

650

SC

FILE NO. 20

650

to pilot enrolled vessels, have not been required to sufficiently demonstrate their ability to perform pilotage competently.

2. 18 per cent of the pilots licensed either did not possess or did not provide documentation that they possessed the qualifications necessary for licensure. Also, three out of 45 (or six per cent) of the licensees who received license renewals for 1979-1980, were renewed even though they did not provide documentation of the two-month requirement.
3. The Board is directed by statute to regulate pilotage tariffs. Because of the monopoly situation that is created by the two pilots associations, it is in the best interests of the public that the Board regulate the tariffs.

In the past, the Board has not taken an active role in setting the tariffs. It has given its "rubber-stamp" approval to the tariff increases negotiated between the pilot's associations and the shipping industry (see Recommendation No. 3).

4. The Board is protecting the public by providing a mechanism to help assure the protection of shipping, human lives and property and the environment from the dangers posed by foreign vessels in Alaskan waters.

II. 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.

1. Because the Governor's Office has not kept Board member appointments current, one of the Board's public member positions was unfilled for 14 months. Another Board member's term was lapsed for 16 months before he was reappointed.
2. The other public member on the Board, although his appointment was current, has attended only 50 per cent of the meetings. Thus, the Board has been operating with only five of its seven members.

3. The Division of Occupational Licensing has not provided the Board with adequate investigative services. Because of this, many complaints made to the Board have gone uninvestigated or, if an investigation was done, it was not timely (see Recommendation No. 5).
4. Because of the high turnover of licensing examiners within the Division of Occupational Licensing, the administrative services to the Board have lacked continuity. We received complaints in response to the questionnaires we sent out that the service provided by OL was either very slow or non-existent.

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

1. During the 1979 Legislative session, a bill was passed that increased the maximum fine payable by violators of the statute which required pilots aboard registered vessels from \$1,000 to \$5,000. This is in the public's best interest because it should have more of a deterrent effect on potential violators than the \$1,000 maximum penalty did.
2. In 1977, a section was added to the statutes which required any oil tankers, whether registered or enrolled, to either pick up a State-licensed pilot or carry a federally-licensed pilot during its entire voyage. It is in the public's best interest to take extra precautions to regulate oil tankers. However, the Board has endeavored to regulate enrolled vessels, in spite of the fact that the State has no jurisdiction over these vessels because of federal laws.
3. In 1976, two public members were added to the Board of Marine Pilots by statutory amendment.
4. In 1978, a change was made to the Administrative Code (AAC 12.56.060(c)) which made the process of obtaining an extension of route easier. We believe this was a sensible change made by the Board, because it eliminated redundant paperwork.
5. Also in 1978, another section was added to the Administrative Code (AAC 12.56.080(b)(3)) which gave the Board the authority to restrict a pilot from piloting in a certain area if he

has not worked in that area for two biennial periods. The restriction remains in effect until the Board determines that the pilot has sufficient knowledge and experience to resume pilotage in that area. Testimony against the regulation was received by the Board from several marine pilots. Their major complaint against the regulation was that it would cause the independent pilots to lose one of the two areas (southeast and southwest) they had previously been licensed for, thus benefiting the associations since competition would be lessened (see Recommendation No. 2).

- IV. 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, and availability of service which it has provided.
1. The public is invited, by notices in the four major newspapers throughout the State, to the Board's meetings. However, in many cases, the notices are not published timely enough to allow a person interested in attending a meeting time to prepare for the meeting.
  2. At each of the last three meetings of the Board, there have been at least four persons, other than the Board members or support staff, in attendance at the meetings.
  3. From the responses to the questionnaires we sent to the licensed pilots and the agents and in talking to other persons such as representatives from the pilots' associations, we heard a number of complaints about the service provided by the Board. For example, requests had been made for copies of Board minutes and notification of changes in statutes and regulations. However, no response was received from the Board or the Division of Occupational Licensing.
- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
1. Until the January, 1979, the pilots' associations and the shipping industry were very involved in the Board's decision making, since they negotiated the tariff increases before they were approved by the Board. Input from

the associations and the shippers will still be welcome; however, in the future, the Board plans to take a more active role in approving tariff increases (see Recommendation No. 3).

2. As stated in Criteria IV, number 1, the public is invited to the Board of Marine Pilots meetings to give input about Board business.
3. The public also has a chance to give input about proposed regulations, since proposed regulations have to be published in the newspapers before they can become effective. In the public notices, the public is invited to make testimony on the proposed regulations.
4. One area where the public is not given notice of impending changes is with the tariff increases. Proposed tariff increases are not published in newspapers.

VI. 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.

1. Per Number 3 under Criteria II and Recommendation No. 5, the Division of Occupational Licensing has not provided the Board with efficient investigative services on complaints made involving marine pilots. As a result, the Board has been criticized by the U.S. Coast Guard, the shipping industry and other licensed pilots because it does not properly police the State marine pilots. Since the complaints have been made repeatedly, they apparently have not been efficiently processed and resolved.

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

1. Based on the requirements for licensure as a State marine pilot, the applicants should be qualified to pilot vessels in the inside waters of Alaska.
2. As stated in Number 2 under Criteria I, 18 per cent of the licensees either did not possess or did not show documentation of

possessing all of the qualifications required for licensure. Also, six per cent of the persons whose licenses were renewed, had not submitted documentation of having fulfilled the two-month requirement.

VIII. 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.

1. Applicants for a State pilot's license must by regulation be at least 25 years old. Age restrictions such as this have been found by the Alaska Legislature to be illegal and unnecessary.

IX. 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.

1. See Recommendations No. 1 through No. 7.

APPENDIXES

APPENDIX A

BOARD OF MARINE PILOTS  
REVENUES COMPARED WITH EXPENDITURES  
 Fiscal Year 1978  
 (UNAUDITED)

Revenues (see Schedule 1 and Note 1)	\$ 6,451
<u>Expenditures</u> (see Note 2)	<u>16,988</u>
Excess of Expenditures over Revenues	<u><u>\$ (10,537)</u></u>

*- increase -*

Schedule 1  
 Types of Revenue

<u>Revenues</u>	<u>Amount</u>	<u>Time of Collection</u>
Application and Examination Fee	\$ 10	With submittal of application
Temporary License Fee	\$ 50	With submittal of application
License Fee	\$200	Biennially

Note 1

Most of the revenues collected by this Board are comprised of license renewal fees. These fees (\$200) are collected once every two years, which causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, the revenue figure reported above is an average of the revenues collected in fiscal years 1977 and 1978, in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures includes those made by Board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for the efforts of other departments, such as the Department of Law, in assisting the Board and OL.

APPENDIX B

ADMINISTRATIVE STATISTICS

<u>Licensed Marine Pilots</u>	<u>As of May 1, 1979</u>
Number of pilots living in-State	31
Number of pilots living in other states	<u>16</u>
Total - Licensed Pilots	<u>47</u>
Number of pilots licensed to pilot in Southeastern Alaska	20
Number of pilots licensed to pilot in Southwestern Alaska	18
Number of pilots holding licenses for both areas	<u>9</u>
Total - Licensed Pilots	<u>47</u>
<u>Number of Board Meetings</u>	
Number of Board meetings in calendar years 1976-1978	6
Number of Board meetings in calendar year 1979 (as of May 1, 1979)	2
Average number of Board meetings per calendar year	2

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Note 1

Statistics on the number of exams given by the Board have not been kept, and therefore are not available.

APPENDIX C

SCHEDULE OF AVERAGE PILOTS' INCOMES

1978 Income of a member of the Southeast Pilot's Association	\$ 58,518 <sup>1</sup>
Average annual income of a member of the Southwest Pilot's Association	120,713 <sup>2</sup>
Average annual income for a member of the Puget Sound Pilots' Association	76,000 <sup>3</sup>

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Note 1

This figure was taken from a tariff increase request proposal submitted to the Board by the Southeast Pilots' Association in September, 1978. The tariff increase request proposed that the Southeast tariffs be increased enough, over a two-year period, to bring the members' salaries up to \$93,041 annually.

Note 2

This figure came from a staff report prepared for the Board of Marine Pilots by a tariff analyst employed by the Department of Law. The report was prepared to study the Southwest Pilots' Association's tariff increase proposal, which estimated average earnings at \$95,000 annually.

Note 3

This figure was taken from a supplement to the staff report prepared by the Department of Law, as described in 2 above.

APPENDIX D

QUESTIONNAIRE SENT TO BOARD MEMBERS  
(see Note 1)

1. What do you believe to be the goals and objectives of the Board of Marine Pilots?

Responses

*To provide for the maintenance of efficient and competent pilot service on all the waters of the State of Alaska to assure the protection of shipping, commerce and the environment and the safety of human life and property.*

*State regulation of pilotage.*

*Mediating between pilots and shippers.*

*Making, giving and grading exams.*

2. Do you feel the Board is achieving its goals as you perceive them in question number 1? Please explain how the goals and objectives are or are not being achieved.

Responses

*The goals are being met by regulating the qualifications and licensing of Marine Pilots.*

*The goals are being met by requesting the investigation of violations of the Marine Pilot statutes and regulations.*

*The goals are being met by regulating pilotage fees.*

*The Board moves too slowly on most matters. One of the items on the 1-30-79 agenda was at least 18 months old.*

3. Do you feel more emphasis should be placed on some goals and less on others? Please explain.

Responses

*All the goals are being adequately pursued except the investigation of violations, which if not improved, could lead to the erosion of credibility concerning the Marine Pilot Statute, harm to commerce and the marine environment of Alaska.*

*More emphasis should be put on safety.*

*The Board should be more efficient.*

4. Do you feel that the absence of State regulations for marine pilots would be detrimental to the public's best interests? Please specify your reasons.

Responses

Yes! High standards for Marine Pilots must be maintained to protect the orderly marine commerce of the State whether it be freight, seafoods, forest products or crude oil as well as protection of the marine environment from pollution from tanker or other vessels navigational accidents.

Yes. It would be a jungle without regulation!

Yes. The U.S. Coast Guard regulations do not cover vessels under registry. Without State regulations there would be no pilotage requirements for foreign vessels.

Yes. The Coast Guard could cover things but it would be in the State's best interest to have some control in the intra-state coastal commerce.

5. Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license? Please explain.

Responses

No. Qualifications for a State license require proof of shiphandling capability in addition to a Coast Guard pilot's license which does not require other than observation of the area or route.

The skills are largely the same, however some of the State regulations are more specific.

Not sure on exactness, but they are similar.

6. Why is it necessary for the State Board of Marine Pilots to require an examination for a State marine pilot's license in addition to the examination required for a Coast Guard marine pilot's license?

Responses

Questions of a nature more pertinent to actual piloting of a vessel in an area are asked in a State examination in addition to those pertaining to the physical features of the area as are generally asked in a Coast Guard examination. The questions are asked by practicing marine pilots while the U.S. Coast Guard and its personnel are not versed in piloting vessels.

6. (Cont'd.)

*The State exam concentrates more on local ports and conditions. The State exam has more details that need to be known on it.*

7. Do you think the State requirements for licensure as a marine pilot - i.e. requirement for a master's license, number of required dockings, and examination requirements - are reasonable? Too restrictive? Too loose? Please discuss your answer.

Responses

*Reasonable, any less restrictive and it would lead to erosion of the high professional standards required by marine pilots in the state of Alaska to protect its rich resources and the environment as well as commerce and safety of human life. These higher professional standards are needed in this State due to the more harsh and extreme conditions under which all commerce must operate in comparison to other areas.*

*Too restrictive - the Coast Guard license should be sufficient so far as written examinations are concerned. Ten dockings and undockings under AAC 12.56.030(5) (A) are more than necessary - three dockings and undockings should be sufficient. Twenty dockings and undockings under AAC 12.56.030(5)(B) could be made less restrictive. Perhaps some of the dockings and undockings could be supervised by individuals holding only a Coast Guard pilot's license for the area.*

*The requirements are reasonable.*

8. Do you think continuing education or reexamination should be required for the renewal of a State marine pilot's license? Please discuss your answer.

Responses

*Continuing education is always necessary and it is required by marine pilots in this State by submitting proof of experience or having worked in an area for license renewal. Experience is the best teacher in pilotage. Most pilot groups, in addition to on-the-job training for junior pilots, have programs for additional training including super tanker training at Grenoble, France and the simulators in New York.*

*No. The problem of discontinuing the license of an incompetent pilot exists, but the problem is not simple. The Coast Guard faces the same problem and there is no need for the State to duplicate their activities. The Coast Guard has more staff and budget to do this.*

*Yes. Some as any licensed pilot needs to have up-dated knowledge.*

9. Alaska Statute 08.62.040(a)(4) states that the Board of Marine Pilots shall regulate pilotage fees. Why do you think setting the tariffs should be a Board function?

Responses

*So that rates will be sufficient to support and attract highly qualified and competent marine pilots of a sufficient number to provide adequate marine pilotage services to all areas of the State where required by industry and commerce.*

*The basic function in rate regulation is to establish fair and equal rates. The State tariff should help control the "monopoly" situation created by the pilots' associations.*

*The Board is composed of the two groups who are directly concerned with tariffs - ships' agents and pilots.*

10. Is the staff of Occupational Licensing and/or other State agencies adequate to handle the administrative and enforcement needs of the Board? What staff support services are provided adequately? Inadequately?

Responses

*The staff of Occupational licensing should be adequate to handle the administrative needs of the Board. Personnel turnover and continual "new" people have made administration rather chaotic at times but hopefully that is being resolved. The enforcement of violations has been very poor due to lack of investigative officers and some cases slow down when the cases are finally passed on to the Attorney General's office.*

*We need continuity - there is too much turnover of the staff.*

*Reasonably adequate.*

*The support services are adequately provided, but the investigative services are inadequate.*

11. Are there any statutes or regulations that you believe are too obsolete, vague, unduly restrictive and/or inadequate to allow the Board to carry out its purposes? Please cite specific statutes and their weaknesses.

Responses

*Any statutes or regulations that are in this category, I believe, are being reviewed and changed by the Board.*

11. (Cont'd.)

AAC 12.56.030(5)(A) and (B) - dockings and undockings must be supervised by a State licensed pilot should be changed so that a pilot holding only a Coast Guard license can also do the supervising. AAC 12.56.030(5)(C) which requires the applicant to have done his dockings within two years prior to the date of application should be deleted - it is covered adequately by Coast Guard requirements.

AAC 12.56.030(6) - requirement for a physical exam should be deleted. It also is adequately covered by Coast Guard requirements.

AAC 12.56.030(7) - requirement that applicant be at least 25 years old should also be deleted. It may be unconstitutional.

The same requirements should be deleted from AAC 12.50.040 and 050.

12. What changes could be made to the Board which would improve its service to the public?

Responses

*I believe the Board is adequate to serve and protect the public if it gets proper assistance in upholding the statutes and regulations.*

*The public members have not been active.*

*The Board needs to take faster action on its decisions.*

13. Please add any other comments or suggestions that you believe would enable us to better evaluate the public need for the Board. Thank you for your cooperation!

Responses

*If the Board of Marine Pilots is abolished the State Pilotage Statutes would be meaningless and the effect would be chaotic on the commerce of the State of Alaska. Foreign vessels would come and go as they please having no concern for the environment and the safety of life and property within the State and answerable to no State agency. The high standards of qualification for marine pilots would erode if not governed and their rates regulated by the Board.*

Note 1

At the time this questionnaire was mailed to the Board members there were six members on the Board. Of the six questionnaires we sent out, we received four responses. The responses are summarized above.

APPENDIX E

QUESTIONNAIRE SENT TO THE  
LICENSED MARINE PILOTS

The following questionnaire was sent to the licensed marine pilots. For each question on the questionnaire, we have indicated the percentage of yes or no responses. We have also included examples of typical written comments for each question as compiled from the questionnaires (see also Note 1).

		<u>Percent of Response:</u>		
		<i>(See Note 1)</i>		
		<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
1.	<u>Do you feel that the absence of the State Board of Marine Pilots would be detrimental to the public's best interests?</u> <u>Please discuss.</u>	92	8	0
-	<i>The Board is needed to assure that only qualified pilots are licensed.</i>			
-	<i>The Board is needed to protect Alaskan waters from the risks posed by foreign vessels.</i>			
2.	<u>Do you believe the Board of Marine Pilots is operating in the public's best interests?</u> <u>If no, please explain.</u>	92	8	0
-	<i>Licensing pilots and investigating accidents is in the public's best interests.</i>			
3.	<u>How would you classify the present Board requirements for determining that an applicant has acquired the skill and knowledge necessary to function as a marine pilot (i.e. requirements for a Coast Guard master's and pilot's license, number of dockings required, and the examination requirements)?</u>			
a.	<u>too restrictive</u>	19		
b.	<u>reasonable</u>	69		4
c.	<u>not restrictive enough</u>	8		
	<u>Please discuss the reasons for your answer.</u>			
-	<i>The exam should be done away with because the Coast Guard exam is sufficient.</i>			

Percent of Responses  
(See Note 1)  
Yes   No   No Opinion

3. (Cont'd.)

- *The docking requirements are good - they require a pilot to demonstrate practical ship-handling experience.*
- *Dockings requirement is too restrictive because of a lack of ships in an area.*

4. Do you feel the Board has permitted all qualified applicants to obtain licensure as a marine pilot?

69   27   4

Please explain:

- *The Board has simply followed the letter of the laws in licensing.*
- *Applicants unwilling to play the political game have been discriminated against.*

5. Do you feel it is necessary for the Board to require applicants for a State marine pilot's license to take a State examination in addition to the examination required for a Coast Guard license?

77   23   0

Why or why not?

- *The State exam goes into more detail about local knowledge and shiphandling than the Coast Guard exam does - the exam should be kept.*
- *The State exam is an unnecessary duplication of the Coast Guard exam.*

6. In your opinion, is the State examination required for licensure as a marine pilot a fair and reasonable test of the skills and knowledge an applicant should possess in order to function as a marine pilot?

77   23   0

Please comment.

- *The exam is somewhat out-dated regarding lights, radio call signs, etc.*

Percent of Responses  
(See Note 1)  
Yes   No   No Opinion

7. Do you have any suggestions for improving the exam or exam procedures? Not applicable
- *The exam should be done away with - applicants should be licensed on the basis of their Coast Guard exams.*
  - *The exam questions should be updated.*

8. Do you feel the procedure for obtaining an extension of route is reasonable? 69   23   8

Can you think of any improvements that could be made to the present system of obtaining an extension of route?

- *The exams for extensions of route should only cover local knowledge applicable to the route being applied for.*

9. AAC 12.56.080(b) requires a pilot to have worked in a licensed deck officer capacity for two months in the area in which he was licensed during the last biennial period in order to get a State pilot's license renewed. The two months must have been worked within the last two biennial periods.

Do you think this requirement is:

- |                                  |    |
|----------------------------------|----|
| a. <u>too restrictive</u>        | 69 |
| b. <u>reasonable</u>             | 23 |
| c. <u>not restrictive enough</u> | 8  |

Please explain further.

- *The requirement is much too restrictive. A pilot may not be able to find sufficient work in an area to meet the requirement.*
- *A pilot should stay familiar with an area. Frequency trips are important.*
- *One orientation trip into an area should be sufficient to keep a pilot familiar with an area.*

Percent of Responses  
Yes No No Opinion

9. (Cont'd.)

- *The terms "area" and "licensed deck officer capacity" are too hard to define.*

10. Do you think continuing education or re-examination should be required for the renewal of a marine pilot's license?

23 77 0

Why or why not?

- *Reexamination should not be necessary as a pilot should keep himself knowledgeable in the areas for which he is licensed.*
- *Everytime a pilot goes aboard a ship he is continuing his education.*

11. Do you believe it should be the Board of Marine Pilots' job to regulate the tariffs marine pilots can charge for their services?

88 8 4

Why or why not?

- *By regulating tariffs, the Board eliminates competition.*
- *If the Board didn't set the rates, one of two things would happen: a) pilots would charge unreasonable rates, or b) the shipowners would work pilots against each other, causing rivalry and chaos.*

12. Are the skills required of a pilot holding only a Coast Guard pilot's license the same as the skills required of a pilot with a State pilot's license?

38 58 4

Please explain.

- *To obtain a State pilot's license, a pilot must demonstrate his shiphandling, local knowledge and practical navigation experience, whereas a pilot could get a Coast Guard license without ever having handled a ship.*



Note 1

Number of questionnaires sent to State licensed Marine Pilots	<u>54</u>
Number of Marine Pilots who responded	<u>26</u>
Response Rate.	<u>48%</u>

APPENDIX F

QUESTIONNAIRE SENT TO AGENTS

The following questionnaire was sent to nine shipper's agents who represent ship owners within the State of Alaska. Six of the agents responded (response rate of 67 per cent). For each question on the questionnaire we have indicated the number of yes or no responses. We have also shown the most typical written comments for each question as compiled from the questionnaires.

		<u>Number of Responses</u>		
		<u>Yes</u>	<u>No</u>	<u>No Opinion</u>
1.	<u>In your opinion, are marine pilots necessary to assure the safety of human life and property on board vessels within the inside waters of Alaska?</u>	6	0	0
	<u>Please explain.</u>			
	- <i>A vessel takes aboard a pilot to gain the benefit of his personal knowledge and experience as it relates to local waters and their hazards.</i>			
2.	<u>Do you think it is necessary for the State to regulate pilotage of those vessels which come under State jurisdiction?</u>	5	1	0
	<u>Please explain.</u>			
	- <i>The State should regulate pilotage aboard registered vessels because the Coast Guard doesn't regulate registered vessels, and they should be regulated by someone.</i>			
3.	<u>If the State Pilotage Act was repealed, would those shippers previously subject to the State Act continue to employ marine pilots?</u>	5	1	0
	<u>Why or why not?</u>			
	- <i>A majority of foreign vessels would continue to employ pilots. Whether a U.S. vessel under registry would employ a pilot would depend on the experience and local knowledge of the vessel's master.</i>			

Number of Responses  
Yes    No    No Opinion

- |    |    |   |   |   |   |
|----|----|---|---|---|---|
| 4. | a) | <u>Do you think the State Board of Marine Pilots should be setting the tariffs marine pilots charge for their services?</u>   | 4 | 2 | 0 |
|    | b) | <u>Do you think marine pilotage fees should be decided upon by the shipper (or agent) and the marine pilot, leaving the Board of Marine Pilots out of the decision?</u>   | 2 | 4 | 0 |
|    | c) | <u>Please explain your answers to the above questions.</u>  |   |   |   |
|    | -  | <i>The Board should regulate tariffs because there appears to be a monopoly operation of pilotage in Alaska, which must be regulated by a government agency.</i>  |   |   |   |
|    | -  | <i>The time spent by the Board in analyzing tariff increases has not been adequate.</i>   |   |   |   |
|    | -  | <i>Each district should set its own tariff fees based on the difficulty factors of the area.</i>  |   |   |   |
| 5. | a) | <u>In your opinion, is the present system of negotiating tariff increases (i.e. setting up an industry-pilot association negotiating team which then makes its recommendation to the Board) an adequate system?</u> | 4 | 2 | 0 |
|    | b) | <u>Do you have any suggestions for improving the system?</u>  |   |   |   |
|    | -  | <i>Let the pilots and industry negotiate tariff increases but keep the State out of it.</i>   |   |   |   |
|    | -  | <i>The present system is the only fair approach.</i>  |   |   |   |

6. Do you find that employing pilots through a pilots' association is an advantage or a disadvantage to your business?

a. advantage	2	
b. disadvantage	1	1
c. both	2	

Please explain.

- *We prefer to have the same pilot handle our vessels because he is completely familiar with the vessels' handling characteristics.*
- *We do not have control of a pilot hired through an association.*
- *An association provides an efficient dispatching service.*
- *Because of the associations, competition is non-existent.*
- *The associations have too much control over future potential pilot applicants.*
- *Independent pilots have little input into rate and other regulatory matters.*

7. Are there any other comments you would like to make about the Board or its activities? Thank you for your cooperation in filling out this questionnaire!

- *There is no enforcement or investigation of accidents or violations.*
- *In general, the Board has failed to take an active part in the pilotage problem.*

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SEP 20 1979

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LEGISLATIVE  
AUDIT

Sept. 24, 1979

State of Alaska  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Gentlemen:

The following is my response to the Legislative Audits preliminary report, "A Performance Review of the Board of Marine Pilots - June 15, 1979".

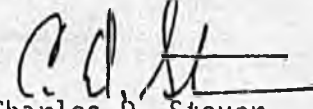
In general, I agree with the report conclusion: The board should continue to regulate and license the marine pilotage profession.

I disagree with the recommendation to discontinue the requirement for State - administered examinations. I think testing rules of the road is a duplication of Coast Guard testing and should be discontinued. I think the number of examination questions should be reduced to cover certain items usually not covered by the Coast Guard exams. I think the oral examinations should be continued.

I do not particularly disagree with the other recommendations.

I think the docking and undocking requirements by state law are to restrictive and should be changed somewhat. This is one important point and I feel that the audit report touched too lightly on this subject. This matter deserves further investigation by the audit division.

Very truly yours,

  
Charles D. Stover  
Board Member

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

Letter obtaining info  
from Am. Pilot Association.

George A. Quick  
President  
Ass. of Maryland Pilots

# ASSOCIATION OF MARYLAND PILOTS

1316 SOUTH BAYLIS STREET

BALTIMORE, MARYLAND 21224

TELEPHONE  
342-6013

TELEPHONE  
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October 26, 1979

To The Trustees and Members of the American Pilot Association

Re: The Role and Function of a Pilot

The enclosed paper was presented at a recent symposium held in Washington D.C. in September of 1979.

Since it represents a departure from commonly held views, some explanation of the circumstances and reasons for the position taken in the paper should be offered.

Pilotage is coming under greater scrutiny by the political institutions than at any previous time. On the Congressional level we've had recent moves to place licensing under Coast Guard control, and a current GAO report to Congress recommends such action. On the State level we have Sunset Laws in many states that cause the compulsory pilotage laws to self-destruct periodically and place the burden on the pilot to prove that his continued existence and state protection serve the public interest. On the International level we have IMCO considering international standards on the training, qualification and operational procedures for pilots; and the International Association of Ports and Harbours defining the role and function of the pilot.

With the emphasis in government today on the creation of a society completely free of risk, we can expect continued scrutiny and examination of the pilot's role in protecting the safety of the ship, the public and the environment from the consequences of marine casualties.

If we must stand in the glare of the public spotlight periodically and undergo a political "physical exam" we should make it clear that we exist to serve the public interest, that we are aware of our public responsibilities and that we are deserving of the protection of the State.

Acceptance of shipping management's definition of the role and function of the pilot as "a servant of the vessel" who "advises the master" places us in the untenable position of justifying our protected status under State laws on the basis of satisfying the

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private interests of the shipowner. If our official position before the public in a political forum, such as Congress or a State Legislature, is as the advisor and servant of the ship filling a purely private interest need of the owner to expedite the ship's schedule for commercial reasons, we will have little claim to public protection. Unless our public role is emphasized to a greater degree there is a very good possibility that the public, i.e. the political institutions, will see our disputes with an antagonistic shipping management as purely a labor/management struggle. When the issues of sunset review, pilotage rates, regulatory boards and other matters affecting pilots arise we must be prepared to show that the public has a stake in protecting the pilot from the domination and control of shipping management. Past experience has shown that shipping management invariably attempts to exploit any weakness or failing on our part to denigrate the role and function of the pilot in order to gain the upper hand in rates, regulation, licensing or control over our profession.

Acceptance of a definition of a pilot in terms that characterize him as a servant who advises the master creates a very weak and misleading public image that does not reflect the actual situation on the bridge of a ship. In order for a pilot who has the conn to be described as an "advisor" requires construing the term in a manner quite different from its commonly understood meaning. It conjures up a picture in the average layman's mind of a master actually maneuvering his vessel with a pilot sitting in the background and available for comment or consultation on local conditions. This is the image frequently offered by the opposition when pilotage rates or regulations are being discussed and the image creates an obstacle to the recognition of our true worth.

There has been a reluctance in the past to assert ourselves on the issue of the pilot's role and function. This has probably been due, in part, to a hope that the advisor designation might offer some protection from liability after a casualty. It is clear from reviewing the court cases dealing with pilot liability that it makes little difference whether the pilot contends that he is in control of the navigation or merely serving as an advisor, if a casualty occurs because of his negligent actions, be they orders or advise, he is liable for the damages.

It would seem that there is no benefit in accepting management's characterization of our role and function aboard ship. We should develop our own view of the part we play in the industry and the interests we serve and protect, and that position should be readily

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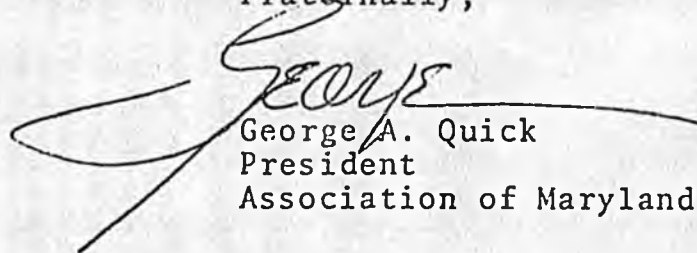
understandable to the layman and justifiable to the political establishment.

The paper and recommendations attached represent a personal viewpoint and policy based on the experience in Maryland--- other pilots with different experiences may hold different viewpoints.

As a trustee of the American Pilot Association I would like the views expressed to serve as a starting point for discussion between us leading to the development of a national policy on pilotage matters. If we don't take the initiative in defining our own goals and role, we may find the AIMS position paper prevailing by default.

I would greatly appreciate your comments.

Fraternally,

A handwritten signature in cursive script, appearing to read "George A. Quick", with a long horizontal flourish extending to the right.

George A. Quick  
President  
Association of Maryland Pilots

NATIONAL ACADEMY OF SCIENCES

SYMPOSIUM ON PILOTING AND VESSEL TRAFFIC SYSTEMS

SEPTEMBER 12-13, 1979

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PILOTAGE

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by George A. Quick, President  
Association of Maryland Pilots

## PILOTAGE

by George A. Quick

I've been given 40 minutes and the promise that I was free to express my views on maritime pilotage in the United States with emphasis on problem areas and possible solutions. Since it is my belief that one of the major problems is a lack of understanding of the role and function of a pilot, even among many pilots, I am going to seize this opportunity to discuss pilotage as an institution from my viewpoint.<sup>1</sup> Knowing that my views won't be shared by everyone, I've attached references or annotations to explain or support the basis of my beliefs.

Before we can get into the finer points that require discussion, I should first describe the pilotage scene as it exists in the United States today for the benefit of those in the audience who aren't familiar with the subject.

All maritime nations since ancient times have offered inducements for mariners to become pilots and maintain pilotage systems for the protection of shipping.<sup>2</sup> We may not be the oldest profession

but we are certainly the oldest regulated profession.<sup>3</sup> The Colonial Legislatures had pilotage laws in effect prior to our becoming a nation.<sup>4</sup> The first Congress assembled after the adoption of the Constitution in 1789 realized that the delegation of the right to regulate interstate and foreign commerce granted to the Federal Government by the Constitution would interfere with the pilotage systems and regulations in place in the various states and quickly passed an Act that left pilotage under state control.<sup>5</sup>

The state laws generally provided for a system of regulated public pilots who conducted ocean-going ships to and from the sea and whose terms and conditions of service were established by law.<sup>6</sup> Pilotage remained exclusively a public service under state control until 1871 when Congress acted to provide for the federal licensing of pilots on steam vessels engaged in the coastwise or interior commerce of the country.<sup>7</sup> At that time steam engines were considered inherently dangerous and many laws were being passed to protect the public from this new threat created by the Industrial Revolution. Since many state laws exempted ships engaged in strictly coastwise or interior commerce from the requirement of taking aboard a public pilot, Congress felt there was a need to insure

that these new and dangerous vessels driven by steam employ someone familiar with the waters over which the vessel was navigating.

This new Act of Congress by creating a different category of federally licensed "pilots" who were employees of the ship and who often were actually the master or other officer acting as "pilot" by virtue of an additional endorsement on his license has caused confusion in defining the term "pilot" and in defining the role and function of a pilot.

The term "pilot" in the United States is used to describe two entirely different sets of relationships:

1.) It can refer to a federally licensed employee of the ship who is subject to the selection and control of the shipowner and whose terms and conditions of employment are determined by mutual agreement. The relationship is the common law one of employer and employee.

2.) It can refer to the state licensed publicly regulated pilot who is not subject to the selection and control of the shipowner and whose terms and conditions of service are established by statute and not subject to negotiation.<sup>8</sup> The relationship is created by compulsion of law and defined by the state compulsory pilotage statute and decided court

cases applying principles of maritime law.

In simple terms, the federally licensed "pilot" is acting in a private capacity on privately agreed terms and conditions, and the state licensed "pilot" is exercising a public function on publicly regulated terms and conditions.<sup>9</sup>

The legal text writers and the court decisions attempt to avoid confusion by generally referring to the pilot acting in a private capacity as a "voluntary" pilot and referring to the pilot exercising a public function as a "compulsory" pilot although the distinction still becomes blurred in some contexts.<sup>10</sup>

In a sense the coastwise seagoing vessel is compelled under the 1871 statute to employ a federally licensed pilot in the same manner as it is compelled to employ a specified complement of licensed officers and engineers or certified seamen, but that is not the type of compulsion referred to in the distinction between "voluntary" and "compulsory" pilotage. In the "voluntary pilot" situation the employment contract is by mutual agreement between the shipowner and the employee pilot, even though the shipowner is naturally compelled to select his employee from among a class i.e. federally licensed pilots. In the "compulsory pilot" situation the pilot is forced

on the shipowner by compulsion of law and under terms and conditions established by law. The concept of "compulsory pilotage" excludes any right of the shipowner and pilot to mutually agree on the terms of their relationship. The right of selection and control, as well as the terms and conditions of service are not properly the subject of negotiations, they are established by the state to serve the state's superior interests.

The British and Canadian practice is to avoid the confusion by legally defining a "pilot" in the following terms:

"'pilot' means any person not belonging to the ship who has the conduct there"

Canada, Pilotage Act, Sec. 2(i),  
(1971)

Great Britain, Merchant Shipping  
Act of 1894, sec. 742, amended  
by Pilotage Act of 1913.

Under their definition employees of the ship who navigate the vessel in pilotage waters are not considered to be, nor licensed as, pilots.

Under British and Canadian practice an employee comparable to our federally licensed pilot would be granted a pilotage certificate, as distinguished from a license, exempting the vessel on which he serves from the obligation of taking on board a licensed public pilot. The pilotage certificate is issued

for a one year period on the basis of relatively limited experience, probably obtained only on the ship employing the certificate holder, and is restricted to the ship named on the certificate.

The issuance of a license as pilot is limited to those who undertake piloting as a distinct profession, with substantially higher standards similar to our state licensing procedures, and whose terms and conditions of employment are the subject of public regulation.

It seems to me that this avoids the unhappy situation where no distinction is made between the professional pilot with broad experience exercising a public responsibility and the company employee with relatively limited experience who works for the shipowner in a private capacity.

There is a vast difference in the training, experience, perceived duties and responsibilities, working relationships, legal relationships and attitudes that separate the federally licensed employee pilot and the state licensed public pilot. An understanding of the differences is necessary if we are to progress further in our discussion of the pilotage scene.

The state licensed pilot is regulated by state statutes creating "compulsory" pilotage. His state license is both a certificate of competency and a

franchise as a public service requiring him to assume public obligations in maintaining pilot stations and operating a pilotage system. The rights, duties and obligations of the owner, the ship, the master and the pilot are created by law and not by mutual agreement between the parties. Common law principles governing the usual employment contract have no application.

The general scheme in effect throughout most of the world is one in which a vessel approaching the coast with the intent of making port has a compulsory obligation to accept a local pilot skilled in navigating those waters and knowledgeable as to local hazards, place him in charge of the navigation of the ship, and pay the fee for his services prescribed by local law.<sup>11</sup> The purpose is to protect the safety of shipping by assuring a complement of pilots will be available when needed at designated locations (pilot stations) and by placing navigational control of the ship in the hands of a qualified local expert when the ship is in a high risk area.<sup>12</sup>

As part of their franchise as a public service it is compulsory for the pilots to maintain pilot boats on established stations known to all mariners, to keep a complement of qualified pilots available to render services at all times, to go to any ship needing his services without discrimination or choice and to provide his services under legally established terms and conditions, and for a fee prescribed by law and published in a tariff.

In order to comply with his obligations under a compulsory pilotage statute, the individual pilot has to devote a considerable part of his early years to education and training to develop professional expertise,<sup>13</sup> he has to invest his capital in his share of pilot station vessels, launches, offices, shore stations, communications equipment, automobiles and all the other equipment and facilities needed to maintain and operate an essential service to shipping within his pilotage district, he has

to be responsible for and employ on his pilot station vessels a considerable work force of masters, watch officers, engineers, launch operators, seamen and stewards, as well as an office staff of dispatchers, drivers and administrative personnel needed to operate a pilotage system at a major port. He undertakes these obligations on speculation as to the future needs of shipping at the port he serves and with no guarantees or contractual obligations from the shipping industry to protect his investment or future income.

Compulsory pilotage is the creation of law, not of contract. It is regulated in much the same manner as a public service company and charged with the public responsibility of rendering pilotage services to vessels. The pilot is in no sense the employee or servant of the shipowner or the vessel he pilots. The shipowner is not personally liable for the acts or negligence of the public pilot,<sup>14</sup> although the ship is liable "in rem" under American law. He is required to be accepted by the vessel and placed in charge of her navigation to serve the state's interest in protecting life and property - and in today's world, the environment - from the hazards of navigation.<sup>15</sup> He sees his duty and obligation as being owed to local political authority and the public, rather

than to the shipowner in the role of an employer. The public nature and regulation of the terms and condition of his service protect and insulate him from the demands and pressures that can be placed on an ordinary employee to compromise the margins of safety.

In contrast the federally licensed pilot is a common law employee of the shipowner serving in a private capacity. The shipowner has the right of selection and the right to exercise control over his employees in the performance of their duties.<sup>16</sup> The terms and conditions of employment are privately agreed to with the shipowner. The prospects of future employment are dependent upon how well the employee satisfies the demands placed upon him by his employer. The master and the federally licensed pilot work for and are answerable to the same employer and are licensed by the same federal agency, the Coast Guard. In some cases the master and pilot may in fact be the same person serving in a dual capacity. This lack of independence and the absence of checks and balances should give the public cause for concern when they consider that the sea-going coastwise tankers are exempt from the protection of state compulsory pilotage laws. The majority of them are navigated on our inland waters by company employee pilots or masters serving in the dual capacity of pilot.

The 1971 collision of the ARIZONA STANDARD and OREGON STANDARD under the Golden Gate Bridge in San Francisco is a good illustration of the consequences of exempting coastwise tankers from state compulsory pilotage laws. Both tankers were under the sole control of masters attempting to perform as pilots on the basis of a Coast Guard endorsement, and under pressure to move their ships in spite of the unacceptable visibility and limited experience they possessed. The resulting oil pollution and national publicity was one of the driving forces behind the Coast Guard's move to establish Vessel Traffic Systems. As an alternative to a massive effort to install expensive and sophisticated electronic systems of doubtful effectiveness, wouldn't it have been wiser to consider efforts to insure the competency of personnel handling ships by increasing the amount of experience and recency of service requirements for licensing; and if the vessel is large enough or carrying oil or hazardous cargoes, so as to present a threat to the environment or the public, her movement be under compulsory pilotage so as to insulate the pilot from

commercial pressures? Both the legislatures of California and Washington attempted to do just that, as a response to the threat of oil pollution in their waters, by attempting to pass state legislation placing large oil tankers in coastwise trade under state compulsory pilotage laws. Both attempts failed, the Washington effort going all the way to the U.S. Supreme Court, because of pre-emption of the field by the Congressional Act of 1871, which places exclusive regulation in the Coast Guard.

I've spent a fair amount of time discussing the contrasting roles of the federal and state licensed pilots, and I am afraid this may create the erroneous impression that federal licensed employee pilots are a major factor in the piloting of large ocean-going ships. They are not. Their employment is limited to a very small number of sea-going ships engaged in the coastwise trade. To put the situation in numerical perspective there are about 1200 compulsory pilots nationwide and there are probably less than 50 federally licensed employee pilots working regularly, primarily employed on coastwise tankers of the major oil companies. The vast majority, probably well over 95%, of ocean-going ships moving on the inland waterways are under the control of state licensed public pilots operating in a compulsory pilotage

system.

I believe there is not sufficient understanding or appreciation of the concepts underlying compulsory pilotage and how it functions to protect and insulate independent decision making effecting the safety of the ship from commercial pressures by placing navigational control in high risk areas in charge of a compulsory public pilot who does not "belong to the ship," i.e. free of the shipowner's interest and control.

Although compulsory pilots hold licenses issued by the state, they also hold federal pilot licenses as that is generally one of the first steps in beginning a career as a professional pilot. I have experience in serving in both the "voluntary" private employee pilot and the "compulsory" public pilot capacities. Keeping the foregoing in mind, I would like to express my views on some aspects of piloting.

#### THE COMPULSORY PILOT AND MASTER RELATIONSHIP

The personal relationship between the master and the pilot is invariably a friendly one, based on mutual respect and a common heritage as professional seamen regardless of nationality. They both have the same goal, a safe and expeditious transit of the ship over the pilotage route. Their interests seldom conflict and I doubt if either gives much thought to the finer points of their legal relationship.<sup>17</sup>

Custom, history and tradition dictate the practical working arrangement worldwide as shipping is international in character and the relationship has to be uniform and standardized regardless of the flag the ship flies or the differences in nationality of the pilot, the master and the crew. The relationship is not a subject matter for discussion between them, it is known and understood from long experience and cannot vary from ship to ship because the pilot, the master or shipping management would personally prefer some other relationship.<sup>18</sup> To permit any variation would cause great confusion as to the role and function of both the master and pilot, and the rights and obligations each owes the other.

The law governing the relationship reflects general shipboard practice and can be found in the works of legal text writers and the court decisions that define the duties and obligations.<sup>19</sup> They are the result of centuries of maritime history and tradition that have developed the basic principles.<sup>20</sup>

The first and most important legal principle is that the compulsory pilot is not the employee, servant, or agent of the shipowner, the ship, or the master. He is placed aboard by the state with the conditions of his service fixed by

law. The shipowner or master has no right of selection or control over him. The compulsory pilotage statute insulates him from the commercial interests of the shipowner and protects him from coercion. His fee is set by law and he can receive no increase in fee for accepting greater risks nor be penalized with a lesser fee for taking precautions in conflict with the owner's interests. His future employment does not depend upon satisfying the demands of the shipowner to maintain schedule or move the vessel with unacceptable margins of safety. He is free to exercise independent professional judgement as to the acceptability of the risks. The public nature of his role leads him to place a higher priority on the protection of life, property and the environment than the master who has to consider all decisions in the light of the owners commercial interest. The compulsory pilot's autonomy and independence are, I believe, the single most important safeguard that exists in the shipping world.

Unfortunately most of the management people we deal with on a day to day basis generally do not have a background that includes shipboard experience and they don't fully understand the pressures and responsibilities placed on the master and how the master/pilot relationship functions as a buffer against

shoreside management pressure. The usual shore personnel we encounter have a strong background in traffic, terminal operations, stevedoring, freight solicitation or other related job categories that have a heavy emphasis on cost effectiveness, competitive advantage, and maintenance of schedule. These attitudes unfortunately impact on the master and he may rightly believe that his future employment may depend upon how well he handles the conflicting demands of ship safety and the shipowner's commercial interest. In a recent survey of ship masters, 40% indicated that maintaining schedule was the prime criterion in judging their job performance, and 50% indicated that there was strong pressure to meet schedules even under poor conditions.<sup>21</sup> It is not unusual to have an apprehensive master faced with a risk he sees as unacceptable to seek shelter from his owners under the compulsory pilot's cloak of insulation by indicating diplomatically that it would be appreciated if the pilot accepted the responsibility for the decision not to attempt the transit under the existing conditions. It is clear that, considering the exposure to risk that large ocean-going ships are subjected to in confined pilotage waters, the casualty rate would be far higher if it were not for the freedom of compulsory pilots to exercise their own best judgement without fear of management retaliation.

The second principle is that the pilots pay a price for the independence and insulation from shipowner

control that they derive from compulsory pilotage statutes.

If the control over navigation is taken away from the shipowner and the master and placed in the hands of the compulsory pilot under operation of law, with no right of selection and control, the shipowner and master are released from personal liability for the acts of the pilot - as he is not their employee or servant.<sup>22</sup> The pilot stands alone and a leading text on Admiralty law states it rather succinctly:

"He so far is in charge of the ship that his errors expose him to appalling consequences....If he injures the vessel which employs him he is liable for the damages. If through her he injures other property, he is liable for that as well, and if the vessel employing him is by his act exposed to liability to the other vessel, he is liable over to her."

Robinson on Admiralty, p. 697

The potential personal exposure to liability that the pilot has when he assumes responsibility for a multi-million dollar ship is for all practical purposes uninsurable as the premiums would approach or possibly exceed the pilotage charges. If he attempted to have the cost of insurance included in the pilotage tariff it would be met with strong shipowner opposition as the owner's basic insurance already covers the owner for the acts of the pilot, and if the pilotage charges also included the cost of liability insurance, the owner would in effect be required to pay for the same

coverage twice. If he attempted to negotiate an exculpatory contract or indemnification agreement with the shipowner, as is common with voluntary pilots acting as docking masters, it would probably fail as his relationship with the shipowner is not a contractual one subject to negotiated terms.<sup>23</sup> The end result is that the compulsory pilot steps on the bridge of a ship and takes charge with a horrendous uninsured personal liability hanging over his head. Management frequently belittles that risk by claiming the owner's recourse against the pilot is financially unreal, as the pilot does not have the resources to pay for the damages he could incur. That makes little difference to the pilot, he is liable for all he owns and faces the possibility of bankruptcy if harm comes to the ship through his error. The fact that pilots are not sued more frequently and placed in bankruptcy is an act of compassion on the part of Admiralty lawyers and insurance companies.

The potential liability has always colored the pilot's attitude. He will not share responsibility or become involved in navigation by committee. He will demand having effective and absolute control over the ship, if there is any intentional or substantial interference by the master with his control he will probably consider himself displaced and leave the bridge

so there will be no question of who was in charge when the casualty occurs. It should be remembered that the relationship of the pilot to the ship is that of a stranger and in the event of a casualty it may be difficult for the pilot to prove the actual circumstances, be it intentional interference, delay in carrying out orders or error on the part of the ship's personnel. The compulsory pilot has far more than action against his license and a suspension at risk when he takes charge of a ship.

The third principle is that the pilot does not serve in an advisory capacity.

The "Report of the Royal Commission on Pilotage"<sup>24</sup> contains a detailed analysis of the British and Canadian statutory definition of the term:

"'pilot' means any person not belonging to a ship who has the conduct thereof."

The Royal Commission decided that to conduct means:

"to have charge and control of navigation; in other words, of the movement of the vessel," and "Similarly, if anyone is merely used as an advisor and not entrusted with the navigation of the ship, he is not the pilot of that ship."<sup>25</sup>

The Royal Commission, after reviewing the actual practices followed aboard ship concluded:

"The pilot does not act as an advisor to the Master but actually navigates the ship. In point of fact the Master is then, to a certain extent, an advisor to the pilot when he points out the peculiarities of the ship. ....This factual situation which corresponds to the legal definition of 'pilot' is, in fact, the only realistic solution because, if pilots were used merely as advisors, navigation would be very hazardous and, at times, it would be impossible to proceed safely..... The first course a ship is committed to is frequently the last. If bad judgement has been used, the result is inevitable and swift.... ....The legislation of most countries recognize the realistic situation that there is not time for advice, consultation and deliberation between the pilot and Master and that the pilot must navigate the vessel himself. How this situation is covered in legislation is a question of semantics,..."<sup>26</sup>

The authoritative legal text "Corpus Juris Secundum" states the law as derived from the American Court decisions to be:

"Generally, while exercising his functions, a pilot is in sole control of the navigation of the ship and his orders must be obeyed as in effect orders of the master. While a pilot who is in charge of a vessel supersedes the master in so far as the navigation of the vessel is concerned, the master does not surrender his vessel to the pilot and the pilot is not the master; the master is still in command of the vessel, notwithstanding the presence of a pilot. There are occasions when the master may and should interfere and even displace the pilot. Thus, the master may properly displace an obviously incompetent or intoxicated pilot, and the circumstances may be such

as to require the master to displace a compulsory pilot because of incompetency or physical incapacity. If, however, the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot, but not blindly. In order to be justified in displacing a pilot, the master should be sure that the pilot is for some reason incompetent, and the master or other officer is not bound to interfere with, or to displace, the pilot, if the pilot is not making an obvious mistake, or danger from his acts is not imminent. The view has been expressed that, even where the master deems a compulsory pilot incompetent, the master is not under an absolute duty to displace the pilot."<sup>27</sup>

The American court decisions have dealt in broad terms with the relationship between the master and the pilot, and the right or duty of the master to displace a pilot.<sup>28</sup> But, they have not explored the finer points of the division of control between the master and the pilot to the same extent as the British courts. Prior to 1913, British law held both the owner and the ship free of all liability for acts of compulsory pilots, so many cases arose determining the role and duties of a pilot and whether the action causing the damage was properly within the duty of the master or the pilot. Since limitation was only granted on the basis of sole fault of the pilot, the cases generally attempted to include the master's lack of vigilance as contributing to the accident

so as to avoid the injured party being forced to look only to the pilot. For a discussion of the problem see THE CHINA, 7 Wall. (U.S.) 67, (1868.) Due to the International nature of maritime law and pilotage, and in the absence of American cases holding to the contrary, the British decisions are applicable to the division of control between the master and the pilot on ships engaged in foreign trade in United States' waters, the compulsory pilot situation.

G.K. Geen, the author of "The Law of Pilotage" includes in his excellent work a review of the British case law on the division of control between the master and pilot.<sup>29</sup> He has concluded:

"The attitude of the courts to the master-pilot relationship is based on precedents created more than a century ago, the guiding principle of which has been throughout that the paramount danger to a ship under pilotage is that created by a 'divided authority.' Attention was drawn to this danger on innumerable occasions, but was perhaps put most succinctly by Dr. Lushington in the case of THE PEERLESS in 1860:-

'There may be occasions on which the master of a ship is justified in interfering with the pilot in charge but they are very rare. If we encourage such interfering, we should have a double authority on board, a divisum imperium, the parent of all confusion, from which many accidents and much mischief would probably ensue. If

the pilot is intoxicated, or is steering a course to the certain destruction of the vessel, the master no doubt may interfere and ought to interfere, but it is only in urgent cases.'

It would appear, however, from what has been deduced so far, that the legal relationship between the master and the pilot is based on principles which are contradictory:-

- (i) that division of authority is inimical to the safety of navigation.
- (ii) that the pilot, by definition, has the conduct of the ship.
- (iii) that the master, by definition, has command or charge of the ship, a definition which specifically excludes the pilot.

In order to reconcile these apparent inconsistencies it becomes necessary to:-

- (i) differentiate between the expressions 'to conduct a ship' and 'to be in command of a ship'; and
- (ii) draw up a code of procedure for vessels under pilotage based upon legal decisions, which defines the respective duties of the master and the pilot.

With regard to the first of these requirements it is evident that confusion as to the difference in meaning between these two terms is not confined to the layman. The words of Bargreave Deane, J., for example, in the case of THE NORD would indicate that he considered the two expressions to be synonymous when he said:- 'I think the word 'conducted' means that the pilot is in charge...he is in command.' The Canadian Royal Commission,

however, drew a very careful distinction between the two expressions thus:-

'To conduct a ship' must not be confused with being 'in command of a ship.' The first expression refers to an action, to a personal service being performed; the second to a power. The question whether a pilot has control of navigation is a question of fact and not of law. The fact that a pilot has been given control of the ship for navigational purposes does not mean that the pilot has superseded the Master. The Master is, and remains, in command; he is the authority aboard. He may, and does, delegate part of his authority to subordinates and to outside assistants whom he employs to navigate his ship, i.e., pilots. A delegation of power is not an abandonment of authority, but one way of exercising authority.'

With regard to the second requirement, having established that both the pilot and the master have active roles to play, it becomes essential that the duties of both should be clearly defined in order to minimise the dangers which are inherent in the 'divided authority' situation."

G.K. Geen then goes on to analyze and cite British cases pertaining to the general duties of the master and pilot,<sup>30</sup> the legal meaning of interference,<sup>31</sup> keeping a lookout,<sup>32</sup> observance of collision regulations, sound signals, private sound signals,<sup>33</sup> whether to proceed,<sup>34</sup> anchoring, speed,<sup>35</sup> and the use of radar.<sup>36</sup>

From his analysis it is apparent that the British and American law respecting the role and function of a

compulsory pilot are consistent.

He is to be placed in navigational control of the ship and give all orders effecting the navigation of the ship, i.e. rudder orders, courses, speed, anchoring, weighing anchor, whistle signals, and the like. He is entitled to the cooperation of the master and crew and they are to see that his orders are carried out and are not to interfere with his control of the navigation unless the pilot is manifestly incapacitated, incompetent, or placing the ship in clear and imminent danger.

In the "voluntary" pilot situation where the pilot's status is one of an employee the law states that the vessel shall "be under the control and direction of pilots" licensed by the Coast Guard. (The Act of 1871, now found in 46 USC §364). On the surface it would appear he has nearly the same role to play in navigating the ship as a compulsory pilot, but his employee status and relationship with the master interfere with his insistence on effect control. After all, the employee pilot thinks, he and the master are employed by the same shipowner and answerable to the same licensing authority, the Coast Guard. Rightly or wrongly, he feels the master is a fellow employee in a supervisory capacity with the right to interfere with or control his actions and the right to overrule his decisions. The employee has to accept interference and control cheerfully or risk loss of

employment or being banned or refused by that company's ships in the future. There is a tendency to be reluctantly seduced or coerced into situations that wouldn't be tolerated on ships under compulsory pilotage - where the pilot's responsibilities are clear and his role is protected.

THE COMPULSORY PILOT AND MANAGEMENT RELATIONSHIP

On a policy making level, our contacts are limited to national trade associations representing companies that own and operate ships and local trade associations that purportedly represent the shipowner's interests, but in actual fact are representing local port business interests, i.e. stevedoring, terminal operations, warehousing, freight forwarding, ship agencies. etc.

It appears to us that the trade associations see their role as limited to an adversary one. the national association being primarily interested in fostering legislation or governmental regulatory policies that favor their shipowner members and the local associations focusing on competitive costs that may enhance their local businesses. The unfortunate result is that much of the dialogue between representatives of industry and pilots occur over the issues of control

over or cost of pilotage services in an antagonistic climate. The lack of a forum to discuss mutual problems and concerns on a co-operative basis leads to many misunderstandings. The differing perceptions of the role and function of a pilot further compounds the problem.

The pilot sees his role as one of serving a mixture of both private and public interests. His role in expediting the movement of the ship to make schedules, avoiding lost shoreside labor commitments, carrying the optimum cargo capacity through the available channel depths, and protecting the safety of the ship he is aboard are basically serving private industry needs. His role in maintaining a compulsory pilotage system as a public service with public responsibilities has already been discussed.

Not unnaturally, industry representatives place greater emphasis on the private role of the pilot in discussions and tend to perceive the pilot as a quasi-employee of the ship serving a private interest objective. This view leads to a developing trend to speak of the pilot as "a servant of the ship" who functions as "an advisor to the master," and "utilizing" the pilot in

a "team effort" in the navigation of the ship. Such terminology re-enforces the perception of the pilot as serving private needs at the expense of his public responsibilities. The terms convey an impression of the pilot's role and function that is not found in maritime law or in actual shipboard practice.

Our concern over attempts to depict the pilot as an "advisor" to the master is twofold--the first and obvious one is that any attempt to discount our real responsibilities will diminish our standing in the maritime community and weaken our claim to adequate remuneration for our training and responsibilities. Secondly, and of more importance to the public, if the pilot's role can be downgraded to an "advisor" to the team, what happens to his right and duty to refuse to move a ship when the circumstances are unsafe due to inadequate keel clearance, reduced visibility, deficient equipment or crew or any other reasons?

It should be borne in mind that about 80% of the ocean-going ships transiting our inland waters are foreign flag with masters and officers licensed by foreign nations.<sup>37</sup>The control over their conduct and license rests abroad in the governments of Liberia, Panama, Singapore, Korea, Russia, Poland, Turkey, Cyprus and other traditional maritime nations. The only American presence aboard with a sense of obligation

and responsibility to the local community and its political institution is the pilot. When a vessel is under pilotage it may be appropriate for the master to represent the shipowner's private commercial interest and give them high priority. Efforts by shipping management to also claim the pilot's primary loyalty as well should be resisted as inconsistent with his public role. Compulsory pilotage should provide a system of checks and balances between the pilot and the master, between public and private responsibilities, between local and foreign allegiances, that should not be blurred by loose language in discussions of the pilot's role and function.

Another area of potential problems in pilotage, and pilot/management relations, arises from past efforts of management to bring local state pilot licensing under federal, i.e. Coast Guard, control.

Our concern is that the present Coast Guard licensing system is one of "voluntary" pilotage with the pilot in an employee relationship to the shipowner. Federal legislation bringing pilots on ships engaged in foreign trade under the same Coast Guard licensing procedures as "voluntary" pilots on coastwise ships could pre-empt the right of states to license and regulate pilots in a compulsory pilotage system. It could result in pilots on all vessels being reduced to the category

of employee "voluntary" pilots with right of selection and terms and conditions of employment being subject to negotiation with performance, i.e. a higher priority on the owner's economic interests, being a factor. The United States would then become the only major maritime nation without a true compulsory pilotage system where the selection, control, terms and conditions governing pilotage shifts from the state to the shipowner.

Since our investment in pilot stations, our livelihoods, our pensions, our standards of training and professionalism, and the orderly administration of a pilotage system depend upon stability in state regulation; we are disturbed by past efforts of management to upset that stability.

There is a need for a constructive dialogue with shipping management, and it should begin with a discussion of the basic issue of the role and function of the pilot and his traditional status in the maritime community.

#### LICENSING, TRAINING AND QUALIFICATIONS OF PILOTS

There are three basic routes for becoming a compulsory state licensed pilot:

1.) Straight apprenticeship where the candidate serves his entire time on pilot station vessels and as an apprentice pilot on ships transiting the pilotage district and receives instruction in basic nautical skills and piloting under senior pilots. It is generally a process requiring 5 to 10 years of increasing responsibility before reaching senior pilot status.

2.) Service as a master or employee pilot on inland vessels, such as tugs or river craft, followed by selection and training as a pilot on ocean-going ships for a period of time.

3.) Service as a master or deck officer on ocean-going ships, followed by selection and training as a pilot for a period of time.

Each geographical area seems to have a preference toward one or the other methods of selection and training. Some areas combine methods. The preference is the result of opinion on the best way to learn the peculiarities of the local area and is probably also colored somewhat by the background of the pilots in the area who believe that the best future pilots are those cast in their own image. My state association requires a college degree, preferably a maritime academy education followed by service at sea as an officer, and after selection for training a period of 4 to 6

years of apprenticeship depending on license and experience on entry.

Our selection process includes an eye exam whose standards for uncorrected vision are higher than the Coast Guard permits with the aid of glasses, and an extensive physical exam with any abnormality of any nature or tendency to obesity not being a cause for rejection, it is automatic rejection. Selection includes an interview by a committee of 15 senior pilots with emphasis on control under pressure, motivation, and quality of past experience and performance. Selection is generally based on a combination of age and license held with only those who have raised their license and sought advancement as quickly as possible being considered. Our goal is to recruit the hard driving, aggressive, ambitious young officer who is already on the fast track of advancement in the industry. About one out every 20 candidates interviewed is accepted.

Each method of training has one thing in common, heavy emphasis on "hands on" experience under the guidance and observation of a senior pilot on all types of vessels under a wide variety of conditions and with incremental steps in size of vessel and responsibilities assumed. Federal pilot licensing

by the Coast Guard is accomplished either before entering training or in the early stages of training and is not given much weight as an indication of competency. We require far more observation, training and experience than possession of a Coast Guard license would indicate before we consider an individual pilot qualified to serve without restrictions.

Actual training and licensing consists of intensive exposure to the pilotage environment. The apprentice is scheduled for about 100 hours a week on duty with approximately 50 hours a week on the bridge of ships. He's lucky if he sleeps two nights a week in his own bed, and the divorce rate among married apprentices is high. The routine is purposely exhausting to serve both as a training method and a test of motivation and commitment. After a very short indoctrination the apprentice is expected to actually do the piloting with a senior pilot offering guidance, instructing, and observing how the apprentice handles various situations and stepping in if the apprentice seems to be headed for trouble. The senior pilots compare opinions on the performance of the apprentice and their collective opinion determines if the apprentice is continued in the training program and eventually licensed. If his performance is unacceptable he can be dropped at the sole discretion of the officers

of the association without the need to show cause or offer explanation. If he is licensed it is on the basis of his having actually performed satisfactorily as a pilot under a wide variety of conditions for a number of years under senior pilot observation.

In marked contrast are the Coast Guard federal licensing requirements. Licensing is based on a written examination that the candidate is qualified to "sit for" after a relatively limited number of trips over the route as an observer without provision for "hands on" experience and evaluation by a qualified pilot.

I believe the differing approaches to selection, training and licensing leads to differing views between the state authorities and the Coast Guard on the handling of pilot discipline and accountability.

It appears to us that the Coast Guard approach is to issue a federal license as pilot on the basis of very scanty experience and training with the knowledge that the license holder can only work under his federal license in an employee category and they expect or hope that his employer will act responsibly to screen or determine the actual competency of the newly employed pilot. In the event an employee pilot proves by virtue of a casualty that he is actually incompetent,

the Coast Guard attempts to spur him to greater effort or remove him from the system by suspension or revocation proceedings against his license. It seems to us the emphasis to screen out incompetent personnel occurs after the fact, when it should occur before the fact in more stringent standards on experience and training required for initial licensing.

In our state system licensing is based on observable and proven competency under actual conditions. Every pilot licensed by the State of Maryland has proven without question that he is a competent professional pilot. If a casualty occurs it is the result of "competent error" by a well trained and qualified expert who for some reason couldn't cope with an extraordinary situation. "Incompetent error" caused by lack of training, skills or experience rarely occurs. Under our system, state pilotage authorities are slow to penalize competent error as most cases involve professional judgement and there is a proper reluctance to substitute the local authorities' judgement for the judgement of a competent professional who was on the scene and performing under unknowable pressures.

Of course, if a casualty occurs because of wilful misconduct or inattention to duty, penalties will

follow. But if the casualty results in spite of the pilot's conscientious best efforts penalties will probably not be imposed. Adding a minor additional burden in the form of a suspension will have little effect on the attitude of a pilot already burdened with the fear of financial liability and possible bankruptcy, and looking forward with dread to years of litigation on the issue of fault in the courts. Months will be devoted to analyzing the actions he was forced to take in minutes or seconds.

Competent pilots can, and do, occasionally become incompetent pilots due to physical deterioration or infirmities, alcoholism or other causes. In that event they are, quite frankly, coerced into accepting a disability or retirement pension, hopefully before rather than after a casualty, and their removal from the system should be considered a legitimate cost of a pilotage system.

For the reasons discussed, the statistics on actions taken against pilots by state authorities are not impressive in the Coast Guard's view. As with most professional groups we have an aversion to public executions, and we are ever mindful that actions finding minor fault against a pilot that result in minor penalties can prejudice lawsuits between

shipowners and companies involving many millions. For these reasons I would suggest that compiling a public record of disciplinary actions against pilots is not high on our list of priorities, and the public record is deceptive with more pilots being removed from the system than the record would indicate.

While state standards generally are far higher than the federal pilot standards administered by the Coast Guard, the Coast Guard standards are nevertheless important, as they constitute a minimum standard for state licensing and the only standard for federal licensed "voluntary" pilots on coastwise ships.

The present Coast Guard standards are far too low in terms of experience over the route and recency of service required to obtain and maintain a pilot license, if the license is to be taken at face value as qualifying the holder as a professional pilot of any ship under any conditions. The problem stems from the Coast Guard being required to license under one uniform national regulation "pilots" on Great Lakes vessels; the vessels employed in the vast inland river transportation system; tugs and inland vessels navigating bays, sounds and harbors of the country; masters and officers acting in a collateral role as pilots of their own coastwise ships; and pilots boarding

ocean-going vessels solely to perform pilotage services. The standards applicable for permitting a member of the vessel's permanent complement to navigate his own vessel, where he has an intimate knowledge of the characteristics of the vessel and her crew, are not the standards that should be applied to the professional pilot who boards as a stranger and has to be qualified to take charge of any vessel under any conditions.

Unfortunately, the Coast Guard's licensing procedures don't recognize this distinction, and licensing requirements are set low enough and broad enough to encompass all categories under the same regulation. Because of this least common denominator principle, possession of a Coast Guard pilot license endorsement really says very little about the holder's experience or training.

Compulsory state pilots nationwide are extremely reluctant to have the Coast Guard sit in judgement on their actions. Since the Ports and Waterways Safety Act greatly expanded their role the Coast Guard has been brought into far greater contact with pilots and other ship's personnel, and the demands on their personnel resources have forced the Coast Guard to place greater and larger responsibilities on lower

ranks and enlisted ratings, many of them with very little practical experience and few, if any of them, with merchant ship experience. The net result is that Coast Guard personnel have lost credibility in the industry as competent maritime professionals. The generally held feeling is how can personnel without the education, training and experience of ocean-going merchant ship officers and pilots regulate an industry effectively and knowledgeably? What forms the basis of their judgements and decisions?

There is an understandable resentment of these inexperienced people with vast authority having control over the license of a professional pilot who has decades of education, training and experience in his field. It is universally believed that the appropriateness of sanctions against his license for professional errors will be more a matter of chance than justice.

RECOMMENDATIONS

1. COAST GUARD - LICENSING STANDARDS

Consideration should be given to adopting the British and Canadian practice of distinguishing between a master or other officers employed aboard a ship with collateral duties as pilot of that ship and the professional pilot who boards solely to provide pilotage services over a specific route. This could be accomplished by retaining the term first class pilot for the former and designating the latter as senior pilot. The present Coast Guard written examination for issuance of a pilot license is adequate, but the standards of experience and recency of service requirements should be substantially increased.

In order to qualify and sit for a license as senior pilot the applicant should have instruction and experience obtained by actually acting as pilot under the supervision of a qualified pilot. The number hours of such instruction and experience should depend upon the license the applicant holds. I would suggest the following schedule is not unreasonable:

Master/Chief Officer..	1,000 hours
Second Officer.....	1,500 hours
Third Officer.....	2,000 hours
Unlicensed.....	3,000 hours

At least 25% of the hours should be during the hours of darkness.

The experience should include at least 50 round trips over each route for which licensing is sought with at least 25% of the trips occurring during the hours of darkness.

Initial licensing should be limited to vessels of restricted length overall, possibly 600-650 feet L.O.A. On successful completion of at least 1000 hours as pilot of vessels restricted to that length the limitation should be increased to vessels of possibly 750-800 feet in L.O.A. After successful completion of an additional 2000 hours as pilot of vessels limited to this category an unlimited license should be issued.

These standards are below the established practice in my State, and I do not believe them to be too high for a professional pilot. Of course, local conditions, particularly in ports with low traffic volume, may make attainment of these standards impractical. But, they should be considered as the general goal for licensing of professional pilots at major ports with high traffic density.

Vessel length should be the basis for limitation of licenses rather than gross tonnage as length is an immutable indicator of the actual physical size of the ship, while gross tonnage is a measure of the internal volume of the ship and astute naval architects can vary the gross tonnage of vessels of identical dimension with uncanny ability.

2. COAST GUARD - RECENCY OF SERVICE REQUIREMENT

In order to maintain the validity of any class of pilot license, the holder should have recent experience over the pilotage route. If the pilot has not made a trip over the route within the past year he should be required to qualify by making at least one trip over the route as an observer before being permitted to act as pilot in charge of the navigation of a ship. The provision could be self-regulated with a substantial fine if violations come to light after a casualty or from spot checks. Of course, this again has to be a general goal and might only be practical at ports with a reasonable volume of traffic.

3. PERMITTING STATE ACTION ON OIL OR HAZARDOUS CARGO

The law placing exclusive jurisdiction in

the Coast Guard for the licensing of pilots on sea-going coastwise ships found in 46 USC § 364 should be amended to permit states to have concurrent jurisdiction over the licensing of pilots on this category of ship if they are carrying oil or hazardous cargoes that threaten the environment. This would permit the states to protect themselves against the actions of company employee federal pilots who can be coerced into imprudent action, by placing these ships under the protection of state regulated compulsory pilotage.

4. PERIODIC TRAINING

The industry and pilots should arrange for periodic training, not in shiphandling skills that pilots practice daily, but in the areas of understanding the role and function of a pilot, environmental awareness, the impact of new regulations or Colregs, pilotage law, new developments in equipment, etc. Such training requires the support of management to agree to pilotage charges that are needed to maintain a facility and provide for additional pilot complement needed to allow for training time.

5. MASTER-PILOT RELATIONSHIP

The master-pilot relationship on the bridge of a ship underway in pilotage waters is rarely, if ever, the subject of discussion or dispute between the master and the pilot. It seems to arise only in discussions with management ashore in the context of pilot remuneration or who has the responsibility for action, the master or the pilot?

On the bridge the master and the pilot each feel responsible for the safety of the ship. There is undoubtedly some element of ambiguity in their feelings about who will be held responsible if a casualty occurs. I wonder if the interests of safety are not best served by leaving it that way? There is sufficient grief for both if a casualty occurs, and I question if it is in the public interest to define their respective duties so precisely as to relieve either from the necessity of eternal vigilance.

It may be in the public interest to assure safety by spelling out in law or regulation that neither has the sole authority to order the vessel to undertake a passage or continue a passage without the concurrence of the other. As a

practical matter, this is what normally occurs. But with the industry attempting to redefine the role of the pilot as advisory, it might be wise to assure that checks and balances remain in place. If conditions are unacceptable and the margin of safety is questionable, both the master and the pilot should have the right to veto the decision of the other to attempt or continue a passage, and a passage should only be attempted when both have agreed that it is safe and reasonable to do so.

We should avoid discussions or rhetoric from management about ultimate responsibility or authority. Each is ultimately responsible for his own actions to different authorities and with differing consequences. What we should be concerned with is concurrent responsibility and concurrent opinion as to the acceptability of contemplated actions.

6. NATIONAL ACCREDITATION BOARD

If it is felt that an effort should be made to improve the standards of pilotage service on ocean-going vessels entering the inland waters of the United States, consideration should be given to the establishment of a

National Accreditation Board, possibly with representatives such as management, maritime labor, pilots, insurance companies, admiralty attorneys, environmentalists, and the Coast Guard.

The Board could continually review, and when necessary increase, the standards for accreditation as a pilot in any locality on the basis of local conditions. This would recognize that it is difficult to apply a general uniform high standard nationwide, but would allow for the highest practical standards for any locality, and permit increasing those standards periodically, possibly on a "phased in" or scheduled basis.

The standards could include:

- 1.) Selection and qualifications for entry into training.
- 2.) Training standards and experience for initial license.
- 3.) Appropriate limitations on initial licensing and provision for appropriate incremental increases in the limits imposed until unlimited status is attained.

4.) Recency of service requirements and provisions for requalification after an absence from active piloting.

5.) Provision for periodic training courses to expose pilots to new developments in regulations, laws or equipment.

Failure to attain or loss of accreditation could result in sanctions being imposed, i.e. lack of support or opposition to increases or revisions in pilotage rates at hearings before state legislatures or regulatory bodies; or support of the National Board for state action that impose acceptable standards.

Suspension or revocation of accreditation for an individual pilot might follow a casualty in which it can be shown he was incompetent or negligent. The Board might utilize a hearing examiner to determine the facts with the Coast Guard findings of facts being made a part of the record. On the basis of all the evidence, including the opinions of other pilots on the standard of care required under the circumstances, the hearing examiner could submit a recommendation to the Board. If the Board suspends or revokes the accreditation of an

individual pilot and the state regulatory agency or pilot association permits him to act as pilot during the suspension, the association could lose its accreditation with appropriate sanctions being imposed.

Individual state regulatory agencies could make accreditation a prerequisite for acting as pilot on a state license, and would then in effect be adopting the actions of the National Board as their own actions.

While the Coast Guard may be a proper participant in a National Accreditation Board, along with other interests that have a degree of professional expertise, under no circumstances should the Coast Guard be permitted to have sole licensing authority with the power to determine fault after a casualty.

There is a serious conflict of interest between the licensing authority and the various other roles the Coast Guard performs. The Coast Guard maintains and services the aids to navigation that, unfortunately, are sometimes improperly or negligently maintained or serviced in a manner contributing to a vessel casualty. The pilot

is then in the unhappy position of having the Coast Guard proceeding against his license to prove it was the pilot's sole fault and not the fault of the Coast Guard. The Coast Guard has a strong financial interest in succeeding against the pilot for if they fail, the Coast Guard could be held liable for the damages sustained by the ship due to the defective aid to navigation. (see UNIVERSE TANKSHIPS v. U.S., 336 F. Supp. 282 (1972))

The Coast Guard is operating vessels that have collisions with vessels under the control of compulsory pilots. (see the USCG WHITE ALDER and S.S. HELENA collision in the Mississippi River on 7 December 1968 with the loss of 17 lives; and the USCG CUYAHOGA and M.V. SANTA CRUZ collision in the Chesapeake Bay on 20 October 1978 with the loss of 11 lives.) The appearance of a conflict of interest in the Coast Guard sitting in judgement on the cause of collisions to which they are a party, with the right to determine negligence on the part of the pilot that could effect the outcome of substantial lawsuits against the Coast Guard for their own negligence, gives us great concern.

The Coast Guard is operating Vessel Traffic Systems in which they can order vessels to comply with their instructions or issue advice that a pilot can only ignore at his peril. Into the traditional master-pilot relationship a new element has been introduced. The decision making process on the bridge now has to include the unseen, but vocal, disembodied presence of the Coast Guard represented by a junior officer or enlisted rating with little experience but an active participant by virtue of a radio link and the legal authority of the Coast Guard to command compliance with their instructions. When casualties occur in which the Coast Guard VTS personnel may be at fault, the Coast Guard will have a strong self interest in placing the blame elsewhere, probably on the pilot, to avoid the consequences and lawsuits resulting from their own possible negligence.

7. OPERATIONAL PROCEDURES

Operational procedures should not be discussed under the same heading as training and qualifications of pilots, as found in the U.S. proposal to IMCO. The latter refer to the capability of the pilot as an individual, the former refer to interaction with ship's