

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7949 HOUSE LABOR & COMMERCE

- All vessels (except public & enrolled) are required to take a State pilot.
- State pilots may not refuse a vessel requesting a pilot entering the state waters.
- A pilot must be available, 24 hours a day, 365 days of the year.
- State pilots must be experienced mariners, trained and licensed in accordance with the states' regulations.
- The public service function of piloting is recognized in State regulations.
- Regulations to free pilots from financial pressures from agents and shipping companies in order that they may exercise independent judgements and safe practices.
- A pilot board or commission to regulate pilotage and pilots.
- Tariff review provision to ensure pilots fair compensation for their services.
- Regulations for disciplining pilots.

ALASKA'S PILOTAGE STATUTE

Alaska's current Piloting Act was effective as of 1 July 1991.

There are major deviations and differences in the Alaska Pilotage Statute from those of other states. These differences are not consistent with the intent of regulated pilotage. Specific problems with the Alaska Pilot Act are as follows:

- No requirement to ensure 24 hour, 365 day a year pilotage service for a region.
- No requirement that all requests for pilots must be serviced.
- Protected competition which forces pilot associations to solicit business and obtain customer commitments.

The regulated competition in the Piloting Act raises serious questions concerning the constitutionality of portions of the Statute. The Act promotes competition and provides for protection against

anti-competitive activities. At the same time, the Statute directs restrictions that are in conflict or in direct interference with the competitive process. Examples are:

- Requiring that the association bylaws be reviewed and approved by a Board.
- The Board which has the power to regulate the organization for anti-competitive practices also has tariff setting and pilot disciplinary authority.
- Pilot organizations are required to take in any licensed pilot. This takes away an associations' (business) authority to regulate its work force.
- Pilot associations (although supposedly competitive) are regulated by a maximum tariff.

Rather than direct or promote public service in piloting, the Alaska Act advocates free enterprise, competition. Adverse impacts of this on the State Pilotage concept are as follows:

- A pilot association cannot project its pilot requirements for the future.
- Trainees cannot be programmed in an association because of business unknowns.
- Pilots are dependent on 'deals' made with agents and ship operators for their livelihood.
- Forces pilots and association to consider business implications in piloting decisions.
- Allows ship operators and agents to select pilots based on industries' criteria.
- Allows an agent or operator who has a business monopoly in a region to control the pilots in that region.
- Free competition in piloting is anti-public interest.

PILOT ACT CONCEPTS

There are basically two general concepts in State Pilotage for recognizing and protecting the role of Pilots. State Pilotage Acts that employ these concepts (or derivatives of) have proven to provide safe, reliable and efficient piloting services that best serve the public's interest. These concepts are:

Public Utility - is a monopolistic status for a particular area in order to provide services considered to be essential to the economy and public welfare. Public utility status is afforded electrical companies, sewer systems, air controllers to name a few. This concept contends that regulation, rather than competition, will better serve to protect the public health and welfare. In return for this protection from competition, control is relinquished over rates and profits. Compensation is limited to a reasonable return. A Board/Commission serves to protect the public from the advantage due to the monopolistic status.

Natural Monopoly - is more like a regulated industry than a standard profession. Natural monopolies are like hospitals and ambulance services. They may be in competition but the competition may not interfere with the public's welfare. As an example, a city regulates the location and number of hospitals and emergency services in order to best serve the public. In return, a natural monopoly must service all who require services and keep costs down to avoid uneconomical duplication of services.

These concepts entail recognizing that the State's interest in assuring the availability of the service is so great that the State sanctions anti-competitive and monopolistic provisions in order to maintain reliable, non-discriminatory service.

Legislative intent sanctioning the unusual nature of piloting must be placed in state statute in a form of a Natural Monopoly/Public Utility concept.

ASHBURN AND MASON

LAWYERS

A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501MARK E. ASHBURN
DOUGLAS B. BAILY
LEWIS F. GORDON
JULIAN L. MASON III
JOHN C. McCARRON
DONALD W. McCLINTOCK III
A. WILLIAM SAUPE
SHARON A. STURGES
KIRSTEN TINGLUMTELEPHONE
(907) 276-4331TELECOPIER
(907) 277-8235

March 30, 1994

Mr. Thomas Dundas
Alaska Marine Pilots
P. O. Box 730
Dutch Harbor, AK 99692Re: Maximum Tariff for Marine Pilots
Our File No. 7936.002

Dear Tom:

I am writing this letter as a follow-up to my earlier letter of March 2, 1994 pertaining to the maximum tariff set by the Board of Marine Pilots pursuant to AS 08.62.045(a). You have asked that I comment particularly on the recent memorandum authored by George Utermohle which addresses my March 2 letter.

In my March 2 letter (a copy of which is attached hereto), I concluded that the repeal of AS 08.62.045 would not be particularly meaningful in its impact on the potential antitrust liability of a marine pilot organization like the Alaska Marine Pilots. My conclusion on this matter has not changed.

First, as I stated in my March 2 letter, a compelling argument can be made that a pilot organization, like the Alaska Marine Pilots, is a business entity that competes on the basis of price and service with rival entities, or potential rival entities, in its region. If in fact a pilot group is a business entity, then no viable claim can be made that the setting of prices by such a group is price-fixing. It is a basic tenet of antitrust law that a violation of Section 1 of the Sherman Act requires "concerted action" by multiple actors not the unilateral behavior of a single actor.

Mr. Utermohle opines in his memorandum that "a group of individuals such as marine pilots cannot agree among themselves to set the tariffs that they may charge for their services." Such an agreement, states Mr. Utermohle, would be anticompetitive and would constitute horizontal price-fixing. Mr. Utermohle's conclusion is overbroad. An agreement among marine pilots as to prices would constitute price-fixing only if the pilots were competitors and not part of a single business entity. Section 1 of the Sherman Act prohibits only certain contracts, combinations or conspiracies in restraint of trade. It does not reach the unilateral action of a single business entity acting alone.

Mr. Thomas Dundas
Page 2
March 30, 1994

For example, a group of lawyers can form a single business entity, set prices for their services and market their services. Such action would not be price-fixing. However, if those same lawyers were not part of a single business but were instead separate business entities competing with one another in the marketplace, then any agreement among them as to the prices they charged may well constitute horizontal price-fixing.

Mr. Utermohle asserts in his memorandum that a marine pilot organization is merely a voluntary association of independent contractors that provide marine pilot services. He states that pilots are not "employees" of the marine pilot organization so the organization cannot be considered a distinct business entity. These assertions are, I believe, conclusory and inaccurate. A marine pilot organization like the Alaska Marine Pilots is not simply a voluntary association of independent contractors. Marine pilots are independent contractors with regard to their relationship to the vessels that they pilot. See AS 08.62.163. This does not mean that marine pilots are necessarily independent contractors with regard to the pilot organization that trains them, dispatches them, and sets fees for their services. There is no reason that a pilot organization like the Alaska Marine Pilots cannot be a distinct business entity that competes with other such entities and that sets prices and service standards for its member pilots.

Second, even if one concludes that pilot organizations are subject to potential liability under the federal antitrust statutes, AS 08.62.045 offers marginal protection to the pilot organizations as it is currently written. As I discussed earlier, the "state action" exemption provides that the antitrust laws do not apply to private conduct directed or compelled by the state. The exemption requires an affirmatively expressed state policy and active supervision by the state of any anticompetitive conduct.

AS 08.62.045, as currently written, does not set a fixed tariff for marine pilots. The Marine Pilot Board sets a maximum tariff that marine pilots and marine pilot organizations may not exceed. It does not, however, set a fixed tariff which all pilots are required to charge. A pilot organization may adopt any tariff it proposes so long as the tariff does not exceed the Board's maximum tariff. The review and oversight by the Board of the proposed tariffs of pilot organizations is minimal. See AS 08.62.045(c).

Mr. Utermohle states in his memorandum that the Board supervises the setting of tariffs by pilot organizations under AS 08.62.045 and that if the Board does not supervise the tariff settings then the state would not be able to satisfy the active supervision requirement of the state action exception. This declaration overstates, I believe, the protection which AS 08.62.045 as currently written provides to pilot

Mr. Thomas Dundas
Page 3
March 30, 1994

organizations. While the statute does certainly offer some protection to pilot organizations because of the maximum tariff and the filing of group tariffs with the Board, it is by no means certain that the limited involvement of the Board would satisfy the "active state supervision" requirement of the exemption.

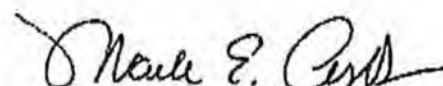
By way of contrast, if the Board set a fixed tariff for marine pilots and if all pilots were required to charge that tariff or to petition the Board for any change in tariff, then such a scheme would satisfy the state action exemption. The current provisions of AS 08.62.045 do not provide for such a fixed tariff, however, and thus any protection afforded by the current scheme is more suspect.

In conclusion, I believe that it is overly simplistic to conclude that pilot organizations cannot be distinct business entities lawfully able to set prices for their members and to compete with other pilot organizations on the basis of price and service. Furthermore, I believe that to conclude the present statutory scheme of a maximum tariff by itself insulates pilot organizations from federal antitrust liability is unwise.

Please contact me if you have any questions.

Very truly yours,

ASHBURN & MASON



Mark E. Ashburn

MEA:dt

cc: Senator Drew Pearce
Senator George Jacko
Representative Bill Hudson
Representative Carl Moses

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PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 23, 1994

Representative Bill Hudson
State Capitol Building
Room 103
Juneau, Alaska 99811-0800

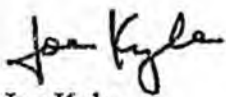
Dear Representative Hudson:

The attached letter to Commissioner Paul Fuhs regarding the tariff provision of the Marine Pilot Act is self - explanatory.

Please accept it and this letter as the Alaska Steamship Association's statement of support for the action taken by the Marine Pilot Board during its February 1994 meeting regarding extending the tariff.

Additionally, permit me to underscore the fact that both pilot association representatives and both industry representatives on the board voted in favor of extending the tariff to June 30, 1998.

Best regards,


Joe Kyle

cc: Commissioner Paul Fuhs, DCED
Alaska Steamship Association

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 23, 1994

Commissioner Paul Fuhs
Department of Commerce & Economic Development
State Office Building
P. O. Box 110800
Juneau, Alaska 99811-0800

Dear Commissioner Fuhs:

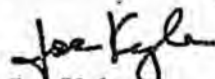
At its February 1994 meeting, the Alaska Board of Marine Pilots voted 5 - 2 to recommend that the current tariff provision in the Marine Pilot Act be extended to June 30, 1998. The two opposing votes were cast by Deputy Commissioner Reed and Chairman Klepper. Deputy Commissioner Reed stated he voted against the motion to extend the tariff, not because he was opposed to extending it, but because he felt the oversight responsibility for the tariff should be exercised by an entity other than the Board of Marine Pilots. Mr. Klepper did not announce his rationale, but presumably it was the same as Deputy Commissioner Reed's. Both pilot representatives on the board voted in favor of extending the tariff.

Over the last week the Alaska Steamship Association (ASA) learned that the Southeast Alaska Pilots (SEAPA), Alaska Marine Pilots (AMP), and Western Alaska Pilots (WAPA) have been opposing a tariff extension in conversations and letters to key legislators. From my recent conversations with the Alaska Coastal Pilots (ACP) and the Southwest Alaska Pilots (SWAPA), I understand they support the pilot board action to extend the tariff.

While ASA is attempting to work constructively with all the pilot associations to find a more mutually agreeable, long term solution to setting pilot tariffs, we believe a continuation of the status quo will best serve as a bridge to that solution. If the tariff sunsets; state officials, the pilot board, the industry, and the pilots will sail off into uncharted waters, just as we are all learning to work with the tariff provision — written into law just over two years ago.

The ASA urges you to support the pilot board action on the tariff by favorably endorsing its February action to the Alaska legislature.

Sincerely,


Joe Kyle

cc: Senator Drue Pearce
Representative Bill Hudson

March 23, 1994

Representative Bill Hudson
Alaska State Legislature
Room 108, Capital Bldg.
Juneau, Alaska 99801-1182

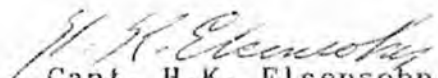
Dear Representative Hudson:

Thank you for your letter of March 16, 1994, pertaining to the future of the Pilotage Act. I appreciate the work you have done trying to bring some sense back to piloting. The thing that worries me the most is that many of the legislators do not seem to realize that the only reason for having state pilots is to protect the ecology, people, and property of the state. Because of the fragile ecology, extreme tidal currents, and difficult weather conditions, the Pilotage Act should only be a means of making sure the State of Alaska is able to attract and retain the most qualified pilots in the United States. The present act attempts to do this, but then it makes pilots compete for work, thus putting the agents and steamship operators in charge of the pilots, instead of the state. These people do not necessarily have the states interests at heart.

There must be some way to explain to the legislators how important piloting is to the state. I have had good replies from a number of them, but still not enough of them are aware of the extreme importance of the job the state pilot does day in and day out, in all kinds of weather. To get a good pilotage act, the concerned state legislative committees should sit down with experienced pilots and work out an act. In reality, the steamship operators are only worried about the costs. They should have an input about rates, but that is all. It is easy to set rates - just set them so the Alaska pilot makes the same as the average pilot on the West Coast, perhaps with an allowance for conditions. That would be easy to do, and in order to keep the tariffs as low as possible, have only as many pilots as are required to take care of the shipping of an area. Also, because of the great differences in the areas, it may be reasonable to have different regulations for each of the pilotage areas.

I am sorry to go on and on about this. I really intended on just thanking you for your help, but when I get started on this subject I just don't know when to stop. Please feel free to contact me if I can be of any assistance.

Respectfully,


Capt. H.K. Elsensohn
P.O. Box 387
Lincoln City, Oregon
97367

ASHBURN AND MASON

LAWYERS

A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501

MARK E. ASHBURN
DOUGLAS B. BAILY
LEWIS F. GORDON
JULIAN L. MASON
JOHN C. McCARRON
DONALD W. McCLINTOCK
A. WILLIAM SAUPE
SHARON A. STURGES
KIRSTEN TINGLUM

TELEPHONE
(907) 276-4331

TELECOPIER
(907) 277-8235

March 2, 1994

VIA FAX NO. 586-1204

Mr. Stuart Mork
Alaska Marine Pilots
P. O. Box 730
Dutch Harbor, Alaska 99602

Re: Maximum Tariff
Our File No. 7936.002

Dear Stuart:

I am writing this letter pursuant to our recent discussions pertaining to the maximum tariff set by the Board of Marine Pilots pursuant to AS 08.62.045(a). Your specific question to me was whether the repeal of AS 08.62.045 would deprive a marine pilot organization of a significant benefit in connection with the "state action" exemption from federal antitrust statutes. You have asked me to set forth in a brief letter the conclusions which I earlier discussed with you.

The "state action" exemption provides generally that the antitrust laws do not apply to action by a state operating in its sovereign capacity or to private conduct directed or compelled by the state. There is a two-pronged standard for applying the state action doctrine to private parties: (1) the challenged restraint must be one clearly articulated and affirmatively expressed as state policy, and (2) the state must actively supervise any private anticompetitive conduct.

For the reasons which I described to you in some detail in our recent discussions, I do not believe that the repeal of AS 08.62.045 would be particularly meaningful in its impact on the potential antitrust liability of marine pilot organizations. There are two basic reasons for this conclusion.

First, an argument can be made that AS 08.62.045 does not satisfy the test for a state action exemption as it is presently written. AS 08.62.045 does not displace competition with regulation; rather, it authorizes the Board of Marine Pilots to set a

Mr. Stuart Mork
Page 2
March 2, 1994

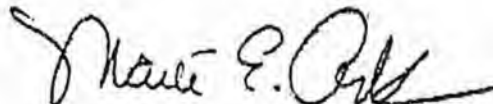
maximum tariff, authorizes a pilot organization to notify the Board of Marine Pilots of a revised tariff for the organization, and sets up a scheme where pilot organizations may compete with one another on price matters. While AS 08.62.045 does offer some antitrust protection to marine pilot organizations (because of the Board's "review" of group tariffs), it is certainly not clear that the Board's action under the statute would satisfy the second prong of the standard for the state action exemptions. The standard would, by way of contrast, clearly be met if the statute authorized the Board to set a fixed tariff and required all pilots to charge the tariff set by the Board.

Second, an argument can certainly be made that in a statutory scheme where marine pilot organizations compete with one another on the issue of tariffs, then there is no anticompetitive impact from allowing pilots to form regional groups that set tariffs, train pilots, provide dispatching services, etc. Such groups are business entities, competing on the basis of price and service with rival groups in the same region.

For these two reasons, the protection afforded by AS 08.62.045 to marine pilot organizations, while measurable, is not particularly significant. I have kept this letter short for your convenience. Please let me know if you have any questions.

Very truly yours,

ASHBURN & MASON



Mark E. Ashburn

MEA:dt

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STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534

February 18, 1994

H
Y. HICKEL

The Honorable Bill Hudson
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

During the meeting of the Board of Marine Pilots held in Juneau on February 7 and 8, 1994, the implications of the sunseting of AS 08.62.045, Pilotage Tariffs, on June 30, 1994 was discussed at length.

Department of Law and legislative legal attorneys are concerned that removing the tariff-setting responsibility of the Board of Marine Pilots would remove the state's pilot organizations' protection from federal anti-trust suits under the state action exemption.

After consultation with Mr. Jim Forbes of the Attorney General's Office, the board moved to request that the legislature extend AS 08.62.045 until June 30, 1998.

Please feel free to contact me if I can provide any further information.

Sincerely,


Daniel C. Twohig
Marine Pilot Coordinator

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 **ALASKA MARITIME AGENCIES**

1600 A STREET, SUITE 215, ANCHORAGE, ALASKA 99501

Tel: (907) 272-0714
Fax: (907) 272-8795
Tlx: 6733427 (MCI)
Cable: ALAMAR

February 11, 1994

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson,

I have recently received a copy of your January 31st letter from Joe Kyle, addressing House Bill 237. In it you wish to have an overview of current and remaining issues between the pilot groups and ourselves (industry).

Working out the fine details of a long term agreement is a lengthy process that has taken many months in the Western and Central Regions. We are confident that our agreements with these 3 groups reflect our desire to make fair agreements with the groups in the Southeast Region. On February 8th and 9th, we had continued our ongoing discussions with SEAPA and feel that there has been much progress from our first discussions.

We will continue to negotiate in good faith, not only on tariff issues but in areas to ensure both SEAPA and ACP have available to them, all of the opportunities that the competing groups would need to continue their profession of piloting vessels in Alaska. With the many statutes and regulations a pilot group must comply with, Industry's agreements with a particular pilot group should not restrict either the training or licensing of any other competing group that wishes to work in the region. It is a very delicate situation in this regard.

I just wish to confirm with you that discussions are taking place and it seems we are closer to a working agreement, although it will take a little more time.

Thank you for the opportunity to reply to your inquiry regarding pilotage in the Southeast Region and am sure Mr. Kyle will keep you advised of all progress.

Sincerely,

ALASKA MARITIME AGENCIES



Daniel Blackmore
Vice President

Cc: Mr. Joe Kyle, Pacific Associates

North West CruiseShip Association of Alaska

PO Box 8080, 1429 Tongass Avenue, Ketchikan, Alaska, 99901

Telephone (907) 225-0999
Facsimile (907) 225-8254

February 8, 1994

Rep. Bill Hudson
State Capitol, Room 108
Juneau, Alaska 99801-1182

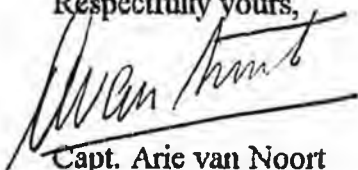
Dear Rep. Hudson:

Through Mr. Joe Kyle of Pacific Associates I received a copy of your January 31 letter regarding your interest in the current status of negotiations between pilot associations and industry, and more particularly the Southeast Alaska Pilot's Association and the Northwest CruiseShip Association of Alaska (NWCA). In the Westerly and Southcentral regions the cruise ship industry is in agreement with the other A.S.A. members and consensus between parties has been reached.

As for the Southeast region, 4 member lines have individually reached agreement, resulting in extended contracts with either Southeast Alaska Pilot Association or Alaska Coastwise Pilots. NWCA has begun the process of contract negotiations with Southeast Alaska Pilots's Association on behalf of the remaining member lines. We are convinced that both parties are anxious to resolve all operational and tariff related differences.

I also want to take this opportunity to express our appreciation for your interest and involvement in these pilotage issues.

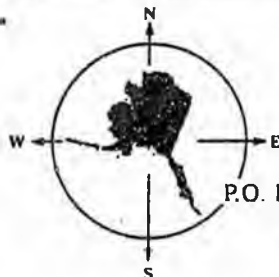
Respectfully yours,



Capt. Arie van Noort
President

NCWA Members:	Costa Cruises	Crystal Cruises
	Cunard Lines	Holland America Line
	Kloster Cruise Lines	Princess Cruises
	Regency Cruises	Royal Caribbean Cruise Lines
	Seven Seas Cruises	World Explorer Cruises

cc: Joe Kyle, Pacific Associates
Capt. H. Antonsen, SEAPA



North Pacific Maritime, Inc.

P.O. BOX 8080 • 1429 TONGASS AVENUE • KETCHIKAN, ALASKA • 99901 • (907) 225-2200

February 7, 1994

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

Joe Kyle of Pacific Associates has forwarded to me a copy of your January 31st letter addressing HB 237 and resolve of remaining issues between industry and pilots.

During the past year there have been significant gains between pilots and industry throughout the various pilot regions. Until December 1993 our efforts have focused on issues in the westerly and southcentral regions. I believe everyone would agree that in those regions consensus has been reached regarding tariff and other principal concerns.

Although pilots and industry in the southeast region were working with existing tariff understandings, Southeastern Alaska Pilots' Association (SEAPA) in December of 1993 requested that pilots and industry begin discussions regarding long term tariff commitments. On January 12th representatives from Alaska Maritime Agencies and Southeast Stevedoring met separately with SEAPA and Alaska Coastwise Pilots Association (ACP) to initiate discussions regarding tariffs and long term impact of projected volumes of cargo shipping activity. My impression of the meetings that day were positive, with discussions open and constructive. We all agreed to resume discussions before or at the next scheduled Pilot Board meeting this month. I have confirmed with SEAPA and ACP that we will meet this next week (February 7-9) in Juneau.

While I to am anxious about the prospects of resolving tariff issues, I am concerned that setting a completion deadline will alter the mood of continued negotiations. It may have taken industry and pilots of other regions months

of negotiations to reach a tariff agreement, but compromise was attained and all parties were satisfied. Most importantly, the negotiations occurred without outside influence or pressures.

Tariff issues may appear paramount, but as the Board of Marine Pilots continues to adopt new regulations relating to entry level qualifications, training and proficiency requirements for pilots, the importance of work opportunity for all pilots will be significant.

I assure you industry is as anxious as pilots to resolve tariff and work related differences. We will continue to meet and negotiate with SEAPA and ACP toward an equitable and achievable compromise. Joe Kyle will keep you advised of the progress of these meetings. Thank you for your continued involvement and concern in Alaska pilotage.

Respectfully yours,

SOUTHEAST STEVEDORING CORP.

Bill Sharp
Vice President

cc: Alaska Steamship Association
Representative William K. Williams, Juneau
SEAPA, Ketchikan
ACP, Ketchikan

WESTERN ALASKA PILOTS ASSOCIATION
P.O. BOX 792
UNALASKA, ALASKA 99685

Bill
Wynne
A.
Lynch file

February 7, 1994

Representative Bill Hudson
State Capital
Juneau, Alaska 99801

RE: Marine Pilots, HB 237

Dear Representative Hudson:

As the president of Western Alaska Pilots Association, WAPA, I am writing in behalf of our association in response to your letter of January 31, 1994.

WAPA was organized, in part, on the premise that we can provide excellent pilotage under competitive conditions. That competition can provide the incentives to do quality work, accommodate the needs of agents and ships and maintain a fair negotiated price seem to us to be self-evident.

We have not responded to offers to enter into formal contracts with agents for several reasons. First, we feel that it is not in the best interest of the agents to be locked into such contracts because they cancel competitive incentives. We worry about market-sharing arrangements for the same reason.

A free market which creates price based upon supply and demand is one of mankind's greatest inventions. There are no examples where prices which have been fixed by fiat have yielded the benefits of free market price setting - either in an economic nor human spirit sense.

We are therefore trying to run our association on the principles which underlie a free market.

Our efforts to provide quality service at a fair price are being undermined by those who fear such principles and who strive to get legislative protection from the discipline of the market.

WESTERN ALASKA PILOTS ASSOCIATION

We feel HB 237 is based upon protectionist and anti-market premises. It is an effort to more firmly establish a monopolistic bias into the piloting profession. It imposes high costs of regulation on pilots, shipowners and the state. Most sadly, it only temporarily benefits those who have failed in a competitive market.

The proposed (by whom, we don't know), new sections (08.62.055 et al) concerning tariff setting procedures are one of the most unfortunate efforts we have ever seen to create a mess where no problem exists.

The current pilotage act has been awkward to implement because it has one foot on regulated monopoly principles and one foot on competitive principles. Naturally, the body of the law will be unstable and controversial.

You have been interested in the industry and willing to get involved in it, and for that we are appreciative. There is no doubt that the current law is badly in need of repairs.

The repairs which are needed, however, are not those which emphasize and continue its weaknesses. What is needed is to take out of the current law those elements which make it weak.

There are really only four aspects of the law which, if removed, would eliminate the barriers which prevent the benefits of a free market from working. These are:

1. Sec. 08.62.080 (a) - The phrase "... and is a member of a pilot organization recognized by the board."

What other profession places such a restriction on it's practitioners?

2. Sec. 08.62.045 - There is no reason or need for the state (board) to be involved in the price a profession charges for it's services, if the profession is not a monopoly or if free market forces of supply and demand are allowed to function.
3. Sec. 08.62.163 - this entire section closed the door on one of the options a ship owner has to be in the competitive market place.

Representative Bill Hudson
RE: Marine Pilots, HB 237
page two of three pages
2/7/94

WESTERN ALASKA PILOTS ASSOCIATION

Is it the state's interest to maintain pilot organizations?
Or is it the state's interest to be sure that the skills of a
licensed pilot are used while a vessel is in Alaskan waters?
We think the answer is obvious.

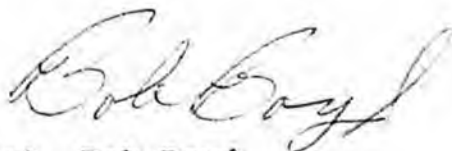
4. Sec. 08.62.080 (b) - The only purpose of this section is to protect pilot organization territory. A pilot in one region may be licensed for 30 ports. Is there any reason that a pilot can not be licensed (qualified) to work in a total of, say, 10 ports which cover more than one region? Of course, the reason is to protect pilot organization regions.

The removal of these four sections (and the regulations based upon), can do more for the marine industry (including pilots) than another 100 pages of law can ever do.

We suggest that if the legislative session is too far advanced to get these sections omitted then it is desirable to Sunset the Board of Marine Pilots and next year begin the law-making process anew.

We do not support any efforts to continue the protectionist and monopolistic bias of the current law by adding the type of provisions currently being sponsored by those who are unwilling to abide by free market principles.

Sincerely,



Capt. Bob Boyd
for WESTERN ALASKA PILOTS ASSOCIATION

Representative Bill Hudson
RE: Marine Pilots, HB 237
2/7/94
page three of three pages

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534

April 7, 1993

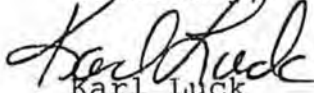
HON. William Hudson
114 Second Street
Juneau, AK 99801

Representative Hudson:

As I testified yesterday during the HB 237 Committee meeting, the subject of tugs and tows and vessels of 1,000 gross tons or greater as addressed in Amendment 9 to HB 237, is currently in proposed regulation. I have attached a copy of the submittal letter and the applicable portion of the proposed regulation for your information.

Additional comments concerning Amendment 9 include the fact that the Alaska Marine Highway vessels are not subject to State Pilotage regulations. Additionally, the reduction of the 60 day pilotage requirement to 30 days reduces a requirement meant to ensure competency and proficiency on vessels subject to this Chapter.

Sincerely,


Karl Luck
Director

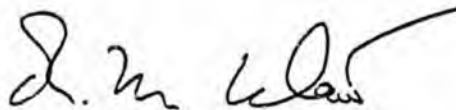
ORDER AMENDING, REPEALING, AND ADOPTING REGULATIONS OF THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

The attached 45 pages of regulations dealing with training requirements, tariffs, license and endorsement requirements, renewal of licenses, drug and alcohol testing, and other subjects related to marine pilotage are hereby certified to be correct copies of the regulations which the Department of Commerce and Economic Development, Board of Marine Pilots, after the December 4, 1992 vote of a quorum of the board, amends, repeals, and adopts under the authority of AS 08.62 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor as provided in AS 44.62.180.

DATE: 1/23/93
Ketchikan, Alaska



Bob Watt, Chairperson
Board of Marine Pilots

FILING CERTIFICATION

I, John B. Coghill, Lieutenant Governor for the State of Alaska, certify that on _____, 19____, at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - AS 44.62.120.

John B. Coghill, Lieutenant Governor

Effective: _____)

Register: _____)

BW/1vs8770t
011593a

preceding the date of application for renewal the familiarization trips in 12 AAC 56.082 in the region for which renewal is sought.

(d) No more than one day's credit for piloting will be given in any one calendar day, and each day's credit must involve a vessel movement.

(e) A marine pilot applying for license renewal for the licensing period after December 31, 1998 shall provide documentation that the pilot's state and federal licenses have no exclusions for the region in which renewal is sought before the license is renewed.

(f) To renew the biennial license of a deputy marine pilot, the licensee shall comply with AS 08.62.093, 08.62.120, and (b)(1)--(5) and (g) of this section.

(g) A deputy marine pilot shall comply with (c) of this section for each complete calendar year that he or she held a license. (Eff. 6/11/71, Register 38; am 6/19/74, Register 50; am 5/12/78, Register 66; am 7/24/83, Register 87; am 8/29/87, Register 103; am / / , Register)

Authority: AS 08.62.040
AS 08.62.120

12 AAC 56 is amended by adding a new section to read:

12 AAC 56.082. FAMILIARIZATION TRIPS. (a) Southeastern Alaska -- to fulfill the familiarization requirements of 12 AAC 56.080(c)(2) in the southeastern region a pilot shall perform

(1) on vessels of 1,000 gross tons or tug and tows exceeding 1,000 combined gross tons that are not subject to AS 08.62, four round trips between

Ketchikan and Skagway, which must include two trips through Peril Straits and four trips through Wrangell Narrows;

(2) on vessels of 1,000 gross tons or more, one round trip or two transits

- (A) through Snow Pass;
- (B) through Decision Pass;
- (C) through North Inian Pass;
- (D) in Sitka Eastern Channel;
- (E) in Gastineau Channel;
- (F) to Point McCarty;
- (G) over Tracy Arm Bar; and
- (H) into Glacier Bay.

(b) Southcentral Alaska -- to fulfill the familiarization requirements of 12 AAC 56.080(c)(2) in the southcentral region a pilot shall

(1) provide proof of a combination of working days and days as an observer totaling at least 60 on vessels subject to AS 08.62;

(2) successfully perform five dockings and five undockings at Nikiski; one docking and undocking shall be performed under ice conditions; and

(3) for a pilot with a VLCC endorsement, successfully perform five dockings and five undockings on VLCC vessels.

(c) Western Alaska -- to fulfill the familiarization requirements of 12 AAC 56.080(c)(2) in the western region a pilot shall either

(1) provide proof of a combination of working days and familiarization trips totaling at least 60; the combination must include at least 20 dockings in five

REGISTER __, __ 1993 PROFESSIONAL REGULATIONS

different ports; no more than one half of the familiarization trips or dockings may occur in any one port, and the remainder must occur in four additional ports; Dutch Harbor and Captain's Bay are considered as one port for the purposes of this subparagraph; or

(2) provide proof of at least 60 familiarization trips on vessels subject to AS 08.62, tugs and tows of 1,000 gross tons combined, or enrolled vessels of 1,000 gross tons or more except fishing vessels as defined in 12 AAC 56.990 as follows:

- (A) 20 trips in Dutch Harbor;
- (B) three trips through Iliuliuk Channel;
- (C) five trips to Captain's Bay;
- (D) 12 trips in any combination through Akutan, King Cove, Sand Point, or Chignik;
- (E) one trip to Cold Bay;
- (F) three trips to Naknek;
- (G) two trips to Togiak;
- (H) two trips to Port Moller; and
- (I) twelve additional trips to any combination of ports in (D)--(H) of this paragraph.

(d) Kuskokwim River - to fulfill the familiarization requirements of 12 AAC 56.080(c)(2) in the Kuskokwim River region a pilot shall complete 15 round trips between the pilot station and Bethel with a total of 30 movements on the Kuskokwim River. (Eff. / / , Register)

Lyndey

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534

April 5, 1993

HON. William Hudson
Alaska State Legislature
114 Second St.
Juneau, AK 99801

Representative Hudson:

On 1-2 April 1993, an audit of Region One pilotage activities for the period 1 November 1991 thru 30 April 1992 was conducted by the Marine Pilot Coordinator. The research utilized records held by this office, and information provided by Southeast Stevedoring Corporation concerning vessel dispatch. Records utilized by this office were limited to quarterly pilot reports submitted to this office by SEAPA and ACP. Numerical breakout of vessel movements follows:

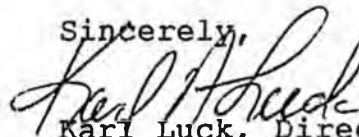
ORGANIZATION	TIMEFRAME		
	OCT-DEC 1991	JAN-MARCH 1992	APRIL 1992
SEAPA	102	85	41
ACP	13	40	15
TOTAL MOVES	115	125	56

PERCENTAGE OF TOTAL MOVES BY ORGANIZATION:

SEAPA%	89%	68%	73%
ACP%	11%	32%	27%

The attached 8 pages of information are reference sources for the information provided here-in. I realize that the presentation of numbers can often be suspect, however all efforts were made to present only factual information in an unbiased manner.

Sincerely,



Karl Luck, Director
Division of Occupational Licensing

ACP

<u>DATE</u>	<u>SHIP</u>	<u>PILOT</u>
10/22/91	Virtue	Spence
10/23/91	Virtue	Spence
10/31/91	Ace Accord*	Spence
11/19/91	Neo Pelargonium*	Spence
11/21/91	Neo Pelargonium*	Homer
11/28/91	Golden APO*	Spence
12/7/91	Fortune Hunter	Spence
12/9/91	Ocean Orchid*	Spence
12/13/91	Ocean Orchid*	Spence
12/15/91	Pacific Sea	Spence
12/17/91	Ocean Orchid*	Spence
12/17/91	Pacific Sea	Spence
12/30/91	Bright Ocean	McPherson
1/6/92	Bright Ocean	Spence/McPherson
1/7/92	Bright Ocean	McPherson
1/9/92	Golden Venture	Nielsen
1/9/92	Sanko Heritage*	Spence/McPherson
1/10/92	Sanko Heritage*	Spence/McPherson
1/12/92	Sanko Heritage*	Spence/McPherson
1/25/92	Spring Vega	Homer/Nielsen
1/27/92	Spring Vega	Homer/Nielsen
1/28/92	Spring Vega	Homer/Nielsen
2/1/92	Spring Vega	Spence
2/4/92	Green Maya	Spence
2/5/92	Green Maya	Spence/McPherson
2/9/92	Handy Accord	Spence/McPherson
2/14/92	World Quince*	Spence/McPherson
2/14/92	Green Maya	Bennett
2/16/92	Green Kobe	Nielsen
2/17/92	World Quince*	Spence/McPherson
2/21/92	Green Kobe	Spence/McPherson
2/22/92	Virginia	Nielsen/McPherson
2/26/92	Bright Ocean	Spence
2/26/92	Fremo Scorpius*	Nielsen/McPherson
2/27/92	Fremo Scorpius*	McPherson
2/28/92	Virginia	McPherson/Nielsen
2/28/92	Virginia	McPherson
2/29/92	Bright Ocean	McPherson/Nielsen
3/2/92	Fremo Scorpius*	Spence/Bennett/McPherson
3/3/92	Virginia	Spence/Bennett/McPherson
3/4/92	Virginia	Bennett
3/6/92	Virginia	Spence/Bennett/McPherson
3/8/92	Woody Duke	Bennett
3/9/92	Shvei Queen*	Bennett
3/12/92	Shvei Queen*	Bennett
3/12/92	Woody Duke	Bennett

3/19/92	Glory Fuji	Bennett
3/26/92	Glory Fuji	Bennett
3/26/92	Glory Fuji	Bennett
3/27/92	Jufu	Spence
3/28/92	Jufu	Spence/McPherson/Bennett
3/31/92	Glory Fuji	Bennett
3/31/92	Ace Accord*	Bennett
4/4/92	Manila Felix	Bennett
4/4/92	Ace Accord	Bennett
4/10/92	Miyabi-Marui	Nielsen
4/11/92	Golden Venture	Nielsen
4/11/92	Miyabi-Marui	Nielsen
4/14/92	Miyabi-Marui	Nielsen
4/21/92	Ocean Lily*	Nielsen
4/21/92	Ocean Lily*	Nielsen
4/21/92	Virginia	Nielsen
4/23/92	Hilda*	Nielsen
4/24/92	Ocean Lily*	Nielsen
4/24/92	Ocean Lily*	Nielsen
4/25/92	Virginia	Nielsen
4/30/92	Golden Rose*	Nielsen
4/30/92	Golden Rose*	Nielsen

ALASKA MARINE PILOT QUARTERLY REPORT

DATE	SHIP NAME	PILOT NAME	PILOT NAME
10/01/91	TRINITY STAR ✓	SWAN, W. R.	
10/01/91	STAR MARLIN ✓	SMITH, R. W.	
10/02/91	ASEAN VICTORY ✓	CHADWICK, A. C.	
10/04/91	CALATAGAN -	PORTER, G. R.	
10/02/91	GLORY EXPRESS ✓	DIMENT, A. G.	
10/06/91	GLORY EXPRESS ✓	COLLINS, D. O.	
10/03/91	WESTERN FAITH ✓	GURRY, R. H.	
10/03/91	WESTERN FAITH ✓	GURRY, R. H.	
10/05/91	WESTERN FAITH ✓	GURRY, R. H.	
10/02/91	GRACE ISLAND †	GURRY, R. H.	
10/03/91	OCEAN EMPRESS ✓	COLLINS, D. O.	
10/09/91	OCEAN EMPRESS ✓	SWAN, W. R.	
10/03/91	APOLLO ACE †	DUNN, R. S.	
10/06/91	APOLLO ACE †	DUNN, R. S.	
10/06/91	STAR EVANGER ✓	COLLINS, D. O.	
10/09/91	STAR EVANGER ✓	COLLINS, D. O.	
10/08/91	FORTUNE HUNTER ✓	SMITH, R. W.	
10/12/91	FORTUNE HUNTER ✓	SMITH, R. W.	
10/06/91	BUFFALO -	COLLINS, D. O.	
10/11/91	BUFFALO -	SWAN, W. R.	
10/08/91	BLUE TAURUS -	DUNN, R. S.	
10/09/91	BLUE TAURUS -	DUNN, R. S.	
10/10/91	OSPREY ARROW -	GURRY, R. H.	
10/15/91	OSPREY ARROW -	SMITH, R. W.	
10/13/91	MARINE TRADER †	CHADWICK, A. C.	
10/16/91	MARINE TRADER †	SWAN, W. R.	
10/17/91	AUK ARROW ✓	SWAN, W. R.	
10/18/91	AUK ARROW -	COLLINS, D. O.	
10/14/91	DILIGENCE TRADE †	SWAN, W. R.	
10/13/91	DILIGENCE TRADE †	SWAN, W. R.	
10/15/91	MAERSK POPLAR †	GURRY, R. H.	
10/21/91	MAERSK POPLAR †	SMITH, R. W.	
10/18/91	USS CORONADO †	GURRY, R. H.	
10/21/91	USS CORONADO †	GURRY, R. H.	
10/17/91	SOUTHERN ACCORD †	SMITH, R. W.	
10/24/91	SOUTHERN ACCORD †	SWAN, W. R.	
10/24/91	SOUTHERN ACCORD †	SWAN, W. R.	
10/29/91	SOUTHERN ACCORD †	PORTER, G. R.	
10/23/91	COAST RANGE †	ANTONSEN, H. H.	
10/23/91	COAST RANGE †	ANTONSEN, H. H.	
10/25/91	GREEN SASEBO -	ANTONSEN, H. H.	
10/31/91	GREEN SASEBO -	JONES, C. B.	
10/30/91	SALINAS -	JONES, C. B.	
11/02/91	SALINAS -	GURRY, R. H.	
11/02/91	WOODY DUKE -	GURRY, R. H.	
11/04/91	WOODY DUKE -	JONES, C. B.	
11/31/91	BRIGHT OCEAN -	CHADWICK, A. C.	
11/06/91	BRIGHT OCEAN -	JONES, C. B.	
11/06/91	CITRUS ISLAND †	COLLINS, D. O.	
11/10/91	CITRUS ISLAND †	JONES, C. B.	
11/01/91	LOUISIANA HAMA -	SMITH, R. W.	

ALASKA MARINE PILOT QUARTERLY REPORT

DATE	SHIP NAME	PILOT NAME	PILOT NAME
11/02/91	LOUISIANA MAHA -	SMITH, R. W.	
11/08/91	VENTURE STAR +	SMITH, R. W.	
11/09/91	VENTURE STAR +	SMITH, R. W.	
11/11/91	GROUSE ARROW -	SMITH, R. W.	
11/12/91	GROUSE ARROW -	SMITH, R. W.	
11/03/91	PIKE BEAUTY +	SMITH, R. W.	
11/06/91	PIKE BEAUTY +	SMITH, R. W.	
10/25/91	OCEANID -	GURRY, R. E.	
10/31/91	OCEANID -	SMITH, R. W.	
10/25/91	VIRTUE -	ANTONSEN, H. H.	
10/30/91	VIRTUE -	SMITH, R. W.	
11/13/91	SOUTHERN VIRGO -	ANTONSEN, H. H.	
11/18/91	SOUTHERN VIRGO -	CREASEY, E. H.	
11/13/91	HANDU ARROW -	SMITH, R. W.	
11/15/91	HANDU ARROW -	SMITH, R. W.	
11/17/91	WESTERN JADE -	ANTONSEN, H. H.	
11/21/91	WESTERN JADE -	JONES, C. E.	
11/24/91		ANTONSEN, H. H.	
11/25/91	STAR NEW YORK +	SMITH, R. W.	
11/10/91	OCEAN MASTER -	COLLINS, D. O.	
11/17/91	OCEAN MASTER -	PORTER, G. E.	
11/22/91	OCEAN MASTER -	ANTONSEN, H. H.	
11/22/91	OCEAN MASTER -	ANTONSEN, H. H.	
11/26/91	OCEAN MASTER -	SMITH, R. W.	
11/30/91	SIERRA MADRE +	PORTER, G. E.	
12/01/91	SIERRA MADRE +	PORTER, G. E.	
11/24/91	TANAGRA -	CREASEY, E. H.	
11/25/91	TANAGRA -	JONES, C. E.	
11/27/91	TANAGRA -	JONES, C. E.	
12/02/91	TANAGRA -	JONES, C. E.	
11/29/91	FREHO SCORPIUS +	CREASEY, E. H.	
11/28/91	FREHO SCORPIUS +	SMITH, R. W.	
11/26/91	MOLDA -	CREASEY, E. H.	
12/01/91	MOLDA -	SMITH, R. W.	
11/26/91	JUFU -	PORTER, G. E.	
12/03/91	JUFU -	ANTONSEN, H. H.	
11/30/91	GRAND HONEST -	ANTONSEN, A. I.	
12/02/91	GRAND HONEST -	ANTONSEN, A. I.	
12/09/91	ORANIBURG +	SMITH, R. W.	
12/10/91	ORANIBURG +	SMITH, R. W.	
12/08/91	TEEN ARROW -	DIMENT, A. G.	
12/10/91	TERN ARROW -	DIMENT, A. G.	
12/11/91	TERN ARROW -	JONES, C. E.	
12/12/91	TERN ARROW -	PORTER, G. E.	
12/13/91	GROUSE ARROW -	SMITH, R. W.	
12/16/91	GROUSE ARROW -	SMITH, R. W.	
12/12/91	ANANGEL NIGHT -	SMITH, R. W.	
12/23/91	ANANGEL NIGHT -	ANTONSEN, H. H.	
12/13/91	GLORY EXPRESS -	DIMENT, A. G.	
12/18/91	GLORY EXPRESS -	DUNN, B. S.	
12/15/91	OCEAN COSMOS +	JONES, C. E.	

ALASKA MARINE PILOT QUARTERLY REPORT

DATE - SHIP NAME PILOT NAME PILOT NAME

12/22/91	OCEAN COSMOS +	JONES, C. E.	
12/22/91	OCEAN COSMOS +	JONES, C. E.	
12/28/91	OCEAN COSMOS +	JONES, C. E.	
12/26/91	CLOVER TRUST +	DUNN, R. S.	
12/30/91	CLOVER TRUST +	SMITH, R. W.	
12/29/91	MORNING ORCHID +	ANTONSEN, H. H.	
12/31/91	PEONIA +	DUNN, R. S.	

ALASKA MARINE PILOT QUARTERLY REPORT

DATE	SHIP NAME	PILOT NAME	PILOT NAME
01/06/92	SIERRA MADRE +	ANTONSEN, H. H.	
01/06/92	MORNING ORCHID +-	SMITH, R. W.	
01/03/92	SPIRIT T -	ANTONSEN, H. H.	
01/05/92	PEONIA -	PORTER, G. R.	
01/06/92	PEONIA -	SMITH, R. W.	
01/10/92	PEONIA -	DUNN, R. S.	
01/02/92	HYUNDAI #16 -	PORTER, G. R.	
01/06/92	HYUNDAI #16 -	DUNN, R. S.	
01/07/92	HYUNDAI #16 -	DUNN, R. S.	
01/09/92	HYUNDAI #16 -	ANTONSEN, H. H.	
01/08/92	NEPTUNE OLIVINE -	SWAN, W. R.	
01/10/92	NEPTUNE OLIVINE -	SWAN, W. R.	
01/07/92	CORMORANT ARROW -	COLLINS, D. O.	
01/11/92	CORMORANT ARROW -	COLLINS, D. O.	
01/04/92	CITRUS ISLAND +	DUNN, R. S.	
01/11/92	CITRUS ISLAND +	DUNN, R. S.	
01/11/92	IBIS ARROW -	ANTONSEN, H. H.	
01/12/92	IBIS ARROW -	SWAN, W. R.	
01/15/92	HAREFIELD -	DUNN, R. S.	
01/17/92	HAREFIELD -	DUNN, R. S.	
01/09/92	ALASKA -	COLLINS, D. O.	
01/12/92	ALASKA -	COLLINS, D. O.	
01/13/92	ALASKA -	COLLINS, D. O.	
01/19/92	ALASKA -	ANTONSEN, A. I.	
01/20/92	ESPERANCE -	SWAN, W. R.	
01/21/92	ESPERANCE -	SWAN, W. R.	
01/25/92	MARINA +	DUNN, R. S.	
01/29/92	MARINA +	ANTONSEN, H. H.	
01/30/92	HAERSE POPLAR	DIMENT, A. G.	
01/31/92	HAERSE POPLAR	DIMENT, A. G.	
02/03/92	HOBGE HARLIN -	SWAN, W. R.	
02/05/92	HOBGH HARLIN -	SWAN, W. R.	
01/30/92	PAC BARON +	SWAN, W. R.	
02/01/92	PAC BARON +	COLLINS, D. O.	
02/07/92	ROVER +	COLLINS, D. O.	
02/07/92	ROVER +	COLLINS, D. O.	
02/13/92	SIERRA MADRE +	PORTER, G. R.	
02/14/92	SIERRA MADRE +	PORTER, G. R.	
02/04/92	RELIANCE TRADER +	ANTONSEN, A. I.	
02/06/92	RELIANCE TRADER +	ANTONSEN, A. I.	
02/15/92	HANDY ACCORD -	CREASEY, B. H.	
02/15/92	HANDY ACCORD -	CREASEY, B. H.	
02/20/92	HANDY ACCORD -	CREASEY, B. H.	
02/17/92	ATLANTIC -	ANTONSEN, A. I.	
02/20/92	ATLANTIC -	ANTONSEN, A. I.	
02/14/92	SWAN ARROW -	ANTONSEN, H. H.	
02/15/92	SWAN ARROW -	PORTER, G. R.	
02/11/92	GROUSE ARROW -	SWAN, W. R.	
02/13/92	GROUSE ARROW -	DIMENT, A. G.	
02/10/92	GEORGIA +	ANTONSEN, A. I.	
02/14/92	GEORGIA +	DIMENT, A. G.	

ALASKA MARINE PILOT QUARTERLY REPORT

DATE	SHIP NAME	PILOT NAME	PILOT NAME	CODE DESCRIPTION
02/17/92	HAKUFU -	PORTER, G. R.		
02/19/92	HAKUFU -	SWAN, W. E.		
02/23/92	ARRITAS -	SWAN, W. E.		
02/26/92	ARRITAS -	DIMENT, A. G.		
02/11/92	VIRTUE -	PORTER, G. E.		
02/14/92	VIRTUE -	CREASEY, E. H.		
03/02/92		DIMENT, A. G.		
03/03/92		COLLINS, D. O.		
02/27/92	TANAGRA -	COLLINS, D. O.		
03/03/92	TANAGRA -	CREASEY, E. H.		
02/23/92	TROPICAL BEAUTY -	ANTONSEN, A. I.		
02/25/92	TROPICAL BEAUTY -	ANTONSEN, A. I.		
02/26/92	TROPICAL BEAUTY -	ANTONSEN, A. I.		
03/01/92	TROPICAL BEAUTY -	ANTONSEN, A. I.		
03/11/92	OSPREY ARROW -	PORTER, G. R.		
03/12/92	OSPREY ARROW -	COLLINS, D. O.		
03/12/92	KEY SPLENDOR +	GURRY, R. H.		
03/15/92	KEY SPLENDOR +	PORTER, G. R.		
03/13/92	PHLOX +	CREASEY, E. H.		
03/16/92	PHLOX +	CREASEY, E. H.		
03/20/92	HAREFIELD -	CREASEY, E. H.		
03/22/92	HAREFIELD -	ANTONSEN, A. I.		
03/23/92	HAREFIELD -	PORTER, G. R.		
03/24/92	HAREFIELD -	DIMENT, A. G.		
03/21/92	RANGER +	DIMENT, A. G.		
03/23/92	RANGER +	PORTER, G. R.		
03/14/92	MARIN TRADER -	GURRY, R. H.		
03/22/92				
03/14/92	SEA WEALTH -	COLLINS, D. O.		
03/23/92	SEA WEALTH -	ANTONSEN, A. I.		
03/25/92	FINNWOOD +	GURRY, R. H.		
03/27/92	FINNWOOD +	ANTONSEN, A. I.		
03/28/92	SAGA WAVE -	ANTONSEN, A. I.		
03/28/92	SAGA WAVE -	ANTONSEN, A. I.		
03/27/92	HANSA ROFSTOCK -	DIMENT, A. G.		
04/06/92	HANSA ROFSTOCK -	DUNN, R. S.		
04/08/92	COAST RANGE +	DUNN, R. S.		
04/09/92	COAST RANGE +	DUNN, R. S.		
04/05/92	GEORGIA +	ANTONSEN, A. I.		
04/07/92	GEORGIA +	ANTONSEN, A. I.		
03/30/92	USS GERMANTOWN +	PORTER, G. R.		
04/03/92	USS GERMANTOWN +	ANTONSEN, A. I.		
04/11/92	MOZU ARROW -	CREASEY, E. H.		
04/12/92	MOZU ARROW -	CREASEY, E. H.		
04/13/92	HAKUFU -	ANTONSEN, E. H.		
04/15/92	HAKUFU -	DUNN, R. S.		
04/15/92	HAKUFU -	DUNN, R. S.		
04/20/92	HAKUFU -	GURRY, R. H.		
04/13/92	PETREL ARROW -	DIMENT, A. G.		
04/20/92	PETREL ARROW -	JONES, C. E.		
04/12/92	PACASTIA -	JONES, C. E.		

ALASKA MARINE PILOT QUARTERLY REPORT

DATE	SHIP NAME	PILOT NAME	PILOT NAME
04/16/92	PACASIA -	JONES, C. B.	
04/20/92	EVPO AGSA -	CREASEY, B. H.	
04/21/92	EVPO AGSA -	CREASEY, B. H.	
04/19/92	STAR EUROPA -	ANTONSEN, A. I.	
04/22/92	STAR EUROPA -	DUNN, R. S.	
04/21/92	PELICAN ARROW -	GURRY, R. H.	
04/23/92	PELICAN ARROW -	CREASEY, B. H.	
04/20/92	CHIVALRY -	DUNN, R. S.	
04/23/92	CHIVALRY -	GURRY, R. H.	
04/20/92	TROPICAL BEAUTY -	DUNN, R. S.	
04/22/92	TROPICAL BEAUTY -	GURRY, R. H.	
04/22/92	WREN ARROW -	DUNN, R. S.	
04/23/92	WREN ARROW -	DUNN, R. S.	
04/25/92	RUBIN DOGA -	ANTONSEN, H. H.	
04/28/92	RUBIN DOGA -	DUNN, R. S.	
04/20/92	ISHIKARI MARU +	ANTONSEN, A. I.	DIXENT, A. G.
04/21/92	ISHIKARI MARU +	ANTONSEN, A. I.	ANTONSEN, H. H.
04/22/92	ISHIKARI MARU +	ANTONSEN, A. I.	ANTONSEN, H. H.
04/23/92	ISHIKARI MARU +	ANTONSEN, A. I.	
04/24/92	ISHIKARI MARU +	DUNN, R. S.	
04/27/92	ISHIKARI MARU +	DUNN, R. S.	
04/28/92	SOUTHERN VIRGO •	ANTONSEN, B. H.	
04/29/92	SOUTHERN VIRGO •	PORTER, G. R.	
04/30/92	SOUTHERN VIRGO •	PORTER, G. R.	
04/30/92	KEY SPLENDOR +	ANTONSEN, H. H.	

CARGO MOVEMENTS IN SOUTHEASTERN ALASKA

1991-1992

Winter Months of October through April, inclusive

SEAPA		ACPA	
Pilots	Movements	Pilots	Movements
9	175	5	62
(64% of pilots)	(73.5% of work)	(35% of pilots)	(26% of work)

TOTAL MOVEMENTS = 234

TOTAL PILOTS = 14

(Source: Quarterly reports of marine pilots, Alaska Department of Commerce and Economic Development, Division of Occupational Licensing)

HB 237

**Regional Citizens' Advisory Council**

Royal Center, 310 Egan Street, Rm. 210
Box 3470, Valdez, AK 99868
(907)835-5957/ FAX (907)835-5926

FAX COVER SHEET

DATE: March 30, 1993
#OF PAGES: 1 INCLUDING THIS COVER SHEET
TO: Rep. Pete Koit
465-4565 (FAX)
FROM: Scott Thompson

Pete,

This is in response to your fax of March 22, 1993, regarding H. B. 237. The most important provision that I can see from a safety of navigation perspective is in Section 1, paragraph (a)(10), where criteria will be established for choosing which pilots will be awarded licenses if there are more applicants than licenses. This might be an opportunity to establish regulations which would maintain the high quality of the pilot pool. I think that it is a valuable addition to the existing law.

Pursuant to our pending funding agreement with Alyeska Pipeline Service Company this information should be made available to all legislators.

Thanks for the opportunity to comment.

A handwritten signature in cursive script, appearing to read "Scott", is positioned below the text "Thanks for the opportunity to comment.".

cc: Alyeska Pipeline Service Company
Avrum Gross, Gross & Burke
Sheila Gottehrer, PWS RCAC Executive director



Alaska Coastwise Pilots' Association

P.O. BOX 22694
JUNEAU, ALASKA 99802
PHONE: (907) 586-2272
FAX: (907) 461-3773

*Marine Pilotage
Dispatch Service*

Ketchikan Office
PHONE: (907) 225-7245
FAX: (907) 247-4568

Testimony of Captain Mike Spence
to the House Labor and Commerce Committee
of the Alaska Legislature
on HB 237
March 30, 1993

Testimony of Captain Mike Spence
to the House Labor and Commerce Committee
of the Alaska Legislature

on HB 237

March 30, 1993

Good Afternoon, Mr. Chairman and members of the committee.
Thank you for the opportunity to testify today.

My name is Michael Spence. As president of the Alaska Coastwise Pilots Association, I represent approximately one-third of the marine pilots in Southeastern Alaska. I have been piloting in Alaska for seventeen years. The average pilotage experience of the members of my organization is thirteen years. Without exception, the members of our organization are career accident-free pilots.

We are particularly concerned about three elements of the proposed HB 237, those relating to fixing tariffs, fixing the number of pilots in a region, and the measure forbidding cross-regional pilotage. Our concern is that these measures are intended to prevent or stifle competitive pilotage. We have some experience with what effects these measures have on our profession, because they have been tried before by pilot organizations in the State. A brief history of our experience may assist some members of this committee to accurately assess what impact this anti-competition legislation may have on the pilotage profession in Alaska.

From the early seventies to 1990, a monopoly in the pilotage profession existed in Southeast Alaska. This monopoly gained

strength through the deliberate application of strategies not uncommon to other cartels:

- a. internal covenants of noncompetition
- b. agreements to fix the number of pilots allowed to work to assure a high income
- c. restricting entry to the profession to men who were sympathetic to the arrangement.

Once these strategies were implemented, the odds of the organization's success were high because of the tandem effects of monopoly power. One was the inherent power to extract maximum income from shipowners because they as consumers had no alternative supply of pilots. The second was the power over dissenting pilots who risked expulsion from their profession if they attempted to reform the organization.

During this period of monopoly on pilotage rewarded itself with a bounty of treasures. We were assured high incomes. We had a buy-in scheme which allowed us to pyramid the value of entry to the profession to whatever price we would choose. We assigned voting privileges so a few pilots controlled the organization over the fractional votes of many others. We had internal shifting of pilot incomes that enabled certain pilots to make 50% more than

others with the same license who worked the same amount of time. We had pension plans designed to benefit men who started piloting in their late fifties, and who could retire soon thereafter without paying a nickel into the plan. We had internal agreements to protect the reputation of our members by not revealing complaints of ship captains, near-miss incidents, or incidents of intoxication of pilots.

Near the end of this period of monopoly, there were pilots who objected to this system. To them, it was a system which cared less about competent pilotage than it cared about covering up for its errant brothers. To counter the threat of those dissenting pilots, rules were written up by the organization which forbid those pilots from testifying to the Board of Marine Pilots or to members of the Alaska Legislature, on penalty of expulsion from the organization.

But some of those dissenting pilots still risked their careers to testify to authorities, and reveal the truths which the organization had so zealously guarded. For these pilots the only alternatives were to seek other careers or to form a new organization. In Southeast Alaska, we chose to form a new organization: The Alaska Coastwise Pilots' Association.

Our organization has been in competition with the dominant group in Southeast Alaska for about three years. Our professional standards are as high now or higher than before the advent of this competition. Our relationship with ship owners as independent State pilots bound to obey the laws of Alaska is unchanged.

Through more efficient dispatching we have optimized on our manpower and reduced overhead costs. By eliminating pyramid scheme buy-in fees and disallowing unfunded pension plans we have prevented substantial liabilities. These efficiencies enable us to provide a better service to our clients, and improved working conditions for our pilots. We have prevented financial inequities within our group by minimizing the internal shifting of pilot incomes. Our dominant competitor imitated some of these same improvements to discourage its pilots from breaking ranks to join our organization. In this manner pilots from both organizations have actually benefitted from competition.

Despite the foregoing, the group which holds the dominant share of the market in Southeast Alaska, joined by the dominant groups in other regions, now seeks State legislation to prevent or limit competition.

The measure in HB 237 seeking to fix the number of pilots in a region is designed to restrict the number of competitors in a region. This measure could create a shortage of pilots in any region if the Board of Marine Pilots simply failed to accurately predict attrition.

Similarly, the measure in HB 237 which prohibit cross-regional pilotage except in case of emergency or a change of boundaries needlessly restricts a supply of pilots which historically has been put to good use.

The measure giving authority to the APUC to set fixed tariffs may indeed move the tariff-setting process to a more organized venue for rate setting, but it may do so at increased costs to already burdensome license fees, however. The measure to fix the tariff is anti-competitive because it disables a new organization of pilots from offering a better deal to shippers. If the APUC is to be involved with rate setting, it should be a maximum tariff, not a fixed one.

As written, HB 237 is not legislation which promotes safety of shipping or environment. It is a bill which promotes the economic safety of already dominant pilot organizations.

If the legislature seeks to improve the Marine Pilotage Statute there are more meaningful changes which could be made. These changes include:

- A section providing for rotational selection of the two pilot members of the Board of Marine Pilots from all pilot groups in Alaska.
- A section preventing the Board of Marine Pilots from fixing the number of pilots or pilot groups that may be licensed or authorized to operate in any region of the State.
- A section providing for independent impartial and unbiased license examiners to administer pilot examinations.
- A section which provides that the APUC may set a maximum tariff.
- A section which revises and cleans up the threshold requirements for Deputy Marine Pilot licenses in the statute.

Spence Testimony/HB 237
March 30, 1993
Page 8

Thank you again for the opportunity to testify today. I would be happy to answer any questions from the committee.

Sincerely,

ALASKA COASTWISE PILOTS ASSOCIATION

Captain Mike Spence

MAR 30 1993

Captain Victor O. Engstrom
436 W. North Camano Drive
Camano Island, WA 98292

State House of Representatives
State Capitol
Juneau, AK 99801-1182

Judy

March 26, 1993

Dear Honorable Representative,

Enclosed is a copy of the letter I sent on June 20, 1992 to each of the State Representatives.

I have been informed that House Bill 194 has again been opened and that some new amendments will be attached.

I would like to see included in these amendments, Ship-Assist Masters on tugs over 1200 horse power be considered candidates for Pilot positions.

This is certainly not a case of "lowering the standards" for a Pilot position, it is a case of "including very qualified people" as Pilot Candidates.

Ship-Assist Masters have an excellent history as Pilots on the West Coast. Alaska will definitely benefit by including them as candidates for Pilot positions.

Thank you.

Respectfully,

Victor O. Engstrom

Captain Victor O. Engstrom

Captain Victor O. Engstrom
P.O. Box 156
Valdez, Ak 99686
Ship-Assist Tug "Guardian"

State House Of Representatives
State Capitol
Juneau, Ak 99801-1182

June 20, 1992

Dear Honorable Representative,

In April of 1991 I was accepted to ride and train with the "Alaska Marine Pilot" Organization. The reason my application was chosen over many others is because of my many years experience on ship-assist tugs.

At this point in time I was fully qualified to pursue a pilot position. After \$7,000.00, of expenses, and a considerable amount of time, I was able to submit, by the September 11, 1991 deadline, an application, to examine, for a Alaska Marine Pilot Licence.

My application was denied because of a new law that had gone into effect, " House Bill 194 (HB 194)." This law requires tug boat masters to show towing experience of two years with combined tonnage (tug and tow) of at least 1600 tons.

I resubmitted my application in January of 1992. I explained to the Board of Marine Pilots, that the tug I work on is a 7000 HP ship-assist tug, and that the ships I assist, in Valdez, range from 40,000 to 260,000 gross tons.

Again my application was denied, because the new law (HB 194) has no provisions for ship-assist masters. Ship-assist masters cannot get credit for the tonnage of the ships they assist.

At this time I requested a hearing with the Department of Commerce and Economic Development. On April 14, 1992 I attended a hearing, in Anchorage, with Hearing Officer Ms. Elizabeth Johnson. Also attending, via telephone, was Mr. Gary Amendola, Assistant Attorney General, representing the Marine Pilot Board.

I explained to the Hearing Officer (Ms. Johnson) that the Board of Marine Pilots were interpreting the new law (HB 194) different than the State Representatives had intended. The new law (HB 194) was designed to closer resemble the other West Coast States, all of which include ship-assist masters as candidates for Pilot positions.

Washington requires ship-assist masters to work on tugs of at least 1,200 H.P., Oregon Pilots must have two years experience on the Columbia River, any horsepower. (Virtually all of the Oregon Pilots come from harbor tugs as deep-draft ship masters cannot accumulate the necessary time on the river.) California and British Columbia both accept ship-assist masters as candidates.

Mr. Amendola responded by saying that, " the law (HB 194), in Alaska, does not include ship-assist masters." He suggested that

I," should either quit my present job and start towing barges, or try to get the law (HB 194) changed."

Ms. Johnson said that," the law (HB 194) is very specific and does not include ship-assist masters. She upheld the Boards decision, on my application, and also suggested that I contact the State Representatives, on a law change.

Marine Piloting is the business of docking ships and that's what I do now. Towing barges is not going to make me a better pilot. My fifteen years experience, on ship-assist tugs, is an excellent background, and should be recognized, by the State.

I've decided to try and change the law (HB 194), or rather have an amendment attached to include ship-assist masters.

Let me show you another side of this new law (HB 194). A chief-mate on a deep-draft vessel, (such as an Exxon Tanker) that has never sailed as master, (and maybe never will) has made twelve trips into Valdez. This person is considered a candidate for a Pilot position.

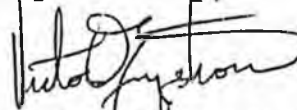
Now, let's look at myself. I've assisted over 1000 tankers into the docks of Valdez. I've escorted over 400 tankers out of Prince William Sound. I regularly shift "oil spill response" barges from buoys to different docks, and regularly participate in "oil spill drills" which include towing the barges throughout Prince William Sound. I'm sure my local knowledge far exceeds the Exxon Mate, still I am not considered a candidate for a Pilot position, something is WRONG !

What the proponents of this new law (HB 194) have done, is exclude one of the best sources of Marine Pilots that are available in Alaska.

Ship-assist masters have an excellent history as pilots on the West Coast, they presently make-up more than half of the Pilots in Washington, Oregon, and California. I'm asking you as State Representatives to amend the present law to include ship-assist masters in Alaska, of tugs over 1200 HP, to be included as candidates for Pilot positions.

Thank you for your time, and please write, and tell me how you feel on this subject.

Respectfully,



Captain Victor O. Engstrom

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

March 29, 1993

Representative William Hudson
State Capitol Room 108
Juneau, AK 99801-1182

Dear Representative Hudson:

You are to be commended for your efforts in behalf of H.B. 237. This bill is badly needed now to stem the deterioration of Alaska pilotage.

The bill seems to be consistent with the pilot acts of other states. Your strong support is needed to make sure H.B. 237 is passed this session.

Thank you.

Very Respectfully,

Robert W. Smith
Captain Robert W. Smith

Southeastern Alaska Pilots' Association

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

March 29, 1993

Representative William Hudson
State Capitol Room 108
Juneau, AK 99801-1182

Dear Representative Hudson:

I want to thank you for your initiative in introducing H.B. 237. Your continued support is needed to pass this bill now.

Outside interests and maverick pilots cannot be allowed to destroy Alaska pilotage.

Your strong leadership is needed in passing H.B. 237 this session

Very Respectfully,

Capt. John (Jack) Thatcher
Capt. John Thatcher



ALASKA MARINE PILOTS **DISPATCHING SERVICE**

P. O. BOX 730 • DUTCH HARBOR, ALASKA 99602 • 907 581 1240

March 1993

Dear Legislator:

This letter summarizes the attached discussion paper setting out AMP's position on HB 237, the bill to amend the Marine Pilotage Act:

1. The legislature must start on this legislation now. The tariff provision of the Act expires June 30, 1994.
2. HB 237 as proposed addresses a couple of problems but not all of them. AMP does support what the bill would do now: return to a fixed pilotage tariff and regulate the number of pilots in the state. However, AMP believes the bill must go farther.
3. AMP asks the legislature to expand HB 237 to cure what AMP believes is the central problem: the 1991 amendments tried to turn piloting into a free-market, competitive enterprise. For the reasons outlined in the discussion paper, marine piloting cannot be truly competitive as a practical matter, and should not be as a matter of sound public policy. The most critical problem is that industry effectively controls piloting by controlling allocation of work to pilot groups. Pilots are no longer independent, but are economically dependent on industry. This is a fundamental safety issue requiring action now.
4. To address these problems, AMP urges the legislature to expand HB 237 by adding the following provisions:
 - (a) Eliminate the notion of competition from marine piloting. Create a single central dispatch office in each region with more than one pilot group, so that pilots are once again independent from industry's economic control.
 - (b) Prohibit vessel operators and agents from being involved in the financial affairs of marine pilots and pilot groups.
 - (c) Eliminate "cherry picking" by requiring pilot groups to serve all ships in all ports of the region at all times of the year.
5. The legislature has the legal authority to do this as a proper exercise of its police power in the interest of public safety.

AMP's pilots and their Juneau representative, Bob Evans, are on call to discuss this issue with you. You can contact Mr. Evans at 364-3360.

Capt. Tom Dundas, President
Alaska Marine Pilots



DISCUSSION PAPER
March 1993

Proposed amendments to the Marine Pilotage Act

HB 237

Alaska Marine Pilots (AMP) actively supports the proposed amendments to the Alaska Marine Pilotage Act (AS 08.62) set out in HB 237, but does not believe HB 237 goes far enough to meet the public safety interests of the people of Alaska. This paper is intended to answer the most common questions being raised about AMP's position respecting the Act and HB 237.

The marine pilotage act was just amended in 1991. Why must the legislature take further action so soon?

The tariff section of the current statute (AS 08.62.045) expires automatically on June 30, 1994. If the legislature does not enact a new tariff section before then, there will be no statutory provision governing fees for pilotage services.

Attention to this issue must not be deferred until the 1994 legislature. It is a complex issue with which most legislators are not fully acquainted. If it is deferred until next year, AMP fears that the legislature will be forced to take action without sufficient time to deal with it knowledgeably and carefully.

How did the 1991 amendments change existing law?

The 1991 amendments to the Act radically changed the statutory scheme governing marine pilots. In the main, the amendments sought to turn marine piloting into an open-access,

free-market, competitive enterprise. To accomplish this objective, the 1991 amendments made the following changes:

-- Abandoned the former fixed tariff and substituted a two-tiered tariff system comprising a maximum tariff set by the Board of Marine Pilots and a "working" tariff that was supposed to be adopted by each marine pilot organization in response to market forces in a competitive marketplace. (AS 08.62.045)

-- Created statutory entities in each of the marine pilot regions called "regional marine pilot organizations." These regional marine pilot organizations were to supplant the existing pilot groups. These new regional organizations must be recognized by the Pilot Board upon compliance with extensive regulatory requirements. Every Alaska pilot must be a member of a regional organizations. Every regional organization must provide the training experience to anyone who requests it, and must accept for membership any licensed pilot who applies. (AS 08.62.080(a), .175)

What has happened in the aftermath of the 1991 amendments?

Since the 1991 amendments, the significant developments relevant to HB 237 involved pilotage regions, marine pilot organizations, and pilotage tariffs:

Regions

The Pilot Board has increased the number of pilotage regions from two to four. The former Southeast Region, from Yakutat southward, is unchanged. However, the former Southwest Region has been subdivided into three new regions:

- the Southcentral Region, from Kakutat to Kodiak Island
- the Western Region, from west of Kodiak Island westward to the end of the Aleutians and north to the Arctic, excluding the Kuskokwim River
- the Kuskokwim River Region

Pilot Organizations

There were four marine pilot organizations prior to the 1991 amendments. The Pilot Board has since granted formal recognition

to the four original groups, all of which restructured to comply with the 1991 amendments, and two additional new groups:

- Southeast Region: SEAPA and ACP
- Southcentral Region: SWAPA
- Western Region: AMP and (just this year) Western Alaska Pilots Association (WAPA)
- Kuskokwim Region: Kuskokwim River Pilots Association

ACP and WAPA were both formed with the active support of the steamship industry to compete with the larger established groups in their respective regions. Industry has been able to exercise substantial control over piloting by playing ACP against SEAPA in the Southeast Region and WAPA against AMP in the Western Region, by favoring ACP and WAPA in allocation of work and in other ways. Industry has exerted substantial influence over SWAPA in the Southcentral Region by threatening to ask the Pilot Board to divide the region into two smaller regions and by holding out the prospect of supporting a new pilot organization to compete directly with SWAPA.

Tariffs

The Pilot Board has adopted by regulation a maximum pilotage tariff for each of the four regions. This "maximum tariff" establishes the ceiling on marine pilot fees in each region.

In addition, the Pilot Board has approved "working tariffs" for each of the regional marine pilot organizations. Each of these working tariffs is structured differently. The pilots in each regional organization can only charge the fees set out in that organization's working tariff.

Why aren't the 1991 changes working?

A single reason: marine piloting cannot and should not be a free-market, competitive enterprise in Alaska. As a practical matter, competition does not work in marine piloting. As a matter of sound public policy, it should not even be attempted.

The practical problem: true competition does not exist

True competition requires a pool of willing buyers and a pool of willing sellers. The pool of both buyers and sellers

must be large enough that no one buyer or seller can effectively control the market. The buyers and the sellers all have to be able to act freely in their own economic interest. This is the basic model of a truly free and competitive market. The 1991 amendments were based on the incorrect premise that this model exists or can be created in marine piloting in the real world.

In truth, none of these factors actually exists. On the industry side, a handful of people control almost all of the compulsory pilotage vessels in Alaska. As a practical matter, these few people dictate which of the competing pilot organizations will get the work, and their decisions are not necessarily based on market factor such as price or service.

On the other side of the equation, marine pilots are so heavily regulated that they cannot respond to market forces the way a "real world" business can. The only factors on which any seller can compete are price, service, and its ability to control its own size and operating expenses. Under Alaska law, no pilot organization has any real control over any of those factors:

1. Price. The fees a pilot organization may charge for its services are regulated by both the working tariff and the maximum tariff. The maximum tariff set by the Pilot Board sets price ceilings that cannot be exceeded regardless of market conditions. Once an organization's working tariff is established, it cannot be adjusted for a year. There is little if any leeway to adjust fees in response supply, demand, operating costs, and other market factors.

2. Service. A pilot organization must provide service to anyone who asks for it, limited only by the number and license qualifications of its members. A vessel operator can adjust its service in response to market forces -- send more ships or fewer, call at more ports or fewer -- but a marine pilot cannot decline to provide service regardless of whether it would be economically advantageous to do so.

3. Size and composition of membership. In the "real" world, a business can expand or shrink in response to market forces; if it is hiring at all, it can train and hire only the best qualified people to make it as competitive as possible. However, under the 1991 amendments, a pilot organization must provide training to new pilots if asked to do so, placing it in the untenable position of having to train its own competitors. Further, a pilot organization must accept for membership anyone with a pilot license; it cannot regulate its own size or limit its members to the very best (and therefore most competitive) pilots. It cannot regulate its income and expenses by limiting the size and composition of its membership. It must dispatch all

its members on a fair and equitable basis, thereby losing the ability to give priority to its most experienced members.

When a handful of buyers control the marketplace, and when the sellers are so tightly regulated that they cannot freely make decisions in their economic interest, there simply is no competition. AMP urges the legislature to recognize this fact and stop forcing marine pilots to try to compete in a non-competitive environment.

What are the public policy objections to the 1991 amendments?

There are two primary public policy objections to the 1991 amendments. The first has to do with industry control over piloting. The second has to do with what has come to be called "cherry picking."

The only reason for any state to enact a compulsory pilotage statute is to ensure public safety. As the Act itself states, the purpose of compulsory pilotage service is "to assure the protection of shipping, the safety of human life and property, and the protection of the marine environment." AS 08.62.040(a)(1). All other considerations are secondary at best.

The public's safety interests are only served properly if there is a corps of properly qualified and fully independent marine pilots available to serve every ship in every port, day or night, at all times of the year. The 1991 amendments actively impair these interests.

Industry control of marine piloting

The independence of pilots is one of the paramount elements of any statutory scheme for marine piloting. Under the Alaska statute, marine pilots are supposed to be independent. AS 08.62.163. Pilots must be so independent of vessel owners and operators that they can freely determine when and how a vessel can safely be moved in pilotage waters.

As soon as a pilot's economic welfare is placed in the hands of the few people who control shipping in Alaska, the pilot's independence is in grave jeopardy. Vessel owners and operators are frequently under heavy financial pressure to keep their vessels moving. In the maritime industry as in all others, time is money. Schedules must be kept. Fish processors must move their product. Passengers must make travel connections.

A vessel operator subject to these kinds of pressures may understandably have a different view of the perils of weather, seas, and circumstance from that of a truly independent marine pilot acting on behalf of the people of Alaska. While no responsible vessel operator will put his vessel and its cargo at risk by making a clearly unsafe decision, the pressure to cut corners is unavoidable. The only surety against corner-cutting is a truly independent marine pilot.

Under the current system, a vessel operator or agent can shop around for tractable pilots. Vessel operators and agents can let it be known that a continued flow of business to a group of pilots depends less on the fees charged by that organization, but on that organization's willingness to cut corners. The simple fact is that the costs of delaying a ship for safety reasons far outweigh whatever difference there may be in the fees charged by competing pilot groups. Vessel operators and agents can and will give the work to the pilots who are most willing to eliminate delays.

Vessel interests will also give the work to the pilot group that is most willing to be agreeable at rate-setting time. A pilot group that has been promised all or most of the work can afford to set its rates lower than the competition. When the great majority of the vessel traffic is controlled by a few people, those few are in a position to make such promises free of market constraints. Pilots who do not fall into line can be forced out of business.

Industry can exert economic power over pilots in two main ways. First and most obvious, vessel interests control a pilot's income if they control access to the work. Second and less obvious, vessel interests can control a pilot's ability even to renew his license, because piloting regulations require a minimum number of vessel movements per year as a prerequisite to license renewal.

Is industry "the bad guy"? Of course not. However, the companies and agencies that control shipping in Alaska have their own economic interests to consider. They understandably will try to control each and every aspect of their cost equations, and from industry's point of view marine piloting is merely another one of those costs.

From the standpoint of Alaskans, however, marine pilots are not simply another cost of doing business. They are the professional mariners entrusted with the safety of lives, property, shipping, and the marine environment. The private economic interests of the shipping industry are not necessarily

the same as the safety interests of the people of Alaska; the latter, not the former, should control marine piloting.

"Cherry picking"

A second public policy argument against the 1991 amendments involves what has come to be called the "cherry picking" problem. Every region has its peak seasons and high-volume ports. In the Southeast Region, the summer cruise ship trade is the high-profit business. In the Western Region, it is Dutch Harbor and a couple of other ports during peak fishing periods.

If pilots are forced to compete with one another, supply and demand will tend to concentrate the competition in the high-volume ports and the high-volume seasons. No one will want to work in unprofitable ports or during unprofitable times of the year.

Public safety interests are not limited to peak seasons in profitable ports. Public safety demands fully qualified, independent pilots in every port at all times.

That is the kind of full-coverage, year-around service AMP is committed to providing in the Western Region. However, it is a simple truth that the high-volume ports and seasons subsidize the low-volume ports and seasons. Without the Dutch Harbor work, AMP pilots cannot provide service in the remote outports such as Adak or St. Paul for anything approaching a reasonable fee.

Under the current system, vessel operators and agents can freely give the desirable, high-profit work to one pilot association in a region and leave the "dregs" to the others. Even if the members of a pilot group are willing and able to provide full year-around full coverage in a region, they have no control over the allocation of work. No pilot group can survive if its members are not given enough work to earn a reasonable living and meet the annual experience requirements for license renewal. Before long, its members will leave the profession or leave Alaska, and there is no guarantee that those left behind will be able to provide the full coverage required to meet the safety needs of Alaska.

Without some mechanism to prevent "cherry picking," the public safety interests of the people of Alaska are at risk.

Can't we simply allow market forces to set pilotage fees so that all ports are profitable?

If pilotage fees for remote ports and low-volume seasons of the year were set strictly on the basis of the cost of providing the service, they would be prohibitively expensive. Historically, pilotage fees set by the Pilot Board for all ports of a region have been predicated on the overall year-around pilotage revenues for all ports of the region. Under that system, the high-volume seasons and ports helped pay for service in the low-volume seasons and ports.

AMP believes that the public interest is best served by continuing this policy. No public interest is served by discouraging trade to remote parts of Alaska by making pilotage fees prohibitively high.

How are the state's interests harmed by having more than one pilot group competing in a region?

As discussed earlier, the ability to play one pilot group off against another is the ability to exercise de facto control over marine pilots and piloting. The handful of people who control Alaska shipping will inevitably act in their own economic interests, which are not necessarily the best interest of the public.

Further, pilots in competition with one another will inevitably be under pressure to cut corners on safety. Whatever interest individual pilots may have in so-called "free competition" is clearly subordinate to the public's interest in making sure pilots have no incentive to cut corners on safety.

Industry's only legitimate requirement of marine piloting is that every vessel subject to compulsory pilotage be able to get a qualified pilot when and where needed at a reasonable rate. Beyond that, industry has no legitimate interest in controlling or influencing pilots.

Does HB 237 solve the problems in marine piloting?

HB 237 addresses part of the problem but not the central problem. AMP believes that the only way to solve the problem altogether is to eliminate the notion of competition, isolate industry from the allocation of piloting assignments, and ensure that industry cannot exert influence directly or indirectly on pilots. Marine piloting is first and foremost a public safety

activity. The concept of competition must be eliminated, and marine piloting should be controlled and regulated exclusively by the state, not by either industry or pilots.

What HB 237 does do

AMP supports the following changes that HB 237 would accomplish as written:

1. Restore a single fixed pilotage tariff in each region. Place tariff-setting responsibility in the hands of an objective and qualified state agency. Give all interested parties an opportunity to participate in the rate-setting process, but the state agency must set piloting rates in the public interest.

2. Regulate the number of pilots coming into the profession on the basis of actual need for pilots to provide services in all ports at all times of the year.

What HB 237 does NOT do

What HB 237 does not do is eliminate the notion of competition from piloting or insulate piloting from the economic influence of industry, nor does it eliminate the problem of "cherry picking."

In the past, AMP has supported a statutory change to create a single pilot organization in each region. The purpose of each regional organization would be to dispatch pilots, bill and collect fees for pilotage services, distribute income to pilots, and coordinate pilot training in the region. AMP remains convinced that this is the best solution in the public interest.

However, some pilots oppose imposition of unitary regional pilot organizations. In some cases, the opposition stems from bad feelings and distrust that have arisen in the past. Members of some competing pilot groups do not want to be forced to work with their former colleagues.

AMP recognizes that unitary regional pilot groups may not be politically feasible. However, the problem remains that public safety is compromised if industry can control pilots by controlling the allocation of work. If unitary regional pilot organizations are not acceptable, then the only way to prevent industry from controlling work allocation is to require a central

dispatching office in every region with more than one pilot group.

In each multi-group region, industry would contact the central dispatch office to request a pilot. The dispatch office would allocate the work among the pilot groups in the region on an equitable basis.

To solve the "cherry picking" problem, every group in the region would be required to have a sufficient number of members with sufficient licensure to serve every kind of vessel in every port at all times of the year. Industry would no longer be able to promote "cherry picking" by selective allocation of work, and pilot groups would not be able to "cherry pick" because the central dispatch office would be distributing all the work, both high-profit and low-profit, equitably to all the groups in the region. All the groups would share all of the piloting responsibilities of the entire region.

AMP therefore urges the legislature to expand H^R 237 to accomplish the following additional changes:

1. Require a central dispatching office in every region with more than one pilot group. The groups themselves would set up the central dispatch office in accordance with statutory and regulatory guidelines, subject to supervision by the Pilot Board. Each group would do its own billing, collection, and income distribution; all groups would share equally in training new pilots. The cost of creating, operating, and maintaining the dispatch office would be included in the regional

2. Prohibit vessel operators and agents from being involved in the financial affairs of marine pilots, pilot organizations, and dispatch offices.

3. Require pilot groups to have the capacity to serve every kind of ship in all ports of the region at all times of the year, and compel them to accept assignments to provide pilotage services for all ships in all ports at all times of the year. Don't permit pilot groups to limit their activities to easy high-volume ports, seasons, and trades.

Wouldn't this just create a protective monopoly to make sure marine pilots make a lot of money? How is the public interest served by encouraging such a monopoly?

One of the common misconceptions about marine pilots is that they make an unreasonably high income. That is not true. The

average income for AMP pilots in 1992 after expenses was about \$100,000. AMP pilots do not get fringe benefits; they must pay for health and life insurance, professional liability insurance, and retirement out of their earnings. Their income is far from excessive for the level of experience and judgment we expect from marine pilots.

Marine pilots are, by definition, at the peak of their profession. The level of experience and training required just to obtain a license is considerable. Comparing the income figures for Alaska's marine pilots to the average income for other pilots in the Lower 48 shows that Alaska pilots are paid appreciably less than their colleagues elsewhere.

They are also paid less than comparable professionals in the maritime industry here in Alaska. For instance, the masters of the American-flag container ships calling at Dutch Harbor typically earn about \$155,000 annually, plus benefits such as a retirement plan and health insurance for the same amount of work AMP pilots typically do each year. A tanker captain can expect to earn \$120,000 annually, plus benefits, for the same amount of work. AMP pilots also earn less than masters of Alaska Marine Highway ferries, when the fringe benefits of ferry employees are taken into consideration.

Opponents of AMP's proposed changes like to argue that these are really "rice bowl" issues, not safety issues. Certainly, AMP does not deny that income is a big part of the equation, nor do AMP pilots deny their personal interest in making a reasonable income and having reasonable job security.

AMP does deny that this factor is unrelated to safety. Marine pilots serve a very different function from those of other people who must hold occupational licenses issued by the state. In Alaska, there are only about 100 active licensed marine pilots to serve a state with more coastline than the rest of the United States combined and some of the worst weather and sea conditions in the world.

If some of the thousands of hairdressers, accountants, and lawyers licensed by the state are forced out of business, public safety is not compromised. But if marine pilots are forced out of the profession or out of Alaska because they cannot make a reasonable living, or do not have reasonable job security, public safety is at risk. If a marine pilot cuts corners in order to make a living, public safety is at risk.

Marine pilots are like air traffic controllers, who control the airports and air space in the public interest, not in the interest of one airline or another or the airline industry in

general. It is in the public interest to encourage experienced marine pilots to stay in Alaska. In marine piloting, it is the year-in, year-out accumulation of experience with different ships, different weather and sea conditions, and different ports that serves the public interest. Alaska has a clear safety interest in encouraging the best, most experienced pilots to stay in Alaska, not only to move ships but to train new pilots.

In a true competitive environment, the best survive and the least capable are forced out. Ironically, the reverse is true in marine piloting in Alaska. The most qualified pilots are the ones who will leave first, because they have the best opportunities to go elsewhere for a reasonable income and reasonable job security commensurate with their professional standing.

How does regulating the number of pilots serve the public interest? Why not continue to allow unlimited access to the profession?

Regulating the number of pilots serves at least two important public interests. First, it prevents the risk of corner-cutting on safety and the dilution of professional expertise that inevitably results when too many pilots are competing for a limited amount of work. As noted above, pilot regulations establish a minimum level of annual piloting experience to renew a license. However, the public interest is served by encouraging more than just the minimum level of experience. We want our pilots to move a lot of ships in all kinds of weather in all of the ports in a region. That can't happen if the work is being spread around among too many pilots.

Second, regulating the number of pilots permits the state to establish a reasonable pilotage tariff in each region based on a target income for pilots. As noted above, the only way to ensure a stable corps of experienced professional pilots is to give them a reasonable expectation of a reasonable income and reasonable job security.

However, that will work only if there is some control over the number of pilots. It does no good to fix a tariff based on a target income if you do not also regulate the number of pilots working under that tariff. For this reason, AMP supports the provisions of HB 237 that would allow the Pilot Board to regulate the number of pilots in each region.

Marine pilots should be treated no differently from other public safety personnel such as policemen or firemen. Alaska does not permit anyone who wants to be a state trooper to move

into that profession at will. Rather, the state brings new troopers into service when and as needed through an equitable system of application and examination.

What are the trade-offs for marine pilots under such a monopoly?

In return for the reasonable job security afforded by monopoly treatment, pilots give up control over what they charge for their services. They surrender to the state the authority to set pilotage rates. They subject themselves to comprehensive state regulation on training, licensing, and discipline. They agree to provide top-quality pilotage services to every vessel every day of the year in every part of the state.

Does the legislature have the legal authority to create such a pilotage system?

Absolutely. Marine piloting is regulated by law for the express purpose of advancing the public welfare. It is a public safety activity, not a matter of private commerce, with both federal and state governments exercising control over piloting in their respective jurisdictions. Governments at every level enjoy broad police power authority to act in matters of public safety.

Promoting public safety is one of the basic objectives of government. Whenever public safety is threatened, government has the right and obligation to cope with the threat by any necessary and appropriate means, subject only to constitutional limitations. Suber v. Alaska State Bond Committee, 414 P.2d 546 (Ak. 1966). Both state and federal pilotage statutes have been enacted expressly to deal with the public safety hazards created by vessels moving in U.S. navigable waters without local marine pilots.

Any legal challenge to a state scheme that regulates or limits access to employment (such as HB 237's proposed regulation of the number of marine pilots in the state) would be based on the equal protection provisions of the federal and state constitutions. The argument from someone who is being denied unrestricted access to employment as a marine pilot would be that the state is violating the equal protection provisions by discriminating in issuing marine pilot licenses.

Alaska's supreme court has ruled that the right to engage in a certain kind of employment is not a fundamental right. According to our supreme court, it is an "important" right, and any statutory restriction on that right must be "closely related"

to a legitimate state interest. Matson v. Commercial Fisheries Entry Commission, 785 P.2d 1200, 1205 (Ak. 1990).

The safety of shipping, human life and property, and the marine environment is clearly a legitimate and compelling state interest. Regulating the number of pilots in the state bears not simply a "close" relationship to that interest, but a direct relationship, for the reasons outlined above.

It is important to note that AMP's proposals would not "disenfranchise" anyone currently holding a state marine pilot license. Alaska law properly protects vested property interests, and a strong argument can be made that anyone currently holding a license has a protected interest in continuing to use it. AMP's proposal would only apply prospectively, to regulate licensure of new pilots.

Another point worth noting is that the federal government reserves the right to impose compulsory pilotage in any state's waters if that state does not do so. Under 46 USC 8503(a), the federal government may impose pilotage on any vessel engaged in foreign commerce and operating in U.S. navigable waters "when a pilot is not required by State law."

Under the 1991 amendments, it is possible that pilots soon will not be available to service Alaska's remote ports, low-volume ports, and low-volume seasons. There is nothing currently in Alaska law to preclude cherry picking; pilot groups are not required to accept any and all requests to provide pilotage services in every port in the region at all times of the year.

A state regulation that identifies a particular port as compulsory pilotage waters is meaningless if there are no pilots to serve that port. If it comes to pass that pilots are not serving parts of Alaska, the federal government has the authority to step in and impose a federal pilotage system.

MEMORANDUM

TO: All Legislators

FROM: Alaska Marine Pilots
Capt. Thomas Dundas, President

RE: HB237 "An Act Relating to Marine Pilot Licensing and Tariffs"

DATE: March 23, 1993

The attached is a brief overview of "The Essential Features of State Pilotage". The author of the article, Captain Pat J. Newly, Jr., is a past president of the American Pilotage Association.

This article is provided to give you a context in which to consider HB 237. If you have any questions, please contact me at 586-3737 or Bob Evans at 364-3360.

THE ESSENTIAL FEATURES OF
STATE PILOTAGE

by
Captain Pat J. Neely, Jr.

In its April 15, 1992 editorial, "Freeing the Tiller," the Journal of Commerce succeeded in collecting in a few paragraphs many of the most often repeated myths and misconceptions about the state pilotage system. Given the acknowledged success of the system and the availability of accurate, reliable information about it, it is difficult to understand the persistence of these myths and misconceptions.

Debate over various aspects of the state pilotage system is perhaps unavoidable and, under the right circumstances, can be beneficial. For the debate to have any value, however, it should be informed. It should proceed from an understanding of the essential features and objectives of the state pilotage system.

1. The State System. There is only one pilotage system in the United States - the state pilotage system. Unlike the limited federal pilot licensing program administered by the Coast Guard, the state system is a comprehensive regulatory system of training, licensing, discipline, economic regulation and operational oversight. The objective of state regulation is to ensure the availability of trained, local navigation experts 24 hours a day, 365 days a year.

Through the state pilotage system, the state's interests in the protection of life, property and environment and in the expeditious flow of waterborne commerce are protected by the presence on the bridge of a ship of a pilot whose primary responsibilities are not to the owner of the ship and the owner's economic interests but to the state. Shipowners are assured that a well-trained, competent

pilot will be provided in a timely manner and that the ship will be charged a standard pilotage fee determined by the state to be fair and reasonable. Subject to the normal uncertainties of the shipping business, state pilots have an opportunity for a career that combines public service with rewards sufficient to justify the large investment that each pilot must make in his pilotage operation, not only financially but in terms of training and professional dedication.

2. The State Pilot. The essence of pilotage is to provide navigational guidance in waters where special knowledge of local hazards is necessary. Compulsory pilotage is governmental safety regulation. When a state requires a ship to utilize a state-licensed pilot, the state seeks to protect its interests. The state pilot is on the ship to serve the state. For that reason, state pilots are deemed state officials either by specific statutory direction or through recognition as such by administrative or judicial decisions.

3. The State Pilot's Independence from Shipowner Control. Perhaps the most important aspect of a state pilot's traditional status and function is the state pilot's freedom from control by a shipowner. The state pilot strives to provide good service to a ship and to satisfy the shipowner and the owner's interests while fulfilling the pilot's primary duty to protect the public interest. Any conflict that might occur between the interests of the ship and those of the state must always be resolved by the pilot in favor of the latter. A state pilot is required to exercise independent judgment and to make navigational decisions in the interests of safety that may sometimes be contrary to the immediate wishes of other parties involved in ship operations.

Some shipowners would like to be able to select the pilot that will handle their ships. States reject that practice because it is inherently inconsistent with the primary duty owed by a state pilot to the public. It would be foolish and naive in the extreme to believe that a shipowner's desire to avoid ship accidents is all the protection that a state needs. If that desire were indeed so predominant that it would always be the overriding consideration in all actions by a ship's agent, charterer, manager, master and others who are typically more involved in a ship's operation than the shipowner, no safety regulation of any kind would ever be necessary. Of course, that is not the case. It is quite appropriate and proper for states and other governmental bodies to impose safety regulations on shipowners, and the single most important navigation safety regulation that a state can have is the requirement that a ship take a state pilot.

4. Pilot Commissions. For 22 of the 24 coastal states, the vehicle for regulating pilotage is a pilot commission. These commissions vary considerably from state to state in their composition, their functions and their legal status within the state governmental framework. For this reason, generalizations about pilot commissions are dangerous.

It is not true that pilot commissions are typically dominated by pilots and retired pilots and that through these commissions pilots set their own rates. Only three states (soon only two) have pilot commissions in which a majority of the members are pilots or pilot representatives. In only one of those three states does the pilot commission set rates.

5. Pilot Associations. Pilot associations facilitate state regulatory oversight

and further the intended objectives of the state system. As an example, each pilot association maintains a rotation system that ensures that each ship will be serviced without discrimination and will receive a rested pilot whenever needed. Also, as agents for the state, most pilot associations administer pilot training programs.

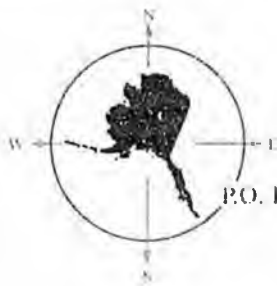
By sharing expenses, pilots in an association are able to acquire, crew and operate pilot boats; obtain other equipment such as radars, computers, radios and transportation vehicles; and maintain dispatching, vessel-tracking, recordkeeping, billing and other services required for a reliable pilotage operation.

6. Pilot Training. State pilots traditionally learn their craft under the tutelage of senior pilots. This is hands-on, locality-specific training, which is a prerequisite for a state pilot license. By contrast, a federal pilot license requires no prior pilot training and is typically issued on the basis of an individual's experience as a member of a ship's crew.

Those who decry the lack of a minimum national standard for pilot licensing ignore the fact that every state-licensed pilot also holds a federal pilot license. The federal license provides the minimum standard. Fortunately, even the least stringent state's pilot license requirements far exceed the requirements for a federal license.

The state pilotage system is constantly improving. In many states, training and licensing standards are being made more stringent, oversight of pilot conduct and pilotage operations are being enhanced, and pilotage requirements are being broadened and more rigorously enforced. If the state system is to continue to evolve in a positive way and to maintain its traditionally high standards in a

changing shipping industry, however, the quality of discourse about the system must improve. Opportunities for real progress are missed when those who support the state system must spend their time rebutting groundless factual assertions and explaining that what critics cite as the outrages of the system, such as training programs, pilot associations and freedom from shipowner control, are, in reality, the fundamental strengths of the system.



North Pacific Maritime, Inc.

P.O. BOX 8080 • 1429 TONGASS AVENUE • KETCHIKAN, ALASKA • 99901 • (907) 225-2200

February 7, 1994

*Bill's
copy
Lynna
Keep file.*

Representative Bill Hudson
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Hudson:

Joe Kyle of Pacific Associates has forwarded to me a copy of your January 31st letter addressing HB 237 and resolve of remaining issues between industry and pilots.

During the past year there have been significant gains between pilots and industry throughout the various pilot regions. Until December 1993 our efforts have focused on issues in the westerly and southcentral regions. I believe everyone would agree that in those regions consensus has been reached regarding tariff and other principal concerns.

Although pilots and industry in the southeast region were working with existing tariff understandings, Southeastern Alaska Pilots' Association (SEAPA) in December of 1993 requested that pilots and industry begin discussions regarding long term tariff commitments. On January 12th representatives from Alaska Maritime Agencies and Southeast Stevedoring met separately with SEAPA and Alaska Coastwise Pilots Association (ACP) to initiate discussions regarding tariffs and long term impact of projected volumes of cargo shipping activity. My impression of the meetings that day were positive, with discussions open and constructive. We all agreed to resume discussions before or at the next scheduled Pilot Board meeting this month. I have confirmed with SEAPA and ACP that we will meet this next week (February 7-9) in Juneau.

While I am anxious about the prospects of resolving tariff issues, I am concerned that setting a completion deadline will alter the mood of continued negotiations. It may have taken industry and pilots of other regions months

of negotiations to reach a tariff agreement, but compromise was attained and all parties were satisfied. Most importantly, the negotiations occurred without outside influence or pressures.

Tariff issues may appear paramount, but as the Board of Marine Pilots continues to adopt new regulations relating to entry level qualifications, training and proficiency requirements for pilots, the importance of work opportunity for all pilots will be significant.

I assure you industry is as anxious as pilots to resolve tariff and work related differences. We will continue to meet and negotiate with SEAPA and ACP toward an equitable and achievable comprise. Joe Kyle will keep you advised of the progress of these meetings. Thank you for your continued involvement and concern in Alaska pilotage.

Respectfully yours,

SOUTHEAST STEVEDORING CORP.

A handwritten signature in black ink, appearing to read "B. Sharp", with a long horizontal flourish extending to the right.

Bill Sharp
Vice President

cc: Alaska Steamship Association
Representative William K. Williams, Juneau
SEAPA, Ketchikan
ACP, Ketchikan

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 30, 1993

The Honorable Bill Hudson
Chairman, House Labor and Commerce Committee
Alaska House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

On behalf of the Alaska Steamship Association (ASA), thank you for this opportunity to submit a statement with regard to House Bill No. 237, "An Act relating to Marine Piloting and Tariffs". While we have previously submitted informational material for the committee's briefing packets, the following statement applies directly to the proposed changes House Bill 237 makes to the existing Marine Pilot Act.

1.) On page two (pertaining to lines 18 through 24), and page three (pertaining to lines 4, 5, 12, and 13), the ASA opposes any additional regulatory effort to restrict the number of licensed marine pilots in the state.

We believe sufficient encumbrances already exist to limit levels of participation. Two examples are particularly pertinent:

The training program adopted by the Alaska Board of Marine Pilots at their November, 1992 meeting, establishes rigid entry level requirements before one can apply to become a licensed marine pilot. Once an applicant has been accepted, an additional two to four year training program must be completed before licensing as a Marine Pilot can occur. This program will unquestionably dampen the ability of aspiring pilots to enter the industry. As the attorney for the Southeast Alaska Pilot Associations commented to the state¹ during the debate over the current pilot act in 1990: "If entry qualifications are increased, this of itself would serve as a limitation upon the number of licenses issued."

Additionally, the Alaska Board of Marine Pilots has adopted new and substantive re-qualification requirements that will also serve to limit the number of licensed pilots. These requirements are imposed upon all licensed pilots throughout Alaska, and contain substantial criteria (port calls, etc.) which will make it difficult for many current pilots to retain their licenses.

¹Letter from Mr. Paul Kircher to the Office of the Governor, dated June 25, 1990.

Table 1 shows the number of existing licenses up for renewal on a biannual basis since 1980, and Table 2 reviews the number of expiring and new, first-time licenses since 1980. These tables clearly display the numerical limitations imposed by the current Act.

In contemplating a system to limit the number of licensed pilots, it is impossible to ignore the impact of limitation upon pilot income levels. In fact, the primary purpose of a limitation system is to protect or increase the existing salary levels. In order to determine the need for such protective measures, the Committee should be aware of the current salary levels for pilots in Alaska. According to the Alaska Department of Commerce & Economic Development, the per capita income level for pilots in Alaska is in excess of \$100,000 per year; in one region, the per capita level is in excess of \$225,000 per year.² Surely these income levels are adequate.

The Alaska Steamship Association opposes any effort to place a state regulatory agency in the position of determining the number of pilots necessary to move commercial cargo and passengers to, from, and within state waters. We believe the mechanics of a free market will more efficiently determine that number. The entry level qualifications in effect as a result of the current Act surpass those required by most maritime states, and serve as a barrier to unqualified or unwanted entry into the profession.

2.) On pages three and four (pertaining to lines 15 through 31, and 3 through 12, respectively), the ASA generally supports removing the tariff setting responsibility from the Alaska Board of Marine Pilots to another rate setting entity. We are not prepared to support moving the responsibility to the Alaska Public Utilities Commission (APUC) because the additional costs that move may impose upon the industry have not been clearly identified. To reiterate, we do agree with the intent of the bill to move the tariff setting responsibility to a professional rate setting body (i.e., the APUC, or a rate setting board chaired by the American Arbitration Association).

We strenuously object, however, to the provisions which call for the rate setting entity to set a fixed, rather than a maximum, tariff. The current Act permits competition via a working tariff, which may or may not be set below the maximum tariff. The working tariff itself is established through industry and pilot association negotiations. This process has served the state well over the past two years. Safety has improved, and the level of service to our customers has also improved dramatically. Additionally, we no longer experience the intolerable situation of being told a pilot will report to move a ship

²Alaska Department of Commerce & Economic Development statistics purport pilot incomes to range from approximately \$20,000 per month for six months work up to \$30,000 per month for eight months work.

The Honorable Bill Hudson
March 30, 1993
Page 3

in 36 hours, only to be told 36 hours later to go ahead and move the ship without a pilot.

We are concerned with the vague language which purports to make equipment a part of the tariff, although we could support specific language that identifies the equipment allowable under the tariff.

We do not believe providing a mechanism to inflation proof a pilot's salary is necessary. As stated above, the average pilot's income level appears to be substantially greater than all public employees, including the Governor.

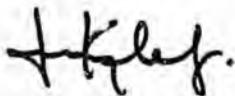
Lastly, we oppose the language which places Alaska tariff expenses in the category of those "in accordance with accepted maritime industry practices and standards". We believe the Congress left pilot regulations to the individual states because the needs of pilotage are locally specific. Pilotage is, of necessity, a local matter and best administered by the states in accordance with state needs. While some generalities may apply to pilotage, the most common thread in pilotage is that it is locally administered. In the lower 48, it has also generally evolved into a monopolistic, heavily state regulated and administered system with accompanying high costs.

We acknowledge that pilotage in Alaska is different from the Lower 48, and we believe Alaska is better off as a result. Characteristically, pilotage in Alaska is performed with a great deal of professionalism, responsiveness to industry needs, and at a reasonable cost. The public, the state, the industry, and the pilots are well served. In large part, this is due to competition. We do not need to emulate the monopolistic and costly pilotage systems prevalent in the Lower 48.

Mr. Chairman, I certainly hope that conformance to the how the Lower 48 "does things" is not the criteria by which Alaskan issues are judged.

With your indulgence, Mr. Chairman, we intend to submit an amendment to the proposed bill in the near future. We believe that while the current Act is generally a good one, and the result of compromises worked out between industry, pilot associations, and the legislature two years ago, problems nevertheless exist. We look forward to working with you, the committee, and the various pilot associations to address them.

Respectfully Submitted

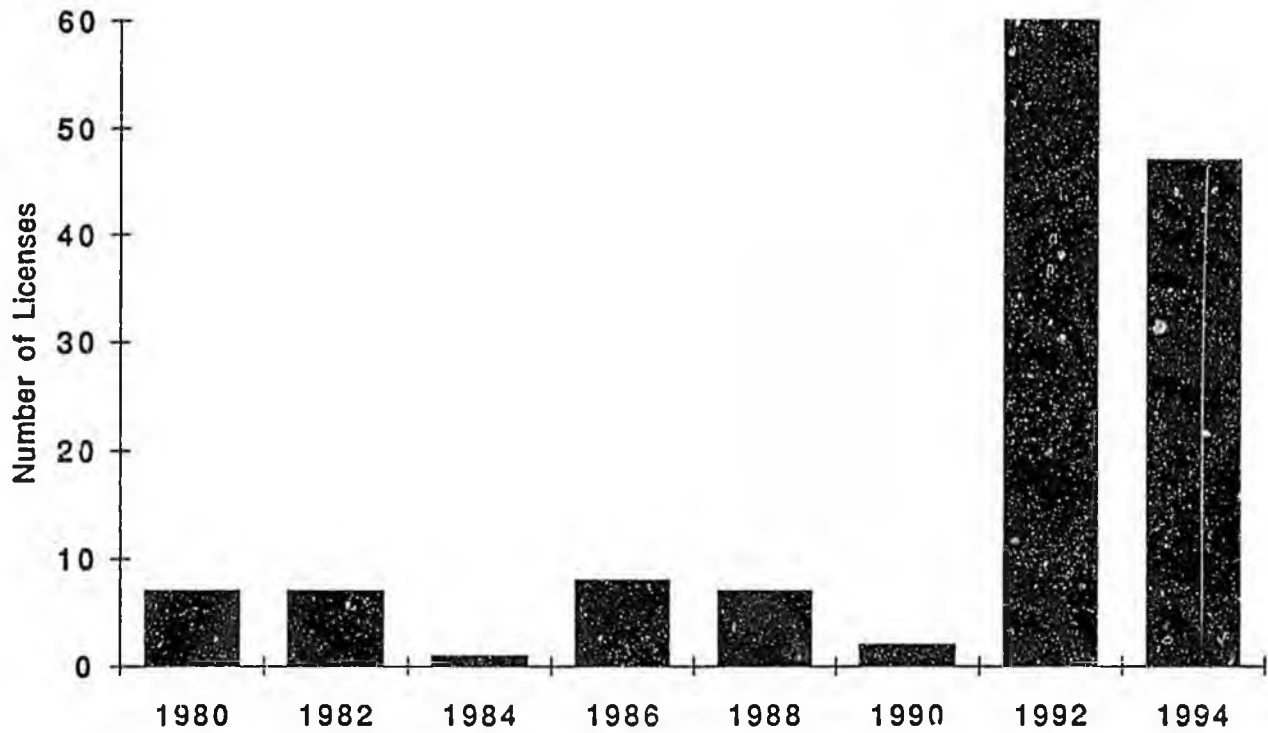


J. M. Kyle, Jr.

TABLE 1

Number of Licenses Up For Renewal

Nearly all current pilot licenses must be renewed between 1992 and 1994. Renewals are subject to the more stringent requirements specified in the 1991 Act.

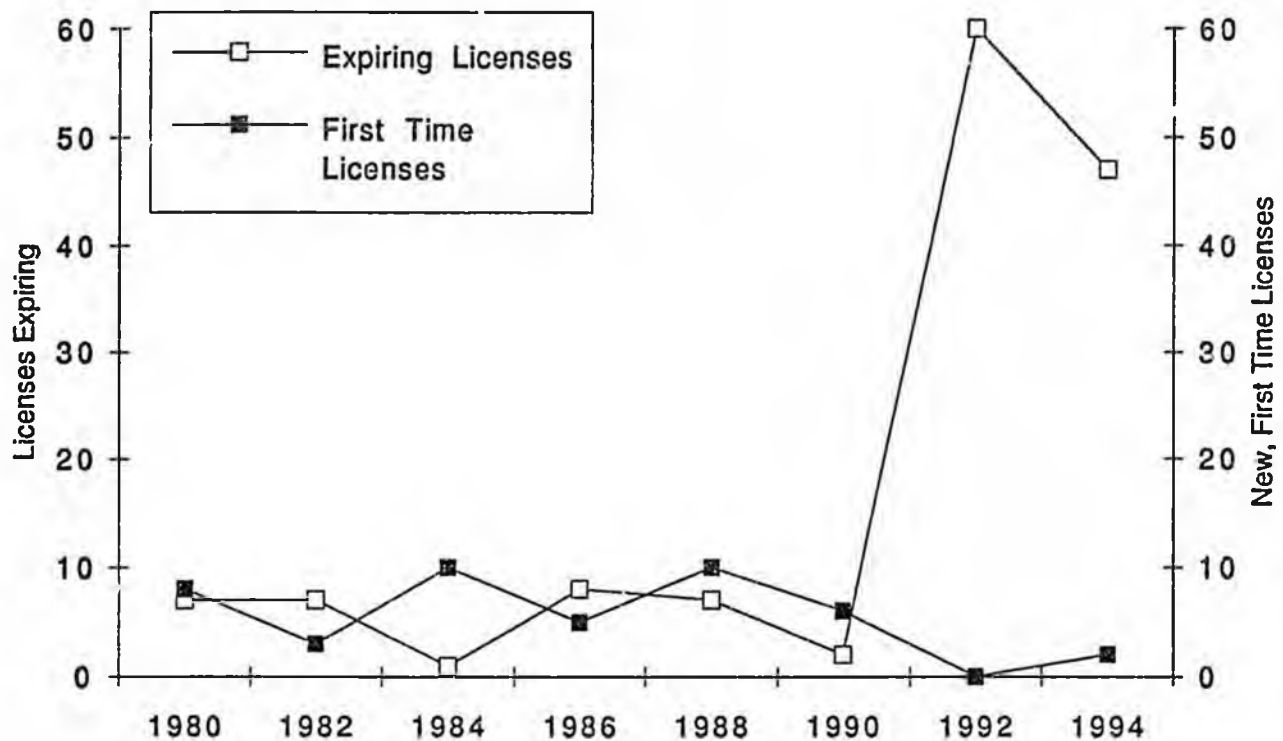


Source: Alaska Department of Commerce & Economic Development

TABLE 2

Trends in the Number of Expiring and New, First-Time Licenses

Since the passage of the 1991 Act, new licenses are substantially more difficult to obtain and more stringent standards apply for renewal of existing licenses. This is due, at least in part, to the emphasis the 1991 Act places on safety and implementation of comprehensive training programs. These factors will result in a de facto limitation in the number of pilots available to serve the industry.



Source: Alaska Department of Commerce & Economic Development

MEMORANDUM

TO: Representative Bill Hudson

FROM: Thomas Dundas
President, Alaska Marine Pilots

RE: An Act Relating to Marine Pilot Tariffs
Word Draft 8-L50808\J - Cramer 3/11/93

DATE: March 16, 1993

The draft legislation proposed will improve the Alaska Pilotage Act, but does not go far enough to free pilots from the control of agents and ship owners. This is particularly true in regions where more than one pilot group exists and the industry side is dominated by one company. Alaska Marine Pilots believe that this is not in the State's best interest. Pilots must be completely independent from control by agents or ship owners and make decisions based on training and experience. The pilots must make decisions to assure the safety of shipping, protection of human life and property, and the marine environment. The decisions should not be made because of pressure to get the job done or possibly lose the business. Pilots should function as a public service or utility, and must offer service at a reasonable rate to all who request it.

This bill would place the rate-setting for pilotage tariffs into the hands of the Alaska Public Utilities Commission and will welcome input from all interested parties. The shipping industry, consumers, and the public are protected by a mountain of regulation to guarantee that when a pilot is requested, a pilot will be dispatched in a timely manner and be fully licensed and trained to do the job at a reasonable rate. On the other side of the equation, the pilots must be protected by regulation as well.

It is in the State's best interest to secure and perpetuate the highest quality pilotage service possible and at a reasonable rate. This can only be accomplished through regulation and not through a belief in competitive market forces. By proposing that the Alaska Public Utilities Commission become the rate-setting body for pilotage tariffs, the industry and the State would seem to be recognizing the public service or utility function of pilots and the need to stabilize rates to protect commerce. Regulations are in place and more are proposed that will guarantee pilots will be available in a timely manner. In return, the pilots must be assured protection by limiting the number of licenses per region, equitable dispatch and dispersal of revenue, no cross-regional licensing, fair access into the profession, access to training, etc. A very important area, equitable dispatch and dispersal of revenue, is not addressed and is an area that remains in the hands of industry monopolies in regions with multiple pilot groups.

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We believe that this bill should include a provision for a single pilot group per region which is open to all pilots licensed for that region. Or, as a second choice, a regional dispatch entity should be created that would function much as a single pilot group but would be more costly. In any event, we feel there must be a state-sanctioned entity that would separate the pilots from the control of agents and ship owners. To expect competition between pilot groups is unfair when the Alaska Public Utilities Commission will set the tariffs for the region, pilots are obligated to serve all vessels who request a pilot, and the industry side in a region is controlled by one company.

Alaska Public Utilities Commission Section 4 AS 08.62.045

AMP concurs that the Alaska Public Utilities Commission would be a good body to set pilotage tariff rates, but this change must be coupled with protection for pilots through regulation as discussed. The language change discussed makes it clear that private contracts must charge the same rate as the regional tariff. We have a problem with private contracts in regions that have more than one pilot group for reasons that will be discussed later.

Private Contracts AS 08.62.045(g) AS 08.62.175(e)

When contracts exist between pilots and agents or ship owners in a region where more than one pilot group operates, problems will be caused at the board level when trying to set the maximum number of pilots per region. The smaller group will contend that more pilots must be licensed in the region so that group can fulfill its contractual obligations even though enough pilots are already licensed for the region, but belong to another pilot association. Allegations of anti-competitive practices will no doubt arise even though a statute is enacted.

This problem would seem to be most prevalent in Southeast Alaska, but could no doubt arise elsewhere. The practice of bringing in masters from the Marine Highway System for 10 to 30 days is common in the peak season when perhaps full-time pilots from another association would be idle. Work should first go to full time pilots until they are utilized and then dispatch part time pilots. A single dispatch office would solve this problem.

Limiting the Number of Regional Licenses AS 08.62.175(10)(a)

AMP agrees that the maximum number of licenses per region should be set and reviewed from time to time. If only one pilot group exists in a region or there is a regional dispatch entity, the optimum number of licenses could be set with relative ease. If, however, the notion of competition continues to be embraced, the board will face severe challenges from smaller, industry-favored pilot groups who will contend that they must have more new pilots to fulfill contractual obligations. This will occur even if previously licensed pilots

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from another group would be idle.

Single Regional Dispatch

A state-sanctioned dispatch entity should exist in each region. It could be the pilot group itself in regions with one association, and this could be the most cost effective and efficient. However, in regions with more than one pilot group, a regional dispatch should be established. This office would be the contact point for agents to arrange pilotage service. I would be responsible for equitable dispatch of work and would collect and disperse revenue to pilots. The central dispatch idea would make it much easier to arrive at the optimum number of licenses needed per region. It would also make pilots independent from industry control.

Section 7 AS 08.62.080(c)

The language in this section would seem to allow an argument that a pilot could be licensed to work in a part of a region. The language should be clarified to assure that a pilot must be licensed to work an entire region or "cherry picking" will occur.

Conclusion

The mix of strict state regulation, rate setting by the Alaska Public Utilities Commission and the notion that competition should exist in piloting is unfair and unworkable, especially when the industry side in a region is controlled completely, or for the most part, by one company.

Thank you for taking time to consider our suggestions. We do appreciate it.

TD/djf.001



Alaska Coastwise Pilots Association
P.O. Box 22694
Juneau, Alaska 99802
Telephone: (907) 586-2272
Fax: (907) 586-2379

Marine Pilotage
Dispatch Service
Ketchikan Office
(907) 225-7245
(907) 247-4568 (Fax)

Representative Bill Hudson
Chairman, House Labor and Commerce Committee
Alaska Legislature
Juneau,
Alaska 99811

March 25, 1993

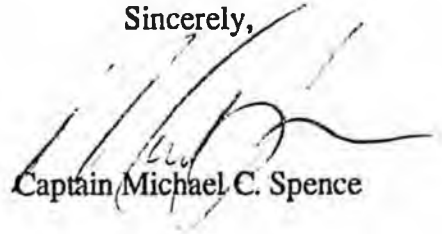
Dear Representative Hudson,

Our Association, consisting of approximately one third of all practicing pilots in Southeastern Alaska, appreciates the interest you have taken in the Marine Pilotage Statute. As you are aware, nearly all parties involved with Marine Pilotage have found problems in the implementation of the Marine Pilotage Act of 1991. The problems are not simply two-sided, with industry pitted against pilots. Pilots are divided on several issues also. The state must not take sides in the economic matters of pilot groups.

Monopoly is not and never has been a prerequisite of safe pilotage in this state or in any other. Pilot groups which have held a *de facto* monopoly must make an economic adjustment when a competitor enters the market. This is a natural process that applies to all professions and businesses in the United States. It serves little purpose for the state to intervene providing turf, tariff, or other economic protection for one of these competitors. Threats of boycotts must not be allowed to intimidate the state into market-fixing legislation.

Meaningful improvements could be made to the Marine Pilotage statute to make competent pilotage the central theme of the Board of Marine Pilots, rather than economic protectionism for a few pilot groups. I have attached some suggested amendments to assist your committee in that direction.

Sincerely,



Captain Michael C. Spence

cc



About the Alaska Coastwise Pilots' Association:

The Association was formed in 1988 by marine pilots who sought an opportunity to work outside of the two then-established marine pilotage associations in Alaska: the Southeastern Alaska Pilots' Association (SEAPA), and the Southwest Alaska Pilots' Association (SWAPA). The new group was formed to promote access to what was before a closed-shop profession in Alaska, and improve conditions for marine pilots in the state.

In late 1990 and early 1991, they were joined by other experienced marine pilots, nearly all of whom had earlier worked for one of the older associations, and all of whom desired higher professional standards and better management in their dispatch organization. The group obtained a contract with Holland America Line as its first entry into the pilotage dispatch business. Soon afterward, Royal Caribbean Cruise Line joined as a pilotage client of the Association. The Association commenced cargo operations throughout Southeastern Alaska in the Fall of 1991. To date, all of the pilots of the Association are career accident-free, and have an average of thirteen years of Alaska pilotage experience.

Just as the Alaska Coastwise Pilots Association came into being, the two previously dominant organizations, SEAPA and SWAPA, pooled their forces in promoting new legislation through the State of Alaska legislature seeking to reestablish their once-airtight monopolies. The legislation was intended to give regional (eg: turf) protection to their self-defined "regions", powers of enforcement of fixed prices, and exemption from antitrust laws so they would no longer have to defend their monopolistic practices in court. The Alaska Coastwise Pilots Association members had to oppose much of the legislation simply to remain in business. In 1991, the Alaska legislature passed the Marine Pilotage Act, which continues to allow competition in the pilotage profession.

The Alaska Coastwise Pilots Association is a full service pilotage organization, providing 24 hour dispatch capability anywhere in Southeastern Alaska, from Dixon Entrance to Yakutat, and maintains offices in Ketchikan and Juneau. It serves vessels of all classes and ownership. Its diverse clientele includes all of the major shipping firms and vessel agencies serving Alaska, and the U.S. Navy.

PA Pacific Associates

116 Gold Street

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

March 29, 1993

Ms. Lynda Giguere
House Labor and Commerce Committee
Alaska House of Representatives
Juneau, Alaska 99801

Dear Ms. ^{Lynda}Giguere:

Please accept the attached documents for the briefing books for tomorrow's Labor and Commerce Committee hearing on House Bill 237.

Hopefully, they are self-explanatory. I will be happy to answer any questions.

Sincerely,



Joe Kyle

- Attachments:
- (1) Letter from Mary Truitt
 - (2) Letter from Pacific Associates to Presidents of Alaska's pilot assoc.
 - ~~(3) Letter from Alaska's General Fund to Alaska's Pilot Assoc.~~
 - (4) Graph depicting steamship agency disbursements to pilot assoc.
 - (5) Graph depicting expiring pilot licenses
 - (6) Graph showing trends in expiring and first time licenses