

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7950 HOUSE LABOR & COMMERCE

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TO: House Labor & Commerce Committee  
FM: Mary Truitt

Dear Chairman and Members of the Committee,

My name is Mary Truitt. I am a native Alaskan and spent eight years working in the Aleutian chain attending ships over all of western Alaska. I no longer do this but now act as agent in the summer season attending cruise ships calling S.C. Alaska Ports from May through September.

Those early days, in the 1980s, were extremely difficult in the handling of vessels in the remote Alaskan waters. Ships frequently were told to wait the required 36 hours then, when no pilot arrived, move without one if the Captain felt confident or continue to wait if he did not. The pressures of business often made the captains decide to move when they might have preferred to wait.

Some ships would not even request a pilot but move without, which created great animosity among our principals who tried to comply with the regulations. These "maverick" ships were rarely caught and the illegal and unsafe activity not only saved them the cost of piloting but the valuable time which allowed them to "grab" cargo while a law abiding vessel sat and waited. The comment from our principals that we heard over and over again was "If a pilot is required then a pilot should be available".

There were NOT enough pilots available to cover the area because many of the pilots, in the only group available to us, did not want to come out to Bristol Bay to move fish carriers; "cruise ships and tankers were easier and more profitable". I heard this from the pilots themselves. Another part of their problem would be on vacation even though it was the busiest time of the year. The ones that did come out (usually the newest members) would work long and hard to cover the demanding schedule. Much of their time was spent transporting themselves from one busy location to another. Then, when exhausted, would return home and another would be sent out. This was, of course, expensive as well as inefficient.

Another practice that was employed during those times was the "convoy system". Often, the one pilot would board the first of two or more ships wanting to proceed to the next port and lead the other(s). This was usually through shallow and treacherous passages because, were it not, the captains would have opted to wait the 36 hours and proceed without pilot. There would be little chance that the pilot could return and physically take each vessel in the allotted 36 hours. The convoy resulted in the grounding of at least one vessel. It should also be noted that the charges for this "service" came through as if the pilot were in fact on the bridge of each ship so there was little incentive to send us more pilots.

It was evident that the needs of the Alaskan fisheries were not to be met by the existing pilot group even though we would have yearly meetings with the pilots and repeatedly pointed out the serious and continuing problems. We would receive encouraging words and promises but little, if any, improvement. We eventually took our problem to the Pilot Board. They listened and agreed that our area had not been properly served. The pilot association, S.W.A.P.A., was directed to provide enough pilots to adequately cover the area. However, the Pilot Board seemed dominated by pilots, even though we had two seats on the board filled by people from the maritime industry, and there was little improvement. We had another season of poor service and the resulting frustrations.

In time S.W.A.P.A. managed to annoy a few of their own members enough that they left and formed their own group, A.M.P. They came up with a plan that addressed the needs of the fisheries in a professional way. We had pilots that stayed in each of the busy areas and moved the vessels in a timely and safe manner. It was not necessary for one or two pilots to try to cover the vast area by themselves. The problems dissolved immediately and dramatically! No more vessels and cargo waiting for pilots. No more convoys. Costs were lower because of lower travel expenses and better efficiency. The new group manned the areas and stayed on the scene. Our principals were satisfied that pilots were available in a reasonable length of time. Ships moved safely and quickly WITH pilots on board.

The simple fact that the market had options made western Alaskan waters safer and the trade served much better. It might also be noted that the other areas served by S.W.A.P.A. received better service, too. The reason seems clear.

It would be a tremendous loss to go back to the outdated system. Things are better, much better except perhaps for a few of the previously privileged pilots. The state is better served and safer than it was before and I firmly believe that competition is the major reason. I do not believe that anything would have changed without it.

Thank you for listening to me on this matter. I feel strongly about it and I believe that my years on the scene have given me an insight to the true picture.

# PA Pacific Associates

119 Seward St., Suite 8 Juneau, Alaska 99801 (907) 586-3107 FAX 586-1001

## MEMORANDUM

March 5, 1993

Sent via fax  
1 page total

To: Captain Bill Swann (SEAPA) 907-247-9696  
Captain Mike Spence (ACP) 907-247-4568  
Captain Mike Stone (SWAPA) 907-835-2134  
Captain Tom Dundas (AMP) 907-581-1372  
Captain Bob Boyd (WAPA) 907-581-3902  
Captain Ron Sumstad (KPA) 503-225-1257

From: Joe Kyle  
Alaska Steamship Association

Subj: Industry/Pilot Association Meetings

As a result of recent telephone conversations and meetings between and among industry, pilots, Representative Hudson, and Commissioner Fuhs, a consensus seems to have formed regarding the best process to follow for dealing with various problems in the current Marine Pilot Act. Whether Representative Hudson introduces a bill to amend the Act this session or not, we believe that he and Commissioner Fuhs want industry and the pilots to enter into serious discussions, now, to narrow their various differences and hopefully reach agreement over several problem areas in the Act.

The Alaska Steamship Association (ASA) wants to play a constructive role in these discussions. In an effort to get the ball rolling, we need points of contact within each pilot association to assist ASA in the preparatory work necessary to ensure these discussions are held in a timely manner. Joe Kyle (ph. 907-586-3107, fax 907-586-1001) will be the point of contact for ASA. Please respond to him as rapidly as possible with the name(s) of your point of contact, so we can begin.

Additionally, and based upon conversations during the recent SWAPA and industry tariff negotiations and other conversations with pilots, we understand the pilots would like to see as many shipping companies represented during the discussions as possible. In order to help us bring principals to the meetings, it would be helpful if the various pilot associations could identify some of the shipping interests they believe would be pivotal for constructive dialogue. As you know, agents normally perform representational duties on behalf of the well over 100 steamship principals operating in Alaska. Nevertheless, we want to do our reasonable best to accommodate any concerns you have in this regard. Over the next few days we look forward to hearing which principals you reasonably hope could be present from each region.

Thank you ... Joe Kyle

# PA Pacific Associates

116 Gold Street

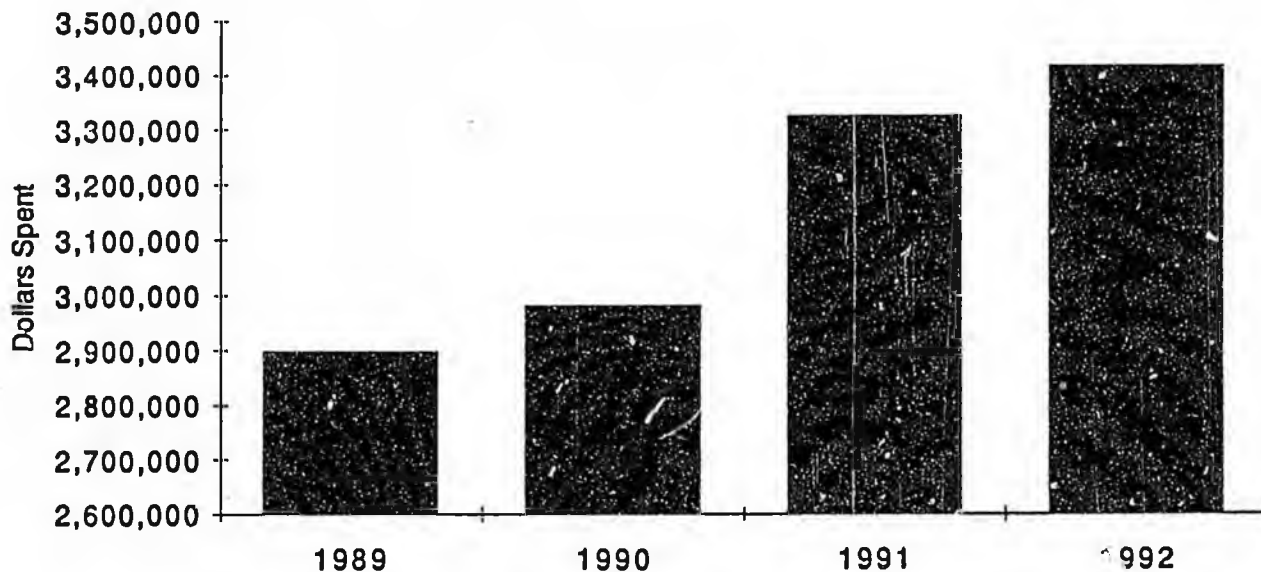
Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

The table below shows the annual payments for pilot services made by one of the major ASA members. Note that the cost has escalated 18% during the four years.

## Major Steamship Company Payments for Pilot Services



Source: Information provided by one of ASA's member companies.

# **PA** Pacific Associates

116 Gold Street

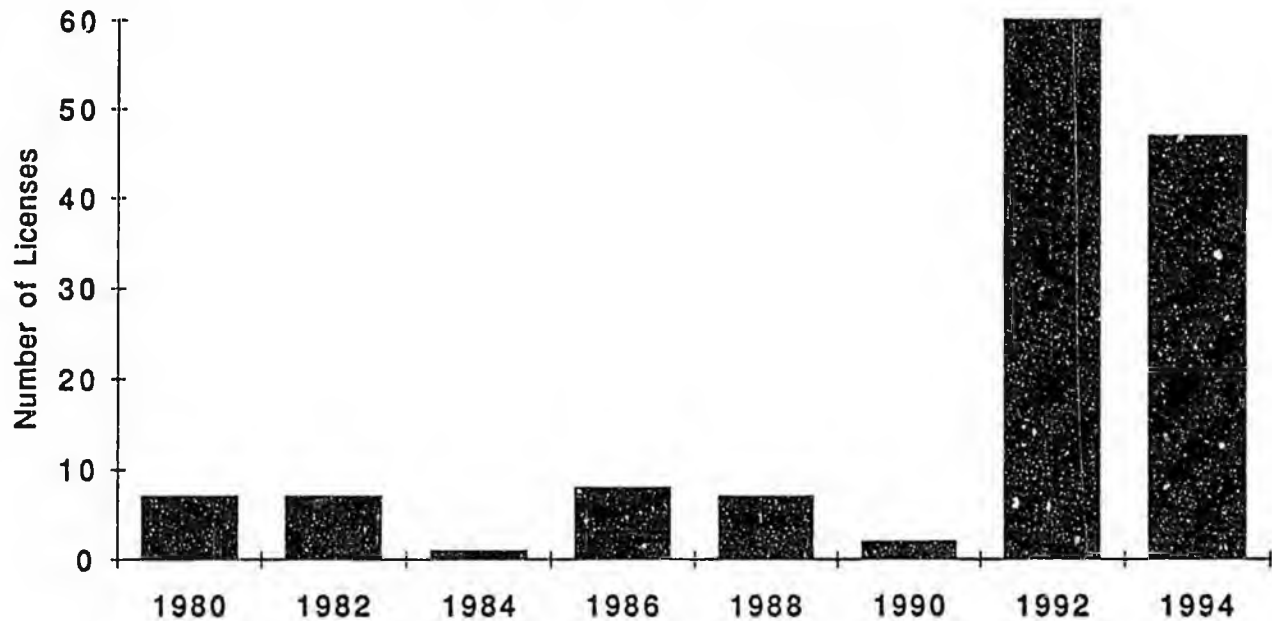
Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

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.

## Number of Licenses Up For Renewal



Source: Alaska Department of Commerce & Economic Development

# PA Pacific Associates

116 Gold Street

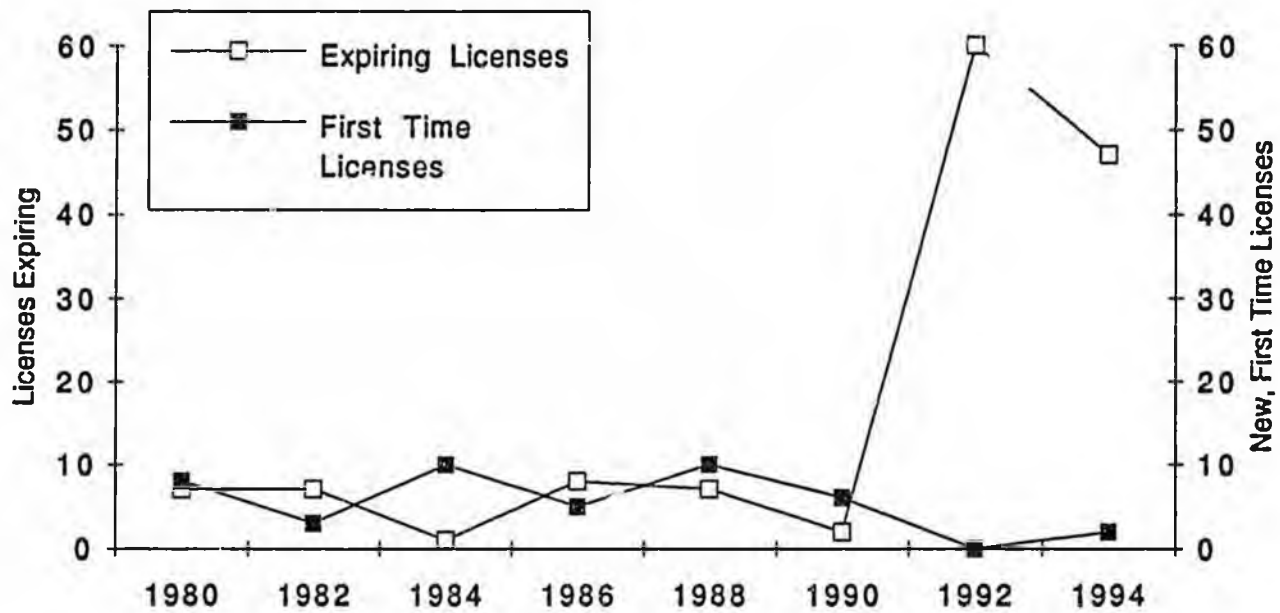
Juneau, Alaska 99801

(907) 586-3107

FA). 586-1001

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.

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



Source: Alaska Department of Commerce & Economic Development



# **ALASKA MARINE PILOTS**

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### **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 factors 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 to 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 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 not 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 HB 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: Representative Bill Hudson

FROM: Bob Evans  
for Alaska Marine Pilots

RE: An Act Relating to Marine Pilot Tariffs  
Word Draft 8-L50808J - Cramer 3/11/93

DATE: March 16, 1993

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The title ought to be broadened to provide for joint dispatch or single pilot organizations. Given the lack of competition between shipping owners or their agents, the requirements of competition between pilot groups is patently unfair.

Additionally, in a free market or competitive system the only elements that should be under consideration are price and service. Clearly, the environment between pilot groups presently does not allow for freedom of price setting or for the freedom to provide or not provide service. We are required to provide service at a set price. The work draft should dismiss the fiction of competition and recognize the "material monopoly" recognized throughout the United States.

**Section 1** AS 08.62.040(a)(10)

Establishment of the maximum number of pilots is good.

**Section 2** AS 08.62.040(b)

Why is this provision necessary? It would seem since the board can establish regions they should be able to review the regions already established. What is the goal to be accomplished by this new language?

**Section 3** AS 08.62.040(d)

AMP agrees with this section of the bill.

**Section 4** AS 08.62.045(a)

Moving the tariff setting function to the APUC is something the shipping industry approves and AMP acquiesces to. It underscores the public utility nature of marine pilotage in the state.

**Section 5** AS 08.62.045(d)

This section alone is fine. However, there is a very serious concern created by the exception created by AS 08.62.045(e) and (g).

**Section 6** AS 08.62.045(e) and (g)

AMP agrees with the work draft proposals embodied in subparagraphs (f), (h) and (i).

However, the exceptions provided in subparagraphs (e) and (g) simply reopen the problems created by the present statute's establishment of "maximum" and "working" tariffs. If the ability to proscribe the shipping industries is curtailed by pilot organizations entering into separate contracts with industry regardless of the fixed tariff previously established by the commission for all pilot organizations.

Suggested correction to subparagraph (g):

(g) If a pilot organization is recognized by the board, and a shipping company or the agent of a shipping company to whom pilotage services are provided agree on [a] the tariff for a particular region, they shall present the agreement to the commission for review. The commission shall hold a public hearing concerning the agreement and may approve it if it finds that approval of the agreement is in the public interest.

(e) With changes suggested above for (g), subparagraph (e) can remain unchanged.

**Section 7** AS 08.62.080

(b) Same concern as addressed in Section 2 commentary. What is the policy reason for this language change?

(c) AMP has a significant concern. One of the major problems under current law is that a pilot group can just provide services for the high revenue ports and ignore service to the out-port or lower revenue ports. This practice is referred to as "cherry picking" in the trade. Board licensure should be for the entire region and not for "specific waterways or ports" in a pilotage region.

Representative Bill Hudson

March 16, 1993

Page 3

(d) The provision of emergency licensing for "specific waterways or ports" makes sense in an emergent setting. AMP has no objection.

**Section 9**

**AS 08.62.150(a)**

AMP agrees with the changes to this section.

**Section 10**

**AS 08.62.175**

AMP has the same concerns raised in Section 6 AS 08.62.045(d) (g).  
Proposed solution would read:

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

**Section 11**

**AS 42.05.141**

New Section: The bill ought to address the question of joint dispatch. The current title does not allow for consideration of that issue.

BE/djf.001



**Holland America Line  
Westours Inc.**

March 19, 1993

Rep. Bill Hudson  
State of Alaska  
House of Representatives  
Juneau, Alaska

Dear Rep. Hudson:

As you know, Alaska is critically important to Holland America Line. We play an important role in Alaska tourism and make a significant contribution to the State's economy. Over the years, and more recently, Holland America Line has taken several steps to foster this relationship to enable Alaskans to better understand our commitment to the state and its people. Among those steps is a new and positive approach to our dealings with the Alaska State Legislature. We are presently in transition to that new approach. The Alaska Marine Pilotage issue is one which spans the past, present, and future of this transition. As a result, we have worked this issue jointly and felt it appropriate to continue communicating with you in that manner.

As a member of the Alaska Steamship Association (ASA), Holland America Line has been kept advised regarding legislation you are considering introducing with respect to marine pilotage in Alaska. We fully concur with all that has previously been communicated to you by ASA. As a result, we would not normally have written this letter. We felt it necessary to do so, however, given that Holland America Line apparently is continuing to be singled out as a villain in this entire process, being representative of many of the ills allegedly existing in Alaska marine pilotage.

We think it's important to make sure the information you are receiving from SEAPA and AMP accurately reflects what has happened over the past three years:

1. It's true Holland America Line was the first shipping company to break the monopoly held by SEAPA in Southeast Alaska. Without our involvement back in 1991, it's questionable whether ACP would now exist. Having said that, however, we trust SEAPA has told you why the pilots that formed ACP elected to do so. Basically, those pilots controlling SEAPA at the time got greedy. They decided not to let other licensed and qualified pilots adequately share in the revenues then available, instead preferring to maximize their own income at the expense of the livelihood of others.

These disgruntled pilots approached Holland America. We never sought them out nor would we have ever known about their plight had they not come to us and asked for our business. When they came to us, they not only proposed more competitive

pricing but offered constructive suggestions on how we could reduce our pilotage costs through scheduling adjustments and other operational changes, none of which compromised safety. As to the more competitive pricing, it still enabled them to realize incomes far in excess of the vast majority of people working in Alaska. Furthermore, because they were able to set-up their own business in an efficient manner, they were able to realize incomes similar to those earned by SEAPA pilots even though the rates charged shippers were less.

2. It's true Holland America remains the most important customer of ACP. Clearly, however, we are not their only customer since they service at least one other cruise line and a multitude of cargo shippers. If we were to terminate our relationship with ACP tomorrow, there is no doubt in my mind some of our competitors would be more than willing to retain their services allowing them to remain a viable operation. In fact, ACP was set to pilot one of the ships for Princess last year and would have done so had SEAPA not used its superior bargaining power to force Princess into giving SEAPA an exclusive contract.

More importantly, we have gone to great length not to dictate, or even attempt to dictate, to ACP how they should run their business or conduct themselves before the Marine Pilot Board. Anyone who may suggest to you the ACP pilots are "Company pilots" for Holland America or ACP marches to our tune is misrepresenting the facts. One example we can give is the charges of ethics violations ACP has made against various members of the Board. First, the charges were lodged without our prior knowledge. Secondly, after the initial round of charges Dan Grausz personally told ACP he questioned their strategy since he felt it might be unnecessarily disrupting the Board's operations. As they have the right to do, they chose to ignore that advice and file additional charges. In other words, they did what they felt was right even though Holland America disagreed. We would expect them to do nothing less.

3. SEAPA and AMP appear to be raising the specter of impending shipping disasters due to competition among pilot groups. There is **ABSOLUTELY NOTHING** that has occurred over the past two years in Southeast Alaska which gives any credibility to that claim. ~~The~~ only serious shipping accident during this period in Southeast occurred in Skagway and involved two SEAPA pilots. If anything, competition has forced both SEAPA and ACP to upgrade the services they are providing.

4. You have undoubtedly been told by Capt. Luck and others that ACP's ethics charges and administrative appeals have disrupted the Board's operations; what is probably characterized as one of the negative impacts of competition. We hope you have also been told that in virtually every administrative appeal, the position of ACP and/or its members has been upheld. As to the ethics violations, we are less certain as to the outcomes although we understand the Attorney General's Office has ruled the Board needed to modify its past practices in order to conform with State law. **NO** person or organization should be faulted for exercising the rights you and other lawmakers have chosen to protect. If the rights should not have been created, that can be considered by the Legislature. Having created the right, however,

the person or organization taking advantage of it should not then become the culprit for the current problems with the Marine Pilotage Act.

5. The 1991 legislation was, to a substantial extent, safety legislation. Holland America made it clear during the hearings on the bill back in 1991 that we supported the safety aspects of the proposals even though we knew ultimately those could cost us more money in pilotage fees.

One also needs to understand, however, what the bill did on the economic side. Basically, it allowed everyone already in the system to keep what they had while at the same time erecting substantial barriers to entry for those who had not yet made it. There are provisions in the law which should serve to force existing pilots to maintain and hopefully improve their skills. The real targets, however, were those people who were not yet licensed but may aspire someday to be pilots in Alaska. As they are now learning, even if their skills are superior to those of existing pilots, the fact they did not have their foot in the door by 1991 will make it much more difficult to get there.

6. The tariff - what it really all comes down to. We would be the first to admit that the Board's deliberations during 1991 and 1992 were unfortunately dominated by tariff discussions. Please appreciate, however, this was only because certain pilot organizations sought to increase their rates even though their members were earning six figure incomes for working less than half the year. The argument given at the time was that increasing the tariff was necessary due to competition. To this date, we have never understood that argument.

The fact is that now, we have reached a peace, possibly an uneasy one but definitely peace, on the tariff issue. It did take a lot of time to get to that point, but the process eventually worked. The pilots continue to earn substantial incomes and the shippers are able to pay the fees. We are not suggesting the battles are over or that everyone is happy with the outcome. We are also not precluding our support of improvements to the process. What we do need to emphasize, however, is we did have new legislation, we all had to learn how to live with it, and maybe we have succeeded. At a minimum, it's premature to assume the tariff wars will reoccur to the same extent as in prior years. Clearly, there are steps the Board or the Legislature can take at this time which will minimize the chances of them reoccurring. Those steps, however, do not require scrapping the system at this time.

7. The question then comes down to a maximum versus a fixed tariff. Holland America has thought this through more times than we like to recall and cannot, no matter how many times we do consider it, justify in our own minds why pilots, unlike virtually any other profession in the world, are entitled to be free from price competition. We wish the State of Alaska could dictate what all cruise lines must charge so we could be assured of a strong net income. We could imagine virtually

all businesses would like the government to keep their competitors from undercutting their prices. That is not the way our system works. For better or worse, we have decided on a free market system. Certain pilots, however, seek to be the exception.

The pilots will tell you price competition jeopardizes both safety and the supply of pilots as people will move to other states where they can get higher fees. First, we find it amusing these pilots can make this argument on the one hand and then also claim legislation needs to be passed to place a cap on the overall number of pilots. If pilots are leaving the State, why do we need a cap? What the pilots are not telling you is ever. Under price competition, new pilots are seeking licenses. They are more than happy to earn the types of incomes that continue to be earned by pilots in Alaska even with price competition.

The fact of the matter is no harm has resulted from price competition. Yes, Holland America does benefit from price competition in the same way any company benefits when their vendors or service providers must compete with each other to get business. Yet, neither Holland America or other shippers have abused the new system. The incomes of pilots have continued to increase notwithstanding price competition. The information compiled by Capt. Luck demonstrates each SEAPA pilot is earning more than \$21,000 for each month they work. There is an ample supply of pilots as evidenced by the efforts of SEAPA and AMP to place caps on the number of pilots. The maximum tariff system has worked.


We respectfully submit what is driving the efforts of SEAPA and AMP at this time is pure and simple greed. They have a lot but want more. They used to have a monopoly in their respective regions and cannot reconcile themselves to the fact they can no longer have it all. To us, the most telling fact is it's the big guy in each region who is complaining - not the smaller pilot group that gets less of the pie. Government, in the area of economic activity, has some responsibility to protect smaller businesses from larger ones who seek to use their economic power to get their way. We do not understand why Alaska would adopt legislation to permit the bigger business to beat up on their smaller competitors.

There is no evidence Holland America's activities have compromised safety in Alaska. More importantly, there is no evidence the 1991 legislation impaired marine pilotage in the State. The 1991 law was an honest compromise between competing interests. Everyone got something but gave something. The system put together in 1991 is finally beginning to work as was envisioned by Sen. Pearce and others who forged the compromise. Yes, fine tuning is required. We respectfully submit, however, the drafts of the legislation we have seen go far beyond fine tuning and threaten instead to unravel the compromises that were made in 1991.

Rep. Bill Hudson  
March 19, 1993  
Page 5

We, together with ASA, stand ready and willing to meet with your office, with Paul Fuhs and with the pilot organizations in order to resolve differences. To date, only SWAPA and ACP have shown an interest in meeting. SEAPA and AMP prefer making their arguments separate from others who may be in a position to refute those arguments. We very much respect your sincere desire to address the problems that do exist in marine pilotage. You have our assurances we will make every effort to facilitate your work. We believe you will find Holland America is not the enemy or the problem in this process.

Sincerely,



Daniel S. Grausz  
Vice President and  
General Counsel



C. J. Zanz  
Director of Government  
and Community Relations

tkw

cc: Cees Deelstra  
Joe Kyle  
Arie Van Noort  
Bill Sharp  
Scott Jones

Capt. E. H. Creasey  
Box 110322  
Anchorage, AK 99521

25 March 1993

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

Dear Representative Hudson,

It all renders down to one (1) thing, money. Even safety standards render down to money, for those honest enough to admit it.

Last year, 1992, my adjusted growth income was \$91,000. This is 34% less than what pilots make in the State of Washington. This is some 64% less than some other pilots make in other regions of our own State of Alaska. This is 35% less than my own peak income of several years ago. Legal fees have gone up 10 fold since "free competition". Cost-of-living stays the same vis-a-vis Seattle at about -42%. It is not economically viable for me to work more than the 4 1/2 month cruise ship season. No retirement benefits are accrued, no health and welfare, no liability protection, and vastly increased risks are the winter-time fare. Working winters is nothing short of stupid!

Why do I stay? I stay because I love Alaska's wilderness, I love shiphandling, and I like the independence and autonomy of this line of work. Winter time is looser time. I stay to keep my place in line; I stay to stave off neophytes and charlatans; I stay to keep a presence; I stay to keep experienced.

Meanwhile, the agents and the shippers and the lawyers post larger and larger profits.

On March 14, 1993, I took a large ocean-going heavily laden ore vessel out of Hawk Inlet. The wind was a sustained 50 knots. My tug boat assistance was two small boats of 600 HP each. One tug master had never done ship assist before. This is unsatisfactory. This is sub-standard. This is dangerous. This is an issue of safety; and the movement should have commanded a minimum combined tug horsepower of 3,000 plus. Yet, if I turned this job down, the competing pilots got a guy aping through the trees waiting to be signalled. Agents can always find a "low-bid" pilot; a free competition pilot.

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25 March 1993  
Page Two

The low-bid pilot saves industry tons of bucks in not having to have proper equipment available; in not having delays due to weather; in not having to slow down in fog; and in cost reductions in pilot training standards. A system of competing pilots is a money maker for foreign flag ship owners, (you don't see U.S. tanker operators chiseling on tug boats); it is windfall profits for ship agents. Competition is the engine of motivation for the legal fraternity. The word "competition" is synonymous with law suit. The free competition system insures that pilots will knowingly be pressured into doing something less than prudent 2% of the time; (where the outcome may be a 50% favorable probability factor.) Is that good enough for the State of Alaska?

I'm glad that all these business guys are making big bucks; but their business profits should not be at the expense of the public welfare. In the present circumstances, the pilot plays the role of a giant fender - he is expendable, and will collapse on impact. And all the remittance men will feast on the remains.

Sincerely,



CAPT. E. H. CREASEY

cc: SEAPA File

March 16, 1993

From: Joe Kyle / Pacific Associates

To: Lynda Giguere / Rep Hudson's Office  
Fax 465-6790

Lynda - you can call me @ the  
Alaska Airlines Board Room @ SEATAC  
(ph. 206-433-3236) until 4 P.M.,  
I mean time with any questions.

As a result of ASA's meeting, today,  
to discuss the draft legislation, the  
following general comments apply:

- 1) ASA appreciates Rep HUDSON's desire  
to sponsor/introduce a bill now  
to "fine tune" the current Marine Pilot  
Act. (please don't read as "patronizing", we  
understand BilO's desire to begin NOW!!)
- 2) While ASA would prefer to work  
through the contentious areas in the  
current Act with the pilots, in an  
effort to reach agreement or narrow  
the differences, before legislation is  
introduced; we will work actively  
with the legislature and the pilots  
to get the best legislation we can.

page 2

b) With regard to the specific bill (draft) we were provided, we/ASA concur with the bill's effects insofar as:

— the tariff is removed from the Board of Marine Pilots to another entity for rate setting (this does not imply we agree to the other "entity" setting a fixed vice maximum tariff)

— tariffs would be set for a three year period

— the language relating to cross regionalization (while primarily of interest to pilots) is not objectionable.

a) Our general feelings are best summarized by stating that while there are some positive things in the bill, we are concerned that two of six pilot associations are being heard more clearly than the other four (they're pushing harder, of course). We do not share the DCED viewpoint that the pilot board and state pilotage in general is "broken" and in need of immediate repair.

page 3

We share what we believe Rep HUDSON's perspective to be; that is, that the ACT requires fine tuning.

5) We will approach that fine tuning from the reference point that:

— pilots are professionals and should be compensated as such

— pilots are not hourly wage employees

— we are concerned about any language that places barriers to entry in a professional occupation

— we believe service to our customers has improved since the current ACT was passed.

— we do not believe, nor have we been <sup>shown</sup> ~~presented~~, that any empirical data exists which demonstrates safety has been compromised or pilot incomes reduced since the current ACT was enacted... we believe the reverse to be true in each case.

6) We are happy to help the process begin.

Respectfully,  
Joe Kyle

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



# Holland America Line Westours Inc.

March 19, 1993

Rep. Bill Hudson  
State of Alaska  
House of Representatives  
Juneau, Alaska

Dear Rep. Hudson:

As you know, Alaska is critically important to Holland America Line. We play an important role in Alaska tourism and make a significant contribution to the State's economy. Over the years, and more recently, Holland America Line has taken several steps to foster this relationship to enable Alaskans to better understand our commitment to the state and its people. Among those steps is a new and positive approach to our dealings with the Alaska State Legislature. We are presently in transition to that new approach. The Alaska Marine Pilotage issue is one which spans the past, present, and future of this transition. As a result, we have worked this issue jointly and felt it appropriate to continue communicating with you in that manner.

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1. It's true Holland America Line was the first shipping company to break the monopoly held by SEAPA in Southeast Alaska. Without our involvement back in 1991, it's questionable whether ACP would now exist. Having said that, however, we trust SEAPA has told you why the pilots that formed ACP elected to do so. Basically, those pilots controlling SEAPA at the time got greedy. They decided not to let other licensed and qualified pilots adequately share in the revenues then available, instead preferring to maximize their own income at the expense of the livelihood of others.

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the person or organization taking advantage of it should not then become the culprit for the current problems with the Marine Pilotage Act.

5. The 1991 legislation was, to a substantial extent, safety legislation. Holland America made it clear during the hearings on the bill back in 1991 that we supported the safety aspects of the proposals even though we knew ultimately those could cost us more money in pilotage fees.

One also needs to understand, however, what the bill did on the economic side. Basically, it allowed everyone already in the system to keep what they had while at the same time erecting substantial barriers to entry for those who had not yet made it. There are provisions in the law which should serve to force existing pilots to maintain and hopefully improve their skills. The real targets, however, were those people who were not yet licensed but may aspire someday to be pilots in Alaska. As they are now learning, even if their skills are superior to those of existing pilots, the fact they did not have their foot in the door by 1991 will make it much more difficult to get there.

6. The tariff - what it really all comes down to. We would be the first to admit that the Board's deliberations during 1991 and 1992 were unfortunately dominated by tariff discussions. Please appreciate, however, this was only because certain pilot organizations sought to increase their rates even though their members were earning six figure incomes for working less than half the year. The argument given at the time was that increasing the tariff was necessary due to competition. To this date, we have never understood that argument.

The fact is that now, we have reached a peace, possibly an uneasy one but definitely peace, on the tariff issue. It did take a lot of time to get to that point, but the process eventually worked. The pilots continue to earn substantial incomes and the shippers are able to pay the fees. We are not suggesting the battles are over or that everyone is happy with the outcome. We are also not precluding our support of improvements to the process. What we do need to emphasize, however, is we did have new legislation - we all had to learn how to live with it, and maybe we have succeeded. At a minimum, it's premature to assume the tariff wars will reoccur to the same extent as in prior years. Clearly, there are steps the Board or the Legislature can take at this time which will minimize the chances of them reoccurring. Those steps, however, do not require scrapping the system at this time.

7. The question then comes down to a maximum versus a fixed tariff. Holland America has thought this through more times than we like to recall and cannot, no matter how many times we do consider it, justify in our own minds why pilots, unlike virtually any other profession in the world, are entitled to be free from price competition. We wish the State of Alaska could dictate what all cruise lines must charge so we could be assured of a strong net income. We could imagine virtually

all businesses would like the government to keep their competitors from undercutting their prices. That is not the way our system works. For better or worse, we have decided on a free market system. Certain pilots, however, seek to be the exception.

The pilots will tell you price competition jeopardizes both safety and the supply of pilots as people will move to other states where they can get higher fees. First, we find it amusing these pilots can make this argument on the one hand and then also claim legislation needs to be passed to place a cap on the overall number of pilots. If pilots are leaving the State, why do we need a cap? What the pilots are not telling you is even under price competition, new pilots are seeking licenses. They are more than happy to earn the types of incomes that continue to be earned by pilots in Alaska even with price competition.

The fact of the matter is no harm has resulted from price competition. Yes, Holland America does benefit from price competition in the same way any company benefits when their vendors or service providers must compete with each other to get business. Yet, neither Holland America or other shippers have abused the new system. The incomes of pilots have continued to increase notwithstanding price competition. The information compiled by Capt. Luck demonstrates each SEAPA pilot is earning more than \$21,000 for each month they work. There is an ample supply of pilots as evidenced by the efforts of SEAPA and AMP to place caps on the number of pilots. The maximum tariff system has worked.

We respectfully submit what is driving the efforts of SEAPA and AMP at this time is pure and simple greed. They have a lot but want more. They used to have a monopoly in their respective regions and cannot reconcile themselves to the fact they can no longer have it all. To us, the most telling fact is it's the big guy in each region who is complaining - not the smaller pilot group that gets less of the pie. Government, in the area of economic activity, has some responsibility to protect smaller businesses from larger ones who seek to use their economic power to get their way. We do not understand why Alaska would adopt legislation to permit the bigger business to beat up on their smaller competitors.

There is no evidence Holland America's activities have compromised safety in Alaska. More importantly, there is no evidence the 1991 legislation impaired marine pilotage in the State. The 1991 law was an honest compromise between competing interests. Everyone got something but gave something. The system put together in 1991 is finally beginning to work as was envisioned by Sen. Pearce and others who forged the compromise. Yes, fine tuning is required. We respectfully submit, however, the drafts of the legislation we have seen go far beyond fine tuning and threaten instead to unravel the compromises that were made in 1991.

Rep. Bill Hudson  
March 19, 1993  
Page 5

We, together with ASA, stand ready and willing to meet with your office, with Paul Fuhs and with the pilot organizations in order to resolve differences. To date, only SWAPA and ACP have shown an interest in meeting. SEAPA and AMP prefer making their arguments separate from others who may be in a position to refute those arguments. We very much respect your sincere desire to address the problems that do exist in marine pilotage. You have our assurances we will make every effort to facilitate your work. We believe you will find Holland America is not the enemy or the problem in this process.

Sincerely,



Daniel S. Grausz  
Vice President and  
General Counsel



C. J. Zane  
Director of Government  
and Community Relations

tkw

cc: Cees Deelstra  
Joe Kyle  
Arie Van Noort  
Bill Sharp  
Scott Jones

Capt. E. H. Creasey  
Box 210322  
Anchorage, AK 99521

25 March 1993

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

Dear Representative Hudson,

It all renders down to one (1) thing, money. Even safety standards render down to money, for those honest enough to admit it.

Last year, 1992, my adjusted growth income was \$91,000. This is 34% less than what pilots make in the State of Washington. This is some 64% less than some other pilots make in other regions of our own State of Alaska. This is 35% less than my own peak income of several years ago. Legal fees have gone up 10 fold since "free competition". Cost-of-living stays the same vis-a-vis Seattle at about +42%. It is not economically viable for me to work more than the 4 1/2 month cruise ship season. No retirement benefits are accrued, no health and welfare, no liability protection, and vastly increased risks are the winter-time fare. Working winters is nothing short of stupid!

Why do I stay? I stay because I love Alaska's wilderness, I love shiphandling, and I like the independence and autonomy of this line of work. Winter time is looser time. I stay to keep my place in line; I stay to stave off neophytes and charlatans; I stay to keep a presence; I stay to keep experienced.

Meanwhile, the agents and the shippers and the lawyers post larger and larger profits.

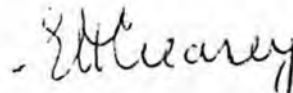
On March 14, 1993, I took a large ocean-going heavily laden ore vessel out of Hawk Inlet. The wind was a sustained 50 knots. My tug boat assistance was two small boats of 600 HP each. One tug master had never done ship assist before. This is unsatisfactory. This is sub-standard. This is dangerous. This is an issue of safety; and the movement should have commanded a minimum combined tug horsepower of 3,000 plus. Yet, if I turned this job down, the competing pilots got a guy aping through the trees waiting to be signalled. Agents can always find a "low-bid" pilot; a free competition pilot.

25 March 1993  
Page Two

The low-bid pilot saves industry tons of bucks in not having to have proper equipment available; in not having delays due to weather; in not having to slow down in fog; and in cost reductions in pilot training standards. A system of competing pilots is a money maker for foreign flag ship owners, (you don't see U.S. tanker operators chiseling on tug boats); it is windfall profits for ship agents. Competition is the engine of motivation for the legal fraternity. The word "competition" is synonymous with law suit. The free competition system insures that pilots will knowingly be pressured into doing something less than prudent 2% of the time; (where the outcome may be a 50% favorable probability factor.) Is that good enough for the State of Alaska?

I'm glad that all these business guys are making big bucks; but their business profits should not be at the expense of the public welfare. In the present circumstances, the pilot plays the role of a giant fender - he is expendable, and will collapse on impact. And all the remittance men will feast on the remains.

Sincerely,



CAPT. E. H. CREASEY

cc: SEAPA File

Lyndy

**MEMORANDUM** (Brief Communications)

**State of Alaska**

<b>TO:</b>	Name	Dept./Div./Sect.	Mail Stop
<b>FROM:</b>	REPRESENTATIVE HUDSON		
	Name	Dept./Div./Sect.	Phone
<b>SUBJ:</b>	MARINE PILOT COORDINATOR	LICENSING? COMM AND ECO DEVEL	2548
			Date
	PILOT DISPATCH IN WESTERN ALASKA		6 APRIL 1993

THE ATTACHED IS FOR YOUR INFORMATION. THERE IS OBVIOUS CONCERN BY AMP WHEN A PILOT FROM A COMPETING ORGANIZATION IS GIVEN DISPATCH AUTHORITY BY AN AGENT.

*Please copy for committee.*

*HS 237*

SUITE 215  
1600 A STREET  
ANCHORAGE, ALASKA 99501



(907) 272-3714  
FAX: 9072728795  
TELEX: 6733427  
(MCI)  
CABLE: ALAMAR

TO: WESTERN ALASKA PILOT ASSOC.

Page 1 of 1

FM: ALASKA MARITIME AGENCIES/Anchorage

April 2, 1993

ATTN: MR. BOB BOYD, President

RE: PILOT DISPATCH IN WESTERN ALASKA

Dear Bob:

Thank you for your letter of March 31. As you know, we were hoping that AMP and WAPA would be able to negotiate a working agreement regarding dispatch of pilots in Western Alaska for the remainder of the year. However, with the summer season hard upon us and nothing in place, we find ourselves forced to take unilateral action, even if only temporarily, to protect the interests of our customers and keep the ships moving.


We therefore request that Bob Boyd act as pilot dispatcher for all ALAMAR vessels in Western Alaska for the months of May, June, July and part of August.

We understand that AMP has again offered to sit down with the WAPA group and discuss a joint dispatch agreement. As ALAMAR, we encourage such talks and if an agreement is reached, we will certainly abide by it. However, in the interim we feel we must put a workable, single source dispatch system in place in time for Togiak herring and for that, we ask your help.

I would also like to reiterate ALAMAR's desire to equalize pilot income in the Western region over both groups. We feel it is in our principal's best interest that both associations stay healthy and viable, and we will be discussing with you ways of dividing the work between the two groups which will achieve these ends.

It appears that ALAMAR's current split of 1/3 WAPA; 2/3 AMP may have to be amended in WAPA's favor as we understand that North Star is currently dispatching 3 of every 4 vessels to AMP and ANP Shipping is dispatching all their vessels to AMP. Again, a negotiated joint dispatching arrangement is the best solution, but barring that, we will do what is necessary to see that income is equalized.

Thank you and best regards,

  
Dan Blackmore  
Vice President, Alaska Operations



**ALASKA MARINE PILOTS  
& DISPATCHING SERVICE**

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

April 1, 1993  
VIA FAX

Western Alaska Pilots Association  
Dutch Harbor, Alaska

Re: Joint dispatch agreement

Gentlemen:

AMP continues to believe that a joint dispatch agreement for the Western Region is in the best interests of safe and efficient piloting, our customers, and the individual pilots in both groups. However, as our recent exchange of written proposals illustrates, many points of disagreement remain regarding the formation and operation of a joint dispatch system.

At this point, AMP believes that the only productive way to resolve this problem is through face to face negotiations between representatives of our two organizations. While the written exchanges have helped define the issues, we have made no real progress toward resolution. In light of the short time remaining before the summer season is upon us, we believe the time has come to sit down and reason together in earnest.

We therefore urge you to meet with us face to face as soon as possible with an eye toward remaining in the room together until we either have an agreement or become convinced that no agreement is possible under any circumstances. We are willing to meet with one or more WAPA pilots of your choosing any time in Dutch Harbor, Anchorage, or Seattle.

In order to minimize potential personality conflicts as much as possible, we invite WAPA to designate at least two AMP pilots to represent AMP in this negotiation. All we ask of WAPA is that its negotiators be WAPA pilots rather than WAPA's legal counsel or other non-pilot representative. It must be understood, of course, that AMP's negotiators will be consulting with the other AMP members throughout negotiations, and that any final agreement must be approved by a majority of AMP's members. We assume that the same would be true for the WAPA negotiators. The important thing, in our view, is to get people in a room discussing this issue in good faith.

Western Alaska Pilots Association  
Dutch Harbor, Alaska  
April 1, 1993  
Page Two

It may be that we cannot make significant progress without the assistance of a mediator. We understand that Commissioner Paul Fuhs is willing to participate in this negotiation or designate someone from his office to do so. We are content to have you explore this with Commissioner Fuhs, or we will do so if you prefer. Capt. Will Anderson is currently in Juneau, and would be able to check promptly with Commissioner Fuhs' office. We are providing a copy of this letter to Commissioner Fuhs for his information.

AMP's members obviously feel strongly about a number of the issues involved in creating and operating a joint dispatch system. However, we assure you that no issue is off limits for discussion: everything is on the table, and we are willing to consider in good faith anything you may wish to discuss. Our objective is to resolve rather than perpetuate our differences, and we are confident that there is a solution that will be acceptable to all interested parties.

Please respond as soon as possible to AMP's Dutch Harbor office. We look forward to hearing from you.

Alaska Marine Pilots



Capt. Will Anderson

cc: Commissioner Paul Fuhs  
(hand delivered)

AMP/Dutch Harbor

## Southeastern Alaska Pilots' Association

Telephone: (907) 225-9696  
(907) 225-9697

CABLE ADDRESS: SEAPILOTS

P. O. BOX 5100  
KETCHIKAN, ALASKA 99901

March 16, 1993

Representative Bill Hudson's Office  
Attn: Ms. Lynda Giguere  
State Capitol  
Juneau, AK. 99801-1182

Dear Ms. Giguere:

The Proposed legislation from Representative Hudson's office has been reviewed. This draft bill very adequately addresses many of the problems associated with the current Pilotage Act. I strongly support this proposed legislation.

There remains the issue of enduring that pilot's are equitably utilized in regions with competing pilot groups, where agents exercise control [ 90 percent or more ] over the region's shipping. only the State should be in a position of control over pilots,. When the industry has direct control over the livelihood of pilots, then the pilots' allegiance and commitments to the State are vulnerable to compromise. The preferred solution is to have the bill include a provision for a one pilot association in each in each region. An alternative solution is to introduce a second bill that provides for a central dispatch service.

As a matter of "housekeeping" it is recommended that the following changes be included in the proposed bill:

Section 08.62.093[3] change to read:

"[3] two years of service as a chief officer on ocean or coastwise vessels of not less than 1600 gross tons while holding a chief officer or master of vessels of not less than 1600 gross tons or greater license."

Section 08.62.093[4] change to read:

[4] two years of service as a commanding officer of United States commissioned or public vessels of not less than 1600 gross tons and have a 1600 gross ton or greater licence; or.

Thank you for your outstanding and objective efforts in formulating this legislation. I stand ready to assist, in any way, in the final preparation of this bill.

Sincerely,

  
William R. Swan  
President

## 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

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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.

Representative Bill Hudson  
March 16, 1993  
Page 2

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

Representative Bill Hudson  
March 16, 1993  
Page 3

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

## MEMORANDUM

TO: Representative Bill Hudson

FROM: Bob Evans  
for Alaska Marine Pilots

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

DATE: March 16, 1993

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The title ought to be broadened to provide for joint dispatch or single pilot organizations. Given the lack of competition between shipping owners or their agents, the requirements of competition between pilot groups is patently unfair.

Additionally, in a free market or competitive system the only elements that should be under consideration are price and service. Clearly, the environment between pilot groups presently does not allow for freedom of price setting or for the freedom to provide or not provide service. We are required to provide service at a set price. The work draft should dismiss the fiction of competition and recognize the "material monopoly" recognized throughout the United States.

**Section 1 AS 08.62.040(a)(10)**

Establishment of the maximum number of pilots is good.

**Section 2 AS 08.62.040(b)**

Why is this provision necessary? It would seem since the board can establish regions they should be able to review the regions already established. What is the goal to be accomplished by this new language?

**Section 3 AS 08.62.040(d)**

AMP agrees with this section of the bill.

**Section 4 AS 08.62.045(a)**

Moving the tariff setting function to the APUC is something the shipping industry approves and AMP acquiesces to. It underscores the public utility nature of marine pilotage in the state.

**Section 5 AS 08.62.045(d)**

This section alone is fine. However, there is a very serious concern created by the exception created by AS 08.62.045(e) and (g).

**Section 6 AS 08.62.045(e) and (g)**

AMP agrees with the work draft proposals embodied in subparagraphs (f), (h) and (i).

However, the exceptions provided in subparagraphs (e) and (g) simply reopen the problems created by the present statute's establishment of "maximum" and "working" tariffs. If the ability to proscribe the shipping industries is curtailed by pilot organizations entering into separate contracts with industry regardless of the fixed tariff previously established by the commission for all pilot organizations.

Suggested correction to subparagraph (g):

(g) If a pilot organization is recognized by the board, and a shipping company or the agent of a shipping company to whom pilotage services are provided agree on [a] ~~the~~ tariff for a particular region, they shall present the agreement to the commission for review. The commission shall hold a public hearing concerning the agreement and may approve it if it finds that approval of the agreement is in the public interest.

(e) With changes suggested above for (g), subparagraph (e) can remain unchanged.

**Section 7 AS 08.62.080**

(b) Same concern as addressed in Section 2 commentary. What is the policy reason for this language change?

(c) AMP has a significant concern. One of the major problems under current law is that a pilot group can just provide services for the high revenue ports and ignore service to the out-port or lower revenue ports. This practice is referred to as "cherry picking" in the trade. Board licensure should be for the entire region and not for "specific waterways or ports" in a pilotage region.

Representative Bill Hudson  
March 16, 1993  
Page 3

(d) The provision of emergency licensing for "specific waterways or ports" makes sense in an emergent setting. AMP has no objection.

**Section 9** AS 08.62.150(a)

AMP agrees with the changes to this section.

**Section 10** AS 08.62.175

AMP has the same concerns raised in Section 6 AS 08.62.045(d) (g).  
Proposed solution would read:

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

**Section 11** AS 42.05.141

New Section: The bill ought to address the question of joint dispatch. The current title does not allow for consideration of that issue.

BE/djf.001

# Alaska State Legislature

Senate Majority Leader  
Chair, Judiciary Committee  
Vice Chair, Community &  
Regional Affairs

Member, State Affairs Committee  
Committee on Committees  
Western States Legislative Forestry Task Force  
Legislative Council



State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3873  
Fax: (907) 465-3922

352 Front Street  
Ketchikan, Alaska 99901  
(907) 225-8008  
Fax: (907) 225-0713

**Senator Robin L. Taylor**

## MEMORANDUM

*LINDA  
FYZE  
U*

**TO: Representative Ramona Barnes  
Speaker of the House**

**FROM: Senator Robin L. Taylor**

**DATE: 3/17/93**

**REF: Marine Pilot Legislation**

\*\*\*\*\*

**Madam Speaker:**

I understand that legislation sponsored by Rep. Bill Hudson will be introduced tomorrow addressing the issues surrounding marine pilotage.

This issue is important to many in my district and I hope this bill can be expedited. Please consider referrals to Labor and Commerce and Transportation.

Thank you in advance for your consideration.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

**Southeastern Alaska Pilots' Association**

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100  
KETCHIKAN, ALASKA 99901

March 16, 1993

Representative Bill Hudson's Office  
Attn: Ms. Lynda Giguere  
State Capitol  
Juneau, AK 99801-1182

Dear Ms. Giguere:

The proposed legislation from Representative Hudson's office has been reviewed. This draft bill very adequately addresses many of the problems associated with the current Pilotage Act. I strongly support this proposed legislation.

There remains the issue of ensuring that pilot's are equitably utilized in regions with competing pilot groups, where agents exercise control (90% or more) over the region's shipping. Only the State should be in a position of control over pilots. When industry has direct control over the livelihood of pilots, then the pilots' allegiance and commitments to the State are vulnerable to compromise. A 'mild' solution is to task the pilot board (in the proposed legislation) to monitor the dispatch of pilots in each region to ensure equitable utilization. A second alternative is to introduce a second bill that provides for a central dispatch service.

As a matter of "housekeeping" it is recommended that the following changes be included in the proposed bill:

- Section 08.62.093(3) change to read:

"(3) two years of service as a chief officer on ocean or coastwise vessels of not less than 1600 gross tons while holding a chief officer or master of vessels of not less than 1600 gross tons or greater license."

-continued-

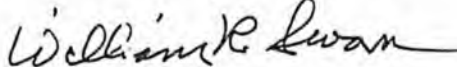
Representative Hudson's Office  
Attn: Ms. Lynda Giguere  
March 16, 1993  
Page 2

- Section 08.62.093(4) change to read:

"(4) two years of service as commanding officer of  
United States commissioned or public vessels of  
not less than 1600 gross tons; or"

Thank you for your outstanding and objective efforts in  
formulating this legislation. I stand ready to assist, in anyway,  
in the final preparation of this bill.

Sincerely,

  
William R. Swan  
President

# PA Pacific Associates

119 Seward St., Suite 8

Juneau, Alaska 99801

(907) 586-3107

FAX 586-1001

## MEMORANDUM

March 5, 1993

Sent via fax  
1 page total

To: Captain Bill Swann (SEAPA) 907-247-9696  
Captain Mike Spence (ACP) 907-789-3773  
Captain Mike Stone (SWAPA) 907-835-2134  
Captain Tom Dundas (AMP) 907-581-1372  
Captain Bob Boyd (WAPA) 907-581-3902  
Captain Ron Sumstad (KPA) 503-225-1257

From: Joe Kyle  
Alaska Steamship Association

Subj: Industry/Pilot Association Meetings

As a result of recent telephone conversations and meetings between and among industry, pilots, Representative Hudson, and Commissioner Fuhs, a consensus seems to have formed regarding the best process to follow for dealing with various problems in the current Marine Pilot Act. Whether Representative Hudson introduces a bill to amend the Act this session or not, we believe that he and Commissioner Fuhs want industry and the pilots to enter into serious discussions, now, to narrow their various differences and hopefully reach agreement over several problem areas in the Act.

The Alaska Steamship Association (ASA) wants to play a constructive role in these discussions. In an effort to get the ball rolling, we need points of contact within each pilot association to assist ASA in the preparatory work necessary to ensure these discussions are held in a timely manner. Joe Kyle (ph. 907-586-3107, fax 907-586-1001) will be the point of contact for ASA. Please respond to him as rapidly as possible with the name(s) of your point of contact, so we can begin.

Additionally, and based upon conversations during the recent SWAPA and industry tariff negotiations and other conversations with pilots, we understand the pilots would like to see as many shipping companies represented during the discussions as possible. In order to help us bring principals to the meetings, it would be helpful if the various pilot associations could identify some of the shipping interests they believe would be pivotal for constructive dialogue. As you know, agents normally perform representational duties on behalf of the well over 100 steamship principals operating in Alaska. Nevertheless, we want to do our reasonable best to accommodate any concerns you have in this regard. Over the next few days we look forward to hearing which principals you reasonably hope could be present from each region.

Thank you ... Joe Kyle

Copy to: Chairman Bob Watt: Board of Marine Pilots  
Captain Karl Luck : DCED  
Ms. Lynda Giguere : Rep Hudson's office

907-225-9807  
907-465-2974  
907-465-6790

*this is why you did not receive*

# PA Pacific Associates

119 Seward St., Suite 8 Juneau, Alaska 99801 (907) 586-3107 FAX 586-1001

## MEMORANDUM

DECEMBER 28, 1992

To: Mr. Karl Luck

From: Mr. Joe Kyle/Mr. Larry Cotter

Re: Alaska Steamship Association (ASA)

Post-It™ brand fax transmittal memo 7871		# of pages ▶ 1
To	Lynda Giguere	From Joe Kyle
Co.	Rep Hudson's	Co. Pacific Associates
Dept.	Office	Phone # 586-3107
Fax #	465-6790	Fax # 586-1001

Please note the current members of the Alaska Steamship Association, listed below. While the name, Alaska Steamship Association, has been registered and reserved with the State of Alaska, the association is an informal one at this time.

Alaska Maritime Agencies  
 American President Lines  
 ANP Shipping  
 Marathon Oil Company  
 Northstar  
 Southeast Stevedoring Corp.  
 Tesoro Alaska  
 West Coast Shipping

North West Cruise Ship Association  
 Costa Cruises  
 Crystal Cruises  
 Cunard Line  
 Holland America Line  
 Princess Cruises  
 Regency Cruises  
 Royal Caribbean Cruise Line  
 Kloster Cruise Ltd.  
 Seven Seas Cruises  
 World Explorer Cruises

Members listed beneath North West Cruise Ship Association represent the membership of that association as well as its members of ASA.

*Lynda - sorry I forgot this list. We provided to Karl Luck @ Dave Miller's request late December.*

*Thks,  
 Joe*

**TESORO ALASKA**

*A  
Lynna*

March 3, 1993

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

Dear Representative Hudson:

I personally would like to thank you for meeting with myself and the others to discuss the issues and concerns of the Draft Marine Bill. I believe that the industry and the Marine Pilot Associations can jointly work together to meet the goals you set out in our meeting and hopefully without legislation this year.

I have made an appointment for March 10, 1993 at 1:30 pm to discuss and update you on our progress. If you have any questions pertaining to these issues please call.

Thank you,

*Bernie Smith*

Bernie Smith  
Senior Engineer  
Tesoro Alaska  
776-8191

cc: Gene Burden



Holland America Line  
Westours Inc.

To: Rep. Bill Hudson  
Jensen Alaska

From: C. J. Zane  
Date: 3-2-93  
Re:



Holland America Line  
Westours Inc.

C. J. Zane  
Director of Government  
and Community Relations

880 H Street, Suite 200A  
Anchorage, AK 99501-3400  
907-274-9019

Dear Bill:

Thank you for seeing us this afternoon.

Since our meeting in your office, we, industry and Pilots, have had several conversations regarding moving forward with negotiations and discussions. We feel that overall, if not all, the essential players are willing to engage in meaningful discussions about tariffs and "target income" for pilots.

In as much as AMP and to a lesser extent SEPA are the only ones pushing legislation at this time, it is our sincere hope that you will delay introducing any legislation until the above mentioned negotiations have a chance to work. We are talking with the various parties to agree on a time line for time certain deadlines to achieve progress. If you let this process have a chance to work we will have a much better chance of getting a consensus next year.

Thanks again for your consideration.  
C. J. Zane

Feb. 12, 1993

Senator Loren Lemau  
3111 C Street  
Suite 425  
Anchorage, Alaska 99503

FEB 22 1993

Dear Senator Lemau:

Subject: PROPOSED CHANGES TO THE ALASKA MARINE PILOTAGE ACT.

In order to introduce myself to you, I will give you a quick look at my background. Prior to piloting I went to sea on cargo ships, in all capacities from Ordinary Seaman to Master. Most of the time was spent on trips to the Far East, but I have been many places around the world, including most of the ports on the East and West Coasts of the United States. My piloting career began in Southeastern Alaska in 1973, and I plan to retire the end of 1993, at the age of 69. I was a member of the Alaska State Board of Marine Pilots from June, 1987 to June, 1991.

During the time I was on the Board of Marine Pilots it became apparent that the original Pilotage Act did not give the Pilot Board authority to properly define strict requirements for obtaining a pilot license. There were so many loop holes in the regulations that some applicants brought their attorneys to the Pilot Board meetings with them in order to try to slip through the loop holes, instead of meeting the requirements. The Pilotage act that the Legislature passed in the spring of 1991 solved most of those problems by giving the Pilot Board the authority it needs, but it created two new, and very large problems.

Sec. 08.62.040 (d) creates competition between pilot groups in a pilotage region. This is wrong. It has created an atmosphere of tension and distrust on the waterfront of Southeastern, and will do the same in the rest of the pilotage regions as soon as competition spreads. Old waterfront friends are now someone to mistrust. It has even pitted some of the deck officers of the Alaska Marine Highway System against the professional pilots. One pilot group is always suing, or threatening to sue the other. Too much time, emotion, energy, and money are spent in this manner to have any positive results. This is not an atmosphere that is conducive to positive results. State pilotage will collapse under this pressure.

State pilots are supposed to be the state's representative aboard foreign ships. The only reason for having a state pilot aboard a foreign ship is to be certain that the people, property and ecology of the state are protected. The state pilot has to be free to make hard decisions without worrying about losing a customer. Under the present conditions pilots are nothing but company employees. If there were only one pilot association in each pilotage district, and the steamship companies had an avenue to bring complaints about individual pilots before the Pilot Board, the state would have better control over individual pilots.

Competition also creates duplication of the expenses by having two or more association offices in a pilotage district. A single association can plan ahead for the manpower needs of a year, but in a competitive situation two or more groups in the same area will not be as efficient. One group in a pilotage district will allow the state to set lower tariffs, and still allow the individual pilot to make an average pilots income.

In order to have a smooth running and efficient pilotage system in the state, Sec. 08.62.040 (d) must be deleted. Add Sec. 08.62.040 (d) When a pilot group requests a specific number of Apprentice Pilots from the board, the board will advertise for that number of applicants. The most qualified from the list of applicants will be accepted.

Sec. 08.62.045 should be changed to return to the Board of Marine Pilots the authority to set firm pilotage tariffs. The present "maximum tariff" is an experiment that has not worked. It has led to much confusion. All of the maritime states that I am aware of set mandatory tariffs for their pilotage districts. The yardstick to use in setting the tariff for a region is that an Alaskan pilot should at least make an income equal to that of other pilots on the West Coast. Our pilotage areas are much larger, and have more hazardous conditions than other areas.

Sec. 08.62.050 should have (c), (d) and (e) added. (c) and (d) more fully define some of the responsibilities of the Marine Coordinator. The suggested requirements are very important in the function of the Marine Coordinator.

Section (e) is added because this was an important item in the committee hearings of 1991. The committees agreed with the need for a Pilot Coordinator, but would only create the position if the costs came from pilot license fees.

Sec. 08.62.080 (b) is just to reaffirm that a pilot may only practice in one area. I can only speak of Southeastern Alaska, but it is large enough to give anyone trouble remaining proficient. Do you realize that there are 11,000 miles of salt water shoreline in Southeastern?

Sec. 08.62.091 Should be added in order to write some kind of license for an applicant who wants to train to become a Deputy Marine Pilot. A person must have some kind of license to work under the direction of a fully licensed pilot. The requirements are part of those presently required for the Deputy Marine Pilot. I think this step was overlooked originally.

SEC. 08.62.160. Add (a) to give the Master of a vessel an avenue to present a problem to the Pilot Board.

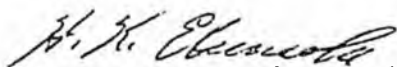
Sec. 08.62.175 (a) gives one more reason for only one pilot group in each region. One group per region will be much more efficient financially than two or three because there will be no duplication of costs.

(1) is to keep anyone who is piloting from being left out of work when this act becomes effective.

Please help in the return of control of Alaska State Marine  
Pilots to the State of Alaska.

Thank you for your consideration of these important matters.

Respectfully,



Capt. H.K. Elsensohn  
119 Austin, Apt. 506  
Ketchikan, Alaska  
99901

PROPOSED CHANGES TO  
THE ALASKA MARINE PILOTAGE ACT

INTRODUCTION - Same

SECTION 1. POLICY, FINDINGS, AND INTENT. -

(b) (2) - Delete word ``maximum''

Sec. 80.62.010. CREATION AND MEMBERSHIP OF BOARD.-Same.

Sec. .62.020. APPOINTMENT AND TERM OF OFFICE. - Same.

Sec. 80.62.030. MEETINGS. - Same

Sec. 08.62.040. POWERS AND DUTIES.

(a) The board shall

(1) SAME

(a) In order to make pilotage rates fiscally efficient, the board will restrict the number of licenses issued for a pilotage region to that number determined necessary to adequately service it's traffic.

All the rest the same, except-

Delete (d)

Add (d) - When a pilot group requests a specific number of Apprentice Pilots from the board, the board will advertise for that number of applicants. The most qualified from the list of applicants will be accepted.

Sec. 08.62.045. PILOTAGE TARIFFS.

(a) The board shall adopt regulations for setting mandatory tariffs for each pilotage region. The board shall identify those expenses that are included in the tariff. In adopting tariffs under this subsection, the board shall take into consideration -

- (1) the total time spent on assignment to a vessel;
- (2) differential compensation for seasonal and weather conditions, risks involved in providing pilotage service, and overtime;
- (3) dispatch expenses, transportation expenses, and other associated costs directly related to provision of pilotage service;
- (4) overhead expenses that are necessary to provide year round pilotage service to the region; and
- (5) other expenses included by the board.
- (6) that the annual income of full-time Alaska Marine Pilots must be at least equal to the average of other west coast pilots, i.e. Puget Sound, San Francisco, Astoria, and the Columbia River.

(b) - Delete

(c) - Delete

(d) - No charges may vary from the mandatory tariff for the region, including 08.62.045 (a) (1), (2), (3), (4) and (5).

Sec. 08.62.050. MARINE PILOT COORDINATOR.

- (a), (b) (1) (2) & (3) - Same. ADD (c), (d) & (e).
- (c) - The Pilot Coordinator shall ride as observer with pilots as necessary to become familiar with the areas, harbors, docks, conditions, dangers, and pilots' ability.
- (d) - The Pilot Coordinator will proceed in all haste to investigate any accident, infraction of the Pilotage Act or Regulations, or any act that may not be in accordance with the International Regulations for Preventing Collisions at Sea.
- (e) - The salary of the Pilot Coordinator will be paid from the license fees of marine pilots.

Sec. 08.62.080. LICENSE REQUIRED; RESTRICTIONS AND CONDITIONS.

- (a) - Same
- (b) - Local knowledge is the essence of piloting, therefore a pilot may only be licensed in one pilotage area.
- (c) - A license issued under this chapter must identify the specific waterways and ports in the pilotage region in which the licensee is authorized to pilot vessels, if the licensee is not qualified for the entire region. If the licensee is qualified for the complete region, the license shall so read.

Sec. 80.62.090. APPLICATION. - Same.

Sec. 80.62.091. QUALIFICATIONS FOR APPRENTICE PILOT. -

- (a) A person who applies for an APPRENTICE PILOT LICENSE under this chapter shall provide proof satisfactory to the board of the following experience;
  - (1) one year service as master on ocean or coastwise vessels while holding a license master oceans, steam or motor vessels, any gross tons, or
  - (2) two years service as master on vessels or tug and tow of not less than 1600 combined gross tons, while holding a license as master of vessels not less than 1600 gross tons, or
  - (3) two years service as chief officer on ocean or coastwise vessels not less than 1600 gross tons while holding a license as master of oceans, steam or motor vessels, any gross tons, or
  - (4) two years service as commanding officer of a United States commissioned ship of not less than 1600 gross tons.
- (b) A person who applies for an Apprentice Pilot License under this section must possess an endorsement of first class pilotage on the persons United States Coast Guard license, without tonnage restrictions, for the pilotage region being applied for.
- (c) An Apprentice Pilot is licensed only to be a pilot

*and  
wholly (4)*

observer, or pilot vessels only under the supervision of a fully licensed pilot.

- (d) In this section, "years of service" has the meaning given the term by the United States Coast Guard under 46 C.F.R. 10.

Sec. 08.62.93. QUALIFICATIONS FOR DEPUTY MARINE PILOT.

- (a) The board shall issue a Deputy Marine Pilot license for a marine pilotage region to a person who
- (1) is a citizen of the United States, and
  - (2) has completed the training requirements established by the board, and
  - (3) passes the written and oral examinations required by the board.
- (b) A person licensed as Deputy Marine Pilot under this section may, except as otherwise provided by the board,
- pilot vessels 20,000 gross tons or less in the pilotage region for which the license is issued.

Sec. 08.62.097. TRAINING PROGRAMS FOR DEPUTY MARINE PILOT LICENSE. - The same.

Sec. 08.62.100. QUALIFICATIONS FOR MARINE PILOT LICENSE.  
The same.

Sec. 08.62.120. RENEWAL OF LICENSES. - Same.

Sec. 08.62.130. LAPSED LICENSES. - Same

Sec. 08.62.140. FEES. - Same

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. - Same

Sec. 08.62.155. DISCIPLINARY SANCTIONS. - Same

Sec. 08.62.157. DUTIES OF LICENSED PILOTS. - Same

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS.  
Same.

Add - (a) If the Master of a vessel finds a pilot to be incompetent in the performance of his piloting duties, he (the Master) may notify the Alaska State Board of Marine Pilots in writing within ten (10) days of the incident. The board will then determine the remedial action to be taken.

Sec. 08.62.163. PILOTS AS INDEPENDENT CONTRACTORS. - Same

Sec. 08.62.165. LIMITATION OF LIABILITY. - Same

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. - Same

Sec. 08.62.175. REGIONAL MARINE PILOT ORGANIZATIONS.

- (a) In order to promote more efficient and economical pilot service, there will be only one pilot group in

each pilotage region.

(1) All persons holding an Alaska State Marine PILOT License at the time this act becomes effective, will automatically become members of the pilot group of the area in which they are piloting.

(b) Same

(c) (1),(2),(3),(4),(5)&(6) Same

(d) (1),(2),(3),(A),(B),(C) Same

Sec.08.62.180. EXCEPTIONS. Same

Sec.08.62.185. CERTAIN LICENSED PILOTS REQUIRED FOR OIL TANKERS. Same.

Sec. 08.62.187. REGISTRATION OF AGENTS REQUIRED. Same

Sec. 08.62.190. PENALTIES. Same

#### ARTICLE 4. GENERAL PROVISIONS.

Same.

INTERNATIONAL

ORGANIZATION

OF

**MASTERS  
MATES &  
PILOTS**

TIMOTHY A. BROWN  
International President

JAMES T. HOPKINS JR.  
International Secretary-Treasurer

GEORGE A. QUICK  
Vice President

J. ALFRED ELLIS JR.  
East Coast Regional Representative

DONALD L. HOFFMAN  
Gulf Coast Regional Representative

ARTHUR J. THOMAS  
West Coast Regional Representative

EMIL F. BOWERMAN  
Panama Canal Regional Representative

February 2, 1993

Captain Bill Swan  
President  
Southeast Alaska Pilots  
217 Heckman Building  
P.O. Box 6100  
Ketchikan, AK 99901

Captain Bob Hendricks  
President  
Southwest Alaska Pilots  
Box 977  
Homer, AK 99603

Captain Dave Renwick  
President  
Alaska Marine Pilots  
P.O. Box 1066  
Seward, AK 99664

Gentlemen:

I am enclosing copies of the Legislative response to the Auditor General's report on maritime pilotage in Florida. It contains information that may be useful to you in light of your problems with anti-trust and the current sorry state of Alaska pilotage law.

PLEASE do not use any of this material at the present time without contacting Mike Buffington, President of the Florida State Pilot Association at (813) 651-1603, as legislation is currently pending. OK

The income and workload data on page 19 should not be taken at face value. The data comes from material submitted at Rate Hearings and no standard methodology was used. The comparison of workload between ports is flawed because they haven't used the same basis (i.e., home to home, bridge time, office to office, etc.).

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The income figures were those submitted prior to rate increases, so current numbers are considerably higher. There are also special circumstances applicable for some of the lower income figures.

Fraternally,

George A. Quick  
Vice President, Pilots

GAQ:kae

Enclosure

**LEGISLATIVE RESPONSE**  
**TO THE**  
**OFFICE OF THE AUDITOR GENERAL'S**  
**PERFORMANCE AUDIT OF THE**  
**REGULATION OF MARINE PILOTING**

**By Staff of the**  
**The Florida House of Representatives**  
**Committee on Business & Professional Regulation**  
**Rep. Jack N. Tobin, Chairman**  
**January, 1993**

**Staff Director: Lucretia Shaw Collins**  
**Staff Contact: Gip Arthur**

## I. INTRODUCTION

This report is the legislative response to the Office of the Auditor General's performance audit on the regulation of marine piloting.

On July 23, 1992, the Office of the Auditor General issued a performance audit (Audit Report #11914) on the Regulation of Marine Piloting. The regulation of marine piloting<sup>1</sup> is established in chapter 310, Florida Statutes, and is administered by the Board of Pilot Commissioners within the Department of Professional Regulation. The audit was conducted as part of the Auditor General's 10-year schedule of performance audits, as directed by chapter 90-110, Laws of Florida.

The performance audit was begun in October of 1990 and completed in February of 1992. Conduct of the audit involved extensive field work, research, and analysis. The entire performance audit is included as Appendix A.

The performance audit formally addresses five questions. The first three questions address concerns which exist under the current system of economic regulation.<sup>2</sup> The next two questions examine the need for economic regulation, and ask if economic regulation should continue at all, or whether it should be replaced by a more standard form of regulation. These questions are:

- 1) Has the board developed a consistent methodology to determine the number of pilots needed in each state port?
- 2) Has the board developed procedures to ensure that pilot business expense information is complete and accurate when setting pilotage rates?

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<sup>1</sup> also known as "harbor piloting."

<sup>2</sup> "Economic regulation" refers to regulation which accomplishes its purpose by virtue of limiting the number of licenses which may be issued, and also setting the rates which may be charged for the service (in this case, pilotage rates).

- 1) Place legislative intent in the chapter endorsing the concept of economic regulation.
- 2) Explicitly state that pilots must service all who may legitimately request such service.
- 3) Amend the current rate hearing process to:
  - (a) Allow reasonable access for those who wish the board to consider a proposal for a rate reduction;
  - (b) Remove the requirement that private businesses asking for a rate reduction must "open their books";
  - (c) Stipulate that if inflation is used as an argument for a rate increase, it should be related to income, and not applied directly to the rates;
  - (d) Provide that the board should not be authorized to consider any rate in excess of the formal request submitted and publicly noticed; and
  - (e) Provide the board a detailed list of factors to consider when evaluating whether a rate change proposal is reasonable or excessive.
- 4) Add a "consumer of pilotage services" member to the board.

federal government. They must have a federally licensed pilot who is licensed for the pilotage waters which the vessel plans to enter.

Registered vessels are American vessels granted permission by the United States Customs Service to engage in foreign trade (foreign-trading American vessels). Registered vessels are under the control of state statutes and regulations regarding piloting when plying waters within the state.

Foreign vessels are those that sail under the flag of a country other than the United States. Piloting regulation of these vessels, as with registered vessels, has been left to each state.

The certification of a vessel as enrolled or registered is made by the United States Coast Guard, in cooperation with the United States Custom Service.

The federal government exempts from state law two categories of vessel. Enrolled vessels and vessels operating on the Great Lakes are exempted from state regulation and are instead controlled by the Coast Guard. The exemption for enrolled vessels was made to facilitate interstate maritime commerce in instances where the government felt that leaving control to a hodgepodge of various state regulations would unduly inhibit that commerce. The exemption from state law for vessels on the Great Lakes was made according to international treaty with Canada. The federal piloting statutes are found in Title 46, United States Code, sections 8501 through 9503. The statutes pertaining to piloting in the Great Lakes are found in 46 United States Code sections 9301-9308.

The federal laws governing pilotage are implemented by the U.S. Coast Guard which establishes licensure and examination standards for pilotage involving coastwise (enrolled) vessels and vessels on the Great Lakes. Federal regulation also provides for disciplinary procedures that can result in the denial, suspension, or revocation of federal licenses.

Fundamentally, that situation continues until this day, with the states having regulatory control over piloting, except in the instances in which the federal government specifically exempts vessels and places them under federal (Coast Guard) regulation.

Although states have the primary responsibility to regulate pilotage in their navigable waters, the federal government reserves the right to step in and institute federal control in any instances in which the state does not exercise its regulatory authority.

The State of Florida was the first state to centralize its regulation of pilots. In 1975, a nine-member State Board of Pilot Commissioners was created within the Department of Professional and Occupational Regulation (later to become the Department of Professional Regulation [DPR]). Prior to 1975, there was a separate Board of Pilot Commissioners in each county that had a port.

Two levels of licensed pilots are established by statute.<sup>5</sup> The qualifications for applicants seeking certification as a deputy pilot are set forth in section 310.071, Florida Statutes. The qualifications for application for license as a state pilot are found in section 310.073, Florida Statutes. Additionally, section 310.081, Florida Statutes, establishes the key qualification factor regarding both deputy pilots and state pilots -- that of examination.

When the Board of Pilot Commissioners determines that a deputy pilot position is open in a particular port, that opening is publicly noticed. To get a seat at the state exam, the applicant must be 21 years of age, have completed 12 years of formal education (or its equivalent), be of sound health, and have at least two years experience as an officer or pilot on the high seas, Great Lakes, or a major port. Once the exam is administered, the individual who scores the highest is awarded the position. This

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<sup>5</sup> State pilot and deputy pilot licensure are found in sections 310.061, 310.071, 310.073, 310.075, and 310.081, Florida Statutes. Rules established pursuant to the above-mentioned statutes are contained in rules 21SS-5.001 through 21SS-5.019, Florida Administrative Code.

applicant must score a passing grade. In the instances where there are several applicants, the highest scorer is awarded the position.

As of November 1, 1991, 92 state-licensed pilots operated in 13 Florida seaports. The department reported that state-licensed pilots yearly handle 33,436 vessels in state ports as of November 7, 1991.

The department received 280 complaints on possible violations of piloting statutes and rules during the period January 1987 through August 1990. Of these 280 complaints, 65 were determined to warrant disciplinary actions by the board in the form of fines, letters of guidance, and letters of reprimand.

The regulation of harbor pilots is funded from the Professional Regulation Trust Fund. Sources of revenue for this fund include license fees, administrative fines, and a percentage of gross pilotage earned by state-licensed pilots (currently set at 1.2%). For fiscal year 1990-91, revenue and expenditures for the board were \$396,369 and \$321,967, respectively.

### 3. The Board of Pilot Commissioners

#### a. Description of Florida's Piloting Board

The Board of Pilot Commissioners for the State of Florida is established under the Department of Professional Regulation. Pursuant to section 310.021, Florida Statutes, is composed of 10 members, all appointed by the Governor. Five board members are active licensed state pilots. In selecting the pilots, all of Florida's ports are divided into four groups, one pilot is selected from each, with the fifth selected from the state-at-large. The other five members are selected by the Governor as three Florida citizens (consumer representatives) having no interest or involvement in maritime industry, and two citizens (maritime representatives) involved in marine shipping. The board exercises the traditional board responsibilities of discipline regarding licensees, and of rule promulgation. In addition to that, the board determines the number of piloting licenses to be issued in each port. The board also sets the rates. Rates are set according to the draft (the depth to which the ship penetrates the

of establishing a set, limited number of licenses that it will issue.

Indeed, with respect to these powers, the board is more similar to bodies which oversee regulated industries (i.e., as the Public Service Commission oversees the public utility industry).

One of the most controversial aspect of the licensing question is the issuance of only a limited number of licenses. Section 310.061, Florida Statutes, gives the Board of Pilot Commissioners the power to determine the "number of pilots based on the supply and demand for pilot services and the public interest in maintaining efficient and safe piloting services". The same section empowers the board to adopt rules authorizing cross licensing of pilots between ports to "serve the public interest".

Rule 21SS-5.009, Florida Administrative Code, states that: "The Board shall, from time to time, determine if there is a need for a licensed state pilot or pilots in the various ports of the state." The rule further states the same with regard to deputy pilots.

Staff asked the Florida Ports Council to supply a representative list of users of pilotage services throughout Florida. Staff sent letters requesting input from these businesses on several specific questions. On the issue of the board establishing the number of licenses to be issued in each port, these businesses were asked if they felt the current system was serving to produce the proper number of pilots for their needs. They were also asked if they knew of any instances in which it appeared pilots were working with insufficient rest time. All responses received indicated that they believed the board had established the proper number of piloting positions in their port. None of the responses indicated knowledge of any instances of pilots working without sufficient rest time.

## (2) Rate Setting Powers

Section 310.151, Florida Statutes, contains the statutes regarding rates of pilotage to be charged by state pilots and deputy pilots within the State of Florida. This

This rejection concerned a March 1982 rate-hike request made by the Tampa Bay Pilots Association. Their reasons for requesting the rate-hike included "judgments being rendered against pilots in civil suits," and "increased legal fees incurred as a result of civil suits...", naming three "incidents", and "the Sunshine Skyway disaster incident." The Skyway Bridge incident involved a vessel, under direction of a state-licensed pilot, colliding with a multi-million dollar bridge, and knocking it down.

There is no record of a rate hearing being held at the request of anyone other than the pilot associations.

Information provided in interviews with pilot board staff indicates that the operator of the Southern Elegance requested a rate hearing for the Port of Panama City for the purpose of lowering the rates he was being charged. The board notified him that pursuant to such a rate hearing, he must "open his books". He asked if books so "opened" would then be public record, and when receiving a reply in the affirmative, he declined to do so.

Since 1990, the Department of Professional Regulation and the board have greatly reformed and refined the information gathering process which takes place prior to the rate hearing. The board sends an investigative committee to a port where a rate change request has been made. The primary purpose of the investigative committee is two-fold: first, to verify the accuracy and completeness of the application so that the rate board can act with reliance on the information contained in the application; and, second, to gather supplemental and collateral information to enhance the rate board's understanding of the relevant factors to be considered in the rate hearing process. This information includes the basic data on current piloting fees, pilot operating expenses, pilot association makeup, distribution of monies, number of vessels handled, facilities owned by the association, and pension or retirement fund arrangements. There is also included a comparison of the current pilotage revenues versus the projected revenues which would result from the requested pilotage rate changes.

**Financial Overview by Port  
As of November 7, 1991 <sup>1</sup>**

Port	Estimated Average Pilotage Time (in Hours) <sup>3</sup>	"Standard" Fee <sup>2</sup>		Estimated Annual Hours Worked Per State Pilot	Number of Licensed State Pilots	Gross Pilotage Fees Per Port	Average Gross Pilotage Fees Per State Pilot <sup>4</sup>	Estimated Earning Per State Pil
		Small Ship	Large Ship					
Boca Grande	2.5	\$567	\$1,524	100	1 <sup>5</sup>	\$ 59,511	\$ 59,511 <sup>5</sup>	\$ 28,244
Canaveral	2.0	295	900	778	5	1,073,676	214,735	193,570
Everglades	1.5	268	902	995	10	3,946,552	394,655	358,420
Fernandina	4.0	293	744	1,956	1	170,667	170,667	86,742
Jacksonville	2.5	376	1,132	823	10	3,188,348	318,835	169,631
Key West	2.5	401	1,168	303	1 <sup>6</sup>	357,044	357,044	95,646
Miami	2.0	279	820	1,154	16	5,033,829	314,614	191,530
Palm Beach	1.5	218	594	1,437	4	643,663	160,916	137,168
Panama City <sup>9</sup>	2.5	710	1,279	650	3	220,140 <sup>10</sup>	73,380 <sup>10</sup>	41,164
Pensacola	2.5	710	1,279	568	1	155,021	155,021	76,350
Port St. Joe	2.5	710	1,279	15	1	3,466	3,466	3,291
Tampa Bay <sup>12</sup>	7.5	439	1,202	2,715	18	4,924,149	273,564	148,554

<sup>1</sup> This information was provided by the pilot associations and was not verified by the Department. Information for Fort Pierce pilotage activities was unavailable.

<sup>2</sup> Standard fee for a small ship is computed for a ship length 342 feet, beam 55 feet, tonnage 2,033, and draft 18 feet; standard fee for a large ship is computed for a ship length 636 feet, beam 79 feet, tonnage 23,200, and draft 20 feet.

<sup>3</sup> "Pilotage Time" is defined by Departmental staff as both time on board the piloted vessel and transportation time to or from the piloted ship.

<sup>4</sup> Average gross fees per state pilot was calculated using the number of state pilots assigned to a port.

<sup>5</sup> Two licensed state pilots serve this port (one full-time pilot is cross-licensed to Key West).

<sup>6</sup> Reported earnings do not reflect company paid medical plan benefits.

<sup>7</sup> Reported earnings do not reflect company paid deferred pension and disability, regular pension, and medical plan benefits.

<sup>8</sup> Two cross-licensed deputy pilots also serve this port.

<sup>9</sup> Statistics are combined for Panama City pilots and Panama City Port pilots.

<sup>10</sup> Estimated fees do not include 424 handles of the cruise ship "Southern Elegance" which has routes to Gulfport, Mississippi. Fees and earnings are averaged for the two pilot associations.

<sup>11</sup> Reported earnings do not reflect company paid pension and medical plan benefits.

<sup>12</sup> In response to our preliminary and tentative audit findings, Department staff indicated that Tampa Bay pilots now estimate average pilot time to be 4 hours. Using the 4-hour estimated average pilotage time, state pilots in Tampa Bay would work an average of 1,446 hours per year instead of 2,715 hours per year. However, the 4-hour estimate was not verified by the Department. Furthermore, the Board used the 7.5-hour estimate to set rates in the most recent Tampa Bay rate hearing.

Sources: Developed by the Office of the Auditor General based on information provided by the Department of Professional Regulation.

- 3) Licensees may charge neither more nor less, than the set rates (a provision designed to minimize or eliminate any competition between licensees);
- 4) Consumers have no option in whether to employ piloting services (failure to employ pilots is a criminal violation); and
- 5) The costs of regulation are primarily paid for by an assessment on the gross operating revenues (rather than by licensure fees).

These factors distinguishing piloting from other professions may be condensed into the following categories:

- 1) Limited licensure (this refers to a limitation on the number of licenses granted);
- 2) Rate setting;
- 3) Provisions which seek to minimize or eliminate competition; and
- 4) Costs of regulation paid for by assessment on gross operating revenues.

Upon examination, we find that there are in Florida other schemes of regulation which share these characteristics. Regulation of some health fields (hospitals, hospices, nursing homes, and emergency medical services) have limited licensure, and provisions which serve to minimize or eliminate competition. For instance, a person or group may not build or operate a hospital, hospice, or nursing home within a given health care market simply by virtue of being capable of doing so. A hospital, hospice, or nursing home may not be built, or go into operation, without applying for, and receiving from the State Health Agency, a "certificate of need."<sup>7</sup> A certificate of need will be granted only if it can be shown that existing facilities are inadequate to service the community. Requiring a certificate of need before issuing a license amounts to a regulatory effort to prevent uneconomic duplication or harmful competition.

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<sup>7</sup> The requirement for a "certificate of need," and the procedure for obtaining one, are found in chapter 408, Florida Statutes, recently transferred from chapter 381, Florida Statutes.

marketplace, will better serve to protect the public health, safety, and welfare. (emphasis added)

"Piloting" could be substituted for "public utilities" and for "electric and gas utilities" in the quote above, and the rationale would apply equally well.

That 1989 report also discusses the elements of regulation which are present when regulation is designed for a "natural monopoly."

In the case of the regulation of electric and gas utilities provided for in Ch. 366, F.S., competition is virtually eliminated due to the monopoly status of the utilities in particular geographic areas. (The Commission's) authority to approve territorial agreements and settle territorial disputes provides this monopoly control and protection from competition....

In return for the protection from competition offered utilities by Commission regulation, the utilities relinquish control over their rates, and therefore, the profits they may make from providing utility services. They gain from this regulatory control, however, because while the maximum profits utilities may earn may be restricted, they also are assured of an opportunity to earn a minimum of a reasonable return on their investments.... Regulation by the Commission serves to protect the public from a utility's advantage due to its monopoly status.... Electric and gas utilities are presumed to be "natural monopolies". (emphasis added)

The above quote notes that such regulation of a monopolistic industry may restrict the maximum profits which may be earned, but such regulation will also assure a "reasonable" profit sufficient to guarantee the continued existence of the service.

Similar regulatory provisions are found in other "natural monopolies." As stated in the 1989 Senate sunset review of chapter 367, Florida Statutes (Water and Sewer Systems):

- C. Practical Considerations: If economic regulation were ended, what additional regulation would be necessary, and what would be the cost?

The audit conducted by the Auditor General recommends ending economic regulation of pilots and inducing competition. Any proposal for ending economic regulation of piloting must consider any regulatory deficiencies which would result, and what additional regulations and regulatory apparatus would then become necessary.

Ending economic regulation entails licensing all qualified applicants as pilots, and then letting market forces determine the pilotage rates. A maximum pilotage rate could be continued in the regulation, but no minimum rate would be allowed. The point of doing this would be to bring about competition among pilots.

Several important questions would remain:

- 1) Under a competitive environment, would there be a requirement for the existing associations to accept the new pilots? If not, how would these independent pilots operate?

If more pilots are licensed than are absolutely necessary, it is very possible that the veteran pilots would seek to prevent the new pilots from joining their existing associations. If pilots are in competition for a finite number of jobs, each additional pilot beyond the minimum number necessary to handle the available work reduces the earnings of the existing pilots -- to the extent the new pilots can obtain jobs. Obviously, existing pilots have no motivation to assist these new, "surplus" pilots in obtaining piloting jobs.

On the other hand, a law compelling the associations to accept the new pilots has problems as well. It may even be unconstitutional to compel a private association of professionals to accept members.<sup>9</sup> Also, forcing a professional group to accept

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<sup>9</sup> It is, of course, against the law to discriminate on the basis of race, sex, national origin, etc. However, it appears that the association could legitimately bar any applicant on the basis