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personnel over whom the pilot has no operational control, indeed, they are strangers to him. Experience has shown us that the best interests of safety are served by the pilot being cooperative with the master and bridge personnel, but he should rely on them as little as possible. If the circumstances permit he should personally assure himself that every order he gives is followed out as given. He should check every course, every rudder order, every engine order on the telegraph and the response of the engines on the tachometer. If the master or bridge personnel wish to maintain a track line, independently determine the ship's position, check all orders given, etc., the pilot will welcome the monitoring and support effort as a back-up to his efforts and as a check against error. But this should not be considered as, or described as "team effort" navigation. The pilot will not find this type of operational procedure in effect on the average ship, he has no right to insist upon it, and should not be held accountable for the failure of the ship's personnel to follow the mandate of either the British or U.S. regulations requiring it. If he does find it, and depends upon it, it loses

its purpose as an independent check. Any requirement placing such duties on ship's personnel should not properly be included in discussions of training and qualifications of pilots as it implies that the pilot might be justified in relying on ship's personnel or might be responsible for the inactions of ship's personnel and both conclusions are clearly erroneous.

REFERENCE NOTES AND ANNOTATIONS

- (1) 1.1 In a case where a shipowner stubbornly refused to acknowledge the effect of pilotage laws, a federal court judge was moved to comment:

"To be sure, state compulsory pilotage is not a body of law familiar to most legal practitioners, much less one at the forefront of public attention. Yet it is not a particularly difficult body of law. Indeed, unlike the state of flux that characterizes many areas of contemporary law, pilotage law is remarkably straightforward and firmly established."

Jackson v. Marine Exploration Co. Inc., 583 F.2d 1350 (1978)

- (2) 2.1 In a case discussing state pilotage laws the Supreme Court of Oregon stated:

"It appears from the report to Parliament that some form of control over pilotage had existed in England and other European countries since about the 14th century.

In the United States, Massachusetts adopted laws regulating pilotage as early as 1783. Some of the other states adopted regulatory laws shortly after Congress, in 1789, specifically provided that the states should exercise control over most of the forms of pilotage."

Powell v. State, 355 P.2d 227 (1960)

- 2:2 In a British decision the court stated:

"This doctrine of compulsory pilotage is an enacted doctrine no doubt. It was not enacted for the protection only of ships; it was enacted for the protection of ports; of commercial ports in particular because if a vessel is wrecked and lost and sunk near to the entrance, or within the entrance of a commercial port, she is not only lost herself, but she is a great danger and obstruction to the port and to other vessels, and would interfere with the commercial business of the port."

The Charlton, 8 Asp. M.L.C. 29 at p. 29 (1895)

- 2.3 In a general discussion of the law of pilotage a leading legal encyclopedia states:

"The various states of this country possessing harbors have enacted laws requiring vessels approaching their ports, with certain exceptions, to take on board pilots duly licensed under the local law, or in case of refusal, to pay pilotage fees, as if the service had been received and rendered, to the qualified pilot who first tenders his services....."

The purpose of these laws is to insure at all times a due supply of men well qualified by skill, knowledge, and experience to protect vessels entering ports and harbors from the dangers of navigation, by holding out to such men sufficient inducements to prepare themselves for the discharge of their duties and to pursue a business attended with so much of peril and hardship."

70 Am Jur 2d, Shipping, §61

- (3) 3.1 "The profession or employment of pilot has existed from the earliest times, and laws have been enacted in every nation engaged in commerce regulating and protecting pilots. Such laws are to be classed under the head of maritime law, pilotage being a subordinate but highly useful branch thereof; and statutory provisions with relation thereto are entitled to a liberal construction in order to give full efficiency to laws especially designed to promote the interest of commerce, and to protect the lives and property of the citizens engaged in it."

70 Am Jur 2d, Shipping, §54

- (4) 4.1 An early Supreme Court decision commented:

"When the government of the Union was brought into existence it found a system for the regulations of its pilots in full force in every state."

Gibbons v. Ogden, 9 Wheat, 207

- (5) 5.1 In one of the first Supreme Court decisions on the effect of the commerce clause of the Constitution it was found:

"The act of 1789 contains a clear and authoritative declaration by the first congress that the nature of this subject is such that until congress should find it necessary to exert its powers, it should be left to the legislation of the states; that it is local and not national; that it is likely to be the best provided for, not by one system or plan of regulations, but by as many as the legislative discretion of the several states should deem applicable to the local peculiarities of the ports within their limits."

Cooley v. Board of Wardens, 12 HOW (US) 299, 13 L.Ed. 996

- 5.2 In discussing the constitutionality of state pilotage the general law has been stated as:

"When the Constitution of the United States was adopted, each state had its own regulations of pilotage, and instead of superseding these in the exercise of its supreme power over the subject, Congress has provided that all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the states respectively wherein such pilots may be, or with such laws as the states may respectively enact for the purpose until further legislative provision shall be made by Congress. It has been stated that this statute adopts the existing state systems, giving them the same validity as if their respective provisions had been specially enacted by Congress, and it leaves to the several states and territories of the United States the power to legislate in the future upon this subject, and to prescribe rules for the licensing and government of pilots, the collection of their fees, and such other incidental matters as the nature of their services in the particular localities may require. The statute was passed in recognition of the propriety of local action in respect of pilotage because of the local necessities of navigation, and it operates not as a congressional grant of power to the states, but as a mere legislative recognition of their

concurrent authority to regulate pilotage until Congress shall act. In general, state pilotage laws have not been superseded by the passage of the various federal statutes regulating shipping, even though these contain certain provisions relating to pilots. However, it should be noted that the Ports and Waterways Safety Act of 1972 provides, inter alia, that the Secretary of the Department in which the Coast Guard is operating (presently the Secretary of Transportation) may require pilots on self-propelled vessels engaged in the foreign trade in areas and under circumstances where a pilot is not otherwise required by state law to be on board, until the state having jurisdiction of an area involved establishes the requirement for a pilot in that area or under the circumstances involved."

70 Am Jur 2d, Shipping, §56

- 5.3 The Act of Aug. 7, 1789 is now contained in 46 USC §211:

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

- (6) 6.1 The Federal Court for the Southern District of Florida stated:

"Since the organization of the state government no less than 25 acts have been passed upon this subject, and by a large majority of these local boards have been given full and complete powers to make rules and regulations, establish rates and change the same, as deemed best; and under them full power in regard to compensation has been claimed and exercised. In no case has the right to fix rates been held to be separate from the question of compulsory pilotage, nor has either question been passed upon or treated separately."

The Chase, 14 F. 857 (1882)

- (7) 7.1 The Act of Feb. 28, 1871 is now contained in 46 USC §364:

"...and every coastwise sea-going steam-vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats (Commandant of the Coast Guard or Commissioner of Customs)."

- (8) 8.1 In a case concerning a suit against a pilot for damages a shipowner had to pay due to the acts of the pilot it was said:

"A licensed pilot, enjoying the emoluments of compulsory pilotage, is quite in a different class from an ordinary employee. He assumes to have a skill and a knowledge in respect to navigation in the particular waters over which his license extends superior to and more to be trusted than that of the master, and from the moment he begins his duty he takes command and supersedes the master in respect to the navigation. His remuneration is fixed by law, and is proportionate to his responsibility, and his liability for neglect or want of skill must be in a similar proportion."

Guy v. Donald, 157 F. 530 (1907)

- (9) 9.1 "In some jurisdictions, on a consideration of pertinent statutes, a pilot has been regarded as a public officer, that is to say, as a state officer, whose office is created by the legislature in the exercise of the police power for the general welfare. In other jurisdictions the view has been taken that a pilot is not a public officer. In any event the office of a pilot is so far public as to be subject to regulations.

The rights, privileges, and powers which are vested by law in a pilot are franchises."

70 C.J.S. Pilots, §1(b)

- 9.2 "The liabilities and rights as between the pilot and the vessel are determined by the sort of pilot the man is. The federally licensed pilot is ordinarily an employee of the coasting ship and the rights and liabilities between him and the owner are those applicable to a member of her ship's company.

The state pilot is usually paid on a fee basis and he has the owner's liability in personam, and also a lien on the ship, for his fees.

The local pilot is entitled to the fees which the state statutes give him. They may be considerable. The federal pilot is usually a salaried man."

Robinson on Admiralty, p. 694

- 9.3 "Since 1805 Louisiana pilots have been State officers whose work has been controlled by the State.

Thus in Louisiana, as elsewhere, it seems to have been accepted at an early date that in pilotage, unlike other occupations, competition for appointment, for the opportunity to serve particular ships and for fees, adversely affects the public interest in pilotage."

Kotch v. Pilot Comm'rs., 330 US 560 (1947)

- 9.4 In discussing the justification of compulsory pilotage the Royal Commission commented:

"From the service point of view, pilotage has been defined as the ultimate means to enhance safe and speedy transit of ships through confined waters. It is a public service in the full sense of the word when it is controlled, maintained or provided primarily to serve the superior interests of the State; it is a private service when its main purpose is to serve private needs, but safety remains the principal aim in both cases: in the former, "safety or navigation" through Canadian waterways; in the latter, "safety of the ship", including safety of privately owned port installations."

Canada, Report of Royal Commission on Pilotage, Part 1, p 473 (1968)

- (10) 10.1 "The coastwise steamer pilot is ordinarily one of the ship's officers. He is not "compulsory" in the sense that the state pilot has been held to be in several cases where the status of the state pilot has been fought over. In these the owner seeks to establish that he was "compulsory" and insists that as he was "compulsory" there is no respondeat superior and the ship owner is not personally liable. The courts have agreed with the conclusion once the "compulsory" character is found."

Robinson on Admiralty, p. 702

- (11) 11.1 "If the pilot charges seem heavy the pilot's responsibilities are great, and it must also be recalled that his job is often one of great hazard. Come wind come weather he boards incoming ships at sea and he leaves outgoing vessels outside the shelter of harbors. And he does both by small boats."

Robinson on Admiralty, P. 695

- (12) 12.1 In considering the status of pilots in a landmark decision, the U.S. Supreme Court stated:

"Studies of the long history of pilotage reveal that it is a unique institution and must be judged as such. In order to avoid invisible hazards vessels approaching and leaving ports must be conducted from and to open waters by persons intimately familiar with the local waters. The pilot's job generally requires that he go outside the harbor's entrance in a small boat to meet incoming ships, board them and direct their course from open water to the port. The same service is performed for vessels leaving the port. Pilots are thus indispensable cogs in the transportation system of every maritime economy. Their work prevents traffic congestion and accidents which would impair navigation in and to the ports. It affects the safety of lives and cargo, the cost and time expended in port calls, and, in some measure, the competitive attractiveness of particular ports. Thus, for the same reasons that governments of most maritime communities have subsidized, regulated, or have themselves operated docks and other harbor facilities and sought to improve the approaches to their ports, they have closely regulated and often operated their ports' pilotage systems.

The object of the entire pilotage law, as we have pointed out, is to secure for the State and others interested the safest and most efficiently operated pilotage system practicable."

Kotch v. Pilot Comm'rs., 330 US 557 (1947)

- 12.2 In a case where the ship struck a dike a federal court stated:

"The purpose of requiring a vessel to take a pilot is to have her in charge of a competent person, familiar with particular waters. When on board he is temporarily in charge of her whole navigation, including the duty of determining her course and speed, and the time, place, and manner of anchoring her. The master is not entirely absolved of responsibility when a pilot is in charge, but before he is justified in displacing him he should be sure that the pilot is for some reason incompetent.....the navigation of the ship was primarily in charge of the pilot, and, while the master had the right, if he deemed him incompetent and circumstances warranted it, to displace him, he was not under the absolute duty to do so, but was entitled to exercise his sound discretion. Whether he should have displaced him, on the facts shown, was not a matter of law for the court, but was a question to be determined by the jury on all the facts and circumstances of the case."

Dampskibsselskabet Atalanta A/S et al v. U.S.
31 F. 2d 962 (1929)

- 12.3 In a case where a ship attempted a transit without a pilot and a casualty resulted, the federal court found:

"There are very few published decisions on the question of whether a local pilot is necessary to complete the proper manning of a vessel when she leaves port. This is probably because pilotage is so universally customary and so generally compulsory at all ports of any importance throughout the world that very few vessels enter or leave a harbor without taking a pilot. The rule announced by the text-writers and supported by some earlier decisions, in substance, is this: Where pilotage is customary at a port, a pilot is available, and the nature of the navigation requires one, it is a breach of the warranty of seaworthiness if a pilot is not taken..... The rule is supported by sound reason. A pilot is employed because he is presumed to have

knowledge of the tides and currents and their effects upon the ship and of all other dangers affecting the safety of the vessel due to local conditions. The master, however competent he might be to navigate his ship in the open waters of the ocean, would not be expected to have this knowledge. It is apparent that it would be as hazardous for a ship to attempt to follow a dangerous channel to sea without a competent hand on the tiller as it would be if the steering gear was defective."

The Framlington Court 69 F2d 304 (1934)

12.4 "A study of foreign pilotage legislation will show that compulsory pilotage in many countries exists broadly for one of the following reasons:

- (i) for the protection of life and property... on board ships, and of harbour entrances and port installations. In such cases it is a statutory offence not to take a pilot and in some cases it is such an offence to interfere with the pilot, as for example in certain parts of Germany.
- (ii) for the financial support of the pilotage service, as for example in Holland."

The Law of Pilotage p. 32

(13) 13.1 In a suit against a pilot for damages sustained by the ship he was piloting, the federal court found:

"He was charged with the safety of the vessel, and bound to use due diligence and care and reasonable skill in the exercise of his important functions. He is answerable if the vessel suffered damage through his negligence or want of skill while she was under his control..... The skill required of a pilot is the ordinary care of an expert in his profession. When in charge of navigation, he supersedes the master, and is liable for negligence."

The Dora Allison 213 F. 646 (1914)

- (14) 14.1 In a case where the ship struck a bridge the federal court commented on the pilot-shipowner relationship as follows:

"There is no dispute that the ship's use of the pilot in our pending case was compulsory. It is well settled that the owner of a vessel is not liable, personally, for the negligence of a compulsory pilot because the element of compulsion eliminates the 'respondeat superior nexus' which would normally serve as a basis for imputing a pilot's negligence to the ship owner.

However, it has also been held, since the Supreme Court's decision in *The China*, 7 Wall (U.S.) 67 that, notwithstanding personal non-liability of the ship owner in such a case, the ship itself remains liable 'in rem' for damages arising out of a collision due to the pilot's negligence-even though the use of the pilot is compulsory.

Harrison v. Hughes, 125 F. 860, citing *The China* and its progeny, succinctly states its rule and the theory upon which it is based:

' . . . It is admitted that, at common law, no action can be maintained against the owner of a vessel, for the fault of a compulsorily taken pilot, as, in such case, the pilot is in no sense the agent or servant of the owner; but, although the same doctrine holds in England, both at common law and in admiralty, a different view of the liability of the ship is taken in admiralty cases in this country.

. . . The theory of the admiralty law in this country in such cases, is that the collision impressed upon the wrongdoing vessel a maritime lien, which the vessel carries with it into whosoever hands it may come. The vessel is treated, according to this theory, as the guilty thing. It is the res, to which fault is imputable, and which is held to respond in damages. The responsibility of the owners, as owners, and the law of agency, as applicable to the employment of a pilot, do not come into consideration.'"

- (15) 15.1 In an early Supreme Court case testing the validity of compulsory pilotage laws the court stated:

"Like other laws they are framed to meet the most usual cases, 'quae frequentius accidant'; they rest upon the propriety of securing lives and property exposed to the perils of a dangerous navigation, by taking on board a person peculiarly skilled to encounter or avoid them; upon the policy of discouraging the commanders of vessels from refusing to receive such persons on board at the proper times and places; and upon the expediency, and even intrinsic justice, of not suffering those who have incurred labor, and expense, and danger, to place themselves in a position to render important service generally necessary, to go unrewarded because the master of a particular vessel either rashly refuses their proffered assistance, or, contrary to the general experience does not need it."

Cooley v. Board of Wardens, 12 How. (U.S.) 299, 13 L Ed. 996 (1851)

- (16) 16.1 In a case involving a "voluntary" pilot the federal court stated:

"The pilot was placed in charge of the Seekonk by the master and not by the law. and the rights and obligations of the parties must be determined by reference to the relation thus established."

Los Angeles v. Standard Transp. Co., 32 F. 2d 990 (1929)

- (17) 17.1 In an excellent legal opinion prepared by a Coast Guard legal officer it states:

"Because of this delicate balance between the authority of the master and the liability of the owner, the case law dealing with the relationship between the master and the pilot is often confusing and sometimes appears contradictory. As a general rule, it may be stated that it is discretionary with the master whether to remove the pilot. The

master has the same power to remove the pilot that he has to remove any subordinate officer and this power becomes a duty to interfere in a case of the pilots intoxication or manifest incapacity, in cases of danger unforeseen by the pilot, or in cases of great necessity. The China, 74 U.S. (7 How.) 53, 19 L. Ed. 67 (1868) But the pilot is more than a mere subordinate to the master and, while on his pilotage grounds, is a temporary master, for the time being in command of the navigation of the ship and his orders must be obeyed in all manners connected with her navigation. The Oregon, 158 US 186, 39 L Ed. 948; Ralli v. Troope, 157 U.S. 386, 39 L. Ed. 742; Cooley v. Board of Wardens, 53 U.S. (12 How.) 299, 13 L. Ed. 996 (1851) He is, in a sense, a master pro hac vice and gives all orders and directions as to speed, course, stopping, and other matters regarding vessel navigation. Guy v. Donald, 157 F. 527, although a master may relieve a pilot, he does so at his peril and with regard to certain matters within the peculiar province of the pilot he must not interfere unless the master sees that the pilot is plainly misgoverning the situation. Union Shipping and Trading Company v. U.S., 127 F. 2d 771 (2nd Circuit 1942). The exercise of the masters power to relieve the pilot rests within his sound discretion and is determined by the factual situation. U.S. v. Westervelt, 135 F. Supp. 596 (SDNY 1956) Further, the master, in waters unfamiliar to him, is entitled to rely on the knowledge and skill of a pilot and is not bound to overrule him. The master should not substitute his judgment for that of the pilot except in cases of clear and obvious danger. Waterman Steamship Company v. U. S. 304 F. Supp. 401 (W.D. Washington 1969); Barbey Packing Corp. v. Stavros, 169 F.Supp. 897 (O. Oregon 1959) It has been repeatedly held that a ships officer is not negligent in failing to intervene unless the pilot is doing something obviously dangerous. Park Steamship Co. v. City Services Oil Co., 188 F. 2d 804 (2nd Circuit)(1951).

This principle is particularly well settled and of long standing with regard to matters based on the special knowledge of the pilot regarding local conditions. The pilot has sole direction of the vessel in those respects where his local knowledge is presumably required such as the course, speed, and maneuvering of the vessel. Baron Parke in The Christina, 7 Moore, Privy Concil 160, 172 (1850) cited in

Union Shipping and Trading Company v. U. S. Supra at 1775). In some cases, the masters "power" to relieve the pilot has been severely circumscribed and it has been stated that the master has no right to interfere with the pilot without ample justification, the navigation of the ship being taken out of the hands of the master and transferred to the pilot. The Oregon, 158 U.S. 186 39 L. Ed. (1943).

It is thus apparent that the popular misconception that a pilot is a "mere advisor" to the master is without substantial foundation in the law. While the master is still the master and in overall command of the ship, and does have the power to relieve the pilot, he may do so only at the substantial peril of exposing himself and the owner of the vessel to far ranging liability. For purposes of administering the Ports and Waterways Safety Act, it is readily apparent that the pilot is indeed in control of the operation and navigation of a vessel both in practice and under admiralty law. It is significant to note, that while a master has been found negligent in many cases for acting improperly to relieve a pilot, for acting improperly after relieving a pilot, or for failure to relieve a pilot, pilots themselves have been held almost universally accountable for their own improper actions. Attempts to relieve themselves of liability by alleging that they were not actually in control and that the sole responsibility for the navigation of the vessel rested with the master have been of no avail."

U. S. Coast Guard Legal Memorandum, P. E. Versaw,
13th Coast Guard District Legal Officer, 13 April, 1977

- (18) 18.1 In a rare state court case involving maritime law the New York Supreme Court wrote the following excellent description of the duties of the pilot and master:

"Where a compulsory pilot is in charge of a ship, the master being required to permit him to navigate it, if the master observes that the pilot is incompetent or physically incapable, then it is the duty of the master to refuse to permit the pilot to act. But if no such reasons are present, then the master is justified in relying upon the pilot, but not blindly. Under the circumstances of this case, if a situation arose

where the master, exercising that reasonable vigilance which the master of a ship should exercise, observed, or should have observed, that the pilot was so navigating the vessel that she was going, or was likely to go, into danger, and there was in the exercise of reasonable care and vigilance an opportunity for the master to intervene so as to save the ship from danger, the master should have acted accordingly. Of course, where danger is suddenly sensed, too late for action by the master, the master's failure to act cannot be charged against the ship. Whether a particular situation calls for action rests in sound judgment, for on some occasions to interfere might be more dangerous than noninterference, or there might be justifiable expectation that the pilot, through his own capacity and superior skill and knowledge, would be able to draw the ship away from the danger zone. These are questions of fact for a jury."

Hinman v. Moran, 268 N.Y.S. 410 (1934)

- 18.2 "Generally speaking, the pilot supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. He becomes the master pro hac vice, and should give all directions as to speed, course, stopping and reversing, anchoring, towing, and the like."

70 Am Jur 2d, Shipping, § 191

- (19) 19:1 The Supreme Court in discussing the pilots role in maritime commerce stated:

"Now, a pilot, so far as respects the navigation of the vessel in that part of the voyage which is his pilotage-ground, is the temporary master charged with the safety of the vessel and cargo, and of the lives of those on board, and intrusted with the command of the crew. He is not only one of the persons engaged in navigation, but he occupies a most important and responsible place among those thus engaged."

Cooley v. Board of Wardens, 12 HOW (US) 299 13 L Ed. 996 (1851)

- 19.2 In a later Supreme Court decision the role of the pilot was affirmed:

"To the pilot, therefore, temporarily belongs the whole conduct of the navigation of the ship, including the duty of determining her course and speed, and the time, place and manner of anchoring her....But the master still has the duty of seeing to the safety of the ship, and to the proper stowage of the cargo. For instance, the duty to keep a good lookout rests upon the master and crew."

Ralli v. Troop, 157 US 386, 15 S. Ct. 657 (1894)

- 19.3 In a case involving the role of the pilot the Supreme Court of Washington commented:

"A pilot while in charge of a ship supersedes the master, in so far as the navigation of the vessel is concerned, but the master is at all times in command, and may and should advise with the pilot, and can displace him in case of intoxication or manifest incompetence. Any power of command exercised by the pilot is limited to the navigation of the ship.... '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. But the master is still in command of the vessel, as distinguished from its navigation, and may properly displace an obviously incompetent or intoxicated pilot, although he is not bound to do so unless the pilot is making an obvious mistake.' ...As to the relative duties of the pilot and the master, it is the law that the pilot does not assume command of the ship. 'No ship is large enough for two captains.' Hughes on Admiralty (2d Ed.) p.36. The pilot becomes navigating officer, and the master should not interfere unless it is plain that the pilot is reckless or incompetent; but the pilot is not in command in the sense that he supersedes the master.... 'In one respect the decisions in relation to pilots run counter to common law ideas on the subject of agency. It is a principle of the law of agency that the foundation of the master's responsibility for the acts of his agent is the right of selection and control. Yet the American courts hold that a vessel is responsible to third parties for unjuries arising from the negligence of the pilot, though he came on board against the will of the master under a state statute of compulsory pilotage... 'The reason why the vessel is held liable is that

admiralty looks on the vessel itself as a responsible thing, and that under the ancient laws relating to pilots the responsibility was one which attached to the vessel itself, irrespective of ownership, it being thought unjust to require injured third parties to look beyond the offending thing to questions of ownership or control."

Grays Harbor v. The Brimanger, 18 P. 2d 29 (1933)

19.4 A leading authority on Admiralty law wrote:

"The pilot when he takes over his duties aboard the vessel supersedes the master, for the time being, in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. The master is not wholly absolved from his duties while the pilot is on board and may advise with him and even displace him in case he is intoxicated or manifestly incompetent. The master is still in command of the vessel, except so far as her navigation is concerned, and is bound to see that there is a sufficient watch on deck and that the men are attentive to their duties.

The master has the same power to displace the pilot that he has to remove any insubordinate officer of the vessel. He may exercise it or not, according to his discretion."

The Law of Seaman, 3rd Edition, §532, Martin J. Norris, The Lawyers Co-Operative Publishing Co.

(20) 20.1 Judge Larned Hand discussed the history of the role of the pilot:

"It is of course true that a master does not surrender his ship to a pilot and that there remain occasions when he must interfere and even displace him. The first case, so far as we know, came up in England in 1847, soon after the compulsory pilotage act was passed. The Gipsy King, 2 W. Roginson 537. It chanced to concern the proper catting of an anchor on a vessel in charge of a pilot, and Dr. Lushington, in excusing the owner because the catting was the pilot's spoke as follows (p. 547): 'It is, I apprehend,

an established principle of law that the mode, the time, and place of bringing a vessel to an anchor, is within the peculiar province of the pilot who is in charge.' Only three years later the Privy Council, speaking through Baron Parke (The Christiana, 7 Moore P.C. 160, 172), said of a compulsory pilot: 'It was his sole duty to select the proper anchorage-place, the mode of anchoring and preparing to anchor.' And still earlier on the same page: 'The Pilot has, unquestionably, the sole direction of the vessel in those respects where his local knowledge is presumably required; the direction, the course, the manoeuvres of the vessel, when sailing, belong to him.' In 1857 Dr. Lushington in The Argo, Swabey, 462, announced the limitation upon this which is generally accepted and which the Supreme Court recognized obiter in The China; and again in somewhat truncated form in The Oregon. It was this: 'a master has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapacity, or in cases of danger which the pilot does not foresee, or in cases of great necessity.' He said further. 'The navigation of the ship is taken out of the hands of the master and transferred to the pilot.'

Union Shipping v. U.S., 127 F. 2d 775 (1942)

- 20.2 In a suit against the pilot brought by a shipowner for damages sustained when his vessel struck a dock while attempting to berth, a Federal court discussed the duties of the pilot and master in the following terms:

"Having found that the pilot placed the vessel in such a position as to constitute an immediate threat of danger both to herself and to the Barbey Dock, and having determined that the subsequent harm done was a result of the pilot's action, does this of itself fasten liability upon the pilot and absolve the vessel? It is settled law that the fact that a pilot was on board the vessel does not release the ship's master from his duties. The master still remains in command of his vessel and retains the authority to control the actions of the pilot to assure the safety of his ship and to avoid any imminent danger.... The courts have held that the master not only retained the power, but had the duty to interfere in all cases of necessity or danger and to displace the pilot.... The earlier cases,

in speaking of the master removing the pilot, were concerned only with situations where it appeared the pilot was intoxicated or manifestly incompetent.... Later cases have appeared to hold the master to a higher degree of responsibility than the earlier courts contemplated....The master's duty to relieve the pilot rests within the master's sound discretion, and can only be viewed in light of the surrounding factual situation....In light of the obvious confusion that would exist on a vessel if, on his slightest whim, the master would countermand the pilot's order, the master to insure the safety of his command should exercise his power to remove the pilot discriminately. The master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or where danger is apparent and avoidable."

Barbey Packing v. The Stavros, 169 F. Supp. 901 (1959)

- 20.3 In speaking of the problems for the master under established pilotage law a leading Admiralty authority stated:

"The relation of pilot and master is an unhappy one for the master. He must see that the pilot's orders are carried out. If he does not check the pilot he forfeits his owner's 'compulsory pilot' defenses. But if he interferes so far that it can be said that he removes the pilot he exposes his owner to whatever liability there would be, in the circumstances, if no pilot were on board."

Robinson on Admiralty, p. 696

- (21) 21.1 In discussing human factors and their impact on ship casualties Mr. W. O. Gray of Exxon Corporation stated:

"High Level of Calculated Risk - Calculated risk is defined for this report as knowing acceptance of risk in operational situations to meet personal or corporate priorities. The acceptance of risk was found by the Panel to be a significant causal factor in merchant marine casualties.

The in-depth survey provided several instances where risk taking contributed to a casualty or near-casualty. For instance, when asked to select among 12 criteria used by companies for grading a captain's performance, 40% of those responding to the question

indicated that making schedules was the prime criterion. When asked how companies feel about meeting schedules in poor conditions, 50% of those responding said that there was strong pressure to meet schedules. Almost all of those responding reported sailing on a ship that they personally knew to be unseaworthy.

Perhaps the most revealing disclosure from the interviews was that of a company that in 1969 dropped a safety program that offered a good bonus to tugs and crews with the least accident claims, because the program resulted in decreased productivity and a slowdown in task completion."

Oil Companies International Marine Forum, Safe Navigation Symposium, Session 2, Paper No. 3, Human Factors by W. O. Gray. Presented at Washington, D. C. 17 - 18 January, 1978

- (22) 22.1 In another Supreme Court decision relating to the role of the pilot it was held:

"The liability of the owner at common law for the act of a pilot on his vessel is well stated by Mr. Justice Story in his Treatise on Agency, 2d ed. § 456a: 'The master of a ship, and the owner also, is liable for any injury done by the negligence of the crew employed in the ship. The same doctrine will apply to the case of a pilot employed by the master or owner, by whose negligence any injury happens to a third person or his property; as, for example by a collision with another ship, occasioned by his negligence. And it will make no difference in the case that the pilot, if any is employed, is required to be a licensed pilot; provided the master is at liberty to take a pilot, or not, at his pleasure; for in such a case the master acts voluntarily, although he is necessarily required to select from a particular class. On the other hand, if it is compulsive upon the master to take a pilot, and a fortiori, if he is bound to do so under a penalty, then, and in such case, neither he nor the owner will be liable for injuries occasioned by the negligence of the pilot; for in such a case the pilot cannot be deemed properly the servant of the master or the owner, but is forced upon them, and the maxim, 'Qui facit per alium facit

per se, does not apply.'

The answer to the second question must therefore be that in an action at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily."

Homer Ramsdell v. La Compagnie Generale Transatlantique,
182 US 1161 (1901)

- 22.2 In a recent case where the ship struck a dry dock the court absolved the master and crew in the following language:

"We also uphold the District Court's finding that 'the Captain and crew of the Hong Kong Clipper were not guilty of any negligence contributing proximately to the collision,' since the ship was under the sole command of Pilot Jenkins throughout the period with which we are concerned here."

Latex Construction Co. v. Jacksonville Shipyards, Inc.,
442 F. 2d 452 (1971)

- (23) 23.1 In a case involving damages caused by the acts of a "voluntary" pilot a federal court held:

"The first question is whether Aultman was a noncompulsory pilot. If so, he was in much the same position as one of the ship's officers. Under the ordinary rules of respondeat superior, the shipowner would be responsible for Aultman's actions. If, on the other hand, the district court had concluded that pilotage was compulsory, the respondeat superior nexus would have been broken, and APL would not be personally liable for the results of the pilot's negligence.... Because of the voluntary nature of the pilotage, and the availability of trip insurance at a nominal cost, the provisions of the tariff of the Port of Long Beach exculpating the pilot and his employers from liability are valid and enforceable."

U.S. v. S.S. President Van Buren, 490 F. 2d 506, 509 (1974)

- 23.2 In discussing the effect of exculpatory agreements a legal authority on the subject has written:

"The pilot associations in Oregon (which has voluntary pilotage only, i.e., either the master or the owner of the vessel is privileged to pilot the vessel and need not hire a pilot), have adopted an ingenious system which has been sanctioned, insofar as it is legally permissible to do so, by the Oregon State Legislature. The system adopted is on the theory that state pilotage rates must directly reflect the cost to the pilots of doing business; consequently, if they must pay rather high premiums to procure adequate insurance to protect themselves against a high degree of liability, the pilotage rates would necessarily have to be increased. Since all vessel owners carry P & I insurance on their vessels, which insurance protects the vessel owner with respect to negligence of the pilot aboard it, if the pilots likewise carry liability insurance, the vessel owner is paying for his liability coverage twice-first in connection with the P & I premium and second in paying an increment in the pilotage fee to reflect the cost of liability insurance for the pilot."

Law of Tug, Tow and Pilotage, p. 484

- 23.3 "Aside from moral considerations which should preclude a shipowner from attempting to disavow a contract freely entered into by which he consents to accepting as his own employe a harbor pilot who is 'loaned' to him, there are highly persuasive economic reasons why ship-owners should, in their own enlightened self-interest, concede the validity of pilotage clauses and proceed with caution in attempting to have them declared invalid or inapplicable.

For example:

(1) It must be remembered that literally every ship being piloted has already procured P & I insurance insuring the liability of its owner to third parties for negligent acts of its master, crew and pilots. If the 'loaned employe' status of the harbor pilot is to be ignored, then the tug company, both with respect to its assisting tugs and its 'loaned' harbor pilot, must procure insurance in an amount equal to the full value of the largest vessel handled and her cargo. The cost of such insurance necessarily must be included in the ship assistance rates charged, in which case vessel

owners will be paying twice for insurance against the same risks."

(24) Canada, Report of the Royal Commission on Pilotage, Part 1, p. 22

(25) 25.1 Ibid, p. 23 and 24

25.2 A legal reference defines "conduct" as follows:

"Conduct (verb): A regulation having statutory force which provides that a ship is to be conducted by a pilot does not mean that she is to be navigated under his advice; it means that she must be conducted by him, and that makes pilotage compulsory"

Words and Phrases Legally Defined, Second Edition, Saunders

(26) Canada, Report of the Royal Commission on Pilotage, p. 30 and 31

(27) 70 C.J.S., Pilots § 14

(28) 28.1 In a case where the master and officers left the bridge to the pilot to retire and the only ship's personnel on watch were unlicensed seaman assisting the pilot the Supreme Court stated:

"Nor are we satisfied with the conduct of the master in leaving the pilot in sole charge of the vessel. While the pilot doubtless supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation, the master is not wholly absolved from his duties while the pilot is on board, and may advise with him, and even displace him in case he is intoxicated or manifestly incompetent. He is still in command of the vessel, except so far as her navigation is concerned, and bound to see that there is a sufficient watch on deck, and the men are attentive to their duties. The Iona, R. 1. P.C. 426.

In The Batavier, 1 Spinks, 378, 383, it was said by Dr. Lushington: 'There are many cases in which I should hold that, notwithstanding the pilot has charge, it is the duty of the master to prevent accidents, and not to abandon the vessel entirely to the pilot; but that there are certain duties he has to discharge (notwithstanding there is a pilot on board) for the benefit of the owners.' In an official report made by a maritime commission in 1874, the Elder Brethren of Trinity House are said to have expressed the opinion 'that in well-conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel, but

that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken.' Marsden on Collisions."

The Oregon, 158 US 194 (1894)

(28) 28.2

"The rule stated in the case of Homer Ramsdell Co. v. Com. Gen. Trans., to the effect that in actions at common law the shipowner is not liable for injuries inflicted exclusively by negligence of a pilot accepted by a vessel compulsorily, does not exempt the shipowner from liability where negligence of the vessel's master proximately contributed to the injury complained of in such an action....We are of opinion that the evidence mentioned tended to prove conduct of the pilot, known to the master, giving rise to a case of danger or great necessity, calling for the intervention of the master. A master of a vessel is not without fault in acquiescing in conduct of a pilot which involves apparent and avoidable danger, whether such danger is to the vessel upon which the pilot is, or to another vessel, or persons or property thereon or on shore...as to whether the negligence shown was exclusively that of the pilot, and as to whether negligence of the master proximately contributed to the injury, should have been submitted to the jury under appropriate instructions."

Jure v. United Fruit Co., 6 F. 2d 7 (1925)

28.3

"The responsibility for the safety of the ship rests upon the master. The pilot, because of his superior knowledge of the depth of water and location of the channel, has charge of the navigation of the vessel, but even then the master is not absolved from his duties, but may advise the pilot, and even displace him in case of manifest incompetency....We recognize the rule contended for by defendant that the master ought not to substitute his judgment for that of the pilot except in cases of obvious danger, or as expressed in the Jure Case, where danger is apparent and avoidable. But we think a proper case for the master's assertion of

authority for the safety of his ship presents itself where it is obvious or apparent that danger from some cause is imminent, though the particular cause of danger may not be appreciated."

Charente S. S. Co. v. U.S., 12 F. 2d 413 (1926)

28.4 "The master is not merely entitled but bound to point out to the compulsory pilot that he may be mistaken in an opinion he has formed (The Tactician (1907) P. 244). He is also entitled, in order to avoid immediate peril, to take the navigation out of the hands of the pilot, but if he does so he must be prepared to show justification...'...if the master sees fit to take the navigation out of the hands of the pilot and countermands his orders, he must satisfy the court that he was justified in so doing, and that the action which he took was at all events more calculated to avoid a collision than the manoeuvre which he countermanded.'"

British, Tower Field v. Dock Board, L1.L. Rep. 233, p. 259 (1950)

(29) The Law of Pilotage, Chapter Seven, Division of Control Between Master and Pilot, p. 58

(30) 30.1 GENERAL DUTIES

Per Baron Parke in The Christiana (1850), 13 E.R. 841 P.C.

"The duties of the master and the pilot in many respects are clearly defined. Although the pilot has charge of the ship, the owners are most clearly responsible to third persons for the sufficiencies of the ship and her equipments, the competency of the master and crew, and their obedience to the orders of the pilot in everything that concerns his duty, and under ordinary circumstances we think that his commands are to be implicitly obeyed. To him belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one only."

Per Brett, L.J. in The Guy Mannering (1882), 4 Asp. M.L.C. 553:

"The duty of a pilot in England is too well known and too universally applied to require any enactment

with regard to it at all. It is to regulate the navigation of the ship, and to conduct it so far as the course of the ship is concerned. He has no other power on board the ship; he has no power over the discipline of the ship, he has no power over the cargo on board; he has no power with regard to the various matters which are necessary to enable him to perform his duty; he cannot place a man on the look-out, or regulate the place at which the look-out man shall be on board the ship. He has nothing to do but to control the navigation."

Per Lord Alverstone, C.J. in The Tactician (1907), 10 Asp.

M.L.C. 534:

"I think the cardinal principle to be borne in mind in these cases...is that the pilot is in sole charge of the ship, and that all directions as to speed, course, stopping and reversing and everything of that kind are for the pilot...But side by side with that principle is the other principle that the pilot is entitled to the fullest assistance of a competent crew, of a competent look out, and a well-found ship."

Per Bargreave Deane, J. in The Ape (1914), 12 Asp. M.L.C. 487:

"I have to...lay down what I think is the true principle as to the duty of ship's officers and crew towards the pilot, and...unless the man is incompetent in the sense of being ill or the worse for drink, or something of that sort which justifies force majeure, the officers of the vessel have no right to take control of the navigation out of the hands of the pilot, yet he is entitled to every assistance which can be rendered to him by those on board the ship."

Sir Samuel Evans said in The Umsinga (1912), 12 Asp. M.L.C. 1

"It is easy to conceive cases in which...a master must be on the bridge before it can be rightly said that all the assistance which the law requires to be given to the pilot by the master and the crew is given, and in which his absence might be evidence of negligence or default...But, in my opinion, it cannot be held as a matter of law, or as an inflexible rule of good navigation that the master must be there, or that his absence amounts to default for which his owners are liable, when he provides a competent officer, or where there are no special circumstances of difficulty, or no special matters within his knowledge of which he ought to be ready to inform the pilot...'It is beside the question to inquire whether the master, if on the bridge, might...have caused the pilot to avoid

the collision. If he is not there, and is not bound by the law, or by the rules of good navigation to be there, the court cannot surmise what he would have done if he was there."

Ibid, p. 61

(31) 31.1

INTERFERENCE

Dr. Lushington defined "interference" as follows:

"I should never go to the length of saying that the mere suggesting to the pilot on the part of the master to take in this sail, or otherwise to keep as near the South Sand light, and vice versa, or to bring the ship up, was interfering, in the legal acceptation of the term, with the duties of the pilot; illegal interference is of a different description. If, for example, in this case the boatswain had called out to the men below to starboard the helm, or if the master had called out to port the helm, it would be interference; but it would not be interference to consult the pilot, or to suggest to him the measures pursued were not proper, or that other measures would in all probability be attended with greater success.

The Lochlibo, 166 E.R. 978 (1850)

Thus, in the case of The Oakfield where the pilot gave, at the suggestion of the master, an improper order which brought about a collision with a vessel at anchor, it was held that the master's intervention did not transfer the responsibility of the pilot to the master. The Judge justified his decision as follows:

'There is a conflict as to how this order to starboard came to be given, but the pilot admits that the words proceeded from his lips. To excuse himself he says he was merely carrying out the captain's order, and that it was not his order at all. I cannot accept that explanation. I feel convinced that the true solution of the case is, that when the Duchess of Albany was first seen there was no doubt as to whether she was or was not at anchor, that the captain very likely did strongly express an opinion that it would be safe and proper to starboard and go across her bows, that the pilot adopted that view and gave the order which brought about the collision.'

The Oakfield, 5 Asp. M.L.C. 575 (1886)

Ibid, p. 62

(32) 32.1

LOOKOUT

"In circumstances which called for the greatest care and fullest assistance he (the pilot) was left to his own observation. It is obvious from his own explanation that he was not fully aware of the position and intentions of both these vessels at the time of the collision. It may be (though I am not satisfied on this point) that he ought to have been aware, but a pilot's duty is that of controlling the navigation of the ship and his attention must at times be concentrated on some particular fact. He is entitled to have the assistance of a look-out and timely reports of material incidents."

The Alexander Shukoff, 15 Asp. M.L.C. 122 (1920)

32.2 "In the same case Lord Molton said:

'The defendants say that the pilot ought to have found these things for himself and that therefore, they are excused for having omitted to report them to him. Now it must be remembered that the pilot has many things to think of, especially where...he is leaving port in company with other vessels and new incidents may at any moment arise. He needs, therefore, to be in a position of feeling that he can give his whole attention to his duties of management secure that all relevant occurrences will be duly reported to him.'

32.3 "...He must have been from his own observation, perfectly aware of the torpedo-boat and her movements at all material times. Under these circumstances it is not easy to see how, even if there had been an omission on the part of the lookout...to report the torpedo-boat, this omission could have contributed to the accident, as the pilot was throughout in full possession of all the facts himself."

The Kamouraska, (H.L.) 2Ll.L Rep. 125, 299 at p.300(1920)

The Law of Pilotage, p. 64

(33) 33.1

COLLISION REGULATIONS

"I have said on many occasions...that a master, has no right to interfere with the pilot, except in cases of the pilot's intoxication or manifest incapability, or in cases of danger which the pilot does not foresee, or in cases of great necessity. The master of the Argo says 'It is not my province to take notice of the ship, or on what shore she is navigating. She may be taken here or there, while she is in charge of the pilot, without my knowing the cause; there may be reason under water why the pilot does it. All my duty is, to take care that all the pilot's orders are promptly and properly obeyed'; and I think he says so rightly."

The Argo, 166 E.R. 1217 (1859)

(34) 34.1

WHETHER TO PROCEED

"Thus in a case where the court had to decide upon the wisdom of taking a vessel through the Downs in bad weather, the Judge said:

'...It would be very dangerous to hold, that there can be any divided authority in the ship with reference to the same subject, and whether the ship was to anchor or to proceed was a matter which we think belonged exclusively to the pilot to decide.'

Pollock V. M'Alpin, 13 E.R. 945 (1851)

34.2

"Similarly, in the case of The Oakfield, which was involved in a collision with a vessel at anchor in the River Mersey in poor visibility, Sir James Hannen said:

'I think if there was such a state of obscurity owing to fog as would give rise to a plain prospect of danger, the master could in those circumstances throw the whole responsibility on the pilot if he ordered the vessel to get underway. But in this case it is said that the circumstances did not give rise to such a plain prospect of danger, for although the weather was admittedly foggy, yet vessels might be

seen at such a distance as that, then it is a question for the pilot to determine whether it was wise to weigh anchor, and the master would be relieved from responsibility. The pilot knows all the local dangers and knows as it were by instinct where he may go and where he may not go. It is therefore obvious that the master would leave it to the pilot to judge whether it would be safe to proceed in such a state of weather."

The Oakfield, 5 Asp. M.L.C. 575 (1886)

The Law of Pilotage, p. 66

(35) 35.1

SPEED

"It would appear from reported cases that the speed at which a vessel should proceed is within the province of the pilot. In The Maria, for example, Dr. Lushington said:

'...it would be a most dangerous doctrine to hold, except under most extraordinary circumstances, that the master could be justified in interfering with the pilot in his proper vocation...If no order was given to ease the steamer, the fault was in the pilot, not in the master.'

The Maria, 166 E.R. 508 (1839)

The Law of Pilotage, p. 68

(36) 36.1

USE OF RADAR

Quoting from the Canadian Royal Commission:

"With the aid of various electronic instruments, the pilot is now provided with means which are constantly being improved to 'see' when visual means fail but this electronic 'sight' has its limitations, and the images and information provided differ from what is seen by the naked eye. Therefore, to take advantage of these technical developments, pilots must acquire the necessary knowledge and skill to understand and use these instruments. The strange images that

appear on the radar screen should be as familiar to the pilot as the land features in time of clear visibility and such local knowledge must form part of the qualifications of pilots today."

Ibid, p. 69

(37) 37.1 Port of Baltimore Vessel Traffic, 1978, attached

Source: Baltimore Maritime Exchange Monthly Reports

Total Arrivals	4,295	Chile	25
U. S.	831	Finland	25
Foreign Flag	3,464	Iran	20
Liberia	568	Taiwan	20
Greece	364	South Korea	20
W. Germany	328	Peru	19
United Kingdom	292	Turkey	19
Norway	233	Iceland	18
U.S.S.R.	156	Philippines	16
Denmark	135	Cyprus	15
Japan	130	Egypt	15
Panama	118	Indonesia	14
Italy	100	Kuwait	13
Sweden	94	Ecuador	10
Singapore	82	Pakistan	10
Netherlands	78	Honduras	9
France	73	Canada	7
Spain	63	Israel	7
Poland	56	Algeria	5
Yugoslavia	46	Bangladesh	4
Brazil	45	Portugal	4
Argentina	39	Switzerland	4
India	34	Netherlands Antilles	3
Colombia	31	Libya	2
Venezuela	30	Malaysia	2
South Africa	26	Austria	1
Belgium	25	Nigeria	1

Prepared by the Great Lakes Commission

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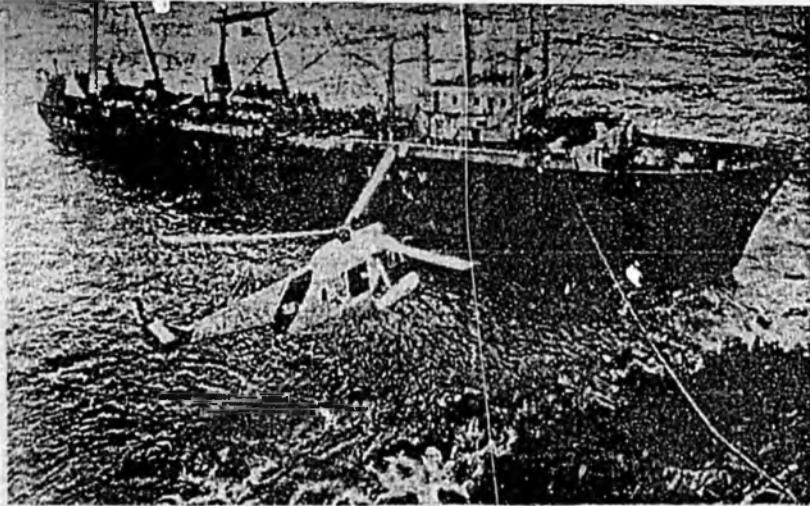
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THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.



Associated Press Wirephoto

The bow of the Japanese ship Ryuyo Maru No. 2 is hard aground on St. Paul Island in the Pribilof Islands, since the fisheries factory vessel hit the rocks on Friday. Some 100,000 gallons of diesel oil has spilled from her ruptured fuel tanks into the Bering Sea. This Coast Guard photo was taken from atop cliffs on the island.

State queries why ship had no licensed pilot

By **BILL WILSON**
Daily News reporter

There was no licensed pilot aboard the Ryuyo Maru No. 2 Friday night when a Japanese fishing vessel crashed into the wildlife-rich rocks of St. Paul Island and began spilling oil, state and federal officials said Wednesday.

The absence of a such a pilot may have been a violation of state law.

Alaska law requires state-licensed pilots be at the helm when large vessels ply so-called "inland waterways." Generally the pilots board vessels as they approach Alaska waters.

Whether or not the seas surrounding the Pribilof Islands are among those requiring an Alaskan pilot is presently being investigated by the Alaska Department of Commerce.

The Ryuyo's captain was at the helm Friday night when the 324-foot Japanese bottomfishing



vessel ran aground, according to Sally Towers, a U.S. government monitor aboard the craft. Towers boarded the Ryuyo in Japan to keep an eye on harvest logs, and was being taken to St. Paul so she could visit an ailing member of her family in Seattle at the time of the grounding.

One source within the commerce department said the penalties following a finding that a pilot was needed, "would be very, very heavy," but declined to say how big they might be.

While state law specifically identifies certain territory requiring a licensed pilot — such as the inside passage in Southeastern and much of Cook Inlet — it addresses much of the

water surrounding Alaska in rather vague terms, according to marine attorneys. Hence the uncertainty over the Ryuyo.

The piloting of the vessel is also part of the U.S. Coast Guard's investigation, according to Lt. Cmdr. Mike Macie, the local Marine Safety Officer, who declined to elaborate.

Meanwhile, the mop-up effort continued into the night Wednesday in the face of worsening weather. Although the 35-knot winds and 20-foot waves that have helped evaporate the 60,000 to 100,000 gallons of diesel fuel that spewed from the ill-fated vessel's tanks, they hamper speedy collection of remaining oil. The weather forecast for St. Paul calls for 60-knot winds and 30-foot waves today and tomorrow.

About 2 miles of beach are now covered with varying amounts of oil, officials say.

The oil has killed dozens of waterfowl and possibly is responsible for the death of a handful of seal pups, but overall, damage to the St. Paul ecosystem appears to be relatively light — at least so far, according to Coast Guard officials.

However, Salt Lagoon, a stopping point for thousands of migrating ducks and other water birds, is suffering from the spill as the tide deposits more and more diesel.

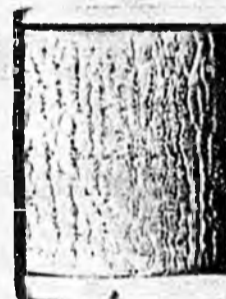
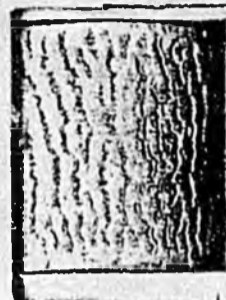
The lagoon, near the village of St. Paul, is fed by a narrow channel. The 80 cleanup workers on the scene are building a sandbag dam across the lagoon in an effort to keep the sheen away. A boom designed to block the flow of the oil was in place Wednesday. It had broken loose earlier in the cleanup effort.

While the current bird population of the lagoon is small, Coast Guard spill experts say a

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15 Nov 1979



State queries ship's lack of licensed pilot

Continued

wave of migrating Elder ducks is expected soon. Much of the cleanup activity is presently centered around collecting oil-poisoned crustaceans so they may not be eaten by birds.

The creatures upon which the Eiders and other birds feed include small shrimp-like animals.

"Our problem now is that several food species are being affected adversely," said Macle. "In other words, they are being killed."

The cleanup crew faces lethal ammonia gas which is thought to have escaped from the vessel's refrigeration system. Also, a deadly hydrogen and sulfur mix is sometimes created when ammonia blends with organic matter, says the Coast Guard. Whether or not that has happened was not known Wednesday as much of the freezing equipment was underwater and could not be reached.

Macle said the oil remaining in the Ryuyo will be removed via three-inch vents on deck, a process he says requires "lots of muscle power and lots of patience."

Macle, who visited St. Paul over the weekend to watch the

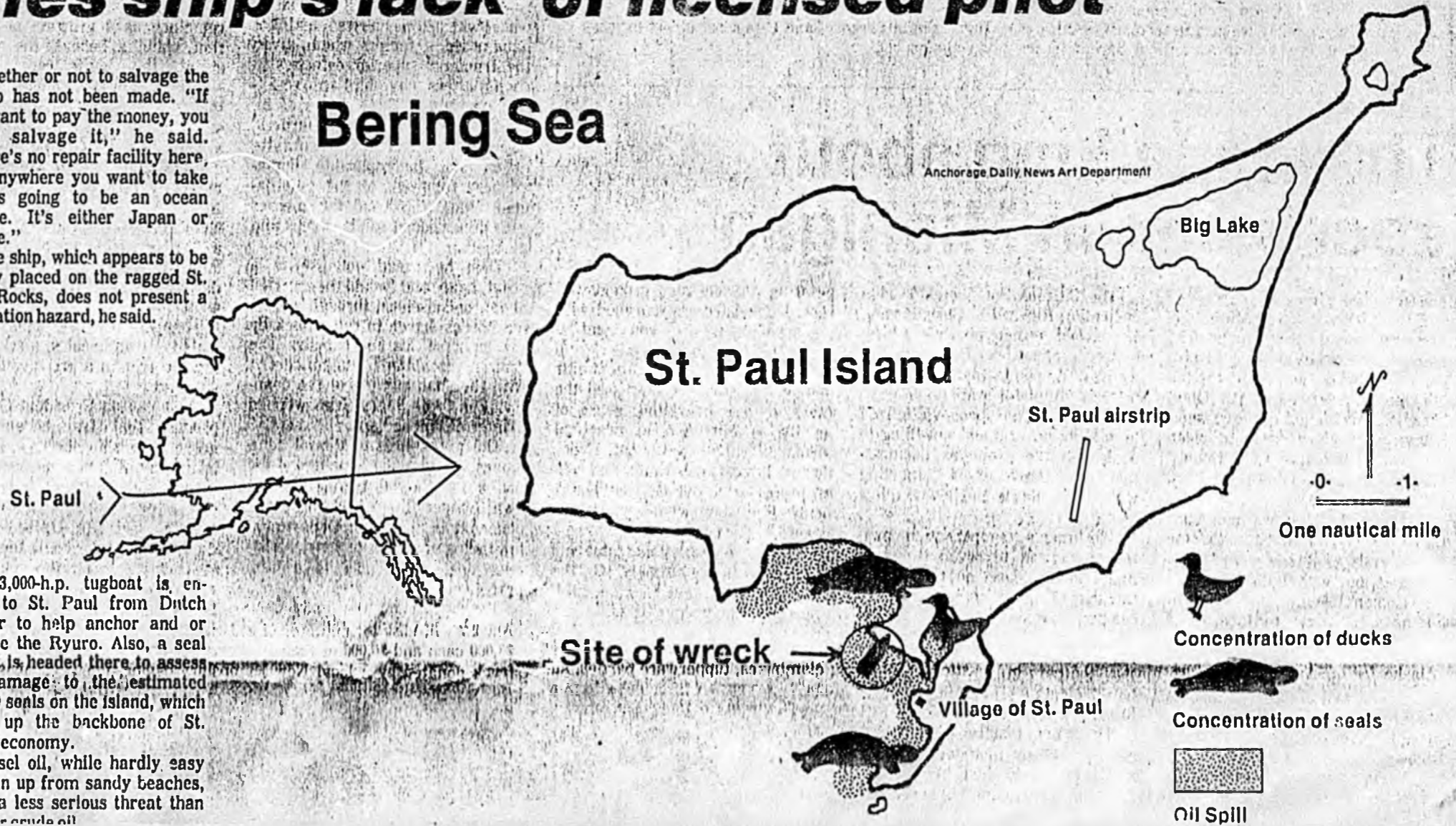
of whether or not to salvage the Ryuyo has not been made. "If you want to pay the money, you could salvage it," he said. "There's no repair facility here, and anywhere you want to take it, it's going to be an ocean voyage. It's either Japan or Seattle."

The ship, which appears to be solidly placed on the ragged St. Paul Rocks, does not present a navigation hazard, he said.

A 3,000-h.p. tugboat is en route to St. Paul from Dutch Harbor to help anchor and or remove the Ryuyo. Also, a seal expert is headed there to assess the damage to the estimated 100,000 seals on the island, which make up the backbone of St. Paul's economy.

Diesel oil, while hardly easy to clean up from sandy beaches, poses a less serious threat than heavier crude oil.

Bering Sea





mailed 21 Dec 1979
file copy
Alaska State Legislature

Senate

Committee on Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

FOR FURTHER INFORMATION CONTACT:

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Anchorage, AK 99501
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PUBLIC SERVICE ANNOUNCEMENT

The Senate Commerce Committee will convene at 1:00 p.m. (Alaska Standard Time) on Monday, December 10, 1979, for the purpose of holding a public "Sunset" hearing on the Board of Marine Pilots. The hearing is open to the public and will be held in Anchorage at 1016 West Sixth Avenue, Suite 201. The hearing will also be teleconferenced to Fairbanks, Soldotna, Ketchikan and Juneau.

Fairbanks will hold its hearing at the Legislative Information Office, 101 College Road, Building F, Room 252, Fairbanks.

The Soldotna hearing will be held at the Legislative Information Office, Cordova Building, Spur Highway, Soldotna.

The hearings in Juneau and Ketchikan will begin at 3:00 p.m. (Pacific Standard Time). Juneau will hold its hearing in Room 124 of the Capitol Building, Juneau. The Ketchikan hearing will be held at the Legislative Information Office, 415 Main Street, Room 301, Ketchikan.

A copy of the performance review of the Board of Marine Pilots is available for public use at the local Legislative Information Offices.

For further information, please contact the Senate Commerce Committee at 1016 West Sixth Avenue, Suite 201, Anchorage, AK 99501, telephone: 278-1581 or 278-1582.

Rooster

MARINE PILOTS

November 1, 1979

AA 0066	Bradley, John R.	PO Box 1273	Homer	AK	99603
AA 0036	Brastad, Erling	10505 15th N.W.	Seattle	WA	98177
AA 0013	Bugler, Franklin	4901 30th St. N.E.	Tacoma	WA	98422
AA 0057	Bullard, William	PO Box 7132	Ketchikan	AK	99901
AA 0062	Christy, Timothy	PO Box 552	Homer	AK	99603
AA 0031	Clark, John E.	13528 91 Pl. N.E.	Kirkland	WA	98033
AA 0035	Clough, A. Harley	PO Box 1171	Juneau	AK	99807
AA 0010	Collar, Oliver K.	2580 Nathaniel Court	Anchorage	AK	99503
AA 0070	Collins, Dale O.	PO Box 5997	Ketchikan	AK	99901
AA 0059	Cray, John J.	PO Box 6100	Ketchikan	AK	99901
AA 0042	Creasey, E. H.	740 Maple St.	Edmonds	WA	98020
AA 0041	Cunningham, John T.	PO Box 568	Homer	AK	99603
AA 0054	Davis, Veymond	PO Box 807	Douglas	AK	99824
AA 0068	Elde, Kaare Per	6413 Colgate Drive	Anchorage	AK	99504
AA 0050	Elaensohn, Harold K.	PO Box 6100	Ketchikan	AK	99901
AA 0007	Falconer, Charles P.	4650 Blank Road	Sebastopol	CA	95472
AA 0065	Gavin, Michael T.	8020 240th S.W.	Edmonds	WA	98020
AA 0069	Handricks, Robert L.	Box 977	Homer	AK	99603
AA 0049	Hodgman, James A.	PO Box 6100	Ketchikan	AK	99901
AA 0043	Hofstad, Richard T.	505 7th Ave., Box 66	Seward	AK	99664
AA 0047	Hurd, James M.	PO Box 678	Homer	AK	99603
AA 0074	Johnson, Arthur L.	2408 2nd Ave.	Ketchikan	AK	99901
AA 0037	Johnson, Robert C.	4111 S.W. Frontenac	Seattle	WA	98136
AA 0027	Johnson, Robert M.	605 Tower Road	Ketchikan	AK	99901
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AA 0006	Maroni, Jack	PO Box 6100	Ketchikan	AK	99901
AA 0033	McReynolds, George	PO Box 7544	Ketchikan	AK	99901
AA 0055	Mitchell, William W.	1304 Millar St.	Ketchikan	AK	99901
AA 0051	Murphy, William E.	PO Box 597	Homer	AK	99603
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AA 0040	Pedersen, Theodore	Bear Cove, Box 113	Homer	AK	99603
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Board of Marine Pilots

10/18/79

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BOARD OF MARINE PILOTS

(AS 08.62.010; 2 pilots and 2 agents and 2 public members or managers appointed by the governor and confirmed by the legislature; 4-year term.)

MEMBERS	REPLACING	APPT.	TERM
Mr. Charles D. Stover P. O. Box 2019 Anchorage, Alaska 99510		76/06/17	80/06/01
Captain Donald J. Oldow P. O. Box 881 Seward, Alaska 99664		76/11/05	80/06/01
Mr. Jack Maroni P. O. Box 6100 Ketchikan, Alaska 99901		75/10/07	79/06/01
Mr. Marvin Taylor P. O. Box 436 Skagway, Alaska 99840		75/10/07	79/06/01
Mr. David Culbertson 801-42 Airport Heights Road Anchorage, Alaska 99504	New: David George R.R. #5 Box 5575-A Juneau, AK 99803	76/10/29	80/06/01
Mr. Kenneth E. Peavyhouse P. O. Box 628 Valdez, Alaska 99686 (Public)		79/01/00	83/06/01

Commissioner *Chamman* *Weber*
Commerce and Economic Development
Pouch D
Juneau, Alaska 99811

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Division of Occupational Licensing
Commerce and Economic Development
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President Capt. Murphy
S.W. Alaska Pilot's Assn.
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President Capt. Richards
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FROM: DANIEL J. PAUL

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February 29, 1980

Honorable W. E. Bradley
Chairman, Senate Commerce Committee
State of Alaska
State Capitol
Pouch-V Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

- 1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

No action is requested. This requirement is included under 12 AAC 56.030(2).

- 2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

It is recommended that language be added to AS 08.62.040(2) permitting elimination of examination requirements

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3. Seek active USCG liaison with the Board of Marine Pilots.

It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

This subject should be included in the scope of the previously recommended Committee's work.

- ② Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

AIMS proposes Section 08.62.160 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

Regulation of Fees

1. Provide more detailed criteria for evaluating pilot-age rate changes.

Section 08.62.040(4) should be amended to require that

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.090(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

Board Composition

- ① Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

Regulation of Enrolled Vessels

- ① Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

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In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employec, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,



Mark R. Johnson
Assitant to the Director
of Marine Affairs

/for/ Daniel J. Paul, Jr.

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