

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7509 SENATE LABOR & COMMERCE

directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for three-fold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Third Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of the Federal Trade Commission Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Fourth Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy and unreasonable restraint of trade and commerce of marine piloting services among several states in violation of Alaska Monopolies and Restraint of Trade Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. The Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Fifth Claim:

1. That the Court adjudge and decree that defendants Association and Pilots have entered into a contract or conspiracy

and unreasonable restraint of trade and commerce of marine piloting services the among several states in violation of the Sherman Act and Clayton Anti-trust Acts and the Alaska Monopolies and Restraint of Trade Act, that the aforesaid contract or conspiracy is illegal, and that said contract or conspiracy be ordered to be canceled and terminated;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees and persons acting for or in their behalf and continuing the effects of such contract or conspiracy;

3. That this Court issue an injunction ordering defendants Pilots and Association to supervise plaintiff Captain Joseph W. Homer for the required dockings and undockings which plaintiff Captain Joseph W. Homer needs to obtain his unlimited pilot's license;

4. That this Court issue an injunction restraining perpetually the defendants from petitioning, lobbying, and taking actions to cause the defendant Board to promulgate regulations and practices in furtherance of defendant Pilots' and Association's conspiracy to restrain trade in violation of the Sherman Act;

5. That this Court award plaintiff Captain Joseph W. Homer his costs and attorney's fees;

6. That this court award plaintiff Captain Joseph W. Homer such other and further relief as this Court deems just and equitable under the premises.

For relief under the Sixth Claim:

1. That this Court adjudge and decree that defendants Association and Pilots have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, including but not limited to, disparaging the services of the plaintiff Captain Joseph W. Homer by false or misleading representations of fact; making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; engaging in other conduct creating a likelihood of confusion or of misunderstanding, and which mislead, deceived, or damaged the plaintiff Captain Joseph W. Homer in connection with the sale or advertisement of services; using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowing concealing, suppressing, or omitting a material fact with intent that other rely upon the concealment, suppression, or omission in connection with the sale or advertisement of services; representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve;

2. For damages in an amount exceeding \$200,000.00, which amount will be proven at the time of trial, together with reasonable attorney's fees and all costs and disbursements of this action.

3. That this Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Seventh Claim:

1. That this Court adjudge and decree that defendants Association and Pilots have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce, including but not limited to, disparaging the services of the plaintiff Captain Joseph W. Homer by false or misleading representations of fact; making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions; engaging in other conduct creating a likelihood of confusion or of misunderstanding, and which mislead, deceived, or damaged the plaintiff Captain Joseph W. Homer in connection with the sale or advertisement of services; using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowing concealing, suppressing, or omitting a material fact with intent that other rely upon the concealment, suppression, or omission in connection with the sale or advertisement of services; representing that an agreement confers or involves rights, remedies, or obligations which it does not confer or involve;

2. That this Court issue an injunction restraining perpetually the defendants, their successors, assignees, officers, directors, agents, employees, and persons acting for or in their

behalf in continuing in unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce;

3. That this Court award plaintiff Captain Joseph W. Homer his costs and attorney's fees;

4. That this Court award plaintiff Captain Joseph W. Homer such other and further relief as this Court may deem just and equitable under the premises.

For relief under the Eighth Claim:

1. That this Court declare that the regulations and practices promulgated by the defendant Board is in furtherance of a contract, combination and conspiracy in restraint of trade and, hence, is in violation of the Sherman & Clayton Anti-Trust Acts;

2. For a declaration by this Court that the regulations and practices promulgated by the defendant Board are null and void;

3. That this Court order said contract and conspiracy to be canceled and terminated;

4. That the Court issue an injunction restraining perpetually the defendant Board, their successors, assignees, officers, directors, agents, and employees and persons acting for or in their behalf from continuing the affects of such contract or conspiracy;

5. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendant Board for three-fold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

6. That the Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable under the premises.

For relief under the Ninth Claim:

1. That this Court declare that the regulations and practices of the defendant Board unduly burden commerce between the several states and the territories of the United States, and commerce between the United States and foreign nations; that the Court further declare said regulations and practices are in violation of the Constitution of the United States, Article I, Section 8, clause 3, which specifically grants to Congress the power to regulate commerce;

2. That the Court order that said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assignees, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of such violations;

4. That the Court award plaintiff Captain Joseph W. Homer such further and different relief which this Court may deem just and equitable.

For relief under the Tenth Claim:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph

W. Homer his rights to due process and equal protection pursuant to Section 1 of the 14th Amendment to the Constitution of the United States of America;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Eleventh Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deprive the plaintiff Captain Joseph W. Homer of the privileges and immunities that should be enjoyed by the citizen of the State of Alaska.

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers,

directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Twelfth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights to due process and equal protection pursuant to the Constitution of the State of Alaska, Article I, Section 1; .

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Thirteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights to due process and equal protection pursuant to the Constitution of the State of Alaska, Article I, Section 7;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Fourteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the Board violate the public policy as expressed in the Alaska Statutes.

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers,

directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

5. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Fifteenth Claim for Relief:

1. That this Court declare that the regulations and practices of the defendant Board deny the plaintiff Captain Joseph W. Homer his rights pursuant to Constitutions of the United States of America and State of Alaska;

2. That this Court order said regulations and practices are to be canceled and terminated;

3. That the Court issue an injunction perpetually enjoining the defendant Board, their successors, assigns, officers, directors, agents, employees, and persons acting for or in their behalf in continuing the unlawful effects of said violations;

4. That the defendant Board, its members and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, from continuing, maintaining or renewing the aforesaid combination, conspiracy or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having

similar purpose or effects and from adopting, ratifying or following any practice, plan, program or devise having similar purposes or effects.

5. That this Court issue an injunction requiring defendant Board to cancel its regulations under 12 AAC 56.030 requiring that an applicant for an unlimited pilot's license obtain a specified number of supervised dockings and undockings, the purpose and effect of this regulation is the suppression or elimination of competition among marine pilots;

6. That this Court issue an injunction requiring defendant Board to notify all Board license holders, the general public, all Alaska cities, boroughs and state officials, and all other interested parties that it has canceled and rescinded the requirements appearing in 12 AAC 56.030 concerning the docking and undocking requirements as a qualification for an unlimited pilot's license, and every other resolution or statement of policy which has as its purpose or effect the suppression or elimination of competition between marine pilots;

7. That the Court issue an injunction requiring defendant Board issue plaintiff Captain Joseph W. Homer an unlimited pilot's license for the waters in and surrounding Southeastern Alaska;

8. That the Court award plaintiff Captain Joseph W. Homer his damages together with his actual costs and attorney's fees;

9. That this Court award plaintiff Captain Joseph W. Homer such other and different relief as this Court may deem just and equitable.

For the Sixteenth Claim for Relief:

1. That this Court adjudge and decree that the defendants Association and Pilots have interfered with the prospective contractual relationships between the plaintiff Captain Joseph W. Homer and ship owners, ship masters, and ship agents;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assigns, officers, directors, agents, employees, and persons acting for or on their behalf from continuing such interference;

3. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages to be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief as this Court may deem just and equitable under the premises.

For the Seventeenth Claim of Relief:

1. That this Court adjudge and decree that the defendants Association and Pilots have disparaged the marine piloting services provided by the plaintiff Captain Joseph W. Homer with the intent to cause plaintiff Captain Joseph W. Homer pecuniary harm;

2. That the Court issue an injunction restraining perpetually the defendants, their successors, assigns, officers, directors, agents, employees, and persons acting for or on their behalf from continuing such interference;

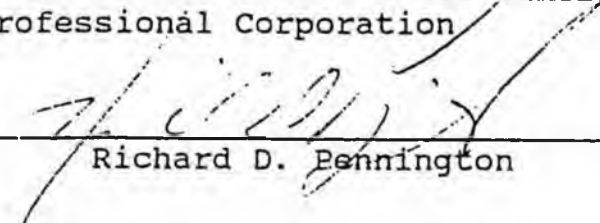
3. That the Court grant judgment for plaintiff Captain Joseph W. Homer against defendants for the amount of damages to be set by the jury, together with reasonable attorney's fees and costs and disbursements of this action;

4. That this Court award plaintiff Captain Joseph W. Homer such further and different relief as this Court may deem just and equitable under the premises.

A JURY IS DEMANDED ON ALL ISSUES SO TRIALABLE.

DATED this 30th day of Aug, 1990.

RICHARD D. PENNINGTON & ASSOCIATES
A Professional Corporation

By 
Richard D. Pennington

ALASKA BOARD OF MARINE PILOTS

Tentative Agenda
April 3-4, 1991

State Office Building
Ninth Floor Conference Room
Juneau, Alaska

Tuesday, April 2, 1991

9:00 a.m. Written Examinations
Initial Licensure, SW-1; SE-2
Extension of Route, SW- ; SE-

Wednesday, April 3

<u>TIME</u>	<u>TOPIC</u>	<u>LEAD PERSON</u>
1. 8:30 a.m.	Oral Examinations (Executive Session)	Mr. Paul Taylor, Chair
2. 10:00 a.m.	Call to Order/Roll Call	Mr. Taylor
3. 10:05 a.m.	Review Minutes of December 17, 1990 Meeting	Mr. Taylor
4. 10:15 a.m.	Examination Results - April 2, 1991 a. Initial Licensure b. Extension of Route	Captains O'Hara & Elsensohn
5. 10:30 a.m.	Report on Temporary License Exam on January 22, 1991	Mr. Taylor
6. 10:45 a.m.	Add Permanent Extension of Route (Temporary Extension Issued on January 22, 1991) 1. Southeast a. Petrich, Kurt b. Winter, Robert 2. Southwest a. Tillion, Vince b. Eliassen, Eric c. Scally, Harry d. Hawker, Mark	Captains O'Hara & Elsensohn
7. 11:00 a.m.	License Upgrades (Approved by Mail) a. Jacobsen, Harry J. b. Antonsen, Hans	Captains O'Hara & Elsensohn

ALASKA BOARD OF MARINE PILOTS
Tentative Agenda
April 3-4, 1991
Page 2

- | | | | |
|-----|------------|--|----------------|
| 8. | 11:10 a.m. | Proposed Regulations - Cominco/Red Dog Pilot Station | Mr. Taylor |
| 9. | 12:00 noon | Recess for Lunch | |
| 10. | 1:00 p.m. | Discussion of Tariff Rates
a. Red Dog Mine area
b. Hobart Bay
c. Input from Attorney General's Office on Tariffs. | Mr. Taylor |
| 11. | 1:45 p.m. | Discussion of Examination and Trip Requirements for Red Dog Mine Area | Captain O'Hara |
| 12. | 2:15 p.m. | Discussion of Proposed Legislation Rewriting the Marine Pilotage Act | Mr. Taylor |
| 13. | 4:30 p.m. | Recess | |

Thursday, April 4, 1991

- | | | | |
|-----|------------|---|------------|
| 14. | 9:00 a.m. | Call to Order/Roll Call | Mr. Taylor |
| 15. | 9:05 a.m. | Investigative Report (Executive Session) | DOL Staff |
| 16. | 9:45 a.m. | Reconsideration of Applications
a. Joe Homer, Upgrade
b. Terry Bennett, Upgrade
c. William Bullard, VLCC Endorsement
d. Will Petrich, Renewal of Lapsed License | Mr. Taylor |
| 17. | 10:30 a.m. | Discussion of Renewal Procedures | Mr. Taylor |
| 18. | 11:00 a.m. | Public Comment | Mr. Taylor |
| 19. | 12:00 noon | Recess for Lunch | |
| 20. | 1:00 p.m. | Discussion of the Continuation of Temporary Licensing | Mr. Taylor |
| 21. | 1:30 p.m. | Private Vessel Navigation Systems | Mr. Taylor |
| 22. | 2:00 p.m. | Schedule Next Exam and Meeting Dates | Mr. Taylor |
| 23. | 2:30 p.m. | Adjourn | Mr. Taylor |

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**
DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX D
JUNEAU, ALASKA 99611-0800
PHONE: (907) 466-2634

April 8, 1991

The Honorable Cheryl Davis
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Davis:

The Board of Marine Pilots is pleased to support House Bill 194. The board appreciates your efforts and shares your concerns about the seriousness of enacting a modern pilotage law for the State of Alaska.

If there is any way that the Board of Marine Pilots can be of any assistance to you in this fight, please call upon me.

Very truly yours,



M. Paul Taylor, P.E., Chairman
BOARD OF MARINE PILOTS

MPT/lvs5199t
4891a

HB 194 (not "cs" language)

(2) Marine pilots, **operating independently of the shipping industry**, have provided and will continue to provide essential service to the state;

(3) Recognize regional marine pilot organizations to promote, administer, and manage an efficient, reliable, and safe pilotage system within each marine pilotage region;

(5) **Establish pilotage tariffs** for each marine pilotage region, and charges for training and other purposes;

(7) Establish standards for training of marine pilots and deputy marine pilots and review training programs conducted by regional marine pilot organizations and approve the training program if the board finds that the program is consistent with standards established by the board.

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

(Page 3, Line 31) ...The coordinator may not be **an active** member of a regional marine pilot organization...

(Page 4, Line 1) ...in the state and may not serve as a marine pilot except as necessary to perform the duties of marine pilot coordinator.

Holland America's Proposal

(2) Marine pilots have provided and will continue to provided essential service to the state;

(3) Recognize regional marine pilot organizations to promote, administer, and manage an efficient, reliable, and safe pilotage system within each marine pilotage region **subject to control by the board and to the obligations imposed upon such marine pilot organization by this chapter.**

(5) Establish charges for training, licensing and other purposes, **which charges are to be paid by persons licensed under this chapter.**

(7) Establish standards for training of marine pilots and deputy marine pilots and review training programs conducted by regional marine pilot organizations **and other persons or entities authorized by the board to provide training programs** and approve the training program if the board finds that the program is consistent with standards established by the board.

(10) audit regional marine pilot organizations recognized by the board for compliance with applicable law **and revoke its recognition of any marine pilot organization that is not in compliance with applicable law;**

...The coordinator may not be a member of a regional marine pilot organization...

...in the state **nor be entitled, directly or indirectly, to share in the revenues derived by any marine pilot organization in the state** except as necessary to perform the duties of marine pilot coordinator.

(Page 4, Lines 21 -)

(4) In the case of a person seeking to renew a license, meets such additional training and examination requirements as may be imposed by the board for the renewal of marine pilot licenses;

(5) Who has either held a marine pilot license or a deputy marine pilot license for at least three full years prior to the date on which the person is issued a marine pilot license;

(6) Posses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the marine pilot license;

(7) Provides evidence of satisfactory completion of a physical examination by a licensed physician within 60 days before the date of issuance of the license;

(Page 5, Line 17) ...pilotage region for which the person seeks the deputy marine pilot license.

...pilotage region for which the person seeks the deputy marine pilot license. A person who applies for a deputy marine pilot license under this section shall provide evidence of satisfactory completion of a physical examination by a licensed physician within 60 days before the date of issuance of the license.

(Page 7, Lines 15-16) (7) charges, collects, or receives an amount for marine pilot services that is different from the tariff established by the board;

Delete.

(Page 7, Line 25) ...not liable in excess of \$5,000.00.

...not liable in excess of \$250,000.00.

(Page 7, Line 28) ...or neglect is wilful.

...or neglect is wilful or constitutes gross negligence or results from an act or omission that would entitle the board to impose disciplinary sanctions on the person pursuant to subsections (2), (3), (4) or (5) of AS 08.62.150(a) (This reference deals with board disciplinary sanctions.)

(Page 8, Lines 5-6) ...or neglect of the organization or a member of the organization who is licensed...

...or neglect of the member of the organization who is licensed...

(Page 8, Lines 9-10) ...of another marine pilot or **the regional organization of marine pilots** relating to pilotage of a vessel.

(Page 8, Line 24) ...(b) the board may recognize one organization of marine pilots within each marine pilotage region.

(Page 8, Line 29) ...that the organization may assume. The articles, bylaws, and rules of each organization of marine pilots recognized by the board are subject to approval by the board on the basis of...

(Page 10, Lines 15-21) Dealing with Anti-trust.

...of another marine pilot relating to pilotage of a vessel.

(b) the board may recognize one or **more organizations** of marine pilots within each marine pilotage region.

...that the organization may assume. **Marine pilot organizations recognized by the board shall be required to offer marine pilotage services to all vessel owners and operators in a uniform and non-discriminatory manner. Marine pilot organizations recognized by the board shall not be permitted to deny membership to any person licensed under this chapter on the basis of that person having either previously withdrawn from the organization or having been a member of another marine pilot organization, whether or not that other marine pilot organization was one recognized by the board. Marine pilot organizations recognized by the board shall be required to offer persons who are not members of the organization the opportunity to participate in board required training programs conducted by the organization on the same basis as organization members upon payment of a training fee no greater than the fee charged members. A person shall not be required to be a member of a marine pilot organization in order to obtain a license under this chapter or provide pilotage services in the state.**

Delete.



Holland America Line
Westours Inc.

TELECOPY MESSAGE

DATE: March 6, 1991

TO: Mr. Rod R. Mourant
Office of Senator Drue Pearce
907 463 5352

COPY TO: Bob Berto
Cruise Line Agencies of Alaska
907 225 8254

COPY TO: Arie van Noort
836-0338

PAGES TO FOLLOW: 15

FROM: Dan Grausz
Vice President and General Counsel
Holland America Line-Westours Inc.
300 Elliott Ave. West
Seattle, Washington 98119
(206) 286-3490

RESPONSE TELECOPY NUMBERS: (206) 284-8332 (Direct)

MESSAGE:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CONTACT SUE LUNDGREN AT
(206) 286-3491.

300 Elliott Ave. West
Seattle, WA 98119
206-281-3535
Telex: 140564 HALW SEA
FAX: 206-283-2687 or 206-281-7110

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**



TELECOPY MESSAGE

DATE: March 6, 1991

TO: Mr. Rod R. Mourant
Office of Senator Drue Pearce
907 463 5352

COPY TO: Bob Berto
Cruise Line Agencies of Alaska
907 225 8254

COPY TO: Arie van Noort
836-0338

PAGES TO FOLLOW: 15

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Vice President and General Counsel
Holland America Line-Westours Inc.
300 Elliott Ave. West
Seattle, Washington 98119
(206) 286-3490

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300 Elliott Ave. West
Seattle, WA 98119
206-281-3535
Telex: 160864 HALW SEA
FAX: 206-281-2687 or 206-281-7110



March 6, 1991

VIA TELECOPIER - 907 463 5352

Mr. Rod R. Mourant
Office of Senator Drue Pearce
P.O. Box V
Juneau, Alaska 99811

Re: Pilotage Legislation

Dear Mr. Mourant:

Tony Thein has suggested that I provide you with the latest draft of pilotage legislation which we have put together. As Tony has probably already mentioned to you, the only reason we have prepared draft legislation is to provide an alternative to the legislation now being advanced by various pilotage groups in Alaska. For reasons explained more fully below, we believe that the legislation being promoted by these pilots will have unwarranted adverse impacts upon the shipping industry in Alaska.

We have no problem whatsoever supporting the idea that pilots should have adequate training for their jobs. In fact, we believe this is essential and have long felt that the requirements of Alaska law were inadequate in this regard. Consequently, we fully support legislation that will increase the quality of pilots operating in Alaska.

Where we take issue with certain pilots is their apparent desire to use the shield of government in order to gain what is essentially monopoly power. The efforts to achieve a monopoly are in three separate areas:

1. Pilot independence: The pilots that have been advancing the legislation which we oppose are seeking to prohibit shipping companies from employing pilots directly. They claim that an employee cannot have the necessary independence. We find it very hard to understand why pilots are different from any other profession in this regard. For example, there is no requirement that businesses use only independent doctors, engineers, architects or any other licensed professional. Utilizing the rationale of the pilots, one could argue that businesses should never be allowed to employ anyone who is required to exercise independent judgment. The absurdity of that proposition is obvious. The fact of the matter is that businesses routinely employ people who need and are expected to exercise independent judgment and who, in fact, do so.

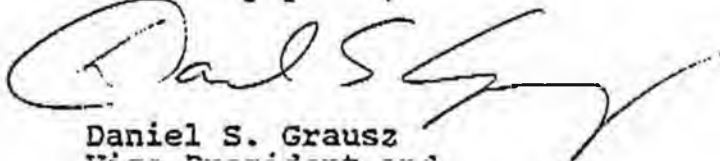
Mr. Rod R. Mourant
March 6, 1991
Page 2
VIA TELECOPIER

2. Established Rates: For reasons which we cannot explain, the pilots somehow seem to feel that they are unable to negotiate rates directly with the shipping companies. Instead, they need to have the State negotiate on their behalf. We fail to understand why pilots are such a special group of people that the market place and the laws of supply and demand cannot be allowed to operate in the normal course. The State of Alaska regulates many professions. The primary reason for regulation is to protect the general public from unqualified professionals. In this case, it seems that the pilots are seeking to protect themselves from the general public.
3. Pilot Organizations: Although the legislation being pushed by the pilots purports to be a safety bill, one of the real purposes underlying it is an attempt to legitimize and immunize marine pilot organizations. The legislation that we are opposing essentially allows these marine pilot organizations to act as a quasi-governmental entity. Effectively, it will require shippers to deal exclusively with these organizations.

Having controlled prices and created a monopoly, the pilots proposing the legislation also seek to limit their liability as well as the liability of the marine pilot organizations. We find it very hard to understand why, on the one hand, safety is a primary concern while, on the other hand, the concern is one that only the shipping companies are being required to pay for.

This cover letter obviously only summarizes some of the major issues. There are many other differences between the legislation being advanced by the pilots and the draft that we have prepared. I would be more than willing to discuss this further with you at your convenience. My direct telephone is (206) 286-3490.

Sincerely yours,



Daniel S. Grausz
Vice President and
General Counsel

DSG/scl
Enclosure

cc: Arie van Noort (by fax)
Tony Thein
Bob Berto (by fax)

HOUSE BILL NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE

Introduced:

Referred:

A BILL
FOR AN ACT ENTITLED

"For an Act entitled: "An Act relating to Marine Pilots and providing for an effective date."

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

* Section 1. AS 08.32.010(c)(12) is amended to read:

(12) Board of Marine Pilots (AS 08.62.010) -- June 30, 1995 [1991];

* Sec. 2. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.005. INTENT. The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds that in order to assure the protection of lives and property and the marine environment of the sta , licensed

marine pilots having extensive local knowledge are required to pilot certain vessels in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish criteria for the training and licensing of marine pilots.

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

Sec. 08.62.030. MEETINGS. The board shall hold at least four regularly scheduled meetings each year [A REGULAR ANNUAL MEETING]. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board [CHAIRMAN WITH PRIOR APPROVAL OF THE GOVERNOR].

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

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall have the authority to

(1) provide for

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

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

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), placing qualifications or limitations on marine pilot and deputy marine pilot licenses based on the characteristics of a marine pilotage region in which the licensee will operate and experience and the

training of the licensee;

(3) keep a register of licensed pilots and licensed deputy marine pilots;

(4) adopt regulations subject to the Administrative Procedure Act (AS 44.62) establishing training, investigation and licensing fees to be remitted to the board;

(5) adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing marine pilotage regions;

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

(7) establish standards for training of marine pilots and deputy marine pilots and review training programs;

(8) impose disciplinary sanctions under AS 08.01.075 on persons licensed under this chapter; and

(9) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation adopted under the Administrative Procedure Act (AS 44.62), make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter.

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

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

Sec. 08.62.045. MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to make recommendations to the board so as to assist the board in the administration and enforcement of the provisions of this chapter. The coordinator may not work as a pilot while employed as the coordinator, except to the extent required by official duties. While employed as the coordinator, the coordinator may not, directly or indirectly, receive, become entitled to or share pilotage fees earned by others working as pilots.

* Sec. 6. AS 08.62.090 is repealed and reenacted to read:

AS 08.62.090. LICENSING PROCEDURES. (a) An application for an original, renewal or reinstated license under this chapter must be made in writing to the board on a form prescribed by the board, must include all information specified by the board of the form and must be accompanied by the licensing fee.

(b) The board shall establish dates for license examinations and shall provide public notice of such dates. The board shall require license examinations for applicants for original licenses and for applicants seeking to reinstate a license that has been lapsed for in excess of one year. The board may require license examinations for applicants for renewal licenses. License examinations may be written and/or oral. In order to be eligible to take the next scheduled examination, a person must file the license application with the board at least 60 days before the date of the examination.

* Sec. 7. AS 08.62.100 is repealed and reenacted to read:

Sec. 08.62.100. QUALIFICATIONS. (a) The board shall issue an original pilot's license to a person for one or more pilotage regions if he or she

(1) is a citizen of the United States;

(2) passes the examination given by the board;

(3) qualifies in accordance with the regulations adopted by the board including those regulations that are specific to the pilotage region or regions for which the applicant seeks to be licensed;

(4) successfully completes a training program that has been approved by the board; and

(5) on a form approved by the board, provides evidence of a satisfactory physical examination by a licensed medical doctor conducted within 60 days before the date of application; and

(6) possesses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the license.

(b) The board shall issue an original deputy marine pilot license to a person for one or more pilotage regions if he or she

(1) is a citizen of the United States;

(2) passes the examination given by the board;

(3) qualifies in accordance with the regulations adopted by the board including those regulations that are

specific to the pilotage region or regions for which the applicant seeks to be licensed;

(4) successfully completes a training program that has been approved by the board;

(5) on a form approved by the board, provides evidence of a satisfactory physical examination by a licensed medical doctor conducted within 60 days before the date of application;

(6) possesses an endorsement of first class pilotage on the person's United States Coast Guard license without tonnage restrictions for the pilotage region for which the person seeks the license; and

(7) provides proof satisfactory to the board of the following experience

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

(B) two years of sea service as a master of freight on a towing vessel while holding a license as the master of freight and towing vessels of not less than 1,600 gross tons; or

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

(D) two years of sea service as a commanding officer of United States government vessels of not less than

1,600 gross tons and holding a license as the master of ocean steam or motor vessels of any gross tons; or

(E) three years of experience during which the candidate was actively engaged in piloting while holding a minimum license as a master of freight or towing vessel of not more than 1,600 gross tons.

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

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

* Sec. 8. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.117. TRAINING PROGRAMS. (a) The board shall establish standards for training programs for marine pilot and deputy marine pilot licenses. The standards shall include requirements for

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

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

(3) special training or experience necessary to qualify for a license for a particular pilotage region;

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

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

(b) A person who supervises the training of persons who are seeking a license under this chapter shall

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

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

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

* Sec. 9. AS 08.62.120 is repealed and reenacted to read:

Sec. 08.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. Applications for renewal must be filed with the board during the 90-day period prior to license expiration. Licenses that are not renewed will be deemed to have lapsed. In order to renew a license, an applicant for renewal must

(1) as of the time of application for renewal, satisfy the requirements of AS 08.62.100 to the same extent as would be the case were the applicant applying for an original license rather than a renewal license;

(2) satisfy such other requirements as are provided in regulations promulgated by the board for the renewal of pilot licenses or deputy pilot licenses, as applicable; and

(3) submit proof satisfactory to the board that the applicant

(A) has engaged in piloting vessels subject to

this chapter in each pilotage region for which renewal is sought during at least 60 days within the two year period immediately preceding the date of application for renewal; or

(B) completed, during the time period specified by the board in its regulations, the minimum number of familiarization trips required by the board's regulations in each pilotage region for which the license is to be renewed.

* Sec. 10. AS 08.62.130 is repealed and reenacted to read:

Sec. 08.62.130. LAPSED LICENSE. In order to reinstate a lapsed license, an applicant for reinstatement must

(1) as of the time of application for reinstatement, satisfy the requirements of AS 08.62.100 to the same extent as would be the case were the applicant applying for an original license rather than a reinstated license;

(2) satisfy such other requirements as are provided in regulations promulgated by the board for the reinstatement of lapsed pilot or deputy pilot licenses, as applicable;

(3) submit proof satisfactory to the board that the applicant has completed two trips for each year that the license has been lapsed to each major port and waterway, defined by the board, in the pilotage region for which the license is to be reinstated; and

(4) take and pass the board's examination for reinstatement of licenses if the license has been lapsed one year or more.

* Sec. 11. AS 08.62.150(a) is amended to read:

Sec. 08.62.150. ENFORCEMENT AUTHORITY [DENIAL, REVOCATION OR SUSPENSION]. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the person

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

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

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

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

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

(6) is guilty of misconduct during the course of employment; or

(7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked [SUFFERED REVOCATION OF FEDERAL LICENSURE AS A PILOT].

* Sec. 12. AS 08.62 is amended by adding a new section to read:

Sec. 08.62.165. ALLOCATION OF LIABILITY. (a) A person licensed under this chapter is not liable for damages or loss occurring as a result of the person's error, omission, fault or neglect in the actual performance of pilotage services on board a vessel, except that

(1) such limitation does not apply in cases where the person is either grossly negligent or guilty of willful

misconduct;

(2) such limitation does not apply to limit the liability of the person to the owner or operator of the vessel on which the pilotage services were performed in cases where the person is either negligent or guilty of willful misconduct; and

(3) such limitation shall not limit the authority of the board under this chapter to impose appropriate disciplinary sanctions on the person as a result of such error, omission, fault or neglect.

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

(c) A person licensed under this chapter is not liable for loss or damage arising from the error, fault, omission or neglect in the actual performance of pilotage services on board a vessel of another person licensed under this chapter.

* Sec. 13. AS 08.62.190 is amended to read:

Sec. 08.61.190. PENALTIES. (a) A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction is punishable by a fine of not less than \$5,000 [\$1,000] nor more than \$15,000

[\$5,000] for the first offense and not less than \$10,000 nor more than \$30,000 for subsequent offenses.

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

* Sec. 14. AS 08.62 is amended by adding a new section to read:

AS 08.62.210. SHORT TITLE. This Act may be cited as the Alaska Marine Pilotage Act.

* Sec. 15. AS 39.25.120(c)(9) is amended by adding a new paragraph to read:

(M) Board of Marine Pilots:

* Sec. 16. AS 39.25.120(c) is amended by adding a new paragraph to read:

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

* Sec. 17. TRANSITION. (a) Pilot licenses issued under AS 08.62.100 as in effect before the effective date of this Act shall be valid for the period for which the licenses were issued but in no event beyond December 31, 1994. If any such license would expire prior to December 31, 1994, it shall be renewed by the board for the period from the date of expiration until December 31, 1994 if the applicant pays the required renewal fee and would otherwise qualify for renewal under the requirements of AS 08.62 as in effect prior to the effective date of this Act including the regulations promulgated thereunder.

(b) Pilot licenses issued or renewed pursuant to (a) of this section entitle the licensee to pilot vessels in any pilotage region in the state during the period to which the license relates.

(c) No person may be issued a pilot license for any period subsequent to December 31, 1994 who has not met the requirements of AS 08.62.090 and AS 08.62.100 as set forth in sections 6 and 7 of this Act.

* Sec. 18. EFFECTIVE DATE. This Act takes effect January 1, 1992.

91-B/PILOTZ.LEG

3/6/91

JAN 31 1991

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth
Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802-1217
Phone: (907)463-2205
Staff Symbol: m

16637
January 30, 1991

Senator Drue Pearce
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pearce:

Thank you for your letter of January 21, 1991, which forwarded the report "Improving Alaska's Marine Pilotage System."

I would certainly like to extend an offer to share information about incidents and accidents, to assist each other with investigations and to coordinate mutual interest items as recommended in the report. A formal accord is not necessary. We now enjoy an excellent relationship with the Alaska State Troopers and we have mutually assisted each other's agencies in the EXXON VALDEZ grounding and the FRANK H. BROWN grounding in Wrangell Narrows a year ago. In the past we had worked with the Division of Occupational Licensing on these matters. I do suggest that the Coast Guard be included on any formal Pilot Review Board that may be developed as part of your new legislation.

Marine Pilot Review Boards that I am familiar with have normally been formally constituted to review marine accidents and incidents and have contained pilots, port authority personnel, ship's agents and Coast Guard advisors. It probably would be helpful if the accident reporting and review process were formalized in your state legislation or regulations. Also, the Pilot Review Board with the Marine Coordinator as the lead person, should be the body empowered to enforce discipline and impose sanctions on the pilots for infractions of the rules or negligence in the performance of their duties. The Coast Guard is willing to participate in these types of accident review boards in an advisory capacity.

The report you provided also states that the entry-level requirements for state licenses are low and that the training and qualification program may be inadequate. The report recommends increased standards in both of these areas. We certainly would not quarrel with these assessments and would support concrete measures to increase the professionalism of state pilots. We would be pleased to participate in any working group that would be formed to articulate increased state standards.

16637
January 30, 1991

Certain items such as physical examinations and substance abuse testing are now covered in federal regulations, however, the implementation of random drug testing is held up in a court case. This matter has been the subject of some correspondence between the Coast Guard and one of the pilot associations. In the event of a serious marine casualty the Coast Guard has the authority to require drug testing, but the application of the theory of post accident testing in remote areas of Alaska still needs some work. Perhaps a joint task force could devise some precise wording of a state statute or regulation which would give us a workable solution for Alaska state pilots.

I appreciate your letter and the opportunity to comment on the report. If we may assist you in any way in drafting standards or participating in Pilot Review Boards or advising on federal standards please do not hesitate to contact me at (907) 463 2210. I will be in Anchorage the week of February 4th, but when I return I will contact your office to discuss these matters in more detail.

Sincerely,



D. E. BODRON
Captain, U.S. Coast Guard
Chief, Marine Safety Division
By direction of the District Commander

HB 194 - Marine Pilots

<u>Interested Party</u>	<u>What Got</u>
Shipping Companies	<ol style="list-style-type: none">1. Break up of pilot monopoly2. Pricing flexibility
Pilots	<ol style="list-style-type: none">1. Protection/recognition of organizations2. Means to compete
State	<ol style="list-style-type: none">1. Higher professional standards2. A say in how organizations operate3. Free market philosophy
Pilot board	<ol style="list-style-type: none">1. Clearer statement of authority & responsibility

No one got all that they wanted, but everyone got most important.

Encourage signature 7/5.

Joe Merrill, ph. 3568

Marine Piloting Bill

Interested Party

What Got

Shipping

1. Break up of pilot monopolies
2. Pricing flexibility

Pilots

1. Protection / recognition of organization
2. Means to comp

State

1. Higher professional standards
2. A say in how organizations operate
3. Free market philosophy

Pilot Board

1. Clearer statement of authority + responsibility

no one got all wanted, but everyone got most important

Encourage signature 7/5

Joe Merrill, Ph. 3568



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: DR. JOE MERRILL Fax: 248-2567

Attn: _____ Phone: _____

Transmitted by: ROD MOURANT Date: 5-3-91

Re: _____

Comments: _____

Number of Pages: 2 Including Cover Sheet.



RESPONSE TO DRAFT MARINE PILOTING ACT

The proposed bill represents a rather unusual combination of strengthening the Board while at the same time weakening it by dictating many details of matters the Board should deal with. On balance the negative aspects seem to outweigh the positive which leads to the conclusion that the proposal needs much more work before beginning its journey through the legislative process.

There are too many conflicts in the proposal between improvements to the pilotage industry and purely self-serving pilot interests.

Positive aspects are:

1. Clarification of the powers of the Board. For example, the language in the present Act leaves some doubt as to the Board's power to set tariffs compared to the power to merely determine criteria as to how the tariffs should be set. The proposal clarifies the ambiguity and states clearly that the Board can set rates.

2. The proposal clarifies the issue of pilot organizations and anti-trust law.

3. The proposal deals directly with the issue of limiting a pilot's monetary liability for damages resulting from accidents.

4. The proposal deals with the cross-over liability between individual pilot actions and his or her organization and other pilots in the organization.

The four items above should be part of any new, or changes to the existing, statute.

Specific sections that create problems:

Unfortunately the proposal consists mostly of matters that are self-serving for existing pilot organizations and create many barriers to entry to the profession and anti-competitive, or monopolistic, features. Some of these features stem from the nature of the profession, but most are more evidently designed as self-protection measures from a pilot perspective.

References to the specific parts of the proposal will show why the above generalizations are valid and demonstrate why the proposal needs a lot of work before being submitted for consideration by the legislature.

SECTION 1(2)

Serves no purpose other than to imply that pilots working directly for shipping companies don't provide an essential service to the state. Further, the statement implies that it is the independent relationship that provides the service instead of the qualifications of the pilot that are based upon the license.

SECTION 2(6)

The pilot members of the Board should be pilots who are actively engaged in piloting and not merely those who have been active.

The Board is presently balanced by an equal number of representatives from the public, the industry, and pilots. While it would be nice to have a pilot from a third region (really an organization) such a change would create an imbalance in pilot representation that should be countered by adding a third member from the public and industry.

What the proposed change really amounts to is an acknowledgment that the pilot members have unduely represented their organization and not profession. There may be other ways (than increasing the size of the Board) to address this issue. Alternatives should be explored.

SECTION 4

The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

SECTION 5(5)

We disagree with the idea that the tariff should include a charge to the ships in order to provide a training fund for either prospective or licensed pilots. We feel the creation of such a fund would be the source of many disputes. If the Board had power to create such a fund it would create a subsidy to a profession that would be both unique to regulated professions and unduely increase costs to the shipping industry.

Other parts of this section represent such a change to the industry that the general topic of regionalization recognition of pilot organizations must be commented upon in total and not in paragraph number.

The previous administration's study on marine piloting emphasized the desirability of improving two aspects of the industry. These were, (1) increasing the standards and training for entry into the profession, and (2) a greater emphasis on local knowledge as a licensing and practicing criteria.

The recommended solution to these two aspects included the suggestion that licensing areas, or regions, should be limited. The criteria for delineating the regions should be in part based upon the general nature of shipping (tankers, tour ships, fishing, hulk

carriers, etc...), variety of piloting tasks (channel riding, docking, anchoring, etc...), transportation costs and time, and variety and number of harbors and ports, etc...

The study also acknowledged that piloting is provided most effectively through centralized dispatching and billing organizations of pilots. Further, piloting is a skill learned through apprenticing because of the need for hands-on experience. Consequently, the organizations play a major role in training and if the training is valid it must be designed around some uniform standards.

Notwithstanding the essential role that pilot organizations have and the natural tendency for traditional organizational boundaries to define pilotage regions, it is not an improvement in the law to simply put such things in legislative concrete.

Another important part of the state's study dealt with barriers of entry into the profession and creating monopolies for the pilot organizations. Some pilot testimony during the hearings on the study focused on the "evils" of competition in the piloting industry. Little was heard about the "evils" of monopoly.

The proposal does not recognize nor deal with the need to eliminate barriers to entry into the profession. In fact, the proposal erects additional barriers under the guise of Board-approved training programs. The approved programs are done through the pilot organizations, administered by pilots with five years of piloting experience who are also approved by the Board. These requirements are coupled with the proposed license requirement that allows a trainee to have only a small number of supervised rides by one approved pilot.

What the combination of these provisions means, in fact, is that no new groups of pilots can start-up or grow. Such a result creates an environment rich for the "evils" of monopoly to develop.

Without going into lengthy discourse on the specifics of the above, I'll say that it is an area that I'd like the opportunity to discuss with you in person.

Additionally the regions created by Section 5(11)(d) need a lot of refinement with the exception of Southeastern Alaska.

SECTION 7(a)

This section limiting licenses to one region is not practical until the regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

SECTIONS 10, 11. QUALIFICATIONS FOR LICENSE

These two sections need additional work to make them articulate together, and internally consistent.

It appears that Sec. 10 contains the requirements for what may be termed a "full" or ^{"unlimited"} ~~limited~~ license whereas Sec. 11 seems meant to be a "lesser" or "limited" license- ie. vessels not exceeding 20,000 gross tons. Further, it is confusing whether or not each class of license has separate pre-requisites or if each class has separate (with some overlap) pre-requisites.

For example, the Sec 10 license requires a variety of sea-going experience as well as unspecified training to be specified by the Board.

On the other hand the Sec 11 Deputy license requires very specific training but evidently no specific sea-going experience.

The full license is based upon a Coast Guard endorsement of 1,600 gross tons but evidently has no tonnage restrictions on the state license. The deputy license has no Coast Guard tonnage specifications but is limited to 20,000 gross tons for the state license.

(5)

It also appears that the deputy license requires familiarization rides and supervised dockings while the "full" license does not. Or, does Sec. 10(3) refer to the training program in Sec. 11(3)? Does the sea-going experience of Sec. 10(6) also, in some way, cover Sec 11 licenses?

In short the proposal leaves more questions unanswered than answered regarding licensing. As it is written the proposal serves no useful purpose other than to make a deputy "lesser" license almost impossible to get for someone trying to get into the profession.

SECTION 12(2)

To what part of AS 08.62.100 is the term "continued qualification" referring?

SECTION 12(4)(6)

Again, the deputy license is treated differently than the "full" license by not specifying the conditions (or possibility) of renewal.

SECTION 13(6)

See comment above reference to Section 12.(4)(6).

SECTION 16(2)

This should clarify that the limit is \$5,000 per accident and not \$5,000 per claimant.

SECTION 18

It appears that the conceptual goal of Section 18 material is worthwhile. Pilot organizations do promote operational efficiency and have a great responsibility for training. However, the content of Sec. 18 again leaves many unanswered questions. Some of these are:

- a. How many pilots are required to form an organization? It would seem the answer is two.
- b. Does a pilot have to work through an organization?

- c. Is an established organization required to let any pilot join?
- d. If more than one organization operates in a region, which one is the "cost center" upon which the regional tariff is imposed?
- e. Is an organization required to accept all applicants for training?
- f. Can an organization function in more than one region?
- g. If two organizations exist in the same region, by which criteria does the Board "recognize" one?
- h. Can a trainee get approved training in a non-recognized organization?

SUMMARY

Based upon the above brief discussion of source of intent, language, and unresolved matters in the draft proposal, it seems reasonable to conclude that much work remains to be done before a piece of workable legislation can be presented. A lot of the problems seem to be a result of the legislation trying to incorporate details better left to the Board. However, the desire to legislate Board members reflects a lack of confidence in the Board.

The legislation would probably be improved if it were restricted to:

1. Continuing the Board
2. Powers of the Board
3. Pilot liability and anti-trust issues

It seems that the alternative to the three things above is for the legislation to be redone in detail- almost as a substitute for regulations and the Board to be given fairly limited powers.

I hope I have the opportunity to discuss in greater detail the concerns I have briefly discussed above. I would be happy to come to Juneau to meet with you.

(7)

I appreciate your interest and concern with marine piloting, and I appreciate your follow-up with me.

Joseph S. Merrill *Jm*
For Alaska Marine Pilots Dispatch Service
In Anchorage:

786-4865 day
243-2395 evening
248-2567 FAX

P.O. Box 220926
Anchorage, AK 99522

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

January 14, 1991

Mr. Gary I. Amendola
Assistant Attorney General
State of Alaska
Post Office Box K
Juneau, Alaska 99811

Dea. Gary:

The Southeastern Alaska Pilots' Association wrote the Board of Marine Pilots on July 30, 1990, regarding tariff violations by Windstar Sail Cruises, Capt. Bennett and Capt. Homer, and asked for an investigation.

Robert A. Harrington responded to our request for an investigation in a letter dated September 7, 1990. He stated "There are several legal considerations which must be qualified before this division can reach a proper determination concerning our enforcement jurisdiction." We then wrote Mr. Harrington in November asking him to advise us on the status of the investigation. In a letter dated December 12, 1990, Mr. Harrington again stated the Attorney General's office still has this matter under advisement, and will not initiate an investigation until an "appropriate time after approval is authorized by the Attorney General's office." Mr. Harrington's letter arrived in our office on December 17, 1990, when you and I were in Anchorage attending a Pilot Board meeting.

During the meeting I asked you to please address the issue of the tariff. You stated "According to regulations, those providing pilotage services must abide by published tariffs. The tariff may not be cut, ut may be raised by agreement of the parties."

The Southeastern Alaska Pilots' Association respectfully requests your office stand by your statement on December 17, 1990, and direct Mr. Harrington, the State Investigator, to investigate the alleged tariff violation by Windstar Sail Cruises, Capt. Bennett, and Capt. Homer.

The Southeastern Alaska Pilots' Association met with Holland America Line on January 7, 1990. Holland America is an affiliate company of Windstar Sail Cruises. We were advised by Capt. Cornelis Deelstr of Holland America's decision not to use our pilotage services. We asked Capt. Deelstr the reason for the change. He stated his company wanted to try something different while they had an opportunity to do so. With recommended changes being made to revise the Alaska Pilotage Act, his company wanted to try something different before the Alaska Pilotage Act is revised. He went on to state there were

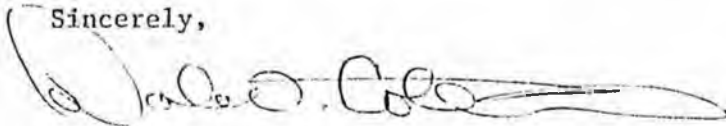
Gary I. Amendola
January 14, 1991
Page 2

considerable cost savings to his company. We asked how this could be as the tariff states the price to be followed. He told Capt. Maroni and myself Windstar Sail Cruises is an affiliate company and they made a similar move last summer and nothing came of it. We asked if he could give us an approximate cost savings to his company. He stated 25%.

Holland America Line Westour Inc. is following the lead of Windstar Sail Cruises. We believe this is largely due to the State of Alaska's inaction on our alleged claim of tariff violation last summer, and the attempt being made to revise the State Pilotage Act.

Windstar Sail Cruises and Holland America Line Westours Inc. pilotage arrangements in Alaska need to be investigated immediately. The Southeastern Alaska Pilots' Association is being placed in a difficult position by the State's inaction. The State has to investigate these alleged violations or be prepared to compensate our association for the losses we are incurring by adhering to the State tariff.

Sincerely,



Dale O. Collins
President

DOC:bjj

copy

Alaska State Legislature

3111 C Street, Suite 150
Anchorage, Alaska 99503
(907) 561-2038



During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-4993

Senator Drue Pearce
District G

December 26, 1990

Mr. Mike O'Hara
P.O. Box 1443
Palmer, AK 99645

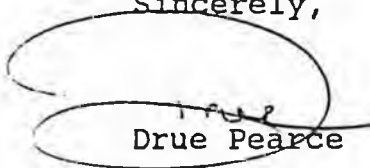
Dear Mike:

Thank you so much for allowing me to accompany you aboard the ARCO Anchorage. It was my first time aboard a tanker and I was fascinated! In fact, I raved about the trip to so many people at the spill exercise and since I returned to Anchorage you may get more calls asking for the opportunity.

While I wasn't able to attend the Monday marine pilot's meeting, I have asked for the minutes and look forward to hearing what you decided in terms of introducing a bill. I stand ready to work with you and look forward to bringing all the interested parties to the table.

I hope you enjoyed your time in California. Have a happy new year. Thanks again for a great trip.

Sincerely,


Drue Pearce

DP:ss

I don't leave for Juneau until Jan. 15 - if you have a chance to call before then, I'd like to hear your impressions of the meeting last Friday.

SUMMARY OF THE OFFICE OF MANAGEMENT AND BUDGET
REPORT ON IMPROVING ALASKA MARINE PILOTAGE SYSTEM

BY

DALE O. COLLINS

In response to concerns about public and environmental safety in the maritime trade, Governor Cowper directed a study of Alaska's Marine Pilotage System and to make specific recommendations to strengthen the State Marine Pilotage Act.

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

Alaska's current pilotage statute has significant weaknesses and gaps in current statute. Alaska's statute is unique among the maritime states, treats licensing as an individual right rather than as a franchise to perform a public service. This emphasis on rights has embroiled the Board of Marine Pilots in controversies with individual pilots, diverting time and attention away from larger issues facing state pilotage. In recent years, various Assistant Attorney Generals and other have questioned the existing act, maintaining that current language does not give the board specific authority to set rates and establish regional

licensing requirements. 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.

For the first ten 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, SEAPA and SWAPA, to serve the Southeast and Southwest regions of Alaska. The associations were responsible for hiring, training and dispatching pilots and collecting fees from shippers. 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.

The Alaska Marine Pilot Act - originally designed to give the board the flexibility to respond to new conditions, has not provided the board the clear authority it needs to deal with the current situation. The Department of Law increasingly questioned Board authority under the statute to develop standards, set pilotage rates, and to exercise overall control.

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 anti-trust litigation, the state should require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.

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

The Marine Pilotage Act should be amended to include an opening statement of intent; extensive entry-level requirements; additional pilotage regions; exclusive licensing by region; standards for progressive licensing, including a formalized deputy pilot program; check-ride system for fully-licensed pilots conducted by senior pilots; recency criteria to maintain endorsements for specific waters and ports; random substance abuse testing; complete annual physical exam; continuing education between license renewals; full-time marine pilot co-ordinator to investigate marine accidents; review training programs and participate in license examinations; complaints concerning pilotage service should be directed to the state board or marine co-ordinator; establish an accord with the United States Coast Guard to share information about accidents, incidents, and conduct joint investigations. The state should not place a specific limit on the number of licenses at this time, however, a determination over a period of time should be made relative to the information on ship movements, whether there is a shortage or an overage of pilots to meet the

demands of shipping. Necessary steps to relieve the situation may include requesting legislative authority to limit the number of licenses. The state should consider accident investigation and other state administrative costs in setting pilotage rates and pilot license fees. A review by the board should be made and license fees should be increased substantially to reflect costs of administering state pilotage. Board meetings should be scheduled at least three times a year, the board be increased to include representation from the Aleutian region of the state. Pilot organizations should be recognized by state law and chartered to provide state approved training for deputy pilots. 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.

All pilot organizations should be required by law to submit copies of their annual audits to the state board; pilot liability should be limited in statute to a specific dollar amount; tariff schedule should be reviewed by the board and adjusted where necessary, and consider special rates for unique circumstances; authority to include a training fee in the tariff schedule to provide partial support for training, and continuing education programs.

The summary of the Office of Management and Budget Report on improving Alaska Marine Pilotage System is offered only to give a brief overview and a complete review of the report is

recommended. Ms. Madden and Mr. Pierce have presented the State of Alaska with an excellent report to study while considering the Proposed Amended Pilotage Act that Southwest Alaska Pilots Association and Southeastern Alaska Pilots Association have submitted to the legislature for enactment during this session.

This Amended Pilotage Act will assure the citizens of Alaska that public interest will be a first priority with pilots and not a secondary consideration after the shipowners interests have been served.

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

Board of Marine Pilots

December 16, 1990

Gentlemen:

Based on the premise that the State has a compelling interest in maintaining a compulsory pilotage system for its coastal waters, the S.E. Alaska Pilots Association recommends the Board of Marine Pilots adopt the recommendations noted in the study compiled by Ms. Madden and Mr. Pierce on improving Alaska's marine pilotage system. We concur with their findings with the exception of limiting the number of licenses and recognizing one pilot association per region. To regulate pilotage in the state of Alaska and not recognize the need to complete the regulatory process will only compound the problems to date. The Board must consider the control they have now and the recommended control being considered, and in vision the complete pilotage act being formulated.

With one association within each region the State would be assured of the following: 24 hour a day service, 365 days a year. All ships would be assured a pilot is available upon request. A highly qualified pilot would board each vessel as a truly independent pilot with the State's interest concerning safety a top priority. Economic pressures would not influence the pilot's decisions. A pilot with current recency trips to all ports and waterways in the region would be provided. A pilot with a wide variety of experience on all ships transiting the region, in all weather conditions would be dispatched.

The above list could be expanded upon and is submitted only as a partial example.

With more than one group of pilots in a region the State could be subjected to the following: No one group providing year round service or even 24 hour a day service. That any one group would assure the State or industry they would have a pilot available at all times upon request. Will the pilot be truly independent if he only worked for a small segment of the industry? Pilots might consider using one tug instead of two to save money and gain an economic advantage over another pilot, or use no tugs! Push their speed in fog, or gillnetter areas, and close glaciers to unsafe distances to gain further advantages. Will the pilot have the necessary recency trips on all waterways and ports in his region if he worked for one or two shipping companies? The S.E. Pilots Association has reviewed the two approaches and has concluded one association per pilot region is by far the best system.

Board of Marine Pilots
December 16, 1990 Page two

If one pilot association per pilot region is accepted, the association would then allow the State to review and revise our Article's of Association, bylaws and operating rules to assure equal opportunity and access to all State licensed pilots for our region.

The S.E. Alaska Pilots Association is proud of its service to the State of Alaska and industry for the past twenty years, and has a good safety record, and has always provided pilots in a timely and efficient manner. We have been the only pilot association in our region and have trained every pilot with a State license for S.E. Alaska to date, including Captain Homer and Captain Bennett, and we stand ready to complete their training upon request by the State, or by mutual agreement.

We do not know of any shipping companies or agents in our area that have not had the service we recommended in this letter. This system is not new to our area as it has been working for the past twenty years. We do know shipping companies will hire novice pilots if there is a cost saving to them. Seasoned Alaska Marine Highway Captains were contracted by the S.E. Alaska Pilots Association to pilot cruise ships through Wrangell Narrows and Peril Straights to assist our association in meeting the high standards we require of ourselves and industry should demand. We were told by one cruise ship company, after several transits, our pilotage service would not be required and their reasons given were the high costs of services in Alaska and they needed to cut costs wherever possible. We were asked if we could meet or beat the other pilotage bid being offered and we offered to meet the non-tariff cost such as pilot boats, travel and per diem. Our offer was declined and we were told this was strictly a business decision. This is a good example of seasoned pilots being passed over for a bargain. We ask this Board to restore common sense to our State pilotage system and our association will continue to do our part by providing highly trained and seasoned marine pilots to meet the requirements of industry and the State of Alaska.

Thank you for your attention and consideration to these recommendations.

Sincerely,



Captain Dale O. Collins
President

INTERNATIONAL ORGANIZATION



ROBERT J. LOWEN
International President
F. ELWOOD KYBER
International Secretary-Treasurer
GEORGE A. QUICK
Vice President

OF
**MASTERS
MATES &
PILOTS**

J. ALFRED ELLIS JR.
East Coast Regional Representative
DONALD L. HOFFMANN
Gulf Coast Regional Representative
REX POLLITT
West Coast Regional Representative
EMIL R. BOWERMAN
Panama Canal Regional Representative

December 7, 1990

Ms. Marilou Madden and Mr. Brad Pierce
State of Alaska, Office of the Governor
Office of Management and Budget
Division of Policy
P.O. Box AD
Juneau, Alaska 99811-0164

Dear Ms. Madden and Mr. Pierce:

It has been suggested that I follow up my letter of November 15, 1990, to you with factual examples of problems that have developed in other ports where laws or regulations have failed to require a unified pilots association or limit the number of licenses.

In the port of San Juan, pilots were licensed under the common laws of Puerto Rico but were not required to maintain service through an association. The licensed pilots worked independently with 12 pilots maintaining and operating nine pilot boats, either independently or individually, as co-owner with another pilot. Work was divided by watch system and whatever fees that were earned by pilots during their duty period belonged to them individually.

If two pilots were on duty and more than two ships required pilots at the same time, a frequent occurrence at a cruise ship port, ships were forced to wait or proceed without a pilot. Duty pilots would not call in other pilots to handle peak traffic loads; without pooling of fees through an association, it would reduce the earnings of the duty pilots. The ships that proceeded without pilots were billed by the duty pilots creating a source of unearned income.

The boats that could be maintained from the revenues earned by individual pilots were substandard and incapable of all weather operation. Even under moderate sea conditions, pilots refused to go outside the harbor and board ships at the designated pilot boarding area prior to reaching a harbor entrance channel. In many cases, ships transited the approach channel without pilots and were boarded or disembarked by pilots





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only in the sheltered waters of the harbor. Without an association there was no central dispatch system. Duty pilots carried beepers and it was the task of ships agents to try to find the pilot when their services were needed. Not infrequently a pilot could not be located and ships proceeded without them.

The above combination of factors - a failure to pool revenues, substandard equipment, the lack of a central dispatch system with work rules ensuring the availability of pilots, resulted in a situation where about half the ships calling in San Juan were not provided pilotage service as required by laws and regulation.

An effective and reliable pilots system ceased to exist in San Juan. Without an association to provide for the administration of the service with seaworthy equipment, dispatching with effective work rules that assured the availability of pilots, the pooling of revenues and expenses that eliminated the personal advantage of working shorthanded and funded the needs of the service on a collective basis, the system failed. It fell into a state of anarchy with each pilot operating as he saw fit.

There was no consensus among the licensed pilots that an association was desirable. They cherished their autonomy and independence and distrusted the other pilots. The industry and the government were frustrated in trying to deal with the situation, as there was no representative authorized to speak for the pilots as a group. Any dialogue was only an expression of individual opinion almost certain to be opposed by others.

The problem came to a head when a pilot was not available to board a ship outside the harbor entrance and the ship attempted the approach unassisted. It grounded on one side of the channel and swung around to block the entire entrance to the San Juan harbor, the second largest passenger ship port in the world. It remained aground for several days trapping a number of large cruise ships with thousands of passengers aboard in the harbor, as well as shutting out several cruise ships with passengers to discharge and new passengers waiting on the dock in San Juan. It stopped all cargo operations that Puerto Rico's Island economy depends upon. The worst potential consequence was that a tanker carrying fuel to the electric generating plant supplying the city of San Juan was shut out. The city of San Juan was only hours away from a black out with the National Guard



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on standby to prevent rioting and looting when the entrance channel was cleared.

The Governor of Puerto Rico appointed a special committee of port authority, shipping industry, and pilot representatives to address the problem and rewrite the regulations governing pilots.

It was apparent from the beginning that the problem lay with the lack of a unified pilot association to administer the routine operation of the pilot service in an effective manner, and the lack of a regulatory board composed of industry and pilots to establish policy and have oversight over the association as well as perform the usual regulatory functions of rate setting, licensing, discipline, etc.

I participated in drafting some of the regulations that were finally adopted. They addressed the issues discussed above and are in the initial stages of being implemented. Due to aspects of the regulatory and administrative system that are unique to Puerto Rico, they contain provisions that may be inappropriate for other jurisdictions. If you have not obtained copies in your review of pilotage in other states, I can send them to you.

Unfortunately, the situation in Puerto Rico reached crisis proportions before any effective intervention occurred. The circumstances that created the crisis are not unique to Puerto Rico. Where it is not compulsory to work through an association, there is always the possibility that strong personal differences among pilots can lead to a fracture in the association structure. Where the option is not available, personal differences get resolved and eventually are forgotten with no lasting damage.

In recent years we have had associations split by dissident pilots in Washington, Oregon, Hawaii and two ports in Florida. The results have been very disruptive to the maintenance of an orderly pilotage service and have lead to abuses cutting safety standards, illegal rebates and kickbacks, piloting by unlicensed personnel, etc.

After a great deal of time, effort, and pressure, the situation in Washington and Florida has returned to normal. The situation in Hawaii and Oregon is still unresolved with the potential to worsen.



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I would urge you at this time to address the issues of administering the pilotage service through an association and providing for a compliment of licensed pilots that is in balance with the needs of maritime commerce.

To enact appropriate laws and regulations at this time, when the situation is stable and under control, is relatively easy. After the problems develop, finding a solution is much more difficult. You will then be dealing in an emotionally charged atmosphere with license holders claiming property rights in their licenses that cannot be amended, vested economic interest cannot associate personal animosities that have developed from competition, individuals seeking personal advantage amidst the confusion, lawsuits challenging the boards authority, etc.

I wish you well in your efforts and if I can be of any assistance please contact me.

Very truly yours,

George A. Quick
Vice President - Pilots

GAQ:kae

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SOUTHWEST ALASKA PILOTS ASSOCIATION

P.O. Box 977
Homer, Alaska 99603

Tel: (907) 235-8783
Fax: (907) 235-6119

December 5, 1990

Alaska Board of Marine Pilots
Division of Occupational Licensing
Pouch D
Juneau, Alaska 99811

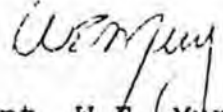
Dear Board Members:

Enclosed for your consideration is SWAPA's proposal for draft legislation to rewrite Alaska's Marine Pilotage Act.

We believe the language of our rewrite, if adopted, will address and solve the problems identified by the pilotage study group and does not threaten the license or status of those currently holding a state pilot license. At the same time it serves the public interest by protecting the pilotage system from competitive pressures fostered by shipping companies and agents and it provides the organizational structure to administer an efficient and highly trained pilotage service throughout the state. Finally, our draft recommends language which clearly establishes the primary duty of pilots to the state, its citizens and the environment.

Thank you for this opportunity to comment. I look forward to the meeting on December 17.

Sincerely yours,


Capt. W.E. Murphy
President

enc.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DEC 10 1990

Div.

ALASKA MARINE PILOTS ACT
(As Recommended by Southwest Alaska Pilots Association)

11/30/90

Sec. 08.62.005. INTENT. (a) The legislature declares that it is the policy of the State of Alaska to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage in certain waters in, around, and adjacent to the State of Alaska. The legislature finds that in order to assure the protection of lives and property and the marine environment of the state, licensed marine pilots having extensive local knowledge are required to pilot certain vessels in certain waters in, around, and adjacent to the State of Alaska. The legislature also finds that to carry out this policy, it is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions and tariffs and the authority to establish criteria for the training and licensing of marine pilots.

(b) The legislature recognizes that marine pilots operating independently of the shipping industry have provided and will continue to provide essential services to the people of the State of Alaska. Marine pilots further the public interest by providing safe pilotage in the pilotage waters of the State of Alaska. It is the intention of this legislature that the board work with marine pilots to ensure that safe pilotage is maintained in the State of Alaska.

(c) The legislature also recognizes that in the past pilot organizations have provided, and in the future will continue to provide important services on behalf of marine pilots. By doing so, these pilot organizations have furthered the policy of protecting lives and property and the marine environment in the pilotage waters of the State of Alaska. It is the intention of the legislature that the board work with pilot organizations in a cooperative effort to enhance that policy.

(d) The Legislature declares that the first and paramount duty of marine pilots licensed by the State of Alaska is to the state, acting through its Board of Marine Pilots, for the public safety, and the safety of the marine environment.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

DEC 10 1990

DIV.

LICENSING

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. The board shall consist of one state licensed marine pilot from each pilotage region who is actively engaged in, and for at least the past five years was actively engaged in, piloting vessels subject to this chapter, two agents or managers of vessels subject to this chapter, each being from a different pilotage region, and two public members from different pilotage regions who qualify under AS 08.01.025. All members of the board must be residents of the state.

Sec. 08.62.020 APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the members of the board in accordance with AS 08.01.020. No member may be appointed to the board for more than two consecutive terms.

Sec. 08.62.030 MEETINGS. The board shall hold at least three regularly scheduled meetings each year. The board may hold special meetings at the call of the chair or at the request of a majority of the members of the board.

Sec. 08.62.040. POWERS AND DUTIES. (a) The Board shall have the authority to

(1) provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter in order to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment.

(2) consistent with the law, adopt regulations, subject to the Administrative Procedures Act (AS 44.62) establishing the qualifications of and required training for pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licenses pilots and agents;

(4) adopt regulations establishing pilotage regions in the state, establishing the criteria by which to set pilotage tariffs, including criteria related to a training and investigation fee to be remitted to the board, and setting pilotage tariffs for each region;

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- (5) make available, upon request, copies of this chapter and the regulations adopted under it;
- (6) review and approve the bylaws and the operating rules of pilot associations;
- (7) 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; and
- (8) review and approve training programs conducted by pilot organizations.

(b) The board shall make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter, including establishing different licensing criteria for different pilotage regions if justified by regional differences in piloting, establishing a mandatory random drug and alcohol testing program for marine pilots, and adopting criteria for trainee selection and for training programs conducted by pilot organizations.

(c) For good cause, the board may require a marine pilot to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a marine pilot.

Sec. 08.62.045 MARINE PILOT COORDINATOR. The department, with the approval of the board, is authorized to hire a marine pilot coordinator who is qualified to administer and enforce the provisions of this chapter. The coordinator may not be an active member of an Alaska pilot organization and may not work as a pilot while employed as the coordinator, except to the extent required by official duties. The coordinator is a member of the partially exempt service under AS 39.25.120. (If this provision is accepted, AS 39.25.120 will also have to be amended.)

Sec. 08.62.080 LICENSE REQUIREMENTS. (a) A person may not pilot a vessel subject to this chapter unless the person is licensed under this chapter.

(b) Except as provided in (c) of this section, a pilot may not be licensed at any one time, in more than one of the pilotage regions established by the board.

(c) 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.

(d) The board shall establish dates for license examinations and shall provide public notice of such dates.

Sec. 08.62.090 APPLICATION. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board.

(c) In order to be eligible to take the next scheduled examination, a person must file the application with the board at least 60 days before the date of the examination.

Sec. 08.62.100. ENTRY LEVEL QUALIFICATIONS. (a) The board will issue a license to a person if he or she is a citizen of the United States, passes the examinations given by the board, completes the training requirements, qualifies in accordance with regulations adopted by the board, and meets the qualifications in (b) - (d) of this section.

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

(1) One year of service as a master of ocean or coastwise vessels while holding a license as the master of ocean steam or motor vessels any gross tons; or

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

(3) Two years service as a chief officer on ocean or coastwise vessels of not less than 1,600 gross tons while holding a license as the mater of ocean steam or motor vessels any gross tons; or

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

(5) Three years of experience as a member of an organized professional pilots association, during which period the candidate was actively engaged in piloting while holding a minimum license as a master freight or towing vessel not more than 1600 gross tons.

Sec. 08.62.105 LIMITATION OF LICENSES. 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.

Sec. 08.62.115 APPLICANT SCREENING. (a) If more applications are received than requested, the board will select the most qualified applicant, depending on:

- (1) documented sea time;
- (2) time spent serving as master;
- (3) formal maritime training;
- (4) experience in the waters for which applying;
- (5) previous piloting experience.

(b) The selected applicants will be given a written examination on shiphandling, local knowledge and other subjects considered appropriate by the Board, 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 two years, and is not renewable.

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Sec. 08.62.117 TRAINING. (a) The deputy pilot will be sent to an association of a region 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. 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.

Sec. 08.62.119. PILOT REGIONS. (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:

(1) "Southeastern Alaska Pilotage Region" shall include all waters of Alaska from Dixon Entrance to Yakutat.

(2) "Southwestern Alaska Pilotage Region" shall include all waters of Alaska from Icy Bay to Demarcation Point, including Dutch Harbor and Captain's Bay.

(3) "Aleutian Island Pilotage Region" shall include all waters of the Aleutian Islands and Alaska Peninsula.

Sec. 03.62.120. RENEWAL. (a) All licenses expire on December 31 of each even-numbered year. In order to renew a license, a pilot must

(1) submit a renewal application on a form provided by the

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DEPARTMENT OF
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(2) meet the minimum qualifications set out in AS 08.62.100 and the board's implementing regulations;

(3) provide evidence of a satisfactory physical examination within 90 days of the date of renewal; and

(4) comply with (b) of this section.

(b) A licensed marine pilot who has not piloted in Alaska during the two years prior to a request for renewal may not have the license renewed until the pilot takes the number of familiarization trips required by the board in the pilotage region for which the license will be renewed.

Sec. 08.62.130. LAPSED LICENSE. The board will reinstate a lapsed license if, in addition to complying with the requirements of AS 08.01.100 (a)-(c), the pilot

(1) makes at least two trips for each year that the license has been lapsed to each major port and waterway in the pilotage region covered by the license;

(2) makes and passes a written and oral examination if the license has been lapsed five years or more; and

(3) complies with all other criteria established by the board.

Sec. 08.62.140. FEES. The department shall set fees under AS 08.01.065 for applications, licenses, and agent registrations.

Sec. 08.62.150 ENFORCEMENT AUTHORITY. (a) The board may impose a disciplinary sanction on a person licensed under this chapter when the board finds that the person

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

(2) is chemically impaired;

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

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

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

- (6) is guilty of misconduct during the course of employment;
- (7) has had his or her Coast Guard pilot's license conditioned, suspended, or revoked; or
- (8) charges, collects, or receives an amount for pilotage services that is different than the pilotage tariff established by the board.

AS 08.62.155. DISCIPLINARY SANCTIONS. The board may take disciplinary action in accordance with AS 08.01.075.

AS 08.62.160 MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating certain waters in, around, and adjacent to the State of Alaska as determined by the board in regulation shall employ a pilot holding a valid license under this chapter.

AS 62.165 ALLOCATION OF LIABILITY. (a) A pilot licensed by the State of Alaska is not liable for damages in excess of \$5,000.00 for damages or loss occurring as a result of the pilot's error, omission, fault, or neglect in performing pilotage services, except that such limitation does not apply in cases where the pilot is either grossly negligent or guilty of wilful misconduct.

(b) Nothing in this section exempts the vessel, its owner or its operator from liability for damage or loss occasioned by that vessel to another person or other property on the ground that (1) the vessel was piloted by a pilot licensed by the State of Alaska, or (2) the damage or loss occurred as a result of that pilot's error, omission, fault, or neglect.

(c) An organization of pilots is not liable for any claims arising from acts or omissions of a pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. A pilot is not liable either directly or as a member of an organization of pilots for any claims arising from acts or omissions of any other pilot or organization of pilots that relate, directly or indirectly, to pilotage of a vessel. The limitation in this

subsection does not apply to acts or omissions relating to the ownership or operation of pilot boats or the transportation of pilots to and from the vessel to be piloted.

AS 08.62.170. PILOT'S LIEN. Each vessel, its tackle, apparel and furniture and other owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, the vessel's tackle, apparel and furniture for the pilot's compensation.

AS 08.62.175. PILOT ORGANIZATIONS. (a) Marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

(b) The Board of Marine Pilots is authorized to recognize certain pilot associations as exclusive representatives of pilots for the various pilot regions, with control over dispatching, training and the collection of fees for all pilots in that region. The articles of association, bylaws and working rules of such associations are subject to approval by the Board of Marine Pilots for compliance with appropriate law and must contain a plan for the efficient maintenance of a reliable and professional pilotage system for the particular region.

AS 08.62.180. EXEMPTIONS. This chapter does not apply to

- (1) vessel under enrollment, except as provided in AS 08.62.185;
- (2) fishing vessels registered in the United States or in British Columbia, Canada;
- (3) vessels propelled by machinery and not more than 65 feet in length over deck, except tug boats and tow boats propelled by steam;
- (4) vessels of the United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively
 - (A) on the rivers of Alaska, or

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

(5) vessels of Canada, including Canadian 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 of United States registry; and

(6) pleasure craft.

Sec. 08.62.185 CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. (a) Any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state waters beyond Alaska pilot states 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.

(b) the pilot required in (a) of this section shall control the vessel during all docking operations.

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

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

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

Sec. 08.62.200. DEFINITIONS. In this chapter

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under AS 08.62.180.

AS 08.62.210 SHORT TITLE. This act may be cited as the Alaska Marine Pilotage Act.

TRANSITION. Sec. 1. The membership of the board as it exists on the effective date of this Act shall continue to conduct the affairs of the board in accordance with this Act until such time as the membership of the board is appointed in accordance with sections 2 and 3 of this Act, provided that the membership of the board is appointed in accordance with sections 2 and 3 of this Act on or before _____, 1991.

Sec. 2. A pilot licensed under AS 08.62 on the effective date of this Act will remain licensed under this chapter until required for the second time to renew his or her license in accordance with section 9 of this Act. Upon renewal, each pilot must then qualify for the license in accordance with the criteria in this Act and any implementing regulations. In addition, after the effective date of this Act, any pilot applying for a change in, an amendment to, or an endorsement for his or her license must qualify in accordance with the criteria in this Act and any implementing regulations.

EFFECTIVE DATE. This Act takes effect _____, 1991.

Antitrust Protection. With the change to Section 08.62.175 allowing marine pilots to form a pilot association, Sec. 45.50.572 (a) should be amended to read as follows:

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.

STATE OF ALASKA
DEPARTMENT OF REVENUE
& ECONOMIC DEVELOPMENT

DEC 10 1990

DIV. OF REVENUE

Dunn
Oct. 29, 1990
312 Pine St. Box H
Ketchikan, Ak. 99901

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 Pilotage 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 pilotage statutes. For persons such as yourselves, who are not directly involved in pilotage, 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 Hodgmen. 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 grins 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 Hodgman 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 (h): 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) 300 Days working as a pilot in a recognized pilotage area
(Under present wording, pilotage experience elsewhere is not even mentioned.)

(C) 2 Years as a Deck Officer on Vessels of 1600 Tons or more in Alaskan waters

(C) 2 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. Hodgman 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. 08.62.740 - 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.