

ALASKA

LEGISLATURE

COMMITTEE

FILES

1991-1992

8672

7058

HOUSE

LABOR

& COMMERCE

Equipment:

10.0

Funding will provide one-time equipment costs for the Marine Pilot Coordinator position. This funding will also provide for on-going office space costs.

TOTAL COSTS:

\$96.0

Revenues:

There are approximately 123 licensed marine pilots whose licensing fees must be increased to cover the new costs provided in the bill. In addition, current expenses of the Board of Marine Pilots exceed revenues generated through licensing fees to support its licensing program. Therefore, licensing fees will have to be increased substantially in order for the licensing program to support its costs. Biennial licensing fees of \$2,040 (\$1,020 per year) will be necessary to fully fund program costs. Marine Pilot licensees currently pay a biennial fee of \$180 (\$90 per year), and reflect a deficit of \$36.2 in covering its costs by licensing fees. If licensing fees are not increased to cover program costs, the program must then be supported by the general fund.

Since marine pilot licenses are due for renewal on December 31, 1992 (FY 93), revenues will not be collected in the first year of operation under provisions of HB 194. Funding in the first year must therefore be covered by general funds, unless a special one time assessment fee is made to licensees in FY 92.

The revenues identified in this fiscal note are based on the assumption that licensees will be willing to increase their fees to fully cover the costs of its licensing program beginning in FY 93 in conjunction with the license renewal period.

ALASKA STATE LEGISLATURE

ELECTIVE DISTRICT I

HYDER
KETCHIKAN
KUPREANOF
MEYERS CHUCK
PETERSBURG
SAXMAN
WRANGELL



HOME

PO. BOX 5723
KETCHIKAN, AK 99901
PHONE 225-6304

DURING SESSION

PO. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3424

Representative Cheri L. Davis

TESTIMONY MARINE PILOTAGE ACT HOUSE BILL 194

The legislatures of all coastal States have, by statute, created boards or commissions to govern the operation of pilots of their respective states; for the appointment and licensing of such pilots; and, frequently, for the fixing of rates for pilots. Such boards and commissions are administrative agencies and, as such, are creatures of statute. The jurisdiction and authority which they assert must be found within the four corners of the statutes under which they were created.

House Bill 194 gives our Board of Marine Pilots this jurisdiction and authority.

It has been almost twenty years since any major changes were made regarding piloting in Alaska. Since introducing this bill, I have been told by some people, "things are fine....if it isn't broken, don't fix it." While I don't feel our pilotage regulations are "broken," I do feel they can use some much needed maintenance.

Pilots play an important, integral part, of transportation in Alaska. Pilots are taken on board at a particular place for the purpose of conducting a ship through inside coastal waters, or from or into a port. It is their "local knowledge" that ensures the safe passage of vessels through our waters.

This bill is a product of compromise. I have met with several representatives from the shipping industry, pilot board members, pilots and pilot organizations. I have taken into consideration all of their comments and requests and incorporated those constructive suggestions into this bill.

The Law of Tug, Tow and Pilotage gives a history of everything you could ever want to know about piloting. It gives a history of the pilotage industry and cites court cases that back-up the need for a strong Pilot Board. Giving the board the statutory power to enforce and regulate its pilots will serve in the best interest of Alaska.

Thank you.

Sectional Summary
CS for House Bill 194

Section 1 of the bill sets out the findings of the legislature in regard to marine pilots and the Board of Marine Pilots.

Section 2 of the bill amends AS 08.62.020 in order to add the public members of the board to this section.

Section 3 of the bill amends AS 08.62.030 by requiring the Board of Marine Pilots to hold at least four meetings each year and by allowing special meetings to be called by the chair of the board or a majority of the membership of the board.

Section 4 of the bill repeals and reenacts AS 08.62.040 relating to the powers and duties of the Board of Marine Pilots.

Section 5 of the bill adds a new section to AS 08.62 providing that the Department of Commerce and Economic Development, after consultation with the Board of Marine Pilots, may employ a marine pilot coordinator approved by the board to administer and enforce AS 08.62.

Section 6 of the bill repeals and reenacts AS 08.62.080 relating to the requirement for a pilot license and to the expiration date of pilot licenses. Furthermore, it allows for a pilot to be licensed for not more than one pilotage region at one time.

Sections 7 and 8 of the bill amends AS 08.62.090 to add requirements that a person must apply to take an examination administered by the Board of Marine Pilots at least 45 days before the scheduled date of the examination and that the board establish and publish the dates for future examinations.

Section 9 of the bill amends AS 08.62 by establishing the qualifications for a deputy marine pilot license. Section 08.62.097 relates to training programs for the Deputy Marine Pilot and establishes standards for those training programs.

Section 10 of the bill repeals and reenacts AS 08.62.100 relating to the qualifications for a marine pilot license.

Section 11 of the bill repeals and reenacts AS 08.62.120 relating to the requirements for renewal of marine pilot and deputy marine pilot licenses.

Section 12 of the bill repeals and reenacts AS 08.62.130 relating to requirements for the reinstatement of lapsed marine pilot and deputy marine pilot licenses.

Section 13 of the bill amends AS 08.62.150(a) relating to grounds for imposition of disciplinary sanctions on marine pilots and deputy marine pilots.

Section 14 of the bill amends AS 08.62.160 relating to the mandatory employment of marine pilots by extending the mandatory pilotage requirement to inland and costal waters of Alaska. Furthermore vessels subject to this chapter shall be under the conduct of a marine pilot unless the marine pilot is relieved for cause.

Section 15 of the bill adds a new section to AS 08.62 relating to the liability of marine pilots, marine pilot organizations, vessels, their cargo, owners and operators of vessels, and owners and operators of pilot boats for damage or loss resulting from or related to the provision of pilotage services.

Section 16 of the bill repeals and reenacts AS 08.62.170 relating to the pilot's lien for compensation for pilotage services.

Section 17 of the bill adds a new section to AS 08.62 relating to the creation of regional marine pilot organizations and the recognition by the Board of Marine Pilots of marine pilot organizations for each marine pilotage region.

Section 18 of the bill amends AS 08.62.180 relating to those vessels exempt from the mandatory pilotage requirements under AS 08.62 by further limiting the exemption for Canadian vessels to those Canadian vessels that are built in Canada and manned by Canadian crews.

Section 19 of the bill makes technical changes to AS 08.62.187 in order to conform to changes made to AS 08.62.040, by sec. 4 of the bill.

Section 20 of the bill amends AS 08.62.190 by increasing the criminal penalties for violating provisions of AS 08.62.

Section 21 of the bill amends AS 08.62 by adding a new section providing that AS 08.62 may be cited as the Alaska Marine Pilotage Act.

Section 22 of the bill amends AS 39.25.120(c) by providing that the marine pilot coordinator, authorized by AS 08.62.050 as added by sec. 5 of this bill, shall be in the exempt state service.

Section 23 of the bill amends AS 45.50.572(a) by adding licensed marine pilot organizations to the list of organizations that are exempt from certain provisions of AS 45.50 relating to monopolies and restraint of trade.

Section 24 of the bill provides for transition from the current marine pilot licensing requirements to those proposed by the bill. The licensing requirements proposed by the bill would apply to new marine pilots as soon as the requirements take effect, but current marine pilot licensees would have until January 1, 1995 to satisfy the new requirements.

Section 25 of the bill repeals AS 08.62.155.

Section 26 of the bill provides that those provisions of the bill not related to the licensure of marine pilots and deputy marine pilots take effect on July 1, 1991.

Section 27 of the bill provides that those provisions of the bill relating to licensure of marine pilots and deputy marine pilots take effect on January 1, 1992.

**CHANGES BETWEEN
3/21 CS AND 4/3 CS**

Page 1, Lines 7 and 8;

Was: (2) marine pilots operating independently of the shipping industry have provided and will continue to provide essential service to the state;

Now: (2) marine pilots operating as independent contractors have provided and will continue to provide essential service to the state;

Why: Industry had problems with the language.

Page 3, Line 4;

Delete: 'each'

Add: 's' to region

Why: Industry felt that by saying 'each region' it could lead to monopolistic trends in the region.

Page 3, Line 8;

Add: after ...training, 'administration'

Why: This would help defray costs of investigating accidents, etc., by the Pilot Coordinator.

Page 3, Line 12;

Add: after ...pilot organizations, 'or individual pilots'

Why: Technical change.

Page 7, Lines 3, 4 and 5;

Was: ...and completes two familiarization trips under the supervision of a licensed marine pilot approved by the board for each year that the license has been lapsed to each major port and waterway, defined by the board....

Now: ...and completes familiarization trips defined by the board....

Why: Technical change. This was an oversight because we removed any reference to specific numbers in regards to training. Left that decision up to the board.

Page 7, Lines 26, 27 and 28;

Was: ...navigating the water of or adjacent to, to the extent permitted by federal law, the state as determined by the board in regulation shall be under the direction and control of a marine pilot...

Now: ...navigating the inland and coastal waters of Alaska as determined by the board in regulation shall be under the conduct of a marine pilot...

Why: Industry did not like the language 'adjacent to' and 'direction and control.' This is compromise language.

Page 8, Line 13;

Add: after ... pilotage of a vessel, 'The limitation of liability of a regional organization of marine pilots under this subsection does not apply if the organization's error, fault, or omission is wilful or constitutes gross negligence or if the organization's neglect constitutes gross negligence.'

Why: Industry wanted the organizations to have some responsibility in the case of gross negligence, etc.

Page 11, Lines 3 and 21;

Add: after ...under AS 08.62.100, 'and AS 08.62.120'

CS FOR HOUSE BILL NO. 194 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES C.DAVIS, G.Phillips, Hudson, Koponen, B.Davis, Taylor, Choquette, Baker, Sharp

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot
2 organizations; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. FINDINGS. The legislature finds that

5 (1) the first and paramount duty of marine pilots licensed by the state is to provide for
6 the public safety and the protection of the marine environment;

7 (2) marine pilots operating as independent contractors have provided and will continue
8 to provide essential service to the state;

9 (3) licensing and regulation of marine pilots have protected and will continue to protect
10 the public from the consequences of marine accidents;

11 (4) the compulsory use of licensed marine pilots to pilot certain vessels in inland and
12 coastal water of the state is necessary in order to prevent the loss of life and property and to protect the
13 marine environment;

14 (5) marine pilots must be highly trained and regulated to assure that only qualified

1 persons are responsible for navigating vessels in and adjacent to water of the state;

2 (6) the Board of Marine Pilots must have broad authority to regulate marine pilots,
3 including authority to establish marine pilotage regions, tariffs, and training and licensing criteria for
4 marine pilots;

5 (7) marine pilot organizations have provided, and will continue to provide, important
6 service to the public and to protect lives and property and the marine environment;

7 (8) marine pilot organizations should share in the responsibility for maintaining safe and
8 reliable marine pilotage systems established by the Board of Marine Pilots;

9 (9) it is in the best interest of the state to exercise its jurisdiction, to the maximum extent
10 possible, over the water of the state through the enactment of a marine pilot licensing law that requires
11 stringent licensing and performance standards for marine pilots.

12 * Sec. 2. AS 08.62.020 is amended to read:

13 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint
14 the pilot, [AND] agent or manager, and public members of the board, subject to confirmation
15 by a majority of the members of the legislature in joint session, for terms of four years [,] or
16 until their successors are appointed. A person, with the exception of the commissioner or the
17 commissioner's designee, may not be appointed to the board for more than two consecutive
18 terms.

19 * Sec. 3. AS 08.62.030 is amended to read:

20 Sec. 08.62.030. MEETINGS. The board shall hold up to four [A] regular meetings each
21 year [ANNUAL MEETING]. The board may hold special meetings at the call of the chair or
22 at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR
23 APPROVAL OF THE GOVERNOR].

24 * Sec. 4. AS 08.62.040 is repealed and reenacted to read:

25 Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

26 (1) provide for

27 (A) the examination of applicants for marine pilot and deputy marine pilot
28 licenses; and

29 (B) issuance and renewal of marine pilot and deputy marine pilot licenses
30 for each pilotage region;

31 (2) place qualifications or limitations on marine pilot and deputy marine pilot

1 licenses based on the characteristics of a marine pilotage region in which the licensee will operate
2 and the experience and training of the licensee;

3 (3) recognize regional marine pilot organizations to promote, administer, and
4 manage an efficient, reliable, and safe pilotage system within marine pilotage regions;

5 (4) keep a register of licensed marine pilots, licensed deputy marine pilots, and
6 agents;

7 (5) establish pilotage tariffs for each marine pilotage region, and charges for
8 training, administration, and other purposes;

9 (6) establish a mandatory random drug and alcohol testing program for persons
10 licensed under this chapter;

11 (7) establish standards for training of marine pilots and deputy marine pilots and
12 review training programs conducted by regional marine pilot organizations or by individual
13 marine pilots and approve the training program if the board finds that the program is consistent
14 with standards established by the board;

15 (8) make available, upon request, copies of this chapter and the regulations
16 adopted under this chapter;

17 (9) review the articles, bylaws, and operating rules of regional marine pilot
18 organizations recognized by the board and approve the articles, bylaws, and rules, if the board
19 finds that they are consistent with this chapter, regulations adopted under this chapter, and other
20 applicable law;

21 (10) audit regional marine pilot organizations recognized by the board for
22 compliance with applicable law; and

23 (11) impose disciplinary sanctions under AS 08.01.075 on persons licensed under
24 this chapter;

25 (12) establish by regulation marine pilotage regions.

26 (b) The board may, by regulation, make other provisions for proper and safe pilotage
27 upon the waters covered by this chapter and for the efficient administration of this chapter.

28 (c) The board may, for good cause, require a person licensed under this chapter or an
29 applicant for a license issued under this chapter to submit to a physical or mental examination
30 to determine the person's fitness to perform the duties of a marine pilot.

31 * Sec. 5. AS 08.62 is amended by adding a new section to article 1 to read:

1 Sec. 08.62.050. MARINE PILOT COORDINATOR. The department may, after
2 consultation with the board, employ a marine pilot coordinator approved by the board to
3 adminis ~~er~~ and enforce this chapter. The coordinator may not be an active member of a regional
4 marine pilot organization in the state and may not serve as a marine pilot except as necessary to
5 perform the duties of marine pilot coordinator.

6 * Sec. 6. AS 08.62.080 is repealed and reenacted to read:

7 Sec. 08.62.080. LICENSE REQUIREMENT. (a) A person may not pilot a vessel
8 subject to this chapter unless the person is licensed under this chapter to pilot a vessel of that
9 type or size within that marine pilotage region.

10 (b) A person may not be licensed for more than one pilotage region at one time.

11 (c) Notwithstanding AS 08.01.100(a), marine pilot and deputy marine pilot licenses
12 expire on December 31 of each even-numbered year.

13 * Sec. 7. AS 08.62.090(a) is amended to read:

14 (a) A person who desires to be licensed under this chapter shall apply in writing to the
15 department. A person must apply to take an examination at least 45 days before the
16 scheduled date of an examination in order to take the examination on that date.

17 * Sec. 8. AS 08.62.090 is amended by adding a new subsection to read:

18 (c) The board shall establish and publish dates for future examinations.

19 * Sec. 9. AS 08.62 is amended by adding new sections to read:

20 Sec. 08.62.093. QUALIFICATIONS FOR DEPUTY MARINE PILOT LICENSE. (a)

21 The board shall issue a deputy marine pilot license for a marine pilotage region to a person who

22 (1) is a citizen of the United States;

23 (2) passes the written and oral examinations that may be required by the board;

24 (3) has completed training requirements established by the board; and

25 (4) satisfies (b) and (c) of this section.

26 (b) A person who applies for a deputy marine pilot license under this chapter shall
27 provide proof satisfactory to the board of the following experience:

28 (1) one year of sea service as a master on ocean or coastwise vessels while holding
29 a license as master of ocean steam or motor vessels of any gross tons;

30 (2) two years of sea service as a master on vessels or tug and tow of not less than
31 1,600 combined gross tons while holding a license as master of vessels of not less than 1,600

1 gross tons;

2 (3) two years of sea service as a chief officer on ocean or coastwise vessels of not
3 less than 1,600 gross tons while holding a license as master of ocean steam or motor vessels of
4 any gross tons;

5 (4) two years of sea service as commanding officer of United States commissioned
6 vessels of not less than 1,600 gross tons while holding a license as master of ocean steam or
7 motor vessels of any gross tons; or

8 (5) three years of experience as a member of a professional pilot's organization,
9 during which the person actively engaged in piloting while holding at least a license as a master
10 of freight or towing vessel of not more than 1,600 gross tons.

11 (c) A person who applies for a deputy marine pilot license under this section shall
12 possess an endorsement of first class pilotage on the person's United States Coast Guard license
13 without tonnage restrictions for the pilotage region for which the person seeks the deputy marine
14 pilot license.

15 (d) A person licensed as a deputy marine pilot under this section may, except as
16 otherwise provided by the board, pilot vessels of 20,000 gross tons or less in a marine pilotage
17 region for which the license is issued.

18 (e) In this section, "sea service" has the meaning given to the term by the United States
19 Coast Guard under 46 C.F.R. 10.

20 **Sec. 08.62.097. TRAINING PROGRAMS FOR DEPUTY MARINE PILOT LICENSE.**

21 (a) The board shall establish standards for training programs for a deputy marine pilot license.
22 The standards may include requirements for

23 (1) supervised familiarization and training trips on vessels subject to this chapter;

24 (2) supervised dockings, undockings, and tug assisted maneuvers;

25 (3) special training or experience necessary to qualify for a deputy marine pilot
26 license for a particular marine pilotage region;

27 (4) completion of the training program within a specified period;

28 (5) other training or experience that the board considers appropriate.

29 (b) A person who supervises the training of persons who are seeking a deputy marine
30 pilot license under this chapter shall

31 (1) hold a marine pilot license issued under AS 08.62.100;

1 (2) receive prior authorization from the board to supervise the training of those
2 persons;

3 (3) maintain a written log and evaluation on a form provided by the board of the
4 training and progress of the person being supervised.

5 * Sec. 10. AS 08.62.100 is repealed and reenacted to read:

6 Sec. 08.62.100. QUALIFICATIONS FOR A MARINE PILOT LICENSE. The board
7 shall issue a marine pilot license for a marine pilotage region to a person who

8 (1) is a citizen of the United States;

9 (2) passes written and oral examinations that may be required by the board;

10 (3) has three years experience as a deputy marine pilot licensed under this
11 chapter; and

12 (4) satisfies additional requirements as may be required by the board by
13 regulation.

14 * Sec. 11. AS 08.62.120 is repealed and reenacted to read:

15 Sec. 08.62.120. RENEWAL OF LICENSES. (a) In order to renew a marine pilot license,
16 a person who is licensed under AS 08.62.100 shall

17 (1) submit an application for renewal of the license on a form provided by the
18 board;

19 (2) submit proof of continued qualification under AS 08.62.100 to receive a
20 marine pilot license;

21 (3) provide evidence of satisfactory completion of a physical examination by a
22 licensed physician within 60 days before the date of renewal of the license;

23 (4) submit proof satisfactory to the board that the person

24 (A) has engaged in piloting vessels subject to this chapter in the marine
25 pilotage region for which the license is to be renewed during at least 60 days in the
26 licensing period immediately preceding the licensing period for which renewal is sought;
27 or

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

31 (b) The board shall establish criteria for the renewal of deputy marine pilot licenses.

1 * Sec. 12. AS 08.62.130 is repealed and reenacted to read:

2 Sec. 08.62.130. LAPSED LICENSES. (a) The board shall reinstate a lapsed marine
3 pilot license if the former licensee satisfies the requirements of AS 08.62.100 and completes
4 familiarization trips in the pilotage region for which the license is to be reissued that may be
5 required by the board and, if the license has been lapsed for a year or more, passes an
6 examination administered by the board.

7 (b) The board shall establish criteria for reinstatement of a lapsed deputy marine pilot
8 license.

9 * Sec. 13. AS 08.62.150(a) is amended to read:

10 (a) The board may impose a disciplinary sanction on a person licensed under this chapter
11 when the board finds that the person

12 (1) is incompetent in the performance of pilotage duties;

13 (2) is [HABITUALLY] intoxicated during the performance of pilotage duties
14 due to alcohol;

15 (3) illegally uses or sells narcotic or hallucinogenic drugs;

16 (4) makes a false statement to obtain a license;

17 (5) violates a provision of this chapter or a regulation adopted under this chapter

18 [IT];

19 (6) is guilty of misconduct during the course of employment; [OR]

20 (7) charges, collects, or receives an amount for marine pilot services that is
21 different from the tariff established by the board; or

22 (8) has suffered revocation of federal licensure as a pilot.

23 * Sec. 14. AS 08.62.160 is amended to read:

24 Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel
25 subject to this chapter navigating the inland and [INSIDE] coastal waters of Alaska as
26 determined by the board in regulation shall be under the conduct of [EMPLOY] a marine pilot
27 holding a valid license under this chapter unless the marine pilot is relieved for cause.

28 * Sec. 15. AS 08.62 is amended by adding a new section to read:

29 Sec. 08.62.165. LIABILITY. (a) A person who is licensed under this chapter is not
30 liable in excess of \$5,000 for damage or loss occurring as a consequence of the person's error,
31 fault, omission, or neglect in performing services for which a license is required under this

1 chapter. The limitation of liability under this subsection does not apply if the person's error,
2 fault, or omission is wilful or constitutes gross negligence or if the person's neglect constitutes
3 gross negligence.

4 (b) This section does not limit the liability of a vessel, its cargo, the owner of the vessel,
5 or the operator of the vessel for damage or loss caused by the vessel because the vessel was
6 piloted by a person licensed under this chapter or the damage or loss was a consequence of the
7 error, fault, omission, or neglect of a person licensed under this chapter while the person was
8 piloting the vessel.

9 (c) A regional organization of marine pilots recognized by the board under this chapter
10 is not liable for damage or loss arising from the error, fault, omission, or neglect of the
11 organization or a member of the organization who is licensed under this chapter that is, directly
12 or indirectly, related to the pilotage of a vessel. The limitation of liability of a regional
13 organization of marine pilots under this subsection does not apply if the organization's error,
14 fault, or omission is wilful or constitutes gross negligence or if the organization's neglect
15 constitutes gross negligence.

16 (d) A person licensed under this chapter is not liable, directly or indirectly or as a
17 member of a regional organization of marine pilots recognized by the board under this chapter,
18 for loss or damage arising from the error, fault, omission, or neglect of another marine pilot or
19 the regional organization of marine pilots relating to pilotage of a vessel.

20 (e) This section does not limit the liability of the owner or operator of a pilot boat for
21 loss or damage arising from the ownership or operation of a pilot boat or the transportation of
22 marine pilots to and from vessels.

23 * Sec. 16. AS 08.62.170 is repealed and reenacted to read:

24 Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, the owner of the
25 vessel, and the master of the vessel are jointly and severally liable for the compensation of a
26 person licensed under this chapter who is employed as a marine pilot on the vessel. A person
27 licensed under this chapter has a lien on the vessel and the vessel's tackle, apparel, and furniture
28 for compensation for marine pilot services.

29 * Sec. 17. AS 08.62 is amended by adding a new section to read:

30 Sec. 08.62.175. REGIONAL ORGANIZATIONS OF MARINE PILOTS. (a) To the
31 extent permitted under federal and state law, persons licensed under this chapter may form

1 organizations of marine pilots within each marine pilotage region.

2 (b) The board may recognize organizations of marine pilots within each marine pilotage
3 region.

4 (c) An organization of marine pilots recognized by the board shall promote a safe and
5 reliable system of marine pilotage for the region in which the organization is recognized,
6 including dispatching and training of marine pilots and deputy marine pilots and other functions
7 that the organization may assume. The articles, bylaws, and rules of each organization of marine
8 pilots recognized by the board are subject to approval by the board on the basis of

9 (1) uniform and nondiscriminatory application of the articles, bylaws, and rules
10 to marine pilots and deputy marine pilots licensed under this chapter;

11 (2) compliance with applicable laws; and

12 (3) effectiveness in

13 (A) promoting an efficient, reliable, and professional marine pilotage
14 system in the region;

15 (B) maintaining a sufficient number of qualified pilots available for
16 dispatch to serve the needs of vessels visiting the region during each hour of the day and
17 each day of the year;

18 (C) maintaining a training program for marine pilots and deputy marine
19 pilots that is approved by the board.

20 * Sec. 18. AS 08.62.180 is amended to read:

21 Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

22 (1) vessels under enrollment, except as provided in AS 08.62.185;

23 (2) fishing vessels registered in the United States or in British Columbia, Canada;

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

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

28 (A) on the rivers of Alaska, or

29 (B) in the coastwise trade on the west coast of the United States including
30 Alaska, Hawaii, and British Columbia, Canada;

31 (5) vessels of Canada, built in Canada and manned by Canadian citizens

1 including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska,
2 if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and
3 those of United States registry; and

4 (6) pleasure craft.

5 * Sec. 19. AS 08.62.187 is amended to read:

6 Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. A person may not act as
7 an agent of a vessel subject to this chapter unless the person's name appears on the register of
8 agents kept by the board under AS 08.62.040(a) [AS 08.62.040(a)(3)].

9 * Sec. 20. AS 08.62.190 is amended to read:

10 Sec. 08.62.190. PENALTY. (a) A master or owner of a vessel required by this chapter
11 to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils
12 or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon
13 conviction, is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000 for
14 the first offense and not less than \$10,000 nor more than \$30,000 for each subsequent
15 offense [\$5,000].

16 (b) A person who violates any other provision of this chapter or a regulation adopted
17 under this chapter [IT] is guilty of a misdemeanor and, upon conviction, is punishable by a fine
18 of not less than \$1,000 [\$500] nor more than \$5,000 [\$1,000].

19 * Sec. 21. AS 08.62 is amended by adding a new section to read:

20 Sec. 08.62.201. SHORT TITLE. This chapter may be cited as the Alaska Marine Pilotage
21 Act.

22 * Sec. 22. AS 39.25.120(c) is amended by adding a new paragraph to read:

23 (21) marine pilot coordinator of the Board of Marine Pilots.

24 * Sec. 23. AS 45.50.572(a) is amended to read:

25 (a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor,
26 agricultural, [OR] horticultural, or licensed marine pilot organizations created for the purpose
27 of mutual help, and not conducted for profit, or forbid or restrain members of those organizations
28 from lawfully carrying out the legitimate objectives of them; nor are these organizations or
29 members illegal combinations or conspiracies in restraint of trade under the provisions of
30 AS 45.50.562 - 45.50.596.

31 * Sec. 24. TRANSITION; MARINE PILOT LICENSE. (a) Notwithstanding AS 08.62.080, as

1 amended by sec. 6 of this Act, and AS 08.62.100, as amended by sec. 10 of this Act, a person who holds
2 an unlimited marine pilot license on the effective date of sec. 10 of this Act or who receives an
3 unlimited marine pilot license under (c) of this section shall receive a marine pilot license, and shall be
4 eligible for renewal of the license under AS 08.62.120, as amended by sec. 11 of this Act, for each
5 marine pilotage region for which the person was licensed as a marine pilot without qualifying for the
6 license under AS 08.62.100, as amended by sec. 10 of this Act. A license issued under this subsection
7 is for all purposes a license issued under AS 08.62.100, as amended by sec. 10 of this Act.

8 (b) A limited marine pilot license of any category or channel pilot license issued under
9 AS 08.62.100 before the effective date of sec. 10 of this Act is valid for the period for which the license
10 was issued and may be renewed until December 31, 1994, without examination upon payment of the
11 marine pilot license fee. The terms and conditions attached to a limited marine pilot license or channel
12 pilot license on the effective date of sec. 10 of this Act remain in effect for the period for which the
13 license was issued and for subsequent renewals of the license until December 31, 1994.

14 (c) A person who has applied for or made a substantial effort toward qualifying for, as
15 determined by the Board of Marine Pilots, a marine pilot license under AS 08.62.100 before the effective
16 date of sec. 10 of this Act, may receive a marine pilot license under the requirements for licensure as
17 they existed before the effective date of sec. 10 of this Act and may renew the license until
18 December 31, 1994, without examination upon payment of the marine pilot license fee.

19 (d) A person who, after the effective date of sec. 10 of this Act, holds a marine pilot license
20 subject to (b) or (c) of this section shall receive credit for each year of service as a licensed marine pilot
21 in this state toward the three years of service as a deputy marine pilot required for a marine pilot license
22 under AS 08.62.100, as amended by sec. 10 of this Act.

23 (e) Except as provided in (a) and (d) of this section, a person may not hold a marine pilot license
24 after December 31, 1994, without satisfying the requirements of AS 08.62.100, as amended by sec. 10
25 of this Act.

26 (f) Notwithstanding AS 08.62.080, as amended by sec. 6 of this Act, until December 31, 1994,
27 a limited marine pilot license or channel pilot license issued under AS 08.62.100 before the effective
28 date of sec. 10 of this Act or under (c) of this section, and for subsequent renewals of the license,
29 entitles the licensee to pilot vessels in the marine pilotage regions in the state for which the licensee is
30 licensed on the effective date of sec. 10 of this Act.

31 * Sec. 25. AS 08.62.155 is repealed.

- 1 * Sec. 26. Sections 1 - 5, 13 - 23, and 25 of this Act take effect July 1, 1991.
- 2 * Sec. 27. Sections 6 - 12 and 24 of this Act take effect January 1, 1992.

HOUSE COMMITTEE REPORT

Date Referred: March 6, 1991

FURTHER REFERRALS:

Labor & Commerce
Judiciary
Finance

Date of Committee Action: 3/19/91

The TRANSPORTATION Committee considered:

HB 194

HOUSE BILL NO. 194

REGULATION OF MARINE PILOTS

"An Act relating to the Board of Marine Pilots, marine pilots, and marine pilot organizations; and providing for an effective date."

RECOMMENDATIONS: the same title
be replaced with _____ a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact PCED

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Gail Phillips</i>	x	<i>Gene Kubera</i>		X	
<i>Ben Somers</i>	x	<i>Sam M...</i>		X	
<i>Bill Hudson</i>	x	<i>Robert A. Herman</i>			✓

Sam M...
CHAIRMAN'S SIGNATURE



House Transportation Committee

DATE: 3/19/91

PLACE: 17

SUBJECT OF MEETING:

HB 194
 HB 162
 HB 175

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Kirkby Day	CLAM	1429 Tongass St. KTN	99904	225-7711	225-6157	Y	N	HB 194
D MONKMAN	Alaska Coastwise Pilots	Dillon & Fiddley 8th Sealska Plaza Jno	99801		586-4000	Y	N	"
J. H. F. [unclear]	FEA/ [unclear]	1194 [unclear]	99901	225-2583		Y	N	"
DALE C COLLINS	Seal Pilots	4212 S. [unclear]	99901	225-5711	225-7676	Y	N	"
Capt. W. C. Murphy	S.W. Alaska	Box 597 Homer, AK	99602	225-8271	225-8783	Y	N	HB 194
GREG O'CLARAY	MEBA	124 FRONT ST JNO	99801	586-6115		Y	N	HB 175
Ann Boudreaux	occ. LIC DCED			253	2538	Y	N	HB 194
Ann Boudreaux	occ. LIC DCED				2538	Y	N	HB 162
Jim [unclear]	SE CONFERENCE	124 W 5th St. Jno	99801	586-1905	463-3445	Y	N	HB 175
Don Kubly	MASTERS & PILOTS Club Pacific	12280 MIDLOPP RD	99801	784-9273		Y	N	H.B. 194 H.B. 175
Jim Ayers	AMHS./DOT	P.O. box R	99811	5-3959		Y	N	H.B. 175

COMMITTEE TESTIMONY IN SUPPORT OF H.B. 194
BY CAPT. W.E. MURPHY, SOUTHWEST ALASKA PILOTS

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of House Bill 194. My name is Edward Murphy. I reside in Homer and I've been a marine pilot in Alaska since 1974. I pilot ships throughout Southwest Alaska including very large crude carriers and other tankers, cruise ships, container ships, bulk carriers and fisheries related vessels. I served on the Alaska Board of Marine Pilots for four years, three of them as chairman.

In January of last year I wrote Governor Cowper a letter concerning grave safety problems I saw emerging in Alaska's state pilotage system. Among them:

- The lowest entry standards for licensing in the country.
- No state mandated standards or requirements for pilot training.
- Control and manipulation of state pilots by Outside steamship companies and agents.
- Pilot Board difficulties in maintaining and upgrading pilot standards.
- Inordinate delays in pilot discipline cases.
- Legal problems for pilot associations in training pilots and maintaining high standards in the absence of state requirements.

Governor Cowper responded to the concerns expressed in my letter by ordering his Office of Management and Budget to conduct an independent study of Alaska's state pilotage system and to make recommendations for improvement based on the study findings. The result of the staff study is a booklet entitled Improving Alaska's Marine Pilotage System. This document is a remarkably thorough and thoughtful look at pilotage in Alaska written by researchers who have no ax to grind except the public interest. If you have not already done so, I urge you to read the study. It will tell you far better than I can the problems with our state's pilotage system and the need for legislative change to the marine pilot statutes.

House Bill 194 represents a collaborative effort between the Southeastern and Southwest Pilot Associations along with representative Davis and her staff. The pilots who live and work in Alaska believe this Bill, or something close to it, is legislation you can all proudly support because it is, ultimately, a safety bill. Consider the following:

1. The "FINDINGS" section makes clear for the first time the public service nature of a pilot's work by stating that, "the first and paramount duty of marine pilots is to provide for the public safety and the protection of the marine environment." It says that "marine pilots operating independently of the shipping industry have provided and will continue to provide essential service to the state." The independence of the pilot from the shipowner's interest and control is a crucial element of safety long recognized by state pilots and identified by the study staff. The federal government recognized this essential element of piloting in the Oil Pollution Act of 1990 by requiring state licensed pilots who are not a member of the ships crew to pilot tankers in certain sections of Prince William Sound.

2. The bill clearly establishes the powers and duties of the Board of Marine Pilots. The ambiguity of the existing law in this regard has long been the cause of conflicting interpretation by staff attorneys from the A.G.'s office. The result has often been Board confusion, frustration, failure to act in the public interest, and law suits.

3. The Bill raises the entry standards for pilot license applicants. The staff study, pages 15 through 17, clearly illustrates how remarkably low Alaska's standards are. The American Pilot Association says they are the lowest in the country.

4. The Bill establishes a "deputy pilot" system whereby new pilots can be trained under the supervision of veterans.

5. The Bill declares that the pilot board will establish standards for training programs. Incredibly, pilot training is not addressed at all under current statute.

6. The staff study pointed out the essential element of local knowledge in all piloting and recommended that Alaska's vast coastline be divided into pilot regions where pilots would be restricted to piloting in one region only. The Bill permits the Pilot Board to establish regions but stops short of restricting pilots to a particular region. Without this requirement regionalization does nothing to assure the public a pilot has adequate familiarity with a particular area. I urge you to strengthen the Bill by inserting such a requirement.

Committee Testimony on House Bill 194

Capt. W.E. Murphy

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In addition to the features of the Bill previously listed, there are 2 more areas of concern which are equally crucial to a workable and professional piloting system. These are limiting pilot liability and permitting the Pilot Board to recognize certain pilot organizations. I'd like to talk about these areas:

The Bill limits a pilot's liability and that of pilot organizations. Every time a pilot steps on a ship he faces the possibility of financial ruin. This is in addition to possible criminal penalties he may suffer in the event the vessel he is piloting suffers an accident. Criminal penalties are called for in House Bill 315 passed by the legislature in 1990. Piloting is a high risk profession and few, if any, pilots can stand the sort of twin liabilities now emerging in this state. Some sort of liability limitation is reasonable as the legislatures of other maritime states have found. Washington is an example: its pilot act also sets a liability limit of \$5,000. Note that H.B. 194 does not limit liability if the pilot's error or negligence was wilful.

Liability is also a major problem for pilot organizations because they are caught in a "Catch-22" situation. The state doesn't require any pilot training. Yet all mariners, and probably laymen too, know that pilots have to be well trained. Yet when we train new pilots, as we must, we can be sued if that pilot has an accident. But if we failed to train a new pilot who then had an accident we would be sued for negligence. It's an impossible situation and another compelling reason why the state must both require pilot training and limit the liability of pilot organizations in their training function.

The Bill gives the Board the authority to recognize organizations of marine pilots for certain pilot regions of the state. It is important to recognize that the state cannot realistically maintain its own pilot training and dispatch service. Pilots form themselves into organizational structures called associations for this purpose. The associations provide pilots, central dispatching, employees, boats, equipment, pilot stations, radio and communications equipment, transportation, training and administration of the whole as a system. We do this with Alaska resident pilots 24 hours a day, 365 days a year in every kind of weather. House Bill 194 recognizes these facts and requires groups of pilots to do certain things in order to be recognized. It requires compliance with state standards in terms of nondiscrimination, promoting a professional pilot service, maintaining sufficient pilots to serve area shipping, and maintaining training programs. The Bill does not franchise particular groups or require individual pilots to balance

Committee Testimony on House Bill 194

Capt. W. E. Murphy

page 4

I urge you to strengthen this section by requiring 24 hour per day, 365 days a year service as an additional standard for recognition as a regional pilot organization.

Alaska's original state pilotage act of 1970 has changed little since it was enacted. Yet shipping in the state has increased many fold with larger and faster ships carrying more dangerous cargoes and an ever increasing number of passengers. Often these ships ply the waters of Alaska with only one United States citizen aboard; that person is the ship's pilot who is licensed by this state. The consequences of the pilot's failure to adequately meet the demands placed upon him can have profound consequences for the marine environment and the citizens of Alaska. The pilot's role is a public service one. Alaska's citizens have a right to expect that state pilots have met high entry standards, have undergone rigorous training and possess extensive local knowledge. As the study group recognized, safety demands that pilots be independent and free of the shipowner or his agent's interest and control. House Bill 194 is long overdue. I urge you to consider it favorably.

Thank you

To: Transportation Committee
Alaska State House of Representatives

From: Captain H.K. Elsensohn

Subject: House Bill No. 194

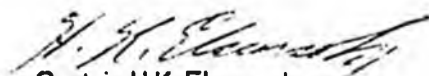
You will find attached excerpts from the book "THE LAW OF TUG, TOW, and PILOTAGE" by Alex L. Parks. This shows clearly that the Congress of The United States has given the individual states the right and responsibility to regulate pilotage on their waters.

I am nearing the end of my four year term as a member of the Alaska State Board of Marine Pilots. AS 08.62.040 states- "(a) The board shall (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property, (2) Consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.52) establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original and renewal pilot licenses to qualified persons." The foregoing seems to be clear enough, but it has been impossible for the board to require all applicants to obtain the same training. The basis of State Pilotage is local knowledge. The pilot must know the area of his work thoroughly. The only way to become a proficient pilot is through the tutelage of an experienced pilot.

There are only two reasons for HOUSE BILL NO. 194, they are-

- 1 - To allow the Board of Marine Pilots to set the standards for pilots.
- 2 - To be sure that the State of Alaska has control of state pilots.

The " CONCLUSIONS AND RECOMENDATIONS" contained in the Division of Policy study 'IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM" lead to the solutions of HOUSE BILL NO. 194.



Captain H.K. Elsensohn
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HOUSE BILL NO. 194

MARINE PILOT ACT

HOUSE TRANSPORTATION COMMITTEE

SEVENTEENTH LEGISLATURE - FIRST SESSION

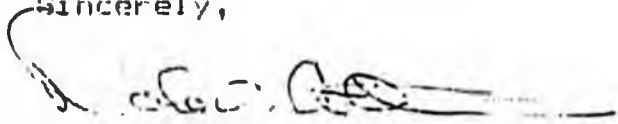
March 19, 1991

The State of Alaska enacted the first Pilot Act in 1970. Two pilot associations formed to meet the pilotage requirements mandated by the State and the marine industry. The Southeastern Alaska Pilots' Association and the Southwest Alaska Pilots' Association have served the State and industry well over the last twenty years. The associations and the State pilot board worked closely together for fifteen years and developed needed regulations to provide and maintain an efficient pilotage system in the State.

During the last five years the associations and the pilot board have been under constant pressure to relax standards, grant waivers for licenses, and hindered while trying to formulate necessary regulations by the Attorney General's office, industry, and dissident pilots who seek to circumvent the pilot regulations. No one segment is fully responsible for the failure of the pilotage system in Alaska.

Rather than debate past failures, the State needs to develop a new pilotage act that will remedy the problems the Board of Marine Pilots is now confronting. The pilotage bill introduced by Representative Cheri Davis will go a long way to solve the problems and concerns of the Board of Marine Pilots. The Southeastern Alaska Pilots' Association respectfully requests the Transportation Committee to view this bill as important legislation to the State of Alaska and its citizens.

Sincerely,


Captain Dale O. Collins
President
S.E.A.P.A.

SECOND EDITION

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THE LAW OF
TUG, TOW,
AND PILOTAGE

BY ALEX L. PARKS

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State Control

The First Congress in 1789 obviously felt that until further action was taken, it was the better part of wisdom to leave the regulation of local pilotage grounds to the various states since different situations existed with respect to the various states in relation to their respective harbors, ports and waters. This made it advisable to permit the states to promulgate different rules and regulations, and occasioned the enactment of the statute now codified as 46 U.S.C.A. 211, reading:

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.

Later, the Congress supplemented this section by enacting a provision leaving to the states the right to regulate the piloting of vessels into and going out of the waters bounding two states. 46 U.S.C.A. 212 reads:

The master of any vessel coming into or going out of any port situated upon waters which are the boundary between two states, may employ any pilot duly licensed or authorized by the laws of either of the states bounded on such waters, to pilot the vessel to or from such port.

In interpreting this latter statute, the courts have held that the waters between two states must in a real sense be the *boundary* between the two jurisdictions. Thus, in *The Glenearne*, (USDC, Ore.) 7 Fed. 604, the court held that a steamboat bound to Portland, Oregon might take either a Washington or Oregon pilot while on the Columbia River [the boundary between Oregon and Washington for much of its distance] but only the Oregon licensee was entitled to pilot the vessel on the Willamette River [which, although a major tributary of the Columbia River, is located wholly within the State of Oregon]. So, too, the United States Supreme Court held, in the case of *Leech v. Louisiana* (1909), 214 U.S. 175, that a pilot holding a license issued by the State of Mississippi was not licensed to pilot a vessel engaged in the foreign trade from the Gulf of Mexico to New Orleans, "since New Orleans is not situated upon waters which are

the boundaries between two states." The United States District Court in Massachusetts held to a like strict construction in *The Swift Arrow*, 1923 A.M.C. 1012, 292 Fed. 651.

Federal statutes, permitting the regulation of pilots to remain in the states until Congress had legislated otherwise, were held to be within the ambit of Congressional power and thus constitutionally valid by the United States Supreme Court in the landmark case of *Cooley v. The Board of Wardens of the Port of Philadelphia*, 12 How. (U.S.) 299. Subsequently this principle was reaffirmed in *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450; *Ex Parte McNeil*, 102 U.S. 572; *Olsen v. Smith*, 195 U.S. 332; and *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187. The most recent affirmation of constitutionality is *Jackson v. Marine Exploration Co., Inc.* (1979), *supra*, which set forth with great clarity the dichotomy which exists between the Federal and state systems and upheld the Florida pilotage act against assaults on its constitutionality under the Due Process Clause and Equal Protections Clause.

The status of state pilotage acts—and in fact the entire system of state pilotage—was seriously threatened and in a state of hiatus from 1852 until 1871.

Between 1812 and 1849, Congress sought to provide for greater safety at sea by requiring certain inspections of equipment aboard steam vessels. In August, 1852, a new act was passed making it unlawful for any person to employ or any person to serve as engineer or pilot on steam vessels unless he was licensed by the United States inspectors. Although the act did not treat specifically of state pilotage, neither did it make an exception which could be construed as permitting state pilots to operate even though not licensed by the Federal government.

The Supreme Court rescued the state pilot system from the confusion into which it was thrown by the above-mentioned act by its decision in *Pacific Mail Steamship Company v. Joliffe*, 69 U.S. 450 in which it was held that the act was not intended to cover "port" pilots.

Again, in 1866, state pilotage was thrown into turmoil by the passage of an act requiring every American seagoing steam vessel navigating the bay, inlets, rivers and harbors of the United States to be under the control of a pilot licensed by the Federal government. While the purpose of such legislation appears to have been strengthening the safety provisions with respect to steam vessels, the net ef-

fect was that state pilotage was doomed. For seven months, this situation prevailed until February, 1867, when Congress, recognizing the total disruption of state pilotage systems, moved to correct the problem by adding a proviso to the 1866 Act reading:

. . . Provided, however, that nothing in this Act, or in the Act of which it is amendatory shall be construed to annul or affect any regulation established by the existing law of any state requiring vessels entering or leaving a port in such state to take a pilot duly licensed or authorized by the laws of such State, or of a State situated upon the waters of the same port.

In 1912, Justice Hughes in *Anderson v. Pacific Coast S.S. Co.*, 225 U.S. 187, in commenting on this proviso, stated:

. . . The existing State laws respecting port pilotage again became operative.

In 1871, Congress repealed the acts of 1852 and 1866 and substituted in lieu thereof a new act which consolidated certain portions of the two earlier acts and set forth clear provisions concerning pilotage of coastwise seagoing steam vessels. It was to this consolidated act that Justice Hughes was directing his remarks in *Anderson v. Pacific Coast S.S. Co.*, *supra*.

It should be emphasized that the Congress, in permitting the states to retain jurisdiction of pilotage, has in no way abdicated its authority to regulate and to license pilots and to place restrictions upon the states in this respect. Although the states have enacted regulatory laws governing the licensing of pilots, their activity, their organization, their compensation and their supervision, such state laws affect only United States vessels sailing under register [authorized to engage in the foreign trade] and foreign-flag vessels plying waters in the several states; the Federal government has preempted the licensing of "pilots" serving on board enrolled, or enrolled and licensed vessels; i.e., vessels authorized to engage in the "coastwise trade." *Anderson v. Pacific Coast S.S. Co.*, *supra*. Moreover, the Federal government has acted to prevent state-licensed pilots from discriminating between vessels which they may lawfully pilot. For example:

46 U.S.C.A. 213 provides:

No regulations or provision shall be adopted by any State which shall make any discrimination in the rate of pilotage or half-pilotage

between vessels sailing between the ports of one state and vessels sailing between the ports of different states, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States; and all existing regulations or provisions making any such discrimination are annulled and abrogated.

46 U.S.C.A. 214 provides that the Coast Guard shall grant to an applicant for a license to pilot steam vessels⁶ such license for a term of five years if it is satisfied, after diligent inquiry, that the applicant possesses the requisite knowledge and skill and is trustworthy and faithful. It also provides for the revocation of the license for certain causes.

46 U.S.C.A. 224 provides that it is unlawful to employ any person or for any person to serve as a pilot of any steamer who is not licensed by the Coast Guard.

46 U.S.C.A. 215 is more to the point and constitutes a flat interdiction against the states invading the sphere of Federally regulated pilotage. It provides, in part:

No State or municipal government shall impose upon pilots of steam vessels any obligation to procure a State or other license in addition to that issued by the United States, or any other regulation which will impede such pilots in the performance of the duties required by Title 52 of the Revised Statutes. . . .

See *Sprague v. Thompson*, 118 U.S. 90, interpreting the above-quoted language.

(Title 52, Revised Statutes contains many statutory sections, but insofar as it concerns the licensing of pilots it applies specifically to coastwise seagoing vessels not sailing under register (i.e., enrolled vessels and enrolled and licensed vessels) and therefore does not apply to vessels engaged in the foreign trade. See *Pacific Mail S.S. Co. v. Joliffe*, 69 U.S. 450, and *Anderson v. Pacific Coast Steamship Co.*, 225 U.S. 187.)

Federal Control of Coastwise Vessels

In addition to the statutes cited above, Congress has affirmatively required that all coastwise seagoing vessels shall be under the control

⁶ As is noted, *infra*, a further statute provides that the term "steam vessel" or "steamer," or "propelled by steam" also means any vessel subject to inspection, propelled in whole or in part by any form of mechanical or electrical power, with certain exceptions not here material.

HB 194
HLC 1991-2

Improving Alaska's Marine Pilotage System



Office of the Governor
Division of Policy
November 1990



IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

(Final Report)

By
Marilou Madden
and
Brad Pierce

November, 1990

Office of the Governor
Division of Policy
P.O. Box AD, Juneau, Alaska 99811

Improving Alaska's Marine Pilotage System

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EXECUTIVE SUMMARY

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

1. FINDINGS

- *Pilotage serves an important public function.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONCLUSIONS

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

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

3. RECOMMENDATIONS

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

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

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

administrative costs in setting pilotage rates.

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

IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

1. INTRODUCTION

A. STUDY BACKGROUND

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

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

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

B. METHODOLOGY

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

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

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

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

C. STUDY OUTLINE

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

2. HISTORICAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. COMPARISON OF ALASKA STATUTES WITH THOSE OF OTHER STATES

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

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

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

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

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

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

A. SYSTEM OF REGULATION

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

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

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

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

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

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

B. LICENSING

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

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

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

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

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

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

license¹⁸ if s/he meets the criteria outlined. In virtually all other states, the license is granted at the discretion of the Board or other licensing authority. Commonly-used language in other states allows the Board (or other licensing authority) "to choose and appoint" pilots or to "grant commissions"¹⁹ to act as pilots. As will be discussed at greater length elsewhere, the Alaskan emphasis on right rather than franchise is, in the opinion of the study staff, a primary cause of current tensions in the state's regulatory scheme.

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

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

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

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

C. PILOT DISCIPLINE

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

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

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

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

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

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

D. PILOTAGE RATES

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

E. PILOT LIABILITY

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

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

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

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

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

Alaska statute does not speak to pilot liability.

F. PILOT ASSOCIATIONS

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

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

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

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

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

Pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs the pilot's duties.²³

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

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

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

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

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

4. CURRENT STATUS OF MARINE PILOTAGE IN ALASKA

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

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

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

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

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

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

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

A. REGIONAL CHARACTERISTICS

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

1. Southeast Region—Southeastern Pilots Association (SEAPA)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. IDENTIFIED PROBLEM AREAS

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

1. Entry Level Requirements

Alaska statute states that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Competition

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

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

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

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

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

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

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

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

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

3. State Board and State Agency Support

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

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

4. Pilot Liability

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

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

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

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

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

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

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

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

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

5. PILOT SURVEY

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

A. QUANTIFIABLE RESULTS

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

TABLE 2: SURVEY RESPONSES BY LICENSE TYPE

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

TABLE 3: SURVEY RESULTS

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

* NR = No Response

B. TRAINING

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

C. Alaska's System of Examination and Licensing

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

Other concerns and ideas cited by respondents include:

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

D. OPPORTUNITIES FOR UPGRADING LICENSES

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

G. ASSOCIATION VS. STATE-RUN TRAINING

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

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

H. BOARD OF MARINE PILOTS

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

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

I. ASSOCIATIONS

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

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

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

J. LICENSE LIMITATION

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

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

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

K. STATE EVALUATION STANDARDS

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

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

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

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

L. THIRD-PARTY REVIEW OF EVALUATION PRACTICES

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

M. LIABILITY PROTECTION

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

N. GENERAL CONCERNS

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

SWAPA and AMP Comments:

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

SEAPA Comments:

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

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

Contract Pilots Comments:

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

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

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

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

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

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

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

6. SHIPS' AGENT SURVEY

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

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

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

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

TABLE 4: SHIPS' AGENT SURVEY RESULTS

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

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

A. PILOTS ACCESSIBILITY AND DISPATCH

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

B. PILOT QUALIFICATIONS

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

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

C. EVALUATION

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

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

D. ACCIDENTS AND PILOT DISCIPLINE

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

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

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

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

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

F. PILOTAGE RATES

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

G. STATE BOARD

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

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

H. BONDING FOR PILOTAGE FEES/PILOT LIABILITY FOR DAMAGES

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

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

I. PILOT INDEPENDENCE FROM SHIP OWNER CONTROL

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

J. STATE DEREGULATION

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

K. ALASKA STATE PILOTAGE SYSTEM

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

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

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

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

7. CONCLUSIONS AND RECOMMENDATIONS

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

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

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

A. ACKNOWLEDGEMENT OF THE STATE'S INTEREST IN PILOTAGE

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

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