

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7556 SENATE LABOR & COMMERCE**

the license has been lapsed to each major port and waterway in the pilotage region covered by the license, with at least one round trip being made at night."

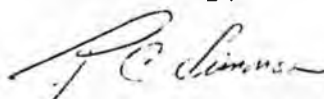
It is recommended in paragraph (a)(4) that the term "state or federal" be inserted prior to the word "license."

Sec. 08.62.150. ENFORCEMENT AUTHORITY-I believe that clarification is needed in paragraph (a)(2), for the term "chemically impaired [HABITUALLY INTOXICATED]." I recommend 33 CFR Part 95 as a guide for better terminology or provide a definition in Sec. 08.62.200. The term "habitually" is unnecessary and would only add difficulties in disciplining an individual.

In paragraph (a)(4) I recommend the term "state or federal" be inserted prior to the word "license."

Sec. 08.62.200. DEFINITIONS-It is recommended that the State provide a definition on the issue of when a pilot is considered on and off duty while on board a vessel.

Sincerely,



R. C. Simonson  
Lieutenant Commander, U. S. Coast Guard  
Chief, Merchant Vessel Safety Branch  
By Direction

LAW OFFICES OF  
**ZIEGLER, CLOUDY, KING & PETERSON**

307 BAWDEN STREET  
KETCHIKAN, ALASKA 99901

C. E. CLOUDY  
EDWARD C. KING  
J. W. PETERSON  
WILL WOODLIE  
TREVOR R. STEPHENS

(907) 225-9401  
FACSIMILE  
(907) 225-5513

(1919-1972 DECLARED)  
A. H. ZIEGLER  
RETIRED  
ROBERT H. ZIEGLER, SR.

October 31, 1990

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

Re: SEAPA  
Our File 29.039.48

Dear Marilou and Brad:

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

DRAFT STUDY

I offer the following editorial comments:

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

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

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

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

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

DRAFT LEGISLATION

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

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

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

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

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

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

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

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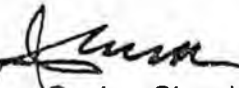
*new*  
00.62.190(a). This section should also provide for a separate violation for each vessel movement to which a separate tariff has been assigned. In Southeastern Alaska, at least, the draft is susceptible of a reading of a single misdemeanor for each 7-10 day cruise transit of the involved vessel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

*2100*  
New Section. A section should be added which expressly authorizes the Board to establish regulations which limit the number of pilots to be licensed under the Act, giving due regard to the stated legislative intent and the fact that wide open licensing could well be counter productive to the policy statements set out in the legislative intent.

*2*  
New Section: Anti-Trust Protection. In addition to 08.62.175, allowing marine pilots to form a pilot association, Section 45.50.572(a) should be amended to read: "AS 45.50.562-45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural organizations created for the purpose of mutual help, and not conducted for profit, as well as marine pilot organizations whose organizational structure has been approved under the Alaska Marine Pilotage Act, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562-45.50.596".

Sincerely,

ZIEGLER, CLOUDY, KING & PETERSON

By   
C. L. Cloudy

CLC:cz  
Z1CLC

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

October 31, 1990

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

Dear Ms. Madden and Mr. Pierce:

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

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

Specifically, we are concerned with:

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

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

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

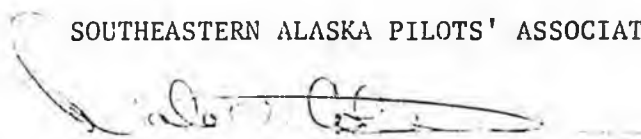
(6) Penalties. We recommend deleting the words "when a licensed pilot is available". This is a loophole that could be used to avoid the penalties of this section or when more than one group of pilots is working the same region. The owner, master or agent gives insufficient notice to either group to meet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

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

- A. Seatime.
- B. Pilot Coordinator.

Sincerely yours,

SOUTHEASTERN ALASKA PILOTS' ASSOCIATION



Dale O. Collins  
President

DOC:bjj

LAW OFFICES  
STEVE K. YOSHIDA  
A PROFESSIONAL CORPORATION

FAX  
(907) 235-8126

3665 BEN WALTERS LANE, SUITE A  
HOMER, ALASKA 99603

TELEPHONE  
(907) 235-5255

October 31, 1990

Brad Pierce/Mary Lou Madden  
Senior Analysts  
State of Alaska  
Office of the Governor  
Division of Policy  
P.O. Box AD  
Juneau, Alaska 99811-0164

14 8 5  
107 9 27  
STRATEGIC PLANNING

Re: Draft Legislation Amending the Marine Pilots Act

Dear Mr. Pierce and Ms. Madden:

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

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

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

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

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

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

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

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

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

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

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

- (b) In addition to the qualifications in (a) of this section, an applicant must provide documentation to the board of the following service or combination thereof:
- (2) ~~Two years of service as a master of freight on a towing vessel on vessels or tug and tow of not less than 1,600 combined gross tons~~ while holding a license as the master of freight and towing of vessels of not less than 1,600 gross tons.
  - (4) Two years service as commanding officer of United States government vessels of not less than ~~1,000~~ 1,600 gross tons and holding a license as the master of ocean steam or motor vessels any gross tons; or
  - (5) ~~Sec. 08.62.100 (5) two years of service as master of local vessels appropriate to the pilotage region in which the applicant seeks to be licensed,~~ while holding a license as master of ocean steam or motor vessels of any gross tons.

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

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

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

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

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

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

7. Applicant Screening. Another section should be added as follows:
- (a) If more applications are received than requested, the board will select the most qualified applicant, depending on:
    - (i) Documented sea time;
    - (ii) Time spent serving as master;
    - (iii) Formal maritime training;
    - (iv) Experience in the waters for which applying;
    - (v) Previous piloting experience.
  - (b) The selected applicants will be given a written examination consisting of 40 questions on local knowledge, which must be passed with a grade of at least 75 percent.
  - (c) A deputy pilot license will be issued to the successful candidate.
  - (d) The deputy pilot license will be good for 4 years, and is not renewable.

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

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

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

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

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

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

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

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

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

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

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

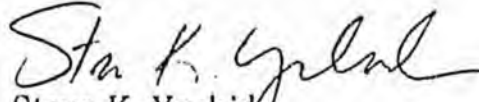
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make it uneconomic for such people to think that way. Doubling the fine for a second offense will deter intentional and systematic violations of the law.

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

Very truly yours,

STEVE K. YOSHIDA, P.C.



Steve K. Yoshida

SKY/mw

cc: Charles Cloudy  
SWAPA Members

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

STATE OF ALASKA  
OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF POLICY

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

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

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

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

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

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

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

operated in this country. It has worked well.

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

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

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

2. Sec. 08.62.160. ALLOCATION OF LIABILITY

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

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

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

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

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

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

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

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

4. Sec. 08.62.190. PENALTIES

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

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

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

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

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

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

##### 5. ANTITRUST IMMUNITY

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

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

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

Respectfully submitted,

Paul G. Kirchner  
KURRUS & KIRCHNER  
Counsel to the American  
Pilots' Association

STATE OF ALASKA  
OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF POLICY

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

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

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

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

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

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

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

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

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

3. Page 4 Voluntary v. Compulsory Pilots

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

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

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

4. Page 8 Apprenticeship/Deputy Pilot Programs

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

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

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

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

#### 5. Page 11 Pilot Liability

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

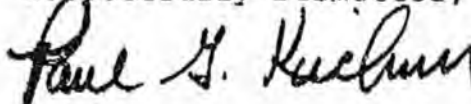
to obtain a finding of negligence on the part of the pilot.

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

#### CONCLUSION

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

Respectfully Submitted,



Paul G. Kirchner  
KURRUS & KIRCHNER  
Counsel for the American  
Pilots' Association

Captain Michael C. Spence  
PO Box 20251  
Juneau, Alaska 99601

Mr. Brad Pierce, Ms. Marilou Madden  
Pilot Study Group/Governors Policy Office  
Office of Management and Budget  
PO Box AD  
Juneau, Alaska 99811-3568

November 5, 1990

Dear Mr. Pierce and Ms. Madden,

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

To elaborate on these remarks, I offer the following:

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

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

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

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

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

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

# **CORRECTION**

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

Captain Mitchell Cloudy  
PO Box 20251  
Juneau, Alaska 99801

Mr. Brad Pierce, Ms. Marilou Madden  
Pilot Study Group/Governor's Policy Office  
Office of Management and Budget  
PO Box AD  
Juneau, Alaska 99811-3568

November 5, 1990

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c) Mr. Cloudy's letter, p 5, ¶3, p6, ¶1 "Experience over the years has shown that the masters will not involve themselves in evaluating a pilot's performance." In fact, SEAP has received a number of written and verbal pilot performance reports by vessel masters in the past three years alone, and has generally ignored and discouraged those reports.

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

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

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

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

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

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

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

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

"Lobbying the Board of Marine Pilots or the Alaska legislature in pilorage matters without the prior authorization of the Board of Directors. First Offense (Expulsion)."

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

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

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

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

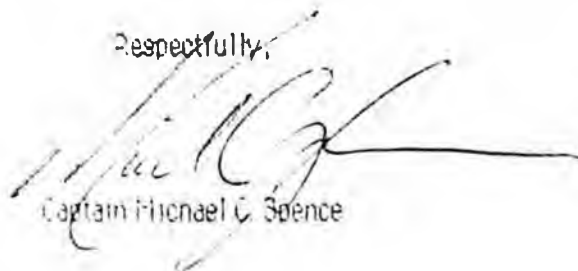
The issue of group liability for ship accidents is appropriately stated as a primary concern among pilots, but other areas of group liability should also be addressed. For example, liabilities for litigation costs and legal settlements of SEAP have been spread upon contract pilots who have no vote or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

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

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

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

Respectfully,



Captain Michael C. Spence

INTERNATIONAL ORGANIZATION



ROBERT J. LOWEN  
International President  
F. ELWOOD KYSER  
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 F. BOWERMAN  
Panama Canal Regional Representative

November 15, 1990

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

Attention: Brad Pierce, Marilou Madden

Dear Mr. Pierce and Ms. Madden:

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

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

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

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

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

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

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





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

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

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

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

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

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

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



Page Three

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

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

Sincerely,

George A. Quick  
Vice President, Pilots

## ZIEGLER, CLOUDY, KING &amp; PETERSON

MEMO November 19, 1990  
 TO SEAP Board of Directors  
 FROM C. L. Cloudy  
 RE Pilot Board Meeting, November 19, 1990  
 Kotzebue Sound - Cominco Question  
 Our File 29.039.47

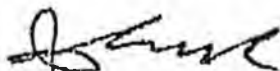
STATE OF ALASKA  
 DEPARTMENT OF COMMERCE  
 & ECONOMIC DEVELOPMENT  
 NOV 29 1990  
 DIV. OF OCCUPATIONAL LICENSING

A review of the U.S. v. Alaska case cited by Gary Amendola as well as prior U. S. Supreme Court cases on the same subject, discloses that the decision is not in point. The Alaska case involved an interpretation of the Submerged Lands Act, and who, as between the United States and Alaska, had control of oil and gas deposits in the Cook Inlet area. The Submerged Lands Act gave several states title to submerged lands in their "inland waters". A previous U. S. Supreme Court submerged lands case had determined that the question of whether or not a particular body of water was "inland waters", would be determined by reference to the Convention on the Territorial Sea and the Contiguous Zone. Under these definitions, a bay with headlands in excess of 24 miles apart would be considered inland waters if and only if it was a "historic bay". The court found that the area of Cook Inlet involved did not qualify as a "historic bay", and therefore held against Alaska with regard to the oil and drilling rights in question.

Consequently, neither the Alaska case nor prior cases on the same subject dealt with the question of who has navigational control over waters which may fall outside the definition of inland waters. Historically, states have controlled navigation beyond their inland waters through the territorial seas out to the high seas line. This right is recognized in Article 17 of the above-referenced Convention. As pointed out in the Alaska case, this right is a characteristic of territorial seas and exercise of that control by a state will not serve to convert the area into an historic bay for submerged land purposes.

In my opinion, the answer to the question posed by Cominco involves a consideration of not only the limits of the territorial seas and the control of navigation thereon, but a consideration of the Russian Convention Line (1867 Treaty of Cession) running north from the mid-point between Little and Big Diomedes at about 168° latitude well outside of the headlands of Kotzebue Sound. In any event, the answer will not be found in cases dealing with submerged lands under the Submerged Lands Act.

Sincerely,

  
 C. L. Cloudy

CLC:cz  
 ZICLC

DEAR ED,

THIS LETTER MIGHT  
 INTEREST YOU!





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**AMERICAN PRESIDENT LINES, LTD.**

---

November 19, 1990

Ms. Mary Lou Madden  
Mr. Brad Pierce  
Division of Policy  
Office of Management and Budget  
Office of the Governor  
P. O. Box AD  
Juneau, Alaska 99811

STRATEGIC PLANNING

**SUBJECT:     PILOTAGE ACT DRAFTING GROUP  
                  STATE OF ALASKA**

To whom it may concern:

American President Lines has recently become aware of your intention to rewrite the State of Alaska Marine Pilot Act. Because we are a customer of the South West Alaska Pilots Association, and a frequent caller at Iliuluk Bay, Dutch Harbor, we would like to take this opportunity to present our views on Alaska pilotage. We present these comments in the hope of assisting you in this task.

First, we feel that the State of Alaska should be the primary authority for managing and controlling pilotage within the state's area of jurisdiction. The present system has caused us concern because of the lack of control and enforcement in keeping the approaches to the APL berth in Iliuluk Bay, Dutch Harbor clear. In early 1990, when the bay became congested with anchored vessels blocking our approach to the APL berth, local authority suggested we request USCG assistance. The USCG-Anchorage felt it was a local Dutch Harbor matter, (between the pilots) and therefore recommended to let them work it out. Fortunately all parties came to a gentlemen's agreement and with a few minor exceptions things have worked well. Regardless, many management hours were spent seeking solution.

APL has considerable experience dealing with pilotage in Asia, the mid-East and the West Coast of the United States. The solutions we have obtained in one area, in many cases, are not acceptable in other areas. Therefore, we recognize that our experiences may not assist you, but in almost every case one factor was evident: We had great difficulty locating a single point of contact to deal with.

Sometimes, pilot associations become fixed in their mode of operations and changes in the industry are not taken into account; this easily becomes expensive and time consuming. In cases like Dutch Harbor it may make the difference in whether the ship will make the call. In the intermodal transportation business schedule is the key to success. We urge you to consider an element that will permit customers to communicate their concerns and problems for coordination.

Ltr to Ms. Mary Lou Madden, Mr. Brad Pierce  
PILOTAGE ACT DRAFTING GROUP - STATE OF ALASKA  
Page two

November 19, 1990

We must state that we have had the greatest cooperation and assistance from the South West Alaska Pilots Association and would like that relationship to continue. We have trained our masters and crews with these pilots and they are familiar with our ships and their equipment and they function well together.

Few industries require less continuing education than the Maritime Industry. Our experience with having pilots join our senior ship officers' in their ship handling and bridge team operations training has proven worthwhile and is recommended. Training is expensive, and time consuming. The training of pilots in basic, advanced and continuing education programs is frequently rejected by those that need the training most. Procedures that require pilots to undergo continuing and when needed, remedial training, is essential. Today there are a number of places where useful training may be accomplished, but unfortunately they are all located in the East. A facility is needed on the West Coast. The California Maritime Academy is endeavoring to acquire a ship handling-bridge operations trainer. I am sure they would appreciate your support; and we urge you to support CMA.

Essentially, we engage pilots for the following reasons:

1. They provide local knowledge;
2. they are familiar with the tugs and docking/undocking procedures, and
3. they reduce in-port transit times.
4. They increase the margin of safety in protection of vessels & port facilities.

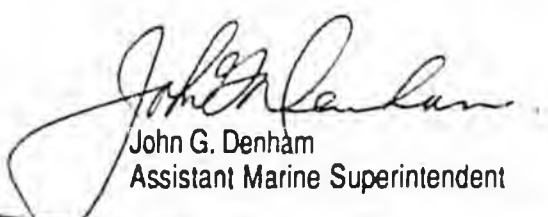
The premise of pilotage is to provide safe, efficient and reliable service for visiting ships that are not familiar with the port; in most cases state pilotage laws support this premise. To guarantee this service and maintain quality, states must be involved in some form of monitoring the quality of the pilotage service, providing for the public protection, and providing legislative assistance to the pilots to operate a reliable, efficient service which permit an adequate income. This service should be supported by fees.

We find, especially on the West Coast, that tug and pilotage costs have become the highest port costs. The trend has been for all pilot services to attempt to obtain near equal net incomes, regardless of the differences in the tasks to be performed. Equanimity is not factor in shipping rates and therefore, not a factor in compensation. We are firmly committed to fair and equitable compensation for tasks performed, and additional costs for additional work. Escalating labor and port costs can only be passed on to our customers; at some point our customers will seek other less expensive carriers. There are only two U. S. Flag liner carriers operating overseas from Alaska ports now.

We are eager to assist you in your task, and will gladly provide you any material or discuss any points you desire. Our purpose is to make our experiences available to you so that you may put together a pilotage law that provides good pilotage to all.

Respectfully,

AMERICAN PRESIDENT LINES, LTD.

  
John G. Denham  
Assistant Marine Superintendent

MARINE PILOTING

Telephone (907) 225-8888  
(907) 225-8887

## Southeastern Alaska Pilots' Association

CABLE ADDRESS SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

November 23, 1990

Mr. Russell Sell  
1727 W. 11th Avenue  
Anchorage, AK 99501

Dear Russell:

Please find enclosed the only information I have on Deputy Pilot Programs. At this time, Mr. Bill Schechter is listed as a contact for the Sandy Hook Pilots on this news release. The American Pilot Association might be able to provide additional information on other Deputy Pilot Programs. Their address is 1055 Thomas Jefferson Street N. W., Suite 404, Washington D. C., phone 202-333-9377.

A Pilot Training Program for Southeastern Alaska Pilots' should include the following as minimum requirements:

1. Each port in Southeast Alaska must have been observed at least three times prior to docking or undocking a ship at that port.
2. Has 50 docking and undockings at ten different docks in Southeast Alaska, with a state licensed pilot.
3. Has conned a ship transiting Wrangell Narrows three times north and south bound.
4. Has conned a ship transiting Peril Straits three times east and west bound.
5. Has conned a ship transiting Olga and Neva Straits three times north and southbound.
6. Has conned a ship transiting Tracy Arm Bar three times inbound and outbound.
7. Has attended at least one simulated shiphandling course and A.R.P.A. course.

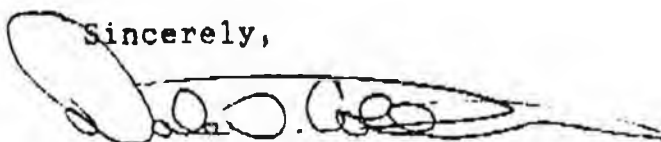
The three step tonnage license system the state has now should be maintained and all pilot

trainees must go through the step system. This proposed training system would take a pilot trainee 3 to 5 years with the exception of the conning transits in narrow channels. These transits would require a pilot additional time and would be endorsed as they were completed.

The proposed training program would be a good start, and will take some refining and a broader consensus before being adopted by the Pilot Board.

If I can be of further assistance, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale O. Collins". The signature is written in a cursive style with a large initial "D" and "C".

Dale O. Collins

# SAN FRANCISCO BAR PILOTS

P.O. BOX 26409  
SAN FRANCISCO, CALIFORNIA 94126  
415-362-5436  
FAX 415-982-4721

STREET ADDRESS:  
NORTH BULKHEAD PIER 7  
SAN FRANCISCO, CA 94111

November 28, 1990

Mr. Bob Pierce  
Ms. Marion Madden  
State of Alaska  
Office of the Governor  
Division of Policy  
P. O. Box AD  
Juneau, AK 99811

Dear Mr. Pierce and Ms. Madden:

Thank you for the copy of the Alaska Marine Pilotage Study and the draft legislation amending the Marine Pilots Act. We found the Review Draft extensively well researched and informative.

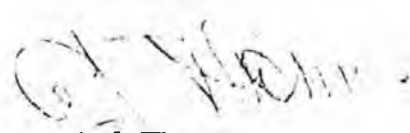
In Section 175 Pilot Organizations it states that marine pilots may form themselves into associations, provided they are not in conflict with the laws of the State of Alaska or of the United States.

We have found through our history that it is a requirement for pilots to belong to pilot associations, with attendant working rules, you are inviting individuals to work outside organized groups. These independent pilots, in our past experience are more directly controlled by; the shipping companies whose interests may not always be safety to the public and the marine environment. We have concerns that these individuals may place economic security above safety.

The specific number of pilots issued licenses is not addressed in the legislation. After establishing the expected traffic volume for each area, the number of pilots needed to provide service with adequate rest, attrition rate among pilots, and other factors involved, a sufficient number of state licenses can be issued. While not immediately important under conditions in Alaska now, we think that failure to address these issues could bring problems to your pilot system in the future.

If we can be of any assistance to you in the future, please feel free to call on us.

Sincerely,

  
A. J. Thomas  
President

AJT:fmb



**ALASKA MARINE PILOTS  
& DISPATCHING SERVICE**

P O BOX 730 • DUTCH HARBOR, ALASKA 99692 • 907/581-1240  
FAX 907/581-1372

November 29, 1990

State of Alaska  
Board of Marine Pilots  
P.O. Box D  
Juneau, Alaska 99811-0800

STATE OF ALASKA  
DEPARTMENT OF COMMERCE  
& ECONOMIC DEVELOPMENT

DEC 4 1990  
DIV. OF OCCUPATIONAL LICENSING

To Whom It May Concern,

We appreciate the opportunity to provide comments and input about and into the proposed modifications to the State Marine Pilotage Statute. We anticipate that we can participate in a constructive manner during the Board's public meeting on December 17th. We expect that the format of the meeting will be such that we shall have adequate time to discuss the specifics and language of the proposed legislation.

We offer the following comments regarding the proposed modifications to the marine pilotage statute.

General Comments:

- 1) We agree that any real or perceived ambiguities as to the Board's authority should be clarified by statute.
- 2) We agree that the make-up of the Board should be re-constituted to include a pilot from each regional functioning pilot organization. If the State is represented on the Board we'd suggest the position be filled by a representative from the Office of Management and Budget.
- 3) We agree that pilots should be required to have some form of continuing education requirement. As a minimum we would suggest a peer-evaluation requirement.
- 4) We agree that licensing should be done on a regional-specific basis. We suggest that the exception to the exclusive region license should only include general ports that are the destination or starting point for ships that generally transit between regions on a regular basis. This would prevent the need for a particular ship to have to change pilot groups enroute.

Consideration should be given to those who presently have licenses for more than one region so that they don't lose what has been expensive and difficult to obtain. Perhaps a way can be found to allow them to designate one of the

regions as their working region for a license period - i.e. two years. When they elect to work in another region they must present evidence of having refamiliarized themselves with that region but not have to re-license for the region. Such a provision can accomplish the goal of localized expert knowledge and the restriction of only working in one region at a time.

5) We agree that tariffs should be based upon regions and the operating costs of the regional pilot organizations. We suggest that since all pilots are required to charge the tariff that those pilots who choose not to be part of a regional pilot organization be required to contribute an "overhead contribution" out of each tariff collected to the pilot organization on whose operating costs the tariff was based. We will support other alternatives that resolve the problem of balancing the constraint of trade arguments when a qualified pilot can not get into a pilot organization and yet is faced with the reality that piloting is best done through an organization and central regional dispatch service.

6) We agree that pilot organizations should have training obligations. We do not agree that the organization needs to bear any costs for such training unless allowed for in the tariff or done on a voluntary basis.

7) We agree that the Board (after reconstituted) should have the power to approve the operating rules and training program of each regional pilot organization. We suggest that statutory language be approved that specifies the criteria to be used in the approval process. There also needs to be an appeal process if the Board does not approve the pilot organizations rules, etc.

8) We agree that organization training should begin after a candidate has a Coast Guard license for enough of a region to allow meaningful training and after passing a State Board examination.

We suggest that language be put into the proposed statute to incorporate the following concept.

The Board in consultation with the regional pilot organizations and agents knowledgeable about shipping needs in the region determine the number of trainees reasonably expected to be needed in each region. After meeting the pre-training requirements the individuals selected by the Board would be assigned to the regional organization for training. During the training program the evaluations prepared, the trainee would be sent to the Board. On the basis of the evaluation the Board would have the authority to cancel an individual's training. Once an individual has completed the training in a satisfactory manner and licensed the individual that person would be eligible to join the pilot organization

for dispatching. The organization would have the right to charge a buy-in, or affiliation, fee and to pro-rate on the basis of coverage, tonnage etc., subject to the Board's approval of the organization's operating rules. However, the newly licensed individual would be free not to associate with the organization.

9) We agree with the proposal for the Board to hire a pilot coordinator.

10) We agree that minimum standards for entry into the profession should be written into the statute providing that the variation in regional shipping and pilotage needs is adequately provided for.

11) We agree that pilots should, by statute, be protected with a limit of liability.

The limit of liability statute should also specifically address pilots in training and pilots engaged in supervising of trainees.

12) We agree that the law should provide that there can be no cross-over liability from one pilot to another and from one pilot to the organization.

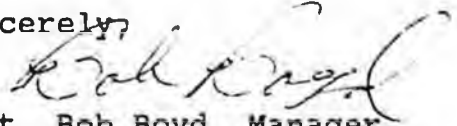
13) In general we agree with the concepts underlying the new statute but feel that specific terms and phrases in the proposed statute need to be clarified and made more specific.

If the above concepts are too difficult to get into statutory language we suggest that the changes to the statute be limited to the following.

- a) Reconstituting the membership of the Board to include a pilot from the dominant organization serving western Alaska.
- b) Clarify the powers of the Board to set tariffs by region.
- c) Direct the Board to regionalize the waters of the state.
- d) Allow the Board to have different entry and licensing standards by region.

Again, thank you for the opportunity to comment.

Sincerely,

  
Capt. Bob Boyd, Manager  
Alaska Marine Pilots

UNITED NEW YORK SANDY HOOK PILOT'S BENEVOLENT ASSOCIATION  
AND  
UNITED NEW JERSEY SANDY HOOK PILOT'S BENEVOLENT ASSOCIATION

201 EDGEWATER STREET  
STATEN ISLAND, N. Y. 10305

CABLE ADDRESS  
"HOOKPILOTS" - NEW YORK  
TEL. (718) 448-3900  
FAX. (718) 447-1582

**NEWS RELEASE  
FOR IMMEDIATE RELEASE**

Contact: Bill Schechter  
(212) 751-4532

**SANDY HOOK PILOTS -- LONG APPRENTICESHIP  
PRECEDES TRAINING THAT NEVER STOPS**

STATEN ISLAND, N.Y., June 27, 1990 ... No Sandy Hook pilot achieves the rank of Full Branch Pilot before completing 14 1/2 years of rigorous, formal training -- following a college degree, (including some from the merchant marine academies). This means that the typical Sandy Hook pilot does not complete maritime training until age 37.

But it doesn't end there. Once a Sandy Hook pilot attains the highest branch license, there's further training at the expense of the Pilots Association. It's off to Grenoble, France to a school for pilots and captains of large vessels via scaled models in a controlled environment. And other schools, such as the MITAGS (Maritime Institute of Technology and Graduate Studies) in Maryland and the Seaman's Church Institute in New York, provide updated training on the bridge of commercial vessels. All such schools offer state-of-the-art simulation courses.

(more)

### Sandy Hook Pilots Training - 2

The process begins aboard a 45 foot motorboat, learning to follow the pilot boat at sea in all weather conditions. Within four years, the candidate is expected to earn several licenses and certificates, including a Coast Guard motorboat-operator's license and a Federal license (master and pilot first class). In the following two years, he must earn at least 10 endorsements to the Federal licenses which enable him to extend his geographical reach for pilotage.

At this point, the candidate still must pass an extensive State examination to become a State pilot.

The Sandy Hook Pilots Association maintains a training program at its Staten Island headquarters, conducted by a maritime veteran, a retired sea captain. The training system was accredited in 1974 as a "Program on Non-Collegiate Sponsored Instruction" by the New York Board of Regents.

The apprenticeship phase lasts seven and one-half years, under constant supervision of senior, fully-qualified pilots. Learning is based on practical experience -- actual on-the-bridge training, seeing and experiencing port conditions and ship characteristics, supplemented by classroom work on the latest developments and techniques.

Knowledge gradually passes from a senior Pilot to the apprentice -- first with smaller ships, finally with the largest.

(more)

### Sandy Hook Pilots Training - 3

Trainees must also meet all requirements of the State Board of Commissioners, before attaining the rank of State Pilot. During that time, trainees ride more than 500 vessels through waters they hope to pilot.

Before reaching Full Branch Pilot status, Sandy Hook pilots must ride more than 1,200 vessels through waters under the Association's jurisdiction. They work their way up through classifications of increasing ship draft and tonnage. They must hold New York or New Jersey State certification as well as Federal licensing. They must be a fully-qualified Master Pilot.

While seven-year phases may seem long to the uninformed, there's a lot to learn and a heavy responsibility to bear. Each applicant who completes the apprenticeship and deputy Pilot training comes through with a gut feel for the tricky geography, wind and weather of the entire harbor area, including Long Island Sound. They are able to draw complex, color-coded maritime charts from memory -- hundreds of depth lines, buoys, aids to navigation and obstructions for waters stretching from the northern Hudson River through New York harbor to Block Island -- in the most intricate detail.

Factual knowledge is multiplied by a sense of the harbor that comes from first-hand experience with the port's subtleties -- which can be critical when handling high-value, sometimes hazardous cargoes, near a densely populated area.

(more)

Sandy Hook Pilots Training - 4

The training actually never stops, because even fully-accredited Full Branch Pilots work under the day-to-day pressure of a loss of license and livelihood for a single infraction or display of unprofessionalism. It's a welcome challenge for the Sandy Hook Pilots.

#####

LAW OFFICES  
STEVE K. YOSHIDA  
A PROFESSIONAL CORPORATION

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FAX  
(907) 235-8126

3665 BEN WALTERS LANE, SUITE A  
HOMER, ALASKA 99603

TELEPHONE  
(907) 235-5255

November 30, 1990

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

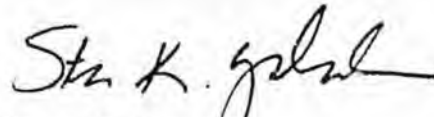
Dear Marilou & Brad:

This is to express Southwest Alaska Pilots Association's complete concurrence with the opinions expressed in the letter by George Quick, dated November 15, 1990 in regards to the limitation of pilot licenses and exclusive associations for each region.

I have accordingly made changes to our last recommendations for the new legislation consistent with Mr. Quick's opinions. see Sec. 08.62.005(d) and AS 08.662.175(b), which I enclose for consideration by the Marine Pilot's Board.

Very truly yours.

STEVE K. YOSHIDA, P.C.



Steve K. Yoshida

/kpo  
Enclosure  
cc: Captain Murphy

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR <sup>R</sup>

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2500

December 3, 1990

Mr. Randy S. Welker  
Legislative Auditor  
Audit Division  
Legislative Budget &  
Audit Committee  
P.O. Box W  
Juneau, AK 99811-3300

Dear Mr. Welker:

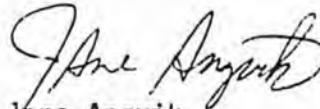
This letter is in response to the preliminary "sunset" audit findings of the Audit Division (hereinafter "audit") regarding the Board of Marine Pilots (hereinafter "board"). Your review of the board's performance has resulted in the recommendation to the Department of Commerce and Economic Development (hereinafter "department") that the extensive report on the marine pilotage industry prepared by the Governor's Division of Policy provides a "framework for legislative review of the Marine Pilotage Act." We concur in this recommendation.

As you know, in preparing a draft response to a letter to Governor Cowper from former board chair Captain Ed Murphy, the Division of Occupational Licensing last spring urged Governor Cowper to ask his Office of Management and Budget, Division of Policy (hereinafter "policy"), to undertake a comprehensive review of the state of marine pilotage in Alaska. The Governor agreed to this proposal and policy staff Brad Pierce and Mary Lou Madden have been significantly involved in a thorough review of marine pilotage issues since May of this year. The Department of Commerce and Economic Development is very much aware of growing concern for both the piloting profession and the ability of the board to deal effectively with increasingly complex piloting issues.

Policy staff have prepared a detailed, thorough report that addresses a variety of relevant marine pilotage issues. Accompanying the report is draft legislation to correct the problems identified by the administration and others intimately involved in the pilotage industry. The board recently held a meeting to review the recommendations contained in the report, and in mid-December is holding a special one-day meeting to thoroughly review the proposed legislation.

The department believes that the findings and recommendations of the Governor's Division of Policy would be an effective guide to the division, the board, the Legislature, and the pilotage industry during the seventeenth Legislature's hearings on continuation of the Board of Marine Pilots, as those entities focus on the many complex matters facing the marine piloting profession in Alaska.

Sincerely,



Jane Angvik  
Commissioner

JA/RPB/bkt3209c  
120390b

cc: Randall P. Burns, Director  
Division of Occupational Licensing

All Members  
Board of Marine Pilots



Holland America Line  
Westours Inc.

December 5, 1990

Board of Marine Pilots  
P. O. Box D, Mail Stop 0800  
Juneau, AK 99811

Gentlemen:

The draft legislation amending the Marine Pilot's Act has more to do with the economics of pilotage than with the safety of coastal shipping. While we support efforts to upgrade Alaska pilotage standards and to strengthen the Board's role in achieving that worthy goal, we do not believe that creating a monopoly situation for existing pilot organizations and their members is either necessary or justified. There is simply no evidence that by legalizing restraint of trade, either good public policy or water borne safety will be served.

What is so unique about piloting that requires its practice to be treated exceptionally? The state licenses numerous other practitioners concerned with the public well-being and safety -- doctors, engineers, architects, to name but a few -- without limiting entry or prescribing fees. Fixing pilotage tariffs not only violates a fundamental principle of the free market economy, it runs counter to public policy in virtually every other commercial endeavor in the state. No other business or profession whose practice affects public health or safety is afforded anti-competitive protection: Not hospitals, not air carriers, not doctors, not lawyers, not even communication companies.

Moreover, there are in the proposed legislation no standards for rate making as in the case of private utilities and other monopolies that have a valid reason for existence.

Board of Marine Pilots  
Page 2

Limiting pilot liability to a piddling \$5,000 is, in our view, blatantly anti-safety. Relieving a pilot of the economic consequences for his errors and omissions can only breed carelessness and indifference. The state provides no such safe harbor for doctors or lawyers or engineers, or even the ordinary citizen who drives a car. They are all financially responsible for their actions. Why are pilots -- and their associations -- to be singled out to be free of this otherwise universal responsibility?

The provision in the draft that would authorize the expulsion of a pilot from an association for failing to charge full tariff for his services is clearly intended to discourage the direct employment of pilots by shipping companies. This is an obvious violation of an individual's right to work for the employer of his choice. If a pilot is qualified and licensed by the board, who his employer is and the terms of that employment are of no concern to the state and in no way affect the safety of the vessels he pilots. After all, the captain of the ship is an employee of the shipping company and by law and tradition he has the final authority to determine where, when and how his ship will operate. This draft specifically permits state-operated vessels to engage pilots directly. Private shippers should have the same right.

Finally, if authority for pilot training is to be vested in the pilot associations, specific provision must be made in the law to give non-members unimpeded and equal access to training and upgrading opportunities.

To repeat, the proposed legislation is seriously flawed in that it would create a monopoly, fix prices, and limit liability, none of which contribute an iota to the safety of Alaska coastal marine traffic or to the public weal, but do contribute to the enrichment of a favored few at the expense of the many.

Cordially,



Anthony E. Thein  
Governmental Liaison

# 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

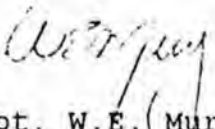
Dear Board Members:

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

11/30/90

(As Recommended by Southwest Alaska Pilots Association)

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 REVENUE  
& ECONOMIC DEVELOPMENT

DEC 10 1990

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;

DEC 10 1993

- (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.

DEC 10 1990

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. 08.62.120. 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 board:

DEC 1 1990

(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) takes 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

DEPARTMENT  
& ECONOMY  
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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

STATE OF ALASKA  
DEPARTMENT OF  
COMMERCE  
DEC 10 1990

(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. 10-100

LAW OFFICES  
STEVE K. YOSHIDA  
A PROFESSIONAL CORPORATION

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FAX  
(907) 235-8126

3665 BEN WALTERS LANE, SUITE A  
HOMER, ALASKA 99603-7738

TELEPHONE  
(907) 235-5255

December 6, 1990

Brad Pierce/Mary Lou Madden  
Senior Analysts  
Office of the Governor  
Division of Policy  
P.O. Box AD  
Juneau, Alaska 99811-0164

Re: Marine Pilot Legislation  
Our File No. 90-0219

Dear Ms. Madden and Mr. Pierce:

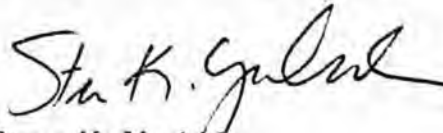
Enclosed is correspondence between George A. Quick, Vice President of Masters Mates and Pilots Organization documenting the problems in Puerto Rico and Hawaii with excessive competition among pilots.

This material is submitted in support of Southwest Alaska Pilot Association's recommendation that there be a limitation on pilot licenses and representation of each region by one pilot association.

Please submit these additional materials for review by the Pilot Board. Thank you.

Very truly yours,

STEVE K. YOSHIDA, P.C.

  
Steve K. Yoshida

SKY/mw

cc: Captain W. E. Murphy, Southwest Alaska Pilots Association  
George A. Quick, Masters Mates & Pilots Organization

INTERNATIONAL

ORGANIZATION

OF

# MASTERS MATES & PILOTS

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

J. ALFRED ELLIS, JR.  
East Coast Regional Representative  
DONALD L. HOFFMANN  
Gulf Coast Regional Representative  
BEX F. GILLY  
West Coast Regional Representative  
EMIL F. BOWENMAN  
Panama Canal Regional Representative

June 29, 1990

TO: ALL REGIONAL REPRESENTATIVES AND BRANCH AGENTS

RE: Report on Hawaii Pilot Situation

Some time ago, two former members of the Hawaii Pilots Association began offering independent pilotage services in Hawaii.

Our letter of October 3, 1989 (Attachment "A") stated the position of this Organization at that time. I believe the State of Hawaii accepts the view that competition in pilotage is not in the public interest.


The State tried to bring the runaway pilots back into the Association through the process of mediation. That attempt failed.

In a well intentioned, but misguided, effort to eliminate competition, the State is proposing regulations to create a "Statewide Pilotage System" with "Central Scheduling" under a State sponsored system of dispatching with State mandated work rules (Attachment "B").

Our position on those proposed regulations is contained in the letter of June 28, 1990 (Attachment "C").

Hopefully, any action on the proposed regulations will be held in abeyance until the next session of the Hawaii Legislature. At that time, remedial legislation could be introduced to force a unified pilotage system under one Association.

Fraternally,



George A. Quick  
Vice President - Pilotage

GAQ:kae

Enclosures

cc: Captain R.J. Lowen  
Captain F.E. Kyser  
Captain R.O. Elsensohn



RICHARD W. COCHINOS, INC.

7711 DELRIDGE CIRCLE  
ANCHORAGE, ALASKA 99507  
0071349-0858

MARINE PILOTAGE      MASTER MARINER      PILOTAGE CONSULTANT

DEC 10 1990  
DIVISION OF  
OCCUPATIONAL LICENSING

12-6-90

MARINE PILOT WORKING GROUP, DRAFT LEGISLATION

BOARD OF MARINE PILOTS

P.O. BOX D-LIC, JUNEAU, AK 99811-0800

GENTLEMEN:

I WISH TO ADDRESS MY COMMENTS TO SECTION 08.62.185, CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. THIS SECTION SHOULD BE CHANGED TO REQUIRE STATE PILOTS ONLY, AS FOLLOWS.

" SEC. 08.62.185. CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS.

ANY OIL TANKER, WHETHER ENROLLED OR REGISTERED OR 20,000 DEADWEIGHT TONS (DWT) OR GREATER SHALL WHEN NAVIGATING IN STATE WATERS BEYOND ALASKA PILOT STATIONS EMPLOY A PILOT LICENSED BY THE STATE UNDER THIS CHAPTER WHO SHALL CONTROL THE VESSEL DURING ALL DOCKING & UNDOCKING OPERATIONS. "

REASONS FOR THE CHANGE,

(a)(1) THE DEADWEIGHT TONNAGE (DWT) SHOULD BE CHANGED TO 20,000 INSTEAD OF 50,000 AS THIS IS A VESSEL OF SIGNIFICANT SIZE & SHOULD REQUIRE A STATE PILOT WHO IS AN EXPERIENCED SHIP-HANDLER FOR DOCKING & UNDOCKING. A 20,000 DWT TANKER CARRIES APPROXIMATELY 7 MILLION GALLONS OF PRODUCT.

(a)(2) THIS SECTION SHOULD BE ELIMINATED. JUST BECAUSE A SHIP'S OFFICER HAS A FEDERAL LICENSE DOES NOT MEAN THAT HE HAS EITHER THE PRACTICAL EXPERIENCE, LOCAL KNOWLEDGE OR RECENT TRIPS IN ALASKAN WATERS TO SAFELY PILOT A TANKER.

RICHARD W. COCHINOS, INC.

7711 DELRIDGE CIRCLE  
ANCHORAGE, ALASKA 99507  
(907) 340-0858

MARINE PILOTAGE    MASTER MARINER    PILOTAGE CONSULTANT

2.

U.S. DEPARTMENT OF COMMERCE  
& ECONOMIC AFFAIRS  
DEC 10 1990  
DIVISION OF OCCUPATIONAL LICENSING

A JUNIOR OFFICER (3<sup>RD</sup> OFFICER) COULD BE THE ONE WHO HOLDS THE PILOT LICENSE. ONLY A STATE PILOT MEETS THE NEEDS OF SAFETY AS DEFINED IN THE INTENT SECTION OF THIS ACT.

ADDITIONALLY, I WISH TO COMMENT ON SECTION 08.62.150 ENFORCEMENT AUTHORITY. SECTION (A)(8) SHOULD HAVE THE WORDS "AND EXPENSES" INSERTED AFTER SERVICES. THIS SECTION IS AMBIGUOUS. PILOTS COULD CHARGE THE CORRECT TARIFF FOR PILOTING BUT ABSORB A PORTION OR ALL OF THEIR EXPENSES IN ORDER TO "GET THE BUSINESS."

SINCERELY,

Richard W. Cochinos  
Pilot # 073.

P.S. ONE LAST COMMENT. GAS CARRIERS, BECAUSE OF THE EXTREME HAZARDOUS NATURE OF THEIR CARGOS, SHOULD BE INCLUDED WITH THE DEFINITION OF TANKERS IN SECTION 08.62.185.

RWC

SUITE 215  
1600 A STREET  
ANCHORAGE, ALASKA 99501



Board of Marine Pilots  
State of Alaska  
Dept. of Commerce and Economic Development  
Division of Occupational Licensing  
PO Box D  
Juneau, Alaska 99811-0800

December 7, 19.

Gentlemen:

This letter is in response for a request for comments concerning draft legislation for AS 08.62, the marine pilotage act. The proposed changes are great and represent a total reversal of direction that we have followed since 1959. Accordingly my comments cannot address each specific section, as such a substantive change deserves more consideration than this letter can or should address. I would like to make my comments in three general areas: Pilot training/safety, Organizational responsibility and structure, and economic issues.

**Pilot Training/safety:**

We agree with all of the proposed ideas for increased pilot training and safety; in fact, we recommend that the State go farther in some areas. Standards for progressive licensing should be supported, as should a program for continuing education. We encourage the Board to formally enlist the University of Alaska in this regard and make them part of the ongoing development of continuing education as well as having a formally recognized role in administering annual, biennial, and renewal requirements. We believe that a complete written and oral exam be required every five years to ensure that the acuity required of a licensed pilot is constant throughout a career, from first license to last. Recency requirements should be increased for all licenses and areas. The concept of a "check-ride" is supported. Entry level requirements should be raised and they should be tailored to specific regional demands. In all cases it should be recognized that no "cook book" will be allowed to exist in statute; education and training demand constant revision in order to maintain effectiveness. We support chemical testing pre-license, random, and post-accident. We support thorough physical examinations annually and believe that reference to height /weight standards or body-fat standards, similar to those of the military or other national transportation systems should be adopted.

As boarding vessels can be a physically demanding task fitness should be encouraged, and a modest test of physical strength and endurance should be performed in concordance with the annual exam. Based on all of the above standards, then, pilots should not be excluded on the basis of age. Costs of these programs should be supported from the tariff.

#### Organizational Responsibility and Structure:

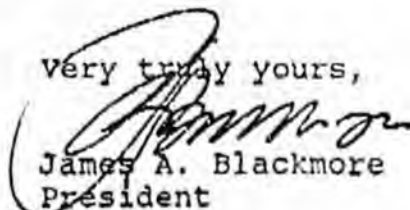
We disagree completely and wholeheartedly with all aspects of the proposed changes to existing legislation with regard to Board responsibility and structure, concepts of "approved monopolies", pilotage "regions", limit on number of licenses, and limit of pilot liability. The structure of the Pilot Board at present, including its present symmetry is excellent; frankly, it is difficult to imagine improvement. The primary purpose of members is to fairly represent a general position; not to become a voice for a special interest group. We understand that comments have been made that indicate that different groups want representation on the Board in order to "take positions". Board symmetry will not be improved by adding positions, if change is demanded --perhaps the Board should become smaller. A position for the Commissioner of Commerce should not be sacrificed. We do not agree that the Board should become more powerful and assume prerogatives of the Executive Branch; these should remain in government and the Board should remain an instrument of policy and regulation only. The concepts of pilotage regions, limits on the number of licenses, Board authority over pilot organizations serve no useful purpose under the broadest interpretation of the stated intent of the law. What they do, is only to offer economic protection to existing pilots. Access to the profession is further diminished as well. We believe that the State should have the highest possible standards for licensing, control and supervise the tariff in order that "competition" focuses only on performance and service. The draft legislation proposes that pilots become quasi-employees of the State, strictly supervised by a volunteer appointed Board. This concept is in opposition to the business culture of our nation and is so flawed that I cannot conceive of how it could actually function.

#### Economic issues:

The concept of a Board approved tariff is the heart and soul of a fairly regulated public utility like the pilots. As we have stated earlier, State control of the tariff and the power to review, is the protection against unfair competition and the ensuing dangers that are created. We feel that in order to maintain high standards of professionalism, the tariff and financial records of all licensed pilots be reviewed annually. Concepts of monopolies, closed shops, do not augment public safety, they conspire against it.

Thank you for this opportunity to express our views; we hope that that these comments will provide the Board with useful information for their deliberations.

Very truly yours,

  
James A. Blackmore  
President

cc: offices, file

INTERNATIONAL



ORGANIZATION

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

OF  
**MASTERS  
MATES &  
PILOTS**

J. ALFRED ELLIS JR.  
East Coast Regional Representative  
DONALD L. HOFFMAN  
Gulf Coast Regional Representative  
REX PULLITT  
West Coast Regional Representative  
EMIL F. BOWLEMAN  
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 an 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





Ms. Madden and Mr. Pierce  
December 7, 1990  
Page Two

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



Ms. Madden and Mr. Pierce  
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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 led 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.



Ms. Madden and Mr. Pierce  
December 7, 1990  
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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

DEC 10 1990

DIVISION OF OCCUPATIONAL LICENSING

Capt. Stuart E. Mork  
 Alaska Marine Pilots  
 P.O. Box 730  
 Dutch Harbor, AK 99592

Board Of Marine Pilots  
 Division of Occupational Licensing  
 P.O. Box D  
 Juneau, AK 99811

Sirs:

This letter is in response to your solicitation of public comment for your meeting scheduled December 17, 1990. Please note that these comments are strictly my own and do not necessarily represent the views of all members of Alaska Marine Pilots, though they are naturally written with the intent of maintaining AMP's position in western Alaska. I have organized them by Sec. number in the event that the board works within the framework of Mr. Amendola's proposed changes to the statutes.

Sec. 08.62.010 CREATION AND MEMBERSHIP OF BOARD

As far as AMP is concerned, there are several problems in this regulation. The clause in this section requiring pilot members of the board to have 5 years of active service as pilots is an unfair burden on the members of AMP. Many members have only 3 years service--an ample amount to understand the problems of piloting--but not enough to meet the requirement. To make access to the board membership more equitable for AMP I would recommend either changing the requirement to read "pilots of record on 1-1-88"; or to begin the 5 year rule effective 1-1-93; or to eliminate the service requirement until the next sunset review.

As currently written, this regulation does nothing to prohibit a member of SWAPA from representing the western Alaska region, thereby giving them unequal representation by having two pilot members on the board.

Finally, by not defining what constitutes a resident, many members of AMP are discriminated against by requiring them to be "residents" of Alaska in order to be eligible for board membership. A review of the Madden/Pierce study shows that only 4 of the 23 maritime states even require pilots to be residents of the state where they work.

Sec. 08.62.040 POWERS AND DUTIES (a) (5)

In the implementation of any body of regulation there are going to be interpretations of the regulations which result in Standard Operating Procedures. In effect, these SOP's become regulations. In the past these SOP's have not been explicitly acknowledged by the board with the result that

7

applicants have wasted much time and money by not being fully acquainted with the requirements to obtain a license. To solve this problem, the statutes should state that the board has the authority to use SOP's in fulfilling its duties and that the SOP's have the force of regulation. Paragraph (5) seems a good place to give notice of the existence of the board's SOP's.

Sec. 08.62.040 POWERS AND DUTIES (a) (6)

This paragraph gives the board the power to review and approve the bylaws and operating procedures of pilot associations. This is a very broad abrogation of the association's autonomy and is very unclearly defined in this paragraph. First of all, there are no criteria mentioned as to what the state will consider acceptable bylaws and operating procedures and how they are to be met. Secondly, the issue of appeal of the board's disapproval of a bylaw or operating procedure is not mentioned. A capricious ruling by the board could have a very detrimental effect on an association whose only recourse would be through the courts.

This paragraph has the profound effect of modifying the state of Alaska's entire approach to regulation. Prior to this proposal the state enacted statutes giving the board broad powers to regulate pilots through regulations the board adopted. Under this proposal the state is inserting another level of regulation, namely the association, by requiring bylaws approved by the board. However, the question of bylaws and operating procedures for pilots outside the three established associations is not addressed in this paragraph, thereby creating two classes of pilot--those governed by the approved bylaws of the association, and those not belonging to associations who are without the additional layer of regulation imposed on pilots in the associations.

To be consistent, the state should require all pilots to belong to one of the three established associations. The associations would then be responsible--through their approved bylaws--for admitting new members and determining classes of membership in the association (and their voting rights), based upon area coverage, experience, capital requirements, etc. By approving or disapproving the association bylaws the board would resolve any restraint of trade issues.

There is ample precedence for requiring membership in an association. What, after all is limited entry fishing, but a requirement for fishermen to belong to a group of fishermen in a geographical area--with ADF&G providing the bylaws? In Colorado, real estate salesmen are required by their board to work under the authority of a real estate broker (who fulfills the role of the association in our case). In Washington state, pilots who leave the association are required by their bylaws to surrender their state license to the state.

Additionally, only the associations can provide the training required in paragraph (B). An independent pilot does not have access to the variety of vessels under the variety of conditions necessary to fully train a new pilot. Once again, the burden of following the regulations falls on the pilots in the established associations.

In Washington, where pilots are required to belong to an association, the pilots have helped in the evolution of the trainee selection procedure. Once potential trainees have their federal pilotage, they take a state examination. From the pool of examinees that pass, the association takes trainees in order of their exam score for further training. Upon completion of this training period, the trainees are eligible for membership in the association. In this way, restraint of trade arguments are nullified and the number of pilots is maintained at an optimal level.

#### Sec. 08.62.080 LICENSE REQUIREMENTS (b) (c)

From the perspective of AMP these are two of the crucial paragraphs of the proposed changes. Paragraph (b) very clearly creates the concept of distinct regional pilotage areas. Paragraph (c) negates paragraph (b), allowing a pilot to work anywhere in the state provided he can show local knowledge and recency. As Capt. Murphy states in his letter to Gov. Cowder "Veteran pilots from both geographic areas agree that there is no way an individual pilot can maintain the high degree of currency and local knowledge of both these huge areas necessary to do a credible and safe job of piloting". While I believe Capt. Murphy was referring to southeastern and southwestern Alaska, the same situation exists in western Alaska.

This section directly relates to the issue of competition among pilots, and the state and the board should not be hesitant to fulfill their duty to protect lives and property as well as the marine environment by skirting the issue. There are three distinct geographical regions in the state, with distinct types of traffic in each one, and the state should acknowledge them in statute. There is some overlap, of course, between the areas: Yakutat between southeast and southwest; Alitak and Chignik between southwest and western Alaska, and these ports can be dealt with in the statutes, but other than these ports there is no need for granting exemptions to the one-geographic-area license concept.

At this point it must be emphasized that adoption of paragraph (b) without (c) does not regulate a certain class of pilot out of work. The pilots most effected by this change, the small number of pilots in SWAPA who have been willing to work in Dutch Harbor, will still have an ample amount of work in their primary region of southwest Alaska.

Sec. 08.62.100 ENTRY LEVEL REQUIREMENTS

As currently written, this proposed statute does not address the area of pilot competency. It takes the step of increasing the entry level requirements for pilot trainees, but does not distinguish between a trainee and a fully licensed pilot. Paragraph (a) should be rewritten to state "the board will issue a deputy pilot license to a person...". Then, a paragraph (e) should be added stating that a pilot license will be granted to a deputy pilot upon completion of a board-approved association training program.

Paragraph (b) needs work. It is very similar to the entry requirements for the observer program for the Port Angeles Pilots, but is not as comprehensive. For example, (1) does not specify the size vessel the unlimited master must work on for one year; in (2), the wording is garbled to read master of freight on a towing vessel (master of freight and towing no longer exists as a Coast Guard license).

Paragraph (5) is far too vague. Not only is the size of vessel not specified, but the clause "while holding a license as 1,600 ton master" should be included. An appropriate size vessel for purposes of this paragraph should be about 300 gross tons.

I would add a sixth paragraph to part (b) similar to the Port Angeles Pilots which states that pilots with two years experience would be able to enter the training program for an Alaska license.

As an administrative matter I would add a seventh paragraph stating that a combination of the requirements in 1 through 6 is acceptable in meeting the requirements.

Finally, I would add an eighth paragraph, for potential pilots not meeting the above requirements, that would create a substantially longer board-approved training period at the association level. This would be comparable to the current practice of requiring ten dockings for a pilot's license unless the applicant has less than one year sea time as master, in which case 20 dockings are required. After all, the purpose of these requirements is to provide better pilots, not to limit the number of pilots in Alaska.

Sec. 08.62.120 RENEWAL (a) (2)

This paragraph must be rewritten. A pilot currently working in Alaska who has not met these new standards will have no opportunity to obtain more sea time without quitting piloting and going back to sea. The inclusion of paragraph (6) giving credit for time served as a pilot as I mentioned above would solve this problem as would grandfathering pilots of record as of a certain date.

Sec. 08.62.150 (a) (9)

Currently, there is an inequity in the state tariffs. In the outport areas it can be less expensive for a ship to make a harbor shift for \$250 rather than pay a standby day of \$600. This must be addressed before changing this clause from its present wording.

Sec. 08.62.165 ALLOCATION OF LIABILITY (a)

This paragraph must be rewritten to specify very clearly that the \$5,000 limit is per incident, not per claim.

Sec. 08.62.175 PILOT ORGANIZATIONS

This paragraph should be rewritten to read "Marine pilots may form themselves into associations of independent contractors..." in order to give statutory authority to the fact that pilots are independent within their associations as to liability.

This might be an appropriate place to require that all pilots belong to one of the three board-approved pilot associations.

Sec. 19 TRANSITION

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

Thank you for the opportunity to comment on the proposed changes. If you have any questions concerning these comments, you may reach me at Alaska Marine Pilots, Dutch Harbor.

Sincerely,



Captain Stuart Mork



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pilots in the off-season, leading to possible migration to other regions.

We would request that no limitation by region be placed on the pilot license. This would allow individual pilots the opportunity to build their skills and coverage of various regions to allow maximum flexibility of movement which is necessary to provide services for vessels as the demand requires so that development of the State of Alaska's resources are not overly restricted by this level of regulation.

**REPRESENTATION ON THE BOARD OF MARINE PILOTS BY A PILOT IN GOOD STANDING FROM EACH REGION.**

With the current number of board members set at a total of seven, having three pilot members on the board could lead to imbalance on key decisions. We would therefore request that if this additional seat be made available, the Board be restructured to include a total of 9 members, of which also 3 members from shipping industry be included.

**RESTRICTION OF DIRECT CONTRACT BETWEEN INDIVIDUAL PILOT AND VESSEL OPERATOR.**

In certain situations where constant service on a particular route or area may best be served by specific contract with an individual pilot, the vessel operators need that option to consider when making arrangements. If this is not allowed, it may result in undue burden on the operator causing delays and other problems.

Thank you for your time and consideration of these matters and we will be looking forward to further discussions in the proposed revisions.

Sincerely,

North Star Maritime Agencies



Tom W. Rueter  
Vice President/  
General Manager

## 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

PROPOSED LEGISLATION  
AS APPROVED BY THE  
BOARD OF MARINE PILOTS  
DECEMBER 17, 1990

DRAFT

CHAPTER 52.  
MARINE PILOTS.

Article

1. Board of Marine Pilots (08.62.005--08.62.045)
2. Licensing (08.62.080--08.62.155)
3. General Provisions (08.62.160--08.62.210)

ARTICLE 1.  
BOARD OF MARINE PILOTS.

Section

05. Intent
10. Creation and membership of the board
20. Appointment and term of office
30. Meetings
40. Powers and duties
45. Marine pilot coordinator

ARTICLE 2.  
LICENSING.

Section

80. License requirements
90. Application
100. Qualifications
120. Renewal
130. Lapsed license
140. Fees
150. Enforcement authority
155. Disciplinary sanctions

ARTICLE 3.  
GENERAL PROVISIONS.

Section

160. Mandatory employment of licensed pilots
165. Allocation of liability
170. Pilot's lien
175. Pilot organizations
180. Exemptions
185. Certain licensed pilots required for oil tankers
187. Registration of agents required
190. Penalty
200. Definitions
210. Short title

DRAFT

"An Act relating to Marine Pilots . . ."

\* Section 1. AS 08.62 is amended by adding a new section to read:

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 the 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.

\* Sec. 2. AS 08.62.010 is repealed and reenacted to read:

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 5 years was actively engaged in, piloting vessels subject to this chapter, each being from a different pilotage region, and two public members from different