

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7953 HOUSE LABOR & COMMERCE

Section 1. GENERAL cont'd.

B. Detention (Stand-by). Detention is the delay of a pilot for any period of time in excess of that normally required to commence or terminate pilotage services. Detention shall specifically include the detaining of a pilot aboard a vessel or craft after the termination or during interruption of his services; and the interval between reporting for duty as ordered and the actual time of commencement of pilotage.

(1) Commencement

a. When anchoring for any reason whatsoever, when anchor is let go.

b. After arrival at a shore structure or other moorings; when the order is given "finished with engines", or when tugs are dismissed from tow.

c. The time a pilot is ordered to report to the vessel by the person ordering the services and the pilot reports as ordered.

(2) Termination

a. When departing from anchorage; the time when anchor is aweigh.

b. When adequate facilities are provided and are ready for the pilot to leave vessel.

c. The time a pilot gives his first orders relative to commencement of regular pilotage service.

Detention shall not include any additional time required to pilot the vessel or crafts by reason of any act of God, or any other force majeure acting directly on the vessel itself, but shall include, however, without limitation, delays or additional time occasioned by breakdown of the vessel, its machinery and equipment; impassability of the waterway being traversed; requiring the pilot to reduce speed or engage in unusual maneuvers to delay the arrival of a vessel at its berth or anchorage; operating a vessel under reduced boiler capacity (or reduced horsepower); and time lost in standing by or anchoring because the vessel cannot be moored; or for any other reason apart from normal pilotage.

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EFFECTIVE: 00:01 A.M., Sep. 27, 1986  
REISSUED: 00:01 A.M., Nov. 28, 1989

OREGON PILOTAGE TARIFF NO. A-5

Section 2. COLUMBIA RIVER BAR PILOTAGE GROUND

COLUMBIA RIVER BAR PILOTS

P. O. Box 81; Astoria, Or 97103

Cable Address: 8ARPILOTS ASTORIA

Radiotelephone frequencies and call signs: Channel 13 or 16 VHF

PEACOCK - WS 7217

COLUMBIA - WS 7344

ORDERS

Orders for pilots should be made to the pilots' dispatcher at the pilot offices, Astoria, Oregon (325-2541 or 325-2642).

Vessels arriving at the bar from sea shall give twelve (12) hours notice of their estimated time of arrival directly to the pilots' office, or, if notice is given by radiotelephone, to the pilot boat on duty. Vessels outbound from upriver points and delayed for any reason shall give notice of the delay to the pilots' office or, if given by radiotelephone, to the pilot boat on duty. When the vessel proceeds after such a delay, notice shall again be given to the office or pilot boat, as the case may be.

ITEM	SERVICE	RATES & CHARGES	MINIMUM
1	Inbound or Outbound between Astoria and the sea.	\$7.32 per draft foot and \$.0419 per gross registered ton.	<u>\$275.00</u>
2	Vessel under tow inbound or outbound between Astoria and the sea.	Towing vessel - per Item 1 Each towed vessel - per Item 1	<u>\$138.00</u> <u>\$138.00</u>
3	Shifting vessels (applies to shifts between docks, between anchorages, and/or between docks and anchorages).	<u>\$275.00</u>	
4	Pilot reporting wherein his good judgment it is safe to proceed, but Master declines to proceed.	<u>\$110.00</u>	
5	Pilot reporting and ship movement cancelled. (Not applicable if upon advice of the pilot, cancellation due to stress of weather or tidal conditions).	<u>\$110.00</u>	

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Section 2. COLUMBIA RIVER BAR PILOTAGE GROUND

ITEM	SERVICE	RATES & CHARGES	MINIMUM
6	Swing ship for compass adjustment or calibration. (If weather and/or tide conditions warrant, tug or tugs will be recommended by the Pilot; but the final decision relating thereto shall be that of the Master.)	<u>\$10.00</u>	
7	A. When vessel enters from sea to put a person ashore or aboard a small craft or other like purpose and then returns to sea: (1) If vessel does not proceed past Clatsop Spit Buoy No. 12 (2) If vessel proceeds past Clatsop Spit Buoy No. 12 B. Vessel proceeds to sea and later returns to Astoria to anchorage: (1) If vessel does not proceed past Clatsop Spit Buoy No. 12 (2) if vessel proceeds past Clatsop Spit Buoy No. 12	1 1/2 times regular inbound pilotage fee.  Full inbound and outbound pilotage fee.  1 1/2 times regular outbound pilotage fee.  Full inbound and outbound pilotage fee.	
8	Detention or standby, per hour or fraction thereof.  No charge for first hour unless pilot detained over one hour, in which case all detention will be charged.	\$ 55.00 First Hour <u>\$10.00</u> Each Addnl Hour	
9	Pilot carried off station unwillingly or through no fault of pilot.	Expenses incurred in return to station in Astoria, plus <u>\$10.00</u> per day from the time pilot is carried off station until again in a position to resume duties in Astoria.	

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OREGON PILOTAGE TARIFF NO. A-5

Section 2. COLUMBIA RIVER BAR PILOTAGE GROUND

ITEM	SERVICE	RATES & CHARGES	MINIMUM
10	Moving vessels not propelled by their own power. <u>(1½ x shift fee of \$275.00)</u>	<u>\$413.00</u>	
11	Pilot is ordered to board vessel at other than regular and customary boarding stations and, as a consequence, transportation expenses in excess of those normally incurred are actually expended. .	Actual expenses incurred in excess of those normally expended.	
12	<u>Pilot boarding and disembarking at sea.</u>	<u>\$25.00</u>	

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Section 3. COLUMBIA AND WILLAMETTE RIVER PILOTAGE GROUND

COLUMBIA RIVER PILOTS

13225 N Lombard; Portland, OR 97203

ORDERS

Orders for a Columbia River Pilot will be accepted only between the hours of 8:00 A.M. and 4:00 P.M. Special arrangements can be made for tentative orders during the night, but such arrangements must be made prior to 4:00 P.M.

When incoming from sea (without the service of Bar Pilot), vessels or agents must give notice between the hours of 8:00 A.M. and 4:00 P.M. and at least 12 hours prior to estimated time of arrival at Astoria. Calls may be placed with Portland office (299-9922) or by radio to COLRIP ASTORIAORE.

Vessels must confirm ETA Astoria at least two hours before arrival by calling Astoria office (325-2641) or by radio to COLRIP ASTORIAORE.

NOTE: For emergency order, after hours, Sundays and holidays, telephone numbers will be furnished upon request.

ITEM	SERVICE	RATES & CHARGES	MINIMUM
1	Inbound from Astoria or Outbound to Astoria	\$10.285 per foot draft and \$.0575 per gross registered ton.	500 gross registered tons or less, \$200.00; over 500 gross registered tons, \$250.00
1a	Length Charge	\$100.00 each 50 feet, or fraction thereof, more than 599' LOA, inbound or outbound.	
2	Stopping at points between Astoria and Portland (either inbound or outbound), each stop.	\$380.00	
3	Pilot reporting and ship movement cancelled within Portland or Vancouver harbor. In addition to regular detention charge, if any.	\$70.00	
4	Pilot reporting and ship movement cancelled outside Portland or Vancouver Harbor. In addition to regular detention charge, if any.	\$100.00	

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OREGON PILOTAGE TARIFF A-5

Section 3. COLUMBIA AND WILLAMETTE RIVER PILOTAGE GROUND

ITEM	SERVICE	RATES & CHARGES	MINIMUM
4a	Pilot made available and ship movement cancelled at Astoria. In addition to regular detention charge, if any.	\$150.00	
5	<p>Detention per hour or fraction thereof,</p> <p>No detention if pilot detained one hour or less. If pilot detained more than one hour, detention for first hour will be charged.</p> <p>Maximum charge per day.</p>	<p>\$ 60.00 First Hour \$ 90.00 Additional Hours</p> <p>\$600.00</p>	
6	<p>Whenever a vessel has to stand by, or anchor, and cannot proceed to berth because occupied or for any other reason, the indicated charge will be made, per hour or fraction thereof, in addition to shift charge to berth.</p> <p>Maximum charge per day.</p>	<p>\$ 60.00 First Hour \$ 90.00 Additional Hours</p> <p>\$600.00</p>	
7	<p>Launch service necessary for transportation of pilots to or from vessels will be for the account of the vessels, except launch service for the normal interchange of bar and river pilots at Astoria.</p>	At cost	
8	<p>Docking a vessel stern first in slip, or head down, at master's, owner's or agent's request. (Not applicable to harbor moves.)</p>	\$100.00	
9	<p>Shifting or turning vessels at dock in Portland Harbor.</p>	\$280.00	

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OREGON PILOTAGE TARIFF A-5

Section 3. COLUMBIA AND WILLAMETTE RIVER PILOTAGE GROUND

ITEM	SERVICE	RATES & CHARGES	MINIMUM
10	Shifting or turning vessels outside Portland Harbor.	\$320.00	
11	Moving vessels not propelled by their own power outside Portland or Vancouver Harbor.	Double regular pilotage.	
12	Shifting vessels not propelled by their own power in Portland or Vancouver Harbors, or on distances of less than 10 miles outside Portland or Vancouver Harbor.	One and one-half times regular shift charge.	
13	Swing ship for compass adjustment, three turns or less  Each additional turn.	\$150.00  \$ 60.00	
14	Harbor moves, Portland Harbor	\$280.00	
15	Interport moves	\$380.00	
16	Barges under tow:  Nine (9) hours or less pilotage service.  Over nine (9) hours - under fifteen (15) hours  Over fifteen (15) hours	Regular Pilotage  One and one-half times regular pilotage  Double regular pilotage.	\$200.00  \$300.00  \$400.00

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OREGON PILOTAGE TARIFF A-5

Section 4. COOS BAY PILOTAGE GROUND

ITEM	SERVICE	RATES & CHARGES	MINIMUM
4	C. Moving vessels from dock to dock including turning (upper or lower bay)  D. Moving vessels from anchorage to dock, or dock to anchorage	\$400.00  \$400.00	
5	Pilot carried away from station	Actual expenses and per diem of \$200.00	
6	Uncorrected Orders: When vessels, owners, or agents do not correct their estimated time of arrival within four (4) hours of ETA last given, compensation will be charged and applied starting at the last estimated time of arrival given until arrival	\$50.00 per hour	
7	<u>Boarding Fee: Per each Boarding/Deboarding from a vessel</u>	<u>\$200.00</u>	

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**COOS BAY  
TOWBOAT CO., INC.**

P.O. BOX 777  
COOS BAY, OREGON 97420  
TELEPHONE 267-6555  
FAX (503) 267-5256

**Tug Service-Coos Bay, Ore.**

Coos Bay - North Bend - Cape Arago

**Tariff Effective**

**JANUARY 1, 1992**

**RATES PER TUG**

PER HOUR..... \$260.00

Minimum 3 Hours

STAND-BY - PER HOUR ..... \$155.00

Due to Delayed Sailing

CANCELLED CALL ..... \$135.00

The COOS BAY TOWBOAT CO., INC. Agrees to supply tug power promptly consistent with other commitments, upon receipt of orders, but will not be responsible for delays, extra expenses or damages caused by strikes, accidents, fire, weather, failure of personnel or equipment, acts of God or any causes whether of similar or dissimilar nature beyond its control.

All rates are subject to change on notice on account of increased costs beyond company's control.

SOUTH COAST PRINTING, INC. · COOS BAY, OREGON





ATTACHMENT F  
Pilotage Fees  
State of Washington  
Puget Sound

PUGET SOUND PILOTS

LOA RATE SCHEDULE  
Effective 0001 Hours June 20, 1991

LOA (Length Overall)	Zone 1 Intra Harbor	Zone 2 0-30 Miles	Zone 3 31-50 Miles	Zone 4 51-75 Miles	Zone 5 76-100 Miles	Zone 6 101 Miles & Over
UP to 449	144	226	392	587	792	1030
450 - 459	148	231	395	595	804	1034
460 - 469	152	234	399	605	816	1038
470 - 479	157	240	405	618	819	1041
480 - 489	161	245	407	629	824	1044
490 - 499	164	247	411	640	833	1050
500 - 509	171	252	419	650	839	1057
510 - 519	174	257	423	657	848	1061
520 - 529	176	267	430	661	856	1071
530 - 539	182	270	435	668	869	1081
540 - 549	185	274	444	676	984	1091
550 - 559	189	283	447	685	890	1102
560 - 569	196	294	456	692	900	1113
570 - 579	200	298	460	694	908	1120
580 - 589	208	303	469	700	914	1132
590 - 599	218	309	472	704	927	1144
600 - 609	226	318	478	706	937	1151
610 - 619	239	321	487	710	948	1161
620 - 629	248	325	493	716	958	1174
630 - 639	261	333	498	718	966	1185
640 - 649	272	339	503	721	977	1194
650 - 659	290	346	512	727	988	1205
660 - 669	298	343	517	730	998	1215
670 - 679	307	358	523	743	1010	1222
680 - 689	312	366	529	751	1018	1234
690 - 699	321	371	536	765	1030	1259
700 - 719	336	383	547	772	1048	1274
720 - 739	356	395	560	783	1071	1295
740 - 759	371	411	572	792	1091	1318
760 - 779	386	428	585	804	1113	1337
780 - 799	405	445	595	816	1132	1360
800 - 819	421	460	607	821	1151	1380
820 - 839	435	475	620	833	1174	1397
840 - 859	454	495	633	842	1194	1421
860 - 879	470	512	646	866	1215	1440
880 - 899	487	528	657	885	1234	1462
900 - 919	501	543	669	906	1259	1483
920 - 939	518	560	685	927	1274	1502
940 - 959	536	575	695	948	1295	1522
960 - 979	550	592	708	966	1318	1543
980 - 999	569	607	719	988	1337	1563
1000 & Over	585	628	732	1010	1360	1585

PUGET SOUND PILOTS RATES  
Effective 0001 Hours June 20, 1991

CLASSIFICATION:

RATES FOR 1991

CHARGES: Ship Length Overall (LOA - Zone)

L.O.A.

Distance furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile, and includes retirement fund contributions. Ships taking and discharging pilots without using their services through all Puget Sound and Adjacent Inland Waters shall pay full pilotage fees on the LOA Zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent Inland Waters.

BOARDING FEE:

\$28.00

Per each boarding/deboarding at the Port Angeles Pilot Station.

HARBOR SHIFT - Live Ship (Seattle Port)

LOA- Zone 1

HARBOR SHIFT - Live Ship (Other than Seattle (Port)

LCA - Zone 1

HARBOR SHIFT - Dead Ship

DOUBLE LOA - Zone 1

DEAD SHIP TOWING CHARGE: (LOA tug + LOA tow + beam of tow) DOUBLE LOA - Zone

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock or dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

WATERWAY AND BRIDGE CHARGES:

Ships up to 90' Beam:

A charge of \$153.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle, south of Eleventh Street Bridge in any of the Tacoma Waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$73.00 per bridge.

Ships 90' Beam And/Or Over:

A charge of \$206.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street Bridge in Seattle and south of Eleventh Street Bridge in any of the Tacoma Waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$144.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two Or Three Pilots Required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

COMPASS ADJUSTMENT:	\$205.00
RADIO DIRECTION FINDER CALIBRATION:	\$205.00
LAUNCHING VESSELS:	\$309.00
TRIAL TRIPS, 6 hours or Less (Minimum \$52.00)	\$ 97.00 per hour
TRIAL TRIPS, Over 6 Hours (Two Pilots)	\$194.00 per hour

SHILSHOLE BAY - SALMON BAY:	\$120.00
SALMON BAY - LAKE UNION	\$ 94.00
LAKE UNION - LAKE WASHINGTON (PLUS LOA FROM WEBSTER PT)	\$120.00

CANCELLATION CHARGE:	LOA - Zone 1
CANCELLATION CHARGE: - PORT ANGELES	LOA - Zone 1
(When pilot is ordered and vessel proceeds without stopping for pilot.)	

DOCKING DELAY AFTER ANCHORING:	\$97.00 per hour
Applicable Harbor Shift rate to apply, plus \$97.00 per hour Standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$97.00 for every hour or fraction thereof.	

SAILING DELAY:	\$97.00 per hour
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$97.00 for every hour or fraction thereof.	

SLOW-DOWN:	\$97.00 per hour
When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$97.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.	

**SUPER SHIPS:**

20,000 to 50,000 Gross Tons:  
 Additional charge to LOA Zone mileage of \$0.0512 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 Gross Tons and Up:  
 In excess of 50,000 gross tons, the charge shall be \$0.0613 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

(DELAYED ARRIVAL - PORT ANGELES:

\$97.00 per hour

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$97.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

TRANSPORTATION TO VESSELS ON PUGET SOUND:

March Point/Anacortes	<del>\$</del> 113.00
Bangor	<del>\$</del> 66.00
Bellingham	<del>\$</del> 125.00
Bremerton	<del>\$</del> 35.00
Cherry Point	<del>\$</del> 147.00
DuPont	<del>\$</del> 66.00
Edmonds	<del>\$</del> 24.00
Everett	<del>\$</del> 43.00
Ferndale	<del>\$</del> 135.00
Manchester	<del>\$</del> 52.00
Mukilteo	<del>\$</del> 42.00
Olympia	<del>\$</del> 85.00
Point Wells	<del>\$</del> 24.00
Port Gamble	<del>\$</del> 61.00
Port Townsend (Indian Is.)	<del>\$</del> 86.00
Seattle	<del>\$</del> 11.00
Semiahmoo (Blaine)	<del>\$</del> 154.00
Tacoma	<del>\$</del> 44.00
Tacoma Smelter	<del>\$</del> 50.00
Winslow	<del>\$</del> 35.00

- (a) Intraharbor transportation for the Port Angeles port area - transportation between Port Angeles pilot station and Port Angeles harbor docks - \$11.00.
- (b) Inter-port Shifts: Transportation paid to and from both points.
- (c) Intra-harbor Shifts: Transportation to be paid both ways. If intra-harbor shift is cancelled on or before scheduled reporting time, transportation paid one way only.
- (d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one-way.
- (e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$1.60 per mile.

DELINQUENT PAYMENT CHARGE:

1.5% per month after 45 days from first billing

NONUSE OF PILOTS:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for the entire distance between two ports on Puget Sound and adjacent inland waters.

RESPONSE TO DRAFT  
MARINE PILOTING ACT  
*HB 194*

The proposed bill represents a rather unusual combination of strengthening the Board while at the same time weakening it by dictating many details of matters the Board should deal with. On balance the negative aspects seem to outweigh the positive which leads to the conclusion that the proposal needs much more work before beginning its journey through the legislative process.

There are too many conflicts in the proposal between improvements to the pilotage industry and purely self-serving pilot interests.

**Positive aspects are:**

1. Clarification of the powers of the Board. For example, the language in the present Act leaves some doubt as to the Board's power to set tariffs compared to the power to merely determine criteria as to how the tariffs should be set. The proposal clarifies the ambiguity and states clearly that the Board can set rates.

2. The proposal clarifies the issue of pilot organizations and anti-trust law.

3. The proposal deals directly with the issue of limiting a pilot's monetary liability for damages resulting from accidents.

4. The proposal deals with the cross-over liability between individual pilot actions and his or her organization and other pilots in the organization.

The four items above should be part of any new, or changes to the existing, statute.

#### Specific sections that create problems:

Unfortunately the proposal consists mostly of matters that are self-serving for existing pilot organizations and create many barriers to entry to the profession and anti-competitive, or monopolistic, features. Some of these features stem from the nature of the profession, but most are more evidently designed as self-protection measures from a pilot perspective.

References to the specific parts of the proposal will show why the above generalizations are valid and demonstrate why the proposal needs a lot of work before being submitted for consideration by the legislature.

#### SECTION 1(2)

Serves no purpose other than to imply that pilots working directly for shipping companies don't provide an essential service to the state. Further, the statement implies that it is the independent relationship that provides the service instead of the qualifications of the pilot that are based upon the license.

#### SECTION 2(6)

The pilot members of the Board should be pilots who are actively engaged in piloting and not merely those who have been active.

The Board is presently balanced by an equal number of representatives from the public, the industry, and pilots. While it would be nice to have a pilot from a third region (really an organization) such a change would create an imbalance in pilot representation that should be countered by adding a third member from the public and industry.

What the proposed change really amounts to is an acknowledgement that the pilot members have unduely represented their organization and not profession. There may be other ways (than increasing the size of the Board) to address this issue. Alternatives should be explored.

#### SECTION 4

The number of Board meetings is not as important as the quality of the meetings. Alternatives as to the way the Board operates should be studied as an alternative to merely increasing the number of meetings.

#### SECTION 5(5)

We disagree with the idea that the tariff should include a charge to the ships in order to provide a training fund for either prospective or licensed pilots. We feel the creation of such a fund would be the source of many disputes. If the Board had power to create such a fund it would create a subsidy to a profession that would be both unique to regulated professions and unduely increase costs to the shipping industry.

Other parts of this section represent such a change to the industry that the general topic of regionalization recognition of pilot organizations must be commented upon in total and not in paragraph number.

The previous administration's study on marine piloting emphasized the desirability of improving two aspects of the industry. These were, (1) increasing the standards and training for entry into the profession, and (2) a greater emphasis on local knowledge as a licensing and practicing criteria.

The recommended solution to these two aspects included the suggestion that licensing areas, or regions, should be limited. The criteria for delineating the regions should be in part based upon the general nature of shipping (tankers, tour ships, fishing, bulk

carriers, etc...), variety of piloting tasks (channel riding, docking, anchoring, etc...), transportation costs and time, and variety and number of harbors and ports, etc...

The study also acknowledged that piloting is provided most effectively through centralized dispatching and billing organizations of pilots. Further, piloting is a skill learned through apprenticing because of the need for hands-on experience. Consequently, the organizations play a major role in training and if the training is valid it must be designed around some uniform standards.

Notwithstanding the essential role that pilot organizations have and the natural tendency for traditional organizational boundaries to define pilotage regions, it is not an improvement in the law to simply put such things in legislative concrete.

Another important part of the state's study dealt with barriers of entry into the profession and creating monopolies for the pilot organizations. Some pilot testimony during the hearings on the study focused on the "evils" of competition in the piloting industry. Little was heard about the "evils" of monopoly.

The proposal does not recognize nor deal with the need to eliminate barriers to entry into the profession. In fact, the proposal erects additional barriers under the guise of Board-approved training programs. The approved programs are done through the pilot organizations, administered by pilots with five years of piloting experience who are also approved by the Board. These requirements are coupled with the proposed license requirement that allows a trainee to have only a small number of supervised rides by one approved pilot.

What the combination of these provisions means, in fact, is that no new groups of pilots can start-up or grow. Such a result creates an environment rich for the "evils" of monopoly to develop.

Without going into lengthy discourse on the specifics of the above, I'll say that it is an area that I'd like the opportunity to discuss with you in person.

Additionally the regions created by Section 5(11)(d) need a lot of refinement with the exception of Southeastern Alaska.

#### SECTION 7(a)

This section limiting licenses to one region is not practical until the regions are defined adequately and the issues of the monopolistic organizations and other barriers to entry are resolved.

#### SECTIONS 10, 11. QUALIFICATIONS FOR LICENSE

These two sections need additional work to make them articulate, together, and internally consistent.

It appears that Sec. 10 contains the requirements for what may be termed a "full" or "~~limited~~<sup>unlimited</sup>" license whereas Sec. 11 seems meant to be a "lesser" or "limited" license- ie. vessels not exceeding 20,000 gross tons. Further, it is confusing whether or not each class of license has separate pre-requisites or if each class has separate (with some overlap) pre-requisites.

For example, the Sec 10 license requires a variety of sea-going experience as well as unspecified training to be specified by the Board.

On the other hand the Sec 11 Deputy license requires very specific training but evidently no specific sea-going experience.

The full license is based upon a Coast Guard endorsement of 1,600 gross tons but evidently has no tonnage restrictions on the state license. The deputy license has no Coast Guard tonnage specifications but is limited to 20,000 gross tons for the state license.

(5)

It also appears that the deputy license requires familiarization rides and supervised dockings while the "full" license does not. Or, does Sec. 10(3) refer to the training program in Sec. 11(3)? Does the sea-going experience of Sec. 10(6) also, in some way, cover Sec 11 licenses?

In short the proposal leaves more questions unanswered than answered regarding licensing. As it is written the proposal serves no useful purpose other than to make a deputy "lesser" license almost impossible to get for someone trying to get into the profession.

#### SECTION 12(2)

To what part of AS 08.62.100 is the term "continued qualification" referring?

#### SECTION 12(4)(6)

Again, the deputy license is treated differently than the "full" license by not specifying the conditions (or possibility) of renewal.

#### SECTION 13(6)

See comment above reference to Section 12.(4)(6).

#### SECTION 16(2)

This should clarify that the limit is \$5,000 per accident and not \$5,000 per claimant.

#### SECTION 18

It appears that the conceptual goal of Section 18 material is worthwhile. Pilot organizations do promote operational efficiency and have a great responsibility for training. However, the content of Sec. 18 again leaves many unanswered questions. Some of these are:

- a. How many pilots are required to form an organization? It would seem the answer is two.
- b. Does a pilot have to work through an organization?

- c. Is an established organization required to let any pilot join?
- d. If more than one organization operates in a region, which one is the "cost center" upon which the regional tariff is imposed?
- e. Is an organization required to accept all applicants for training?
- f. Can an organization function in more than one region?
- g. If two organizations exist in the same region, by which criteria does the Board "recognize" one?
- h. Can a trainee get approved training in a non-recognized organization?

### SUMMARY

Based upon the above brief discussion of source of intent, language, and unresolved matters in the draft proposal, it seems reasonable to conclude that much work remains to be done before a piece of workable legislation can be presented. A lot of the problems seem to be a result of the legislation trying to incorporate details better left to the Board. However, the desire to legislate Board members reflects a lack of confidence in the Board.

The legislation would probably be improved if it were restricted to:

1. Continuing the Board
2. Powers of the Board
3. Pilot liability and anti-trust issues -

It seems that the alternative to the three things above is for the legislation to be redone in detail- almost as a substitute for regulations and the Board to be given fairly limited powers.

I hope I have the opportunity to discuss in greater detail the concerns I have briefly discussed above. I would be happy to come to Juneau to meet with you.

(7)

I appreciate your interest and concern with marine piloting, and I appreciate your follow-up with me.

Joseph S. Merrill *Jm*  
For Alaska Marine Pilots Dispatch Service  
In Anchorage:

786-4865 day  
243-2395 evening  
248-2567 FAX

P.O. Box 220926  
Anchorage, AK 99522

( 8 )



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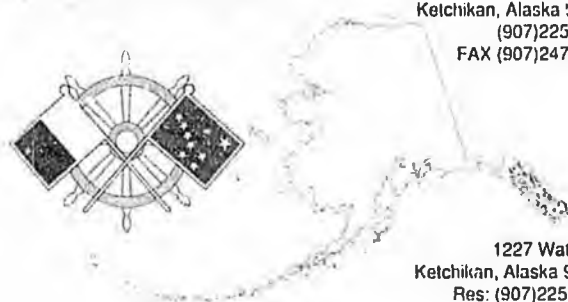
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IN RESPONSE TO  
PROPOSED CHANGES  
TO HAWAII REVISED  
STATUTES 462A  
"PILOTAGE"

January 3, 1991

Recommendations by:

**PORT PILOTS OF HAWAII**  
PIER 32  
HONOLULU, HAWAII 96817  
(808)-531-6248

JANUARY 1991

Memorandum:

TO: Concerned and affected parties

FROM: PORT PILOTS OF HAWAII

SUBJECT: Opposition to proposed legislation by Hawaii  
Pilots Association regarding port pilotage;  
(exhibit 1)

INTRODUCTION

The PORT PILOTS OF HAWAII, is a professional association of State licensed port pilots. We are registered with the State of Hawaii as a trade organization whose purpose is to provide safe, professional, and well trained pilots to meet the needs of commerce as it relates to pilotage. Each pilot in our group has been authorized by the D.C.C.A. to provide our pilotage services independently of the Hawaii Pilots Association. We have documents on file which show that Hawaii Revised Statutes allow us to provide pilotage services independently of any existing pilot association.

The PORT PILOTS OF HAWAII has provided a totally safe and reliable pilotage service and has given the Shipping Agents a viable alternative without compromising Safety. Our Safety record will show that there is nothing to dispute this.

BACKGROUND OF TWO ASSOCIATIONS

In Mid 1987 Captain LePendu attempted to establish a pension plan, but was warned by the C.P.A. for Hawaii Pilots that the pension plan he wanted to establish may not be qualified under I.R.S. rules. While investigating this it was discovered that there was uncertainty surrounding the precise legal status of the various Hawaii Pilot organizations. It was apparent that restructuring of the Organization was a necessity. Captain Geronimo and LePendu were removed as directors of Hawaii Pilots and not made part of the restructuring process and were ostracized for having discovered these serious business irregularities. We believe that we were made scapegoats for these irregular business practices established by the majority of the Hawaii Pilots.

It became very apparent that Captain Geronimo and Captain LePendu were no longer welcome in the Hawaii Pilots. We eventually left the Hawaii Pilots in hopes of providing our pilotage service to all shipping agents. Our reputations and professionalism have never been questioned by the Hawaii Pilots until it became apparent that we were becoming successful in our endeavors to provide quality pilotage. Our success was measured by the loss of business suffered by the Hawaii Pilot Association.

## OBJECTIVE #1

This report will show cause why legislation to establish a single pilot association is:

1. Not in the best interest of the People of the State of Hawaii;
2. Will promote a Privately Owned Monopoly for the Hawaii Pilot Association;
3. Has no basis in fact that Public Safety will be better served by only one pilot association;
4. The Support System of the Hawaii Pilots Association is not economically efficient;
5. An attempt to circumvent ongoing mediation and pending litigating between former members of Hawaii Pilot Association and the HPA.

## OBJECTIVE #2

This report will also seek to determine that legislation for the reestablishment of the Board of Pilot Commissioners will further the MONOPOLY interests of a single pilot association:

1. 1985 Legislative Auditors Report to the Governor and the Legislature is highly critical of the Pilot Commission; (exhibit 2)
2. 1985 Legislative Auditors Report is highly critical of pilots on the Commission;
3. Commission acted in the interests of the pilots and not the interest of the public;
4. 1990 Legislative Auditors Report to the Governor and the Legislature is supportive of DCCA responsibilities since 1985; (exhibit 3)
5. 1990 Legislative Auditor Report determined that regulations have improved under the Director of DCCA;
6. 1990 Legislative Auditor Report critical of exams for Deputy Port Pilots because test takers and scorers were in the same pilot association;

## TESTIMONY

### I. Legislation proposed by the Hawaii Pilot Association: (Exhibit 1)

#### MONOPOLY:

This legislation seeks to create a PRIVATELY OWNED MONOPOLY which is clearly not in the best interest of public safety nor in the best interest of the State. This legislation would, however, be in the best financial interest of the Hawaii Pilots Association, by guaranteeing them total control of the financial market and control of the supply of licensed pilots.

The PORT PILOTS OF HAWAII opposes these proposed legislative changes to Hawaii Revised Statutes 462A-Pilotage.

"ASSOCIATIONS OF SHIPOWNERS AND OPERATORS ARE NOT PLEASED WITH THE BENEVOLENT MONOPOLY OF STATE PILOT ASSOCIATIONS. SOME HAVE STATED THAT INCREASED COMPETITION WOULD BE GOOD FOR THE MARITIME INDUSTRY." Quote from The Pilotage study Group, 1989, for the U.S. Coast Guard

The 1985 Legislature was correct in Sunsetting the Board of Pilot Commissioners. The 1985 Legislative Auditor's Report was overwhelming in its criticism of the Commission and the Hawaii Pilot Association. (Exhibit 2) The 1990 Legislative Auditor's Report (Exhibit 3) is very favorable of the present direction of the D.C.C.A. Going back to the "old days" of the MONOPOLY and the Pilot Commission would be a 5 year leap backward in the progress toward the improvement of pilotage regulations.

The proposed legislation is misleading and contradictory in that it assumes that there should be a "return" to a single pilotage system. There is already a single pilotage system in effect since all pilots are required by Statute and Regulations to provide the same pilotage service in all Ports. Hawaii Administrative Rules under the direction of the Department of Commerce and Consumer Affairs has created a STATEWIDE PILOTAGE SYSTEM with the adoption in 1990 of Subchapter 12 of the Rules. (exhibit 4) The STATEWIDE PILOTAGE SYSTEM is exactly what the Hawaii Pilots Association is attempting to establish with their proposed legislation. The only differences is that the Hawaii Pilots Association is attempting to establish themselves as the single and only pilot association. The contradiction is that the Single Pilotage System does not mean a single Pilot Association.

Neither the Hawaii Pilot Association nor the Board of Pilot Commissioners acted responsibly on safety matters. "In many cases, board actions furthered the financial interests of licensed pilots and not those of the State." Auditor's Report 1985, (Exhibit 2)

The pilotage act with all its rules and regulations is a State authorized monopoly. At present it is under the control of the DCCA and operating with the best interests of people of the State of Hawaii, and this is where the control must remain for the system to work. Allowing the Hawaii Pilot Association to control all State Pilots under one association with Legislative sanction would create a privately owned monopoly. This could have grave implications, possibly violating Anti-trust laws, and certainly not representing the best interest of the State.

The proposed legislation would require all pilots to financially contribute to the pilot support system of the Hawaii Pilots Association without any study or determination that their system is economically efficient or cost effective. We seriously doubt that the Hawaii Pilots Association can come close to matching our Dispatch and Pilot Boat Service.

## II. Legislation proposed by the Hawaii Pilot Association:

"Reestablishment of the Board of Pilot Commissioners."  
Parts A. and Parts B.

The PORT PILOTS OF HAWAII opposes these proposed changes to Hawaii revised Statutes 462A-Pilotage.

"IN ALMOST ALL AREAS REVIEW, THERE WAS EVIDENCE OF THE INFLUENCE OF THE PILOT ASSOCIATION ON THE BOARD'S DECISION MAKING PROCESS. IN MANY CASES, BOARD ACTIONS FURTHERED THE FINANCIAL INTERESTS OF LICENSED PILOTS AND NOT THOSE OF THE STATE." Quote from Legislative Auditor's Report 1985.

Hawaii Administrative Rules Title 16, Chapter 96, Port Pilots, which were approved by the Governor of the State of Hawaii on August 9, 1990, specifically provide for a central scheduling system. This central system will guarantee that "pilotage services will be available at all times". The proposed changes to HRS 462A-Pilotage would conflict with Hawaii Administrative Rules and specifically the new rules in SUBCHAPTER 12 the STATEWIDE PILOTAGE SYSTEM. (Exhibit 4)

The Sunset Evaluation Update: Pilotage 1990, by the Legislative Auditor, is highly favorable of the Department of Commerce and Consumer Affairs in its regulatory responsibilities since assuming the conn in 1985. The report also states that the regulation of pilotage has improved under the D.C.C.A. The Report's conclusion is that the "public interest is best served by the reenactment of the statute." ... "The State should continue to regulate pilotage."

The Report does not make recommendations for changes to a single pilot association. The Report does not make recommendations that a Board of Pilot Commissioners be reestablished.

## SUMMARY AND RECOMMENDATIONS

"The concentration of MONOPOLISTIC power ... heavily influenced by nine licensed pilots, leaves the State in a vulnerable position. Because of these concerns, we strongly believe that pilots should continue to be regulated, not by the board, but by the Department of Commerce and Consumer Affairs."

Legislative Auditor's report 1985

Attempts to create legislation to sanction a single pilot association and to reestablish the board of pilot commissioners would seriously undermine the authority and progress that the D.C.C.A. has accomplished in the past 5 years. The Legislative Auditor's Report of 1985 was highly critical of the Board of Pilot Commissioners and of the Hawaii Pilots. "In almost all areas covered the commission acted in the interest of the pilots and not the Public"

We believe that the Hawaii Pilot Association is deliberately trying to scuttle the progress made by the Director of D.C.C.A. with the pretext that public safety is in jeopardy. The speculation and assumption that the Director of D.C.C.A. or the PORT PILOTS OF HAWAII are less caring about safety is unfounded in fact.

There is doubt that the Hawaii Pilots Association is a nonprofit Association. It has never been confirmed with the D.C.C.A. that this corporation was ever incorporated and registered with the State either as a profit or as a nonprofit corporation. There are serious I.R.S. problems with the pilots' pension plans, and an uncertainty surrounding the precise legal status of Hawaii Pilots, Inc. and its related organizations.

1. We recommend that the proposed legislation not be supported.
2. We recommend that the Director of DCCA continue with his powers and duties as provided for in HRS 462A-3.
3. We recommend that Hawaii Administrative Rules title 16, chapter 96, Subchapter 12, STATEWIDE PILOTAGE SYSTEM, be implemented without delay.
4. We seek your support in opposing the proposed legislation by the Hawaii Pilots Assn., and ask that you write and express your concerns to:

Hawaii State Legislature  
Consumer Protection and Commerce committees

The Alaska Marine Pilotage Act,  
*A One Year Retrospective*

*by the*

*Alaska Coastwise Pilots Association  
June 30, 1992*

*"They got a special charter from the legislature, with large powers, under the name of the Pilots' Benevolent Association..."*

*"The organization seemed indestructible. It was the tightest monopoly in the world."*

*from Life on the Mississippi,  
Mark Twain (1874 )*

According to Mark Twain, in the mid nineteenth century pilotage on the Mississippi River became the tightest monopoly in the world. His words aptly describe the effect the pilotage monopoly had on the shipping industry on the river:

*"In time the association could put the wages up to any figure it chose; and as long as it should be wise enough not to carry the thing too far and provoke the national government into amending the licensing system, steamboat-owners would have to submit, since there would be no help for it"*

Following the rapid increase in pilotage rates, the vessel operators also raised their rates for commerce on the river and thus passed on the formidable increases in pilotage costs to consumers.

*"...and explained to the farmers along the river the necessity of it, by calling to their attention the burdensome rate of wages about to be established".*

The eventual result is history. Merchants looked for other more economical ways to ship their goods. Alternative modes of transportation were found, and the Mississippi River steamboat trade went into sharp decline.

*" and behold, in the twinkling of an eye, as it were, the association and the noble science of piloting were things of the dead and pathetic past!"<sup>1</sup>*

While the history of marine pilotage is a long and noble one, some of its chapters would do the profession well if they were not repeated. Regional monopolies in the pilotage profession were not uncommon in the nineteenth century. Nepotism and discrimination based on race, ethnic origin, and gender were also commonplace. Fortunately, in the century or so since the account of Mark Twain took place, public policies of federal and state governments have discouraged or forbidden such practices. Yet entrenched monopolies and discriminatory practices are still found in some pilot organizations in the United States. The monopoly issue deserves the careful attention of state governments which regulate pilotage, if only to prevent the destructive history described above from needlessly repeating itself.

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<sup>1</sup> Life on the Mississippi, chapter 15, "The Pilots Monopoly", Mark Twain (1874)

Some states have taken important steps to counter the monopolistic overtures of marine pilot organizations. In 1985 the State of Hawaii conducted an investigation of the activities of the Hawaii Board of Pilot Commissioners and the anticompetitive efforts of one of the pilot organizations in Hawaii. The auditor reported that the statute in effect up to that time "...creates a monopoly by empowering the Board to set pilotage rates and to limit the number of licenses... The board has abused these powers by acting in the interests of the pilots and not in the interests of the people of the state."<sup>2</sup> The State of Hawaii found significant flaws in the licensing procedures and accident investigations of the State Board, which were similarly predicated on the financial interests of the pilot members of the Board. It found that the rules for acquiring a license were subjective and not directed at insuring competency. "Although the rules are restrictive, they do not restrict on the basis of competency." (Hawaii auditor, 1985)

The Hawaii report cited the example of a serious accident which was not reported to authorities by the pilot involved or the representative of his organization on the Board of Pilot Commissioners. The pilot members on the Board refused to proceed against the pilot, who was a member of their organization, and eventually moved to dismiss the case. Two and a half years later, when the accused pilot broke ranks with their organization and became a competitor, the pilot members on the Board urged the Board to pursue an investigation of the accused pilot. In this case, the Hawaii auditor found "The board's failure to conduct an unbiased, comprehensive, and timely review of a serious incident is irresponsible." The State Legislature of Hawaii in 1985 followed the auditor's recommendation to dismantle the Board of Pilot Commissioners. In 1990, following another sunset review, the State of Hawaii audit reiterated a concern over the self-interests of pilot members of one organization having control over examinations of pilots of a competing organization, and recommended that pilots from both groups be involved in the examination procedures. Despite the efforts of the formerly dominant pilot group to reestablish the Board, the State of Hawaii continues to this day its policy of regulation of marine pilotage without a Board of Pilot Commissioners.

In 1991 two pilot organizations attempted to install a nineteenth-century regional monopoly system in the state of Alaska. They employed an aggressive and well-funded lobby effort and liberally circulated rhetoric about the supposed link of "safety" with "monopoly". The line of reasoning was that ships could not be piloted safely unless all the pilots belonged to the same fraternity. They proposed a bill, which, like the example cited by Mark Twain, would give "large powers" to the Board of Marine Pilots to regulate the profession of marine pilotage in the

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<sup>2</sup> State of Hawaii Auditor's Report (1985)

state. The initial lobby effort to pass the Act came from the two dominant pilotage organizations in Alaska, the Southeastern Alaska Pilots Association (SEAPA), and the Southwest Alaska Pilots Association (SWAPA). The intent of those organizations, as described by one of the pilots involved in the effort, was to solidify their regional monopolies, to fix tariffs, and to get protection from court antitrust challenges to their monopolistic practices (see memo of Captain Ed Murphy dated May 28, 1991 attached).

The efforts of SEAPA and SWAPA were successful in part, obtaining a unique exemption from antitrust laws. Fortunately, the Alaska Legislature did not buy all of their arguments. Provisions were included in the new Marine Pilotage Act which expressly forbid the Board of Marine Pilots from enacting regulations which are anticompetitive. The new law also provides for a maximum tariff (instead of a fixed one) to protect vessel operators from gouging by pilot organizations and to allow a competitive market in the profession. Were it not for a lobby effort on the part of pilots who did not want to be forced into those monopolies, and shipowners who did not favor a monopoly, Alaska might have been placed in the situation similar to that of the Mississippi River in the 1870's: with pilotage a deterrent to commerce, and possibly destined to become "a thing of the dead and pathetic past".

To accurately assess the impact that monopolies have on the pilotage profession, some less conspicuous issues must be considered. Once a monopoly is in place, the pilot organization has the power of enforcement upon its members. Pilot organizations which are monopolies do not tolerate minority dissent. If a pilot challenges the system, internal sanctions may be brought against him which would threaten his very livelihood. Few pilots would take such a risk, for doing so would put years of training and considerable investment in jeopardy, and invite the prospect of long-term unemployment. The whole issue of pilot competence is put in a vacuum. No pilot would want to disclose evidence which might reveal his shortcomings or those of his partners, for doing so would jeopardize the cartel. Vessel captains are fearful of reporting pilotage incidents because they risk running afoul of the pilots, and thus incurring retaliatory action from the pilots upon whom they must depend in order to comply with the law. The result is that acts of incompetence, of intoxication, and events of damage to property or environment are often unreported. Perhaps the worst effect of the monopoly in pilotage is its corruption of the selection process of pilots. Instead of being directed at recruiting the most talented, the process is too often directed at maintaining the power base and support network of cronies and "old boys" by a complex array of barriers to entry.

There are recent examples in the Alaska pilotage profession which point out the severity of these problems. In 1983 The Southwestern Alaska Pilots Association were subject of litigation by pilots who were being denied access to "supervised" qualification experience by the SWAPA group.<sup>3</sup> In 1985 and 1988 the Southeastern Alaska Pilots Association was also subject of similar litigation for alleged denial of access for contract pilots to membership, denial of due process prior to termination, and attempting to force a monopoly on the profession.<sup>4</sup> In all of those cases the result was that the complainant pilots eventually gained access as legitimately qualified pilots, albeit at great financial cost to all concerned. In 1988 a member of the Southeastern Alaska Pilots Association reported an incident of intoxication on duty by a fellow member, which later resulted in sanctions against the accused pilot by both the U.S. Coast Guard and the State of Alaska. Internal action taken by the SEAPA organization was, however, quite the opposite. The accused pilot was promptly elected to office *as president of the association*, and he soon filed internal charges against his accuser for allegedly "bringing discredit to the association". The pilot association stacked a hearing panel with pilots and an attorney sympathetic to the intoxicated pilot, and sentenced the reporting pilot to a \$25,000 suspension. Because of the absolute monopoly which existed at that time, the reporting pilot was forced to institute litigation proceedings simply to remain employed. In May 1990, the pilot who reported the incident of intoxication was granted a restraining order by the U.S. District court against the SEAPA organization.<sup>5</sup>

In 1991 and 1992, against the backdrop of the new Marine Pilotage Act, the SEAPA and SWAPA organizations and their members on the state Board of Marine Pilots continued their efforts to wipe out or prevent competition in their regions of Southeastern and Southwestern Alaska. They did so by strategies which included the following:

1) efforts by SEAPA and its member on the Board of Marine Pilots to orchestrate a boycott of pension and health benefits of their competitor pilots through the union of Masters, Mates, and Pilots (see correspondence of former Board of Marine Pilots member Captain H.K. Elsensohn, whose brother Robert is an official of that union, of April 11, 1991, and of Captain Brown of the IOMM&P of July 29, 1991) Captain Elsensohn, while a sitting member of the Board of Marine Pilots, also wrote the Marine

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<sup>3</sup> Hicks & Terpening v. Southwest Alaska Pilots' Association

<sup>4</sup> Bennett v. Southeastern Alaska Pilots' Association  
Homer v. Southeastern Alaska Pilots' Association JPO-13-CI

<sup>5</sup> Spence v. Southeastern Alaska Pilots' Association J90-004-CIV

Highway system to disrupt the employment of part-time ACPA pilots in competition with SEAPA. (letter of May 6, 1991 attached).

2) efforts by the SEAPA member of the Board of Marine Pilots to pass such an oppressively high maximum tariff through the Board of Marine Pilots that it could be used to coerce vessel operators to sign exclusive long-term agreements with SEAPA, which has only limited competition. (see correspondence of Captain Arnt Antonsen dated Jan 29, 1992 attached). SEAPA's interpretation of the "tariff" requirements of the law in this letter also seems to contravene the language of the Marine Pilotage Act, which states that marine pilot organizations shall adopt a uniform tariff that all of its members must adhere to for a period of one year from enactment. In the case of SEAPA's offer to cruise operators, it proposes a different tariff for each customer, and if no contract is entered into, then a "the full 50% increase on a trip by trip basis".

3) efforts by SEAPA to spread false information throughout the maritime community and the Board of Marine Pilots that their competitor, the Alaska Coastwise Pilots' Association (ACPA) was engaged in "merger discussions" with SEAPA, in order to undermine the clientele and potential clientele of ACPA, and to steer the Board of Marine Pilots into endorsing or forcing such a merger (see correspondence of Captain George Porter dated Nov 20, 1991, attached).

4) efforts by SEAPA and SWAPA members to pass regulations through the Board of Marine Pilots which make competition a practical impossibility, including:

a) training requirements that necessitate the personal supervision and approval of pilot candidates by organization members who do not desire competitors in their regions.

b) noncompetition covenants attached to training programs of pilotage organizations (see SEAPA training program regulations proposed to the Board of Marine Pilots Jan 14, 1992, attached )

c) requirements that cross-regional competition only be allowed if there are "not a sufficient number " of pilots already in the region to perform the work (see regulations proposed Nov 29, 1991, attached).<sup>6</sup>

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<sup>6</sup> On March 20, 1992, the Alaska Assistant Attorney General assigned to pilot regulations proposed by the Board reported that "[This] regulation on its face appears anticompetitive. If safety is the primary concern of the Board, it could be accomplished without a blanket

It is clear from the foregoing that the SEAPA and SWAPA members of the Board of Marine Pilots<sup>7</sup> do not accept the requirement of the Alaska Marine Pilotage Act that the Board not adopt anticompetitive regulations. The timetable and agenda of the Board of Marine Pilots over the past five months reflects the priorities and direction given to the Board by the SEAPA and SWAPA members. During this period the dominant themes of discussion have been tariffs and turf, the pilot members on the Board leading the charge with lengthy arguments in favor of economic protectionism and huge increases in tariffs. With the exception of brief discussions of recognition requirements of pilot organizations, and training requirements for Deputy Marine Pilots, issues of pilot competence and professional standards have scarcely been addressed.

Accountability of pilots in cases of marine accidents, intoxication, or acts of incompetence is a matter which should have a high priority in the agenda of the Board of Marine Pilots. Without it the state simply cannot effectively regulate the profession. Marine Pilots have a demonstrably poor record of "policing themselves". Accountability to standards set by law must be assured through the establishment of regulations which the State may successfully prosecute against highly-paid defense attorneys of pilots. Most accused pilots have upwards of \$150,000 license insurance coverage dedicated to their defense. The state is no match against those pilots unless its regulations are made strict and explicit enough to be enforceable. Those regulations must also be designed to prevent personal biases of Marine Pilot Board members from intervening against their competitors. Currently the personal relationships of pilot members of the Board with pilots who come before the Board in disciplinary actions distort both accountability and due process.

The history of oppressive monopoly in the pilotage profession need not be repeated in Alaska. It is time that the Board of Marine Pilots move away from debating what has already been debated and settled in the Alaska legislature. Establishment of regional monopolies and economic protectionism of pilot organizations are not the business of the Board of Marine Pilots. Instead the Board must accept the direction given to it by the Legislature of Alaska, to raise the professional standards of marine pilots by enacting regulations which are objective and specific to the task.

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restriction." and recommended to the Board that the regulation proposed by the SWAPA member be withdrawn.

<sup>7</sup> Of the four pilot organizations in Alaska, only SEAPA and SWAPA have representation on the Board of Marine Pilots.

# Audit Report

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DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
BOARD OF MARINE PILOTS

November 4, 1993

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Audit Control Number:

08-1415-94

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
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November 4, 1993

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF MARINE PILOTS

November 4, 1993

Audit Control Number

08-1415-94

The audit reports on whether the Board of Marine Pilots (BMP) should continue its existence. Currently AS 08.03.010 has BMP scheduled for termination on June 30, 1994. BMP would be allowed one year in which to conclude its affairs. We recommend that the legislature extend BMP, but remove all powers and duties that make BMP ineffective because of conflict of interest situations.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.


  
Randy S. Welker, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Marine Pilots (BMP) to determine if it should continue in existence.

### Objectives

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether BMP should be reestablished. The law currently specifies that BMP will terminate on June 30, 1994 and will have one year from that date to conclude its affairs..

### Scope and Methodology

Our audit reviewed BMP's implementation of the Marine Pilot Act of 1991 and how effectively the board exercised its powers and fulfilled its duties as required by that Act. The policy of the Act is *"to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state."* The Act is founded on the premise that any type of marine accident due to pilotage error, while low in probability, would have a serious adverse impact on the State of Alaska. This places BMP in the often difficult situation of having to strive for the highest safety standards, while developing regulations that encourage a competitive economic structure. Since House Bill (HB) 237, which would significantly lessen the competitive aspect of the Marine Pilot Act, was introduced in the first session of the Alaska State 18th Legislature, we have analyzed how the passage of that bill or a similar one would affect BMP's authority.

The scope of our review was limited by the lack of readily available safety performance measurement data from federal government agencies and the State. U.S. Coast Guard, Army Corp of Engineers and members and staff persons of the National Research Committee informed us that pertinent safety information for Alaska coastal waters is not current or readily available for our safety measurement purposes. We found the information does not lend itself to statistical comparison on safety between federal-licensed and state-licensed pilots.

During the course of our examination, we reviewed and evaluated the following:

1. applicable sections of state and federal statutes and regulations;
2. interviews with various state employees including staff within the Department of Commerce and Economic Development, Department of Law, Ombudsman Office,

Equal Employment Opportunity Office, Human Rights Commission, and Alaska Public Utility Commission;

3. interviews with U.S. Coast Guard personnel;
4. interviews with present and former board members;
5. interviews with Alaska pilots, national and local pilot associations;
6. interviews with National Research Committee members;
7. minutes of BMP meetings;
8. director of Occupational Licensing's correspondence files;
9. BMP licensing examiner's correspondence files;
10. BMP licensing files;
11. investigation and litigation files;
12. office of the Ombudsman closed case file;
13. budget documents, session laws and other legislative information relating to the board's operations;
14. internal reports and documents prepared by the board;
15. financial reports from the state accounting system;
16. Office of the Governor, Boards and Commissions' files;
17. prior year audit work papers and audit reports;
18. interviews with Federal Trade Commission employees; and
19. other documents and interviews as deemed pertinent.

## ORGANIZATION AND FUNCTION

Chapter 106 SLA 1970, which established the Board of Marine Pilots (BMP), was made effective May 7, 1970. However, the statutes were significantly changed with the passage of the Marine Pilot Act of 1991 to broaden BMP's authority. The legislature felt it necessary to give BMP broad statutory authority, which included establishing pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. All but one section of that Act went into effect on July 2, 1991. That section, which required a pilot to be a member of a pilot association, did not go into effect until January 1, 1993. The policy, findings, and intent of the Marine Pilot Act stated, "*It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state.*"

### Membership on the board

BMP is composed of seven members. Membership consists of two pilots licensed under the statute who are actively engaged in that profession, two agents or managers of vessels subject to the statutes, two public members, and the commissioner of the Department of Commerce and Economic Development or his designee. All members must be residents of Alaska. Not more than one pilot member and one agent can be from the same judicial district (see

Recommendation No. 5). The public members cannot be engaged in the piloting profession, have a legal contract with a pilot, or have a direct financial interest in the piloting profession.

#### Members of the Board of Marine Pilots

Glenn Reed, Assistant Commissioner,  
Department of Commerce  
and Economic Development

Dale Collins, Pilot

Michael O'Hara, Pilot

Bob Watt, Agent, Chairman

Donna Bumgardner, Agent

Mark E. Springer, Public Member

John C. Klepper, Public Member

### Duties of BMP

BMP's statutory responsibilities include:

1. Adopting regulations establishing qualifications of and required training for pilots and providing for examination of pilots.
2. Keeping a register of licensed pilots, licensed deputy pilots, and agents.
3. Adopting regulations requiring pilotage regions, amount of professional fees, and criteria to recognize pilot organizations.
4. Making copies of the statute and regulations available upon request.

5. Reviewing and approving articles, bylaws, and rules of pilot organizations.
6. Auditing a pilot organization or individual pilot as necessary to implement the statute.
7. Reviewing and approving training programs conducted by pilot organizations.
8. Establishing and publishing the dates of future license examinations.
9. Establishing maximum tariffs (see sidebar to the right) that may be charged by pilots for the provision of specific pilotage services.

Duties of the Department of Commerce and Economic Development

The Department of Commerce and Economic Development (DCED) provides administrative and investigatory assistance to BMP. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, DCED may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of a person, and issue subpoenas for the attendance of witnesses and records.

Marine Pilot Coordinator

The department may hire a Marine Pilot Coordinator, with the approval of BMP, to assist the board in fulfilling its statutory duties. The Marine Pilot Coordinator cannot work as a pilot, be an active member of a pilot association, or have a financial interest in a pilot association or the equipment that it uses.

Role of pilot associations

Pilots usually form associations to provide service to the shipping industry. Pilot associations offer centralized dispatch of services to industry through its pilot members. The

**ITEMS BMP MUST CONSIDER WHEN ADOPTING A TARIFF**

Alaska Statute 08.62.045 specifies that BMP shall consider the following when adopting regulations that set maximum tariffs:

1. reasonable compensation for actual time aboard a vessel as a pilot and for time engaged in preparing to provide pilotage services;
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 the provision of pilotage services;
4. reasonable overhead expenses that are necessary to provide year-round pilotage services for the region; and
5. other expenses identified by the board.

associations either own pilot boats, or have agents whom make arrangements for pilot boats, to carry pilots to and from vessels. Pilot associations sponsor candidates by providing access to a training officer and vessels with which the association or their agent has a contract. The pilot fees are collected by the association and pilots receive a portion of the revenue collected.

BMP has established four pilotage regions in the State of Alaska and has recognized six pilot associations.

Region	Association	No. of Full-Time Members	No. of Associate Members	No. of Trainees
Southeast	Southeast Alaska Pilot Association	20	10	3
	Alaska Coastwise Pilot Association	7	6	5
Western	Western Alaska Pilots Association	4	-	-
	Alaska Marine Pilots	11	-	-
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	2	4
Kuskokwim River	Kuskokwim Pilots Association	2	1	-

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## BACKGROUND INFORMATION

Piloting is the act of directing a vessel into and out of areas where navigation has been deemed dangerous or difficult. The difficulties can include restricted waterways, such as channels, ports or harbors; tides, currents and water depths; and type and nature of traffic. A pilot can either be a member of the ship's crew or he can be independent of the crew and brought onto the ship solely for the purpose of guiding the vessel through pilotage waters. The pilot's knowledge of the local geography and weather of the waters he is piloting makes him invaluable to the vessel. The safety of the lives aboard the vessel and for the marine environment is the pilot's responsibility.

### History of pilotage in the United States

Prior to the formation of the United States, many maritime states had already started regulating pilotage. The First Congress of the United States had to determine which functions would be administered by the federal government and which functions would be administered by state governments. The Commerce Clause of the Constitution grants the power to regulate interstate and foreign commerce to the federal government. To enable the states to continue regulating pilotage, an amendment was made to the Lighthouse Act of August 7, 1789, which stated

*That all pilots in the bays, inlets, rivers, harbors and ports of the United States, shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively hereafter enact for the purpose, until further legislative provision shall be made by Congress.*

Since the passage of the Lighthouse Act, Congress enacted very few laws to impact the states' authority over pilotage. A law was passed in 1852 which provided for federally-licensed pilots to be in charge of vessels propelled in whole or in part by steam and carrying passengers. Since 1871, responsibility for the regulation of marine pilotage is shared by the federal government and state governments. In general terms the federal government, through the United States Coast Guard (USCG), regulates pilotage on enrolled vessels. Enrolled vessels are registered in the United States and engaged in commerce between American ports. However, individual states are given the right to regulate pilotage on registered vessels. Registered vessels are those engaged in foreign trade. The U.S. Customs Service determines in which trade a vessel is operating.

### Requirements for federal licensing

The USCG enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, if not all, an applicant must have a USCG pilot license in order to obtain a state license. The USCG license is usually referred to as a minimum standard of competence license. The requirements for a USCG license include a required number of months of sea service, a certain number of round trips, and passing a written

examination. The USCG appointed a Pilotage Study Group to make recommendations on pilotage in U.S. waters. The report issued on September 15, 1989 recommended increasing the sea service time and tightening record-keeping requirements to document service qualifications.

A federal license is valid for a period of five years. For renewal of the license, a pilot has to submit evidence of one year of sea service within the previous five years. Pilotage endorsements on the license do not expire, but the pilot must make one round trip refamiliarization trip over the route endorsed every five years. For long or extended routes, the pilot does not have to physically make the refamiliarization trip, the pilot can be certified based on his review of publications and charts.

#### Requirements for state licensing

Since knowledge of local geography is an essential aspect of the pilotage profession, state licensing procedures require intensive on-the-job training to gain the necessary experience. Some states have apprenticeship programs that provide on-the-job training. Entry into an apprenticeship program often requires little or no previous experience, but the training may last up to seven years. Other states, including Alaska, have deputy pilot programs that provide on-the-job training. Training for deputy marine pilot programs is often for a two-year duration, which is considerably less time than the apprenticeship program. This is because the entry requirements for the deputy pilot includes considerably more sea service experience than the apprentice. Alaska's deputy marine pilot qualifications could take from one to three years to attain. All training programs require the trainee to ride a ship with a fully licensed pilot, observing their handling of the ship. Over time the trainee begins to handle the ship himself under the pilot's guidance.

Licenses granted by the states are for a set period and must be renewed at intervals ranging from one to five years. Alaska has a biennial renewal. According to the American Pilots' Association, several states have continuing training programs or requirements. Alaska has also incorporated renewal requirements for marine pilots. Below is an excerpt from the statute on Alaska's continuing training program.

*AS 08.62.120. Renewal of License. (a) In order to renew a marine pilot license, a person who is licensed under AS 08.62.100 shall . . .*

*(4) submit proof satisfactory to the board that the person has*

*(A) engaged in piloting vessels subject to this chapter in the marine pilotage region for which the license is to be renewed during at least 60 days of each calendar year in the licensing period immediately preceding the licensing period for which renewal is sought; or*

*(B) completed the minimum number of refamiliarization trips required by the board for renewal of a marine pilot license for a marine pilotage region for which the license is to be renewed.*

## Vessels subject to Alaska marine pilotage regulations

A pilot is required to be employed by vessels navigating in the inland and coastal waters of or adjacent to the State, as defined by the board. However, certain vessels are exempt as detailed below.

*AS 06.62.180 Exemptions. This chapter does not apply to*

*(1) vessels subject to federal pilot requirements under 46 U.S.C. 8502 except as provided in AS 08.62.185 (see below);*

*(2) fishing vessels, including fish processing and fish tender vessels, registered in the United States or in British Columbia, Canada;*

*(3) vessels propelled by machinery and not more than 65 feet in length over deck, except tugboats and towboats propelled by steam;*

*(4) vessels of United States registry of less than 300 gross tons and towboats of United States registry and vessels owned by the State of Alaska, engaged exclusively*

*(A) on the rivers of Alaska; or*

*(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;*

*(5) vessels of Canada, built in Canada and manned by Canadian citizens including Canadian cruise ships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and*

*(6) pleasure craft.*

*AS 08.62.185. Certain licensed pilots required for oil tankers. (a) Any oil tankers, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in state water beyond Alaska pilot stations employ a pilot licensed by the state under this chapter.*

*(b) The pilot required in (a) of this section shall control the vessel during all docking operations.*

## Pilot discipline

The USCG investigates pilotage incidents that involve pilots operating under their federal license. The USCG has the authority to issue a letter of warning or reprimand, levy a fine, or seek criminal prosecution. The USCG may suspend or revoke a pilot's federal license if the pilot violated maritime law or regulation or was negligent or inattentive to his pilotage duties. At the present time, the USCG has no jurisdiction over a pilot's state license if the pilot was operating under that license at the time an incident took place. Both the National Transportation Safety Board and the USCG Pilotage Study Group recommend that federal law be changed so the USCG can take action on a pilot's federal license, even if an incident occurred when the pilot was acting on his state license.

All 24 maritime states have procedures for disciplining pilots when incidents occur while the pilot is operating on his/her state license. In most states, the pilot is required to report in

writing an incident to the oversight entity. In Hawaii the oversight entity is a state department, but in the other 23 states the oversight entity is a board or commission that may or may not include pilot members. In many states, incidents are investigated and findings presented to the oversight entity by a state agency. If just cause is shown, the oversight entity can suspend or revoke the pilot's state license. In Alaska, reports are investigated by DCED, but BMP has the authority to suspend or revoke a pilot's license. BMP also has the statutory power to suspend or revoke a pilot's state license if his USCG license has been conditioned, suspended, or revoked.

#### Marine Pilot Act of 1991 changes Alaska's pilotage statute

Alaska's Office of the Governor, Division of Policy, issued a report in November 1990 titled, *Improving Alaska's Marine Pilotage System*. The report stated that Alaska's statute treated licensing as an individual right rather than recognizing its importance as a public service. The emphasis on individual's rights had diverted BMP's attention from public safety issues facing state pilotage as BMP was constantly dealing with controversies with individual pilots. The report pointed out Assistant Attorney Generals questioned whether existing language granted BMP the broad discretionary powers intended by the legislature. The report stated, "*weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.*"

In response to the report, the legislature drafted a bill that came to be known as the Marine Pilot Act of 1991. The Act made significant changes to Alaska's pilotage statute. A policy, findings, and intent section emphasized safety by requiring compulsory pilotage on the inland and coastal waters of the State to prevent the loss of lives and property and to protect the marine environment. The legislature gave BMP broad statutory authority, including setting pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. The effectiveness of BMP's use of this authority is discussed on page 31, in the Analysis of Public Need section of this report.

However, two aspects of the Act created a competitive economic structure for pilotage in Alaska, which was directly contrary to recommendations made in the report. The report had a section on competition and its potentially adverse impact on safety. But the legislature allowed a competitive economic structure by stating the board could not adopt a regulation or take any other action resulting in anti-competitive activities. The report had recommended, "*The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.*" Instead, the legislature empowered BMP to adopt maximum tariffs. This means pilot associations can compete with other associations in their region based on price, as long as the maximum tariff is not exceeded.

#### Impact of economic structures on the pilotage profession

Of the 24 maritime states, competition exists mainly in four states — Connecticut, Oregon, Hawaii, and Alaska. However, we understand that certain ports in California and some East coast areas also have competition. Traditionally, the pilotage profession has been handled

by states as a publicly-regulated monopoly, in much the same manner as a utility company. This is usually accomplished by setting fixed tariffs that pilot associations can charge for their services and, in many states, by limiting the number of licenses granted. The reason advanced for a state endorsing a regulated monopoly is to protect the state's interests by creating pilot independence from the shipping industry. Most pilots and their national association have long argued a pilot is not free to base his piloting decisions solely on safety considerations if he has to solicit jobs from industry. If acting in an employee or contractee situation, a pilot may decide to move a vessel in marginal situations to meet a shipowner's schedule.

Proponents of competition argue the shipping industry is unlikely to place pilots in a position of having to compromise their independent decision-making, because the shipowner has the most to lose if there was an accident in terms of money for cargo, vessel, and insurance premiums. Pilots in favor of competition also allege that incidents go unreported and uninvestigated when there are no competing pilot associations.

A July 23, 1992 performance audit conducted by the State of Florida, Office of the Auditor General recommended a competitive economic structure in spite of foreseeing potential problems if that direction were taken. The audit said additional regulations would likely be needed to overcome potential problems in the areas of training programs for pilot candidates and requiring pilot dispatches for industry. The legislative response to this performance audit argued that piloting is a "natural monopoly," and justified anti-competitive regulatory provisions upon this monopolistic structure.

The Federal Trade Commission (FTC) has performed several reviews of various states' statutory and regulatory policies to determine if they are too restrictive or anti-competitive. Reviews were performed on the State of Florida Board of Pilot Commissioners and the State of South Carolina on the Commissioners of Pilotage for the Port of Charleston. FTC has stated in these reviews that *"We have no reason to believe that harbor pilotage is a natural monopoly. For that reason, price regulation likely represents a response to entry restrictions, which may enable incumbent pilots to charge higher than competitive prices."* The FTC also stated in their review that a direct approach through vigorous safety regulations and enforcement is more effective in promoting safety than the indirect method through economic regulation. Interviews with FTC staff in Washington D.C. and the Seattle Regional Office have confirmed that these statements reflect the current attitude of the FTC regarding marine pilotage.

#### HB 237 would make Alaska pilotage profession anti-competitive

House Bill (HB) 237 was introduced into the first session of Alaska's 18th Legislature. While this bill is still undergoing amendment as it goes through the legislative committee process, the original bill calls for limiting the number of licenses in a region based on the number needed to assure the safety of human life, property, and the marine environment. The bill also removes the tariff setting duty from BMP and calls for the Alaska Public Utilities Commission to adopt a fixed tariff.

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## REPORT CONCLUSION

Alaska Statute 08.03.010 requires that the Board of Marine Pilots be terminated on June 30, 1994, with Alaska Statute 08.03.020 providing for a one-year wrap up period. As of the date of this report, the board is technically in its final year of operation, and if no action is taken by the legislature, the board will be dissolved June 30, 1995. We recommend that legislation be enacted to extend the board's termination date to June 30, 1998, but remove all powers and duties that make BMP ineffective because of conflict of interest situations. (See Recommendation No. 1)

The Findings and Recommendations Section describes areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board. In our opinion, regulating and licensing of marine pilots within the State of Alaska is a necessary function to ensure the protection of human lives and the marine environment.

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should extend the Board of Marine Pilots (BMP) termination date to June 30, 1998.

BMP has been given the responsibility in statute to provide for the maintenance of efficient and competent pilotage service on the inland and coastal waters of and adjacent to the State. Regulation and licensing of qualified professional pilots is necessary to protect shipping and the safety of human life and marine environment. As discussed in Analysis of Public Need on page 31, the board has only been partially successful in adopting regulations, licensing qualified applicants, and approving the hiring of a Marine Pilot Coordinator to conduct investigations which the board hears for disciplinary purposes.

Although BMP has attempted to operate in the public interest, its success has been hindered by circumstances beyond the board's control. We identified two duties of BMP where the board has been ineffective. The two causes which limit the board's effectiveness include the conflict of interest issue (see discussion on page 16) and the lack of economic and financial backgrounds of individual board members. The two board duties which give rise to a conflict of interest are establishing a maximum tariff (see Recommendation No. 3) and participating in the examination of license applicants (see Recommendation No. 4).

BMP has established goals for itself that are in direct opposition to its statutory policy mandate to operate in a competitive environment. Until the board can document evidence that a non-competitive system is superior in assuring public and environmental safety, they should follow statutory mandates. In this report, we identify areas where improvements are needed and recommend action to correct those weaknesses. These areas include training, dispatching, enforcement or sanctions, examinations and tariffing (See Recommendation Nos. 2, 3, and 4). However, these weaknesses do not solely prove that a competitive structure will not work for the Alaskan marine pilotage profession. In our opinion, BMP has not exerted sufficient effort to resolve these weaknesses. Instead, their efforts have tended to advocate a monopolistic structure rather than a competitive one. The Federal Trade Commission (FTC) has suggested addressing safety concerns directly through vigorous enforcement of safety regulations rather than indirectly through economic regulations.

At the present time, the board has listed FY 94 goals for itself that would make the pilotage profession non-competitive. Some of the goals listed in BMP's FY 93 annual report are to encourage and support reform of pilotage statutes, including eliminating competition within regions and establishing fixed tariffs. These goals are discussed further on page 31 in the Analysis of Public Need section.

While BMP has not been entirely effective at meeting its goals, we believe removing time-consuming economic duties from BMP that create conflict of interest situations will enable BMP to focus their attention on areas within their realm of expertise. Duties that are

## CONFLICT OF INTEREST ISSUE

The manner in which the Board of Marine Pilots (BMP) votes on certain issues has been greatly impacted by the Ethics Act. Below are the Alaska Statutes, Article 2, which defines the code of ethics applying to public officers, including board members.

*Sec. 39.52.110. Scope of Code. (a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust.*

*Sec. 39.52.120. Misuse of Official Position. (a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.*

*(b) A public Officer may not . . .*

*(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or*

*(5) attempt to benefit a personal or financial interest through coercion of a subordinate.*

During the period of our review, three ethics complaints have been filed against board members. The Attorney General's Office has stated in a letter [redated for print January 1, 1992, RE: Complaint pursuant to the Executive Branch Ethics Act (AS 39.52)] that "A potential conflict of interest exists whenever the board takes actions that will benefit the member's association and, presumably, the member." As a result, certain members are precluded from voting on various board issues.

On the advice of the assistant attorney general assigned to the BMP, the two pilot members have recused themselves from discussing and voting on tariff issues, recognition of associations, participation in license examinations, or in reviewing upgrade applications that apply to their particular region. In addition, the two agent members do not participate in discussion and voting on tariff issues for the regions in which they reside or work. In one instance, this has resulted in the board voting on a licensing issue with only three members participating, which may not constitute a legal quorum.

within the board's expertise include licensing members into the profession, establishing continuing education and drug testing requirements, monitoring activities of pilot associations through approval of articles and bylaws, and disciplining members who violate the statute and regulations. Those duties are commonly the purview of boards monitoring their profession.

We recommend BMP's termination date be extended, and appropriate regulatory and statutory changes be made to improve BMP's effectiveness. The regulatory and statutory changes we suggest are included in Recommendation Nos. 2, 3, 4, 5, and 8. We further recommend that BMP's operations and related goals conform to the statutory policy mandate. If BMP is opposed to those mandates, the board should seek legislative revision by presenting clear and convincing evidence in support of their position.

### Recommendation No. 2

Statutes and regulations should be revised and strictly enforced to adequately protect the best interest of the state.

- A. Competition requires statutes and regulations to ensure access of adequate training and dispatching of services.

#### **Access to Training**

The main reason for the pilotage profession is knowledge of local waters. A federal license only addresses, in a cursory way, a person's ability to pilot a ship; the federal license is weak on local knowledge. Trainees for state licenses can gain knowledge of local waters by working a port on a simulator or by gaining experience on the actual waterway. At present, there are no simulators in Alaska and few Alaskan ports have been installed on simulators in other states. Therefore, a trainee needs to gain experience by having access to actual vessels operating in waterways in which the trainee desires to be licensed.

Trainees in the Southeast Region, which until a few months ago was the only region with two competing pilot associations, find it difficult to obtain access to vessels in order to complete their experience requirements (see page 36 of Analysis of Public Need for explanation of Southeast Region situation). The sponsoring association assists the trainee by providing access to vessels that it has contracts with and by having experienced pilots conduct the training. However, the sponsoring association may not have contracts with vessels for all waters and ports with which the trainee needs experience. Naturally, a competing association is not likely to make vessels they have contracts with and their experienced pilots available to competitors for training purposes.

We recommend the board be given statutory authority requiring pilot associations to train all qualified candidates regardless of affiliation. However, pilot associations do not ultimately control access to a vessel. If the shipping industry wants the pilotage profession to remain competitive, industry needs to make sure their vessels are available to trainees from any pilot association. By requiring pilot associations to train qualified applicants in an equitable and timely manner, sufficient qualified pilots should be available to meet the needs of industry.

### **Dispatch of Pilots**

With competition, pilot associations may choose not to provide services to less lucrative ports or shipping companies. The Director of the Division of Occupational Licensing (OL) said, "*The State can neither guarantee marine pilotage services to industry nor insure the professional competency of marine pilots if the forces of competition dictate the terms and structure of the Alaska Pilotage System.*" A situation occurred in the Western Region in 1993 where one vessel moved in Dutch Harbor without a pilot and there was a threat other ships would also move unless a pilot was available on very short notice (see page 32 of Analysis of Public Need for explanation of Western Region situation). When BMP adopted emergency regulations to ensure pilotage service, a Superior Court judge ruled against the board and said that if an emergency was, in fact, found to exist the State could use other alternatives to ensure the availability of adequate pilotage services.

We recommend that the legislature specifically give BMP authority to revoke recognition of a pilot association or impose individual sanctions on a pilot or association who has a qualified pilot available, but refuses to provide pilotage services when requested. In addition, BMP should evaluate and recommend to the legislature other methods of solving disputes between competing associations. One possibility would be a law that requires resolution of disputes through binding arbitration.

- B. Allegations of pilot misconduct should be expeditiously handled by OL and the board. Sanctions levied should be equal to the infraction.

### **Reporting**

A pilot is required by regulation to report to the board within 10 days any incident of a vessel they are piloting going aground, colliding with another vessel or a dock, experiencing any casualty, or being damaged in any way. If a vessel is damaged, the pilot must report the incident as soon as possible after returning to shore. A pilot who fails to report an incident is subject to having his license suspended at the board's discretion. According to a former Marine Pilot Coordinator, pilots rarely report their own accidents timely. However, OL has found one advantage of competition is that all marine accidents, no matter how minor, get reported by competing marine pilots. If competition were to be eliminated, BMP would have to become more proactive and would need to exercise its authority of suspending a pilot's license if he failed to report a marine incident.

## Investigating

The Department of Commerce and Economic Development, Division of Occupational Licensing (OL) has not been following up on investigative cases regarding marine incidents in a timely manner. Furthermore, there is no documentation of case prioritization. Of the ten cases we reviewed, two had no action in the past seven months. The Anchorage investigator stated that he did not have time. The Division of Legislative Audit had cited the same problem in previous sunset audits of this board.

The Office of the Governor, Division of Policy had recommended in their *Improving Alaska's Marine Pilotage System* report of November 1990 that OL hire, with BMP approval, a Marine Pilot Coordinator to investigate accidents and incidents of pilot misconduct. Although this position was created and originally filled in January 1992, it was vacant from December 1992 to March 1993 and from August to October 1993. Investigations are being conducted by the Director of OL and by OL investigators. Pilots under investigation often continue to hold their license and work while an investigation is being conducted. If an investigation takes too long, the public could be endangered by an incompetent or negligent pilot. OL should establish documentation procedures to prioritize and track cases on a continuous basis. OL should work cases on a timely basis and close those files which will not go to a hearing.

## Disciplining

One would expect sanctions to be immediate and severe in a profession whose national association lobbies for a regulated monopoly because safety is of paramount concern. Both the USCG and other states have been criticized in law reviews for the lack of consistent disciplinary decisions and how lax some sanctions are compared to the magnitude of the incident. In a 1985 sunset audit, the Hawaii Legislative Auditor found the Board of Pilot Commissioners failed to take timely disciplinary action, was selective in its enforcement of rules, and had failed to develop adequate rules.

Alaska's marine pilotage statute is founded on the premise that any type of marine accident due to pilotage error while low in probability, would have a serious adverse impact on the State. Alaska Statute (AS) 08.62.150 states the board shall impose a disciplinary action; which can include a fine, letter of reprimand, or suspension or revocation of the pilot's license; if the board finds the pilot committed one of the offenses listed in that statute. Since the Alaska statute is founded on the premise of low probability, but high impact, which is reflected in Alaska's entry and licensing requirements, we question whether the maximum civil fine of \$5,000 (AS 08.62.155) that the board can impose is sufficiently high enough.

### Recommendation No. 3

#### The legislature should remove the responsibility of setting tariffs from the Board of Marine Pilots.

Alaska Statute (AS) 08.62.045 requires the Board of Marine Pilots to adopt by regulation maximum tariffs that may be charged by pilots for the provision of specific pilotage services. We recommend that the responsibility of setting a maximum tariff be taken away from the board for the following reasons.

#### **Untimely Establishment**

Prior to the Marine Pilotage Act in 1991, the board was not required to set tariffs, but to establish the standards by which pilotage fees may be established and to pay for audits, whenever necessary, to collect information needed to apply the standards.

The tariff, that was established in 1979, remained the same until the 1991 Act. SLA 1991 Chapter 89, Section 33 directed the board to implement the requirements for tariffs before January 1, 1992. The board did not meet this time requirement. Nor have they met subsequent time requirements.

The new tariff was eventually adopted by the regulations and became effective May 1992 with a repeal date of January 1, 1993. As of September 27, 1993, proposed regulations for 1993 tariffs have not gone into effect. According to OL's regulations specialist, both pilots and industry do not like to be locked into a tariff for a period longer than a year; yet the board finds it impossible to adopt each year's tariff in a timely manner.

#### **Time-Consuming Process**

The board expended a considerable amount of time and effort into the establishment of the 1992 tariff. Pilot associations presented proposals that included proposed rates for their region along with their justification for the rates. BMP requested information on individual pilot income from associations so a comparison could be made to information provided by other states on their average pilot income. Some of the associations were cooperative, but other associations never provided the requested information.

Also, the board created a panel, consisting of two board members and two non-board members, to assist them in their efforts to establish tariffs. While the panel expended some effort, it was eventually abolished without providing any substantive information to the board.

For the 1993 tariff, pilot associations submitted proposals which were reviewed and discussed by the board. Throughout the process, public comments were obtained and evaluated. Since November 1991, tariff setting has been discussed at almost every board meeting. We were told that on some occasions it was discussed over a two-day period.

Some individuals feel that, because the board has to spend so much time on tariffs, other issues, such as safety and licensing, are not being dealt with on a timely basis.

### **Arbitrarily Set**

To determine how tariffs were set, we reviewed minutes of board meetings and some of the proposals presented by the pilot associations. We reviewed proposals for one region and saw one association proposing an 80% increase and another a 98% increase. We were told that another region proposed an increase of approximately 300%. Also, we discussed this issue with individuals involved in the process.

We could not confirm that a specific methodology was used to establish the tariff that was adopted for 1992. We have been told that such a methodology does not exist because the tariff was arbitrarily established as a result of a compromise between the board, industry and pilots.

Except for the Western Region, all ports in May 1992 increased by 50%. The tariff for the Western Region increased by 35%. The proposed rates for 1993 show a change from the May 1992 rate for only the Southcentral and Western Regions. All ports in the Southcentral Region increased by 33% and ports in the Western Region by 27% and 33%. Rates for the newly created Kuskokwim Region have been proposed and are in the process of being adopted.

### **Require Financial Expertise**

Prior to adopting a tariff, AS 08.62.045(a) requires the board to consider various expenses and compensation related to pilotage services. However, the membership of the board does not require that anyone have the necessary expertise to analyze economic or financial information.

One of the proposals we reviewed contained some expenses for the association. There was no indication that the amounts were obtained from audited financial statements. When financial data is provided for future tariff setting, it should be prepared by an independent party and compiled in a manner that is uniform for all regions.

### **Conflict of Interest**

With two agents and two pilots on the board, a majority of the membership has, at some point, a direct financial interest (see Conflict of Interest discussion on page 16) in the decisions pertaining to tariffs. When tariffs are set for the regions they represent, members have to recuse themselves. When this is done, it reduces the effectiveness of a seven-member board.

Because of the concerns enumerated above, we believe the legislature should remove the responsibility of establishing tariffs from the board. We understand such an action is being considered in House Bill No. 237, which was introduced in March 1993. It places the

responsibility of establishing a fixed tariff with the Alaska Public Utilities Commission (APUC). We agree that the responsibility of establishing tariffs should be removed from BMP. Assigning this duty to APUC is an alternative that should be considered and evaluated.

#### Recommendation No. 4

The examination process for marine pilots needs to be revised.

The Board of Marine Pilots (BMP) has been given statutory authorization to examine applicants for deputy marine pilots and marine pilots as they deem necessary. Through regulation, the board has required an oral examination and a written examination.

*12 AAC 56.070. EXAMINATIONS. (a) The examinations required by 12 AAC 56.030(b), 12 AAC 56.040(b) and 12 AAC 56.050(b) for permanent licensure will be given at least once a year at a meeting of the board.*

*(b) Both the written and oral examination will cover the following topics:*

- (1) international rules of the road;*
- (2) seamanship, including shiphandling underway, docking and undocking, including use of tugs and anchors, and emergency procedures;*
- (3) chart navigation, including aids to navigation, chart symbols and abbreviations, and use of charts in piloting;*
- (4) rules and regulations, including all federal and state statutes and regulations, affecting the piloting of vessels in compulsory pilotage waters of Alaska;*
- (5) pilot responsibilities, including duties of a pilot, relationship between master and pilot, practical operation of marine radar including plotting, and engine order and rudder commands for U.S. merchant vessels, U.S. naval vessels, and foreign merchant vessels; and*
- (6) local knowledge of individual geographical areas, including routes from sea to port and port to port, change of course points and distances passed abeam, names and locations of landmarks, waterways and aids to navigation, tides and currents, weather, restricted areas and explosive anchorages, dredged channels, cable areas, and other anchorages, docks and dangers.*

Our review of examinations determined that topics examined were in accordance with regulations, and the individuals licensed by the board had received the required percentage for passage. However, there is an apparent need for a change within the current written and oral examination process.

A. The written examination should be more objective.

The BMP has attempted to have a pilot board member be present at the examination. OL has stated the purpose of the pilot's presence is to answer any technical questions that may come up during the examination, which departmental staff cannot answer. The conflict of interest issue (see page 16) has discouraged pilot board members operating within the same region as an examination applicant from participating in this process.

If a pilot board member is involved in examining pilots of a rival association, a question of unethical treatment could be raised by the applicant. In response to one such question, the Attorney General's Office stated that the board member questioned in a particular case "*consistently administered exams fairly and objectively.*" However, the Attorney General's Office advised the board to consider having the non-rival pilot proctor examinations, unless it posed an inconvenience. Nevertheless, pilots are more cautious and less likely to proctor an examination for fear of having an ethical complaint filed against them.

By making the examination more objective, the need for any exchange between the applicant and proctors could be diminished or even eliminated. This would remove pilot board members from a potential conflict of interest situation and alleviate any fear the applicant has of being wrongfully denied a fair chance at successful passage because of undue influence from competing forces.

B. The oral examination, as it is currently structured, should be eliminated.

The process for the oral examination of marine pilots involves the board members asking the applicant a number of questions from a pool of previously prepared questions for that region. The applicant is then required to respond to the question(s). The topics asked are the same as the written examination defined in 12 AAC 56.070.

The oral examination has not been the sole determinant in the decision to deny a license to a particular applicant. Thus, its usefulness is questioned. Because of its nature, an oral examination creates a feeling of arbitrariness unless the oral process is sufficiently documented. However, we found BMP lacks sufficient documentation on their oral examination procedures. There is no reporting of which questions the applicant was asked, how they responded, and how the individual score was derived. With the increase in challenges of board members on the conflict of interest issue, this is one more reason to eliminate the oral examination process and concentrate on the written examination. Unless the subjectivity is eliminated and documentation procedures are improved, we recommend elimination of the oral examination.

The BMP has been given the responsibility of licensing qualified applicants to pilot vessels in Alaskan waters. By making the written examination more objective and eliminating the oral examination, we believe the BMP would be more effective and efficient in performing this duty.

### Recommendation No. 5

The statutory criteria for appointment and regional representation of members to the BMP should be refined and strictly adhered to by the governor during the selection and appointment process.

Board members are appointed by the governor, and the creation and composition of those boards are defined within Alaska statutes.

*AS 08.01.020. Board Organization. Board members are appointed by the governor and serve at the pleasure of the governor.*

*AS 08.62.010. Creation and membership of the board. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or the commissioner's designee. Not more than one pilot and one agent or manager shall be from any one judicial district. All members of the board shall be residents of the state.*

According to our review of board appointments, from a technically legal perspective, the board has been adequately composed per the statutes. However, public and agent member appointments raise some concerns which should be addressed.

### **Public Member Criteria**

The main purpose for public membership on regulatory boards is to add an objective viewpoint which is not swayed towards the profession or the industry which financially rely on that profession. If a public member is not independent from the profession and industry, objectivity could be compromised. Below is the legal criteria to be used for public member appointments to boards and commissions.

*AS 08.01.025. Public members. A public member of a board may not*

- (1) be engaged in the occupation that the board regulates;*
- (2) be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation; or*
- (3) have a direct financial interest in the occupation that the board regulates.*

In one instance, a public member appointed by the governor to BMP had an indirect financial link to the cruise ship industry. A representative of the industry sent a letter to the board member which an Assistant Attorney General referred to as a "thinly-veiled threat" imposing

economic sanctions against the member. In response to this letter, the member resigned his board seat. We question whether an appointment of this nature can be independent of the forces of industry.

It is our opinion that if an individual has a financial interest in the pilotage profession, whether that be direct or indirect, they should not be appointed as the public member to the board. This financial interest should not be analyzed only if related to pilots, but to the industry which is dependent on pilotage services as well. To avoid this in the future, the board should recommend a change in the statutes which would eliminate a public member candidate with any financial interest (direct or indirect) to the pilotage profession or the industry utilizing that profession.

### **Agent Member Criteria**

An agent appointment to the board has also raised some concerns which should be addressed. An agent member of the board is not currently engaged in an agent's capacity to provide pilotage services. However, the member has properly registered with the State as an agent as required by statute (see below).

*AS 08.62.187. Registration of agents required. A person may not act as an agent of a vessel subject to this chapter unless the person's name appears on the register of agents kept under AS 08.62.040(a)(3).*

Yet, by definition within the regulations, an agent member must be acting on behalf of an owner or operator of a vessel to secure pilotage services.

*12 AAC 56.990. DEFINITIONS. In this Chapter (1) "agent" means a person residing within the state who acts on behalf of the owner or operator of a vessel with actual or apparent authority for the purposes of securing pilotage services.*

We question whether this appointment was actually how the legislature intended agents to be represented on the board. If this individual has not acted in the profession (an agent) in which they represent on the board, how effectively do they represent that profession?

It is our opinion that an agent member of the board should be actively engaged in contracting with an owner or operator of a vessel to secure pilotage services, or, at the very least, be recently retired from that profession. This will prevent an individual not active in this field from representing an industry in which they are not considered a "peer."

### **Regional Representation**

While BMP appointments have met the criteria of not more than one pilot and one agent or manager being from any one judicial district, we question whether this requirement is meaningful to the pilotage profession. If the point of the requirement is to ensure adequate representation for all pilots, then this requirement does not ensure representation. Judicial

districts and pilot regions recognized by the board do not coincide. This means technically correct appointments could still result in two members from the same pilot region but different judicial districts. We recommend that the wording of AS 08.62.010 be changed to require not more than one pilot and one agent or manager shall be from the same pilot region recognized by the board.

By making the revision to the public member criteria and assuring that industry is adequately represented on the board through the agent seat, the composition of the board will be as intended by the legislature. Changing the geographic location criteria from judicial district to pilot region will make the board more representative and more effective in accomplishing its purpose. We further recommend that the governor adhere to public and agent member criteria when making appointments to the BMP.

#### Recommendation No. 6

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation (AS 08.01.065(c)). Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not associated with the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993, *Occupational Licensing Fee-Setting Policy Assessment* report OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project will be scheduled for March 1994." DCED has recently indicated that, for the determination of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

#### Recommendation No. 7

OL should continue their efforts to adequately provide public notice of board meetings and application deadlines for examinations.

OL has not consistently provided adequate public notice of board meetings and application deadlines for examinations. Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 44.62.310 requires reasonable notice for all meetings required to be open. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Applications for examination must be received by the board at least 60 days prior to the scheduled examination (12 AAC 56.070).

OL's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to an unplanned teleconference. We reviewed the public notices of 22 BMP meetings, including teleconferences and examinations, and determined that six, or 27%, were not adequately noticed in accordance with OL's internal policy. Four of those six errors related to teleconferences, and the remaining two errors were related to examination application deadline. However, the errors in the application deadline for examinations did not appear to impede applicants for licensure.

OL has a large volume of public notices and the division's public notice process is very labor intensive. OL is in the process of initiating a system to automate the public notices.

OL should continue their efforts to automate the public notice process in order to ensure adequate public notice.

#### Recommendation No. 8

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the Marine Pilot Coordinator is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. As a result, board members may not review the minutes until several months later, when they may not be able to properly determine their accuracy. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

#### Recommendation No. 9

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, division

personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

Recommendation No. 10

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the licensure application for each professional occupation to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The Deputy Marine Pilot, Biennial Renewal of Marine Pilot License, and the Vessel Agent Biennial Renewal applications require height, weight, and hair and eye color. The Biennial Renewal of Marine Pilot License and Vessel Agent application also asks the sex of the applicant. EEO, within the Department of Administration, Division of Personnel, discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The application forms used by OL should be reviewed with EEO to make sure the requested information is pertinent to the licensure of deputy marine pilots and vessel agents. OL indicated this information is requested for identification purposes to prevent fraud when a licensee moves from one state to another. If this information is considered necessary for identification, to prevent fraud, or for other reasons, it should be separated from the application prior to review of the application for licensure.

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## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

#### *The extent to which the board, commission, or program has operated in the public interest.*

BMP has only been partially successful at operating in the public interest. Some of the board's lack of success has been within their realm of control and some circumstances have been beyond the board's control.

Areas within the board's control include the goals they establish for themselves, licensing pilots, establishing tariffs, and examination procedures. In the Marine Pilot Act of 1991, the legislature established a competitive environment for marine piloting. However, the board has developed goals that are contrary to this mandate. Until the board can document evidence that a non-competitive system is superior in assuring public and environmental safety, they should follow statutory policy mandates (see Recommendation No. 1). BMP has licensed qualified applicants, but some applicants have received their license by hiring an attorney and going through an appeal process. The board has not been consistent in applying licensing requirements to all applicants. Hearing officers have issued decisions based on precedent set by the board and point out BMP cannot be arbitrary when licensing applicants. BMP has not taken an active role in setting tariffs (see Recommendation No. 3). Instead of establishing a reasonable methodology, tariffs have been arbitrarily set. There have been problems with lack of documentation and clarity in BMP's examination process. In addition, BMP's examination process is not objective (see Recommendation No. 4).

Those areas outside of BMP's control include the burdensome regulation process, the vacancy of OL employee positions, and conflict of interest situations. BMP has approved regulations to meet the intent of the Marine Pilot Act of 1991, but most of those regulations are still under review by the Department of Law. The current regulation revision process has been over a two-year period. OL has hired a Marine Pilot Coordinator to conduct investigations which the board will then hear for disciplinary purposes. But since the position was established in January 1992, it has been vacant for a total of seven months (see Recommendation No. 2). The duties of the board, coupled with its membership requirements, create conflict of interest situations. On the advice of Assistant Attorney Generals' members recuse themselves from potential conflict of interest situations, which makes the board less effective (see Conflict of Interest discussion on page 16).

*The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.*

In its Annual Performance Report for FY 93, BMP stated that despite its efforts to implement the Marine Pilot Act of 1991, it had been "thwarted in many of its efforts by incomplete legislation, competition among pilot organizations, and a lack of legal support from Board representation to the Superior court level." BMP's reference to incomplete legislation refers to the number of times a decision of the board is appealed and the board's decision is not supported by a hearing officer. BMP believes the broad statutory authority the legislature intended to give the board is being eroded by hearing officer decisions. Hearing officer decisions are discussed in greater detail on page 36 in the section dealing with qualified applicants.

The Marine Pilot Act of 1991 created a competitive economic system for the marine pilotage profession in Alaska. BMP has found the competitive system required by the Act created situations where board members may violate the Alaska Executive Branch Ethics Act (see page 16) unless members recuse themselves from voting on certain issues. During the period of our review, three ethics complaints have been filed against board members. Implementation of Recommendation Nos. 3 and 4 would increase BMP's effectiveness as those recommendations remove conflict of interest situations from the board.

The third situation that led BMP to believe their efforts to implement the Marine Pilot Act of 1991 has been thwarted is the lack of legal support from the Attorney General's Office in appealing a case to the Supreme Court level. In June 1993, BMP declared an emergency situation existed in the Western Region. Two competing pilot associations operated in the Western Region. One pilot association had a preferred customer policy refusing service to a client who uses pilots from another organization. According to a judge who later reviewed the situation, the competing association had a disproportionate share of shipping contracts to its membership. An Assistant Attorney General stated that since the first association threatened to boycott, industry was concerned the second association would not be able to provide the required piloting services. BMP was informed one vessel had moved without a pilot when one was available because of the two pilot associations stances. BMP was also informed more ships involved in salmon fisheries would move without a pilot unless one was available on very short notice.

Believing the movement of a vessel without a pilot created a danger to life, property, and the coastal environment, BMP developed emergency regulations which were signed by the Lieutenant Governor on June 30, 1993. The emergency regulations required the two pilot associations to dispatch pilots upon the request of an agent representing a vessel located in the compulsory pilotage waters of Western Alaska. The emergency regulations also required the pilot associations to accept a validly licensed pilot into its membership within 24 hours after receiving documentation. The association with the majority of the piloting jobs for the shipping industry filed a motion in Superior Court requesting a temporary restraining order, to which the State responded by filing for compliance to its statute and the emergency order.

The judge ruled against the State and said that if an emergency was, in fact, found to exist the State could use other alternatives to ensure the availability of adequate pilotage services.

BMP voted unanimously to appeal the judge's decision. An Assistant Attorney General felt there were legal merits to the case that would support the board's petition for review. But a decision was made by the Attorney General's Office to not pursue the appeal for administrative, rather than legal reasons. BMP believes allowing the judge's ruling to stand unchallenged seriously weakens the credibility and viability of the board. We recommend the board be given the authority through statute to place the burden of having competent pilots available on the association with stringent penalties if service is refused when a qualified pilot is available (see Recommendation No. 2).

*The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.*

BMP has actively participated in statutory changes regarding the marine pilotage profession. In BMP's FY 91 Annual Report, the board indicated a goal accomplished for the year was that BMP participated in the legislative process regarding the Marine Pilot Act of 1991.

At the April 27-28, 1993 BMP meeting, the members voted to approve the concept of HB 237, which recommends changes to the Marine Pilot Act, and HB 243, which establishes pilot requirements on the Kuskokwim River. In its FY 93 Annual Report, BMP stated the board strongly supported certain aspects of HB 237. The board identified those aspects as being:

1. limiting the number of pilots licensed per region;
2. establishing fixed tariffs; and
3. limiting the dollar amount donated for lobbying efforts by both industry and pilot associations.

Although BMP supports aspects of HB 237, no BMP members participated in any legislative committee meetings regarding HB 237 in FY 93.

In its goals for FY 94, BMP plans to strongly encourage and support reform of the Marine Pilot Act of 1991. BMP mentions its goals as being:

1. eliminating competition within regions;
2. establishing fixed tariffs;
3. firmly establishing the States' interests as the number one priority in the Act; and
4. investigating greater State involvement and the possibilities of contract pilots and dispatch.

BMP supports aspects of HB 237 and have stated so in their FY 94 goals. This bill would restrict competition. Members of pilot associations question whether BMP is specifically

prohibited by AS 08.62.040 (d), which states the board may not take action resulting in anti-competitive activities, from supporting measures that limit competition.

*The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.*

The location, date and time of board meetings are published in newspapers around the State so that interested public members can attend the meetings. However, we found that adequate public notice was not always given (see Recommendation No. 7). OL's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to an unplanned teleconference. In spite of sometimes inadequate notice, interested persons are always in attendance at board meetings.

BMP has been responsive to public participants by setting a public comment time period each day during BMP meetings. During the lengthy regulation process, public notice was allowed several times during the meeting to discuss the specific sections of the regulations on which BMP was currently discussing.

BMP has also called on knowledgeable public individuals to explain issues. For example, a local medical doctor read the State of Washington medical requirements and the proposed pilot medical requirements for the State of Alaska. The doctor offered his opinion as to medical testing BMP might want to consider adopting.

When BMP has voted on some issues, the board has asked the public present if there were any questions or problems with the action taken. Individuals have used this opportunity to ask questions and have appeared satisfied with the responses.

In some instances BMP members have relinquished their seat to a member of the public for commenting on a certain topic. We did not see any evidence where others who wanted to comment were not given the opportunity.

*The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.*

BMP has encouraged public participation in the making of its regulations. The passage of the Marine Pilot Act of 1991 required BMP to extensively rewrite regulations for Marine Pilots. The process started at the January 1992 BMP meeting. Most of the first draft for the regulations were written by the Marine Pilot Coordinator. The draft regulations were released for public comment from October 23 to November 27, 1992. Twenty different individuals and/or groups submitted written comments. In addition, several people came to the December 1-4, 1992 BMP meeting and made verbal comment on the draft regulations.

The draft regulations were extensively revised based on the public comments received. The final regulations tried to accommodate the concerns expressed by the commenting public, which was composed of the shipping industry, pilot associations, individual pilots, and captains with the Alaska Marine Highway System (AMHS). BMP decided to eliminate a section that provided funding for training programs because many people described the section as vague. Drug and alcohol regulations were changed so that unsubstantiated results from tests would not be given to the USCG. The biennial license renewal requirements were changed so that AMHS trips would count as familiarization trips. The regional requirements for deputy marine pilot license were changed to accommodate two competing associations in the Southeast Region. The Director of Occupational Licensing referred to the final deputy marine training requirements for that region as *"the lowest common denominator that could be reached by all interested parties."*

*The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.*

Public complaints have been filed against BMP with the Office of the Ombudsman, ethics complaints have been filed with the Department of Law, and BMP decisions have been appealed to OL hearing officers. While some of these complaints have been processed and resolved, many complaints are not resolved to date. We found that many cases are not closed in a timely manner and there is no documentation of prioritization of cases.

The Office of the Ombudsman closed two marine pilot cases during the time period July 1, 1989 to August 17, 1993. One case was closed because the complainant had not appealed the board's decision through the available administrative appeal process. The second case was closed because the complainant was waiting for the Marine Pilot Coordinator's decision on his application and the board's subsequent action.

Three ethics complaints have been filed against BMP members with the Department of Law since 1991. Two of the complaints have been dismissed, but one complaint is still open. The open case was filed on December 15, 1992.

OL investigated 55 cases against marine pilots, unlicensed marine pilots, and marine pilots applying for entry or upgrade during the time period FY 91 through FY 93. At the end of FY 93, 20 of these cases remained open. As discussed in Recommendation No. 2, some cases are not being investigated in a timely manner.

*The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.*

BMP has had difficulty in issuing professional licenses and endorsements. BMP has responsibility for adopting regulations establishing qualifications of and required training for pilots, reviewing and approving training programs conducted by pilot organizations, and approving license applications. As explained in Recommendation No. 4, BMP does not have objective testing procedures for licensing applicants.

One difficulty trainee applicants face is definitely the result of the competitive economic situation (see Recommendation No. 2). Competition can create a barrier to entry into the profession due to a trainee's inability in obtaining access to vessels to complete their experience requirements. A situation occurred in the Spring of 1992 in the Southeast Region that illustrates how competition hinders a trainee's access to vessels. A trainee was being sponsored by one pilot association. The union for the industry endorses the competing pilot association. The union sent out a letter to AMHS deck officers requesting solidarity regardless of pilot association affiliation. The letter goes on to say, "*I am deeply concerned that any member continuing to work, or any other members accepting employment with this new splinter group, will cause a reaction against our jobs that we may not be able to stop.*"

Ten days after the union letter was sent, a letter to his shipmates went out from the captain of the ferry that the trainee was on board as a pilot observer. In his letter, the captain stated that he is convinced the union-endorsed pilots would raid AMHS positions should their pilot association go under. The captain went on to say, "*For my part, I refuse to sign another pilotage trip until the pilot groups are one.*" The captain refused to sign the trainee's pilotage trip and the trainee was required to disembark at Juneau. The captain did not appear to have any ill will toward the trainee but was instead responding to what he perceived as a threat. A timely and decisive action by the AMHS port captain alleviated the problem for pilot observers on AMHS vessels.

The port captain developed a formal pilot observer plan that allows access to AMHS vessels irrespective of sponsoring association. While the access problem on AMHS vessels has been solved, this same access problem exists on industry vessels piloted by competing associations. We recommend a statutory requirement to address equal access to a competing association's contracted vessel regardless of association sponsorship (see Recommendation No. 2).

The difficulty of approving licenses by BMP is evidenced by the number of times a hearing officer has reversed BMP's decision on denying an applicant a license or upgrade. Over the two-year period of FY 92 and FY 93, 19%, or 20 out of 104 applicants, were denied a license or upgrade. Fifty percent of the applicants denied licensure or upgrade appealed that decision. We reviewed the case files of seven of the ten applicants who appealed and found that two of the cases were still open, one case was dismissed at the applicant's request, in one case the hearing officer upheld BMP's decision, and in three of the cases the hearing officer rejected BMP's decision.

The regulations regarding licenses and endorsements have been revised effective October 2, 1993. But even the new regulations do not address the essential problems BMP has had regulating the profession. These problems are the competitive economic system in Alaska for the marine pilotage profession and the board's lack of consistently applying standards (See Recommendation No. 1).

One of the board members explained that since competition started, applicants are trying to jump steps in the process of upgrading the ships they are licensed to pilot. The board member said that before competition went into effect, unqualified applicants could not get past their own association to apply for licensure or upgrade; the pilot associations would request that the applicant obtain all the required experience prior to applying for licensure.

Once BMP granted a few pilots license upgrades without completely fulfilling all the requirements, other pilots challenged the licensing requirements. Since the regulations were written to allow BMP to use its discretion to waive license qualification requirements, applicants can make valid interpretations which are strictly for personal benefit and not to enhance public or environmental safety.

While competition may have an impact on the number of unqualified applicants trying to get licensed, another problem is that BMP has not been consistent in enforcing experience requirements. BMP granted a license to two applicants who did not have the required pilotage experience. This licensing action on BMP's part has had a domino effect in that two other applicants who were denied a license cited BMP's decision in the other applicants' cases. In two of the cases we reviewed where the hearing officer reversed the decision of BMP, the applicant was trying to jump steps. In the decision on one of the cases, the hearing officer pointed out that BMP had issued a license to two applicants who did not have the required pilotage experience and that BMP could not arbitrarily decide when to enforce experience requirements. The hearing officer also pointed out that BMP could not arbitrarily require a step system unless every pilot went through that system.

BMP appeared to be acting arbitrarily in choosing to take no action to renew a pilot's license in the third case we reviewed where the hearing officer recommended an action contrary to BMP's decision. The hearing officer initially recommended to BMP that an interim license be granted to the pilot. but the case was subsequently dismissed when the pilot fulfilled the familiarization trip requirement.

*The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

We did not find any evidence that BMP was not complying with state personnel practices, including affirmative action, in qualifying applicants or in hiring the Marine Pilot Coordinator. Each time BMP has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. However, we

recommend that OL work with EEO to determine proper application questions (see Recommendation No. 6).

*The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.*

See Recommendation Nos. 1 through No. 10.

## APPENDIX A

Department of Commerce and Economic Development  
Board of Marine Pilots  
Schedule of Revenues Compared with Expenditures  
(Unaudited)  
(Note 1)

Revenues (Note 2)	\$ 12,995
Expenditures (Note 3)	<u>125,040</u>
Excess of Expenditures over Revenues (Note 3)	<u>(\$112,045)</u>

### Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

### Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Licenses are renewed biennially. Because of the renewals, revenues vary substantially year-to-year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

### Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 6 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

**APPENDIX B**  
**Department of Commerce and Economic Development**  
**Board of Marine Pilots**  
**Application, License and Other Fees<sup>1</sup>**

**Application and Other Fees<sup>2</sup>**

Type of Fee	Amount
Application	\$ 50
Examination	100
Extension of route or tonnage upgrade application	100
License endorsement application	100

**License Fees**

License Category	Initial and Biennial Renewal Fee <sup>3</sup>
Marine Pilot License	\$2,000
Deputy Marine Pilot License	2,000
Vessel Agent	100

<sup>1</sup>The licensing fees charged by the Division of Occupational Licensing for the Board of Marine Pilots are set out in the Alaska Administrative Code at § 12 AAC 02.240. The last fee change for this board was effective November 28, 1992. According to the Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

<sup>2</sup>The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

<sup>3</sup>The biennial renewal period for the Board of Marine Pilots is December 31, 1994.

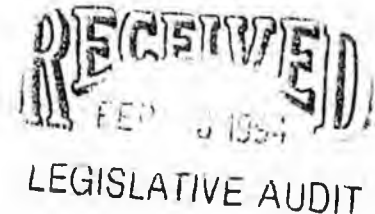
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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February 3, 1994

Mr. Randy Welker  
Legislative Auditor  
Legislative Budget and  
Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300



Dear Mr. Welker:

RE: Preliminary Audit Report, Board of Marine Pilots

The Board of Marine Pilots is an independent board that oversees a highly contentious industry. Often decisions of the board are challenged by claims and counterclaims that are settled at the Hearing Officer level. In the report conclusion (page 13), the auditors state that their recommendations, if implemented, will improve the efficiency and effectiveness of the board. Marine pilotage is a very complex and controversial issue. I am not confident that this audit has addressed these controversial issues sufficiently to make realistic recommendations.

In reviewing the Preliminary Audit Report, Board of Marine Pilots, we have noted several discrepancies. Although some of the problems with the report were related to each other and spread throughout the document, we have endeavored to group our comments in relation to the recommendations made by the auditors.

Recommendation No. 1

The legislature should extend the Board of Marine Pilots (BMP) termination date to June 30, 1998.

The department concurs with the recommendation but feels that we must comment on the text of the audit.

The auditors state that the board is not operating in the public interest by establishing goals that are in direct opposition to its statutory policy mandate to operate in a competitive environment. Although the board does state in its FY 93 annual report that its goals are to eliminate competition, it was doing this by supporting legislation that would bring about changes to the pilotage system. The board has recently changed its opinion on HB 237 and has taken a neutral position. While this legislation is being considered, this independent board continues to act completely within the law as mandated by The Marine Pilot Act of 1991. The Marine Pilot Board (MPB) continues to recognize qualified pilot