

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7947 HOUSE LABOR & COMMERCE

1 pilot is not licensed. The emergency endorsement must state the ports or waterways  
2 covered by the endorsement and the period of time for which it is valid.

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

4 (a) The board shall impose a disciplinary sanction on a person licensed under  
5 this chapter when the board finds that the person

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

7 (2) is chemically impaired;

8 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;

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

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

11 it;

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

13 (7) has had the person's United States Coast Guard pilot license  
14 conditioned, suspended, or revoked; or

15 (8) charges, collects, or receives an amount for pilotage services that  
16 is different from the [IN EXCESS OF THE MAXIMUM] tariff established by the  
17 Alaska Public Utilities Commission under AS 08.62.045 [BOARD OR DIFFERENT  
18 FROM THE TARIFF ADOPTED BY THE PILOT ORGANIZATION OF WHICH  
19 THE PERSON IS A MEMBER].

20 \* Sec. 10. AS 08.62.175 is amended by adding a new subsection to read:

21 (e) A pilot organization recognized by the board may enter into an agreement  
22 with a shipping company or the agent of a shipping company to whom pilotage  
23 services are provided for a proposed tariff for a particular region under  
24 AS 08.62.045(g).

25 \* Sec. 11. AS 42.05.141 is amended by adding a new subsection to read:

26 (d) The commission shall perform the duties assigned to it under  
27 AS 08.62.045.

28 \* Sec. 12. AS 08.62.045(b), 08.62.045(c), and 08.62.175(c)(3) are repealed.

29 \* Sec. 13. Notwithstanding the amendments to AS 08.62.045 and 08.62.150(a) made by  
30 this Act, tariffs for marine pilotage services in a region may continue to be charged under  
31 AS 08.62.045 as it existed on the day before the effective date of this Act until the Alaska

- 1 Public Utilities Commission adopts regulations setting fixed tariffs for that region.



# Alaska State Legislature

REPRESENTATIVE BILL HUDSON

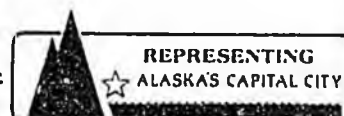
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3744

## COMMITTEES

CHAIR  
Labor & Commerce  
VICE CHAIR  
Resources  
MEMBER:  
Transportation  
Regulation Review  
Economic Development  
Task Force

This draft has been either mailed or faxed to the following:

Board of Marine Pilots	
Bob Watt	225-9807
Donna Bumgardner	835-4574
John Klepper	835-6944
Dale Collins	247-9696
Mark Springer	
Michael J. O'Hara	
APUC (Bob Lohr)	
Karl Luck, Occupational Licensing	
Captain Bill Svann (SEAPA)	247-9696
Captain Mike Spence (ACP)	789-3773
Captain Mike Stone (SWAPA)	835-2134
Captain Tom Dundas, Attorney, AMP	581-1372
Captain Bob Boyd (WAPA)	581-3902
Captain Ron Sumstad (KPA)	503-225-1257
Dennis Lodge,	
Cook Inlet RCAC/PWS/RCAC	224-3380
Joe Kyle, Pacific Associates	
Gary Amendola, Assistant AG	465-2417
Captain Kelly Mitchell, AMHS	465-2476
Bernie Smith, Tesoro	776-5546
Beverly Ward, ARCO	
Paul Quesnel, BP	



## TRANSACTION REPORT

MAR-12-93 FRI 18:06

## SERIAL B' CAST

#	DATE	S. T.	NAME	TIME	PGS	NOTE	DP
01	MAR-12	18:37	82258807	9' 38"	8	SERIAL OK	08
02		18:47	88354574	5' 29"	8	SERIAL OK	08
03		17:51	88358944	8' 17"	8	SERIAL OK	06
04		18:54	82478898	5' 11"	5	SERIAL COM. E- 4	06
05		17:00	82478898	7' 44"	8	SERIAL OK	08
06		18:03	87893773	0"	0	SERIAL BUSY	08
07		18:04	88352134	0"	0	SERIAL BUSY	08
08		17:10	95811372	5' 32"	8	SERIAL OK	08
09		17:18	95813902	5' 33"	8	SERIAL OK	06
10		18:05	8115032251257	0"	0	SERIAL BUSY	06
11		17:23	82243380	7' 18"	8	SERIAL OK	08
12		17:31	2417	6' 38"	8	SERIAL OK	08
13		17:38	2478	4' 47"	8	SERIAL OK	06
14		17:43	97785548	7' 5"	8	SERIAL OK	08
TOTAL				1H11M10S	85		

## TRANSACTION REPORT

P. 1

MAR-13-93 SAT 13:51

SERIAL B' CAST

#	DATE	S. T.	NAME	TIME	PGS	NOTE	DP
01	MAR-13	13:48	87893773	0*	0	SERIAL BUSY	06
02		13:49	98352134	0*	0	SERIAL BUSY	06
03		13:50	8115032251257	0*	0	SERIAL BUSY	06
TOTAL				0S	0		

## TRANSACTION REPORT

MAR-13-93 SAT 13:18

## SERIAL B' CAST

#	DATE	S. T.	NAME	TIME	PGS	NOTE	DP
01	MAR-13	13:15	97893773	0'	0	SERIAL BUSY	06
02		13:16	98352134	0'	0	SERIAL BUSY	06
03		13:17	8115032251257	0'	0	SERIAL BUSY	06
TOTAL				05	0		

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



MEMORANDUM

March <sup>8</sup>10, 1993

TO: Legal Services  
FROM: Representative Bill Hudson  
SUBJECT: Marine Pilot Legislation

Please prepare a work draft repealing AS 08.62.045 and amending it using the attached as a guide.

If you have any questions, please call Lynda Giguere of my staff at 465-6827.

Attachment

2538

AS 08.62.045 to be replaced in its entirety by the following

Sec. 08.62.045 PILOTAGE TARIFF: (a) A Fixed Pilot Tariff for each pilotage region is to be set by the Alaska Public Utility Commission (APUC). The APUC shall identify those expenses that are just and reasonable and in accordance with accepted maritime industry practices. The APUC will be guided by other utility rate setting practices as established in AS 42.05 and will establish, by regulation, the criteria to be considered by the commission at the time of hearing. As a minimum the maritime industry standards shall included:

1. reasonable compensation for actual time a pilot spends on board a vessel as a pilot, including overtime, and for time engaged in preparation to provide pilotage service, comparisons are to be limited to the United States maritime market;
2. differential compensation for seasonal and weather conditions, risks involved in providing pilotage services in Alaska compared to the other maritime states;
3. pilot expenses allowed for dispatch services, transportation expenses, and other associated costs directly related to the provision of pilotage services;
4. reasonable overhead expenses that are necessary to provide year round pilotage service for the region;
5. equipment associated with the tariff must be used and useful toward pilotage;
6. an economic impact statement
7. other expenses identified by the commission.

(b) The allowed pilot expenses may not include an allowance for costs of political contributions, public relations or lobbyist expenses.

(c) The APUC will provide for an annual adjustment of the tariff for inflation, based on the Consumer Price Index (CPI) for the region, to become effective January 1 of each year. If a local CPI is not available then an Alaskan CPI adjusted by an established differential study will be used.

(d) A tariff hearing will not be held more often than once every three years.

(e) Funding for the APUC hearing shall be by a tariff fee assessed on every movement of a vessel subject to AS 08.62, per region. The fee is to be set by the commission and held in escrow by the department. This tariff setting fee escrow account shall not exceed \$250,000 per region.

(f) Should a pilot organization and industry agree on a tariff for a particular region outside of the APUC hearing process, that agreement must still be presented to the commission with the required supporting documentation for public comment and ratification by the commission so that the consumer is not unduly penalized by the resulting tariff.

(g) A pilot organization recognized by the board or a member of a pilot organization may not charge a tariff for the provision of

for industry wide comment

pilotage services that is different from the fixed tariff set by the commission.

TO: Terry Cramer, Legal Services  
FAX 2029

FROM: Lynda Giguere  
465-6827

AMEND

Sec. 08.62.175. (4) be open to membership by all persons licensed under this chapter to pilot vessels in the pilotage region in which the organization is recognized, provided that the number of pilots per region is (based on the supply and demand for piloting services to assure the protection of lives and property and the marine environment of the state as established by regulation.)

Board  
limit # of  
pilots  
region

←  
policy

Pilot organizations  
Board may  
not  
however

if I wish come  
not served

To: Terry Cramer  
Legal Services

3/11/93

Sec 08.62.080. License required; restrictions and conditions.

(a) A person may not pilot a vessel subject to this chapter unless the person has a valid license issued [IS LICENSED] under this chapter.

(b) A pilot may not be licensed in more than one pilotage region except during transition periods as established by regulation. [AT ONE TIME, UNLESS THE BOARD DETERMINES THAT IT IS IN THE BEST INTEREST OF THE STATE TO LICENSE PILOTS FOR PARTS OF MORE THAN ONE PILOTAGE REGION.] The board may declare that a emergency exist which requires unique licensing to assure the protection of lives and property and the marine environment of the state. The board may license pilots for parts of another region for the duration of the declared emergency.

(c) A license issued under this chapter must identify the specific waterway and ports [IN EACH PILOTAGE REGION IN WHICH A LICENSEE IS] authorized by the board. [TO PILOT VESSELS.] The board shall authorize a licensee to pilot vessels in [A] specific waterways or ports in a pilotage region upon the licensee satisfying the training and other qualifying requirements required by the board to pilot vessels in that [WATERWAY OR PORT] region.

# WORK ORDER REQUEST FORM

W.O. [18] LS-0808

KEYWORDS: MARINE PILOTS

ASSIGNED: Lauterbach

REQUEST FOR: New Bill

TAKEN BY: Barnes

SUBJECT: Marine Pilot Tariff

REQUESTED FOR: REP HUDSON

BY: Rep. Hudson

PHONE: 465-6827

DELIVER TO: Rep. Hudson, Cap 108

INSTRUCTIONS: Draft bill amending AS 08.62.045, relating to marine pilots, per attached.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]

AUTHORIZED TO CONFER WITH \_\_\_\_\_

RETURN \_\_\_\_\_

\_\_\_\_\_ TO REQUESTOR

APPROVED:  DIRECTOR, LEGAL SERVICES

REVIEWED \_\_\_\_\_

IN 03/08/93 DUE \_\_\_\_\_

TYPED: Draft \_\_\_\_\_ Date \_\_\_\_\_

Final \_\_\_\_\_ Date \_\_\_\_\_

PROOFED \_\_\_\_\_ DELIVERED \_\_\_\_\_

SPECIAL INSTRUCTIONS to TYPING/PROOFING

Request for DRAFT

8-LS0840A  
Lauterbach  
3/12/93

**HOUSE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE HUDSON**

**Introduced:  
Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the provision of pilot dispatch services by the Board of  
2 Marine Pilots in pilotage regions that have more than one marine pilot  
3 organization; and providing for an effective date."

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

5 \* Section 1. AS 48.62.040(a) is amended to read:

6 (a) The board shall

7 (1) provide for the maintenance of efficient and competent pilotage  
8 service on the inland and coastal water of and adjacent to the state to assure the  
9 protection of shipping, the safety of human life and property, and the protection of the  
10 marine environment;

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

- 1 (3) keep a register of licensed pilots, licensed deputy pilots, and agents;  
2 (4) adopt regulations establishing  
3 (A) pilotage regions in the state;  
4 (B) the criteria for concurring in the amount of license,  
5 application, training, investigation, and audit fees proposed by the department  
6 under AS 08.01.065;  
7 (C) the criteria for recognizing pilot organizations under  
8 AS 08.62.175 ;  
9 (5) make available, upon request, copies of this chapter and the  
10 regulations adopted under this chapter;  
11 (6) review and approve the articles, bylaws, and rules of pilot  
12 organizations;  
13 (7) audit a pilot organization or an individual pilot as necessary to  
14 implement and enforce this chapter;  
15 (8) review and approve training programs conducted by pilot  
16 organizations; the board shall cooperate with the Department of Environmental  
17 Conservation in the review and approval of training programs for pilots of tank  
18 vessels; [AND]  
19 (9) establish and publish the dates of future license examinations; and  
20 (10) provide pilot dispatch services under AS 08.62.055.

21 \* Sec. 2. AS 08.62 is amended by adding a new section to article 1 to read:

22 Sec. 08.62.055. PILOT DISPATCH SERVICES. (a) The board shall hire  
23 staff whose duties include the provision of centralized, equitable dispatch of pilot  
24 services in each pilotage region established by the board for which the board has  
25 approved more than one pilot organization under AS 08.62.175.

26 (b) The board's dispatchers shall operate under regulations adopted by the  
27 board that

28 (1) require a master or owner of a vessel required by this chapter to  
29 employ a pilot in a region that has more than one pilot organization to contact the  
30 board's dispatchers to obtain a pilot;

31 (2) provide that a master or vessel owner may reject a pilot who is

1 dispatched to it by the board; if a pilot is rejected, the board's dispatchers shall  
2 dispatch another pilot who is a member of the same pilot organization as the rejected  
3 pilot, if one is available;

4 (3) provide for dispatching of pilot services in an equitable manner  
5 considering the availability of pilots from more than one pilot organization;

6 (4) ensure that pilots who are available for fewer than 60 days a year  
7 are dispatched by the board's dispatchers only when pilots who are available for 60  
8 or more days a year are unavailable;

9 (5) provide for the board to collect all pilotage tariffs for pilots used  
10 under the board's dispatch service, by region, and to distribute the tariffs to the pilot  
11 organizations in each region served by the board's dispatchers on a monthly basis  
12 according to the pilotage services provide<sup>d</sup> by members of each organization; however,  
13 the board shall make this distribution only after reserving from the tariffs the charges  
14 established under (6) of this subsection;

15 (6) establish a charge under AS 37.10.050 for the dispatch service  
16 provided by the board; the charge shall be reserved by the board under (5) of this  
17 subsection from the tariff collected for a pilot service that was provided after dispatch  
18 by the board; the charge may not be a fee that is assessed in addition to the pilotage  
19 tariff otherwise applicable in the region; the board shall set the charge to cover the cost  
20 of the dispatch service, including its costs under (7) of this subsection; the amount of  
21 the charge may be different from the portion of the tariff attributable to dispatch,  
22 transportation, and other expenses determined under AS 08.62.045(a)(3);

23 (7) establish rates to be used by the board to pay for the costs of  
24 reaching and returning from a vessel that are incurred by pilots who are dispatched by  
25 the board; the rates may include travel costs, per diem, and pilot boat expenses.

26 \* Sec. 3. AS 08.62.175(c) is amended to read:

27 (c) A pilot organization recognized by the board shall

28 (1) promote a safe and reliable system of marine pilotage for the region  
29 in which the organization is recognized;

30 (2) provide for the dispatch of pilots who are members of the  
31 organization if the organization is the only one recognized by the board for a

1 region served by the organization; if the board provides dispatch services under  
2 AS 08.62.055 for a region, the pilot organizations recognized by the board for that  
3 region shall cooperate with the board's dispatchers;

4 (3) adopt and revise tariffs for the provision of pilotage services by the  
5 members of the organization;

6 (4) be open to membership by all persons licensed under this chapter  
7 to pilot vessels in the pilotage region in which the organization is recognized;

8 (5) operate or participate in a training program for pilots and deputy  
9 pilots that is approved by the board;

10 (6) cooperate with and assist the board in implementing this chapter.

11 \* Sec. 4. This Act takes effect July 1, 1993.

# WORK ORDER REQUEST FORM

# W.O. [18] LS-0840

KEYWORDS: MARINE PILOTS ASSIGNED: Lauterbach

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Dispatching of Marine Pilots

REQUESTED FOR: REP HUDSON BY: Rep. Hudson PHONE: 465-3744

DELIVER TO: Rep. Hudson, Cap. 108

INSTRUCTIONS: Draft bill relating to marine pilots, per attached.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ]  
AUTHORIZED TO CONFER WITH \_\_\_\_\_

RETURN \_\_\_\_\_  
\_\_\_\_\_ TO REQUESTOR

APPROVED: X DIRECTOR, LEGAL SERVICES

REVIEWED \_\_\_\_\_

IN 03/10/93 DUE \_\_\_\_\_

TYPED: Draft \_\_\_\_\_ Date \_\_\_\_\_

Final \_\_\_\_\_ Date \_\_\_\_\_

PROOFED \_\_\_\_\_ DELIVERED \_\_\_\_\_

SPECIAL INSTRUCTIONS to TYPING/PROOFING

Request for DRAFT

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



## MEMORANDUM

March 10, 1993

TO: Terry Cramer, Legal Services  
FAX 465-2029

FROM: Representative Bill Hudson

SUBJECT: Marine Pilot Legislation

Please prepare a work draft amending AS 08.62, incorporating the attached language as a guide. Is it possible to draft a single bill by combining this wording with the work draft you have already prepared, 8-LS0808/A. Also, do we still need to be concerned with the sunset date under Sec. 08.62.045, in light of the wording you have provided us?

The note on the bottom of this draft, "language to allow discretion on dispatcher service being compatible with vessel needs," addresses the potential problem of a shipper not wanting to use the pilot who has been dispatched to guide his vessel. I would like there to be some kind of wording in this bill allowing for some leeway to reject a pilot in favor of the next one available on the rotation.

If you have any questions, please call Lynda Giguere of my staff at 465-6827.

Attachment

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

Section 1. PILOT DISPATCH. (a) The Board will establish a system in each region that provides for the centralized, equitable pilot service dispatch. The Board will adopt regulations establishing a central dispatch entity for pilotage regions in the state with more than one Pilot organization that

(1) will be designated as the entity that is to be contacted by vessel's agents or master needing pilot services;

(2) provides for the dispatch of Pilots by having the dispatch service contact Pilot organizations in an equitable manner;

(3) ensures that part time pilots, who are not available for dispatch 60 days or more per year, will be dispatched only when full time pilots, who are available for 60 days or more per year, are fully used;

(4) collects all Pilotage tariffs assessed for the use of pilot services, and;

(5) equitably redistributes all tariffs collected from vessels to Pilots providing pilot services on a monthly basis so that the total amount of tariff received is divided ~~equally~~ among the number of pilots on dispatch rosters in a region.

(b) The regional dispatch entity established by the Board under (a) of this section will pay necessary expenses associated with pilot dispatch such as travel, per diem, and pilot boat costs prior to tariff redistribution to pilots in the region.

(c) Operation of the regional dispatch entity will be financed through tariffs established under this Chapter.

22  
No way around getting the share to people who are only part time

Plus language to allow <sup>reasonable not absolute</sup> discretion on ~~dispatcher~~ dispatcher service being compatible with vessel needs. Identify what were going to <sup>accept</sup> ~~accept~~

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

PILOT ORGANIZATION. There shall only be one pilot organization in a pilot region established by the Board.

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to marine pilot tariffs and deputy marine pilot training  
 2 programs; providing for a single marine pilot organization in each pilotage region;  
 3 limiting relationships between marine pilots and vessel owners, operators, and  
 4 agents; relating to information to be provided to the marine pilot coordinator by  
 5 vessel owners, operators, and agents; clarifying the circumstances under which a  
 6 pilot may be licensed in more than one region; and prohibiting licensure of a  
 7 pilot for only part of a region."

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

9 \* Section 1. AS 08.62.040(a) is amended to read:

10 (a) The board shall

11 (1) provide for the maintenance of efficient and competent pilotage  
 12 service on the inland and coastal water of and adjacent to the state to assure the  
 13 protection of shipping, the safety of human life and property, and the protection of the

1 marine environment;

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

6 (3) keep a register of licensed pilots, licensed deputy pilots, and agents;

7 (4) adopt regulations establishing

8 (A) pilotage regions in the state;

9 (B) the criteria for concurring in the amount of license,  
10 application, training, investigation, and audit fees proposed by the department  
11 under AS 08.01.065;

12 (C) the requirements for regional marine [CRITERIA FOR  
13 RECOGNIZING] pilot organizations under AS 08.62.175;

14 (D) the procedures for adopting and for reviewing and  
15 renewing a tariff under AS 08.62.045; and

16 (E) criteria for determining and regulating the appropriate  
17 number of persons licensed as deputy marine pilots in each pilotage  
18 region;

19 (5) make available, upon request, copies of this chapter and the  
20 regulations adopted under this chapter;

21 (6) review and approve the [ARTICLES], bylaws [, AND RULES] of  
22 regional marine pilot organizations;

23 (7) audit a regional marine pilot organization or an individual pilot as  
24 necessary to implement and enforce this chapter;

25 (8) review and approve training programs conducted by pilot  
26 organizations; the board shall cooperate with the Department of Environmental  
27 Conservation in the review and approval of training programs for pilots of tank  
28 vessels; and

29 (9) establish and publish the dates of future license examinations.

30 \* Sec. 2. AS 08.62.045(a) is amended to read:

31 (a) The board shall adopt by regulation a tariff for each pilotage region

1 designated under AS 08.62.040(a)(4) that establishes the fees and rates  
2 [MAXIMUM TARIFFS] that may be charged by pilots for the provision of specific  
3 pilotage services. The board shall identify those expenses that are included in the  
4 tariff. The board shall review each tariff adopted under this subsection and renew  
5 or change it effective on January 1 of every odd-numbered year. In adopting or  
6 renewing a tariff [MAXIMUM TARIFFS] under this subsection, the board shall take  
7 into consideration

8 (1) reasonable compensation for actual time aboard a vessel as a pilot  
9 and for time engaged in preparing to provide pilotage services;

10 (2) differential compensation for seasonal and weather conditions, risks  
11 involved in providing pilotage service, and overtime;

12 (3) dispatch expenses, transportation expenses, and other associated  
13 costs directly related to the provision of pilotage services;

14 (4) reasonable overhead expenses that are necessary to provide year  
15 round pilotage services for the region; and

16 (5) other expenses identified by the board.

17 \* Sec. 3. AS 08.62.045(d) is amended to read:

18 (d) A pilot organization [RECOGNIZED BY THE BOARD] or a member of  
19 the pilot organization may not charge a tariff for the provision of pilotage services that  
20 is different from the [EXCEEDS THE MAXIMUM] tariff set by the board [, THAT  
21 IS DIFFERENT FROM THE TARIFF ADOPTED BY THE PILOT ORGANIZATION,  
22 OR THAT HAS NOT TAKEN EFFECT UNDER (c) OF THIS SECTION].

23 \* Sec. 4. AS 08.62.045 is amended by adding a new subsection to read:

24 (e) When adopting or reviewing a tariff under this section, the board shall  
25 solicit and consider public comments and may conduct its own investigation and  
26 analysis regarding the criteria set out in (a) of this section.

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

28 Sec. 08.62.047. CONFLICTS OF INTEREST. Notwithstanding AS 39.52 or  
29 any other law relating to ethics or conflicts of interest, a board member may participate  
30 in deliberations and vote in decisions involved in adopting, reviewing, or renewing a  
31 tariff under AS 08.62.045 for a region in which the board member is a pilot or agent

1 or manager of a vessel.

2 \* Sec. 6. AS 08.62.080(a) is amended to read:

3 (a) A person may not pilot a vessel subject to this chapter unless the person  
4 is licensed under this chapter and is a member of ~~the [A] pilot organization for the~~  
5 ~~region in which the vessel is operating at the time the person is piloting the vessel~~  
6 [RECOGNIZED BY THE BOARD].

7 \* Sec. 7. AS 08.62.080(b) is amended to read:

8 (b) A pilot may not be licensed in more than one pilotage region at one time,  
9 unless the board determines that licensing [IT IS IN THE BEST INTERESTS OF THE  
10 STATE TO LICENSE] pilots for [PARTS OF] more than one pilotage region is  
11 necessary to protect shipping, human life and property, or the marine  
12 environment. The board may not license a pilot for only part of a region.

13 \* Sec. 8. AS 08.62.090 is repealed and reenacted to read:

14 Sec. 08.62.090. APPLICATION AND ADMISSION TO TRAINING  
15 PROGRAM. (a) A person who desires to be licensed under this chapter in a  
16 particular marine pilotage region shall apply in writing to the department. The  
17 application must provide the information and be made on a form prescribed by the  
18 board. A person may apply to be licensed in more than one region but may not enter  
19 a deputy marine pilot training program in more than one region or be issued a license  
20 in more than one region at the same time except as provided in AS 08.62.080(b).

21 (b) An applicant for entry to the deputy marine pilot training program in a  
22 region must be a citizen of the United States and hold a federal endorsement of  
23 pilotage without tonnage restriction for every port and waterway in the region. The  
24 board by regulation may adopt additional requirements for entry to deputy marine pilot  
25 training programs.

26 (c) The board shall determine whether each applicant is qualified under this  
27 chapter to enter the deputy marine pilot training program for the region or regions for  
28 which the applicant has applied. The board shall by regulation establish procedures  
29 for maintaining a list of qualified applicants for each region and for determining on  
30 a fair and nondiscriminatory basis the priority of each applicant for admission to the  
31 deputy marine pilot training program in that region.

1 (d) At least once annually, the board shall evaluate the pilotage needs of each  
2 region on the basis of the number of licensed pilots in the region, the tonnage and  
3 geographical limitations of the licenses held by the pilots in the region, the number and  
4 type of vessels visiting the region and expected to visit the region, and the expected  
5 attrition of pilots licensed in the region.

6 (e) The board shall admit an applicant to the deputy marine pilot training  
7 program in a region for which the applicant has applied only when the board  
8 determines it is necessary to do so in order to ensure a sufficient number of pilots in  
9 that region to meet the anticipated needs of all vessels visiting that region during each  
10 hour of the day and each day of the year, and to assure protection of shipping, the  
11 safety of human life and property, and the marine environment.

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

13 (a) The board shall impose a disciplinary sanction on a person licensed under  
14 this chapter when the board finds that the person

- 15 (1) is incompetent in the performance of pilotage duties;  
16 (2) is chemically impaired;  
17 (3) illegally possesses, uses, or sells narcotic or hallucinogenic drugs;  
18 (4) makes a false statement to obtain a license;  
19 (5) violates a provision of this chapter or a regulation adopted under

20 i,

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

22 (7) has had the person's United States Coast Guard pilot license  
23 conditioned, suspended, or revoked; or

24 (8) charges, collects, or receives an amount for pilotage services that  
25 is different from the [IN EXCESS OF THE MAXIMUM] tariff established by the  
26 board [OR DIFFERENT FROM THE TARIFF ADOPTED BY THE PILOT  
27 ORGANIZATION OF WHICH THE PERSON IS A MEMBER].

28 \* Sec. 10. AS 08.62.155(b) is amended to read:

29 (b) The department may impose a civil fine not to exceed \$5,000 on a marine  
30 pilot organization [RECOGNIZED BY THE BOARD,] if the organization violates this  
31 chapter or a regulation adopted under this chapter.

1 \* Sec. 11. AS 08.62.163 is amended to read:

2 Sec. 08.62.163. PILOTS AS INDEPENDENT CONTRACTORS. (a) A pilot  
3 [PILOTS] licensed under this chapter is an [ARE] independent contractor  
4 [CONTRACTORS] and may not be employed as an employee of the owner, [OR]  
5 operator, or agent of a vessel subject to this chapter.

6 (b) The owner, [OR] operator, or agent of a vessel subject to this chapter may  
7 not employ a person licensed under this chapter as an employee.

8 \* Sec. 12. AS 08.62.175 is repealed and reenacted to read:

9 Sec. 08.62.175. REGIONAL MARINE PILOT ORGANIZATIONS. (a) The  
10 pilots licensed for each pilotage region constitute the regional marine pilot organization  
11 for that region. A person licensed under this chapter to pilot vessels in the region is  
12 automatically a member of the pilot organization in that region.

13 (b) For each regional pilot organization, the board by regulation shall establish

14 (1) procedures for dispatching pilots, billing and collecting charges for  
15 pilotage services, and distribution of income to pilots;

16 (2) one or more locations within the region for the organization's  
17 business and dispatching operations;

18 (3) training programs for deputy marine pilots and marine pilots; and

19 (4) requirements for providing information relating to pilotage and  
20 organization operations to the marine pilot coordinator.

21 (c) Each regional organization shall adopt bylaws providing for the internal  
22 business affairs of the organization. An organization's bylaws may reflect differences  
23 among regions. An organization's bylaws and changes to its bylaws may not take  
24 effect until approved by the board on the basis of

25 (1) uniform and nondiscriminatory application to marine pilots and  
26 deputy marine pilots licensed under this chapter and trainees for licenses under this  
27 chapter;

28 (2) compliance with applicable laws; and

29 (3) effectiveness in promoting an efficient, reliable, and professional  
30 marine pilotage system in the region.

31 \* Sec. 13. AS 08.62 is amended by adding a new section to read:

1           Sec. 08.62.188. LIMITATIONS ON RELATIONSHIPS INVOLVING  
2 OWNERS, OPERATORS, AGENTS, AND PILOTS. (a) An owner, operator, or  
3 agent of a vessel subject to this chapter may not directly or indirectly

4           (1) exercise control over or have involvement in the dispatching,  
5 billing, accounting, collection, or distribution of revenue or in any other business  
6 activity of a pilot or pilot organization;

7           (2) own or operate a marine pilot organization;

8           (3) demand, charge, or collect a commission, premium, or fee from a  
9 pilot or pilot organization in return for requesting pilotage services from the pilot or  
10 pilot organization.

11          (b) A pilot or pilot organization may not

12           (1) directly or indirectly pay or offer to pay to an agent of a vessel  
13 subject to this chapter a commission, fee, or premium in return for a request to provide  
14 pilotage services; or

15           (2) enter into or renew an agreement with an owner, operator, or agent  
16 of a vessel subject to this chapter under which the owner, operator, or agent exercises  
17 control over or has involvement in the dispatching, billing, accounting, collection, or  
18 distribution of revenue or in any other business activity of a pilot or pilot organization.

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

20           Sec. 08.62.189. INFORMATION TO BE PROVIDED BY AGENTS. In  
21 compliance with regulations adopted by the board, the owners and operators of vessels  
22 subject to this chapter, through their agents registered under AS 08.62.187, shall  
23 provide to the marine pilot coordinator information relating to

24           (1) the number, type, and movements of vessels subject to this chapter  
25 that are expected to visit the state; and

26           (2) any vessel subject to this chapter that makes any movement in  
27 compulsory pilotage waters without employing a marine pilot licensed under this  
28 chapter.

29 \* Sec. 15. AS 08.62.900 is amended by adding new paragraphs to read:

30           (7) "marine pilotage region" means a region established by the board  
31 under AS 08.62.040(a)(4);

1 (8) "pilot organization" means a regional pilot organization;

2 (9) "region" means a marine pilotage region;

3 (10) "regional pilot organization" means the organization that meets the  
4 board's requirements under AS 08.62.175 and is composed of all marine pilots licensed  
5 for a region.

6 \* Sec. 16. This Act does not apply to actions under a contract that is in effect on the  
7 effective date of this Act. However, a contract that is entered into, revised, or renewed on or  
8 after the effective date of this Act shall comply with this Act.

9 \* Sec. 17. AS 08.62.045(b), 08.62.045(c), 08.62.080(c), and sec. 35, ch. 89, SLA 1991, are  
10 repealed.

8-LS0434AE  
Lauterbach  
2/12/93

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

BY

Introduced:  
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to marine pilot tariffs and deputy marine pilot training  
2 programs; providing for a single marine pilot organization in each pilotage region;  
3 limiting relationships between marine pilots and vessel owners, operators, and  
4 agents; relating to information to be provided to the marine pilot coordinator by  
5 vessel owners, operators, and agents; clarifying the circumstances under which a  
6 pilot may be licensed in more than one region; and prohibiting licensure of a  
7 pilot for only part of a region."

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

9 \* Section 1. AS 08.62.040(a) is amended to read:

10 (a) The board shall

11 (1) provide for the maintenance of efficient and competent pilotage  
12 service on the inland and coastal water of and adjacent to the state to assure the  
13 protection of shipping, the safety of human life and property, and the protection of the

1 marine environment;

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

6 (3) keep a register of licensed pilots, licensed deputy pilots, and agents;

7 (4) adopt regulations establishing

8 (A) pilotage regions in the state;

9 (B) the criteria for concurring in the amount of license,  
10 application, training, investigation, and audit fees proposed by the department  
11 under AS 08.01.065;

12 (C) the requirements for regional marine [CRITERIA FOR  
13 RECOGNIZING] pilot organizations under AS 08.62.175;

14 (D) the procedures for adopting and for reviewing and  
15 renewing a tariff under AS 08.62.045; and

16 (E) criteria for determining and regulating the appropriate  
17 number of persons licensed as deputy marine pilots in each pilotage  
18 region;

19 (5) make available, upon request, copies of this chapter and the  
20 regulations adopted under this chapter;

21 (6) review and approve the [AR: laws [, AND RULES] of  
22 regional marine pilot organizations;

23 (7) audit a regional marine pilot organization or an individual pilot as  
24 necessary to implement and enforce this chapter;

25 (8) review and approve training programs conducted by pilot  
26 organizations; the board shall cooperate with the Department of Environmental  
27 Conservation in the review and approval of training programs for pilots of tank  
28 vessels; and

29 (9) establish and publish the dates of future license examinations.

30 \* Sec. 2. AS 08.62.045(a) is amended to read:

31 (a) The board shall adopt by regulation a tariff for each pilotage region

1 designated under AS 08.62.040(a)(4) that establishes the fees and rates  
2 [MAXIMUM TARIFFS] that may be charged by pilots for the provision of specific  
3 pilotage services. The board shall identify those expenses that are included in the  
4 tariff. The board shall review each tariff adopted under this subsection and renew  
5 or change it effective on January 1 of every odd-numbered year. In adopting or  
6 renewing a tariff [MAXIMUM TARIFFS] under this subsection, the board shall take  
7 into consideration

8 (1) reasonable compensation for actual time aboard a vessel as a pilot  
9 and for time engaged in preparing to provide pilotage services;

10 (2) differential compensation for seasonal and weather conditions, risks  
11 involved in providing pilotage service, and overtime;

12 (3) dispatch expenses, transportation expenses, and other associated  
13 costs directly related to the provision of pilotage services;

14 (4) reasonable overhead expenses that are necessary to provide year  
15 round pilotage services for the region; and

16 (5) other expenses identified by the board.

17 \* Sec. 3. AS 08.62.045(d) is amended to read:

18 (d) A pilot organization [RECOGNIZED BY THE BOARD] or a member of  
19 the pilot organization may not charge a tariff for the provision of pilotage services that  
20 is different from the [EXCEEDS THE MAXIMUM] tariff set by the board [, THAT  
21 IS DIFFERENT FROM THE TARIFF ADOPTED BY THE PILOT ORGANIZATION,  
22 OR THAT HAS NOT TAKEN EFFECT UNDER (c) OF THIS SECTION].

23 \* Sec. 4. AS 08.62.045 is amended by adding a new subsection to read:

24 (e) When adopting or reviewing a tariff under this section, the board shall  
25 solicit and consider public comments and may conduct its own investigation and  
26 analysis regarding the criteria set out in (a) of this section.

27 \* Sec. 5. AS 08.52 is amended by adding a new section to read:

28 Sec. 08.62.07. CONFLICTS OF INTEREST. Notwithstanding AS 39.52 or  
29 any other law relating to ethics or conflicts of interest, a board member may participate  
30 in deliberations and vote in decisions involved in adopting, reviewing, or renewing a  
31 tariff under AS 08.62.045 for a region in which the board member is a pilot or agent

1 or manager of a vessel.

2 \* Sec. 6. AS 08.62.080(a) is amended to read:

3 (a) A person may not pilot a vessel subject to this chapter unless the person  
4 is licensed under this chapter and is a member of the [A] pilot organization for the  
5 region in which the vessel is operating at the time the person is piloting the vessel  
6 [RECOGNIZED BY THE BOARD].

7 \* Sec. 7. AS 08.62.080(b) is amended to read:

8 (b) A pilot may not be licensed in more than one pilotage region at one time,  
9 unless the board determines that licensing [IT IS IN THE BEST INTERESTS OF THE  
10 STATE TO LICENSE] pilots for [PARTS OF] more than one pilotage region is  
11 necessary to protect shipping, human life and property, or the marine  
12 environment. The board may not license a pilot for only part of a region.

13 \* Sec. 8. AS 08.62.090 is repealed and reenacted to read:

14 Sec. 08.62.090. APPLICATION AND ADMISSION TO TRAINING  
15 PROGRAM. (a) A person who desires to be licensed under this chapter in a  
16 particular marine pilotage region shall apply in writing to the department. The  
17 application must provide the information and be made on a form prescribed by the  
18 board. A person may apply to be licensed in more than one region but may not enter  
19 a deputy marine pilot training program in more than one region or be issued a license  
20 in more than one region at the same time except as provided in AS 08.62.080(b).

21 (b) An applicant for entry to the deputy marine pilot training program in a  
22 region must be a citizen of the United States and hold a federal endorsement of  
23 pilotage without tonnage restriction for every port and waterway in the region. The  
24 board by regulation may adopt additional requirements for entry to deputy marine pilot  
25 training programs.

26 (c) The board shall determine whether each applicant is qualified under this  
27 chapter to enter the deputy marine pilot training program for the region or regions for  
28 which the applicant has applied. The board shall by regulation establish procedures  
29 for maintaining a list of qualified applicants for each region and for determining on  
30 a fair and nondiscriminatory basis the priority of each applicant for admission to the  
31 deputy marine pilot training program in that region.

1 (d) At least once annually, the board shall evaluate the pilotage needs of each  
2 region on the basis of the number of licensed pilots in the region, the tonnage and  
3 geographical limitations of the licenses held by the pilots in the region, the number and  
4 type of vessels visiting the region and expected to visit the region, and the expected  
5 attrition of pilots licensed in the region.

6 (e) The board shall admit an applicant to the deputy marine pilot training  
7 program in a region for which the applicant has applied only when the board  
8 determines it is necessary to do so in order to ensure a sufficient number of pilots in  
9 that region to meet the anticipated needs of all vessels visiting that region during each  
10 hour of the day and each day of the year, and to assure protection of shipping, the  
11 safety of human life and property, and the marine environment.

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

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10 pilot organization.

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26                   (2) any vessel subject to this chapter that makes any movement in  
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3 (10) "regional pilot organization" means the organization that meets the  
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6 \* Sec. 16. This Act does not apply to actions under a contract that is in effect on the  
7 effective date of this Act. However, a contract that is entered into, revised, or renewed on or  
8 after the effective date of this Act shall comply with this Act.

9 \* Sec. 17. AS 08.62.045(b), 08.62.045(c), 08.62.080(c), and sec. 35, ch. 89, SLA 1991, are  
10 repealed.

# 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

## 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.

Has not been corrected.

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.

Still being argued by legislature in light of JNE opinion. Hearing offered by board.

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 to attempt to raise standards to lowest common denominator.

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.

Change

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.

done

done in AS 05.67.093 - Needs some clarification

- 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.

done

- The Board should establish an **additional pilotage region** in the Aleutian Chain/Western Alaska region.

NOT done about 180° out

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

done but competition of southern pilots equal access to vessel

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.

Not done - for licensed pilots - Training pilots for Training

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.

done

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

done but from Training H&D

Done Randoms

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

Still biannual

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

Not done - Done

- 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.

Not done - Done

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

Not done - Done

- 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.

done No limit

- The state **should not place a specific limit** at this time on the number of pilot licenses issued.

Not done

- 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.

Not done could be

- 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

done

- 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.

notified

done

done

11/27/01  
done  
12/5/01  
done  
12/5/01  
done  
12/5/01  
done

done  
12/5/01

done  
12/5/01

done

done  
12/5/01

# 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:

any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, when navigating in state waters beyond Alaska pilot stations either (1) employ a pilot licensed by the state under this chapter; or (2) utilize a federally licensed pilot whose duty station has been on that tanker throughout that specific voyage.<sup>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) <i>LA</i> <i>San Diego</i> <i>Long Beach</i> <i>Escondido</i>	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	<i>each region</i> (yes) "the board shall determine the number of pilots based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services." §310.061 Board determines number for each port. When vacancies occur in the number of required pilots, examinees are appointed on the basis of highest score on written exam.	state pilot must serve two years as deputy pilot, deputy pilot must have had maritime experience satisfactory to the board (detailed in statute); federal first-class unlimited license; written examination for both pilots and deputy pilots. Pilots licensed or certified for and appointed to specific ports (State pilots are "licensed;" deputy pilots are "certified")	licensed pilots in each port "shall submit to the Board for its approval a deputy pilot training program of not less than 2-years duration." §310.075 Training program includes progressive increases in size and tonnage of boats handled and comments of the pilot in charge on each training journey.	hold licenses "so long as they possess the qualifications set out in [the] chapter and remain in active service in the ports for which they are appointed." §310.081	no
Georgia	local ports	yes; statutory limits at each port	determined by local port commissioners	no	not mentioned	no
Hawaii	State, director of the department of commerce and consumer affairs licenses	no	standards developed by director	no	all licenses expire on June 30 of even numbered years	no
Louisiana	local ports (Governor actually appoints pilots but on recommendation of local Board of Examiners)	unclear: "Whenever there exists a necessity for more pilots, the board of examiners shall hold examinations for all applicants who have registered with them." (R S 34:945)	examination developed by local Board of Examiners; "steamship pilots" must have federal first class license	must have completed an approved apprenticeship program	not mentioned	must be voter of the state

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

State	Level of Regulation	Limits on Number of Pilots	Requirements for License	Training	Duration of License	Residency Requirement
Maine	State; Maine State Pilotage Commission. 5 members: 3 pilots, 1 industry, 1 general public with marine background	yes; Commission shall select only such number of pilots as would be necessary to permit adequate pilotage in these waters." §38.90 (H)	statute cites only federal first class endorsement; however, commission has authority to "establish and determine the qualifications of any person applying for a pilot's license and conduct examinations." §8.90 (C)	no	5 years	yes
Maryland	State; Board of Pilots. 9 members—1 department head, 1 president of pilots' association, 3 pilots, 2 industry, 2 consumers	yes; indirectly by controlling number of apprentices; "from the list of qualified applicants, the Board may choose and appoint the number of apprentice pilots that the board considers necessary to protect the commercial interests of the State." §11.305	apprenticeship to get limited license; have limited license and provide pilotage for 3 years for other licenses.	apprenticeship	2 years	no
Massachusetts	local harbor districts	no	determined by local district commissioners	no	not mentioned	no
Mississippi	local port commissions	yes; duty of the commissioners to appoint... a sufficient number of pilots... necessary for the protection of the harbor and the advancement of public shipping" §59-1-7	qualifications passed on by port commissioners	no	appointed for 4 years	no
New Jersey	State; Commissioners of Pilotage; six members "selected from among such persons as have been officers in our naval, revenue or merchant service, or such as have been commanders of vessel engaged in our coasting trade." (§12.8-1)	not mentioned. Vessels sailing from any US port bound in or over bar of Sandy Hook must request a pilot in writing from commission; commission assigns pilots in rotation. (§12.8-8)	examination by commissioners in presence of one or more branch pilots of the state; qualifications and local knowledge	Deputy pilot: 4-year apprenticeship; examination by commissioners. Full branch pilot: 2 years of deputy pilot and examination by commissioners	not mentioned	no

TABLE 1: State Statutory Provisions Regulating Piloting

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

TABLE 1: State Statutory Provisions Regulating Piloting

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

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

State	Level of Regulation	Limits on Number of Pilots	Requirements for License	Training	Duration of License	Residency Requirement
Texas (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 Kavilina area with the intention that ore ships carry a state-licensed pilot in designated waters. Over the past summer, the association experienced difficulties with the shipping company operating the ore ships out of Cominco port. State action may be needed to enforce company compliance with state pilotage regulations.

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

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

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

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

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

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

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

### *B. IDENTIFIED PROBLEM AREAS*

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

#### 1. Entry Level Requirements

Alaska statute states that:

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

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