

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7505 SENATE LABOR & COMMERCE

- C - The regulated pilot organization would do the training. In exchange for this service the state would limit the liability of the pilot doing the training.
- D - The training program would consist essentially of ship handling - i.e. docking and undocking throughout the region. During the training progress reports would be filed with the Board who would have the authority, and based upon the pilots who act as trainers, to terminate a trainee who is not making it. In short, someone in training can flunk out. Additionally, it appears that the training period must extend over a fixed time period. For instance a year even if all the required dockings had been accomplished in two weeks.
- E - At the end of the successful training period the person would then get their license.
- F - After getting the license the person would automatically be eligible to be dispatched through the pilot organization. However, the pilot organization could require an "affiliation fee" so that the organization can cover the costs of property and operations. In short, this is like the \$10,000 AMP now requires.

In addition the pilot organization can have operating rules to allow income sharing based in varying percents that take into consideration coverage and tonnage.

One last point on the training is that the organization does not have to pay for it. That is, the trainee still has to pick up the living and travel costs involved in getting the license.

- G - A person getting a license does not have to join the organization. That is they can pilot on their own. However, they can not be kept out of the organization if they pay the affiliation fee.

The above are the main features that it was felt must somehow get into the law if the state is to continue to have compulsory pilotage and implement it without just having state employees.

The Pilot Coordinator would be a qualified pilot working as an employee of the state to oversee the organizations, licensing and complaint aspects.

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After the meetings I spent a long time visiting with Captain Ed Murphy of SWAPA. The state is well aware of past conflicts between SWAPA and AMP. I've always had respect for Ed's interest in keeping high standards for the piloting profession and we get along well as friends.

The purpose of the meeting was to find a way to work together towards the goals of building AMP, protecting SWAPA's interest in Dutch Harbor and at the same time insure high professional standards. After we get the report from the Attorney General's Office I will meet with SWAPA to try to insure that we are harmonious at the November meeting. I think that will be the case. If the pilots are not united then the State may discount our input and do what they want.

When I get the material from the Attorney General I'll distribute it to you so we can discuss it.

Sincerely,

Joe Merrill

JM:as

cc: Mary Lou Madden  
Brad Pierce  
Captain Ed Murphy

INTERNATIONAL



ORGANIZATION

ROBERT J. LOWEN  
International President  
F. LEWOOD RYNER  
International Secretary-Treasurer  
GEORGE A. QUICK  
Vice-President

OF  
**MASTERS  
MATES &  
PILOTS**

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East Coast Regional Representative  
DONALD J. HOFFMANN  
Gulf Coast Regional Representative  
REX POLLITT  
West Coast Regional Representative  
EMIL F. BOWERMAN  
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November 15, 1990

State of Alaska  
Office of the Governor  
Office of Management and Budget  
Division of Policy  
P.O. Box AD  
Juneau, AK 99811-0164

Attention: Brad Pierce, Marilou Madden

Dear Mr. Pierce and Ms. Madden:

I want to thank you for the copy of the Alaska Marine Pilotage Study and the draft of a proposed Alaska Marine Pilotage Act.

Our Organization represents approximately 1,150 marine pilots throughout the United States, the Panama Canal and Puerto Rico, as well as masters and deck officers on American flag ships.

We are concerned about the treatment of two issues in the report and proposed legislation that have the potential for serious consequences at some future time.

First, there is an absence of any requirement that pilots provide service through an association. Secondly, there is no provision to limit, either directly or indirectly, the number of licenses issued. The issue of permitting pilots to work outside the structure of an association and an unrestricted number of licenses are closely related. One permits competition and the other encourages it.

While these issues may not seem critical under the present circumstances in Alaska, failure to address them now could result in an orderly pilotage system collapsing in the future.

A policy choice must be made whether to have a regulated pilotage system that serves the interests of the State, or a competitive business that serves the interests of the shipowners.

If the safety of shipping and the protection of the marine environment are the first priority of a regulated pilotage system, then the pilot must be insulated from the shipowners





competitive pressures. It is unreasonable to expect him to give the highest priority to the State's interests, if doing so will expose him to retaliations in the loss of future assignments.

If shipping companies are permitted to select between competing pilots, it will place effective control over the pilot in the hands of the company whose interest in public safety and the marine environment are tempered by economic concerns.

The public interest is best served by protecting the pilotage system from competitive pressures, and making it clear in law and regulation that the pilots first and paramount duty is to the State acting through the Board of Marine Pilots.

You have pointed out in the study the need for an organizational structure to administer an efficient pilotage service. The service has to provide pilots, central dispatching, employees, boats and equipment, pilot stations, radio and communication equipment, transportation, training and administration of the whole as a system.

Permitting a pilot to work outside the association undermines the system. It will not only create a competitive climate, but removes revenue that should go to support a unified system. The infrastructure of people and equipment required for a reliable system can not be supported on an individual basis. The possibility that members could leave an association to operate independently inhibits long range planning and the commitment to undertaking financial obligations in equipment, facilities and personnel to provide services. In the unfortunate cases in other states where pilots have broken away from associations there is always a significant decline in the quality of service.

The Board of Marine Pilots should be authorized to recognize an association as exclusive representative of pilots in a port or region with control over dispatching and collection of fees. Recognition should be dependent on the requirement that their bylaws and working rules be approved by the Board and that they contain a plan for the efficient maintenance of a reliable pilotage system for their port or region.

We would also urge that consideration be given to the Board being authorized to establish the number of licenses that can be issued to a number sufficient to protect the commercial interests of the State. That number could be established periodically on an informal basis, or on a formal basis after public hearing, after a review of expected traffic volume, expected attrition rates among pilots, or other relevant factors.



Page Three

If we can be of any assistance in providing more detail on our views, please contact us.

I must congratulate you on a very thorough and fine report. It is one of the best analysis of pilotage that I've seen.

Sincerely,

*George A. Quick*

George A. Quick  
Vice President, Pilots

CAPTAIN EDWARD H. CREASEY

Post Office Box 6583  
Ketchikan, Alaska 99901

October 29, 1990

Office of Management and Budget  
Division of Policy  
State of Alaska  
Box AD  
Juneau, Alaska 99811-0199

Attention: Ms Marilou Madden  
Mr. Brad Pierce

I applaud your efforts on "The Alaska Marine Pilotage Study".

This is the most comprehensive study of its type that I have  
ever read. Keep up the good work.

Thank you,

Captain E. H. Creasey

EHC:bjj

Captain George J. Spence  
PO Box 20251  
Juneau, Alaska 99601

Mr. Brad Pierce, Ms. Marilou Madden  
Pilot Study Group/Governors Policy Office  
Office of Management and Budget  
PO Box AD  
Juneau, Alaska 99611-3568

November 5, 1990

Dear Mr. Pierce and Ms. Madden,

I am particularly interested in any efforts to upgrade the existing levels of professionalism and competency of pilotage in this State, and to furthering the pilotage profession in general. Your efforts in conducting the survey and review are commendable, however, some aspects of the fact-gathering are already flawed, and some areas merit considerable additional study by the reviewing parties if the recommended changes are to achieve the desired result.

To elaborate on these remarks, I offer the following:

I.) The State of Alaska has a duty to follow democratic principles of representation in matters such as this, which intimately concern the rights of individuals to pursue their profession.

a) The presentations made by Mr. Cloudy and Officers of SEAP are not truly representative of the views of the 40-odd pilots who earn their livings by piloting in Southeast Alaska. This is due to the fact that, although all of these pilots, members and contractors alike, must contribute an equal dollar amount to funding those presentations (willingly or not), and only nine have a full vote in the affairs of the Association.

b) The seat on the Board of Marine Pilots occupied by the Southeastern Alaska pilot is only accessible to a restricted few members of SEAP because of internal implicit prohibitions in the Bylaws of the Association (SEAP Bylaws Art. VIII, sect. 4). Enforcement of this prohibition is accomplished under threat of expulsion (and consequent unemployment) by the disciplinary procedures of the Association.

II.) Factual inaccuracies have already been introduced to this study by parties whose views are overweighted. For example:

a) Mr. Cloudy's letter of 6/25/90, attached to the Study Draft, on p. 3, states as follows: "non-member pilot is charged...between 25% and 10% of the tariff receipts generated by the nonmember pilot depending upon his license level. These funds are ... shared equally by the member pilots." In fact, those funds are not distributed equally at all, with some members receiving more than double the amount given to others.

b) Mr. Cloudy's letter, p. 2, 92: "Almost all of these non-member pilots came to SEAP with little more than entry-level qualifications, and without exception anyone who wanted to train up was given the opportunity to do so. For the most part, however, these nonmembers have been content to skim off the cream in the Summer and very reluctant to come back in the winter and avail themselves of training-up opportunities." In fact, a substantial portion of SEAP's contractor pool came to SEAP with prior pilotage experience, and a great number have willingly made a great effort to train up in the winter.

of Mr. Cloudy's letter, D.F. #3, pp. 91. "Experience over the years has shown that the masters will not involve themselves in evaluating a pilot's performance." In fact, SEAP has received a number of written and verbal pilot performance reports by vessel masters in the past three years alone, and has generally ignored and discouraged those reports.

c) Marine Pilotage Study draft, p. 4, #3, "By contrast, it is estimated that less than 50 federally-licensed pilots are employed regularly, primarily on coastwise oil tankers." In fact, the ferry systems of Alaska and Washington alone employ over 150 such federal pilots. The federally licensed independent pilot infrastructure on the East coast (Interport Pilots, Northeast Pilots, and various docking master organizations) alone easily employs over the stated fifty pilots operating under federal licenses.

In citing the above items, my intention is not to discredit any of the sources of the stated information, but to direct the attention of the group involved in this study to the need for greater objectivity and consideration of the lopsided forces already working on their effort.

Additionally, I would ask that the study group consider some of the more abstract aspects of the regulated monopoly issue before it embraces that concept completely. For example, are marine pilots as a class going to be denied the protections offered to all other citizens under existing antitrust law?

Pilotage, unique a profession as it may be, does not have to be separated from the mainstream of professional classes in such matters as employment accessibility and equitable compensation. Nor does our business have to be dominated by archaic, dictatorial, or nepotistic practices that might have gained statutory approval in other states many years ago.

I believe professional standards for pilotage in Alaska should be enhanced and elevated to the highest possible level, yet I am not convinced that a regulated monopoly assures such a scenario. A lack of competition does not assure competence. Similar arguments have been made in other transportation industries (the airlines, notably), that safety is compromised if competition is permitted, yet State and Federal policy has not accepted the anticompetitive argument in those industries.

It might reasonably be argued that Association policies do not in fact promote enhanced professionalism or competent pilotage. The record of disciplinary policy of SEAP, for example, reveals that the Association has never proceeded against a pilot for pilotage errors which have resulted in groundings or damage or destruction to property and environment, even when the State has determined pilot fault. Nor has it in instances of alcohol or drug abuse, despite the stated authority for such discipline in the misconduct sections of its Bylaws and Operating Rules.

Given the incidents of alcohol and drug-related problems in our profession, and the record of inaction by the Association, it may be fairly inferred that the presence of language in the Operating Rules and Bylaws of SEAP pertaining to this type of professional misconduct reflects only a political concern, and not a concern for the sober and competent performance of pilotage.

Earlier this year, Mr. Cloudy drafted extensive changes to the Misconduct section of the Bylaws of SEAP, giving even broader powers of discipline to the Board of Directors of the Association. While those measures have not as yet been adopted by SEAP, they nonetheless represent the direction Mr. Cloudy (and presumably certain pilots) would like to see our Association go in its disciplinary powers. Among the proposed rules were the following:

Looking the Board of Hear the Pilots or the Alaska legislature in pilotage matters without the prior authorization of the Board of Directors. First  
Third offense (Expulsion)

"Any conduct or behavior detrimental to either or both the Association and the reputation of its membership. Third offense (Expulsion) "

It is not difficult to understand the power that such broad disciplinary discretion given to an Association controlled by few pilots would have. They would literally have the power to bring financial ruin to any pilot who should question their ways.

**The State must investigate disciplinary policies of the Pilot Associations and safeguard them from being merely a vehicle for advancing the views of an empowered minority.**

If the State of Alaska is to approve or endorse the operating procedures of the existing Associations, and sanction their total control over the profession, it must **first and foremost** review the **internal procedures** of the Associations. This task in itself is formidable, given funding and staffing constraints on the State Department of Law, and the well-funded interests who will seek to preserve the present inequities. Association procedures must be regularly reviewed by disconnected parties to assure and promote fair and democratic principles. Above all, the Associations cannot, as Mr. Cloudy suggests in his letter, be the "watchdogs" over themselves.

The issue of group liability for ship accidents is appropriately stated as a primary concern among pilots, but other areas of group liability should also be addressed. For example, liabilities for litigation costs and legal settlements of SEAP have been spread upon contract pilots who have no vote or representation in the Association, and are not responsible for the actions which precipitated the litigation. This is another area of liability which will likely not be brought up by the funded representatives of SEAP, but which the State must.

If the State of Alaska is to approve the procedures for allocation of income of Pilot Associations, and to increase fees for licensing, it must insure that income and expensing procedures are equitable, and equal to the work performed. If income differentials are permitted, they must be tied to higher license or seniority, and there must also be proportionate expensing. On the matter of increased license fees to fund increased State intervention, The State cannot expect a pilot who earns \$30,000.00 annually to pay the same licensing fee as a pilot who earns \$150,00.00

In Summary, if the state of Alaska is to endorse or approve the existing infrastructure of Pilot Associations, it must first accomplish a vigorous and comprehensive review of their Bylaws, Operating Rules, Articles, and other documents. This should be accomplished with particular regard to establishing and maintaining the rights of pilots, as for other citizens, under the law, to due process, free speech, and freedom to pursue a livelihood in their chosen profession.

This task must not be underestimated. The State should be mindful of the special interests within the pilotage community, and give equal credence to each of the pilots whose welfare is directly affected, not just an entrenched minority

Respectfully,



Captain Michael C. Spence

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October 31, 1990

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Mr. Brad Pierce  
Senior Policy Analysts  
State of Alaska  
Office of the Governor  
Office of Management & Budget  
Division of Policy  
Post Office Box AD  
Juneau, Alaska 99811-0199

Re: SEAPA  
Our File 29.039.48

Dear Marilou and Brad:

Our clients individually and collectively are directly responding to the materials received under cover of your letter of October 8. My own comments here set forth are supplementary.

DRAFT STUDY

I offer the following editorial comments:

Page 16. All members of SEAPA hold an unlimited license. Because such a particular reference is made to SWAPA on page 18, a similar reference should be made to SEAPA or abandoned entirely as to both.

Page 17. There are no "contract" pilots who have not been accepted for membership into SEAPA in recent years because none, to the knowledge of the various Boards of Directors involved, have sought admission. While it is true that if someone had sought admission he would have been turned down for lack of vacancy, the draft language suggests more than that.

Page 18. We do not believe the references to "heavy-handed intimidation tactics" and "to quell dissent" are warranted. Whatever has come to your attention, has not been brought to the attention of SEAPA and it is unfair to SEAPA to engage

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Ms. Marilou Madden  
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in such characterization based on one way input. Also, SEAPA's encouragement to staff with regard to meeting with "dissident pilots" was not predicated upon any awareness of who these pilots may have been other than those in litigation against the Association. The question was put to SEAPA as to whether or not they would object to a canvass of dissident pilots if any there might be and the answer was there was no objection.

Page 24. Although Captain Clough was one of the very first pilots admitted to membership in SEAPA, he was not a founder.

DRAFT LEGISLATION

08.62.005(a). Add to this paragraph the following language:

In establishing tariffs, the Board shall seek to compensate the marine pilots in such measure as will ensure that safe, efficient and year-round pilotage will be provided to those vessels obligated to employ Alaska marine pilots.

08.62.040(a)(4). A criteria reference should be included related to carrying out the legislative intent as expressed in 08.62.005 in addition to the criteria set out in the draft.

08.62.040(a)(8). Oversight authority over the training program should also be included as a power and duty of the Board.

08.62.040(b). The word "shall" should be substituted for the word "may".

08.62.165(a). Either the one or the other of the phrases "grossly negligent" and "guilty of willful misconduct" should be deleted. The Alaska Supreme Court has consistently held that the one term encompasses the other. To use both terms suggests a distinction which does not exist and would only serve to promote needless litigation over the question.

08.62.165(b). Cargo should be named as being held in for damages along with the vessel and its operators. Cargo is being held in under oil spill legislation; however, when it comes to damages, involved cargo could include lumber, logs and hard mineral ores, to name but a few.

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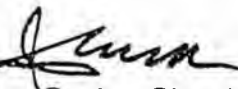
*new*  
08.62.190(a). This section should also provide for a separate violation for each vessel movement to which a separate tariff has been assigned. In Southeastern Alaska, at least, the draft is susceptible of a reading of a single misdemeanor for each 7-10 day cruise transit of the involved vessel rather than multiple misdemeanors for the separate pilotage movements carried out by the master during the 7-10 day cruise.

*new*  
New Section. A section should be added which expressly authorizes the Board to establish regulations which limit the number of pilots to be licensed under the Act, giving due regard to the stated legislative intent and the fact that wide open licensing could well be counter productive to the policy statements set out in the legislative intent.

New Section: Anti-Trust Protection. In addition to 08.62.175, allowing marine pilots to form a pilot association, Section 45.50.572(a) should be amended to read: "AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural organizations created for the purpose of mutual help, and not conducted for profit, as well as marine pilot organizations whose organizational structure has been approved under the Alaska Marine Pilotage Act, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562-45.50.596".

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

By   
C. L. Cloudy

CLC:cz  
ZICLC

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TO: BRAD PIERCE / MARILOU MADDEN

FROM: PAUL G. KIRCHNER

DATE: November 1, 1990

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER PAGE): 9

MESSAGE:

Please confirm receipt of this by return fax  
message

STATE OF ALASKA  
OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF POLICY

COMMENTS OF THE AMERICAN PILOTS' ASSOCIATION  
ON  
PROPOSED LEGISLATION TO MODIFY THE MARINE PILOTS ACT  
November 1, 1990

The American Pilots' Association (APA) appreciates the opportunity to comment on the proposed legislation to modify the Alaska Marine Pilots Act. We have reviewed the proposed legislation carefully and have discussed it with the Southwest Alaska Pilots' Association (SWAPA) and the Southeastern Alaska Pilots' Association (SEAPA), both of which are members of the APA.

The Division of Policy is to be commended for the thoroughness and purposiveness with which it has conducted the review of Alaska pilotage law. The APA is encouraged that the State of Alaska is obviously intent on improving its present pilot regulatory system, and the APA will continue to follow this matter with great interest and with whatever assistance we can provide. In that respect, the APA offers the following brief comments on the draft legislation. We are aware of the concerns and questions of SWAPA and SEAP. Rather than repeat those items in these comments, the APA simply asks that State consider carefully the SWAPA and the SEAP comments.

COMMENTS ON DRAFT LEGISLATION1. New Sec. 08.62.040. POWERS AND DUTIES OF BOARD

In addition to the powers and duties listed in the new section, the Board should be given the power to limit the number of licenses that it will issue. The absence of such a power is, the APA believes, a significant flaw in the proposed legislation.

When a license is a matter of right and a state issues as many licenses as there are individuals who desire one, a simply unworkable and unsafe situation develops, no matter what qualifications and standards are set for a license. It inevitably leads to an oversupply of pilots, which in turn, results in the worst manifestations of competition in the provision of pilotage services. Such competition is inconsistent with the function of state pilotage and with the proposed legislative recognition (new Sec. 08.62.005(b)) of the value of having pilots who are independent of the shipping industry. Those few states that have experimented with unlimited licensing have regretted it, and those states that have considered it carefully have rejected it. (See, "Review of Chapter 310, Florida Statutes Relating to Pilots, Piloting and Pilotage," Report of the Florida Senate Economic, Community and Consumer Affairs Committee, January, 1986 (the "Upchurch Report"), pages 27-29).

A state should acknowledge and make it clear that it does confer certain monopoly benefits on state pilots by controlling the number of licenses it issues. In return for the monopoly conferred by the license, however, a state regulates the pilots extensively, including setting the fees that the pilots may charge. This is the traditional way in which State pilotage has

operated in this country. It has worked well.

We recommend that the following item be added to the proposed list of Board powers and duties:

( ) determine the number of pilots based on the supply and demand for pilot services and the public interest in maintaining efficient and safe pilotage services.

This is modeled after the provision in Florida's pilotage law. Fla. Code Ann. §310.061.

2. Sec. 08.62.160. ALLOCATION OF LIABILITY

A separate statement of legislative findings and intent should be added to this proposed section. Such a statement should say that the legislature finds that in order to secure to Alaska's system of compulsory state pilotage the benefits identified in Sec. 08.62.005, and in particular to assure an adequate supply of qualified, independent state pilots and to maintain pilotage rates at reasonable levels, it is necessary to provide state pilots with protection from liability for damages that far exceed the pilots' ability to pay. Further, the legislature finds that such liability limitation will not in any way diminish the ability of any party harmed by acts or omissions of a pilot relating to the pilotage of a vessel to be compensated for whatever damages are suffered as a result of such acts or omissions. Other state pilotage statutes with similar liability limitation provisions contain such statements, which can be consulted.

3. Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS;  
Sec. 08.62.180. EXEMPTIONS; Sec. 08.62.185. CERTAIN  
LICENSED PILOTS REQUIRED FOR OIL TANKERS

We recognize that the Alaska pilotage requirement was not one of the items specifically considered in the review of the existing Alaska regulatory system. Also, we are aware that the draft legislation mainly continues the present language of these sections. Nevertheless, the rewrite of the pilotage law presents an opportunity to improve the present pilotage requirement, which is somewhat confusing and employs language and terms that no longer have accepted meanings. For example, Sec. 08.62.180 refers to "vessels under enrollment" and vessels that are "registered." The Vessel Documentation Act of 1980, P.L. 96-594, 46 U.S.C. §12101 et seq., eliminated the term "enrollment" and significantly changed other terms used in the documentation of vessels under the laws of the United States. A number of states have encountered problems with their pilotage requirements that use documentation terms made obsolete by the VDA.

We suggest that Secs. 08.62.160, 08.62.180, and 08.62.185 be replaced with the following section:

- (a) Except as may be specifically provided in subsections (b) and (c) hereof, all vessels shall be under the direction and control of a pilot holding a valid license issued under this chapter when underway on the navigable waters of the State of Alaska and the approaches thereto.
- (b) This section shall not apply to:
  - (1) vessels exempt from state pilotage requirements under Federal law;
  - (2) fishing vessels documented under the laws of the United States or registered in British Columbia, Canada;

- (3) vessels propelled by machinery and not more than 65 feet in length over deck, except tug boats and towboats propelled by steam;
  - (4) vessels documented under the laws of the United States of less than 300 gross tons and tow boats documented under the laws of the United States and vessels owned by the State of Alaska, if such vessels are engaged exclusively--
    - (A) on the rivers of Alaska, or
    - (B) in the coastwise trade of the United States including Alaska, Hawaii, and British Columbia.
  - (5) vessels documented under the laws of Canada, including Canadian-flag cruise ships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those documented under the laws of the United States; and
  - (6) pleasure craft.
- (c) The Board may, by regulation, determine that certain waters of Prince William Sound do not require the use of a pilot licensed under this chapter subject, however, to whatever conditions the Board may impose on vessels moving on such waters without a pilot licensed under this chapter and provided that any oil tanker of 50,000 dead weight tons or greater shall, when on such waters, be under the direction and control of either a pilot licensed by the state under this chapter or a federally-licensed pilot whose duty station has been on that tanker throughout that specific voyage.

As the above language indicates, the suggested section maintains the exemptions from state pilotage under present Alaska law -- or at least our understanding of the exemptions. The APA is concerned, however, that the present and the proposed pilotage law has too many such exemptions. That subject is beyond the scope of these comments. The APA's general position is that each state's compulsory pilotage requirement should be as clear and as broad as possible. Moreover, the pilotage requirement should not give pilot boards so much discretion in applying the requirement

or in granting exemptions from the requirement that exemptions are encouraged. Pilots and pilot boards should not be faced with the burden of responding to an unending succession of exemption requests from every shipowner or operator who wants to avoid pilotage.

4. Sec. 08.62.190. PENALTIES

The penalties that would be provided for failure to take a required state pilot are inadequate. We normally recommend that there be three available methods of enforcing a pilotage requirement: criminal penalties, civil penalties, and the recovery of pilotage fees that would have been paid if a pilot had been taken.

Although criminal penalties can be very effective, they should not be the sole enforcement device. Because of the nature of criminal charges and procedures and the burden that a state has in obtaining a criminal conviction, experience with the use of criminal penalties in other states has been disappointing on several occasions. Lower-level state judges are often unfamiliar with pilotage and pilotage law and extremely reluctant to find individuals guilty of criminal charges in an area of the law and with respect to a matter that they themselves may not understand. Also, state prosecuting authorities are often just as unfamiliar with pilotage and are unwilling to assign priority to prosecuting violations of pilotage laws, except in the case of major, headline-grabbing accidents.

Assuming that sufficient authority can be given to the Board under Alaska law, we would suggest the addition of civil penalties

similar in nature and amount to those that the United States Coast Guard is authorized to assess for violations of federal pilotage law under 46 U.S.C. §§8502 and 8503. Such civil penalties provide a state with a flexible and responsive tool for enforcing its pilotage requirement.

Finally, most state pilotage statutes make a vessel owner, operator or master liable for payment of pilotage fees otherwise due if the vessel does not take the required pilot. In addition, a lien is created for the payment of the fees. Sec. 08.62.170 of existing Alaska law does recognize a lien but the lien is available only when a pilot has been actually employed.

Recovery of pilotage fees and a lien for such fees is a very effective and useful device for enforcing a pilotage requirement. See, Jackson v. Marine Exploration Company, Inc. 583 F.2d 1336 (5th Cir. 1978). Not only does it give an added penalty for failing to take a required pilot, it allows for a measure of private enforcement. Id. The only caution here is that the obligation to pay pilotage fees should be clearly presented as a penalty provision, not as an alternative to the requirement to take a pilot.

##### 5. ANTITRUST IMMUNITY

We understand that one of the intended objectives of the proposed legislation is to provide the pilot associations with immunity from the antitrust laws in connection with their pilotage operations authorized under the pilotage statute. The APA supports that wholeheartedly. We need not discuss here how antitrust suits are becoming a potentially crippling influence in state pilotage

today. The State of Alaska is to be congratulated for deciding to deal with this issue head-on.

It is not apparent how the draft legislation would provide such immunity from antitrust laws, however. This should be stated clearly in the legislation. Further work needs to be done on developing suitable and effective language. The APA does not have a suggestion at this time but intends to work with SWAPA and SEAP and may be able to recommend specific language or at least a legislative approach in the near future.

Respectfully submitted,

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TO: BRAD PIERCE / MARILYN MADDEN

FROM: Paul Kirchner

DATE: November 5, 1990

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER PAGE): 6

MESSAGE:

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STATE OF ALASKA  
OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF POLICY

COMMENTS OF THE AMERICAN PILOTS' ASSOCIATION  
ON  
REVIEW DRAFT OF "THE ALASKA MARINE PILOTAGE STUDY"  
November 5, 1990

The American Pilots' Association (APA) appreciates the opportunity to comment on the Review Draft of "The Alaska Marine Pilotage Study" (the "Study").

The Study is a very impressive document that evidences a thorough and objective review of Alaska state pilotage regulation. It provides accurate and useful information, thoughtful analysis of the strengths and weaknesses of Alaska's regulatory system, and well-considered recommendations for improving the system. The APA is particularly pleased with the Study's acceptance of the need for improved training and entry requirements.

To the extent that the Study's recommendations are embodied in the proposed legislation to modify the Marine Pilots Act, the comments of the APA on the legislation address the underlying recommendations and will not be repeated here except to express again the disappointment of the APA that the Review Draft of the Study does not recommend limiting the number of pilots.

The APA does offer the following minor comments or suggestions on the factual discussion in the first part of the Study.

1. Page 1 - Description of State/Federal Pilotage Jurisdictions

The description of state pilotage jurisdiction should include not only foreign-flag ships but United States-flag ships on foreign voyages as well.

2. Page 4, Note 8 "Vessels Sailing Under Register"

Technically, the U.S. Customs Service has never granted permission to American vessels to engage in foreign trade. No permission is necessary for such trade. Indeed, at least until the Vessel Documentation Act of 1980 went into effect in 1982, it was not necessary for a vessel to have any document at all in order to to engage in a United States foreign trade. It might be better to state that vessels sailing under register are United States-flag vessels engaged in a foreign trade or in any trade other than one requiring a coastwise, Great Lakes, or fisheries license.

3. Page 4 Voluntary v. Compulsory Pilots

This discussion seems to confuse two different concepts, viz., compulsory v. voluntary pilots and independent v. employee pilots. Compulsory pilotage does, in fact, refer to a pilot who is used by a ship under compulsion of law, whether federal law or state law. A federally licensed pilot on a United State-flag coastwise vessel (use of the term "enrolled" to refer to a vessel engaged in the domestic or coastwise trade is no longer accurate) is a compulsory pilot who is required to direct and control the vessel under 46 USC §8502(a). Conversely, some state pilotage requirements are considered voluntary, e.g., Oregon's.

The federal pilotage requirement can be met with a federally licensed pilot who is a member of a vessel's crew. There are, however, some groups of federally licensed pilots who operate in particular ports, are not members of vessels' crews, and go aboard vessels only when the vessels are moving in the port. Pilots in these groups operate somewhat like independent state pilots, although in some cases they enter into employment contracts with vessel owners and otherwise can be more accurately considered employees.

Most state pilots are required to be independent of the vessels and vessel owners for which they provide their services. They are more correctly viewed as officials or agents of the state that licenses them. This is one of the distinguishing features of state pilots. Ironically, Alaska is one of the few states in which a state pilot need not be independent of a vessel or its owner. The oil industry and certain people with an interest in pilotage have pointed out to the APA that there is nothing in Alaska law to prevent a vessel owner from employing a compulsory Alaska pilot to serve exclusively on its vessel. As the APA has observed, this is one of the shortcomings of the Alaska system.

#### 4. Page 8 Apprenticeship/Deputy Pilot Programs

The description of these types of programs and the differences between the two is somewhat inaccurate.

Although all programs vary, we are not aware of any apprenticeship program, at least of an APA member, that is independent of state oversight. A state with an apprentice program typically

accepts and assigns applicants to the program, which is run by the pilot association. Thereafter, the pilot association or its members may be required to certify the progress of the apprentice in the program in order that the apprentice may move through the apprentice-deputy progression and receive increasingly broader state licenses. This process is not free from state oversight, however, and the state control is present from the start of the apprenticeship.

The real distinction lies primarily in the level of prior experience required and the resulting extent of training involved in the two programs.

#### 5. Page 11 Pilot Liability

It is not true that "maritime law generally holds that pilots are not personally liable for damages caused to life, ship and facilities." In the absence of liability limiting or exculpatory provisions in statute, regulation or contract, pilots are always personally liable for their own negligence. The fact that until recently it was rare for pilots to be sued and have damages assessed against them was the result of two factors. First, the limited resources of a typical state pilot were considered as making a judgement against a pilot of dubious value and, under most circumstances, not worth the expense of the litigation. Also, because of the traditional maritime law principle that a vessel (in voluntary and compulsory pilotage settings) and a vessel owner (in a voluntary pilotage setting) is liable for the negligence of a pilot, it is not in the interest of vessel owners

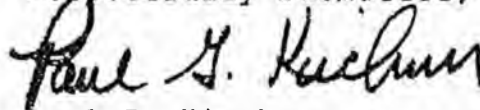
to obtain a finding of negligence on the part of the pilot.

The discussion in the Review Draft is correct in suggesting that the traditional liability situation may be changing. Pilots are being sued with increasing frequency; the noncompulsory/compulsory test for applying the master/servant rule for determining vessel owner liability is losing its rationale (the test really should be independent/employee rather than noncompulsory/noncompulsory); and state and federal oil pollution laws are creating increased uncertainty in this area. All these factors make limiting pilot liability more urgent than at any time in the past.

#### CONCLUSION

The APA appreciates the opportunity to comment on the Study. We look forward to continuing to work with the State of Alaska in improving its state pilotage system.

Respectfully Submitted,



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October 31, 1990

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DEPT OF  
ECONOMY & BUDGET  
10/31/90

STRATEGIC PLANNING

Re: Draft Legislation Amending the Marine Pilots Act

Dear Mr. Pierce and Ms. Madden:

The following is a response by the Southwest Alaska Pilots Association (SWAPA) to the draft legislation attached to Gary Amendola's October 8, 1990 memorandum and the Alaska Marine Pilotage Study ("OMB report").

The areas of most concern to SWAPA relate to (1) limited licenses, (2) grand-fathering of existing licenses, (3) specific training requirements for new licensees, and (4) antitrust protection. We recommend and comment as follows:

1. Board Powers and Duties. Sec. 08.62.040 (a) states the "board shall have authority to ... and (b) states the board, may by regulation, make other provisions ..."

*Comment.* The board should not only have authority but should be mandated to do all things listed in this section. The above underlined language should be changed to read the board shall. Although the past legislation has suffered from the lack of clarity as to the board's authority, there has also been a lack of initiative on the part of the board to exercise its authority. We believe that strong language should be inserted to require the board to exercise its powers and duties under 08.62.040.

2. Audit. Sec. 08.62.040 (7) states that the board shall have authority to "audit a pilot association or any pilot whose pilot fees are not collected by an association for compliance with state law as considered necessary by the board".

*Comment:* This subsection requires further detail. SWAPA does not want routine and undirected audits of their books unless specifically required for compliance with state law. It is important that the board have the authority to check both Association financial records and those of pilots whose pilot fees are not collected by an association: for compliance with published tariffs.

3. Tariffs. Sec. 08.62.040 (4) gives the board authority to "adopt regulations establishing pilotage regions ... and setting pilotage tariffs for each region, ~~provided that the board may adopt different tariffs within a region if justified.~~"

*Comment:* We recommend that the language that "the board may adopt different tariffs within a region" be deleted. The language is unclear and if interpreted to allow different tariffs within a region using different criteria, such a procedure would effectively gut a stable tariff system.

4. Endorsements. Sec. 08.62.080 (c) should be changed to read: "the board may issue an endorsement to a licensed pilot for specific ports outside of the pilotage region for which the pilot is licensed. This endorsement and any renewals thereof shall be issued only to those pilots who are licensed for ports outside of their pilotage region on the effective date of this legislation. Renewal of endorsements shall be in accordance with Sec. 08.62.120." ~~The board shall establish criteria upon which to determine whether to issue or renew an endorsement. Among other factors, the board must consider local knowledge and recency of service in determining whether to issue or renew an endorsement.~~

*Comment:* Pilots should indefinitely retain endorsements to ports for which they are licensed at the time of enactment of this legislation subject to recency rules adopted by the board. This privilege, however, should extend only to a "grandfathered" pilot, so as not to perpetuate a multi-regional licensing system. Only then can the concept of licensing in exclusive regions be enforced without prejudice to existing license holders.

5. Entry Level Qualifications. The following changes should be made to Sec. 08.62.100(b):

(b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board of the following service or combination thereof:

(2) ~~Two years of service as a master of freight on a towing vessel on vessels or tug and tow of not less than 1,600 combined gross tons while holding a license as the master of freight and towing of vessels of not less than 1,600 gross tons.~~

(4) Two years service as commanding officer of United States government vessels of not less than ~~1,000~~ 1,600 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or

(5) ~~Sec. 08.62.100 (5) two years of service as master of local vessels appropriate to the pilotage region in which the applicant seeks to be licensed, while holding a license as master of ocean steam or motor vessels of any gross tons.~~

Comment: Changes to (2) allow for experience on any vessel of 1,600 gross tons or more such as a fish processor ship, instead of confining such experience to freight and tow vessels only.

Changes to (4) make the experience requirement of 1,600 gross tons consistent with the vessel size experience requirements in (2) and (3).

Section (5) should be deleted in its entirety. This provision would, for example, allow captains of small fishing vessels in a pilotage region to qualify to master larger tonnage vessels. We do not feel this experience is appropriate for a license qualification. In the alternative, the added language is recommended.

6. Limitation of Licenses. A new section should be added as follows:  
"The board shall regulate and limit the number of pilots to be licensed under this chapter, such number of pilots to be regulated and limited to the number

found by the board to be required to render efficient and competent pilotage service."

**Comment:** We feel that it is critical that the board limit the number of pilot licenses. As pointed out in the OMB report, all maritime states with the exception of Rhode Island, Hawaii, Virginia, and Washington limit the number of pilots. This is done for the very good reason that unlimited licensing has caused a surplus of pilots and cut-throat competition. Pilots are then at the mercy of agents and ship owners whose desire for meeting a schedule are more important than safety considerations. Another problem is with the training of deputy pilots. Pilots may simply refuse to train an unlimited number of competitors. Under a limited license system, a new trainee would be welcomed as a needed addition to the pilotage work force.

7. **Applicant Screening.** Another section should be added as follows:
- (a) If more applications are received than requested, the board will select the most qualified applicant, depending on:
    - (i) Documented sea time;
    - (ii) Time spent serving as master;
    - (iii) Formal maritime training;
    - (iv) Experience in the waters for which applying;
    - (v) Previous piloting experience.
  - (b) The selected applicants will be given a written examination consisting of 40 questions on local knowledge, which must be passed with a grade of at least 75 percent.
  - (c) A deputy pilot license will be issued to the successful candidate.
  - (d) The deputy pilot license will be good for 6 years, and is not renewable.

**Comment:** The board should be given direction on how to select candidates should there be an excess of candidates over positions under a limited license system.

8. **Training.** A new section should be added to read as follows:
- (a) The deputy pilot will be sent to the association of that district for training. The deputy pilot shall complete a minimum of one hundred familiarization/training trips on ships requiring pilots. These trips must include at least 50 dockings and 50 undockings performed by the trainee, divided among the major docks of the district named in the regulations. These dockings and undockings must be tug assisted in Southeast. In Southwest, 25 dockings and undockings tug assisted; 25 dockings and undockings without tugs. An evaluation sheet will be submitted to the board of Marine Pilots by the supervising pilot for each observer trip and docking and undocking by the trainee. The supervising pilot must have at least five years' experience as an unlimited licensed pilot in that pilotage district.
  - (b) Successfully complete a class in shiphandling at a simulator approved by the board.
  - (c) Upon successful completion of the required observer trips, and dockings and undockings, and shiphandling simulator class, the deputy pilot will be eligible to take an examination for a "limited pilot license, not over 20,000 gross tons". This training period may not exceed two years or less than six months.

**Comment.** The legislation should specify both entry level licensing and training requirements. The details of qualifying and training a pilot should not be left to the changeable discretion of the board.

9. **Pilotage Regions.** A new section should be added defining the pilotage regions as follows:

- (a) Due to the vastness of the pilotage districts, and because state pilotage requires a high degree of local knowledge and proficiency, it is deemed in the public interest that a pilot can be licensed for only one region. The regions in Alaska shall be defined as follows:

- (i) "Southeastern Alaska Pilot Region" shall include all waters of Alaska from Dixon Entrance to Yakutat.
- (ii) "Southwestern Alaska Pilotage Region" shall include all waters of Alaska from Icy Bay to Demarcation Point, including Dutch Harbor and Captain's Bay.
- (iii) "Aleutian Island Pilotage Region" shall include all waters of the Aleutian and Alaska Peninsula.

**Comment:** Dutch Harbor and Captain's Bay have been included in the Southwestern Alaska Pilotage Region because SWAPA is the only association that can handle the larger tonnage ships in these areas and has a substantial investment in the pilot stations in these locations. SWAPA will continue to train deputy pilots to qualify for these areas.

10. **Antitrust Protection.** In addition to Sec. 08.62.175, allowing marine pilots to form a pilot association, Sec. 45.50.572 (a) should be amended to read: "AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural or marine pilot organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562-45.50.596."

**Comment:** Merely approving the formation of pilot associations under Sec. 08.62.175 may not be enough to provide the anti-trust protection contemplated by the OMB report. Marine pilot associations should be specifically exempt from state anti-trust laws under Sec. 45.50.572(a).

11. **Penalties.** The minimum and maximum fines under Sec. 08.62.190(a) should be increased to "not less than \$5,000 nor more than \$15,000"; under (b) to "no less than \$1,000 nor more than \$5,000." The minimum and maximum fines should be doubled for the second conviction.

**Comment:** Some ship owners have taken the attitude that they are willing to pay a fine as a cheaper alternative to hiring a pilot. A higher fine will

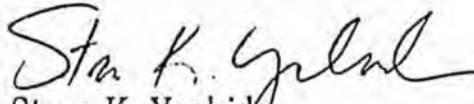
Brad Pierce/Mary Lou Madden  
October 31, 1990  
Page 7

make it uneconomic for such people to think that way. Doubling the fine for a second offense will deter intentional and systematic violations of the law.

If you have any questions about these comments and recommended changes to the draft legislation, please feel free to call me.

Very truly yours,

STEVE K. YOSHIDA, P.C.

  
Steve K. Yoshida

SKY/mw

cc: Charles Cloudy  
SWAPA Members

Faxed to Brad Pierce/Mary Lou Madden at 465-2079 on 10/31/90

October 27, 1990

Mr. Brad Pierce  
Ms. Marilon Madden  
State of Alaska  
Office of Management and Budget  
Division of Policy  
P. O. Box AD  
Juneau, AK 99811-0199

OFFICE OF  
MANAGEMENT & BUDGET

OCT 29 1990

STRATEGIC PLANNING

Dear Mr. Pierce and Ms. Madden:

I am a member of the Southeastern Alaska Pilots' Association and recently had the opportunity to review the Office of Management and Budget's Alaska Marine Pilotage Study.

You are to be highly commended on the thorough, methodical and impartial approach employed in this study. Your hard work and dedication has resulted in a study that provides a solid cornerstone from which to strengthen the Alaska State Pilotage Act.

I strongly concur with most of the conclusions and recommendations in the study. However, there are certain aspects of some of the recommendations that I believe warrant further study and action.

The following comments reflect my concerns, in this regard, and are submitted for consideration during the final review:

#### PILOT QUALIFICATIONS

##### Marine Experience

Marine experience is widely recognized as the paramount requirement for any pilot. Other states ensure their pilots possess this important ingredient by making extensive seagoing experience a prerequisite, and/or through long term pilot apprentice programs. It is my opinion that Alaska's Pilotage Act should have strong and firm experience requirements. Accordingly, it is suggested that a minimum of 8 years of licensed seagoing experience be specified as a basic entrance requirement for Alaska pilotage.

##### Docking/Undocking Requirements

Alaska's current piloting Statutes and Regulations requires entry level dockings and undockings for limited and unlimited licenses. At this requirement, as it now stands, to have little or no value. My experience has been that many of the people doing dockings/undockings are not ready for this level of training. This is not the fault of

the pilot trainee. After all, he is just trying to satisfy the Statute requirements.

I strongly suggest that the requirement for dockings and undockings be relegated to the final stages of the pilot qualification process. At this point, it would be more beneficial to the pilot trainee, and it would allow his proficiency to be more accurately and fairly evaluated. A requirement along the lines of the following sequence is recommended for insertion in the pilot qualification process:

- A minimum of 5 observed dockings and 5 undockings in every port (where there is a dock).
- Trainee is required to pass a comprehensive written examination.
- Trainees' progress is evaluated by the pilot board.
- Pilot board designate those trainees found ready to undergo ship docking/undocking training.

Even a requirement such as this would be conservative compared to corresponding requirements in other states' pilot statutes.

#### PILOT EVALUATION AND LICENSING.

##### Renewal Check-Ride Requirement

It is an unaware of any established precedence, or justified necessity, for check-ride proficiency testing of fully licensed marine pilots. By its nature, piloting does not lend itself to check-list evaluation or decline industry check-ride requirements. Changing factors make each docking or undocking different. Even among pilot peers, a variety of procedures and techniques are used in shiphandling. Thus, the only right way to dock or undock a ship is to do it as safely and expeditiously as possible. No check-off list will guarantee this result.

The expertise for any given piloting area is best represented by the fully licensed working pilot, who has a good record. A pilot's expertise is reproven everyday by doing another successful job. To subject a working licensed pilot to a proficiency test, or kibitzing from a peer, is clearly unproductive. In those cases where a pilot has a record of incidents/accidents, then some recertification requirement may indeed be appropriate. Such cases should be handled on an individual basis in accordance with procedures established by the pilot board.

## LIMITING THE NUMBER OF PILOTS

The only rationale evidenced in the study for not limiting the number of pilots is that "----- the state's interest is served by ensuring that there is an adequate number of pilots in all regions to provide pilotage service". This reasoning seems more applicable to the regulation of businesses than it does for sustaining a public service. Further, it undermines what is perceived to be one of the primary responsibilities of the pilot board; that being, to ensure all ports and waters of the state are provided adequate pilot services. Maintaining pilot services on around the clock basis is a crucial part of any pilotage act, and should not be left to the choice of competition. Accordingly, it is believed that the pilot board should continually monitor and review pilot requirements for Alaska's ports and waters. Recruitment and licensing of pilots would then be authorized to meet defined requirements.

Not limiting the number of licenses in no way assures that the states new or unique pilot needs will be satisfied. Rather, it is more likely to promote unwarranted competition for the easier and more lucrative piloting work. This carries with it all the unsafe and unsavory acts that are contrary to safe piloting practices. Pilot regulations would be routinely violated in the heat of competition and collusion with shipping company interests. I strongly suggest that any new Alaska pilotage legislation have provisions for closely monitoring pilot requirements, and for only issuing licenses to satisfy defined requirements.

## PILOT DISCIPLINE

### Pilot Coordinator.

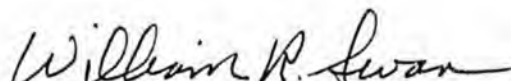
The study offers no justification for why the pilot board should be staffed with a person with this sort of centralized authority. The coordinator would easily become a dominant individual acting in the name of the pilot board rather than at its pleasure. If the coordinator position is filled by a person with a marine background, then the position would undoubtedly usurp the roles of the marine pilots on the pilot board. Furthermore, I believe it would be very unproductive to fill this position with anyone who may have preconceived ideas and prejudices obtained from previous Alaska piloting experience.

I fully support a strong pilot board that has specific responsibilities, duties and functions, and the authority to carry them out. Accordingly, such a board would require permanent administration and investigative support. The marine pilots on the board would be available to assist with any marine expertise or interpretation. Injecting a Pilot

Coordinator position into this organization, and having him function as a "Piloting Czar", seems to subvert the entire board/commission concept.

Thank you for your outstanding study and for being given the opportunity to comment on it. You have my continuing support.

Sincerely,

  
William R. Swan

Oct. 29, 1990

312 Pine St. Box H

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Ms. Marilou Madden

Mr. Brad Pierce

State of Alaska

Office of Management and Budget

Division of Policy

Box AD

Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

After reviewing the draft legislation amending the Alaska State Marine Pilots Act sent by Mr. Amendola, I wanted to take this opportunity to comment. Before doing so, however, I want to compliment you both on your thorough and well thought-out examination of the present pilots statutes. For persons such as yourselves, who are not directly involved in pilots, I feel that you are to be commended for identifying a number of problem areas and offering - for the most part - appropriate remedial wording to correct, or at least minimize, a number of the deficiencies which you found. As a working pilot on the waters of Southeastern Alaska, I wish to add my voice to those of my cohorts who have expressed their thoughts to you already. For the most part I would concur with the sentiments expressed by Capts. Eisensohn and Hodgman. If I cover some of the same territory they did, it only emphasizes the fact that I agree with their assessment that some changes are still necessary so as to come

to grapple with the problems we face. Simple, effective, and unequivocal language is necessary to produce the best possible legislation. I am confident that this is your aim as well.

My specific recommendations for desirable changes are:

1) In Section 5 - AS 08.62.040 (4) Do not grant exceptions to the stated tariff schedule. This only creates administrative and legal loopholes which unnecessarily complicate things for everyone concerned.

2) In Section 5 - AS 08.62.040 (6), (7), and (8), make all provisions regarding By-law reviews, audits, and training applicable to groups and independent pilots in addition to pilot associations.

3) In Section 5 AS 08.62.040 (8)(c), what is GOOD CAUSE with respect to the Board requiring a pilot to submit to a physical or mental examination?

4) In Section 6 AS 08.62.045 - MARINE PILOT COORDINATOR - I concur with Captain Hodgmen that the Department, SUBJECT TO THE GUIDANCE AND OVERSIGHT OF THE BOARD (Wording changed from "with the approval of the Board") is authorized to hire a Marine Pilot Coordinator, etc. Care must be taken to insure that the Board has the authority to take appropriate action on its own when the coordinator is not fulfilling his responsibilities in a satisfactory manner.

5) In Section 9 Section 08.62.100 - ENTRY LEVEL QUALIFICATIONS (b): It is my feeling that the enumerated requirements as

stated (1-5) should be changed to something like the following:

(1) In addition to the qualifications in (e) of this section, an applicant must provide documentation of the following:

(1) An applicant must (A) Hold, at a minimum, a currently valid License as Master of Vessels of 1600 Tons or more, AND (B) Have at a minimum, 6 years of marine discharges as a licensed deck officer (or 20 years cumulative service aboard Government or Military Vessels such as the Coast Guard, Navy, NOAA, Corps of Engineers, etc.)

(2) IN ADDITION TO the above, the applicant must meet at least 1 of the following requirements, or an equivalent combination of more than 1 (Time to be calculated in the same manner as for Coast Guard License upgrading, etc.)

(A) Two years' service as Master of Local Coastwise, or Ocean-going vessels

(B) 360 Days working as a pilot in a recognized pilotage area  
(Under present wording, pilotage experience elsewhere is not even mentioned.)

(C) 3 Years as a Deck Officer on Vessels of 1600 Tons or more in Alaskan waters

(C) 3 Years as a Deck Officer on Ocean-going or Coastwise vessels while holding an unlimited Ocean (or Great Lakes) Chief Mate or Master's License

6) In Section 10 Section 08.60.100 RENEWAL (e)(2) Make it possible to "Grandfather" those already working as pilots who may not presently meet all the minimum qualifications enumerated in 08.60.100 and the implementing regulations (Another reason for changing them along the lines suggested in 5). In this I concur

with Capt. Elsensohn.

7) In Section 08.62.120 RENEWAL (b) Specify a minimum number of days (60) of active piloting required during the 2 years preceding the request for renewal so as to avoid a lapse.

8) In Section 08.62.160 MANDATORY EMPLOYMENT OF PILOTS - I concur with Capt. Hodgmen that wording should be inserted to the effect that a pilot so employed will be "on duty at all times when underway on the waters covered by this section."

9) In Section 08.62.180 EXEMPTIONS (5) - I concur with Capt. Elsensohn that there should be wording to the effect that "Vessels of Canada, including CANADIAN BUILT AND DOCUMENTED cruise ships engaged in frequent trade between B.C. and Alaska, etc." are exempt from pilotage. (This is to preclude any possibility of cruise lines possibly using Canada as a flag of convenience so as to avoid having to utilize Alaska pilots.)

10) In Section 08.62.190 PENALTIES a) Omit the following language "When a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot." This, again, opens the door to abuse by creating unnecessary exceptions. Also increase the fine to a realistic figure for example, not less than \$5000 nor more than \$10000.

In b), likewise increase the fines to appropriately realistic higher figures.

11) Finally with respect to training, it is my opinion that the

new wording should incorporate enough flexibility within them so that pilot associations continue to have sufficient leeway so as to allow them to both train new pilots and take in new members according to their own internal criteria, so long as these criteria reasonably adhere to the guidelines set forth and are equitably administered by the associations.

In closing, I wish to thank you for taking the time to become aware of my concerns. Our continued success is dependent upon keeping pace with changing realities. Your efforts have contributed significantly to achieving this objective.

Sincere Best Wishes

*Capt. Roger S. Dunn*

Capt. Roger S. Dunn

S. E. Alaska Pilot

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

October 22, 1990

Marilou Madden and Brad Pierce  
State of Alaska  
Office of the Governor  
Office of Management and Budget  
Division of Policy  
P.O. Box AD  
Juneau, Alaska 99811-0199

Dear Marilou and Brad:

Before getting into my comments on the proposed legislation to modify the Marine Pilot Act, I must tell you that I believe you did an excellent job in coming up with facts in your study of pilotage. For two people to start with no knowledge about an industry, and be able to present such an understanding of it in so short a time, is amazing to me. Congratulations.

As a member of the Alaska State Board of Marine Pilots for the last three years, I can state clearly that a most important consideration in the new statute and regulations must be the elimination of exceptions. I hope the state ends up with documents that have no exceptions, in order that the Board of Marine Pilots is not always facing a lawsuit. The exceptions in the regulations have made my service on the board very frustrating.

Comments--

Sec. 08.62.040 - Powers and Duties.

Page 4, No. 4 - Delete the words "provided that the board may adopt different tariffs within a region if justified."

By having the above words in, you are creating an exception.

Page 5, No. 7 - Change to read "audit a pilot association, pilot group, or independent pilot as considered necessary by the board."

If we are to have pilot groups that are owned by one person or company, and independent pilots that work through no group, they should all be subject to state inspection.

Page 5, No. 8 - Change to read "Direct training programs to be conducted by pilot organizations."

The state must direct the training programs in order to have them state programs. Associations can not have their own training programs.

Sec. 08.62.080 - License Requirements.

Page 6, (b) & (c) Because these two create an exception they cancel each other and equal nothing. Please rewrite as follows:

(b) "A pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(1) Those pilots who, on the effective date of this act, have more than one region on their license will be grandfathered, but must meet the requirement for each region at renewal time."

This will eliminate the exception.

Sec. 08.62.100 - Entry Level Qualifications.

Page 7, (b) (2) Change to read "master of freight or towing vessel.

Page 8, (b) (5) - What does this mean? It could be construed to mean a charter fishing boat, sightseeing boat or pleasure boat. Whatever it is, it needs to be clearly defined. This is the kind of wording that gets the Pilot Board into trouble.

Page 8, Add (6) "All time to be counted as the U.S. Coast Guard counts time."

That means that only working time counts, which makes the time meaningful.

Sec. 08.62.120 - Renewal.

Page 8, (a)(2) This item would be acceptable only if all present licenses were grandfathered. As you know, one of the reasons for all of this work of re-writing the Pilotage Act is that Alaska has such a low requirement for entry level of experience. There are many Alaska pilots at this time that do not meet the criteria set forth in this act. This act must be an instrument to improve pilotage in Alaska, not eliminate some pilots that are working here now.

Page 9 (b) Change to read "A licensed pilot who has not piloted in the region covered by his/her license at lease sixty (60) days during the two years prior to - - - - -"

Sec. 08.62.160 - Mandatory Employment of Licensed Pilots.

Page 11 Add sentence - "The State licensed pilot will be on duty at all times the vessel is underway, while on the waters covered by this chapter."

Sec. 08.62.175 - Pilot Organizations.

This section as written says nothing. The only reason that I can see for the proposed "Sec. 08.62.040-(a)(6) review and approve the bylaws and the operating rules of pilot association" should be that the state would recognize pilot associations in such a manner that they would be protected from anti-trust suits. This is the section that should sanction associations as long as their bylaws and operating rules are approved by the state.

Sec. 08.61.180 - Exemptions.

Page 13 (5), Change to Read - "Vessels of Canada, including Canadian built cruise ships under the Canadian flag, engaged in frequent trade between -----"

Sec. 08.62.190 - Penalites.

Page 14, (a), Remove the words "when a pilot is available". This is another exception that needs to be removed. The section gives the vessel the right to proceed if the perils or hazards of sea prevent a pilot from reaching her, that is all that is appropriate. It is up to the board to see that there are an adequate number of pilots for the trade.

Also, the fine in this section needs to be raised to an amount that the state will be willing to enforce. In the past, pilots have reported sighting foreign vessels in Alaska waters without pilots, but the state has done nothing about them.

Sec. 19 - Transition.


Page 15, Sec. 2 - This section magnifies the problem raised by Sec. 08.62.120, (a)(2). Many of the presently licensed pilots in Alaska do not have the background that meets the requirements. Unless they are grand-fathered, they will not be able to renew.

Marilou Madden and Brad Pierce  
October 22, 1990  
Page 4

One very important item is not approached in Sec. 08.62.040. The section should set the criteria to be used by the board in determining the tariff for a pilotage district. Because the State of Alaska must compete with other areas for qualified applicants to become pilots, I suggest that the state establish a desired income for pilots equal to that of other Pacific Northwest pilots. The income should compare to that of the Columbia River Pilots, Columbia River Bar Pilots, Port Angeles Pilots, Grays Harbor Pilots, or Coos Bay Pilots. Perhaps an average of all of those association would be appropriate.

Thank you for your consideration of the above items.

Respectfully,



Capt. H. K. Elsensohn

Oct 30, 1990

ATTN:

Mary Lou Madden  
Brad Pierce

Following seven pages are  
comments from Capt. Stuart Wood.  
We have discussed these on the  
telephone.

Looking forward to seeing you  
in Anchorage!

Bob Boyd

FAX # 619-423-0667

To: AMP  
From: Stuart

If I were writing to Marilou Madden to respond to the advisory group's study and the proposed changes to the Alaska Statutes, I would say something like the following. I would also send copies to SEAPA and SWAPA.

Dear -----

Thank you for sending the copy of the Alaska Marine Pilotage Study. I was very pleased with the extent of the research and background material and the obvious care the analysts took to objectively study marine pilotage issues in the state of Alaska and to compare them to the situation in other states and how problems were resolved there.

Before commenting on the proposed changes to the Alaska statutes published by the Attorney General's office, I'd first like to make some observations on the material in the study itself. In reading the study it seems that all pilots and those associated with the shipping industry agree that the first obligation of pilots is "to protect lives, property and the environment of the state". The question then of how to achieve this goal becomes the dividing issue among all the concerned parties.

In the study there is one section devoted to the investigation of competition among pilots. Competition, both within and between associations--along with the topic of pilot qualifications--is the foundation of the problems within the pilotage service in Alaska.

As mentioned in the study competition does bring increased responsiveness to industry needs. However, responsiveness cannot be measured simply in terms of cost efficiency. For example, the two dissident pilots that broke away from SEAPA are surely providing a very cost efficient service to their employers. The pilots are happy because they have no overhead to speak of in their operation so a large percentage of the tariff collected goes to the pilots. The shipowners are happy because they have unrestricted availability of their pilots with, I suppose, low travel and per diem expenses.

But pilotage is a service. By not being part of a group these two pilots are not able to provide pilotage to other ships requiring pilots, such as those that arrive in the winter, or those that call on a random basis. The cost of providing a full pilotage service in southeastern Alaska falls on those willing to provide it, whether it is as profitable as the company work or not. In addition, an association of two pilots cannot meet the state mandate of providing an adequate training program. Pilots working on only one class of ship cannot train others to become fully

qualified pilots capable of working on all types of ships under all conditions.

There is a difference between serving as a pilot and serving as what amounts to a company employee.

The other aspect to consider in this situation is that the breakaway pilots were given extensive training by the other pilots in the SEAPA group. Without the opportunity to obtain a license and upgrade it provided by SEAPA, these two pilots would not have been able to form their own group. It seems as though the study recommends that all pilots be trained by the associations, meaning all independent pilots must come from their former associates.

This example also brings into focus the assertion that company pilots are unduly under the influence of the company, at the expense of safety. Two breakaway pilots are not nearly as able to resist company pressure as an association. If the two pilots lose their contract, they are quite restricted in their opportunities for further employment as pilots.

This situation is not, however, comparable to what SWAPA asserts about AMP. In the Western region it is SWAPA (which accounts for perhaps 20% of the pilotage service in the area) providing the threat of competition to an established organization. If SWAPA were not in the Western region, obviously, it would not be possible for a company to pressure AMP.

The pilotage situation in the Western region is unique in Alaska. It is only there that two pilot groups are working in the same area. That is, in southeast Alaska SWAPA does not compete for business, and in the remainder of the state SEAPA does not compete with other associations for work. It is only in AMP's primary revenue center (Dutch Harbor) that two associations are working.

Beside the issue of competition, the other important concern facing the state of Alaska is the qualifications of pilots, and the state's "certification of competency" in granting a pilot's license. It appears that the study and resulting proposals are trying to say that the state will grant a license as pilot--that indicates competency--but that the new pilot will not be truly competent until he has trained through an approved association training program.

The study notes vastly different opinions on the topic of trainee qualifications. On one hand are those that state that pilots must have "extensive sea experience on large vessels" in order to be an unlimited pilot, while elsewhere in the study (Attachment B) it is noted that through the apprentice system of pilot training as practiced primarily on the east coast no sea experience is required at all. Both routes lead to competent pilots.

Since the state will be approving rigorous training programs provided by the associations then the need for increasing the entry level requirements of pilots is not as great as it might appear. The issue is not so much the qualifications of trainees before they become pilots, but how well qualified and capable they are to serve as pilots once they have completed their training and examination.

Perhaps the state should consider the concept of licensing as a discretionary power and not an individual right. Another possibility is that the granting of a license is conditional upon completing an approved association training course.

The heart of the study is the explicit social contract established between the state and the pilots. As noted by Mr. Kirchner and Mr. Cloudy, the pilots will become instrumentalities of the state, serving in a quasi-public capacity. The benefits that will accrue to the state include the training provided by the pilot associations, the power to charter associations and regulate them through approval or disapproval of bylaws (and thus the selection of potential trainees), and the oversight of pilots' financial statements.

In effect, then, the state has modified its approach of administering by enforcing regulations authorized by statute into a system whereby a third level is established. Under this system the state will now regulate the bylaws of the pilot associations, making them subject to Board of Marine Pilot regulation, which is subject to Alaska Statute. This system should provide the flexibility necessary to meet the divergent pilotage needs in the various parts of the state.

To the pilots' benefit the state will limit by statute their liability for accidents and help to protect them from anti-trust litigation.

What the study has not recommended and the proposed changes to the statutes do not accomplish is to stabilize the pilotage industry in Alaska. I do not believe it is in the state's best interest at this time to limit the number of pilots. What I do believe will best serve the state of Alaska, the shipping industry and the pilots themselves is to limit the number of pilot associations (and in this an independent pilot working for only one company could be considered an "association").

In Alaska, three pilotage areas are sufficient, each one served by only one association that is responsible for training and dispatching pilots, collecting tariffs and operating under their respective bylaws as approved by the state.

To expand upon the limited entry to the fishing industry analogy mentioned in the study, it is possible to consider

the entire fishing industry as similar to pilotage in Alaska. To limit competition for a finite resource the state has instituted limited entry. But instead of seeing this as limiting the total number of permits it is necessary to look at limited entry as requiring fishermen to belong to an association of fishermen in a specific geographical region, say the Bristol Bay District, or the Chignik District. Fishermen from one district cannot fish in another district.

Within each district there are regulations determined on a local basis, depending on the conditions and requirements of that area, giving the state very good control over the fishing in each district. As conditions change so do the regulations. The situation could easily be the same for pilots. The state sets policy by statute and regulation and then tailors more specific regulations for each pilotage area through the approval of association bylaws.

This way, situations unique to each area can be dealt with regionally instead of statewide. For example, southwest and western Alaska have no need for channel licenses, yet southeast does. Southeast and western Alaska have no need for VLCC requirements, but southwest does. Why have statewide regulation when regional regulation is so much more flexible? In this system, if a problem develops the pilot coordinator, in conjunction with the Board, can deal with only one group--the association for the area--instead of an assortment of pilots and associations, giving the state better control over the pilotage industry.

The other benefit of this system is that it eliminates competition, or the threat of competition from pilotage. No longer would pilots be unwilling to give dockings or other training to pilots for fear that they would break away and form competing groups. Pilots of one association could not be threatened by owners with replacement by another association. Restraint of trade and entry to association issues could be dealt with in the bylaws that are approved by the state.

As the study states "State pilot licenses can be considered both a certificate of competency and a franchise to perform a public service...". The dictionary (Webster's), as well as business practice, define a franchise as "the right or license granted to an individual or group to market a company's goods or services in a particular territory; the territory involved in such a right". Along with the duties and obligations conferred with the pilot's license should come the territorial benefits of the concept of franchise.

By its very nature a franchise involves exclusion and the state, through statute, should accept this. By becoming chartered (charter: "a grant, or guarantee of rights, franchises or privileges from the sovereign power of a state...; a special immunity, privilege or exemption"),

associations should also become franchised. As Mr. Cloudy states in Attachment C, "The State must realize that competition is not the goal of marine pilot regulation and that, to the extent monopoly promotes the goals of marine pilotage (e.g., safety and a reasonable return for professional effort expended), such should be recognized and accepted as legal and appropriate."

I don't know about other boards in Alaska, but I once had a real estate salesmans's license in Colorado. As one of the conditions for licensure every salesman had to be employed, or maybe under the supervision (I don't remember the wording), of a real estate broker. I don't see why Alaska couldn't require a pilot (salesman) to work under the authority of an association (broker) and its bylaws.

In addition to comments on the study and its recommendations, the proposals put forth by the Attorney General's office also merit comment.

Sec. 08.62.010

The clause in this section requiring pilot members of the board to have 5 years of active service as pilots is an unfair burden on the members of Alaska Marine Pilots. Many of the members of this group have only three years service. I recommend either changing the requirement to pilots of record as of 1-1-88, to begin the 5 year rule in 1993, or to eliminate the service requirement. Also, as written, this regulation does nothing to prohibit a member of SWAPA from representing the western Alaska region, thereby giving them two pilot members on the board.

If the state is going to require board members to be residents of Alaska, it must define resident for purposes of this regulation. Many of the pilots in the western area do not live in the Aleutians, nor do many of the contract pilots working in southeast Alaska live in Alaska. The work schedules in these areas require months of duty at a time, with corresponding periods of vacation time, allowing these pilots more flexibility in their choice of residence. Some provision must be made to allow for this pool of expertise and experience to be part of the decision making process in Alaska state pilotage.

Sec. 08.62.040 (a)(4)

I'm not sure what the purpose of the clause "...provided that the board may adopt different tariffs within a region if justified" is. Does this mean that the tariff will be set by class of vessel? Without further clarification, I would eliminate this clause.

Sec. 08.62.040 (a)(5)

In the implementation of any body of regulation there are

always going to be interpretations and standard operating procedures used. In the past the board has used SOP's that had the effect of becoming regulations. I think this is unavoidable, but the existence of these procedures should be clearly stated in the statutes. Paragraph (5) seems to be an appropriate place to insert this notice.

Sec. 08.62.040 (a)(6)

This paragraph requires the approval of the board for the bylaws of each association. It does not provide for an appeal process for bylaws that are not approved. The clause should not only provide for an appeal, but it should also require re-approval at specified time intervals, or whenever changes are made. The question of the bylaws of pilots outside the associations is not addressed. If the state allows pilots to work outside the association system, it is in effect creating two classes of pilots: those in the associations that must adhere to the "social contract" and those outside of the associations that don't.

Sec. 08.62.080 (c)

This clause negates the whole attempt at resolving the competition issue in Alaskan pilotage. Paragraph (b) standing alone, would be much better. Areas or ports near the boundaries of two areas should be made part of both areas. These special areas should be limited to Yakutat, Chignik and Alitak.

Because of past practices in the westward area causing the inability of AMP pilots to increase the tonnage limits on their licenses, there must be a transition period in that area during which SWAPA pilots would be allowed to work in Dutch Harbor. The pilots allowed to work there should be limited to those showing a certain amount of recent pilotage in the area. There should be no blanket grandfathering of all pilots with western Alaska coverage.

At this point it must be emphasized that adoption of paragraph (b) does not regulate a certain class of pilots out of work. The pilots most effected by this change, those in SWAPA who have been willing to work in Dutch Harbor, will still have an ample amount of work to do in their primary region of southwest Alaska.

Sec. 08.62.100 (a)

As mentioned in the marine pilotage study, maybe Alaska should adopt a "discretionary" policy toward granting licenses. This would help to alleviate the problem of "regulation by exception" that is plaguing Alaskan pilotage.

Sec. 08.62.100 (b)

In this section I would add to paragraph 5 the clause "while holding master of 1,600 gross ton license".

I would also add a paragraph (6) two years of active service as a pilot in another pilot association.

I would add a seventh paragraph stating that a combination of the above service would be acceptable.

An eighth paragraph would provide for a mechanism for those candidates not meeting the above requirements to enter a pilot training program. This could include increased training at the association level, similar to the apprentice pilot program as used on the east coast.

Sec. 08.62.120 (a) (2)

This paragraph must be rewritten. A pilot currently working in Alaska who has not met these new standards will have no opportunity to obtain more sea time without quitting piloting for a time. The inclusion of a new paragraph (6) in 08.62.100 (b) would resolve this problem. Otherwise, grandfathering will be necessary.

Sec. 08.62.120 (b)

The definition and purpose of the familiarization trips mentioned in this paragraph must be stated explicitly. As it reads, the paragraph implies that these trips are described elsewhere.

Sec. 08.62.150 (a) (B)

Currently, there is an inequity in the state tariffs. In the outport areas it can be less expensive for a ship to make a harbor shift for \$250.00 rather than to pay a standby day of \$600.00. This must be addressed before changing this clause from its current wording.

Sec. 08.62.175

A better wording of this clause might be to include the phrase "independent contractor" after the word associations. This would give statutory authority to the fact that pilots are independent within their associations for liability purposes.

The TRANSITION paragraph allows two renewals to meet the new requirements. As stated under the comments on Sec. 08.62.120 (a) (2), a currently working pilot will not have the opportunity to gain more sea experience without leaving the piloting business.

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

October 31, 1990

Ms. Marilou Madden and Mr. Brad Pierce  
State of Alaska  
Office of the Governor  
Office of Management & Budget  
Division of Policy  
Post Office Box AD  
Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

I have read your pilotage study and found it to be excellent. I have also read Mr. Amendola's draft legislation amending the Marine Pilotage Act. His draft is also very good.

The Southeastern Alaska Pilots' Association remains firmly committed to safe, reliable and efficient pilotage. To further this commitment, the Southeastern Alaska Pilots' accepts the challenge to assist in formulating proposed legislation to modify the Marine Pilotage Act, which we believe is long overdue.

Specifically, we are concerned with:

- (1) Intent. The ability to limit the number of licenses must be included in this pilotage act. ("The Board of Marine Pilots shall provide for a sufficient number of licenses to meet the requirements of the marine industry in the State of Alaska"). The state must recognize this requirement as a necessary evil to promote safe and efficient pilotage. The cost of the training programs proposed by your study will in itself place a financial burden on the marine industry. If the marine industry is to bear this cost, it is only reasonable to limit the number of pilot trainees required to be trained to meet the future demands of industry. Safety is compromised when too many pilots are required to train-up too fast or there is no perceived need for the trainee and training becomes a burden rather than a necessity. Training programs must be based on a need for additional pilots for the training program to be worthwhile and self-serving to industry and the individual pilot trainee. Pilot trainee and working pilots need to earn at least the average rate of pay for pilot trainee and working pilots on the West Coast of the United States to ensure the quality of applicant pilots and working pilots will be available.

- (2) Improved Pilot Qualification. An applicant must have a license as Master of vessels of 1600 tons or more, have a minimum of 2190 days of marine experience as a licensed deck officer, or a commissioned deck officer serving aboard a government vessel. In addition to the above requirements, the applicant must meet at least one of the following requirements or an equivalent combination of more than one. (All sea-time calculated using underway time only. One day underway equals one day of seetime.)
- A. 730 days service as Master of local, coastwise or oceangoing vessels.
  - B. 365 days working as a state-licensed pilot from another state.
  - C. 1095 days as a deck officer on vessels of 1600 tons or more in Alaskan waters.
  - D. 1095 days as a deck officer on ocean-going or coastwise vessels while holding an unlimited ocean (or Great Lakes) Chiefmate or Master's license.
- (3) Marine Pilot Coordinator shall also direct and assist in accident investigations as necessary. State pilotage acts are weak in this area and a coordinator would go a long ways to insure a timely investigation was made by a knowledgeable person (provided the coordinator has a marine background).
- (4) License Requirements. Port-specific-licensing outside the pilotage region for which a pilot is licensed is the same as not having pilotage regions. Your study shows regions are in the interest of pilot proficiency and safety. To deviate from this is not in the best interest of pilotage. This state has recognized Southeastern and Southwestern Alaska for years. As natural geographical regions, these two regions need to be further defined and regulated on a regional basis.
- (5) Renewal. Grandfathering seems to be the general consensus as it applies to meeting the minimum qualifications recommended by this draft proposal. We also recommend a pilot work on their license for a minimum of sixty days during the biannual renewal period or the license is considered lapsed. This proposal would insure a pilot is intent on working on the license and maintaining pilot proficiency in the pilotage region.
- (6) Mandatory Employment of Licensed Pilots. We recommend adding "A pilot will be on duty while underway directing the movement of the vessel at all times. The Master may relieve a pilot for cause, and shall submit a written report within ten days explaining the reason the pilot was relieved." (The State of Alaska recognizes the Master

Marilou Madden & Brad Pierce  
October 31, 1990  
Page 3

remains in command of the vessel at all times, and must relieve a pilot for cause when deemed necessary.)

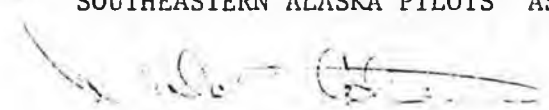
(6) Penalties. We recommend deleting the words "when a licensed pilot is available". This is a loophole that could be used to avoid the penalties of this section or when more than one group of pilots is working the same region. The owner, master or agent gives insufficient notice to either group to meet the pilotage call. The Association has over the years maintained a sufficient number of pilots to meet the demand for our services. However, as more pilot groups begin working in a region, which group will take the responsibility for providing the necessary pilots to meet the demand on a year-round basis. We believe this problem should be considered by the state and industry while developing this amended pilotage act. The penalties are too low for violating this act and should be increased to at least cover the cost to investigate the violation.

(7) Definitions. We recommend adding the following definitions:

- A. Seatime.
- B. Pilot Coordinator.

Sincerely yours,

SOUTHEASTERN ALASKA PILOTS' ASSOCIATION



Dale O. Collins  
President

DOC:bjj

1610 Water Street,  
Ketchikan,  
Alaska 99901.

## STRATEGIC PLANNING

October 29th 1990.

Mr. Brad Pierce  
Ms. Marilou Madden  
State of Alaska  
Office of Management & Budget  
Division of Policy  
P.O. Box AD  
Juneau, AK 99811-0199

Dear Mr. Pierce and Ms. Madden

As a member of the Southeastern Pilots' Association, I would like to highly commend you on the outstanding and impartial methods you took to make a study of "Alaskan Marine Pilotage", and the eventual results will surely help to make our state waters a better and safer place for all.

I agree with most of the conclusions of the study, but I believe there are certain aspects which need to be studied further.

### Entry Level Qualifications:

In the State of Alaska the existing state entry levels are woefully inadequate and low, especially when compared to other states, or any other maritime country. If the state is not prepared to make the minimum license "Ocean Masters-Unlimited Tonnage", then it is suggested that entry level qualifications be set at a minimum of 6 years licensed seagoing experience. This would be fair to persons with local experience and those with offshore experience, and would help to ensure we get applicants with a good maritime background, which is not happening to-day.

### Docking Requirements:

The existing regulation requirements for Limited and Unlimited Licenses require both dockings and undockings with no requirement for observations of dockings and undockings, which is like putting the "Cart before the horse".

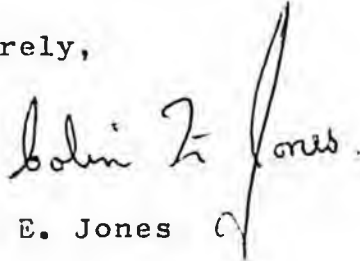
I would kindly suggest that applicants should have a minimum of 75 observed dockings and 75 observed undockings.

Pilot Performance:

I think that the idea of establishing a check-ride system for fully licensed pilots is completely unnecessary, every time a pilot performs a docking or undocking successfully his ability and expertise is proven especially in Southeastern waters with the strong winds and currents, many low horsepower tugs, and old and fragile piers. The only time a check-ride system should be necessary is when a pilot has a record of accidents.

I appreciate being able to comment on your study , and thanks for a job well done.

Sincerely,

A handwritten signature in cursive script that reads "Colin E. Jones". The signature is written in dark ink and is positioned above the typed name.

Colin E. Jones

CAPTAIN JAMES A. HODGMAN  
415A Front Street  
Ketchikan, Alaska 99901

October 29, 1990

Ms. Marilou Madden  
Mr. Brad Pierce  
State of Alaska  
Office of Management and Budget  
Division of Policy  
Box AD  
Juneau, Alaska 99811-0199

Dear Ms. Madden and Mr. Pierce:

Captain Elsensohn has given me a copy of the Alaska Marine Pilotage Study and proposed legislation flowing therefrom and requested that I submit comments to you. I share his admiration for the work you have done.

My comments are based on thirty years experience as a Coast Guard officer and seventeen years as an Alaskan pilot, including four years on the State Board of Marine Pilots.

There is no question that the enactment of the draft legislation will result in major improvements in pilotage. I disagree with your study in that you conclude that by not limiting the number of pilots you ensure that there will be an adequate number of pilots available. In the past pilot organizations have ensured that pilots were available to meet all of the requirements of industry. These requirements change materially from year to year and day to day. It takes considerable time, effort, judgment and money to ensure that qualified pilots are always available. The benefits to the associations compensate for this in a non-competitive system.

This year for the first time there was competition in Southeast Alaska. Two (or three?) pilots obtained the business on one cruise ship. These pilots essentially remained on board and were one-company pilots subject to the pressures you mentioned in the study. They provided "competition", but was it fair? The company actually went to our pilot association to ensure that we would provide backup pilots if they so requested. The Southeastern Pilots' Association maintains a year-round office staff; keeps up-to-date information on charts, waterways, routes, ports; provides pilots to work with industry on local conditions; provides pilot board members and representatives to work with the pilot board; supervises dockings; assists pilots in training; provides extra pilots to meet peak work loads; provides pilots to handle extremely demanding assignments during slow winter months; etc. Will it be in our interests to continue this overhead that is essential to the state if

competition spreads and splinter pilots pick off vital cruise ship company business? Can the state expect us to perform these services when company pilots on the same pay scale operate with no overhead?

While we disagree on pilot competition, to be meaningful I have developed specific comments on the draft legislation that are based on your decision not to limit the number of pilots in a region.

COMMENTS ON DRAFT LEGISLATION BY SECTION:

Sec. 08.62.040 Powers and Duties

- (a)(4) Delete "provided that the board may adopt different tariffs within a region if justified."  
Tariffs are different for different ports within a region. The above phrase seems redundant and confusing.
- (a)(6) Change to include pilot groups and independent pilots. All pilots should be subject to review equally.
- (a)(7) Same as (a)(6) above.
- (a)(8) Same as (a)(6) above.
- (b) Delete "conducted by pilot organizations."  
All pilots in a region should have equal training programs.

Sec. 08.62.045 Marine Pilot Coordinator.

I agree that such a position is needed, but believe that the position should be subject to guidance by the pilot board and that this should be stated in the law. Otherwise, the board's functions are liable to be usurped. One additional thought--I believe it will be extremely difficult to find a qualified candidate who would take the job.

Sec. 08.62.080 License Requirements.

- (b) & (c) Paragraph (c) makes paragraph (b) meaningless. Alaskan pilotage regions are probably as large as any in the world and the goal should be for a pilot to operate in only one region. Yet abrupt implementation of paragraph (b) probably would create hardships and shortages. It is common maritime practice in such instances to grandfather existing licenses.

Sec. 08.62.100 Entry Level Qualifications

- (a)(1) Revise to require services as a master of ocean or coast-wise vessels of not less than 1600 gross tons as in (3). I'm sure this was intended.

- (a)(5) This section could negate the four prior sections and tie the board up in endless applications, arguments or legal actions.
- (b) The preceding requirements could be thwarted by giving time for shipyard overhauls, layups, vacations, etc. I suggest an additional section stating that all services will be calculated using Coast Guard methods.

Sec. 08.62.120 Renewal

- (b) One day's piloting would meet the requirement as written. I suggest a minimum of sixty (60) days service as a federal or state pilot.

Sec. 08.62.150 Enforcements Authority

- (2) I'm not sure what is meant by "chemically impaired". Does it mean an alcoholic who uses alcohol and a drug addict? Or does it mean a pilot that is under the influence of drugs including alcohol while on duty. I believe it should cover both cases.

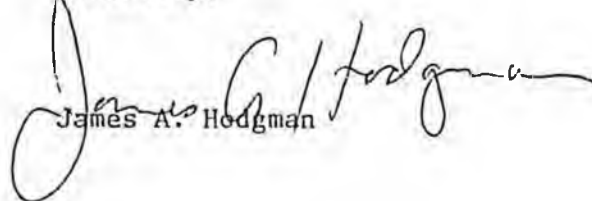
Sec. 08.62.160 Mandatory Employment of Licensed Pilots

I suggest further clarification by adding "who will be on duty at all times when the vessel is underway.

Sec. 08.62.190 Penalties

- (a) & (b) In the past vessels have delayed their requests for pilots sufficiently that a pilot was not available when desired. I suggest deletion of "when a licensed pilot is available". Further, penalties in both (a) and (b) are grossly inadequate; particularly when compared with the pilotage fees the vessel is avoiding. In the past the Attorney General's office has been unwilling to prosecute fully documented cases, presumably because they weren't worth the effort.

Sincerely,

  
James A. Hodgman

JAH:bjj

Bill Sharp

S.Z. Stewarding

be explicit in law w/ intent  
industry doesn't want to pay full cost  
of ↑ training  
balance crucial

Capt Terry Bennett

Indep. Pilot  
S.E.

just be tradeoff of safety for cost  
board makeup - sb looked at  
no evidence that tariff competition erodes  
standards  
companies don't control key  
monopolies = higher cost to industry

Tommy Thery  
support efforts to ↑ standards  
concern about economic side  
will create monopoly - won't help safety  
or public policy  
  
no standards for rate making  
/ just limit liability

Joseph Farrell - (with H. Dispatchers)  
wants all areas on the Board  
wants no barriers to entry  
  
what if  
pilot wants?  
for company?

Steve Ashadz (sp?) . Swift Pilots org.  
support but want more direction  
needs to look like benefits public.

Dale S.E. AK Pilots Pres.  
force only 1 organization in each area  
limit # (S.F. does?)

Scott Jones AK Parttime  
balance on board is crucial

Murphy Pres SWAKP  
balance crucial  
industry wants company pilots  
↑ standards likes ongoing education

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

### OFFICE OF MANAGEMENT AND BUDGET DIVISION OF POLICY

STEVE COWPER, GOVERNOR

P.O. BOX AD  
JUNEAU, ALASKA 99811-0199  
PHONE: (907) 465-3568

October 15, 1990

Senator Druc Pearce  
Rm. 510, Capitol  
P.O. Box V  
Juneau, 99811  
Attn: Peg Cahill

Dear Senator Pearce:

Enclosed for your review are draft copies of "The Alaska Marine Pilotage Study" and proposed legislation to modify the Marine Pilots Act. These drafts are being distributed as widely as possible to gather comments from marine pilots, ships agents and other interested parties before a final study document and draft of proposed legislation are presented to the Board of Marine Pilots at its meeting on November 8 and 9 in Anchorage. Please address your comments to the Office of Management and Budget, Division of Policy no later than November 1, 1990 if you wish to have them incorporated into the presentation to the Board.

All interested parties should understand that this is only the beginning of an extensive public review process. There will be ample opportunity for all viewpoints to be considered as legislation is drafted and proceeds through the legislative hearing process. The regulatory changes proposed in the study will be considered by the Board of Marine Pilots in accordance with standard public notice and administrative procedures requirements.

Thanks very much for your attention.

Sincerely,

*Brad Pierce*

Brad Pierce  
Senior Policy Analyst

*Marilou Madden*

Marilou Madden  
Senior Policy Analyst

BP/MLM/dmc/91F-1142

Enclosure(s)

57% return on survey  
interviewed all shipping agents  
C.C.  
Pd members  
Asst. nda

# ALASKA MARINE PILOTAGE STUDY

(REVIEW DRAFT)

explicit social contract  
w/ state

state offers liability  
+ anti-trust protection  
state gets more control  
+ people are  
protected

By  
Marilou Madden  
and  
Brad Pierce

tariffs also include  
litigation expense.

October, 1990

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

## 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 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 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.

## 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

The report makes the following specific recommendations for strengthening the State Pilotage Act and improving pilotage regulation in the state.

- *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 control for the purpose of protecting lives, property, vessels, and the marine environment.*

- *The State 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.*

- *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 current 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 and to conduct joint investigations.

foundations  
retirement  
age?

• *The state should not place a specific limit on the number of pilot licenses issued.*

• *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 Department of Commerce and Economic Development Commissioner or designee position on the State Board should be reassigned to an active pilot from the Aleutians region. Non-pilot members should represent all regions of the state.*

• *The Board should either cease to require detailed information on ships' movements from individual pilots or should use the information to publish periodic management reports.*

• *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.*

# Alaska Marine Pilotage Study

## 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.<sup>1</sup> 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

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<sup>1</sup>See Attachment A for a copy of Captain Murphy's letter and Governor Cowper's response.

comparability of Alaska's standards to those in other states.<sup>2</sup> 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 are being released to the Board of Marine Pilots and staff from the relevant state agencies in October for review before a final report is issued in November. 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.

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<sup>2</sup>See Attachment B for a copy of Mr. Kirchner's letter.

## 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.<sup>3</sup>

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..<sup>4</sup>

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.<sup>5</sup>

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

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<sup>3</sup>Florida Statutes §310.001

<sup>4</sup>Captain Earnest A. Clothier and Captain Hilton Lowe, Maritime Pilotage in America: Historical Outline with European Background, American Pilot's Association, 1979, p. 11.

<sup>5</sup>Gibbons v. Ogden, 9 Wheat 207

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.<sup>6</sup>

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.<sup>7</sup>

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 register<sup>8</sup> and foreign-flagged vessels) are under the authority of the states while American vessels engaged in domestic trade (enrolled vessels) 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 or "voluntary" pilots, generally employees of the ship and state or "compulsory" pilots, who act as independent agents. The vast majority of working pilots in the United States are state pilots, numbering about 1,200 nationwide. By contrast, it is estimated that less than 50 federally licensed pilots are employed regularly, primarily on coastwise oil tankers.

The distinction between "voluntary" and "compulsory" used in legal texts and court decisions is somewhat misleading. The distinction is not one of freedom to employ or not to employ a pilot. Except on the high seas, all ships whether under register or enrolled, are

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<sup>6</sup>46 United States Code §8501

<sup>7</sup>46 United States Code §364. The inspectors of steam vessels were employed by the Steamboat Inspection Service, created in 1852 as part of the Treasury Department. The service was transferred to the Coast Guard during WW II.

<sup>8</sup>Vessels sailing under register are American vessels granted permission by the U.S. Customs Service to engage in foreign trade.

required to have on board a pilot familiar with local conditions. In this sense, all pilots are "compulsory." Rather, the distinction refers to the terms of pilot employment. With enrolled ships, the pilot is considered voluntary in that he/she is an employee of the ship and in fact, often is actually the ship's master or other officer acting as pilot. With ships under registry, the pilot is considered "compulsory" in that the terms and condition of employment are set by state statute, not by the ship owner.

**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 responsibility for pilotage between the federal government and the maritime states. While the federal government exercises control over enrolled 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.<sup>9</sup> 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"<sup>10</sup> 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."<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup>Alex L. Parks, The Law of Tug, Tow and Pilotage, Second Edition Cornell Maritime Press, 1982.

<sup>10</sup>43 SLA 1970; "west coast" includes Alaska, Hawaii, and British Columbia, Canada

<sup>11</sup>22 SLA 1973

<sup>12</sup>78 SLA 1977

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. For this reason, consideration of other states' statutes in revising Alaska's law 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.<sup>13</sup>

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 employ and train the apprentices largely independent from state oversight. After the applicant has completed the apprenticeship to the satisfaction of association members, they present him/her to the state for examination. In states with deputy pilot programs, the deputy pilot is under the control of state licensure regulations from the beginning of the training. While the deputy often serves under an association pilot to gain the experience necessary to progress to full licensure, experience standards are set and examined by the board or state licensing official rather than the association. Alaska's system follows the deputy pilot form, although that term is not used in the statute.

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<sup>13</sup>AS 08.62.010

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.<sup>14</sup>

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.<sup>15</sup>

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.<sup>16</sup>

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

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<sup>14</sup>Quick, George A., "The Role and Function of a Pilot", paper presented to the National Academy of Sciences, 1979, pp. 8-10.

<sup>15</sup>Code of Virginia §54-1-905

<sup>16</sup>Washington Statutes §88.16.035)

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."<sup>17</sup>

### 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."<sup>18</sup>

Thus, a person found negligent or incompetent may still be allowed to operate in local waters on enrolled vessels 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

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<sup>17</sup>Florida House of Representatives Committee on Regulatory Reform, *The 1989 Report on the Issues Associated with Mandatory Pilotage*, November, 1989

<sup>18</sup>*Report of the Pilotage Study Group* to the U. S. Coast Guard, September, 1989, p. 6

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".<sup>19</sup> 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".<sup>20</sup>

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."<sup>21</sup>

#### *E. Pilot Liability*

Maritime law generally holds that pilots are not personally liable for damages caused to life, ships, and facilities. However, past legal interpretations of the "master/servant" rule—where the pilot is considered to be the servant of the ship's captain—have come

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<sup>19</sup>Washington Statute §88.16.100

<sup>20</sup>AS 08.62.155 (a)

<sup>21</sup>AS 08.62.040 (4)

under increasing fire, based on the "compulsory" nature of state pilotage. If state pilots are indeed independent and not an employee of the ship's company, then the "master/servant" relationship should not hold.

Were pilots 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".<sup>22</sup> 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].<sup>23</sup>

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.

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<sup>22</sup>California Statute §1134

<sup>23</sup>Oregon Statute 776.520

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.<sup>24</sup>

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 outlines the provisions of each state's pilotage statute in some detail.

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<sup>24</sup>Hawaii Statutes §462A-15