

**HB**

**108**

**HFIN**

**FILE**

**HOUSE COMMITTEE REPORT**

(11)

Date Referred to Committee: February 15, 2007

FURTHER REFERRALS:

Date of Committee Action: 2/21/07

The FINANCE Committee considered:

HB 108

HOUSE BILL NO. 108

BOARD OF MARINE PILOTS

"An Act extending the termination date for the Board of Marine Pilots; and providing for an effective date."

Recommends it be replaced with  HCS or  HCS for HB 108 (L+C)  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_ |  Same Title |  New Title

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

HFC

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	Garca	✓			
<i>[Signature]</i>	CRAWFORD	✓			
<i>[Signature]</i>	Hawker	*			
<i>[Signature]</i>	Joule	X			
<i>[Signature]</i>	Thomas	X			
<i>[Signature]</i>	NELSON	✓			
<i>[Signature]</i>	STOLTZ	X			
Chair: <i>[Signature]</i>	McL...	X			
Chair: <i>[Signature]</i>	Chenault	X			

# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS HB 108 (L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correctic \_\_\_\_\_ Dept. Affected: Commerce  
 Title Extending Marine Pilot Board RDU Corp. Bus & Prof Licensing (117)  
 Component Corp. Bus & Prof Licensing  
 Sponsor House Labor and Commerce Committee  
 Requester House Finance Committee Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services		75.1	75.1	75.1	75.1	75.1
Travel		17.7	17.7	17.7	17.7	17.7
Contractual		50.6	50.6	50.6	50.6	50.6
Supplies		0.6	0.6	0.6	0.6	0.6
Equipment		0.0	0.0	0.0	0.0	0.0
Land & Structures		0.0	0.0	0.0	0.0	0.0
Grants & Claims		0.0	0.0	0.0	0.0	0.0
Miscellaneous		0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services		144.0	144.0	144.0	144.0	144.0
<b>TOTAL</b>	<b>0.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The revised fiscal note for CS HB 108 (L&C) reflects the change made in the Labor and Commerce version of HB 108. The termination date was amended from June 30, 2011 to June 30, 2013.

This legislation extends the Board of Marine Pilots to June 30, 2013. In accordance with AS 08 03 020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2008 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2008 budget. FY 2014 would be the one year extended funding in accordance with AS 08 03 020 which is not included on the fiscal note.

Prepared by: House Finance Committee Phone 465-4945  
 Division \_\_\_\_\_ Date/Time 2/21/07 12:00 AM  
 Approved by: Representative Kevin Meyer Date \_\_\_\_\_  
 Agency: Representative Mike Chenault

FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. \_\_\_\_\_

ANALYSIS CONTINUATION

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. New funds are not required to implement this bill.

replaced

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 108(L&C)  
(H) Publish Date: 2/15/07

Revision Date/Time (Note if correction):  
Title Extending Marine Pilots Board  
Sponsor House Labor and Commerce  
Requester House Labor and Commerce

Dept. Affected: Commerce  
RDU Corp, Bus & Prof Licensing (117)  
Component Corp, Bus & Prof Licensing  
Component No. 2360

### Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services		75.1	75.1	75.1	75.1	
Travel		17.7	17.7	17.7	17.7	
Contractual		50.6	50.6	50.6	50.6	
Supplies		0.6	0.6	0.6	0.6	
Equipment		0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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### FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156-Receipt Supported Services		144.0	144.0	144.0	144.0	
<b>TOTAL</b>	<b>0.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>144.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 144.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

### POSITIONS

Full-time						
Part-time						
Temporary						

### ANALYSIS: (Attach a separate page if necessary)

This legislation extends the Board of Marine Pilots to June 30, 2011. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2008 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2008 budget. FY 2012 is the one year extended funding in accordance with AS 08.03.020.

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. New funds are not required to implement this bill.

Prepared by: Chris Wyatt, Administrative Manager  
Division: Corporations, Business, and Professional Licensing  
Approved by: Emil Notti, Commissioner  
Agency: Commerce, Community, and Economic Development

Phone (907) 465-2572  
Date/Time 2/9/07 6:16 PM  
Date 2/9/2007



# ALASKA STATE LEGISLATURE HOUSE LABOR & COMMERCE COMMITTEE

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Rep. Jay Ramras                Rep. Berta Gardner  
Rep. Gabrielle LeDoux        Rep. Bob Buch

## CS HB 108 Board of Marine Pilots

CS HB 108 extends the sunset date for the Board of Marine Pilots to 2013, the six year extension recommended by Legislative Audit.

The Board serves a vital public purpose in regulating and licensing qualified individuals who pilot passenger and cargo ships in Alaskan waters.

Since its inception, the Board of Marine Pilots has helped to insure the safe transit of large foreign flagged vessels in Alaskan waters.

Virtually everything we purchase, from food to automobiles, medicines and clothing come to us via cargo vessels. The source of most of our State's revenue travels on tankers with marine pilots on board. Huge cruise ships, with thousands of passengers aboard, enter Alaskan ports each summer.

These vessels transit the pristine bays and inlets of Alaska. Future generations of Alaskan's depend on us to help protect these waters and their beaches from the inadvertent actions of ships captains unfamiliar with Alaskan waters.

The oversight provided by this Board is critical to the continued safe passage of these vessels.

I would appreciate your support of HB 108.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300  
Juneau, AK 9811-3300  
(907) 465-3830  
FAX (907) 465-2347  
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November 2, 2006

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, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF CORPORATIONS, BUSINESS, AND PROFESSIONAL LICENSING  
BOARD OF MARINE PILOTS  
SUNSET REVIEW

October 13, 2006

Audit Control Number

08-20045-06

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(a) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, AS 08.03.010(e)(10) states that the board will terminate on June 30, 2007, and will have one year from that date to conclude its administrative operations.

In our opinion, the termination date for the Board of Marine Pilots should be extended. The licensing of qualified marine pilots benefits the public's safety and welfare. We recommend the legislature extend the termination date of the Board of Marine Pilots to June 30, 2013.

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

A handwritten signature in black ink that reads "Pat Davidson".

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 have reviewed the activities of the Board of Marine Pilots (BMP or the board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Currently, AS 08.03.010(c)(10) states that the board will terminate on June 30, 2007 and will have one year from that date to conclude its administrative operations.

### Objectives

There are three central, interrelated objectives of our report. They are:

1. To determine if the termination date of the board should be extended;
2. To determine if the board is operating in the public interest; and
3. To determine if the board has exercised appropriate regulatory oversight of licensed marine pilots.

### Scope

Our audit reviews the operation and activities of the Board of Marine Pilots for the period July 1, 2002 through June 30, 2006. The assessment of the board is based on criteria set out in AS 44.66.060(c).

### Methodology

To accomplish the audit objectives, the following documents were reviewed:

- Applicable sections of federal regulations and state statutes and regulations;
- Minutes of board meetings and annual reports related to, or issued by, the board;
- Licensing files for marine pilots;
- Files maintained by pilot associations and contractors related to drug testing of pilots;
- Marine pilot coordinator's correspondence files;
- Board revenues and expenditures from FY 03 through FY 06;
- Legal information from the Department of Law and the courts; and
- Various reports submitted, as required, by the pilot associations.

We interviewed the following individuals and groups:

- Staff of the Division of Corporations, Business, and Professional Licensing (DCBPL), Department of Commerce, Community, and Economic Development (DCCED);
- Pilot associations' officials, board members, pilots, and shipping agents regarding various concerns and issues involving marine pilotage in Alaska. The topics covered included the activities of BMP, the impact of the mandatory retirement revisions made to marine pilot statutes in 2003, and subsequent impact on the rate setting process on board operations and pilotage in Alaska;
- U.S. Coast Guard licensing and enforcement officers;
- Chief investigator for DCBPL, DCCED;
- Attorney at the Department of Law familiar with Board of Marine Pilot statute and regulations;
- Administrative assistants for pilot boards in the States of Washington and Oregon;
- Staff of the drug testing contractors for the Pilot associations;
- The maritime department head of the Alaska Vocational Center in Seward;
- A private sector contractor specializing in maritime training and evaluation of pilot skills; and
- Executive director and legal counsel of the American Pilot Association.

Additionally, we conducted a survey of licensed marine pilots, some trainees and apprentices, and registered agents and organizations that use piloting services. In addition, we contacted each pilot association and registered agent seeking additional individuals or organization contacts that they believed might be interested in participating in the survey. As a result, we identified and issued surveys to seven additional industry<sup>1</sup> members. Our survey sought responses related to various policy issues, such as:

- Board member objectivity and service;
- Rate setting process;
- Adequacy of drug testing;
- Licensing requirements and pilot disciplinary practices; and
- Simulator training, performance evaluations, and continuing professional education.

---

<sup>1</sup> Industry is defined as vessel agents who must register with BMP, shipping and cruise businesses, and vessel owners.

## ORGANIZATION AND FUNCTION

The Board of Marine Pilots (BMP or the board) 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. At that time the legislature gave BMP broad statutory authority which included establishing pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. 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."*

In 1995 the legislature extensively revised the statutes and overall structure of BMP. The most significant change involved the role in establishing rates for piloting services. This is significant, since pilot associations have control over providing pilot services to foreign-flagged vessels and domestic oil tankers of 50,000 dead weight tons or greater.

### Membership on the Board

BMP is composed of seven members. Membership consists of two licensed pilots 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, Community, and Economic Development (DCCED) or a 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. Additionally, not more than one registered agent may be employed by, be a contractor for, or hold a financial interest in the same marine industry business entity, including commonly owned, affiliated, or subsidiary business entities.

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.

#### **Exhibit 1**

#### **Members of the Board of Marine Pilots At October 1, 2006**

Albert H. Clough, DCCED  
Deputy Commissioner, Chair

#### Pilot Members

Dale O. Collins, Southeast Region  
Anthony J. Joslyn, Southwest Region

#### Agent Members

Robert J. Arts, Southwest Region  
Les Cronk, Southeast Region

#### Public Members

Jack G. Poulson, Esq. Public Member  
Robert Schasteen, Public Member

### Duties of BMP

1. Maintaining an efficient and competent pilotage service on the inland and coastal waters to ensure the protection of shipping, safety of human life and property, and protection of the marine environment.
2. Adopting regulations establishing qualifications of, and required training for, pilots and providing for examination of pilots.
3. Maintaining a register on licensed pilots, licensed deputy pilots, and agents.
4. Adopting regulations establishing pilotage regions, professional fees, and criteria to recognize pilot organizations.
5. Reviewing and approving training programs conducted by pilot organizations.
6. Reviewing and approving the articles, bylaws, and rules of pilot organizations.
7. Audit a pilot organization or an individual pilot as necessary to implement and enforce this chapter.
8. Establishing and publishing the dates of future license examinations.
9. Approve or disapprove rates for pilotage services in a manner provided for in the marine pilot statutes.

### DCCED, Division of Corporations, Business, and Professional Licensing (DCBPL)

DCBPL provides administrative 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, DCBPL may conduct an investigation if it appears an individual has engaged – or is about to engage – in a practice over which DCBPL has authority. DCBPL 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 license holder and/or association, and issue subpoenas for the attendance of witnesses and records.

### Marine Pilot Coordinator

DCCED employs a marine pilot coordinator to assist the board in fulfilling its statutory duties. The duties of this position, whose hiring is subject to approval by BMP, are set out at AS 08.62.050. 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. The coordinator position is funded from fees generated by BMP.

### Organization of Pilot Associations

All Alaska marine pilots are required to belong to an association. Pilots have formed an association in each of the three regions of Alaska to provide services to the maritime industry. The association exists to facilitate joint activities such as billing and collecting for pilot services and to administer the rotation, dispatch, pilot boat and training operations.

## BACKGROUND INFORMATION

Piloting involves directing a sea-going vessel into and out of waters where navigation has been determined to be dangerous or difficult. The difficulties can include: (1) restricted waterways, such as channels, ports or harbors; (2) tides, currents and water depths; and, (3) type and nature of traffic. A pilot can either be a member of the ship's crew or independent of the crew and brought onto the ship solely for the purpose of guiding the vessel through designated pilotage waters. The pilot's knowledge of the local geography and waterways they are piloting makes them invaluable to the vessel. The pilot is responsible for the safety of those aboard the vessel and the protection of the marine environment.

Pilotage of international trade vessels in the United States is regulated by the individual states, each of which maintains a pilotage system that is suited to the particular needs and circumstances of its own water. In 1789, the first Congress of the United States enacted a law giving the states the right to regulate pilotage in their waters. That created the state pilotage system, which remains in effect today. Every foreign-flag vessel and every U.S.-flag vessel engaged in international trade, moving in the waters of a state, is required to use the services of a state licensed pilot.

### History of pilotage in Alaska

Enacted in 1970, Alaska's original piloting law created the Board of Marine Pilots (BMP or the board) to license pilots. The statute did not specify qualifications and licensing standards for pilots, leaving the establishment of such standards to the discretion of BMP.

In 1990, the legislature drafted and passed a bill, known as the Marine Pilot Act of 1991, making significant changes to Alaska's pilotage statute. The act included a policy, findings, and intent section which 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 identifying pilotage regions, setting maximum tariffs and establishing criteria for the training and licensing of marine pilots.

In 1995, in conjunction with the sunset extension of BMP, the legislature again amended the marine pilot statutes. One of the more significant changes the legislature made involved the role BMP has in establishing rates charged for piloting services. Under the revised statute, local pilot associations set rates either through negotiation with shippers or by providing due notice to all enterprises utilizing pilot services. Upon due notice of a change in rates, affected parties can appeal the change in proposed rates to BMP.

### Rate Setting Process

Prior to 1995, the rates for marine pilot services were established as a maximum tariff set by BMP. This tariff served as a basis for customer charges. Typically, users of marine pilot services paid an amount which included a negotiated discount from the established tariff.

The 1995 amendments to the marine pilot statutes made rate setting the responsibility of the local association through provision of published rates to customers (utilizing pilot services), or negotiation of rates with shipping industry customers.

Upon due notice of a proposed rate change, affected parties can appeal the newly proposed rates to BMP. If the parties fail to reach an agreement, the board can solicit information from the association about the proposed rate change. BMP can then evaluate the information presented, and determine if the proposed change in rates is reasonable. The board acts as the final binding arbiter where the published rates are disputed.

Rate setting was further complicated with the addition of 12 AAC 56.310(e) and (f), effective February 12, 2005, which included the retirement surcharge in the rate setting. This regulation provides that a pilot organization is to provide a retirement plan or program for eligible members. Also, the pilot organization may assess a separate charge at a rate necessary to provide the benefits to be paid out under a retirement program. The charge for the retirement plan or program is to be listed separately in the published rate.

### Requirements for federal licensing

The U.S. Coast Guard (USCG) enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, including Alaska, 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. USCG licensing requires a minimum amount of qualifying sea service in addition to passing a written examination.

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 familiarization round-trip over the route for which they have 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 and waterways is an essential aspect of the pilotage profession, individuals licensed as marine pilots are required to have extensive navigational experience. Established by state law, these requirements involve up to ten years experience in navigating vessels of various sizes. Due to these requirements, most applicants for marine pilot

licensing have extensive experience either with the USCG, Alaska Marine Highway System, or commercial shipping.

Pilot trainee programs provide on-the-job training in the region where licensure is sought. Entry into an apprenticeship program typically requires less experience than entry as a trainee. Candidates in trainee/apprentice programs progress from either trainee or apprentice to a deputy marine pilot (license issued by BMP) and, finally to a marine pilot. It takes from one to four years to attain licensure as a deputy marine pilot. All training programs require the candidate to ride a ship with a fully licensed training pilot, observing their handling of the ship. Over time, the trainee or apprentice begins to handle the ship under the training pilot's guidance. Statute requires a minimum of four years apprenticeship training to become a deputy marine pilot. A deputy marine pilot, in addition to other requirements set out in statute, must have three years experience as a licensed deputy marine pilot to obtain a marine pilot license.

Alaska has a biennial license renewal. BMP has incorporated the continuing proficiency requirements for license renewal in regulations: (1) a marine pilot with Very Large Crude Carrier (VLCC) endorsement for license renewal after January 1, 2001, must have satisfactorily completed a manned model course within six years preceding the license period for which renewal is sought; (2) a deputy pilot and marine pilot must receive a pilot performance monitoring with at least a satisfactory rating each calendar year in which the pilot is engaged in piloting vessels for 30 days or more; and (3) a marine pilot or deputy marine pilot applying for license renewal effective on or after January 1, 2003, must document satisfactory completion of a board-approved, simulator-based training and pilot performance evaluation within six years preceding the license period for which renewal is sought.

#### Vessels subject to Alaska marine pilotage regulations

A pilot is required to be employed for vessels navigating inland and coastal waters of, or adjacent to, the State (as defined by the board). This includes any oil tanker of 50,000 dead weight tons or greater, navigating in state water beyond Alaska pilot stations. Vessels exempt from this regulation include vessels subject to federal pilot requirements, U.S. or Canadian fishing vessels, many U.S. and Canadian registered vessels and foreign-flagged yachts 65 feet or less in overall length.

#### Pilot discipline

All 24 maritime states have procedures for disciplining pilots when incidents occur while the pilot is operating under their state license. In Alaska, reports are investigated by the marine pilot coordinator (MPC), who serves as primary staff to BMP. 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.

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 their pilotage duties. However, marine pilots operating within state waterways are not directly under the purview of the USCG.<sup>2</sup>

#### Drug and Alcohol Testing Program

Under AS 08.62.040(b)(2), BMP has the discretionary authority to establish responsibility for a mandatory random drug and alcohol testing program. BMP has delegated the responsibility for the administration of alcohol and drug testing to the local pilot associations. The board requires each pilot association establish a mandatory random drug testing program. Alcohol testing is also performed, but only after a maritime incident or for reasonable cause.

Board regulations specify that a pilot must participate in a random drug testing program conducted according to the requirements of federal regulations (46 CFR 16 and 49 CFR 40). Additionally, pilots are required to report to the marine pilot coordinator that they have participated in a random drug testing program during the previous year.

#### License Fees

Alaska Statutes 08.01.065(a) and (c) require the Department of Commerce, Community, and Economic Development to adopt regulations that establish the amount and manner of payment of an occupation's applicable fees, and that the fee collected for an occupation approximately equals the actual regulatory costs for the occupation. Licensing fees have been as follows:

2001//2002:	\$2,000
2003/2004:	2,600
2005/2006:	2,000

Exhibit 4 on page 23 shows revenues and expenditures for the Board for FY 03 through FY 06.

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<sup>2</sup> Although not under the jurisdiction of the USCG, a marine pilot could be assessed a civil penalty for violations of USCG rules.

## REPORT CONCLUSIONS

Under AS 08.03.010(10), the Board of Marine Pilots (BMP or board) will terminate on June 30, 2007. If the legislature does not take action to extend the board's termination date, then AS 08.03.020 provides the board one year in which to conclude its administrative operations.

The regulation and licensing of qualified marine pilots benefit the public's safety and welfare, as well as protection of the environment. The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so. The board has successfully worked with the pilot associations in resolving many of the problems identified in prior sunset audits and has contributed to improving marine safety in Alaskan waters. However, over the past four years the board has been hindered in effectively executing its statutory requirement to arbitrate over the rate setting process.

As discussed in the Findings and Recommendations section, BMP's administration of the mandatory drug and alcohol testing is not consistent with established regulatory standards and needs improvement. Further, BMP should establish procedures to ensure adequate coverage of the marine pilot coordinator's critical investigation functions during a vacancy or extended periods of absence. The board should also consider changes to continuing professional education. Additionally, the legislature should consider statutory changes to direct the usage of pleasure craft exemption fees. See Recommendation Nos. 1 through 6 for further discussion.

In our opinion, BMP serves an important public purpose. It should be continued in statute and its termination date extended for six years until June 30, 2013.

(Intentionally left blank)

## FINDINGS AND RECOMMENDATIONS

Four recommendations were made in the prior Board of Marine Pilots (BMP or the board) sunset audit report.<sup>3</sup> One recommendation has been satisfactorily addressed; however, the remaining three are reiterated as Recommendation Nos. 1 through 3 below. Recommendation Nos. 4 through 6 are new recommendations.

### Recommendation No. 1

BMP should establish more informative and comprehensive reporting requirements so the marine pilot coordinator (MPC) can confirm that an appropriate number of licensed pilots are consistently being subjected to random testing.

### Prior Finding

Current state regulation 12 AAC 56.940(h) requires each pilot to submit a report to the MPC by January 31<sup>st</sup> of each year stating that the pilot has participated in a random drug testing program during the previous year. The respective pilot association provides this annual report on behalf of their pilot members. The report is essentially a list of the association's membership – since presumably all members are subject to, but not necessarily selected for, random testing for alcohol and drugs. Nowhere in the report did it indicate if a pilot was actually selected for, and submitted to, a drug test.

### Legislative Audit's Current Position

The prior finding has not been resolved. Of the three associations, two provided the MPC with an incomplete listing of pilots participating in drug testing. Specifically, some pilots identified as working and included in the testing pool were not listed on the report to the MPC. The third association failed to list any of the pilots participating in a drug testing program for both 2004 and 2005.

Incomplete and inaccurate reporting is due in part to the associations not fully understanding state regulation and failure to verify the information listed prior to submitting to the MPC. This information provided to the MPC does not support the actual testing activity conducted and, therefore, is not in compliance with state regulation.

We recommend that BMP revise regulations relating to drug test reporting to ensure the MPC has complete and accurate information with which to identify the extent and results of

<sup>3</sup> Division of Legislative Audit's *Department of Community and Economic Development, Board of Marine Pilots, November 1, 2002, Audit Control No. 08-20015-02.*

testing conducted. We further suggest the board develop or amend current regulation to provide for more specificity about what constitutes participation in a drug testing program, as well as what process should occur in the event of a positive<sup>4</sup> test result. See Recommendation No. 2 for further discussion.

We recommend the MPC take a more active role in monitoring the associations' testing programs throughout the year.

### Recommendation No. 2

BMP should take action to ensure regional pilot associations administer mandatory alcohol and drug testing programs in a manner consistent with established regulatory standards.

### Prior Finding

Under AS 08.62.040(b)(2), the board is authorized to develop a mandatory drug and alcohol testing program for licensed pilots. The board adopted regulations that delegated the responsibility for administering a mandatory alcohol and drug testing program to the local pilot associations. Further, BMP regulations required that local associations administer their programs in accordance with requirements set out in Titles 46 and 49 of the Code of Federal Regulations.

### Legislative Audit's Current Position

The prior finding has not been resolved; however, some improvements have been made. We reviewed detailed records for calendar years 2004 and 2005 – related to the mandatory alcohol and drug testing programs – at all three pilot associations, as well as their drug contractors in the State. These records show continuing problems with the completeness of testing programs and inconsistencies with federal regulatory requirements. Issues noted were:

1. Testing follow-through was incomplete. During 2005 two pilots, from one association selected for random testing, failed to report for analysis. No further follow-up effort was made by the association to ensure that the selected individuals were tested. In addition, one pilot that was selected took over two months to report for testing. Failure to report for testing is considered a *positive* result according to federal regulation. If a pilot is determined to have a positive result –

*“before they may return to work aboard a vessel, the medical review officer shall determine that the individual is drug-free and the risk of subsequent use of dangerous drugs by that person is sufficiently low to justify his or her return to work. In addition,*

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<sup>4</sup> Positive results equate to drugs or alcohol found in urine during drug testing analysis.

*the individual shall agree to be subject to increased, unannounced testing for a period as determined by the medical review office of up to 60 months.*<sup>5</sup>

BMP has no follow-up process in place.

2. Selection for testing was inconsistent between associations. All associations contract for drug testing services. The contractor may include a number of organizations within a consortium to establish a single testing pool. Two of the three pilot associations have established their entire membership as a single testing pool.

In contrast, the membership of one association has directed the contractor to include within their testing pool employees of another entity within their organization<sup>6</sup> creating two subgroups. The addition of the subgroups of nonpilots represents approximately one-third of the association's testing pool. Although, in 2005, 50 percent of the pilots were tested in-compliance with federal regulation, the addition of the group of nonpilots effectively dilutes the testing pool. While including both groups is technically consistent with federal regulation, the association has no mechanism that ensures the subgroup of marine pilots will consistently meet the 50 percent requirement.

Further, this same association did not have any signed agreement with their contractor. If testing problems do occur, responsibilities of either party are unclear, due to lack of agreed upon procedures to resolve them.

3. All pilots were not enrolled in a drug testing program. On a regular basis the associations provide a current listing of active pilots for inclusion in the quarterly, random selection process performed by the contractor. However, one association was unable to provide adequate support for which pilots were actually working during two different quarters in 2005.

Further, three pilots from two different associations were not enrolled by these associations in their mandatory drug testing program. Accordingly, even though these individuals should have been subject to random testing, they were never "eligible" for selection in the quarters reviewed, because their names were not provided to the contractor. One of these pilots claimed he participated in another drug testing program; however, the pilot association did not keep sufficient evidence to support his participation.

The reason for these oversights and inconsistencies were due to either the pilot associations' lack of understanding of testing program requirements set out in the relevant federal regulations, or miscommunication between the associations and their contractors.

<sup>5</sup> Federal regulation 46 CFR 16.370, Medical review officer.

<sup>6</sup> This other group included pilots that ferried the marine pilots to/from pickup and drop-off points, as well as maintenance workers and cooks.

We recommend that the board take a more active role in administering the drug testing program. Procedures and processes should be established through enhanced regulations to clarify the role of the pilot associations in meeting compliance requirements. Additionally, the board, through the MPC should actively monitor the pilot associations. Specific areas which should be addressed include, but are not limited to:

- Identify the number of days, following pilot notification, to report for testing that constitutes a failure to report.
- Immediate reporting to the MPC of positive test results or failure to report.
- Require each pilot association to set out in their by-laws, or operating rules, assurances that they will test 50 percent of their marine pilots.
- Require associations to have a current signed agreement with their testing contractors, as well as providing a copy to the MPC.
- Establish a mechanism or process where the MPC can verify that all pilots are enrolled in their association's program or supply adequate documentation that they are actively participating in another random drug testing program.

### Recommendation No. 3

The legislature should consider amending current statutes in order to extend mandatory drug and alcohol testing to pilot organization trainees and apprentices.

### Prior Finding

At the time of the prior review, no statutory or regulatory provision existed which required trainees or apprentices to be subject to random drug testing. Pilot associations reported that most trainees and apprentices worked for other employers involved in maritime activities. As such they were likely to be included under other employer testing programs according to federal regulations.

### Legislative Audit's Current Position

The prior finding has been partially resolved. The legislature gave the board, through statute, the authority in 2003 to adopt regulations requiring trainees and apprentices seeking a license to participate in a mandatory drug and alcohol testing program through a change to AS 08.62.040(b)(2). The board, however, has yet to propose any mandatory random drug testing regulations over those trainees and apprentices seeking a deputy marine pilot's license. At the present time those seeking a deputy marine pilot's license, under the purview of BMP, are not held to the same standards as a licensed deputy or marine pilot for drug testing. Associations were attempting to manage this requirement informally, but each association had trainees and apprentices who were not fully participating in the program.

Apprentices and trainees should participate in random testing with the pilot associations. This ensures all individuals who board and train on vessels. Under the State's marine pilotage requirements, are subject to random testing. It would also ensure that their participation is reported to the board.

Accordingly, we recommend BMP develop regulations requiring the inclusion of trainees and apprentices to participate in the random drug testing programs administered by the pilot associations. Additionally, they should be included within the reporting requirements as identified in Recommendation No. 1.

#### Recommendation No. 4

The legislature should consider clarifying current statutes specifying the use of pleasure craft exemption fees.

Currently, pleasure craft exemption fees (yacht fees) received by BMP are combined with pilot licensing and other marine pilot occupational fees. A four-year average of yacht fees, from 2003 through 2006, represents approximately 28 percent of the annual revenues of the board. These additional revenues became part of the Division of Corporations, Business, and Professional Licensing's (DCBPL's) computation in determining the amount to assess pilots and pilot candidates for covering the subsequent year's anticipated operation and regulatory costs of the board.

Alaska Statute 08.01.065(c) states:

*"... the department shall establish fee levels under (a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation."* [Emphasis added]

Because statutes refer to the amount of fees collected "for an occupation", any fee not related directly to operations or regulation of that profession or trade, such as yacht fees, should presumably not be combined with that occupation's licensing fees. Under current procedures combining yacht fees, not directly related to the piloting profession, results in a reduction of licensing fees due from pilots to support the operations of the board. Further, AS 08.62.180 states:

*"... An exemption issued under this subsection may be revoked by the board if the vessel is not operated in a manner that is appropriate to protect human life, property, and the marine environment or if the vessel does not comply with all applicable local, state, and federal laws."* [Emphasis added]

The State – through BMP – has identified certain pleasure craft as exempt from regulatory oversight, based on a determination they are not a substantial threat to public safety or the environment, as long as the owner or master follows the terms and conditions of the

exemption granted. Therefore, the State has taken on the risk associated with potential harm to the public and the environment. Although the board incurs some costs associated with the administration of yacht fees, they are negligible at less than one percent of total costs of the board in FY 2006.

In our view, regulatory guidance is unclear as to whether the yacht fees paid by owners or their agents should be included with marine pilot licensing revenues. Exclusion of yacht fees provides that, similar to other regulated occupations, the board's operations are only supported by pilots' occupational fees. Accordingly, we recommend the legislature consider revision of current statutes to clarify the use of the yacht fee revenues received by BMP.

#### Recommendation No. 5

The director of the DCBPL should ensure coverage of the marine pilot coordinator's investigative functions occur during extended absences or vacancy.

A violation of vessel movement was reported in Western Alaska during the summer of 2004. Information supplied to the MPC, as required under AS 08.62.157(b),<sup>7</sup> was not investigated within a reasonable amount of time. The case was not assigned for investigation until January 2005, a full six months after the reported violation. At that time, the attorney general's office determined too much time had elapsed to ensure an adequate investigation of the events.

The MPC position was vacant during the last half of 2004, and a divisional staff member performed only cursory functions as acting-MPC. Reliance is placed on the MPC as the primary investigator of marine pilot violations reported to DCBPL. When staffing issues, such as vacancies or extended periods of absence occurs, adequate coverage over this position's investigative functions should be a priority. Without timely investigations performed "*the protection of shipping, the safety of human life and property, and the protection of the marine environment...*" are placed at risk.<sup>8</sup>

We recommend the DCBPL ensure appropriate coverage of critical investigative functions when the MPC's position is vacant for an extended period of time. The Division's Office of Investigation should take over the functions during extended absences of the MPC.

<sup>7</sup> AS 08.62.157(b) Duties of licensed pilots: "*A person licensed under this chapter shall report to the appropriate authority all violations of a federal or state pilotage law.*"

<sup>8</sup> AS 08.62.040(a)(1) Powers, duties, and limitations. "*The board shall provide for the maintenance of efficient and competent pilotage service on the inland and coastal water of and adjacent to the state to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment.*"

Recommendation No. 6

BMP should consider changes to regulations requiring other types of continuing professional education (CPE) of its licensees, instead of the mandatory annual peer review.

To meet CPE requirements,<sup>9</sup> marine pilots and deputy marine pilots receive annual performance monitoring, also known as a "peer review." Peer review is normally a more effective mechanism to ensure continued competency. Although peer reviews are being conducted by the associations, the board is not monitoring associations to ensure satisfactory annual completion by each pilot as required. Additionally, interviews and results of our survey of marine pilots, identified that generally pilots do not consider peer reviews either useful or objective.

If pilots do not consider peer reviews a useful requirement for ensuring competency of performance, the board should – at a minimum – review and reconsider changes to the current process. Further, other alternatives that may be more effective on an annual basis should be given consideration by the board. Continuing education should provide reasonable assurance that the professional is at least keeping abreast with new developments and maintains an awareness of the changes occurring in their profession.

BMP needs to be responsive to the public need for continued competency of licensed pilots. We recommend the board consider developing a CPE program or find an effective peer review process which provides an objective, useful measure of licensed pilot performance.

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<sup>9</sup> 12 AAC 56.083(e) Continuing education requirements: "A deputy marine pilot or marine pilot must receive a pilot performance monitoring with at least a satisfactory rating each calendar year in which the pilot engages in piloting vessels for 30 days or more."

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## AUDITOR'S COMMENTS

As discussed in the Analysis of Public Need section on page 21, rate setting has hindered the efficiency of board operations and has increased legal costs incurred by the State on behalf of the board.

BMP and the Department need to consider alternatives available to remedy difficulties the board has encountered with rate setting.

Over the past four years the board's requirement to hear disputed rate proposals has increasingly become hampered by difficulties of conflicting public policy in statute. BMP is a seven-member board consisting of: two marine pilots, two industry<sup>10</sup> members, two public members, and the commissioner's designee. Inherent in this makeup is a balance of licensed pilots with an equal number of industry members. On rate setting matters it is presumed the four members would cancel each other's vote out, leaving the deciding vote on an issue with the two public members and the chair. Ostensibly on rate setting matters, the board becomes a three-member board – the two public members and the commissioner's designee.

In addition to balancing pilot and industry members on the board, the legislature also specifically exempted the board from the Administrative Procedures Act (AS 44.62). This means the responsibility of hearing rate setting issues is retained by the board and not automatically assigned to an administrative law judge when there is a dispute.

However, the application of Alaska's Executive Branch Ethics Act (AS 39.52) has caused a disruption of the voting balance on rate setting matters. Under Alaska's Executive Branch Ethics Act, members of a board or commission are considered a public officer. AS 39.52.120 defines what is considered a misuse of an official position. The act specifies,

*"A public officer may not... take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest."*

The impact of the Ethics Act is that nonpublic members of the board may have to recuse themselves from voting on rate setting issues. When the board is voting on whether or not to increase pilotage fees in a specific pilotage region, the pilot on the board from that region has a clear financial conflict.

However what is less clear, is when the industry member has a conflict. Under AS 08.62.10, an industry member must be "...registered agents or managers of vessels subject to this chapter who are actively engaged in the procurement of pilotage services.... Not more than one registered agent or manager may be employed by, be a contractor for, or hold a

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<sup>10</sup> Industry members are comprised of vessel agents, shipping and cruise line firms, and vessel owners.

*financial interest in the same marine industry business entity, including commonly owned, affiliated, or subsidiary business entities.*

Currently, there are neither board policies requiring disclosure of all the business affiliations for its industry board members nor guidelines provided when an industry member has a conflict under the State's Ethics Act.

The effect of recusing one nonpublic member of the board during rate setting is to create an imbalance in vote counts between pilots and industry board members. When one of the two pilot members is recused, industry needs only two of the three votes of the public members and chair to defeat a rate matter. Whereas the remaining pilot would need all three votes to pass a rate matter.

Rate setting is absent from the purview of most professional occupational boards in Alaska with the exception of the Board of Marine Pilots.<sup>11</sup> Further, rate setting is part of the objectives of other states' marine piloting boards – such as Washington's State Board of Pilotage Commissioners and the Oregon Board of Maritime Pilots. Both of these states have recognized that their boards, created in statutes, have an inherent financial conflict of interest when voting on pilotage rate issues. Despite this conflict, no member need recuse themselves from voting on board issues in which they have a direct financial interest because it would create an imbalance.

The Department and BMP should consider the options available to them which would alleviate the rate setting difficulties currently hampering their effectiveness. Some options to be considered might include:

- A narrowly defined exemption within the Ethics Act, specific to rate setting. Although this is in opposition of public policy, the unique nature of board functions could support this action while still generally recognizing all other Ethics Act requirements that are applicable to protect public interest.
- The board can establish policies requiring employment disclosures from the industry members that identify all business relationships. The board can then establish a policy identifying those circumstances when an industry member has a conflict and should be recused from voting.
- Removal of the board's exemption from the Administrative Procedures Act, effectively removes the board from the rate-setting process and forwards the sole responsibility for rate decisions to an administrative law judge.

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<sup>11</sup> In addition, the Board of Realtors sets specific rates, but it is done based on advise of the Department and not presented to board members.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of the Board of Marine Pilots' (BMP or the board) activities relate to the public-need factors defined in the sunset law, AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas covered within the scope of our review.

As part of the review, a survey was conducted of the primary stakeholders of the board's functions and actions including pilots licensed and regulated by the board and industry<sup>12</sup> who utilize the services of pilots. Seventy-seven pilots<sup>13</sup> were provided the survey and 50 responded. Twenty-three industry members were provided the survey and 13 responded. Survey results are presented in the Appendices of this report.

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

The regulation and licensing of qualified marine pilots benefits the public's safety and welfare. The quantity of tourist passenger ships traveling in Alaskan waters, coupled with shipping, has continued to make BMP's role important. During the period covered by this review (July 1, 2002 to June 30, 2006) BMP has licensed six deputy marine pilots and five marine pilots.

The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so.

BMP has continued to update their exam database questions and answers for content, applicability, and accuracy. The pilot associations' designated training chairs, actively solicit all pilot members for questions to present to the board for input into the testing database. The board also focused on improvements to address training and continuing education of Alaska marine pilots as follows:

- The board has increased both docking requirements and supervised transits within particularly sensitive environmental or hazardous waterways.
- The board has a proposal into the Department of Law for changing regulations from a board-approved simulator to an industry-standard Class A facility.<sup>14</sup>

<sup>12</sup> Industry represents vessel agents, shipping and cruise firms, and vessel owners.

<sup>13</sup> Includes some trainees.

<sup>14</sup> Det Norske is a rating system which identifies simulators meeting an industry-determined standard, Class A being the most rigorous.

- The board has created new requirements for a marine pilot wishing to transfer from one region to another. Specifically, the pilot must have successfully completed the board-approved training program for the requested region prior to approving the license move.

Survey responses showed mixed results on the overall satisfaction of the board's performance. Pilots responded with 52 percent "above average" for overall satisfaction whereas, 54 percent of industry members rated the board's performance "below average" (See page 31). Similarly, 44 percent of the pilots gave the board a rating of "above average" on addressing important issues while 62 percent of industry representatives gave the board a "below average" rating on the same factor (See page 32).

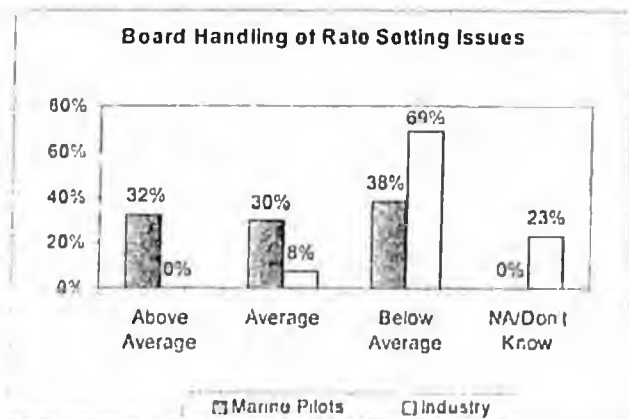
*Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.*

### Rate Setting

The board's rate setting process has been significantly impeded by the role of board members which has been determined to be in conflict with the Executive Branch Ethics Act. Specifically, over the past four years, the necessity for some pilot members to recuse themselves from voting on rate issues has created an imbalance on the board. The board structure, established by the legislature, created a situation where the two licensed pilots and two industry members would, most likely, have an inherent conflict due to a personal or financial interest when rate decisions came before the board. See Auditor Comments for further discussion.

As shown in Exhibits 2 and 3, 69 percent of industry respondents rate the board's handling of rate issues as below average. However, both pilots and industry oppose removing the rate setting process from the board.

**Exhibit 2**



**Exhibit 3**

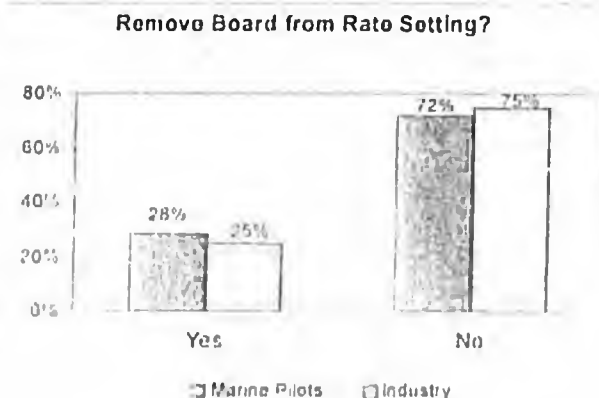


Exhibit 4

**Schedule of Board of Marine Pilots  
Revenues, Expenditures, and Cumulative Roll Forward  
For the period FY 03 through FY 06  
(unaudited)**

	FY06	FY05	FY04	FY03
<b>Board Revenues:</b>				
Yacht Fees	\$ 37,050	\$ 43,064	\$ 51,500	\$ 26,800
Licensing and Occupational Revenues	29,967	162,380	11,430	198,602
<b>Total Revenues:</b>	<b>67,017</b>	<b>205,444</b>	<b>62,930</b>	<b>225,402</b>
<b>Board/Occupation Direct Expenditures:</b>				
Personal Services	82,039	63,116	98,937	82,230
Travel	19,152	16,211	17,084	12,757
Contractual	60,685	37,979	24,622	15,945
Supplies	3	727	580	388
Equipment	-	-	-	-
<b>Total Board/Occupation Direct Expenditures:</b>	<b>162,044</b>	<b>118,033</b>	<b>141,223</b>	<b>111,320</b>
<b>Total Administrative Indirect Expenditures:</b>	<b>3,693</b>	<b>4,445</b>	<b>4,382</b>	<b>4,409</b>
<b>Total Direct and Indirect Expenditures:</b>	<b>165,737</b>	<b>122,478</b>	<b>145,605</b>	<b>115,729</b>
<b>Revenues - Expenditures</b>	<b>(98,720)</b>	<b>82,966</b>	<b>(82,675)</b>	<b>109,673</b>
<b>Cumulative Roll Forward Surplus</b>	<b>\$ 72,014</b>	<b>\$ 170,764</b>	<b>\$ 87,798</b>	<b>\$ 170,475</b>

Board Finances

The schedule above presents the Board revenues and expenditures used to calculate the board's licensing fees.<sup>15</sup> At the end of FY 06, the board shows a surplus of over \$72,000. Given the current litigation regarding rate setting, contractual costs in FY 06 are higher than

<sup>15</sup> Any fines collected by the board are not reflected in this schedule because they are not used in calculating the licensing fees.

prior years and probably will be higher again in FY 07. Therefore, the current surplus is necessary to avoid increasing licensing fees in the future to cover the cost of the litigation.

As discussed in Recommendation No. 4, the crediting of yacht fees to the board should be reexamined. If a change is made to exclude yacht fees from the calculation of required license fees, then licensing fees would likely increase. Licensing fees have been lowered in recent years as a result of the inclusion of yacht fees in the overall fee determination calculation.

#### Drug Testing

Passive enforcement of the drug testing program, through delegation to the pilot associations, did not significantly improve from the prior audit period. Current procedures and practices by the board are insufficient to ensure the adequacy of the drug testing program. Those practices impeded the board's ability to operate effectively. See Recommendation Nos. 1 through 3.

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

During the past four years the board has supported three statutory changes. The first was enhancing the drug testing to include trainees and apprentices seeking a license. The second change modified the exemptions for pleasure craft from requiring pilotage. The final change was to modify the degrees and minutes of the northern latitude where compulsory pilotage is required.

*Determine 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 has published notices of all examinations, meetings, and prospective regulation changes. Public notice of meetings, examinations, and changes in published rates are made in newspapers of general circulation and also in the State of Alaska's Online Public Notice website. Additionally, a period of time for public comment was available at each BMP meeting.

The Division of Corporations, Business, and Professional Licensing (DCBPL) maintains a list of individuals or organizations who are interested in the regulations of that occupation. DCBPL sends a *Notice of Proposed Regulations* automatically to the parties on the occupation listing, each time there is a proposed change in the occupation's regulations.

*Determine 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's agenda allots time for public comment. The public has been encouraged to use these public comment periods to express concerns, obtain information from the board, and participate in the regulatory process. When the agenda time allotments could not be followed based on topics covered, the board still adhered to the specified public comment period.

*Determine 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 victims' rights or 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 generally handled and resolved in an appropriate manner consistent with its priority and the limitations of the DCBPL's staff. However, during a period of approximately six months, the MPC position was vacant and critical investigation functions were not timely handled. (See Recommendation No. 5.)

No complaints were filed with the Office of the Ombudsman or the Office of Victims Rights in recent years regarding the operations of the board specifically, or marine pilots in general. BMP has revoked two marine pilot licenses - one each in FY 04 and FY 06. These revocations were due to an accident occurring as a result of the pilot's actions and due to medical reasons, respectively.

Survey respondents expressed opinions about complaints, investigations, and disciplinary actions as follows:

- Forty-two percent of industry respondents said the board should be more proactive during the course of an investigation into an accident which causes damage or harm to people, property, or the environment. In contrast, 72 percent of pilots believed the board did not need to be more proactive. (See page 36)
- Industry representatives were evenly split on how the board handled incidents involving pilots. 38 percent rated the board above average, 38 percent rated the board below average and 24 percent rated the board as average. (See page 45)

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

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

**Exhibit 5**

Schedule of Pilots as of June 30, 2006					
Region	Association	Marine Pilots	Deputy Marine Pilots	Trainees	Apprentices
Southeast	Southeast Alaska Pilot Association	42	3	2	5
Western	Alaska Marine Pilots	9	0	1	3
Southcentral	Southwest Alaska Pilot Association	20	2	3	0
Totals		71	5	6	8

When surveyed, 60 percent of the pilots believed the board requirements of trainees and apprentices were just right. However, on the issue of continued competency, 76 percent of the pilots indicated that the peer-conducted performance evaluations were not effective. (See Recommendation No. 6.)

A majority of both industry members and marine pilots believed there were sufficient pilots available to meet business needs. In addition, 83 percent of industry indicated a high level of skill was necessary to pilot their vessels; whereas, 66 percent believed that pilots demonstrated a high level of skill. (See page 43)

*Determine 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.*

No evidence indicated BMP's noncompliance 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.

*Determine 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.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

Over the past four years, considerable time has been spent by BMP on rate setting issues hindering the efficiency at which the board operates. Issues that impact the evaluation of the rates by the board involve the inclusion of a retirement surcharge in the rates set by pilots; as well as, pilot board members' ability to vote on rate issues and the need to recuse themselves from voting on rates being set in the region they represent.

Rate issues have resulted in increased need for legal advice by an administrative law judge. In one recent rate setting hearing, BMP chose not to even hear the case and automatically passed the issue to a judge.

Sixty-nine percent of industry respondents and 38 percent of pilots gave the board a below average rating on rate setting issues. However, both industry and pilots overwhelmingly (75 percent and 72 percent, respectively) support the board's continued involvement with rate setting issues. (See page 34)

Rate setting issues were, again, recently addressed by the Superior Court. The reviewed case related to a board vote on a 2003 Southwest Pilots Association proposed rate which included, amongst other changes, a retirement surcharge. The case also addressed the issue of pilots recusing themselves from voting on certain rate setting issues.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

No duplication of efforts or activities was identified with other governmental agencies, including both state and federal agencies. Further, the drug testing processes and procedures have been delegated fully to the pilot associations which are the private sector; therefore, no duplication of efforts over that board activity is occurring.

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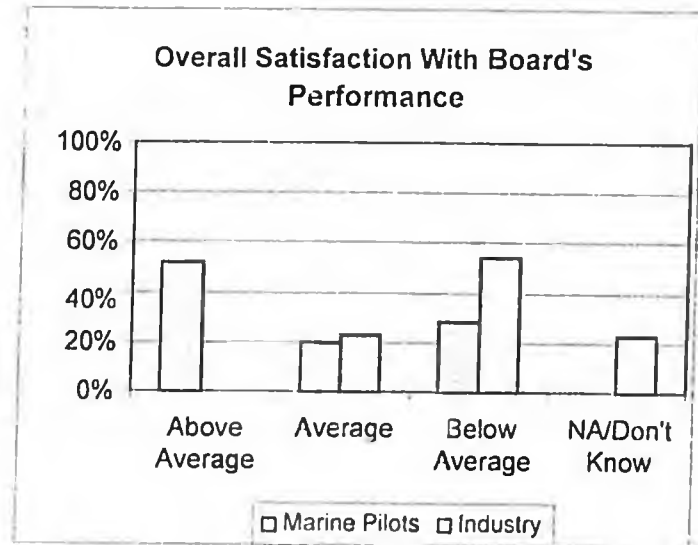
# APPENDICES

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**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**

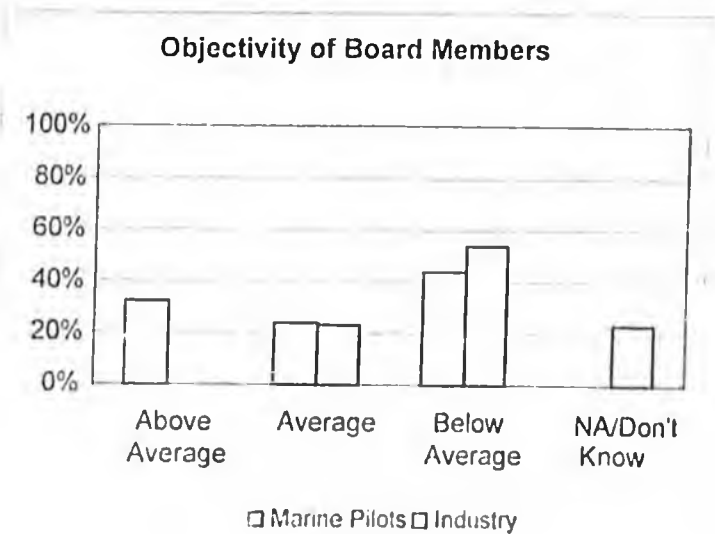
1. Rate your overall satisfaction with the board's performance.

	<u>Marine Pilots</u>	<u>Industry</u>
Above Average	26	0
Average	10	3
Below Average	14	7
NA/Don't Know	<u>0</u>	<u>3</u>
Total	50	13



2. Rate the objectivity of the board members.

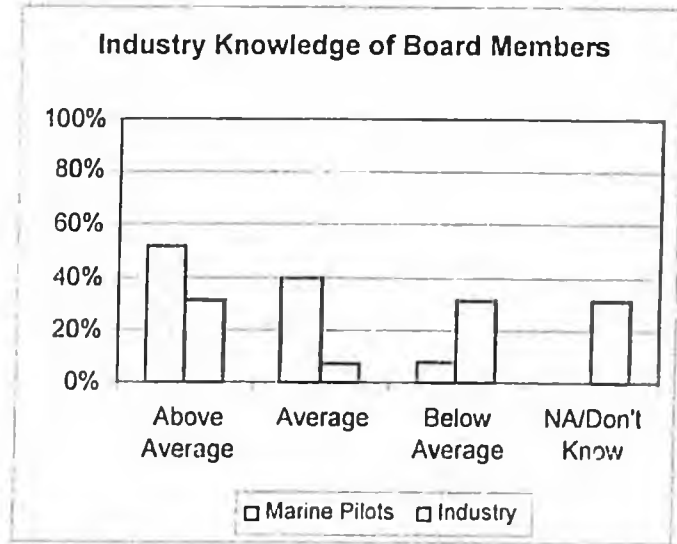
	<u>Marine Pilots</u>	<u>Industry</u>
Above Average	16	0
Average	12	3
Below Average	22	7
NA/Don't Know	<u>0</u>	<u>3</u>
Total	50	13



**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**  
(Continued)

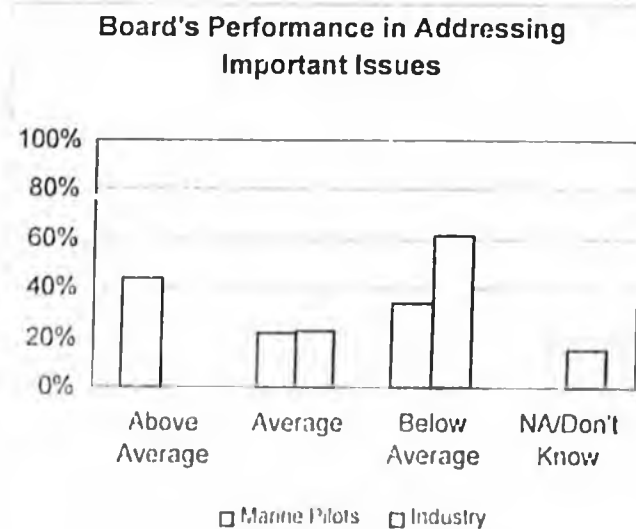
3. Rate the industry knowledge of the board members.

	<u>Marine Pilots</u>	<u>Industry</u>
Above Average	26	4
Average	20	1
Below Average	4	4
NA/Don't Know	<u>0</u>	<u>4</u>
Total	50	13



4. Rate the board's performance in addressing important issues.

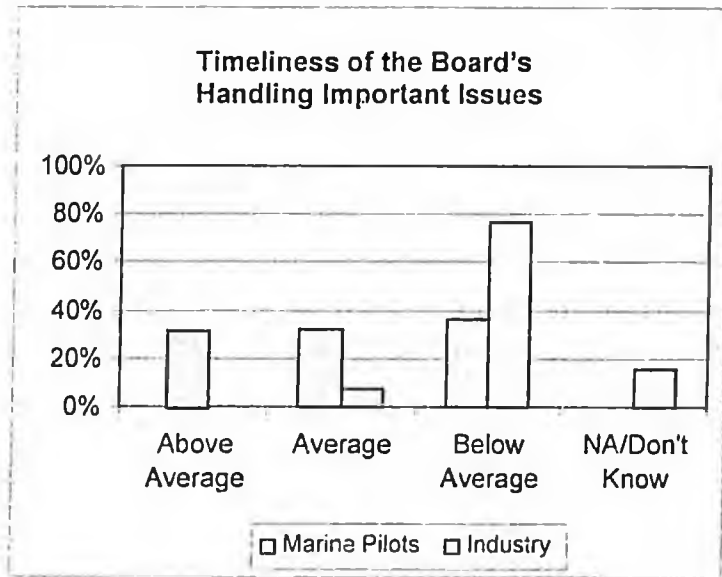
	<u>Marine Pilots</u>	<u>Industry</u>
Above Average	22	0
Average	11	3
Below Average	17	8
NA/Don't Know	<u>0</u>	<u>2</u>
Total	50	13



**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**  
(Continued)

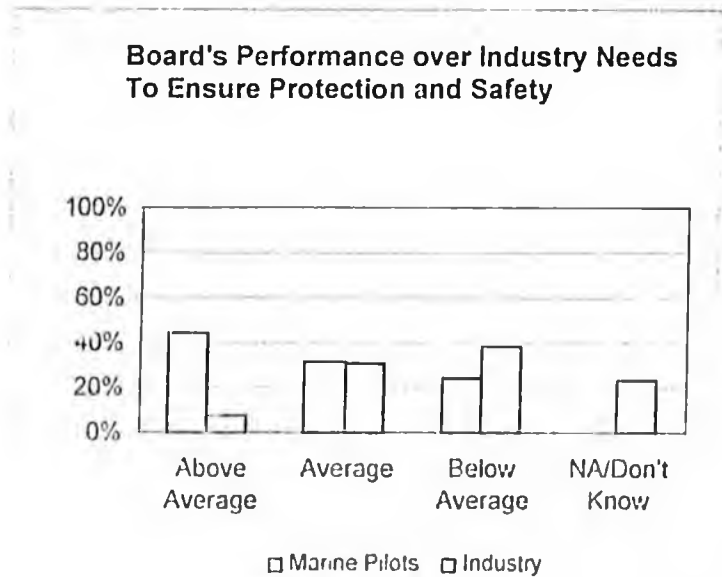
5. Rate the timeliness with which the board handles important issues.

	Marine Pilots	Industry
Above Average	16	0
Average	16	1
Below Average	18	10
NA/Don't Know	<u>0</u>	<u>2</u>
Total	50	13



6. Rate the board's performance in addressing industry needs sufficient to ensure protection of shipping, safety of human life and property, and the protection of the environment.

	Marine Pilots	Industry
Above Average	22	1
Average	16	4
Below Average	12	5
NA/Don't Know	<u>0</u>	<u>3</u>
Total	50	13



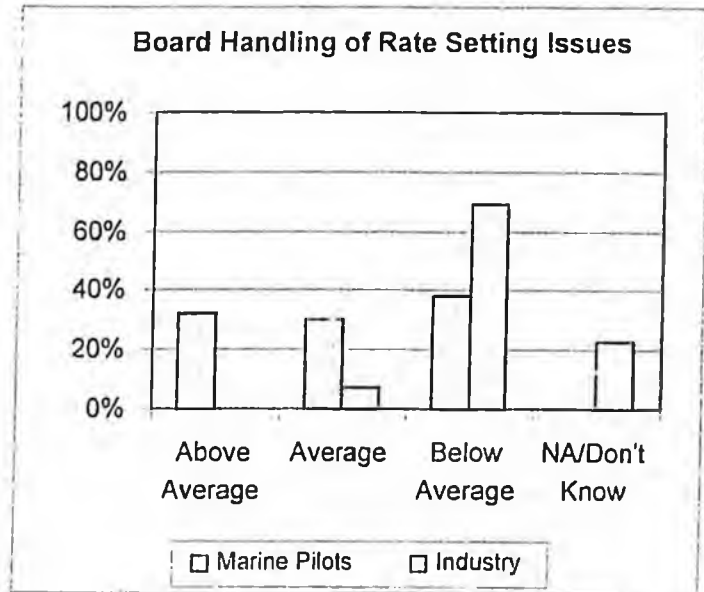
**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**  
(Continued)

7. Rate the board's handling of rate setting issues.

	<u>Marine Pilots</u>	<u>Industry</u>
Above Average	16	0
Average	15	1
Below Average	19	9
NA/Don't Know	<u>0</u>	<u>3</u>
Total	50	13

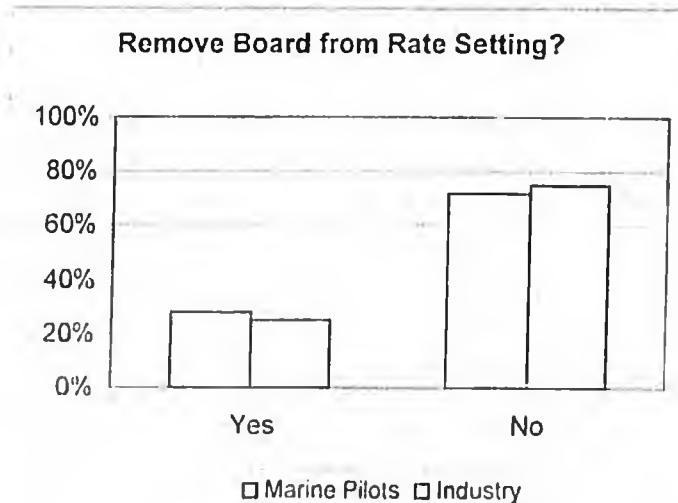
*Comments:* Both industry and pilots commented that the board has been ineffective in handling rate setting issues. However both industry and pilots agreed that the BMP needs to keep this function so that individuals with knowledge of the industry are more involved in the rate decision process.

Pilots expressed concern about the balance of the board when hearing rate issues if (1) pilot members are required to recuse themselves and (2) public members are not free from conflicts with the shipping industry.



8. Should the board be removed from the rate setting process?

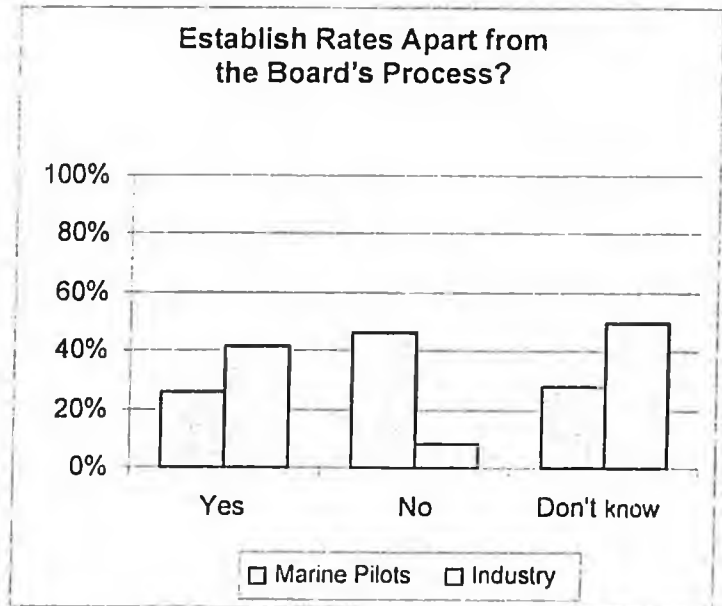
	<u>Marine Pilots</u>	<u>Industry</u>
Yes	14	3
No	<u>36</u>	<u>9</u>
Total	50	12



**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**  
(Continued)

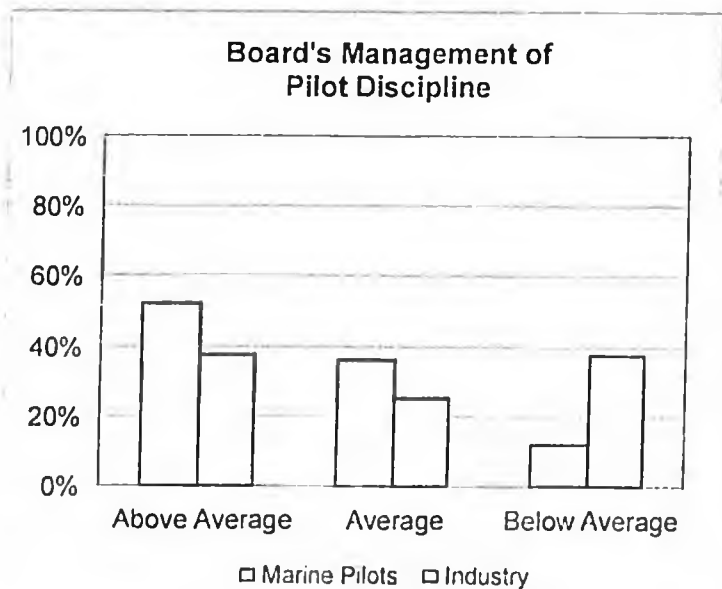
9. In your opinion, would it be more effective for pilot associations to establish rates with industry principals, or their agents, apart from the board's processes.

	Marine Pilots	Industry
Yes	13	5
No	23	1
Don't know	<u>14</u>	<u>6</u>
Total	50	12



10. In your opinion, how has the board managed disciplinary situations involving pilots.

	Marine Pilots	Industry
Above Average	26	3
Average	18	2
Below Average	6	3
Don't know	<u>0</u>	<u>0</u>
Total	50	8

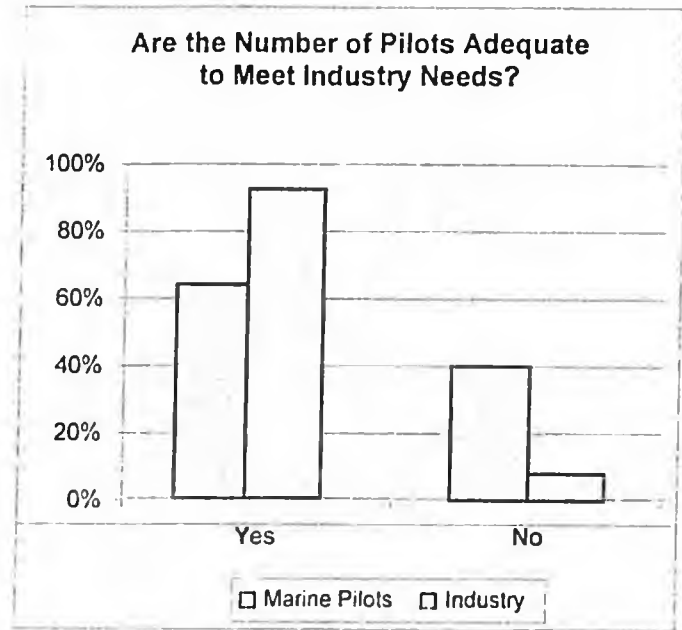


**Appendix A**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS AND INDUSTRY**  
(Continued)

11. Is the current number of licensed deputy and marine pilots in your region adequate to cover the needs of the industry?

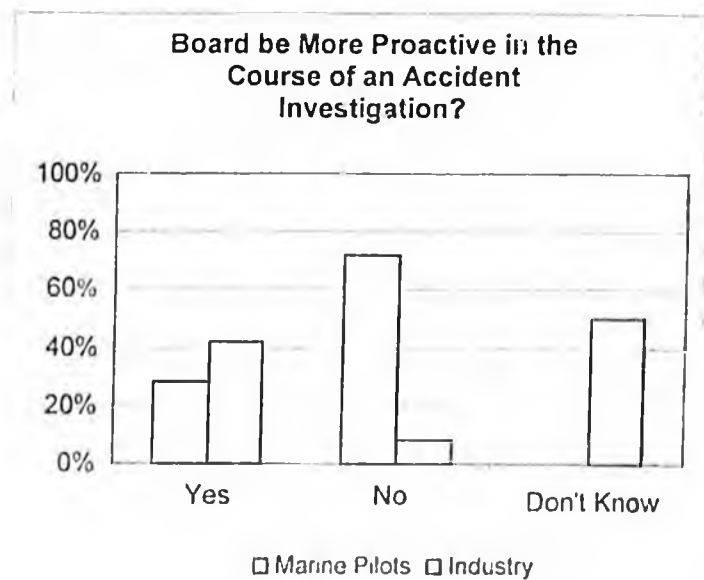
	Marine Pilots	Industry
Yes	30	11
No	<u>20</u>	<u>1</u>
Total	50	12

Although the majority of both industry and pilots believed that there were currently enough pilots, both sides expressed concern about having enough pilots in the future to cover demand.



12. Should the board be more proactive during the course of an investigation into an accident which caused damage or harm to people, property, or the environment?

	Marine Pilots	Industry
Yes	14	5
No	36	1
Don't Know	<u>0</u>	<u>6</u>
Total	50	12



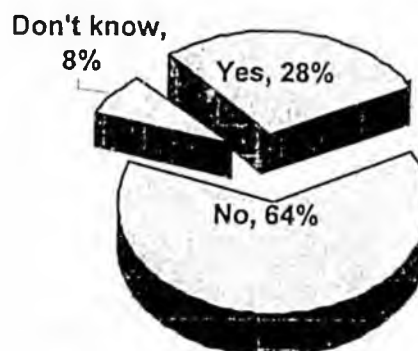
Appendix B  
SURVEY RESULTS  
QUESTIONS ANSWERED BY  
MARINE PILOTS  
(50 Respondents)

1. Should the simulator evaluation, now required once every 6 years, be expanded to include a live performance evaluation, such as a manned model?

*Pilot comments:*

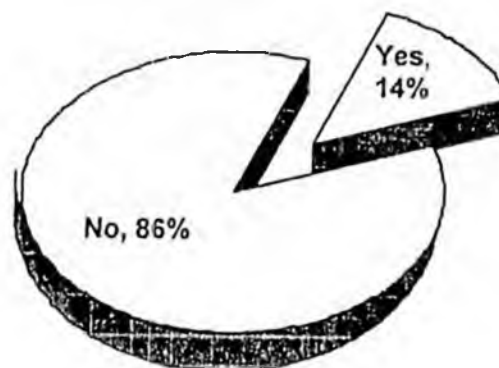
Pilots commented that required time on manned models and required training spent in simulators would be a better use of resources and would be more beneficial to the industry than simulator evaluations.

Simulator Evaluation Change?



2. Should performance evaluations be required more frequently than once every 6 years?

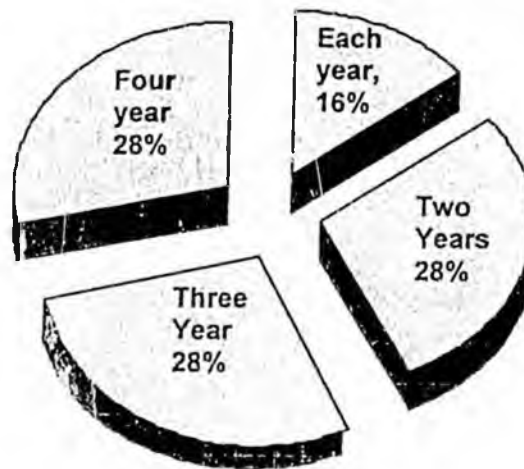
More Frequent Performance Evaluation?



**Appendix B**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS**  
(Continued)

3. Of those who answered 'Yes' to question 2, we asked how often should they be done?  
(7 respondents)

**How Frequent Should Performance Evaluations Be?**

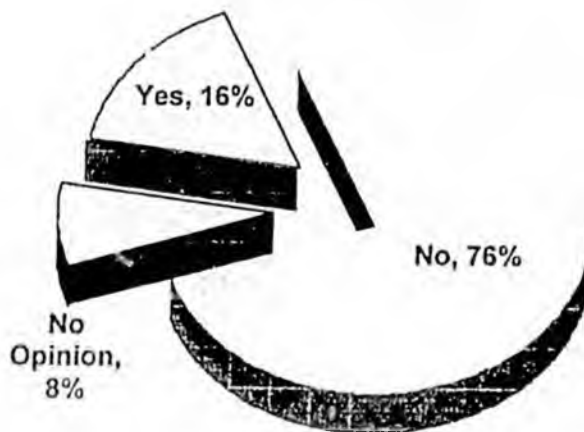


4. Are the peer-conducted performance evaluations effective?

*Pilot comments:*

A few pilots commented that the peer-review process is both unproductive and ineffective. They also commented that in lieu of this process, some form of continuing education would better serve the industry as it makes the current pilots better at their jobs.

**Are Peer Performance Evaluations Effective?**



**Appendix B**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS**  
(Continued)

5. Rate the length of time it currently takes for a trainee or apprentice to complete the training process to obtain a marine pilot license.

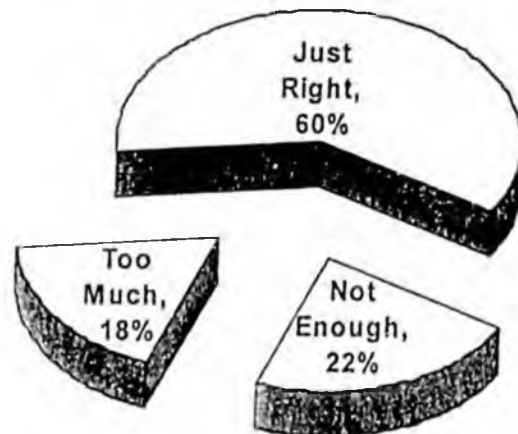
*Pilot comments:*

Pilots who believed that the amount of time to complete the training process was too long commented that training should be more intensive therefore lessening the amount of time and money it takes a trainee to complete the process.



6. Rate the adequacy of trainee and apprentice pilot requirements

**Adequacy of Trainee and Apprentice Pilot Requirements?**



**Appendix B**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS**  
(Continued)

7. In order to ensure there are enough qualified pilot candidates available to serve the public's need, should there be some form of financial incentive for trainee?

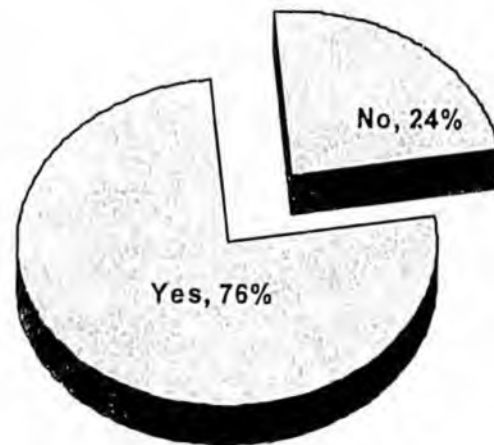
*Pilot comments:*

Pilot's suggestions for financial incentives to be provided to trainees including low interest loans, free passage on state owned transportations system (Alaska Marine Highway System for example) and dropping the testing fees.

Some pilots also commented that, in their opinion, this was not a board issue but an association issue.

One pilot commented that the financial incentive is the compensation one gets after obtaining their marine pilots license.

**Financial Incentive for Trainees?**



8. Rate the effectiveness of your association's pilot recruitment.

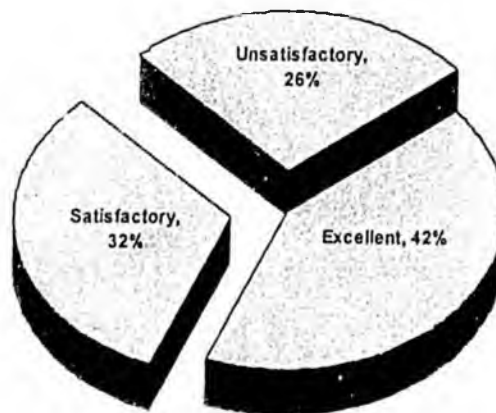
**Effectiveness of your Association's  
Pilot Recruitment?**



**Appendix B**  
**SURVEY RESULTS**  
**QUESTIONS ANSWERED BY**  
**MARINE PILOTS**  
(Continued)

9. Rate the effectiveness of your association's pilot retention.

Effectiveness of Your Association's Retention?

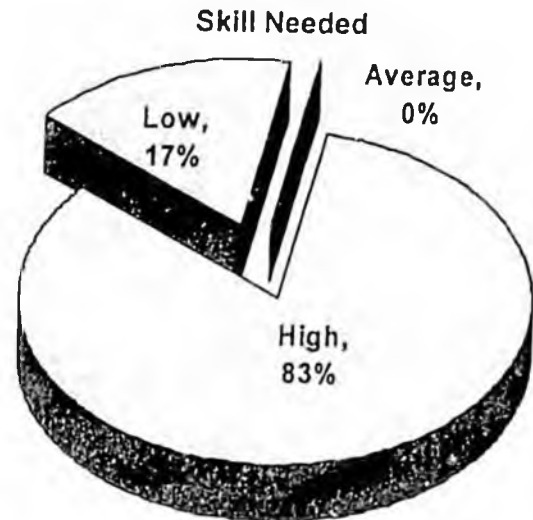


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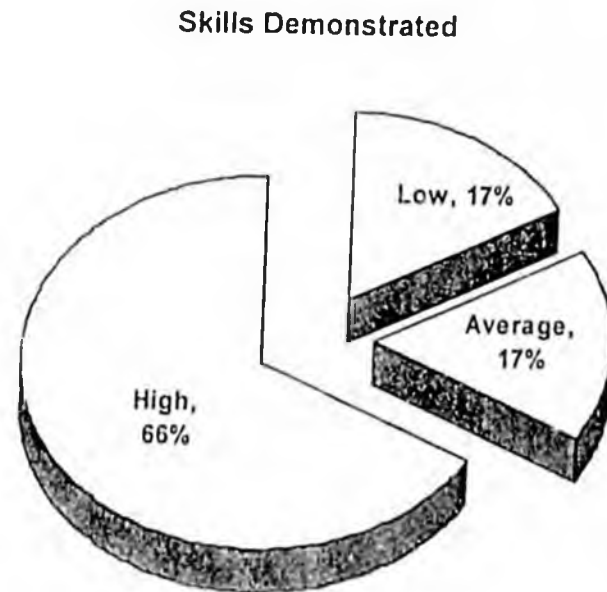
Appendix C  
SURVEY RESULTS  
QUESTIONS ANSWERED BY  
INDUSTRY  
(13 Respondents)

1. Rate the level of:

Skill needed to pilot your vessels.



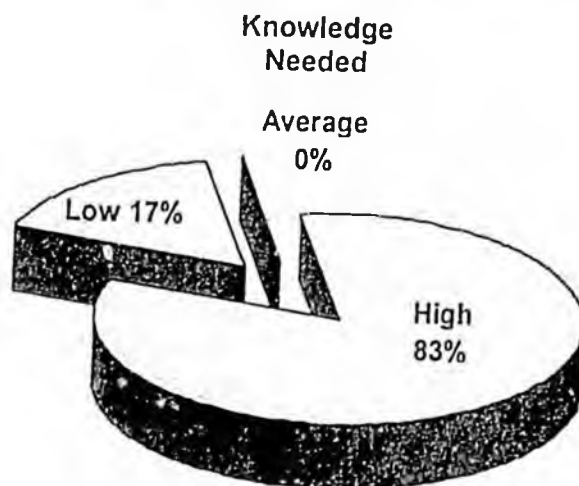
Skill demonstrated by pilots on your vessels.



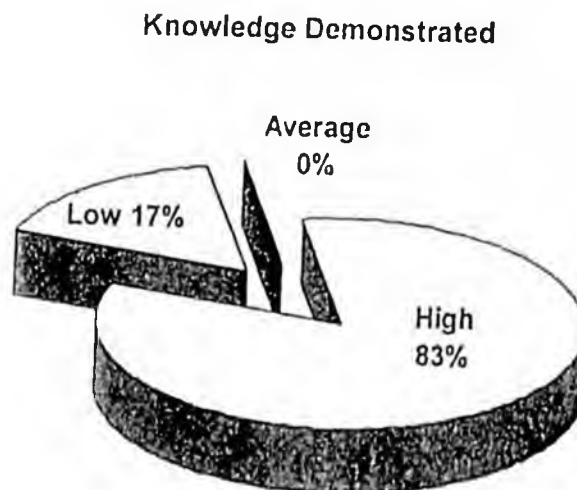
Appendix C  
SURVEY RESULTS  
QUESTIONS ANSWERED BY  
INDUSTRY  
(Continued)

2. Rate the level of:

Knowledge needed to pilot your vessels.



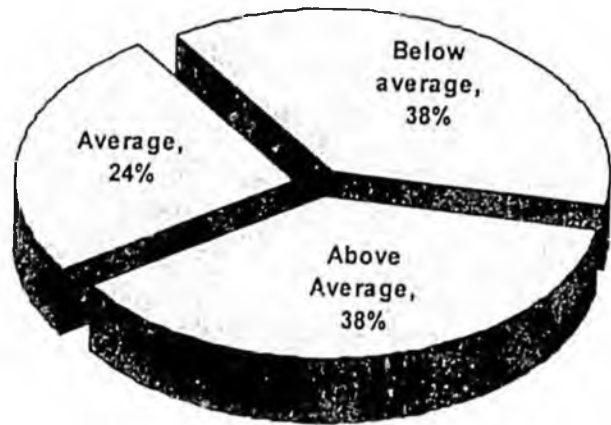
Knowledge demonstrated by pilots on your vessels.



Appendix C  
SURVEY RESULTS  
QUESTIONS ANSWERED BY  
INDUSTRY  
(Continued)

3. Rate the board's handling of incident(s) involving pilots.

Board Handling of Incidents Involving Pilots



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DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT  
Office of the Commissioner

*Frank H. Murkowski, Governor*  
*William C. Noll, Commissioner*

December 1, 2006

Ms. Pat Davidson  
Legislative Auditor  
Alaska State Legislature  
Legislative Budget and Audit Division  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

Dear Ms. Davidson,

I am in receipt of Preliminary Audit Report, Department of Commerce, Community and Economic Development Board of Marine Pilots (BMP) Sunset Review. Following per your request is a written response to your October 13<sup>th</sup> Preliminary findings report. An electronic copy of this response was emailed to you on December 1, 2006.

The BMP responded to the draft audit report on November 1, 2006 and notes and appreciates that the preliminary audit report has taken into account some of the BMP's earlier responses. The following comments are specific to the Preliminary Audit report (red cover).

The Board of Marine Pilots and Department are in general agreement with the Report Conclusions.

The BMP recognizes the need for various changes in drug and alcohol testing and standards.

The BMP is also actively involved with the pilot organizations in further refining professional standards and continuing education for Alaska Marine Pilots.

The BMP does not agree that the distribution of yacht exemption fees should be changed. Board position on this issue is further explained in the specific comment response section.

The Board of Marine Pilots is also well aware of the frustration by parties interested in the rate setting process; the Board is equally frustrated by this conundrum.

The BMP most surely agrees that it serves an important public purpose. Further, the BMP supports the enactment of new statute to extend the termination date for another 6 years to June 30, 2013.

Following are detailed comments in response to issues raised in the Preliminary Audit report.

Prior Audit Recommendation No. 1.

*The BMP should establish more informative and comprehensive reporting requirements so the Marine Pilot Coordinator (MPC) can confirm that an appropriate number of licensed pilots are consistently being subjected to random testing.*

The BMP agrees in most part with the current position of Legislative Audit and with the recommendations. Part of the underlying problem seems to be due to the seasonal nature of much of the pilot work; especially with Southeast Alaska Pilots Association- the majority of whose work is associated with the highly seasonal Cruise Ship trade.

The MPC has already been working to resolve the shortcoming and will continue to do such. The current effort is to rectify this issue without having to promulgate new regulations. However if the situation cannot be sorted out by working with the pilot associations appropriate regulation will be developed.

Prior Audit Recommendation No. 2.

*The BMP should take action to ensure regional pilot associations administer mandatory alcohol and drug testing programs in a manner consistent with established regulatory standards.*

The BMP agrees with Legislative Audit that additional effort must be expended to ensure the consistency of testing programs. As in recommendation No. 1, part of the problem is due to the seasonal nature of the business.

The MPC has been directed to work with the pilot associations to further refine various testing and reporting practices. Further, the MPC has been requested to assure spot checking is conducted on reports to assure completeness.

The MPC has also been requested to ensure that testing is consistent between the three associations (issue raised in recommendation 2, number 2). The MPC has been instructed to make sure that all working pilots are enrolled in a testing program as required by statute and regulation and that the necessary reporting requirements are complied with.

The MPC will be working with the pilot associations to further evaluate and implement (if necessary) the 5 specific recommendations detailed in the audit.

Prior Audit Recommendation No. 3.

*The legislature should consider amending current statutes in order to extend mandatory drug and alcohol testing to pilot organization trainees and apprentices.*

The BMP agrees with the recommendation that apprentices and trainees should be included in the association's mandatory drug and alcohol testing program. The MPC is working with the association to accomplish such. However, the BMP would suggest this be done through procedures or by regulation and not by a statute change.

Recommendation No. 4.

*The legislature should consider clarifying current statutes specifying the use of pleasure craft exemption fees.*

The BMP understands the arguments presented by Legislative Audit in relation to yacht exemption fees. However, the BMP does not agree with Legislative Audit on this issue and recommends the yacht exemption fees remain reserved with marine pilot and other pilot occupation fees.

The administration of yacht exemptions is not a trivial matter for the BMP or the MPC. Not only is considerable time and effort expended in administering this program by both the MPC and board members, the BMP has also incurred significant legal fees as part of overseeing this exemption. With homeland and port security requirements growing with no end in sight, the efforts of the BMP and MPC on private yachts will only increase.

HB 251, the 2003 legislation which created the yacht pilotage exemption was supported by the BMP and pilot associations with the understanding that fees generated from these exemptions would be used to offset BMP expenses to include the administration and management of exempt yachts. It would be disingenuous to come back at this date and change this fund source for the BMP.

For these reasons the BMP recommends yacht exemption fees remain as part of the BMP combined revenue.

Recommendation No. 5.

*The director of the Division of Corporations, Business, and Professional Licensing should ensure coverage of the marine pilot coordinator's investigative functions occur during extended absences or vacancy.*

The BMP agrees with the recommendation by Legislative Audit on this issue. The BMP has already had discussions with the Division Director to assure such situations do not recur.

Further, the MPC has been working closely with the investigative unit in the Division. In cooperation with the Chief Investigators office, various protocols have been developed and instituted that assure continuity of coverage on BMP matters.

Recommendation No. 6.

*The BMP should consider changes to regulations requiring other types of continuing professional education (CPE) of its licensees, in lieu of the mandatory annual peer review.*

The BMP agrees with this recommendation. At its most recent meeting (after this audit was completed) various new regulations were approved that strengthen CPE.

Auditor Comments.

The auditor has stated "the BMP and the Department need to consider alternatives available to remedy difficulties the board has encountered with rate setting."

Although this is not a formal recommendation put forward by the Audit, the BMP agrees with the comment. So long as the BMP is under the state's ethics act there can not be equal and full representation by the industry and pilot groups on rate setting matters. The BMP believes this is a poor way to conduct business and that state piloting in general and rate setting in particular would be best served by a balanced BMP as envisioned by the legislature.

The pilot and shipping company survey conducted as part of this audit noted that although both competing interest groups were not satisfied with BMP actions on rate setting matters that both sides overwhelmingly agreed that rate setting matters should remain the purview of the BMP.

The BMP looks forward to working with various parties to resolve this impasse. Until such time this balance can be regained the BMP recommends that contested rate matters be assigned to a hearing officer.

Thank you for this opportunity to comment.

Sincerely,

Albert H. Clough  
Chair, Alaska Board of Marine Pilots  
Deputy Commissioner DCCFD

Cc: Rick Urion, Director Division of Corporations,  
Business, and Professional Licensing

Renda Heimbigner, Marine Pilot Coordinator