the written examinations has improved to the point where there is little discussion about failings due to slanted examinations. The previous conflict of interest of examination proctors seems to have been resolved by the improvement in the examinations and their administration.
2. The oral examination, as it is presently structured, should be eliminated. The oral examination is still in place. The 1995 revision to the statutes left statutory requirement for such an examination at AS 08.62.093 untouched. The major problem identified with the oral examination as a part of the licensing process is that it would not likely withstand legal challenge if an applicant was denied licensure based on its outcome. From pilots and BMP board members we interviewed, there appears to be some sentiment to get rid of the examination.

Others we spoke with feel it has value because it may be the only chance that BMP members have to meet with new licensees. Those opposed describe it as a general get-together where the board and the applicant do get to know each other, but that it serves no real purpose in the licensing process. In the recent memory of past board members only one person, in 1990, failed the oral examination. It appears to us that the oral examination is not being used to unduly exclude prospective licensees from approval.

The oral examinations are time-consuming for BMP members. Some feel it important that the board have some personal contact with new entrants. There has been an effort to standardize the questions in the oral examinations to ensure they could not be challenged on conflict of interest or other grounds.

Prior Audit Recommendation No. 5

The statutory criteria for appointment and regional representation of members to BMP should be refined and strictly adhered to by the Office of the Governor during the selection and appointment process.

This recommendation has been implemented. From our discussions with industry members there appears to be satisfaction with the composition of BMP. Some individuals in the industry would like to see BMP expand the board by one pilot and one public member, but this is tempered by a desire not to increase costs which generate higher licensing fees.

Currently, both of BMP's public members are from Anchorage. Statutes permit both public members to be from the same region. This decision was guided by a firm resolve to avoid conflict of interest charges that had plagued BMP in the past. Public members are subject to the provisions of AS 08.01.025 which prohibits the individual from being a licensed member of the regulated occupation, be associated by legal contract with a licensed member of the regulated occupation, or have a direct financial interest in the regulated occupation. Current public members are in compliance with this requirement.

The 1995 revision by specifying that agents and pilots be appointed from different pilotage regions rather than judicial districts (as provided for previously in the law) has also contributed to better board balance.

The requirement that only one pilot and one agent from each region be represented has been followed by the Office of the Governor in the course of making appointments. There has been a major effort to eliminate the conflict concerns that were a major focus of the last sunset review in 1994.

Prior Audit Recommendation No. 6

The Department of Commerce and Economic Development should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

This recommendation is still in the process of being implemented. This continues to be a widespread issue for all boards and professions regulated by the Division of Occupational Licensing (OL). We have addressed this issue in another audit report, titled *Occupational Fee Setting Policies and Regulatory Costs*, (Audit Control Number 08-4567-97).

Licensed pilots are up for renewal at the end of 1998. License renewal fees are less than charged during the last renewal period in 1996, reflecting reduced operating costs on the part of BMP.

Prior Audit Recommendation No. 7

OL should continue its efforts to adequately provide public notice of board meetings and application deadlines for examinations.

This recommendation has been implemented. In recent years, OL staff has provided adequate public notice of BMP board meetings and application deadlines for examinations.

Prior Audit Recommendation No. 8

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

This recommendation has been implemented. The 1995 legislation clarified the role of marine pilot coordinator in statute. In addition, OL provides administrative assistance to many boards and commissions, including the Board of Marine Pilots. OL staff helps during BMP meetings, including taking minutes. These minutes are submitted to the board for approval at the subsequent meeting. The board prepares the annual report. Concern has been expressed by pilots about improving the database from which BMP operates. This is discussed further in Recommendation No. 1 of our current review.

Prior Audit Recommendation No. 9

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law.

This recommendation has been implemented. The chairman of BMP has requested continuing assistance from the Department of Law to brief board members on the Ethics Act and its requirements. Board members seem to be well aware of their responsibilities in the area of ethics. Nothing came to our attention during the course of this review that suggests executive branch ethics requirements were allegedly violated.

Prior Audit Recommendation No.10

OL should, in conjunction with the Equal Employment Opportunity Office, review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

This recommendation has been implemented. There is no information requested on the application form regarding sex or physical features. There is no photo required of applicants.

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AUDITOR COMMENTS

In the course of this review, we noted three additional areas of concern related to the operational issues faced by the Board of Marine Pilots (BMP). Two of these issues were among the multiplicity of concerns addressed in the last sunset review and the 1995 statutory revisions. We present the following discussion here to further inform the legislature about progress and the current status of issues involved.

Competition

BMP's efforts to regulate and/or limit competition between and within pilotage regions were the centerpiece of its activities in the previous audit period. After the decision was reached that neither BMP nor the Alaska Public Utilities Commission would engage in rating-setting in the traditional manner, the 1995 Alaska legislature passed the procedure set out at AS 08.62.046 which provided a mechanism for adjudicating disputes between pilot associations and shippers. BMP is only required to intervene when there are objections to rate changes. This seems to have had the effect of smoothing out negotiations in those areas where competition was previously creating problems.

Concerns about some of the counter-productive aspects of competition¹ between rival pilot organizations in certain regions of the State posed a critical regulatory problem to BMP at the time of our last review. Concerns about competition were never a serious issue in Region 2 (Southcentral). The competition in Region 3 (Western) between the Western Alaska Pilots Association and the Alaska Marine Pilots has been eliminated by the two groups becoming one and the Southwest Alaska Pilots Association withdrawing from competition in the region.

This action eliminated the bidding for clients at Dutch Harbor and other locations that had proved so much of a concern to BMP and has lessened the intrusions into pilotage waters by vessels without a pilot. The problems of weather and distance in this region will continue to create problems in providing service to this region, but the greater stability of pilotage services that has been achieved should have some positive effect.

There are still two groups competing in Region 1 (Southeast), the Southeast Alaska Pilot Association and the Alaska Coastwise Pilot Association. The great increase in cruise ship traffic during the period 1997-98 has provided sufficient business for both, and they have been able to negotiate contracts that provide stability that did not exist when both groups were strongly competing for a more limited number of clients.

¹ One analyst of the industry, testifying before the legislature in 1995, attributed many failings of the State's marine pilot activities to the "quasi-competitive" system that had evolved in certain regions of the State. In his view the pressure of market competition allowed shippers to play off different pilot groups against each other, which led to many of the problems he had identified. In his view this was particularly bad in Southeast and the Aleutians where there were competing pilot associations.

The result of reaching a greater consensus among pilots on competition has been to dramatically lessen the legal battles between pilots and pilot associations that previously took up so much of BMP's time. The reduction in legal activity has resulted in a reduction in costs due to fewer meetings and less time from the Department of Law being required. It was announced at the July 16, 1998 BMP teleconference that there was an expectation fees could be reduced.

Training

It is a general consensus of the pilots and those who employ them that training programs have improved in recent years, with BMP given credit as a positive force in that improvement.

A major problem in the past was securing ship time for trainees. It is still a problem primarily due to the nature of pilotage in Alaska where large ships are involved in a limited number of trips compared to traffic in other pilotage areas. The problem is not just the number of trips, but also securing time on the larger vessels to attain an unlimited tonnage endorsement.

The problem is most acute in the Southeastern Region where the preponderance of large cruise ships makes it difficult for pilots who do not have unlimited licenses to secure trips. The problem is not as acute in other regions because there is a better mix of ship sizes.

Recruitment to pilot ranks is a long process throughout the profession and short apprenticeships, while not unknown, are not common. The requirements for a federal license alone require a minimum of 36 months. Pilot association requirements throughout the U.S. can run up to ten years or more.

Recruitment in Alaska has been able to keep pace with the rapid growth in cruise ships and fisheries associated vessels while handling the regular traffic of oil tank vessels, container ships, and others. In the 1995 BMP Annual Report, the average age of marine pilots was reported as 54 years. A review undertaken by the BMP coordinator in September 1998 showed the average age as 53-1/2 years, a good indicator of stability and the ability of the training programs to fill the ranks.

In Alaska, an individual can become a deputy marine pilot by serving an apprenticeship of at least four years in the pilotage region for which a license is sought. They must also serve 3 years as a deputy marine pilot to qualify for a marine pilot license (AS 08.61.100 (3)). Thus, Alaskan requirements are not dramatically different from other states at this time.

Continued Proficiency Efforts

Alaska marine pilots and deputy marine pilots must renew their licenses every two years and must submit documentation that they have met the continuing education requirements in the statutes (12 AC 56.83). Evaluation of their performance under this requirement is not required by statute. Once the training program leading to marine pilot is completed, no evaluation

process to determine competency is required. Peer pressure within the pilot associations is the only system available until disciplinary action is undertaken by BMP in accordance with AS 08.01.075.

The problem with the present system is that it is difficult to intervene before an incident leading to disciplinary action occurs. This is different from many systems, such as aviation, where airline pilots and air traffic controllers have their skills evaluated on an ongoing basis. In the case of marine pilots, often complaints from users are the first indication that the pilot association or BMP may have that there is a problem.

BMP has recently issued a request for proposals (RFP) for a Simulator Based Marine Pilot Performance Evaluation System. In the RFP (Number 99-0046), it is stated, "*The Board of Marine Pilots is not satisfied with the current system and is seeking to prevent future mishaps through development of a performance evaluation system.*" The RFP points out that the State has not implemented regulations that require Alaska marine pilots to have their performance as a marine pilot evaluated because no facility offers such an evaluation service.

The RFP requires the development and successful testing of a training and evaluation system over a three-year period. The system shall incorporate Bridge Resource Management (BRM) and Automatic Radar Plotting Aids (ARPA) training. BRM is not available in Alaska due to the lack of a marine training simulator in the State. ARPA training has been available in Seward at the Alaska Vocational Education Training Center (AVTEC).

The RFP is an ambitious effort to take the next step in BMP's legislative mandate to "*provide for the maintenance of efficient and competent pilotage service*" in Alaskan waters. There is a good deal of discussion among pilots about relying on simulators to determine competency, but strong opposition to the program did not come forth in the interviews with pilots. It is possible that there has not been sufficient discussion over the summer as most pilots have been very busy on the ships.

The existing statutes appear to provide sufficient authority to BMP to implement the program. The STAR Center in Dania, Florida has been chosen to implement the program. As far as can be determined, Alaska and BMP are on the leading edge in recertification efforts for marine pilots with this program. No other state or jurisdiction could be found with anything similar.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

During the period covered by this review (July 1, 1993 to June 30, 1998) the Board of Marine Pilots (BMP) has substantially improved its performance at operating in the public interest compared to the previous review period (1990-93). The issues of competition versus monopoly, training, and tariff-setting have not been totally resolved, but there is a great deal more consensus between BMP, marine pilots, and shippers that are subject to the board's oversight. There is a greater acceptance of BMP's rulings, and this has almost eliminated the continual legal confrontations that hampered the board's activities from 1990 to 1994. This has enabled BMP to concentrate more on the public safety aspects of its mandate. The board was able to work with the pilot associations in reaching satisfactory solutions to the controversial issue of whether tariffs should and could be set by BMP or whether pilotage fees should be set by the competitive market.

The regulation and licensing of qualified marine pilots benefit the public's safety and welfare. The steady increase in tourist passenger ships in recent years has made BMP's role increasingly more important. The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so. Extension of the board will take it through a period that, prospectively, appears to be one of intensive activity. BMP has begun improving training and continuing education of Alaska marine pilots. The board has successfully worked with the pilot associations in resolving many of the problems identified in the 1994 audit and has contributed to improving marine safety in Alaskan waters.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The 1995 amendments to the State's marine pilot statutes changed much pilot organizations could charge for services. The approach developed, as set out at AS 08.62.046, allows local pilot organizations flexibility to negotiate rates with shippers operating out of their local ports. The process allows for competition between organizations

where it might exist, while giving shippers an avenue of appeal and review when they believe rates may be excessively high in regions of the State where there is no competition.

BMP has carried out the intent behind this amendment, although the current semi-competitive environment is significantly different from the situation that existed at the time of the 1995 amendments. See the Auditor Comments section for our discussion regarding the current competitive situation related to marine piloting in the State. The board is also carrying out the legislative directives related to training and licensing qualifications, which were also an important part of the 1995 amendments.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

As discussed in the Background Information section, in 1995 the legislature made substantive revisions to the marine pilot statutes. According to testimony before legislative committees considering the amending legislation, the measure that was adopted was a result of negotiations between the administration officials, BMP members, pilots, and shippers. Since those amendments, there has been a general reluctance in the marine pilotage community to "reopen" the marine pilot statutes to further revision. BMP has reflected this general reluctance, with limited inclination to seek further statutory change in recent years.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

BMP through the work of marine pilot coordinator has published notices of all examinations, meetings, and prospective regulation changes. Public notice was solicited during BMP's most recent regulatory writing project. Additionally, a period of time for public comment was available at each BMP meeting.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted previously, each board meeting agenda allots time for public comment. The public has been encouraged to use these public comment periods to express concerns and obtain information from the board. The public comment period for regulation changes also assures that the public has the opportunity to participate in the regulatory process.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

Complaints and concerns regarding decisions and activities of the board, as well as complaints about the performance of licensed marine pilots were handled and resolved in an appropriate and timely manner consistent with its priority and the limitations of Division of Occupational Licensing staff. No complaints were filed with the Office of the Ombudsman in recent years regarding the operations of the board specifically, or marine pilots in general.

The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

Over the past three fiscal years, the board has certified three individuals as marine pilots and six individuals as deputy marine pilots.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that BMP was not complying with state personnel practices, including affirmative action, in qualifying applicants or in hiring the marine pilot coordinator. Each time BMP has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

See the discussion presented both in the Findings and Recommendations section and the Auditor Comments section of this report.

ALASKA

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

January 11, 1999

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RECEIVED
JAN 13 1999

Dear Mr. Jenson,

This letter is in response to your request for comments regarding the Preliminary Audit Report of the Board of Marine Pilots dated November 18, 1998.

Recommendation No. 1

The Board of Marine Pilots (BMP) should work with the pilot associations, the U.S. Coast Guard (USCG), the shippers, and other maritime interests to develop a database against which the competency of both trainees and licensed pilots can be better measured.

Currently the Board has a regulation in place that requires pilot associations to submit pilot activity reports on a quarterly basis. These reports provide the information necessary to identify shipping trends; however, since the reports are submitted on paper and for each individual pilot, it would be extremely labor intensive to compile the information into a useable database. The Board has recently adopted a regulation that will require the pilot associations to submit their quarterly reports in an electronic format so that they may be placed directly in a database maintained by the Marine Pilot Coordinator (MPC). Upon compilation of sufficient data the database will provide a means for identifying marine traffic trends. This will greatly aid the Board in establishing training requirements that are accurate and attainable.

The preliminary audit also states that a lack of performance norms for pilots is hampering the Board's efforts to implement a new simulator-based performance evaluation system. To the Board's knowledge a database of human factors or performance norms for marine pilots does not exist; however, the lack of such a database is not hampering the Board's effort to establish a simulator-based performance evaluation system. In fact, despite the lack of such a database, four of the most respected marine simulator facilities in the country submitted proposals to develop a simulator-based performance evaluation system for State of Alaska Marine Pilots. Upon its implementation, this system will be the first in the world to evaluate the performance of marine pilots. If the developed system proves effective, the Board expects the concept to expand to other jurisdictions, perhaps eventually becoming a universal requirement of licensure. During

the development and use of a simulator-based performance evaluation system, the human factors involved in marine piloting will be identified and performance norms will be established.

Recommendation No. 2

BMP should consult the Department of Law regarding the practicality of enforcing the current piloting exemption statutes. After such consultation, the board should develop proposed statutory changes for the consideration of the legislature.

The Board would be pleased to work with the Department of Law and the Legislature to develop any future amendments to the Act.

Prior Audit Recommendation No. 2

Statutes and regulations should be revised and strictly enforced to adequately protect the best interest of the State.

1. Access to pilotage training . . . We continue to have concerns about the length of the current apprenticeship program and recommend a review of the training statutes and regulations to determine if the progress from apprentice through Deputy Marine Pilot to Pilot can be shortened without compromising the quality of training programs.

The statement above seems to be in conflict with the "Training" portion of the Auditor's Comments. The last paragraph on page 26 under the subtitle "Training" notes that an individual can become a deputy marine pilot by serving a four year apprenticeship, and then serve another three years as a deputy marine pilot to become a marine pilot. The last sentence of the paragraph states, "Thus, Alaskan requirements are not dramatically different from other states at this time."

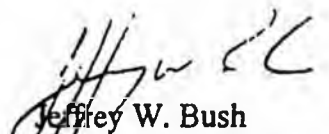
The process from trainee to marine pilot takes five to six years for applicants that meet the stated statutory requirements of AS 08.62.093(b)(1)-(5), that is two-three years as a trainee and another three years as a deputy marine pilot to be eligible for advancement to marine pilot. It is worth noting that the deputy marine pilot apprenticeship program was established for otherwise highly qualified candidates who were unable to meet one or more of the statutorily required experience requirements listed in AS 08.62.093(b)(1)-(5). Thus, it does not seem unreasonable that the apprenticeship program should take seven years. Even at seven years, the program is only one to two years longer than the usual program, and as stated in the auditor comments, even then it is not dramatically different in duration than other states. The Board and the pilot associations

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consider the minimum four-year experience requirement established in statute for the deputy marine pilot apprenticeship program to be appropriate.

I hope the comments above add to your understanding of the Marine Pilot Program and will assist you in drafting your final report. I would like to thank your section for conducting a comprehensive, accurate and equitable audit. Please contact Peter Christensen, the Marine Pilot Coordinator in Occupational Licensing at 2548, if you have any additional questions.

Sincerely,



Jeffrey W. Bush
Deputy Commissioner