

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7722 SENATE TRANSPORTATION

276

BILL NO: SB 165

DATE: April 1, 1991

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with reasonable priced meals and lodging. The vessel must be family oriented, with special accommodations for children and for the physically challenged. The Alaska Marine Highway System must further provide passengers the benefit of riding a vessel with excellent safety equipment for fire fighting and damage control, including a state of the art sprinkler system throughout the vessel, and an enclosed method of safely evacuating the vessel in case of emergency.

Should a new vessel be constructed, regulatory concerns dictate that it must be American flagged, inspected by the U.S. Coast Guard, and operated by American crews. A vessel must be designed for a 50 or 60 year life, through the use of planned refurbishments. It is not contemplated that all or even 50% of the costs of a new vessel would be allocated to the fund. The State would defray most costs through other means.

#### **Southwest System Specific Requirements**

The S.W. System must be serviced by a vessel that is ocean rated and must be able to transit the Gulf of Alaska year round. This vessel must have a vehicle transfer system that will enable it to service docks with no transfer ramps, and have a stern car door. The vessel length is constrained to a length no greater than 400 ft, due to the confined harbors it must serve; preferably the length should be no greater than 380 ft.

#### **Southeast System Specific Requirements**

The S.E. Mainline System is optimally served by a vessel with a forward car door, at main deck height. All other S.E. needs are met by the general and S.W. requirements.

#### **Oil Spill Response Requirements**

Members of the legislature and the public have identified the importance of the state having an emergency response capability for containing, and cleaning up oil spills as a result of the Exxon Valdez experience. Therefore, a new mainline vessel or modified vessel from the existing fleet should be able to respond to the oil spills in the following capacities:

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- A. Communication/Command Center
- B. Work/Machine Shop for Equipment Repair
- C. Room and Board for Spill Response Team
- D. Helicopter Support
- E. Boom Deployment
- F. Loading/Storage Spill Response Material
- G. Storage of Liquids, Dispersant/Oil
- H. Training Center

### **New Vessel Description**

The list of mission requirements above, and the conceptual design work done for the Tustumena replacement project in 1982, provides enough data to assemble the major characteristics of a mainline vessel that would meet the above requirements.

A new vessel would be a steel displacement vessel, 380 feet in length by 65 feet in beam, designed and constructed in the United States. The vessel would carry approximately 450 people, 75 standard vehicles, and 100 berths. The vessel would be diesel-powered with twin controllable pitch propellers. Propulsion machinery would be augmented by the addition of bow thrusters and fin stabilizers. This vessel should have a large vehicle elevator/transier system located near the stern. This vessel would also have a stern door and stern ramp, and a crane above the stern door for handling the rescue boat and emergency stores or gear. Emergency evacuation would occur through covered lifeboats, boarded from inside the boat deck. The vessel would have a sprinkler system throughout.

A new mainline vessel would be well suited to oil spill response efforts, as it could respond anywhere in the Pacific Ocean in a matter of days. The bridge of the vessel would have the necessary electronic gear to act as a control/command center. The vessel would have the unique ability to travel to any dock and load containerized vans full of response gear, without assistance. The vessel's machine shop, adequate working space, and accommodations would be available for use by the clean-up crew. The aft upper-most deck could support a helicopter pad. The stern ramp would

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be easily converted to deploy oil containment booms underway, or act as a small vessel dock when anchored. The crane above the ramp could be used to move gear from the vessel to boats moored off the stern. The vessel would have large integral tanks able to hold spill response chemicals or recovered oil.

### **Vessel Design and Construction**

To obtain a new vessel or perform necessary refurbishments to one or more existing vessels, the Alaska Marine Highway System must go through three design phases: conceptual, preliminary, and construction. Design time would be on the order of 18-24 months for a new vessel and from 6-12 months for modifications to an existing ship. Construction time would be on the order of 30-36 months for new construction and 6-12 months for major modification to an existing ship.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
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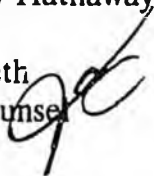
Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

April 4, 1991

**SUBJECT:** Is language in AS 46.08 relating to the establishment of "emergency response depots" sufficient to authorize the development of depots aboard vessels of the Marine Highway System?

**TO:** Senator Jay Kerttula  
ATTN: Kathy Hathaway

**FROM:** Jack Chenoweth  
Legislative Counsel 

AS 46.08.120 provides:

The division [of emergency services, Department of Military and Veterans' Affairs] shall maintain emergency response depots in areas of the state determined in the plans prepared under AS 46.04.200 - 46.04.210 to be potential sites of releases or threatened releases of oil or hazardous substances. The depots shall be equipped and staffed in a manner that ensures prompt response when containment and cleanup actions are necessary.

You have asked whether the requirement authorizes the development of vessels as emergency response depots or the placement of emergency response depots on state vessels.

AS 46.08.190(2) offers a definition of the term "depot," but the definition is not helpful for our purposes.

I understand from Terri Lauterbach, who handled ch. 190, SLA 1990, the source of the language of the first sentence of the quoted material, that the drafting history of the provision sheds no light on whether the legislature contemplated vessel-based depots.

Senator Jay Kerttula

April 4, 1991

Page 2

A common dictionary definition of the term "depot" seems to presume a land-based place for storage of material. Webster's New World Dictionary, Second College Edition, in use in our offices, defines "depot" as "a storehouse [or] warehouse; a storage place for supplies." Citing specific cases in which the term is used and defined, Black's Law Dictionary describes a "depot" as "[a] place for the deposit of goods; a warehouse or storehouse," again implying a location on land. (However, one standard reference, Webster's Third New International Dictionary, expands upon the definition to include reference to storage or maintenance of "military or naval supplies," opening the door to use of supply or storage ships for support of marine activities.)

However, the use of the term "depot" in context would seem to preclude the state from developing marine depots aboard one or more vessels of the Marine Highway System without specific statutory authority to do so. The substantive element of the provision quoted requires that the emergency response depots be "in areas of the state determined in the plans prepared . . . to be potential sites of releases or threatened releases of oil or hazardous substances." In implementing that requirement, the plan developer must take into consideration the factors bearing upon development and implementation of the state master plan in AS 46.04.200. AS 46.04.200(b)(5) directs that the state master plan must "designate the locations where oil and hazardous substance emergency response depots should be established . . . ." The reference in subsection (b)(5) to "the locations" seems to me to contemplate placing depots at fixed shore-based sites rather than aboard marine response vessels that are a part of the Marine Highway System.

JC:gc

91-186.glc



# Alaska State Legislature

## SENATE

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

*Law*

**TO:** Sen. Menard, Chairman  
Senate Transportation  
Committee

**FROM:** Senator Kerttula *JK*

**SUBJ:** Senate Bill 165-  
Oil Spill Res-  
ponse Ferries

**DATE:** March 13, 1991

I appreciate the scheduling of Senate Bill 165. Senate Bill 165 has a dual purpose -- to add to Alaska's oil spill response capability and to provide for funding of vessels to replace the Alaska Marine Highway System's aging fleet.

Senate Bill 165 provides for the construction of these vessels from the fund established by five-cents a barrel surcharge on North Slope crude which I sponsored, and which was approved by the legislature following the Exxon Valdez disaster. This bill will allow the state to use funds from this oil spill account to build a new breed of vessels which will be outfitted not only for passenger and cargo service, but for oil spill response as well. A new ocean-certified ferry could be built under provisions of this bill designed to deploy containment booms, house workers, serve as a communications and command center, store cleanup materials and perform other cleanup duties.

I believe that construction of ferries with oil spill response capabilities is an eminently suitable use of the oil spill response fund and urge favorable consideration of this bill.

JK:kh



Official Business

# Alaska State Legislature

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

## SPONSOR STATEMENT SENATE BILL 165

### SENATOR JAY KERTTULA

The impact of the 1989 Exxon Valdez Oil Spill was heightened to a phenomenal extent by lack of preparedness. More than \$2 billion was spent in a summer-long effort to make up for that lack of preparedness -- mobilizing the equipment, personnel, logistics, communications, management and decision-making ability to pursue the oil and mitigate its impact. During the summer of 1989, more than 20 communities in the path of the oil, 11,000 cleanup workers and hundreds of boats and aircraft were consumed by the superhuman efforts required to contain and cleanup the oil.

In the wake of the Exxon Valdez disaster, I introduced Senate Bill 470 creating a 5 cents a barrel surcharge to fund the Oil and Hazardous Substance Release Response Fund. This fund offers an ideal mechanism whereby Alaska can create new oil spill response capabilities which are vital if we are to be prepared for another major spill.

Despite our best efforts to legislate environmental protections, current oil spill containment and cleanup assets in Alaska are insufficient to respond to a major oil spill. The public and private sectors need to encourage the creation and maintenance of new oil spill facilities and services in the state.

The Alaska ferry vessel, Bartlett, was used to house oil spill workers in 1989. The Bartlett served a useful purpose, but its usefulness was limited by its lack of spill response equipment. Alaska's ferries are almost always within one day of any location in Southeast, Southcentral, or Southcentral Alaska -- areas which are at high risk for oil spills. It makes eminent good sense to use the monies within the Oil and Hazardous Substance Release Response Fund to construct and refurbish ferry vessels which are capable of responding to, containing, and cleaning up spills.

I urge your support for Senate Bill 165.

SB

1977

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO.** SB 197

Revision Date: 4/23/91 Department Affected: DOTPF

Title: An Act Relating to Outdoor Advertising BRU: \_\_\_\_\_

Sponsor: Senate Transportation Comm. Component: \_\_\_\_\_

Requestor: Senate Transportation Comm. COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Johanna Munson Phone: 465-2679

Division: Senate Transportation Committee Date: 4/23/91

Approved by Commissioner:  \_\_\_\_\_

Agency: \_\_\_\_\_ Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



# Alaska State Legislature

SENATOR DICK SHULTZ

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4940  
Home: P.O. Box 487  
Tok, Alaska 99780

Member  
Finance Committee  
Transportation Committee  
Special Committee on Oil & Gas

Senate  
District J

## MEMORANDUM

District 17

ALCAN BORDER  
ANDERSON  
BIG DELTA  
BOUNDARY  
CANTWELL  
CHICKEN  
CHISTOCHINA  
CLEAR  
COPPER CENTER  
DELTA JUNCTION  
DENALI PARK  
DOT LAKE  
DRY CREEK  
EAGLE  
EAGLE VILLAGE  
GAKONA  
GLENNALLEN  
GULKANA  
HEALY  
HEALY LAKE  
KENNY LAKE  
MENDELTA  
MENTASTA LAKE  
NABESNA  
NELCHINA  
NENANA  
NORTHWAY  
PAXSON  
SLANA  
TANACROSS  
TAZLINA  
TETLIN  
TOK  
TOLSONA  
TONSINA

TO: ALL SENATORS  
FROM: SENATOR DICK SHULTZ *DS*  
DATE: MARCH 12, 1991  
RE: OUTDOOR ADVERTISING

\*\*\*\*\*

I have introduced legislation to correct a problem which has caused great conflicts along the road system in this state.

As most of you know Alaska is required to abide by very strict federal laws regarding the placing of signs along highways outside the organized areas.

Boroughs and cities are able to pass local ordinances at variance with the so called "Lady Bird" laws but we in the unorganized areas can not. Can you imagine being a business on a second class road and having to put your sign over two hundred feet from center line? Sound ridiculous? Federal law does not require it. State regulations do.

Obviously we can not change federal law, however in those few instances where our state laws are more restrictive than the federal statutes, we can in fact, gain a little breathing room.

District 18

BADGER ROAD  
EIELSON/MOOSE CREEK  
NEWBY  
NORTH POLE  
PLACK  
RICHARDSON  
SALCHA

The bill I have introduced will mandate that the state adopt federal standards where they are less stringent then our present regulations. It is very important for those of us in the unorganized areas and I ask for your support.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

March 4, 1991

**SUBJECT:** Sectional Summary of Work Order No. 7LS0728; An Act relating to outdoor advertising

**TO:** Senator Dick Shultz

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is a sectional summary of Work Order 7LS0728.

A sectional summary of a bill is not an authoritative interpretation of a bill. The bill itself is the best statement of its contents.

Section 1 of the bill adds a new section to AS 19.25 relating to outdoor advertising. Outdoor advertising is permitted outside of the right-of-way of highways in the state, except as otherwise required for participation in federal aid highway programs. The Department of Transportation and Public Facilities is to seek all exemptions for outdoor advertising available under federal aid highway programs. The department shall adopt regulations to implement the outdoor advertising laws of AS 19.25.091 - 19.25.180.

Sections 2 - 4 of the bill contain technical amendments to internal cross references to statutory sections relating to the regulation of outdoor advertising. The definition of "department" was deleted from AS 19.25.160 because the definition is unnecessary as the term is already defined in AS 19.45.001.

Section 5 of the bill repeals statutory sections relating to the current policy for regulating outdoor advertising and prohibitions and other restrictions on outdoor advertising adjacent to the right-of-way of highways in the state.

GU:mi  
91-043.mai



## SOUR DOUGH ROADHOUSE

1/2 Mile 147.5 Richardson Hwy.

P.O. Box 4

Gakona, Alaska 99586

2-19-91

Dear Mr. Schultz:

As per our conversation this AM., I am enclosing the letter sent to us by the D.O.T. Needless to say, we were quite disappointed with their decision.

It is true that we have historical signs on the highway, but it is hard to see the lodge in the summer because of foliage - and we miss lots of traffic because of the fact that they don't realize we are an open business.

I'm also wondering if the Design & Construction Section took into account that the highway is quite elevated from the lodge & makes it quite hard to see from either direction.

Why is the state so reticent to put up signs for small businesses? They not only help us, but also the traveling public.

The D.O.T. suggests we can put up our own sign 150' from the highway centerline. Due to the fact we are in a bowl & there is a hillside to contend with, we would require the services of the Goodyear blimp & a very large bank. (The blimp probably the easier of the two)

Again, we wish to thank you, no matter what the outcome. And to think a senator returns calls to his constituents. Well, you've our continuing vote.

Sincerely

Jim & Mardele Ruedel

# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

MAINTENANCE & OPERATIONS

SOUTH CENTRAL DISTRICT

WALTER J. HICKEL, GOVERNOR

P.O. BOX 507  
VALDEZ, ALASKA 99686  
PHONE 835-4322

January 11, 1990

Jim Rickle  
Sourdough Lodge  
Mile 147.5  
Gakona, Alaska 99586

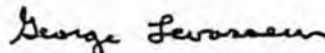
Dear Mr. Rickle:

I have looked into your request for Food, Phone, Lodging signs at Sourdough Lodge. When the road was reconstructed through the Sourdough area, the decision was made by our Design and Construction Section that these signs were not required. Signs identifying Sourdough Roadhouse with its historical significance were installed well in advance on each side of the lodge.

If you desire, you could install a sign on your own premises, 150' from the centerline of the highway. This would give your business additional attention while still being in compliance with State and Federal laws.

The Department's position still remains that we are not obligated to install Food, Phone, Lodging signs for your business establishment.

Sincerely,



George Levasseur  
District Manager

mmw

cc: George Herrman, Area Manager, Tazlina  
John Horn, Regional Director, Fairbanks

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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Mail Stop 3101

### MEMORANDUM

February 21, 1991

**SUBJECT:** Regulation of outdoor advertising (W.O. No. 7-LS0728)

**TO:** Senator Dick Shultz

**FROM:** George Utermohle *GU*  
Legislative Counsel

This memorandum is in response to the query of Dave Stancliff of your staff as to whether state statutes regulating outdoor advertising along state highways are more restrictive than required by the federal government for participation in the federal aid highway program.

A state may establish restrictions on outdoor advertising that are more restrictive than those required under the federal law. 23 U.S.C. 131(k). The state statutes regulating outdoor advertising on state highways are more restrictive than required for participation in the federal aid highway program in two significant areas.

First, AS 19.25.090 prohibits all outdoor advertising on federal aid interstate, primary, and secondary highways and other state roads, except as permitted under AS 19.25.-105. The federal statute only requires that outdoor advertising be controlled in areas adjacent to the federal aid interstate and primary highways. 23 U.S.C. 131. Under AS 19.25.105(a) the following kinds of outdoor advertising are permitted, but only adjacent to federal aid interstate, primary, and secondary highways in the state:

(1) directional and other official signs and notices which include, but are not limited to, signs and notices pertaining to natural wonders, scenic, and historic attractions, which are required or authorized by law, and which shall conform to federal standards for interstate and primary systems;

(2) signs, displays, and devices advertising the sale or lease of property upon which they are located or advertising activities conducted on the property;

(3) signs determined by the state, subject to concurrence of the United States Department of Transportation, to be landmark signs, including signs on farm structures, or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the provisions of AS 19.25;

(4) directional signs and notices pertaining to schools;

(5) advertising on bus benches or bus shelters if the state determines that the advertising conforms to local, state, and federal standards for interstate and primary highway systems.

These kinds of outdoor advertising are substantially similar to those permitted by the federal statute: directional and official signs; signs advertising the sale or rent of the property on which the sign is located, signs advertising activities conducted on the land on which the sign is located; and certain signs in existence in 1965 that are determined to be landmark signs. 23 U.S.C. 131(c)(1)-(4). The federal statute does permit one additional kind of outdoor advertising that is not permitted under the state statute: signs advertising the distribution of free coffee by nonprofit organizations to travellers on the interstate and primary highways. 23 U.S.C. 131(c)(5).

Second, the federal statute does allow outdoor advertising that is otherwise consistent with the purposes of the federal statute to be erected and maintained within 660 feet of the right-of-way of federal aid interstate and primary highways in areas that are zoned as industrial or commercial or that are unzoned industrial or commercial areas approved by the Secretary of Transportation. 23 U.S.C. 131(d). The state law does not contain a similar exemption for outdoor advertising in commercial and industrial areas.

The federal law also permits certain signs that were lawfully erected prior to May 6, 1976 to be maintained in certain specific areas even though they are not in compliance with federal standards, if (1) the signs provide directional information about goods and services in the interest of the travelling public, (2) removal of the sign would cause a substantial economic hardship in the area, and (3) the Secretary of Transportation approves the continued maintenance of the signs. 23 U.S.C. 131(o). It is probably too late to enact an exception to the state statute that takes advantage of this provision of the federal law, because the eligible signs should no longer exist. The applicability of this provision to Alaska has been mooted during the last 15 years in which the state has prohibited the existence of any signs that could have otherwise qualified; however it is another example of how the state statute is more restrictive than the federal law.

The provisions mentioned above make the state law on outdoor advertising more restrictive than necessary to comply with federal law. However, relaxing the state law so that it is not more restrictive than the federal law may not completely solve the problems associated with outdoor advertising in Alaska. The federal law on outdoor advertising addresses outdoor advertising only in the area adjacent to the highway right-of-way and not within the highway right-of-way. The rights-of-way of highways in the state varies from just the width of the travelled surface to more than 100 feet. In many areas of the state it is not practical to place outdoor advertising adjacent to the right-of-way because brush in the right-of-way or topography of the area would obscure the sign. The only alternative is to place the outdoor advertising in the right-of-way, however outdoor advertising within the right-of-way of federal aid interstate,

Senator Dick Shultz  
February 21, 1991  
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primary, and secondary highways is virtually prohibited because it is considered an encroachment on the right-of-way. 23 C.F.R. 712.203(b). Encroachments on the right-of-way of federal aid highways are permitted only on a case-by-case basis. 23 C.F.R. 713.204.

Outdoor advertising in and adjacent to the right-of-way of nonfederal-aid roads in the state is not subject to the federal law on outdoor advertising so the state is free to adopt those standards for those roads that the state considers appropriate.

If I may be of further assistance, please advise.

GU:pl  
91-101.plm

S B

218

# Improving Alaska's Marine Pilotage System



Office of the Governor  
Division of Policy  
November 1990



# IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

(Final Report)

By  
Marilou Madden  
and  
Brad Pierce

November, 1990

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

# Improving Alaska's Marine Pilotage System

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## EXECUTIVE SUMMARY

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

### 1. FINDINGS

• *Pilotage serves an important public function.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. CONCLUSIONS

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

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

## 3. RECOMMENDATIONS

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

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

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

**administrative costs** in setting pilotage rates.

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

# IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM

## 1. INTRODUCTION

### A. STUDY BACKGROUND

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

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

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

### B. METHODOLOGY

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

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

Copies of the draft report and legislation were released to the Board of Marine Pilots, staff from relevant state agencies, pilot groups, and other interested parties in October for review. Comments received as a result of the review process are appended to this report<sup>3</sup>. The study authors presented the report and comments from reviewers to the Board of Marine Pilots at its November meeting in Anchorage.

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

### *C. STUDY OUTLINE*

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

## **2. HISTORICAL BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

This act effectively established a dual piloting system in the United States: the historical state system and a new federal system. Generally speaking, vessels engaged in foreign trade (vessels sailing under register<sup>9</sup> and foreign-flagged vessels) are under the authority of the states while American vessels engaged in domestic trade are under federal authority. One exception to this general division of responsibility is Great Lakes traffic, which is under the exclusive regulatory control of the federal government through the Coast Guard. The exemption from state law of Great Lakes vessels was made pursuant to an international treaty with Canada which provides for piloting by persons having either U.S. Coast Guard or Canadian licensure.

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

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

### 3. COMPARISON OF ALASKA STATUTES WITH THOSE OF OTHER STATES

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

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

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

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

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

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

#### A. SYSTEM OF REGULATION

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

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

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

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

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

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

### B. LICENSING

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

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

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

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

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

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

license"<sup>18</sup> if s/he meets the criteria outlined. In virtually all other states, the license is granted at the discretion of the Board or other licensing authority. Commonly-used language in other states allows the Board (or other licensing authority) "to choose and appoint" pilots or to "grant commissions"<sup>19</sup> to act as pilots. As will be discussed at greater length elsewhere, the Alaskan emphasis on right rather than franchise is, in the opinion of the study staff, a primary cause of current tensions in the state's regulatory scheme.

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

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

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

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

### C. PILOT DISCIPLINE

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

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

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

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

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

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

#### *D. PILOTAGE RATES*

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

#### *E. PILOT LIABILITY*

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

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

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

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

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

Alaska statute does not speak to pilot liability.

#### *F. PILOT ASSOCIATIONS*

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

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

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

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

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

Pilots licensed under this chapter, each of whom shall be deemed an individual contractor, may form a nonprofit association which shall not be deemed a partnership or corporation for liability purposes, in order to provide such arrangements and facilities as may be necessary and desirable for the efficient dispatching of vessels and rendering of pilotage services required under this chapter. The association shall have no control over the selection of persons to be licensed as pilots or their discharge. The association shall have no direction over the manner in which an individual pilot performs the pilot's duties.<sup>28</sup>

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

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

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

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

**TABLE 1: State Statutory Provisions Regulating Piloting**

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

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

#### **4. CURRENT STATUS OF MARINE PILOTAGE IN ALASKA**

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

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

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

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

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

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

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

#### *A. REGIONAL CHARACTERISTICS*

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

##### 1. Southeast Region—Southeastern Pilots Association (SEAPA)

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

The Southeastern Pilots Association has experienced the most internal problems of the three major groups of marine pilots operating in the state. In the past few years the association has been beset by numerous legal difficulties. A letter<sup>29</sup> from SEAPA attorney, C.L. Cloudy includes a list of the types of legal claims that have been made against the association:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *B. IDENTIFIED PROBLEM AREAS*

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

#### 1. Entry Level Requirements

Alaska statute states that:

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

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

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

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

Applicants for all classes of licenses must hold valid Coast Guard licenses both as a first-class pilot for vessels of any gross tons<sup>32</sup> upon the waters for which the applicant seeks state licensing and as a master of steam or motor vessels of 10,000 gross tons or greater. Progression from initial licensing through unlimited licensing requires actual experience in ship movements, usually dockings and undockings, of ships of increasing size. The original intent of the regulation appears to have been that this experience would be obtained in the area for which the applicant sought licensing. However, recent interpretations of the statute and regulations by the Attorney General's office has removed this geographical limitation. Therefore, applicants desiring to move from Step 1 to Step 2 limited or to unlimited licensing in one geographic area may obtain the necessary experience in ship movements anywhere in Alaskan waters.

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

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

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

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

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

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

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

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

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

## 2. Competition

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

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

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

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

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

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

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

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

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

### 3. State Board and State Agency Support

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

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

### 4. Pilot Liability

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

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

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

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

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

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

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

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

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

## 5. PILOT SURVEY

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

### A. QUANTIFIABLE RESULTS

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

**TABLE 2: SURVEY RESPONSES BY LICENSE TYPE**

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

TABLE 3: SURVEY RESULTS

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

\* NR=No Response

### *B. TRAINING*

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

### *C. Alaska's System of Examination and Licensing*

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

Other concerns and ideas cited by respondents include:

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

### *D. OPPORTUNITIES FOR UPGRADING LICENSES*

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

Several SEAPA and southeast contract pilots complained of favoritism within the association, i.e., personal connections allow some individuals to be "fast tracked" and given access to observer trips and dockings that others aren't. As one suggested, "favoritism can not be completely eliminated, but a formal training program run by the associations under state supervision could go a long way toward solving the problem."

#### *E. TRAINING AND EXAMINATION FOR LICENSE RENEWAL*

A majority of pilots feel that present requirements for license renewal are adequate. Some would require complete reexamination of pilots, while others think that only inactive pilots should be reexamined or required to take simulator/radar training. Several advocate rules of the road testing and a complete physical exam every two years prior to license renewal. A few respondents called for a mandatory retirement age (70 was the most commonly mentioned cut-off age).

There appears to be strong sentiment among association pilots that "the day-to-day practice of the profession is the most important test of competence." As one pilot put it "handling a variety of ships in a variety of conditions is the best possible training." Familiarization trips to areas a pilot doesn't transit regularly are advocated by several respondents. Others proposed a check ride system similar to airline pilots, where a "competent independent observer employed by the state" would grade each pilot's performance prior to license renewal or upgrade.

#### *F. SIMULATOR TRAINING*

Several pilots stated that simulator or radar training was most useful for those new to the profession and of marginal value to active pilots. As one pilot put it "the essence of pilotage is local knowledge and a practiced feel for how different forces affect the handling of a ship." A few referred to simulator training as "video games." However, most seemed to agree with the statement of one respondent that "as electronic controls and aids to navigation become more sophisticated, pilots need to keep up to date with the latest training methods."

A majority of pilots surveyed would like better access to simulator and radar training, preferably on the West Coast. Several said that the location of the training facility does not make much difference—a large number of Alaska's pilots have attended simulator training at Kings Point, Rhode Island, Southampton, England or Grenoble, France. Some pilots feel that if the state requires simulator training then the state should pay for it, while others think that pilots themselves should be responsible for their own training expenses. The most common response to the question of who should pay for increased training requirements was to place a "training surcharge on the tariff schedule."

### *G. ASSOCIATION VS. STATE-RUN TRAINING*

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

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

### *H. BOARD OF MARINE PILOTS*

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

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

### *I. ASSOCIATIONS*

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

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

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

#### *J. LICENSE LIMITATION*

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

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

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

#### *K. STATE EVALUATION STANDARDS*

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

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

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

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

#### *L. THIRD-PARTY REVIEW OF EVALUATION PRACTICES*

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

#### *M. LIABILITY PROTECTION*

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

#### *N. GENERAL CONCERNS*

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

##### **SWAPA and AMP Comments:**

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

##### **SEAPA Comments:**

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

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

#### Contract Pilots Comments:

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

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

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

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

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

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

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

## 6. SHIPS' AGENT SURVEY

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

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

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

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

TABLE 4: SHIPS' AGENT SURVEY RESULTS

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

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

#### A. PILOTS ACCESSIBILITY AND DISPATCH

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

### *B. PILOT QUALIFICATIONS*

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

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

### *C. EVALUATION*

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

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

#### *D. ACCIDENTS AND PILOT DISCIPLINE*

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

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

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

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

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

#### *F. PILOTAGE RATES*

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

#### *G. STATE BOARD*

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

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

#### *H. BONDING FOR PILOTAGE FEES/PILOT LIABILITY FOR DAMAGES*

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

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

#### *I. PILOT INDEPENDENCE FROM SHIP OWNER CONTROL*

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

#### *J. STATE DEREGULATION*

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

#### *K. ALASKA STATE PILOTAGE SYSTEM*

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

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

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

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

## 7. CONCLUSIONS AND RECOMMENDATIONS

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

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

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

### A. ACKNOWLEDGEMENT OF THE STATE'S INTEREST IN PILOTAGE

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

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

**RECOMMENDATION:**

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

***B. PILOT QUALIFICATIONS***

That state pilots hold extensive knowledge of local waters should be the foundation of, and rationale for, a compulsory pilotage system. However, the study finds that existing state entry level standards cannot assure that all licensed pilots have this special knowledge. Alaska's extensive coast line, difficult weather conditions and numerous ports of varying size and accessibility preclude one individual from gaining extensive local knowledge of the entire state. Thus, the Alaska situation appears to dictate regional licensing. Given both diverse physical characteristics and region-specific types of shipping traffic, qualifications and entry-level requirements may differ by region. However, documented, extensive sea-going experience should be a basic entry-level requirement of prospective pilots in all regions.

While some of the knowledge required for piloting can be acquired by traditional educational methods, local knowledge is best gained through hands-on experience under the direction of senior or master pilots. In this respect, the report questions whether or not the current sea-going experience and docking/undocking requirements are sufficient for licensure. All other maritime states require more extensive training and sea-going experience than does Alaska, although Alaska's size and diversity makes its compulsory pilotage waters among the most extensive and difficult in the country.

Based on information received, the report also questions whether or not pilots currently holding limited licenses have adequate opportunity to gain the experience necessary to upgrade their licenses.

The report finds that existing statutory and regulatory language is insufficient to allow the State Board to set up and enforce entry level qualification which can adequately ensure the required local knowledge on the part of state pilots.

**RECOMMENDATIONS:**

1. The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.
2. The Board should establish a third region in Western Alaska in addition to the two current regions (Southeast and Southwest).
3. The Board should strongly consider setting additional requirements by region to accommodate differing physical conditions and shipping patterns. The Board

should move towards exclusive licensing by region. A transition period should be established to allow existing pilots who are licensed for more than one region of the state to choose their licensing region. Pilots new to the system should be required to train in and be certified for only one region of the state. The Board should be given the authority to allow inter-regional endorsement for specific ports to allow for a smooth transition between current regulation and exclusive licensing by region. Strict recency requirements should be adopted for pilots who wish to maintain inter-regional endorsements and no new inter-regional endorsements should be issued.

4. The Board should be authorized to establish a formalized deputy pilot program, with substantial experience requirements (in addition to existing tonnage requirements) that must be completed before a pilot is allowed to take the exam for a higher license. Each pilot seeking a higher license should also be required to pass a check ride evaluation. The Board should require the pilot organization of each region to develop training procedures that enable all deputy pilots to have equal opportunity to perform ship movements, take observer trips, and perform the dockings/undockings necessary to upgrade their license.

### *C. PILOT EVALUATION AND RELICENSING*

Currently, the state has no system for evaluating pilots after they have been licensed. Once a person has obtained a license of any type (with the exception of a temporary license), s/he is free to operate under that license indefinitely upon payment of a biennial license renewal fee and submission of a physical exam results. In theory—and allegedly, in practice—pilots can hold endorsements for state waters and for ports which they have not visited for years. Pilots can continue to renew licenses with only minimal actual pilotage within a two-year period. Finally, although new technologies are being introduced in the industry, the state currently requires no continuing education for licensed pilots.

Because the state has an interest in assuring the continued competency of the pilots to which it has granted licenses, the report concludes that the current system of virtually life-long licensure without periodic evaluation is insufficient.

Despite national concern about substance abuse, particularly in occupations of high importance to public safety, Alaska currently conducts no oversight of the marine pilots in this respect. This lack is particularly troubling in view both of Alaska's known high incidence of substance abuse and of several recent legal actions alleging abuse among pilots.

Finally, some persons contacted in the course of the study expressed concern that Alaska had no age limit for license renewal. A mandatory retirement age has been suggested. The study concludes that physical condition rather than age should be the main judgement criteria. In this respect, the existing general, biennial physical

examination requirements are insufficient to ensure that pilots maintain the level of health and stamina required by the profession.

#### **RECOMMENDATIONS:**

1. The Board should establish a check-ride system for fully-licensed pilots, that would allow the skills of each pilot to be observed prior to license renewal. Check rides should be evaluated by current senior pilots (i.e., peer-review), designated from each region by the Board. The check-ride evaluator should be considered an employee of the state at the time s/he performs the evaluations and should be insulated from liability exposure and peer pressure in the performance of the evaluation duty.
2. Recency criteria should be adopted for pilots to maintain endorsements for specific waters and ports. Some form of "use it or lose it" provision, such as a minimum number of ship movements between license renewals, should apply to all pilots.
3. The Board should be authorized to conduct random substance abuse testing.
4. Every pilot should be required in statute to submit to a complete annual physical exam administered by a fully-licensed, practicing physician.
5. The Board should develop an approved list of continuing education options, such as simulator or Automatic Radar Plotting Aids (ARPA) training, and require that pilots complete a course between license renewals.

#### *D. PILOT DISCIPLINE*

In the past, the state relied upon the pilot associations to handle pilot discipline within their own ranks. However, recent court cases allege that associations are no longer willing or able to fulfill this function. Therefore, the state must increase its ability to monitor the profession.

The study finds that Alaska's statute concerning pilot discipline is among the most comprehensive and modern of the maritime states. However, the study also finds that the statutory sanctions are seldom invoked. Major hindrances to the efficient policing of pilotage by the state appear to be the difficulty in obtaining timely information about accidents and incidents and the lack of trained marine investigation personnel to follow up on those which are reported.

#### **RECOMMENDATIONS:**

1. The Division of Occupational Licensing should be authorized to hire a full-time marine pilot coordinator, to be funded with program receipts from increased pilot license fees and a portion of tariff receipts. Ideally, the coordinator would have no connection with any pilot organization in the state and would be approved by the Board of Marine Pilots. S/he should be qualified to review pilot organization training programs, participate in license examinations, and investigate accidents and incidents of pilot misconduct. The coordinator would report findings to the state Board for action. Allegations of pilot misconduct should be expeditiously handled

by the board under the powers granted in AS 08.62.150-155.

2. All complaints concerning pilotage service should be directed to the State Board through the Marine Coordinator—not to pilot organizations.
3. The state should pursue the possibility of establishing an accord with the U.S. Coast Guard to share information about accidents/incidents, conduct joint investigations, and coordinate mutual requirements (e.g., for physical examinations, substance-abuse testing, etc.). Study staff have made preliminary contact with the Coast Guard on this issue and believe that additional discussions would be fruitful.

#### *E. LIMITING THE NUMBER OF PILOTS*

Every other state places a limit on the number of pilots either by explicitly setting a limit in statute, delegating responsibility to set a number to a Board(s), or through an apprenticeship program where piloting associations must recommend an apprentice for licensing. Sentiment among pilots and pilot groups in Alaska is strongly in support of granting the Board of Marine Pilots similar authority to limit the number of licenses issued. However, as mentioned in the body of the report, Alaska's compulsory pilotage system differs in significant respects from that of other maritime states. Compulsory pilotage waters in the state cover substantially larger areas than those of other states, where pilotage is generally limited to specific ports. The size of Alaska's regions impose travel costs and potential time delays on industry associated with bringing qualified pilots from their home location to the ship to be serviced. As the shipping industry evolves in the state, the pilotage system must maintain the flexibility to form new associations and groups closer to the point of shipping activity. The desires of some pilots and pilot groups to limit the number of licenses must be weighed against the larger issue of efficient service to the industry and, ultimately, to the consumer of shipped goods. The study concludes that at the present time there is no objective information that too many pilots have been licensed by the State of Alaska. Study findings suggest that ease of entry rather than absolute number of licenses is the problem to be addressed.

If the recommendations in this report are accepted, the number of pilots in each region will be controlled indirectly through increased entry-level qualification requirements, extended deputy pilot training, increased license fees, an enforceable tariff schedule, and increased requirements for license renewal. In addition, the capacity of regional training programs to accept new entrants will be limited by virtue of the fact that the suggested training will require much greater participation and oversight by senior pilots. The effect of the new licensing requirements on reducing the number of active pilots in the state is as yet unknown.

#### **RECOMMENDATIONS**

1. In order to trace these effects, this report recommends that the Board compile the information on ship movements, currently filed with the Division of Occupational Licensing, into a form which is usable for management purposes. Over a period of

time, if the Board determines from these management reports that there is a shortage or an overage of pilots relative to the demands of shipping, it should take the steps necessary to relieve the situation. Such steps may include requesting legislative authority to limit the number of licenses issued.

#### *F. BOARD OF MAINE PILOTS*

The study concludes that during the past few years, the Board of Marine Pilots has been thwarted in attempts to adopt and enforce higher standards for pilots, largely because of inconsistent policy direction from various DCED commissioner's designees on the Board and conflicting legal advice from the Attorney General's Office. The report finds that current statutory language defines a state pilot license as an individual right and not as a franchise granted by the state to perform a public service. This language has led to a situation whereby state efforts appear to be directed at meeting individual pilot interests rather than asserting the state's interests in protecting life, property, and the environment.

The current make-up of the Board does not recognize changes that have taken place in the industry. Currently, the Board has heavy representation from two regions and none from the Aleutian region. The two public members on the Board are both from the same region. State representation on the Board (i.e., the DCED commissioner or designee position) appears to be of limited value in asserting state interests, primarily because of the high turn-over rate of designated members.

During the course of the study, it was found that the Board currently requires individual pilots to file frequent reports on ships' movements which they have handled. Study staff had intended to utilize this information to provide a more quantitative description of Alaska's shipping industry. However, the information received by the Board is not maintained in a useful format. The report concludes that existing reports are not being utilized by the State Board or the DCED. Yet, the state should have access to the management information necessary to efficiently regulate marine pilotage in the state.

#### **RECOMMENDATIONS:**

1. The Board must be given specific authority in statute to set pilot license fees and tariffs, impose experience and training requirements as it sees fit, set physical/health standards, and require drug and alcohol testing of pilots.
2. Since Board actions benefit the entire shipping industry, particularly with respect to pilot qualifications, accident investigation, and rate setting, the Board should have authority to consider state administrative costs in setting pilotage rates. A portion of the tariff would be returned to the state and could be used, on appropriation by the Legislature, to assist in funding program administrative costs.
3. Because of increased duties and responsibilities being recommended for the Board, meetings should be scheduled at least three times per year, with provision for emergency meetings at the request of the chair.

4. Board membership must be increased to encompass all three of the state's pilotage regions. In order to preserve balance of representation, it is recommended that an additional pilot, ships' agent and public member be appointed to the Board to represent the Aleutian region.
5. Given the emphasis in the proposed legislation on regional licensing and entry-level requirements, no action on setting regional requirements should be taken until Board membership has been altered to include all affected regions.
6. The DCED Commissioner or designee position should be reassigned to accommodate the membership changes set out in Recommendation Number 4. The fact that the Board operates under the aegis of the Department of Commerce and Economic Development appears to be sufficient to assure that state administration concerns are taken into consideration by the Board.
7. In its review of association by-laws, the Board should require that procedures by which the associations recommend representatives to the State Board allow equal participation from all association members.
8. The Board should organize the detailed information on ships' movements currently submitted by individual pilots into a form which can be used in making management decisions. Where additional information is determined to be necessary for the regulation of pilotage, the Board should have the ability to require this information from individual pilots and pilot associations.

#### *G. PILOT ORGANIZATIONS*

Despite current internal problems within some pilot associations, the report concludes that associations and other voluntary organizations of pilots will continue to provide the core of mandatory pilotage services in Alaska, as is standard practice in all other maritime states. If the above recommendations concerning increased entry level requirements are adopted, the associations will be called upon to play the major role in training, since their members constitute the largest pool of senior pilots with unlimited licenses. Under the recommendations for pilot evaluation, association members will also take the responsibility for peer review. In performing these functions for the state, associations must have liability protection.

The report also concludes that pilot associations and groups are the most efficient mechanisms for providing comprehensive, 24-hour per day, year-round pilot services. Although individual pilots can and should be allowed to continue to operate independently to provide specific services, without some form of pilot association, portions of the state and the industry are very likely to be under-served. If associations are to continue to perform the services of pilot dispatch, they must be cleared of antitrust charges.

However, the report also finds that in return for recognition and protection from antitrust allegations, the state should more closely monitor association activities.

Based on U.S. maritime history and the experience of other states, as well as the testimony of most Alaskan pilots, the report concludes that unregulated competition among pilots can have a corrosive effect both on the quality of services provided and on the independence of state pilots from shipowner control. While nothing in state regulations should grant monopoly rights to associations or preclude individual pilots or groups of pilots from providing more efficient service to the industry by cutting down travel time and costs or by moving dispatch services closer to the point of ship traffic, competition based only on pilotage rates should be discouraged. Where such competition has been allowed in other states,<sup>39</sup> the result has been a cut-throat battle for lucrative shipping jobs while more difficult routes, remote ports and unusual vessels have been unable to obtain timely services. Additionally, to corner the most desirable assignments, pilots and pilot groups have apparently given up a large measure of independence and operate essentially as employees of the shipowners.

#### RECOMMENDATIONS:

1. Pilot organizations should be recognized in state law and chartered to provide state-approved training for deputy pilots.
2. In return for limiting liability and providing protection from antitrust litigation, the state should require that pilot organizations file their bylaws and operating rules with the Department of Commerce and Economic Development. The Board should have the authority in statute to veto bylaws and/or suspend the charter of organizations for practices that it feels do not serve the public interest.
3. In order to assure that all pilots and pilot organizations honor the Board-established pilotage rates, pilot organizations and individual businesses should be required by law either to submit copies of their annual audits to the State Board or, in the case of individual contract pilots, to keep their books open for state audit.

*Note:* The charter of pilot organizations does not preclude individual pilots from offering their services independently, so long as they adhere to the tariff schedule.

#### H. INDIVIDUAL PILOT LIABILITY

The study concludes that the traditional liability protection afforded pilots has been eroded by an increasing number of "nuisance suits" brought against pilots. This exposure is expected to increase as a result of recent federal anti-oil-spill legislation. Although pilots should continue to be held liable for wanton and reckless behavior, some dollar limitation on liability would relieve pilots from being automatically included in any claim for damages arising from performance of their duties.

#### RECOMMENDATION:

1. Individual pilot liability should be limited in statute to a specific dollar amount. Most states which have enacted such protection set the amount at \$5,000.

### *I. PILOT LICENSE FEES AND TARIFFS FOR SHIP MOVEMENTS*

The existing fee schedule for pilot licenses appears to be extremely low and has not been amended for several years. The report finds that a biennial fee of \$180 has little relation to either the administrative costs associated with renewal or the value of the license to the holder. Most other maritime states charge significantly higher fees.

The tariff schedule has been in effect since the early 1980's and does not reflect changes in cost of living or in the industry. In addition, as mentioned above, the Board's authority to set and enforce rates has been called into question.

#### **RECOMMENDATIONS:**

1. Pilot license fees should be reviewed by the Board and increased substantially to reflect the increased costs of program administration. It is recommended that the Legislature consider treating license fees as program receipts and authorize that they be used to partially fund a marine pilot coordinator and evaluation requirements. Based on other states' rates, an annual license fee for pilots of \$1,500 appears to be reasonable.
2. The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.
3. The tariff schedule for ship movements should be reviewed by the Board and adjusted where necessary. The Board should consider special rates for unique circumstances, such as ferrying fisheries observers to vessels in Dutch Harbor.
4. The Board should be given the authority to include a training fee in the tariff schedule. The fee would be used by associations and individual pilots to provide partial support for training and continuing education. A portion of the fee should accrue to the state as program receipts which, if appropriated by the Legislature, would cover expenses for evaluation check rides.

## FOOTNOTES

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

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

<sup>3</sup> See Appendix A for a summary of public comment.

<sup>4</sup> Florida Statutes §310.001

<sup>5</sup> Captain Earnest A. Clothier and Captain Hilton Lowe, *State Pilotage in America: Historical Outline with European Background*, American Pilot's Association, 1979, p. 11.

<sup>6</sup> *Gibbons v. Ogden*, 9 Wheat 207

<sup>7</sup> 46 United States Code §8501

<sup>8</sup> 46 United States Code §364. The inspectors of steam vessels were employed by the Steamboat Inspection Service, created in 1852 as part of the Treasury Department. The service was transferred to the Coast Guard during WW II.

<sup>9</sup> Vessels sailing under register are American vessels engaged in foreign trade or in any trade other than that requiring a coastwise, Great Lakes or fisheries license.

<sup>10</sup> According to Paul Kirchner, counsel for APA, "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." Telefax communication from Paul Kirchner, "Comments of the American Pilots' Association on Review Draft of The Alaska Marine Pilotage Study", November 5, 1990.

<sup>11</sup> Alex L. Parks, *The Law of Tug, Tow and Pilotage*, Second Edition Cornell Maritime Press, 1982.

<sup>12</sup> 43 SLA 1970; "west coast" includes Alaska, Hawaii, and British Columbia, Canada

<sup>13</sup> 22 SLA 1973

<sup>14</sup> 78 SLA 1977

<sup>15</sup> AS 08.62.010

<sup>16</sup> Quick, George A., "The Role and Function of a Pilot", paper presented to the National Academy of Sciences, 1979, pp. 8-10.

<sup>17</sup> Code of Virginia §54-1-905

<sup>18</sup> AS 08.62.100

<sup>19</sup> See Massachusetts Statute Chapter 103 §3 and Maryland Statute §11-305 for examples of discretionary language.

<sup>20</sup> Washington Statutes §88.16.035)

<sup>21</sup> Florida House of Representatives Committee on Regulatory Reform, *The 1989 Report on the Issues Associated with Mandatory Pilotage*, November, 1989.

<sup>22</sup> *Report of the Pilotage Study Group* to the U. S. Coast Guard, September, 1989, p. 6.

<sup>23</sup> Washington Statute §88.16.100

<sup>24</sup> AS 08.62.155 (a)

<sup>25</sup> AS 08.62.040 (4)

<sup>26</sup> California Statute §1134

<sup>27</sup> Oregon Statute 776.520

<sup>28</sup> Hawaii Statutes §462A-15

<sup>29</sup> A copy of Mr. Cloudy's letter is included in Appendix D.

<sup>30</sup> "Marine Pilot Group, Member Tangle Over Accusations," Juneau Empire, May 24, 1989.

<sup>31</sup> AS 08.62.100 (emphasis added)

<sup>32</sup> A license for "any gross tons" is an unlimited license, enabling the holder to work on ships of any size.

<sup>33</sup> 12 AAC 56.050 (3)

<sup>34</sup> AS 08.62.120

<sup>35</sup> 12 AAC 56.080 (b)

<sup>36</sup> Judith L. Linfield, "A Survey of North American Pilot Training Programs," California Maritime Academy, 1990.

<sup>37</sup> Paul Kirchner, Letter to C. L. Cloudy, July 27, 1990. See Appendix E.

<sup>38</sup> Only Florida (Tampa Bay Port) and Connecticut have experienced such competition. Both states are currently attempting to remedy the situation by law or regulation.

Appendix A

Summary of Public Comments  
on Review Draft of Study

**APPENDIX A:  
Summary of Public Comment  
on Review Draft of Study**

Copies of the review draft of the Alaska Marine Pilot Study, together with proposed legislation, were widely distributed to concerned parties for review and comment. Written comments were received from pilots, ship agents and state agency staff, analyzed by study staff, and presented to the State Board of Marine Pilots at its November meeting. Where possible, comments have been incorporated into the final draft. Comments addressed to particular study recommendations are summarized below:

**STUDY RECOMMENDATIONS**

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

**Comments:**

**SEAPA**

- tie board duties and responsibilities back to legislative intent
- state that it is intent of legislature to limit number of pilot licenses

*•The State Board of Marine Pilots should be given clear and unambiguous authority in statute to promulgate and enforce more extensive entry-level requirements for state pilots.*

**Comments:**

**Coast Guard:**

- entry level qualifications too stringent
- would exclude marine ferry employees
- State should have same qualifications as Coast Guard
- use Coast Guard nomenclature, where appropriate, to avoid confusion

#### Alaska Maritime Agencies

- should keep provision for two years as Master in local region

#### SEAPA

- 1600 tons or more
- calculate time same as Coast Guard
- minimum service time
- refine wording re: experience appropriate to specific region to preclude charter fishing boat, pleasure boat, etc.
- set requirement at "six years licensed seagoing experience"
- set specific hour requirements under different types of Coast Guard licenses

#### AMP

- 1600 gross ton or more
- add two years service as active pilot in an association
- allow pilots who do not meet entry level requirements to enter training program, but to undergo additional training (similar to an apprenticeship program)

#### SWAPA

- allow for experience on any vessel of 1600 gross tons
- delete section concerning appropriate to region or require that person gain experience while holding master's license

#### Other pilot (unidentified region)

- 1600 gross tons

• *The Board should establish an additional pilotage region in the Aleutian Chain.*

• *The Board should move towards exclusive licensing by region.*

#### Comments:

## SWAPA

- define regions but keep Dutch Harbor and Captain's Bay in Southwest Region
- allow port endorsement outside region only for those pilots so licensed at effective date of legislation

## AMP

- don't allow port endorsements outside region
- allow transition period, based on recency experience

## SEAPA

- don't allow port endorsements outside region
- grandfather, but make new requirements mandatory at next renewal

## Alaska Maritime Agencies

- regions a good idea, but agents must maintain right to employ any qualified pilot in region regardless of group with which they are affiliated

## Other

- don't allow port endorsements in other regions
- grandfather existing licenses

• *The Board should establish increased standards for progressive licensing, including a formalized deputy pilot program. The Board should develop training criteria that provide all deputy pilots equal opportunity to perform the ship movements necessary to upgrade their licenses.*

## Comments:

### Other

- current docking/undocking requirements inadequate

## SWAPA

- detail steps of deputy pilot program
- require simulator training
- set limits for training period
- state that deputy must complete training to be eligible to take exam for limited license, not over 20,000 gross tons

#### SEAPA

- current docking requirements inadequate
- give associations sufficient leeway to allow them to train new pilots and to take in new members according to internal criteria so long as criteria reasonably adhere to guidelines set forth and are equitably administered by association
- give Board explicit authority to oversee training programs

#### Coast Guard

- require simulator training
- recurrent training for working pilots to deal with new technology (similar to airplane pilots)
- consider establishing a separate "docking pilot" license

*• The Board should establish a check-ride system for fully-licensed pilots, conducted by current senior pilots designated from each region by the Board.*

#### Comments:

#### Other

- check ride evaluation not appropriate for marine pilots

#### SEAPA

- check ride evaluation not appropriate for marine pilots

*• Recency criteria should be adopted for pilots to maintain endorsements for specific waters and ports.*

• *The Board should develop an approved list of continuing education options and require that pilots complete a course between license renewals.*

**Comments:** (includes comments on renewal as well as recency)

**SEAPA**

- require 60 days service in last biennium as federal or state pilot as condition for renewal
- grandfather existing pilots from meeting entry level requirements

**AMP**

- define familiarization trips

**Coast Guard**

- for each year that license has lapsed, require two round trips on vessels over 1600 GT to each major port and waterway in pilotage region, with at least one trip made at night

• *The Board should be authorized to conduct random substance abuse testing.*

• *Every pilot should be required to submit to a complete annual physical exam.*

**Comments:**

**Coast Guard**

- require that pre-employment physical exam include-chemical test for dangerous drugs
- follow Coast Guard requirements for physical exams prior to license renewal
- consider having state appointed physicians establish minimum physical standards relating to vision,

- hearing and general physical condition and possibly review and/or administer general physicals
- use Coast Guard terminology for "chemically impaired"

#### SEAPA

- define chemically impaired to cover both habitual substance abuse and intoxication/drug use while on duty

• *The Division of Occupational Licensing should be authorized to hire a **full-time marine pilot coordinator** to investigate marine accidents, review training programs and participate in license examinations.*

• *All complaints concerning pilotage service should be directed to the State Board through the Marine Coordinator—not to pilot organizations.*

• *The state should pursue the possibility of establishing an accord with the U.S. Coast Guard to share information about accidents/incidents and to conduct joint investigations.*

#### Comments:

##### Alaska Maritime Agencies

- good concept as long as individual performs investigative and clerical support functions for board
- must not assume operational or administrative control of policy

#### SEAPA

- assure that coordinator operates subject to guidance and oversight of Board
- Board must maintain primary authority
- will be difficult to find qualified person to take job
- coordinator should also be specifically empowered to direct and assist in accident investigations