

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8968 SENATE RESOURCES

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.

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.

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 Bungardner, Agent
Mark E. Springer, Public Member
John C. Klepper, Public Member

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.

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

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.

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.
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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

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.

with in 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 the 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. ,

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 Fees¹

Application and Other Fees²

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 ³
Marine Pilot License	\$2,000
Deputy Marine Pilot License	2,000
Vessel Agent	100

¹The 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.

²The 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.

³The 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

RECEIVED
FEB 3 1994
LEGISLATIVE AUDIT

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

organizations and continues to license qualified pilots regardless of their affiliation. Although the composition of the board creates conflict of interest issues, we believe it has made every effort to address its business in a fair and impartial manner.

On page 17, the auditors place the burden of proof upon the board to demonstrate that competition is detrimental to protecting the interests of the state before it establishes goals which are contrary to its mandated policy. Albeit the audit then continues to make the board's point by stating several major flaws in the present system.

On page 17 of the report, the auditor cites examples where competition has been detrimental to providing training opportunities that would further the state's interest by licensing a better qualified pilot.

On page 18, the auditors cite an example of problems with the dispatch of pilots (the Western Region incident). The idea of a competitive piloting system walks a fine line between acting in the state's best interest (protecting life, property, and the environment) and violating the provisions of AS 08.62.157 and AS 08.62.163. By allowing pilots, through their organizations, to enter directly into contractual agreements with shipping companies, competitive piloting has the potential to compromise the pilot's ability to act independently, and therefore has the potential to compromise safety.

On pages 16 and 21, the auditors cite examples of how competitive piloting has impeded the board in acting in the best interest of the state by creating conflict of interest situations under the Alaska Executive Branch Ethics Act. Four ethics violations have been filed against members of the Board of Marine Pilots; none of these complaints have been sustained.

Recommendation No. 2

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

The department has taken a neutral position on how the statute and ultimately the regulations should be changed. The audit illustrates the overall problems with the current statute but has not probed deeply enough to validate the feasibility of their recommendations.

Recommendation 2(A)

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

The department does not consider this recommendation a realistic solution to the problem.

The auditors state that due to the competitive economic structure of marine pilotage in Alaska, the Board of Marine Pilots should be given statutory authority to compel pilot organizations to provide training opportunities to all qualified pilot trainees. However, in the preceding paragraph the auditors state, "Naturally, a competing association is not likely to make the vessels they have contracts with, and their experienced pilots, available to competitors for training purposes." Due to the need of the members of competing pilot organizations to increase their numbers in order to gain an economically viable share of the market, Pilot Docking Evaluation Reports have already lost their objectivity. These reports are the basis by which the Division of Occupational Licensing tracks a trainee's progress and evaluates his/her experience prior to licensure. If a pilot organization needs these trainees to be licensed in order to compete, their training program may already be compromised. It is unlikely that a pilot organization can be legally regulated into providing training for their competition. It is also unlikely that industry, i.e. foreign shipping companies, can be regulated into making their ships available for training to pilot associations that they do not hold contracts with.

There are many legal questions to be covered by this recommendation. Marine pilots carry \$250,000 liability insurance. Can the board, by regulation, compel training pilots from one pilot organization to be financially responsible for the actions of their competition's trainee?

Although recommendation number 2(A) suggests giving the Board of Marine Pilots specific statutory authority to revoke recognition of a pilot organization or impose sanctions on a pilot who fails to dispatch when available, it also suggests the use of binding arbitration to solve disputes between pilot organizations and industry. As illustrated by the pilotage dispute in the western region during the summer of 1993, a potential threat to the public safety by vessels moving without pilots aboard will not wait for the deliberative process of binding arbitration.

Recommendation 2 (B)

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

The department agrees with the recommendation: but not the supporting text.

The auditors suggest that if competition were eliminated, the Board of Marine Pilots would have to become more proactive and would need to exercise its authority of suspending a pilot's license if he/she failed to report a marine incident. The department considers the suspension of a pilot's license because of a failure to report an accident to be an unrealistic penalty. This particular concern of the auditor is blown out of proportion inasmuch as now that there is a Marine Pilot Coordinator, the board is and has been proactive.

The auditors stated that the Division of Occupational Licensing has not been following up on investigative cases and closing them in a timely manner. The auditor cites two cases that were reviewed that had no action taken on them in seven months.

The auditors cite the vacancy of the Marine Pilot Coordinator position as one possible reason for this deficiency and also a lack of documented prioritization of cases.

The following is an excerpt of the Division of Occupational Licensing's reply to the Office of Management and Budget regarding prioritization of investigations:

"Within the Investigative Unit, priorities are established as to what cases should be investigated before others. All reports of noncompliance result in a case being opened provided the complaint is not frivolous and potential violation of the law exists.

The exception to this is either a noncooperative complainant or the lack of a competent witness. Anonymous reports will be investigated if the severity of the report dictates such action. Once a case is opened, the following priorities are established to determine where the scarce investigator time will be applied:

1. incidents which represent an immediate danger to the public health and safety. This includes incidents of a continuing nature;
2. incidents which by the severity of their nature dictate a high priority. This also may involve incidents of a continuing nature;
3. routine cases which may involve a one-time complaint;
4. incidents which require a proactive initiation or are the result of violently opposed schools of thought for professional treatment or a time versus expected results. These categories will most likely result in no priority assigned. Due to manpower limitations, the division can only respond to complaints and must allocate it's scarce investigative resources where we get the greatest results. This leaves many professions without adequate investigative services."

From 1989 to the present, the Division of Occupational Licensing has opened and investigated 96 cases involving state licensed pilots; 77 of those cases, or 80.2%, of the total have been closed.

In 1989, 17 cases were opened. All of these cases, or 100%, have been closed.

In 1990, 11 cases were opened. All of these cases, or 100%, have been closed.

In 1991, 17 cases were opened; 15 of these cases, or 88%, have been closed. The remaining two cases, or 12%, have been fully investigated, are in litigation, and cannot be closed until the litigation is completed.

In 1992, 25 cases were opened; 22 of these cases, or 88%, have been closed. Of the remaining three cases, or 12%, two are awaiting action by the United States Coast Guard before the state can proceed, and one case is pending an MOA or litigation if the MOA is not agreed to.

In 1993 (to date), 26 cases have been opened; 12 of these cases, or 44%, have been closed. The remaining 14 cases, or 56%, are in the process of being investigated, are in litigation, or are awaiting hearing officer review.

Of all 96 cases opened since 1989, 19 cases remain open; 14 cases, or 73.7%, of those cases remaining open, were opened in 1993. Some of the cases that remain open were initiated by the hearing officer and are not under the control of the Division of Occupational Licensing.

Recommendation No. 3

The Legislature should remove the responsibility of setting tariff from the Board of Marine Pilots

The department concurs with recommendation No. 3.

Recommendation No. 4

The examination process for marine pilots needs to be revised.

The department concurs with this recommendation.

Recommendation No. 4 (A)

The written examination should be more objective.

The department concurs with this recommendation.

Recommendation No. 4 (B)

The oral exam as it is currently structured should be eliminated.

Because of the conflict of interest issue, competition, and the past board practices, the department concurs with this recommendation. However, the board should still retain the right and duty to question an applicant as to his/her work experience, credentials, and application.

Recommendation 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.

The department has no objection to this recommendation but feels that the audit made only a cursory review of the problems concerning the composition of the board.

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 licenses that are more reflective of the actual regulatory cost of the occupation.

As this recommendation is applied to the MPB, the department disagrees with this recommendation because it is nonreflective of the MPB fee setting practice. The auditor's comments are general in nature and apply to other occupations but not the MPB. The 1991 Marine Pilot Act authorizes a Marine Pilot Coordinator with the combined responsibility of board executive secretary and investigator. To pay for this new position, all licensed pilots were subject to a one-time additional \$805.00 for FY 92. The bi-annual license fees for pilots increased from \$180.00 to \$2,000.00. These fees were collected as of January 1, 1993, consequently the MPB was the first board to have its fees adjusted to reflect the actual cost. The department does agree that the accounting system is not perfect, but with additional staffing, more precise accounting can be achieved.

An OMB audit of the department fee setting practice was completed in early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators and hearing officers, has been implemented effective July 1, 1993 by the division for all occupations.

The OMB audit recommended a cap on incremental fee increases of no more than 10-25% per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. Unpredictable and unforeseen program expenses occur due to investigations, litigation, and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the division's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable limit" for fee increase adjustments under the OMB recommendations and in accordance with AS 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as potential economic hardships for licensees who wish to renew their licenses, sit for examinations, etc. The division will make requests

for additional spending allocation to Legislative Budget and Audit Committee to alleviate these harsh consequences, but failing favorable consideration, the division must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system at the time the decision had to be made. The data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff when fee decisions were made.

In conclusion, the Department of Commerce and Economic Development has worked with the OMB auditor on a continuing basis regarding this issue.

Recommendation No. 7

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

The division is continuing to insure that each board meeting and examination is properly public noticed. As indicated in the report, four of the six errors concerned teleconferences. The majority of these teleconferences involved a series of emergency meetings of the board concerning the possible cessation of pilotage in the Western Pilotage Region due to a dispute between pilotage associations. All interested parties associated with this situation were notified of the teleconference and participated in it. No complaints of not being notified have been received. Consequently the intent of the statute has been met but there exists no documentation in the records that proper notice was given through the normal process. The Board of Marine Pilots is operational in nature inasmuch as the board is responsible to insure safe pilotage throughout the state and must act accordingly.

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 the production of an annual report.

A rewrite of AS 08.01 is available, and the division is seeking legislative support to introduce it. The rewrite makes numerous revisions including amendments to the statutes cited in this recommendation.

The rewrite included revisions which make drafting minutes a department responsibility. It also provides for an annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics

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WALTER J. HICKEL
GOVERNOR

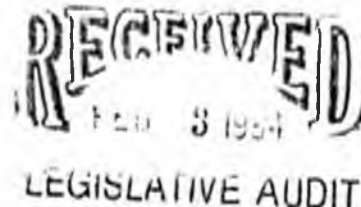


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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1994

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



Dear Mr. Welker:

We are responding to your request for a written response to preliminary audit report 08-1415-94 Department of Commerce and Economic Development, Board of Marine Pilots, dated November 4, 1993.

We are pleased that Legislative Audit has concluded that appointments to the Board of Marine Pilots have been made in accordance with state statutes (Recommendation no. 5, page 24).

Regarding Recommendation No. 5, the following response is made:

The Governor's Office believes that the public member in question had no "direct financial interest in the occupation that the board regulates". This is in accordance with AS 08.01.025, relating to public members of occupational licensing boards. Legislative Audit concluded the same. We believe that the appointment of this public member was in accordance with statute. Legislative Audit reached the same conclusion.

However, Legislative Audit determined that the public member in question must have had an indirect conflict of interest since he resigned after a threat from the cruise ship industry. We believe that the fact that the cruise ship industry threatened this member and that this member chose to remove himself from this situation does not indicate that the public member had a conflict of interest. We believe this presumption of Legislative Audit to be in error and unsubstantiated.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Kristie D. Leaf".

Kristie D. Leaf
Director, Boards and Commissions

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
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February 4, 1994

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Department of Commerce and Economic Development's and the Office of the Governor's responses to our audit report. However, nothing has been brought to our attention which would change our position to our recommendations. We have addressed only those recommendations in which the departments have taken exception to.

We agree marine pilotage is a very complex and controversial issue and the board oversees a highly contentious industry. During the course of our audit, we interviewed proponents of competition and monopoly. In order to obtain an unbiased understanding of this contentious and complex marine pilotage industry we contacted neutral professionals including the United States Coast Guard (USCG), the Federal Trade Commission (FTC), plus members and staff of the National Research Council Study.

Recommendation No. 1

We are pleased to note that the board has, subsequent to our audit field work, stated their intentions of taking a neutral position on the passage of House Bill (HB) 237. That bill has been revised in committee to emphasize the need for an independent, impartial, and unbiased board with regards to examinations and the issuance and renewal of pilot licenses. We concur that an unbiased board is important and required for efficient and effective oversight of the present competitive marine pilotage structure in Alaska. However, the department continues to support the non-competitive provisions of HB 237 by claiming weaknesses in the present system pointed out by the auditor proves that competition is detrimental to protecting the interest of the State.

The legislation introducing competition to the marine pilotage profession in the State of Alaska was implemented as recently as 1991. We question whether the implementation of competition could be fully evaluated and an adverse conclusion drawn by the board in such a short period of time. As we state in Recommendation No. 1, we do not believe that the board has exerted sufficient effort to resolve these weaknesses. Instead, their efforts have

tended to advocate a monopolistic structure rather than a competitive one. The FTC has suggested addressing safety concerns directly through vigorous enforcement of safety regulations rather than indirectly through economic regulations.

In the department's response to our report, they raise concerns regarding recommendations to training, safety, and conflict of interest issues of the board. Our report does point out weaknesses in which problems presently exist in the State's competitive structure, yet recommendations to resolve those weaknesses within the competitive structure have also been suggested.

We have recommended that statutory changes be made to require a pilot to train any qualified candidate regardless of pilot association affiliation. However, as recently as January 1994, the board has introduced changes to their regulations in direct opposition to this recommendation. This change states that "*a training pilot may not be compelled to accept a trainee.*" In our comments to Recommendation No. 2 below, we will address this issue in more detail.

The department has stated in their response that by allowing pilots to enter into contractual agreements with shipping companies there is a potential to compromise safety. However, neither the department nor the board has demonstrated or furnished documentation or overwhelming evidence that a competitive system has compromised safety in Alaska or other jurisdictions. Attempts were made to gather information from the USCG and the Army Corp of Engineers to analyze shipping safety in Alaska, but sufficient data was not available to perform such a study.

The department acknowledges that the composition of the board creates conflict of interest issues. The department has concurred with Recommendation Nos. 3 and 4 regarding the tariff setting and examination processes. Implementation of these recommendations will eliminate most conflict of interest situations which arose within Alaska's competitive structure.

Recommendation No. 2

In developing this recommendation, we discussed the possibility of competing associations training all qualified trainees with an Assistant Attorney General. He stated that the suggested statute change would not be considered unconstitutional and would be defensible in court. He also added that a similar situation is already evidenced in case law of common carriers being required to haul freight for their competitors. Without such statutory requirement, pilot associations are not likely to train their competitors. The department's response acknowledges that the board has not thoroughly researched this issue.

A similar situation arose within the Alaska Marine Highway System (AMHS) ferry system where AMHS personnel affiliated with one association refused to train pilot trainees of their competitor. The AMHS port captain was able to resolve this issue by allowing trainees equal access to AMHS vessels irrespective of their sponsoring association. This issue was resolved with little, if any, board involvement. However, to ensure equal access to training on industry's vessels, the board will need to take the same active approach as the AMHS port captain. The authority for this action will be gained through the recommended statutory changes.

The department mentions a possible problem in the current training process is the lack of objectivity of the pilot docking evaluation reports. These forms are utilized to track the trainee's progress and evaluate their experience prior to licensure. The reliability of these forms has been questioned by the department, when the pilot associations are evaluating their sponsored candidate. An advantage of having competing pilot associations train qualified candidates is that the pilot docking evaluation reports, with oversight by the Marine Pilot Coordinator, would enhance the possibility of regaining their objectivity.

The department has stated that they believe it to be unlikely that foreign shipping vessels will make their ships available for training. We believe that industry is an advocate of competition; therefore, they would have an incentive to ensure that competition remains by cooperating in this training effort. In addition, the department's response acknowledges that the board has not researched this issue.

The department states that many legal liability questions arise out of requiring associations to train competing pilot trainees. These are very good questions that the board should be pursuing answers to rather than claiming the competitive structure will not work.

The Assistant Attorney General was also consulted regarding the dispatching issue. His response was that pilot associations could not be forced to accept a less lucrative job over another, but that they could be penalized for their failure to provide a pilot when one was available. This last issue was considered defensible in court.

In the response, the department stated that the suspension of a pilot's license, due to a failure to report an accident, is an unrealistic penalty. However, this sanction is clearly outlined in 12 AAC 56.960 (e) which is a regulation developed by the board. It is important to have in place appropriate enforcement sanctions, in a competitive structure, in order to regulate the profession.

The department noted that policies to prioritize cases for investigative purposes do exist. However, during our review of the investigative files, there was no physical documentation which defined the priority of a particular case. Our recommendation is that the documentation of those procedures to prioritize be maintained within each case file and cases should be tracked on a continuous basis.

In order to resolve the questions raised by the department in their response to this recommendation, we believe it is the board's responsibility to investigate these options rather than respond that our recommendations are unrealistic. To our knowledge, the board has not attempted to review these possibilities.

Recommendation No. 5

We have read the response from the Office of the Governor regarding appointments to the Board of Marine Pilots. Although the governor's office states that the public member in question did not have a direct nor an indirect financial interest, we disagree. The purpose of having public members on boards is to provide an unbiased viewpoint. If those public members are not free from any interests which may influence their opinion, their objectivity could be compromised. We are not suggesting that the public member in question compromised himself, and in fact feel that his immediate resignation was appropriate under the circumstances. Since this public member withdrew his seat due to a threat which would impact his financial well being, this clearly demonstrates an indirect financial interest to industry.

Recommendation No. 6

We have reviewed the agency's response to Recommendation No. 6 and provide the following clarification. We agree that the recommendation is general in nature and addresses the division's fee-setting policy as a whole. Of the \$125,000 average expenditures allocated by the division to the Board of Marine Pilots, almost 80% (approximately \$97,000) is associated with the Marine Pilot Coordinator position which is directly funded by marine pilot fees. However, a portion of costs associated with the division's investigative unit and hearing officers', whom address marine pilot issues, have been allocated to the board in the method described in the recommendation.

Recommendation No. 10

All state documents and forms utilized by this board should be free from potentially discriminatory information. We suggest that the board work with the Equal Employment Opportunity Office to ensure that forms are free of this information. As a result, the protection of the board against discrimination claims would be enhanced.

Analysis of Public Need

We understand that a difference in opinion exists for calculating the effectiveness of the board in approving licenses. However, we do not believe the board can state that it was

February 4, 1994

correct in issuing licenses 97.1% of the time. There is no third party review of all 104 licenses granted or denied. This review would be necessary in order to sustain the 97.1% effectiveness claimed by the department. Therefore, the methodology we use to evaluate the effectiveness of the board's license decisions is solely based upon those cases which were appealed.

Sincerely,



Randy S. Welker, CPA
Legislative Auditor

Alaska's Marine Pilotage System Revisited

December 8, 1994

**Prepared by Brad Pierce
Senior Policy Analyst
Office of Management and Budget**

Introduction

Note: This paper on the status of the state's marine pilotage system is intended as a briefing document for the incoming administration. Public release of the contents is entirely at the discretion of the Commissioner of Commerce and Economic Development.

Marine pilots are responsible for the movement of foreign shipping through our coastal waters and docking of vessels at Alaskan ports. Most citizens are unaware of the vital role performed by pilots every day or the awesome burden of individual liability that comes with a state marine pilot license. The local knowledge and ship handling abilities of pilots are essential for protecting lives, property and the marine environment and problems within the pilotage system have potentially catastrophic consequences. In fact, the problems discussed herein have been cited by investigators as contributing to at least one recent accident, which makes asserting the state's interest in maintaining a safe and efficient pilotage system a high public safety priority. There is also some need to get a grasp of the situation quickly as the Board of Marine Pilots, charged with regulating the profession, is slated to sunset on June 30, 1995.

The report begins with a description of the grounding of the cruise ship *Nieuw Amsterdam* near Ketchikan last August. Competition between pilot groups, legal challenges to the authority of the board to regulate the profession, and contradictions in the state's Marine Pilot Act are cited as factors contributing to the present situation where such accidents are likely and perhaps inevitable. The perspectives of the various stakeholders in Alaska's marine pilotage system are identified and discussed. Competing interests involved in developing the Marine Pilot Act of 1991 are analyzed to explain how economic considerations have come to predominate over safety concerns in the regulatory process. Ongoing efforts of the board to implement the Act are summarized. Finally, the pros and cons of three alternative policy approaches for rectifying problems within the system are discussed.

Several appendices are included to provide backup information. Appendix A provides details on contradictions within the Marine Pilot Act of 1991. Data on the license status of pilots and their associations as well as significant statistics on recent incidents involving ships in Alaska waters, investigations, lawsuits and administrative hearings are contained in Appendices B and C. Appendix D is a letter from Department of Commerce and Economic Development Commissioner Paul Fuhs requesting this study and Appendix E is a letter from Captain Michael Clinkscales cited in the report.

The *Nieuw Amsterdam* Grounding

Note: This accident is currently under investigation by the U.S. Coast Guard, the National Transportation Safety Board (NTSB) and State of Alaska, Division of Occupational Licensing. The U.S. House Subcommittee on Navigation and the Merchant Marine has received testimony from the NTSB on the *Nieuw Amsterdam* grounding during its hearings on cruise ship safety in American waters. This incident has prompted the NTSB to consider holding public hearings in the near

future on the pilotage situation in Alaska. All of the information used in compiling this analysis was taken from public sources.^{1,2,3}

At 0610 on August 9th 1994, the 704 foot, 34,000 gross ton cruise ship *Nieuw Amsterdam*, carrying 1,225 passengers and 500 crew was steaming at 15 knots through Nichols Passage (10 knots over ground) in heavy current and thick fog when she grounded on the rocks at Gravina Point near Ketchikan. The ship struck at an oblique angle rupturing the bulbous bow and deforming 220 feet of the portside hull and bilge keel. One of the four blades on the port propeller was sheared off and the others severely bent. Fortunately, only the lower forepeak tank was ruptured and the ship did not flood beyond the collision bulkhead. A few hundred gallons of hydraulic fluid were spilled from the destroyed propeller's controllable pitch hub (the ship carried approximately 63,000 gallons of fuel). As most passengers on board were asleep, there were no significant injuries and the *Nieuw Amsterdam* was able to refloat herself off the rocks at about 0730 the same morning. According to informed investigators, it was almost miraculous that the hull was not ripped open, which would have probably caused the ship to capsize and sink. A major tragedy was narrowly avoided.

About 45 minutes prior to the accident, a state pilot and an unlicensed observer boarded the ship to bring her into Ketchikan. Both the pilot and observer were members of Alaska Coastwise Pilots (ACP), one of two pilot associations serving the Southeast pilotage region, which extends from Ketchikan northward to Yakutat. At the time she struck, the ship was being conned from the starboard radar console by the observer under the supervision of the pilot standing behind him. Apparently, the observer did not possess a federal pilotage endorsement for any Alaskan waters on his masters license.

Under provisions of Alaska's Marine Pilot Act of 1991, the training programs of pilot associations must be approved by the Board of Marine Pilots to ensure compliance with professional standards. The ACP training program had been approved by the board. State law also requires that entrants into a state sanctioned training program meet stringent entry requirements, among which is a valid federal pilotage endorsement for the region. As he did not qualify as a trainee, it was illegal for the observer to be in control of the ship. The captain and several officers were also present on the bridge at the time, operating the ship's state of the art navigation equipment.

Prior to the grounding, the observer had never handled the *Nieuw Amsterdam*, though he had made several transits of Nichols Passage as an observer. Most of his sea career had been as a Panama Canal pilot. The supervising pilot was on leave from the Alaska ferry system and was more familiar with the handling characteristics of ferries, which have a high horsepower to weight ratio, dual rudders and bow thrusters. The *Nieuw Amsterdam* has only a single rudder and is much lower powered in comparison to its tonnage, hence much less maneuverable than a ferry.

¹"Pilots plead the 5th when questioned about grounding," Morrison L. Edwards, *Marine Digest and Transportation News*, September 1994, p. 33.

²"How the *Nieuw Amsterdam* found her rock in Alaska," *Professional Mariner*, December / January 1995, pp. 38-39.

³Investigative file on *Nieuw Amsterdam* released by U.S. Coast Guard.

In hindsight, it appears that the ship was moving too fast for the conditions and that the pilot exercised poor judgment by relying on radar screen "eyeball navigation," rather than traditional chart plotting in transiting a dangerous passage. (In fact the ship's second mate, who was manning the centerline radar, reportedly warned the captain and pilot that they were steaming too fast for the conditions and that the pilot had missed his turn.)

Ostensibly this grounding was unremarkable, aside from the fact that it was extremely lucky the *Nieuw Amsterdam* did not sink, no one was killed or seriously injured and there was no catastrophic oil spill. In the words of one investigator, "the pilots had a bad day." However, if one looks behind the event to the root causes for a more complete understanding of why it happened, a disturbing picture emerges.

The reasons why an unlicensed observer under the tutelage of a moonlighting mate from the Alaska Marine Highway System (AMHS) was in charge of the safe passage and docking of the 34,000 gross ton cruise ship with 1,725 people aboard and carrying 63,000 gallons of fuel can be traced back to problems within the pilotage profession in Alaska and specifically, to the pressures of market competition between the two competing pilot organizations in Southeast - ACP and the Southeast Alaska Pilot Association (SEAPA).⁴

Changes in the Profession

In the U.S., pilotage is divided between the federal government and maritime states. The federal government exercises control over vessels engaged in domestic trade, while individual states have the authority to require compulsory pilotage for foreign ships and U.S. flag ships on foreign voyages operating within the waters of the state. Alaska is one of a handful of maritime locales worldwide where the pilotage profession is not regulated as a natural monopoly, similar to a public utility.

Traditionally, pilots have formed associations for each port, region or waterway to offer centralized dispatch and billing services. Most associations operate as a tightly controlled guilds, carefully controlling entry into the profession and requiring an extensive apprenticeship program for a trainee to become fully licensed. The associations sponsor candidates for licensure by providing a training officer and access to vessels with which their association or agent has a contract. Pilot fees are collected by the association, with pilots receiving a portion of the revenues.⁵

For the first 10 years after the passage of the original State Pilotage Act in 1970 the marine pilotage system in Alaska virtually ran itself. Pilots voluntarily organized themselves into two associations to serve the Southeast and Southwestern regions of

⁴The Southeast Alaska Pilot Association (SEAPA) currently has 21 full time members, 6 associate members and 1 trainee. Alaska Coastwise Pilot Association (ACP) has 11 full time members, 6 associates and 3 trainees. Associate members are employed on a seasonal basis.

⁵"Department of Commerce and Economic Development Board of Marine Pilots," Audit Report 08-1415-94, Division of Legislative Audit, November 4, 1993.

Alaska. The associations were organized along traditional lines and were responsible for hiring, training, and dispatching pilots and collecting fees from shippers. Occasional discipline problems with individual pilots were handled internally and the associations were responsible for the quality control of their membership.

During the 1980s, marine pilotage in Alaska experienced considerable growing pains as shipping traffic in state waters increased, particularly in the Southeastern and Aleutians regions. This growth resulted in new tensions and opportunities. Challenged by pilots new to the system, traditional association control over pilot training and discipline was eroded by legal actions and fears of potential liability in the wake of the *Exxon Valdez* disaster. The Alaska Marine Pilot Act - originally designed to give the Board of Marine Pilots the flexibility to respond to new conditions - did not provide the board the clear authority it needed to deal with the situation.

Increased demand for pilotage services created niches for new groups and configurations of pilots. During the late 80s, splinter groups of pilots broke off from the original associations to offer competing pilotage services. ACP was formed in 1989, primarily to service the growing cruise ship trade. Its original membership included pilots who were denied entry into SEAPA and SEAPA members who were disaffected with the internal operations of the association. Although actual charges for ship movements are difficult to determine, it appears that ACP was able to find a market niche by offering a lower priced alternative to SEAPA and secured contracts to move several ships, including an exclusive contract with Holland America.⁶

Marine Pilot Act of 1991

In response to concerns raised by pilots and recommendations from a study published by the Governor's Office of Management and Budget, legislation was introduced in 1990 to reform Alaska's marine pilot statutes.⁷ The legislation proposed an explicit social contract between the state and pilot associations. In return for limiting pilot liability and protecting pilot associations from antitrust litigation, the state would require increased professional standards for all pilots and heightened accountability on the part of pilot organizations.⁸ However, due to changes in staffing that occurred between the Cowper and Hickel administrations, neither the Governor's Office nor the Division of Occupational Licensing played any significant leadership role in developing or modifying the legislation as it passed through the legislative committee hearing process. This executive branch leadership vacuum allowed intense lobbying efforts by pilot groups and shippers to exercise inordinate influence in shaping the final legislation.

⁶Because the cruise ship trade in Southeast is highly seasonal, there is not enough work to employ large numbers of full time pilots over the winter months. Thus associate members are used extensively by both organizations. Many of these associate members are either pilots in other places during the winter or Alaska Marine Highway System (AMHS) officers. Ferry system employees are able to work on a seasonal basis for less than full time pilots because they receive state retirement and health benefits as well as extensive amounts of leave time.

⁷*Improving Alaska's Marine Pilotage System*, Maniyou Madden and Brad Pierce, November 1990.

⁸During this period The Federal Trade Commission was looking into anti-competitive practices nationwide and antitrust charges had been brought against SEAPA in a lawsuit.

Key legislators added their own ideological stamp in the committee process. Thus, while the legislation, as passed, contained much stricter entry and training requirements for pilots and their associations, it also contained some significant concessions to shippers and dissident pilots. Several contradictions ended up in the law, which have since haunted the board's ability to effectively regulate the industry (see Appendix A). This was an unfortunate but perhaps inevitable consequence of the political process, given the virulent self interest and fractiousness of the participants.

From a public cost and efficiency standpoint, it is obvious that centralized dispatch of pilots for each region makes the most sense, i.e., one association per region. It was hoped that once the internal operations of the associations were opened up to public scrutiny, the various pilot groups would come to some kind of agreement to operate cooperatively. This turned out to be a naive assumption. Overwhelming self interest and a competitive environment precluded any reconciliation.

Led by Holland America, shippers perceived a bottom line advantage to keeping pilot associations in competition with each other and their combined lobbying efforts had a great deal to do with the legislative outcome. Shippers were able to insert language in the final bill forbidding the board from taking any action that would result in "anti-competitive activities," thereby ensuring their ability to foster competition between associations. Senate majority leader Rick Halford added an additional political wrinkle to the process by insisting on "free market" language as a condition for the bill to reach the senate floor for a vote. Specifically, his amendment stipulated that the Board of Marine Pilots could only adopt a maximum tariff, allowing price competition among pilot groups under the tariff cap. His reasoning was that tariff competition would allow market forces to most efficiently allocate resources.⁹ These provisions led to the quasi competitive system in place today and are the source of many of the problems described in this report.

Alaska is one of only a few states that has abandoned the traditional association run pilotage system in favor of a competitive model. Two other states, Hawaii and Florida have experimented in recent years with competitive pilotage systems. Both have failed after experiencing many of the same problems as Alaska. In Hawaii, the state has taken over pilotage and the Florida legislature recently passed legislation specifically abolishing competition between pilot organizations.

In the broadest sense, the Marine Pilot Act of 1991 represented the culmination of a shift in political power from the pilots – who controlled their profession and ran it in traditional fashion from 1970 through the 80's – to the shippers and their agents who have been able to exercise ever greater control in the 90's.

Competition between Pilot Associations and the *Nieuw Amsterdam* Accident

There are not many professional mariner jobs available in the U.S., which makes a pilot's state license an extremely valuable franchise, worth perhaps several million dollars over a career. Although the cruise ship trade in Southeast is growing, primarily through ever larger vessels, competition for market share between the associations

⁹In the overall economics of shipping, pilotage fees are a minuscule proportion of shippers' operating costs and have virtually no impact on Alaskan trade. These facts were apparently lost on the legislature.

amounts to a zero sum game in which increased market share for one organization means less for the other. Thus, competition between pilot associations really amounts to competition for licenses, i.e., the association with the largest number of fully licensed pilots will get the largest share of the available trade.

This competitive situation makes smaller associations desperate to "train up" new pilots. In the case of ACP, the pressures of competition to secure market share reportedly led to shortcutting the traditional training process by having unqualified trainees in the program (e.g., the *Nieuw Amsterdam* accident) as well as other dubious practices, such as allowing multiple observers aboard a ship to meet trip requirements.¹⁰ Competition in the Western region of the state has led in one instance to one association refusing to dispatch a pilot to an agent who used pilots from a rival association. It may also have led to ships moving through compulsory pilotage waters without pilots.

Competition has severely compromised the board's ability to maintain high professional standards. Pressures on pilots to become licensed have become so intense that virtually every trainee who has failed an examination or has been given an unfavorable rating on ship handling during the past few years has brought a legal challenge.¹¹ Conflict of interest charges have been filed against pilot members of the board who administer examinations. The training of new pilots has been severely impacted by competition, with fully licensed pilots refusing (understandably) to train individuals from competing associations. This makes it very difficult for deputy pilots to get full endorsements for their region, particularly for seldom visited ports. Instructor pilots complain to the board that even within their own association they are afraid to flunk a trainee on ship maneuvers for fear of being sued, leaving the state with no protection against incompetence. In fact, training requirements for Southeast, where competition between associations is the fiercest, are the lowest of the four pilotage regions in the state and perhaps the nation.

Thus, while the *Nieuw Amsterdam* grounding can be viewed as the pilot and trainee having a bad day, to those who have studied the profession in Alaska it is symptomatic of a system in trouble. The public interest in maintaining a safe and efficient pilotage system has fallen victim to legal challenges and special interest politics. However, the pernicious effects of competition between pilots and pilot organizations are not readily apparent to the casual observer. The question most often raised in discussions of competition in pilotage is "If competition is so bad then why don't we have more accidents?". The answer is only because of a combination of luck and the professional competence of the majority of senior pilots already in the system; it has little or nothing to do with safeguards in the system itself.

¹⁰A September 5, 1994 letter from SEAPA pilot Michael Clinkscales to Dan Twohig, Marine Pilot Coordinator raised this issue (see Appendix E for full text). He states, "While this may not violate the letter of the law, it does violate the spirit of the law in that several trainees needing for pilotage at one time cannot receive complete and adequate instruction from one instructor pilot." That this practice would be tolerated by a shipper raises serious concerns about their commitment to a safe and professional pilotage system.

¹¹One often overlooked factor in the ingenuity of pilots (aside from the value of the license) is that pilots have license insurance, entitling them to up to \$100,000 in legal expenses. This creates an incentive to sue whenever they face an unfavorable regulatory decision.

Had the *Nieuw Amsterdam* grounding resulted in significant loss of life, one can imagine the flurry of recriminations, investigative reports and editorial articles blaming legislators, the Division of Occupational Licensing and the Board of Marine Pilots for their failure to adequately protect the public. Yet it was only luck that prevented a catastrophe, though lost revenue to Southeast Alaskan towns due to missed port calls was about \$816,000.¹² Damage to the ship is estimated at \$2.5 million and a Holland America spokesman estimates that lost revenues during the three weeks the ship was in drydock totaled perhaps \$30 million. Clearly this accident demonstrates that the state's interest in protecting lives, property and the marine environment is not being supported by present law or regulations. The real tragedy would be if the present situation were allowed to continue.

Where Do We Go From Here?

Before discussing solutions to the problems described above, it is useful to identify the competing interests in the profession and sort out how they affect the regulatory process. According to the American Pilots Association, state pilotage boards or commissions, while varying greatly in their composition, authority and powers, legal status and other features are most often composed of industry representatives, pilots and public members.¹³ The Alaska Board of Marine Pilots is composed of two pilot members, two ships agents, two public members and the Commissioner of Commerce designee. Its membership is meant to be roughly representative of the stakeholders in the profession. (Note that shippers are not directly represented, since they are mostly foreign corporations. Instead they are represented by their domestic agents.) The board is staffed by a Marine Pilot Coordinator.

Stakeholders in Alaska's Marine Pilotage System

State regulation of pilotage is split between safety concerns and economic issues.¹⁴ The interests of the major stakeholders in Alaska's marine pilotage system, which run the full spectrum from exclusive focus on safety to near exclusive focus on economics, can be summed up as follows:

- The public interest is exclusively related to safety, with little or no concern for the earnings of pilots or the profits of shippers. The public has a right to expect their government to protect lives, property and the marine environment through the compulsory pilotage system. In the past few years, the public interest with respect to pilotage has been most effectively represented by environmental groups such as the Prince William Sound Public Advisory Group, formed in the wake of the *Exxon Valdez* disaster.

¹²Based on numbers generated by the DGED, Division of Tourism.

¹³American Pilots Association Comments on State Pilot Commissions, September 4, 1990.

¹⁴*Minding the Helm, Marine Navigation and Piloting*, National Research Council, 1994, p.40.

• **State government's interests** relate primarily to safety and secondarily to administrative efficiency. Since the essence of pilotage is local knowledge and ship handling ability, laws and regulations should emphasize and reinforce these professional skills. Alaska's compulsory pilotage regions are much larger than any in the U.S. so exclusive regional licensing is necessary for pilots to claim expert local knowledge. High entry level qualifications and training standards, a lengthy apprenticeship period and continuing education requirements are desirable. The independence of pilots is necessary so that decisions regarding ship movements during adverse weather, ice or other conditions are based on safety considerations and not the shipper's schedule. A powerful and well staffed board should be able to effectively regulate the system, discipline pilots and promptly investigate incidents / accidents. Legal challenges have made the marine pilotage system extraordinarily expensive to administer – it is the only professional licensing board with a full time staff person and a full time assistant attorney general – though costs are recovered through license fees. The state is involved in economic regulation only to the extent necessary to ensure there are a sufficient number of pilots to service shipping and that tariffs are reasonable and based upon objective criteria.

• **Pilots and their associations** have both a safety and economic interest in the profession. Since a pilot's license is his or her livelihood, their safety concerns closely parallel those of the state. Potential liability for accidents, particularly during training is an ongoing concern. A fair and equitable examination process is necessary to maintain professional standards. Pilots' economic concerns revolve around dividing up the available work, so they tend to focus on limiting the number of licenses in each region and increasing licensing requirements. In the Western and Southeastern regions where competition between pilot associations exists, market share concerns of the associations have in some instances superseded individual pilots' basic interest in safety and professional standards.

• **Shippers concerns** are primarily economic and secondarily related to safety. They tend to favor competition among pilots to keep tariffs low. Safe and reliable pilotage services are important but their safety concerns are largely met by hiring competent officers and carrying adequate insurance. Some shippers would prefer to hire their own "company pilots" to keep costs down. Some shippers would also prefer to allow cross regional licensing of pilots so that they would not have to change pilots when moving from one region to another (e.g., cruise ships traveling from Southeastern waters to Whittier or Seward).

• **Ships agents interests** are almost exclusively economic. Because they provide many services to shippers during port calls, only one of which is pilotage, ships agents have an interest in keeping pilot rates low to enhance their bottom line. In fact, **ships agents are the only stakeholders in Alaska's pilotage system who have virtually no**

financial stake in safety. Agents tend to be split on the issue of competition between pilot associations, with some favoring the convenience of dealing with a single association for dispatch of pilots, while others favor competition to hold down costs.

Ongoing Board Issues

The board continues to attempt to implement the provisions of the Marine Pilot Act of 1991 as discussed below.¹⁵ The Act is only three years old and while some progress has been made in fulfilling its legislative intent, many of the problems that have appeared can only be resolved by changes in statute or are a result of the Governor's appointments to the board. A recent American Pilots Association (APA) survey of pilotage systems in the various states provides some useful comments on what Alaska should strive for when considering changes. According to the APA, "a pilot commission is probably the single most important component of a state system for the regulation of pilotage." The report lists the overall attributes of successful regulating bodies in the various maritime states: "A pilot commission should be active. It should take its licensing responsibilities seriously. It should investigate accidents and complaints against pilots and oversee the activities of the pilots in a purposeful manner. It should be fair and objective in its dealings with pilots. Finally, it should be perceived as independent of both the pilot association and the industry."

Conflict of Interest

Much of the board's conflict of interest problem can be attributed to the pressures of competition between pilot associations. The board and the division are in the process revamping the examinations procedure to provide a more objective, less proctor-intensive examination. Unfortunately these new examinations are being legally challenged before a Hearing Officer and in federal court. The board appointment description in statute does not provide for broad representation of all regions of the state. Because the two pilot members and two ship agent members form a majority and have a direct economic interest in board decisions, conflict of interest situations are almost inevitable, particularly when attempting to set tariffs. Additionally, the Board of Marine Pilots is the only professional board administered by the Division of Occupational Licensing composed of both members of the profession being regulated and their (ships agents) customers. The legislature should look at the composition of the board in any future revisions of the Marine Pilot Act.

Tariff Setting

While the Marine Pilot Act of 1991 made provision for the board to establish maximum tariffs for each region, as a practical matter the board has wasted an enormous amount of time and effort attempting to establish tariffs and has failed miserably. Legislative auditors found that the maximum tariffs in place appeared to be arbitrarily set through negotiations between pilots and shippers rather than objectively determined through some rate setting methodology. Additionally, board members' lack of economic and financial expertise has hindered the board in setting maximum tariffs. Sunset of AS

¹⁵Much of this discussion is summarized from two sources: a Legislative Audit sunset review "Department of Commerce and Economic Development, Board of Marine Pilots," (November 4, 1993) and a DCED, Division of Occupational Licensing report, "Boards, Commissions and Licensing Programs Annual Performance Reports Fiscal Year 1994."

08.62.045, tariff setting authority (as of June 30, 1994), should ease this problem. However, all of the parties involved would probably agree that there needs to be a better defined, regularly scheduled process for setting tariffs. The auditors recommended that the board consider assigning the task of tariff setting to the Alaska Public Utilities Commission (APUC).

Some parties have expressed concern over the possibility of anti-trust suits, should there be no state oversight of the pilot tariff. The implication of assigning this task to the APUC would be that the associations are regulated as utilities, at least with respect to price competition - a very different approach from the present quasi-competitive situation. If tariffs were assigned to an independent third party, at least they would be established according to objective criteria and an agreed upon (and transparent) methodology. The division recommends that this issue be studied by the Office of Management and Budget with recommendations made to the legislature regarding the possibility of tasking the APUC with tariff setting.

Training, Examinations and Licensing

The legislative auditors recommended that the board initiate statutory authority to require all pilot organizations to train all qualified candidates regardless of affiliation. The division flatly disagrees with this recommendation on the grounds that the board has no authority to "regulate" pilot associations into training their competitors. Competition among pilots has been detrimental to the training of highly qualified pilots by limiting training opportunities to the ships with which the trainee's association has contracts. It is unreasonable to expect a pilot to assume the immense liability of training a competitor. In fact, the training issue is at the crux of what is wrong with the current quasi-competitive system. The auditors also recommended that the board initiate statutory authority to compel industry to make vessels available to all trainees. However, this too is unrealistic. It is unreasonable to expect a ship master to be compelled by law to place the safety of his vessel in the hands of a trainee and the use of foreign flag vessels for the training of pilot candidates must, of necessity, remain a cooperative effort between pilot organizations and industry.

The Marine Pilot Coordinator is in the process of updating exams so that they are more objective and test for a well rounded pilot. Restructuring of the examinations has already led to legal challenges. Appeals of examination scores have been filed with the Hearing Officer and a lawsuit has been filed in federal court against the State of Alaska, state officials, and the Board of Marine Pilots (see Appendices C and D). With the development of more objective exams, the need for board members to be actively engaged in the examination process should be reduced. However, despite potential conflicts of interest, pilot members of the board are continually queried for their local knowledge and expertise. Since local knowledge along with ship handling skills are the essence of pilotage, it is difficult to see how the examination process could be structured to eliminate interaction between the person taking the exam and the pilot member representing the region.

State's Authority Over Pilot Associations

Should the investigation of the *Nieuw Amsterdam* grounding confirm that an unlicensed observer was conning the vessel at the time of the accident and/or additional illegal training activities, the board must be able to impose severe sanctions against the

association, including suspension or revocation of its state recognition and ability to operate. The board cannot tolerate violations of state law by state-sanctioned pilot associations.

In a competitive environment, pilot associations may choose not to provide services in less lucrative ports. There have been incidents where an association has refused to dispatch a pilot because the shipper (i.e., agent) had been using competing group's services. The Marine Pilot Coordinator has drafted regulations to address this problem. There have also been several instances where ships have been moved illegally through compulsory pilotage waters without pilots, even when they were readily available. The legislature should initiate statutory changes to strengthen the board's authority to administer the Marine Pilot Act and to hold vessel owners, masters and their agents accountable for the movement of vessels in compulsory pilotage waters without a pilot.

As long as there is tariff competition there will be disputes between pilot organizations. The Marine Pilot Act of 1991 does not provide any method to settle these disputes. AS 08.62.175 requires pilot organizations to cooperate with and assist the board in implementing this chapter. However, in the competitive environment, pilot associations have been reluctant to provide the state with needed information to assist the board and the Department of Commerce and Economic Development in resolving difficulties. The legislative auditors suggested binding arbitration as a possible solution to disputes between associations.

Investigations and Pilot Discipline

Whenever ships are moved in and out of ports, a certain number of accidents is inevitable. One unintended consequence of a quasi-competitive pilotage system is that in the regions with competing associations, virtually all incidents/accidents get reported to the Marine Pilot Coordinator (by pilots from the competing association), no matter how trivial. The division has set priorities for investigation and prosecutes reports of pilot misconduct or incompetence in a timely manner. With assignment of the Marine Pilot Coordinator to handle the maritime investigative case load, great strides have been made in following up on investigations.

Because of the magnitude of the potential threat to life, property, and the marine environment, the legislature should consider increasing civil penalties for violations of the Marine Pilot Act from the current \$5,000 maximum to a higher figure.

Administration

The Division of Occupational Licensing has revised the fee setting process for the upcoming renewal period to reflect the cost to the state. Pilot licensing fees have been increased substantially from a \$2,000 biennial fee to \$3,200. This increase is in large part reflective of the costs of legal challenges to the board's decisions, many of which relate to contradictions in the Marine Pilot Act. As the cost of these legal proceedings is passed on to the profession in the form of license fees, it is likely to eventually have a dampening effect on lawsuits. Since pilotage tariffs must ultimately pay for legal costs, a vessel surcharge collected by the pilot associations may be a more appropriate means of offsetting the cost of regulating compulsory pilotage.

Board Goals for 1995

In its goals for fiscal year 1995, the board stated that its overall objective was to make the safety interests of the state the primary focus of its regulatory activities. The board intends to continue with ongoing implementation of the Marine Pilotage Act of 1991 and to revamp the examination process. The board also supports reform of the Act.

At the October 5, 1994 board meeting in Juneau, the pilot representatives from all groups agreed to form an Alaska State Pilots Alliance to draft a "pilots bill" for introduction in the 19th Legislature to meet the above policy goals. It remains to be seen whether the pilots themselves can find enough common ground on which to draft legislation. Note that a previous "pilot's bill," designed to meet many of the concerns cited above, was introduced by Representative Hudson in the first session of the 18th Legislature. It languished in the committee process for two sessions and eventually died in the House Transportation Committee.

Pros and Cons of Various Policy Approaches for Improving Alaska's Marine Pilotage System

The policy approaches for repairing the pilotage system that have been advocated by various stakeholders and others can be separated into three models or paradigms. The pros and cons of each are described below:

1) Band aid approach as identified by Legislative Audit.

This alternative would basically continue the status quo and try to make the quasi competitive system work better. The Pilot Act would be opened to remove contradictions in statute only. The board would be renewed but would still operate under the "anti-competitive clause" in the law. Tariff setting could be assigned to the APUC, which would collect a fee from the industry for its services. Pilots would be required to train their competitors and serious sanctions would be applied to any association that conducted illegal training activities or refused to dispatch an available pilot.

Pros

The obvious advantage to this approach would be that it is the easiest. The legislature has demonstrated very little interest in wrestling with another thorny marine pilot bill. If tariff setting authority was assigned to the APUC, it might be possible to re configure the board (by eliminating agent and public members) to make it more of a licensing as opposed to regulatory body, which should ease some of the conflict of interest issues. One idea would be to replace some of the non pilot board members with representatives of environmental watchdog groups, e.g., the Prince William Sound Public Advisory Group, who have no economic interest in pilotage but share the state's safety concerns.

Cons

The status quo is not working. Unless the loopholes in the law are closed, the board will continue to find itself mired in lawsuits and legal challenges to virtually every unfavorable decision. Conflicts of interest will continue to hobble the board and legal costs (and license fees) will continue to rise proportionally. The power of the board to

provide a safe and efficient pilotage system will be further diluted. Competition between associations has had a seriously negative effect on public safety. There appears to be no reasonable means to coerce pilots into training their competitors.

2) Free market approach with the board as a licensing body only.

Under this alternative, the board would not be renwed in its present form but rather as a licensing body only, responsible for examinations and license renewals. The Marine Pilot Act would be stripped of provisions relating to pilot associations and the Marine Pilot Coordinator would be eliminated. Tariffs would be negotiated between individual pilots or associations and shippers. (Note that the main reason for having an enforceable tariff is to prevent overcharging. Under deregulation, tariffs could be set at whatever the market would bear, which might be very expensive, e.g., for an out of the way port during a holiday, and could lead to movement of ships without pilots.) Any pretense of pilots as independent contractors responsible to the state for public safety would be abandoned. The state would give up most of its oversight responsibilities and let the free market determine the demand for pilots and the routes for which they could be licensed, i.e., cross regional licensing would be allowed.

Pros

This approach has the virtue of simplicity and is the least cost alternative from the state's perspective. The board would more closely resemble other occupational licensing bodies. Conflict of interest problems would be reduced.

Cons

If pilotage were deregulated, there would be no need for state licensed pilots. At the extreme, shippers could employ anyone with a federal pilotage endorsement and make them "company pilots." The interests of the state in the prevention of loss of life, property and protection of the marine environment would be left in the hands of foreign shipping companies and fiercely competing pilot associations. Deregulation would remove virtually all state oversight and open all parties to potential antitrust complaints. As independent contractors, pilots would lose their liability limitation (currently \$250,000) and be unable to get insurance. This would make pilotage unattractive to otherwise qualified mariners. There is no conceivable way that a viable training program could be carried out under these conditions. The state would have little or no ability to investigate and prosecute marine incidents.

A recent National Research Council study of marine navigation and piloting in the U.S., *Minding the Helm* recommended that federal pilot endorsements be downgraded in the licensing system to become nothing more than a prerequisite for the more demanding state pilot license.¹⁶ For Alaska to go in the other direction would be an unhealthy departure from the recommendations of the most comprehensive and up to date national pilotage study. In short, general deregulation would subordinate the safety concerns of the public to the economic interests of pilots and shippers, creating a recipe for disaster.

¹⁶National Academy Press, 1994.

3) Greater state involvement, i.e., a State Pilotage Authority.

A state pilotage authority would offer central dispatch of pilots and billing. Shippers planning to enter a compulsory pilotage region would call one number to get a pilot. Pilot boats would be contracted by the state. Pilots would be contractual employees of the state, paid either by the day or hour (plus a tonnage multiple). The number of pilots would be controlled to provide a target income to all pilots within a reasonable tariff schedule. Competitive issues would be removed and the state's safety interests would be paramount. The state would take over training. Trainees would be selected from a list of qualified candidates via a competitive examination process. Trainers could receive additional compensation and have their liability covered. Continuing education requirements for renewal of licenses would be monitored by the state. A fixed tariff would be set by the APUC (or other body) and could provide for surcharges to cover the overhead costs of running the system and training. In sum, a state pilotage authority could operate as a self-funded public corporation.

Pilots could form associations to provide group insurance, retirement plans and tariff representation. The state would have direct control of the industry as a regulated utility, thus allowing pilots protection under the state action exemption.

Pros

A state pilotage authority would assure that the state government and public interests predominated in maintaining a safe and efficient pilotage system.

Cons

Even if it was established as a public corporation, a state pilotage authority would be equivalent to adding another layer of bureaucracy. It is doubtful that an authority could operate at less cost than the present system. The powerful shipping agent lobby would undoubtedly object strenuously to such an arrangement, since a portion of their revenues comes from pilot related port fees.

Conclusion

To the uninitiated, the issues surrounding marine pilotage in Alaska can be quite bewildering. The problems within the profession are complex and controversial and the special interest politics involved in amending the Marine Pilot Act are vicious. Both the pilots and shippers are playing for high stakes. Numerous lawyers and lobbyists are making substantial fees off of this unfortunate situation. In fact, the marine pilotage system is a classic "tarbaby" for an incoming administration. There are no easy solutions. Yet we have a serious problem here with potentially catastrophic consequences and state government has a basic public safety obligation to provide safe and reliable pilotage.

This report is an attempt to lay out all of the issues in a manner that is useful for newly appointed officials. While the author takes complete responsibility for the contents, the conclusions and recommendations presented herein are really a consensus of the opinions of executive branch staff who have been charged with studying or regulating pilotage during the past several years. Their general conclusions that the system is not

working and that the state should become further enmeshed in pilotage, rather than deregulating the profession to "let market forces straighten things out," flies in the face of conventional wisdom. Indeed, the most difficult thing about providing sound advice to legislators and other policymakers on pilotage issues is to overcome their inherent bias towards a "market solution." We've tried a market solution in Alaska for three years and have ended up with a system ripe for disaster. Pilotage really is different and problems within the state system do not lend themselves to conventional solutions.

Whatever approach the new administration takes, it is absolutely essential for the executive branch to play a leadership role in asserting the state's interest to protect lives, property and the marine environment in any revisions to the Marine Pilot Act of 1991. Government has an obligation to ensure that the safety concerns of the public predominate over the economic concerns of pilots, shippers and ship agents in the regulatory process.

Appendix A

Contradictions in the Marine Pilot Act of 1991

The Board of Marine Pilots has encountered numerous difficulties in implementing the Marine Pilot Act of 1991.¹⁷ Many of these difficulties can be attributed to the following five major problems and contradictions that the board has identified within the Act.

1) The policy and findings of the 17th Legislature states:

"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."

and further that:

It is necessary to give the Board of Marine Pilots broad statutory authority, including the authority to establish pilotage regions, and maximum tariffs and the authority to establish criteria for the training and licensing of marine pilots.

AS 08.62.040 Powers and Duties states:

(d) Notwithstanding the exemption from AS 45.50.562-45.50.596 granted to pilot organizations under AS 45.50.572 (a), the board may not adopt a regulation or take any other action resulting in anti-competitive activities that, if the board were subject to AS 45.50.562-45.50.596, would violate AS 45.50.562-45.50.596.

Contradictions:

Marine pilotage under the Marine Pilot Act of 1991 is not a freely competitive profession. It is a carefully regulated profession. Pilots do not compete in a "free market". The State of Alaska creates a need for pilots in the form of a compulsory pilotage statute. The state decides where pilots can operate and prohibits them from competing in more than one region. The state places a limit on how much pilots can charge for their services. Pilots are required to comply with recency criteria attainable only by an organization with sufficient contracts to meet the standards for renewal for all of its members. The state prohibits pilots from becoming the employee of a shipper, yet requires them to belong to an association that contracts with shippers. The state mandates all of these things and then expects pilots to compete on whatever ground is left. This is the basis of the "quasi-competitive" system that is causing many of the regulatory problems facing the board.

¹⁷Excerpted from the FY 94 Board of Marine Pilots Report to the Governor prepared by Dan Twonig, Marine Pilot Coordinator.

- 2) **AS 08.62.163 Pilots as Independent Contractors** requires that pilots be independent contractors and prohibits them from being an employee of a shipper. This statute was passed to ensure that state licensed pilots represented the interests of the state and that safety was not compromised by decisions of an economic nature, e.g., to move a ship during adverse weather or ice conditions to maintain a shippers schedule.

Contradictions:

AS 08.62.175 Regional marine pilot organizations states that pilots may form organizations.

AS 08.62.080 License required; restrictions and conditions, states that pilots must belong to an organization in order to pilot vessels. Pilot organizations (associations) are formed for the common dispatch of pilots, the billing of shippers for services, and disbursement of revenues. Under the present pilotage scheme, pilot associations compete for contracts with shippers. Pilots associated with an organization that has a contract with a shipper are therefore *de facto* contractual employees of that shipper. Thus the possibility exists for losing the independent contractor status that is required by AS 08.62.163.

- 3) **AS 08.62.080 License required; restrictions and conditions** states:

(b) A pilot may not be licensed in more than one region in the state unless the board determines that it is in the best interest of the state.

Contradiction:

AS 08.62.080(c) requires that a license issued under this chapter must identify the specific waterways and ports in each pilotage region in which a licensee is authorized by the board to pilot vessels. The board shall authorize a license to pilot vessels in a specific waterway or port in a pilotage region upon the licensee satisfying the training and other qualifying requirements by the board to pilot vessels in that waterway or port.

AS 08.62.093 Qualifications for a deputy marine pilot license states:

(a) the board shall issue a deputy marine pilot license for a marine pilotage region to a person who This requires entry level pilots to gain a license for a complete region as opposed to specific ports and waterways within a region.

Several cases are pending in the Hearing Officer process that are caused directly by contradictions in the statutes that refer to cross regional licensing.

- 4) Legislative auditors have stated that training should be mandated by law to be open to all candidates regardless of affiliation. They suggested that the board initiate legislative change requiring pilots to train their competitors (see following section).

Contradiction:

In a competitive environment, a pilot can not be compelled to train a person for his competitors. Regardless of any legal requirements imposed by the state, pilots are reluctant to expose their license to the liability of training a candidate who may become a future competitor. Training pilots have also been subject to lawsuits by trainees for giving less than satisfactory evaluations.

In this sense, competition in piloting has been detrimental to the training of highly qualified pilots. If a pilot organization needs more pilots to gain a larger market share, taking short cuts in training and licensure are in the financial interest of that organization. **Decisions on training have become business decisions and not safety decisions. More pilot organizations sharing a finite amount of work means fewer opportunities to all pilots for training.**

- 5) The Board of Marine Pilots has been stymied in its efforts to adopt regulations that properly implement the Marine Pilot Act of 1991. The regulations written and adopted by the board are continually challenged in the legal arena because of incomplete or contradictory legislation. Lawsuits have been filed and are pending in both state and federal court against the State of Alaska, state officials (both individually and in their official capacities), the Board of Marine Pilots and board members (both individually and in their official capacities).

Appendix B

Licensing Status of Pilot Associations*

Region	Association	No. of Full Time Members	No. of Associate Members	No. of Trainees
Southeast	Southeast Alaska Pilot Association	21	6	1
	Alaska Coastwise Pilot Association	11	6	3
Western	Western Alaska Pilots Association	4	-	1
	Alaska Manne Pilots	11	-	-
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	2	4
Kuskokwim River	Kuskokwim Pilots Association	2	-	-
Total		69	14	9

* As of 12/7/94.

Appendix C

Significant Pilotage Statistics

Ship statistics for recent incidents involving vessels in Alaska waters:

* *Reefer Badger* 3,100gt reefer cargo 197 metric tons of fuel
Incident involving a pilot abandoning his duty

* *Regent Star* 24,000gt 850 berths 1,827 mt of fuel
Incident involving collision with a submerged object

* *Nordic Prince* 23,200gt 1,194 berths no fuel data available
Incident involving possible training violations

* *Nieuw Amsterdam* 33,930gt 1,374 berths 2,191 mt of fuel
Incident involving grounding of the vessel with flooding, pollution and injuries

* *Overseas Ohio* 92,017gt 272.5 mbbbl. crude 6215.5 mt of fuel
Incident involving collision with an iceberg and flooding

* *Dhara* 2,187gt reefer cargo no fuel data available
Incident involving vessel moving without a pilot aboard

* *Regal Princess* 69,845gt 1,350 berths 2,100 mt of fuel
Incident involving an "uncomfortable landing" due to high winds

* *Noordam* 33,930gt 1,340 berths 2,191 mt of fuel
Incident involving collision with a gillnet

* *Polar Eagle* 66,174gt LNG carrier no fuel data available
Incident involving a hard landing with damage to pier facilities

* Information gleaned from Lloyds Registry.

Since 1991 there have been 3 fatalities directly involving cruise ship operations in Alaska.

Since 1991 there have been 3 serious incidents involving the use of assist tugs in Alaska. 1 fatality, 2 tugs lost.

Appendix C continued

Since 1989 (when computerized records began), the Division of Occupational Licensing has opened and investigated 126 cases involving marine pilots in the state of Alaska. There are currently 29 cases that remain open. Of these, 16 cases were opened in FY 1994.

Since the creation of the Marine Pilot Coordinator position, 57 cases have been opened and investigated, 97 cases have been closed.

Since 1991 there have been 27 reported collisions between vessels or collisions between vessels and docks.

Since 1991 there have been 9 reported groundings of vessels with pilots aboard.

Litigation Summary

Aside from litigation pending in the hearing officer process, 4 lawsuits are pending in superior court against the state, and several lawsuits between pilots have been filed. Significant among these are 3 anti-trust suits (2 have been settled).

Since 1991, 5 ethics complaints have been filed against members of the Board of Marine Pilots and investigated by the Department of Law (none were sustained).

A pilot board member (public) was forced to resign from the board when his private business was boycotted by the cruise ship industry because they were not pleased with the way that he voted on the board.

Appendix D
Letter from Commissioner Paul Fuhs

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEE, GOVERNOR

P.O. BOX 110800
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500
FAX: (907) 465-5442

June 23, 1994

Mr. Shelby Stastny
 Director
 Office of the Governor
 Office of Management and Budget
 P.O. Box 110020
 Juneau, AK 99811-0020

Dear Shelby,

In November of 1990, the Office of the Governor, Division of Policy published a study entitled, **IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM**. This study was commissioned as a result of concerns raised regarding the events leading to the grounding of the tanker **EXXON VALDEZ** on Bligh Reef in 1989.

Since this study was published, the Alaska State Legislature enacted the **Marine Pilot Act of 1991**. This Act promotes a semi-competitive system of pilotage in which more than one pilot group may compete for contracts with vessel owners operating within the state's compulsory pilotage waters. This system was based on the Board of Marine Pilots setting a **maximum tariff** that pilots could charge for their services.

In November of 1993, the Division of Legislative Audit published a performance report on the Board of Marine Pilots which sharply criticized the Pilot Board, the Division of Occupational Licensing, and the Governor for their inability to implement the Marine Pilot Act of 1991. Although the audit grouped its comments into 10 recommendations, the Department of Commerce and Economic Development has identified 31 individual criticisms from the audit of the Pilot Board or the pilotage system as it exists today.

Two major concerns addressed in this report are:

Conflicts of interest among board members. Operating in a competitive environment has made some board members ineffective in the areas of expertise for which they were chosen to sit on the board.

The statutes and regulations should be revised to adequately protect the best interest of the state. The report demonstrated that problems with competition have limited training opportunities for pilots, and recommended that violations of the statutes should be promptly prosecuted and punished, and that the Governor should strictly adhere to the statutory criteria for appointment to the board.

Alaska Statute 08.62.045 (**MAXIMUM TARIFFS**) sunsets on June 30, 1994, thus removing the authority to set and oversee pilotage tariffs from the Board of Marine Pilots. In the opinion of legislative legal council, this action may expose pilot organizations to federal anti-trust suits caused by the loss of protection under

Mr. Shelby Stastny

-2-

June 23, 1994

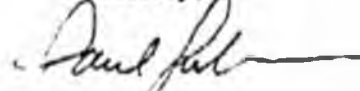
the state action exemption. The Alaska State Legislature adjourned recently without passing legislation to extend the maximum tariffs or passing HB 170 extending the Board of Marine Pilots.

Since the passage of the Marine Pilotage Act of 1991, ships have moved in compulsory pilot waters without pilots (Dutch Harbor and the North Slope in 1993 and Atka in 1994) thus flouting the pilotage system. Five ethics violations arising from possible conflicts of interest with competing pilot organizations have been filed against members of the Board of Marine Pilots, and only three new pilots have been licensed throughout the state (two of whom were licensed to serve a newly created and remote pilotage region on the Kuskokwim River).

With these issues in mind, it becomes obvious that the Alaska Legislature should take a close look at marine pilotage in the coming session. IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM was a very well written analysis of pilotage in Alaska as it stood in 1989. Since its publication, many changes have been made in the pilotage industry, both in Alaska and nationwide. These changes bear another look so that the Legislature has good, up-to-date information to consider when they act on this very complex and controversial topic.

I request that the Office of the Governor, Division of Management and Budget update and revise this report in time for the Legislature to digest it well before the next session. My staff stands ready to answer questions, provide information, or assist the authors in any way possible.

Sincerely,



Paul Fuhs
Commissioner

DT/PF/yd463.01

062394a

Enclosures: IMPROVING ALASKA'S MARINE PILOTAGE SYSTEM
Audit Report, Board of Marine Pilots
Letter from Director, Division of Occupational Licensing,
DCED, Re: Audit, Board of Marine Pilots

Appendix E
Letter from Captain Michael Clinkscates

MARINE PILOTS

Southeastern Alaska Pilots' AssociationTelephone (907) 449-9098
(907) 225-8887

CABLE ADDRESS: SEAPILOTS

P. O. BOX 6100
KETCHIKAN, ALASKA 99901

5 September 1994

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

SEP 07 1994

DIV. OF OCCUPATIONAL LICENSING

Captain Dan Twohig
 Dept. of Commerce & Economic Development
 Division of Occupational Licensing
 P. O. Box 'D'
 Juneau, Alaska 99811

Dear Captain Twohig,

I am writing this letter to express my concerns that the current training guidelines of Marine Pilots in Alaska have allowed pilot groups to implement minimal training programs for new pilots. I believe competitive market forces, rather than safety, have been a motivation factor for some pilot training programs.

Since there are no uniform training requirements or standards set by the State of Alaska, individual groups have used their best judgment about criteria and safety factors in training new pilots. Now that a highly competitive atmosphere exists in Alaska marine piloting, safety concerns are more likely to be overlooked in favor of accelerated training programs, so that more pilots can be created in order to expand one group at the expense of another. On several occasions a pilot group has placed more than one trainee (up to 4-5) at a time on a ship. While this may not violate the letter of the law, it does violate the spirit of the law, in that several trainees riding for pilotage at one cannot receive complete and adequate instruction from one instructor pilot.

Virtually nowhere else in the United States and the world are pilot groups allowed to compete in this manner. We can see the results of an instant "shake 'n bake" trainee program with the Nieuw Amsterdam (Holland American Lines) accident, in which a non-licensed pilot observer - not a pilot trainee - was in command in fog and in close waters.

It is also in the interest of agents and the shipping industry to favor one group over another in order to break the groups up into as many pieces as possible. The undesirable effects of these actions are that the newly formed group will need contracts in order to build up its base and expand. It will be pressured to form unhealthy, close relationships with shippers to get these contracts. A pilot then will be less able to keep his independent status.

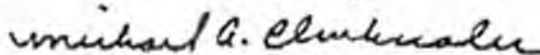
which is paramount when lives, property, and the environment are at stake.

When pilots have a relationship which is too close to shippers the following events occur. If a shipper wants to proceed with a docking in poor weather conditions in order to meet a schedule, the pilot may not feel free to say no. Also, if the shipper's captains insist on taking command through the majority of the voyage, the pilots are not free to protest. In essence, the result is that the independent pilot has become a "company pilot". I feel that this "company pilot" situation now exists in Southeast Alaska.

The solution is for the State to mandate a uniform pilot training program with criteria which will discourage fast-track training of pilots at the expense of safety. There should also be one dispatch roster, per region, through which all pilots are dispatched. Then there would be no favoritism or behind the scenes dealing in assigning pilots to ships. More important, pilots would maintain their independent status. There could be one or more pilot groups per region, and the State could set pilot fees based on U.S. west coast prices, plus a cost of living allowance.

We should remember what happens when safety concerns are overlooked in favor of monetary considerations, such as in the Exxon Valdez accident. Once the accident had occurred (due to various reasons), the cleanup effort was ineffectual because industry and the government had allowed for inadequate cleanup equipment and contingency plans. Monetary considerations had supplanted safety concerns and the environment and the Alaskan people paid the price.

Sincerely,



CAPT. MICHAEL A. CLINKSCALES

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

SEP 07 1994

DIV. OF REGULATORY AFFAIRS

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/14/95

FURTHER: Finance

Date of 5-Day Notice: 3-15-95
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-19-95

Resources Committee considered SB 130

Marine pilots; extending the termination date of the Board of Marine Pilots; efd.

and recommends:

- be replaced with CS SB 130 (YES)
- adopt previous CS ()
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill: same title
- new title
- House Bill: same title
- technical title
- new: SCR# _____

<u>SIGNING DO PASS</u>	DP	<u>OTHER RECOMMENDATIONS</u>	NR	DNP	AM
<i>Irma Louca</i>	✓	<i>[Signature]</i>	✓		
<i>Robin L. Taylor</i>	✓	<i>[Signature]</i>	✓		
CHAIR: <i>Arin J. Leman</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
C+ED	3/17		162.1

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

AMENDMENT

Failed 1-40

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES)(Draft Version K dated 4/11/95)

1 Page 2, after line 23:

2 Insert a new bill section to read:

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

4 Sec. 08.62.046. PILOTAGE TARIFFS. (a) The board shall adopt by
5 regulation maximum tariffs that may be charged by pilots for the provision of specific
6 pilotage services. The board shall identify those expenses that are included in the
7 tariff. In adopting maximum tariffs under this subsection, the board shall take into
8 consideration

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

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

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

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

17 (5) other expenses identified by the board.

18 (b) A pilot organization recognized by the board, acting on behalf of its
19 members, may adopt a new or revised tariff for provision of pilotage services if the
20 pilot organization follows the procedures set out in (c) of this section. The tariff
21 adopted under this subsection must include those expenses identified by the board
22 under (a) of this section, but may not exceed the maximum tariff set by the board.
23 The tariff adopted under this subsection may be revised annually.

24 (c) A pilot organization shall send a notice of intent to adopt a tariff for
25 provision of pilotage services to the board and publish the notice on at least three

1 days during a period of 14 consecutive days in a newspaper of general circulation in
 2 the state. The notice of intent to adopt a tariff shall include a copy of the proposed
 3 tariff, the name and mailing address of the pilot organization that intends to adopt the
 4 tariff, and a statement of the time and place of adoption of the tariff. A pilot
 5 organization may not adopt a tariff until 30 days have elapsed from the later of the
 6 mailing of the notice of intent to adopt a tariff to the board or the last date of
 7 publication of the notice of intent to adopt a tariff. A tariff may not take effect until
 8 30 days after the tariff is adopted by the pilot organization.

9 (d) A pilot organization recognized by the board or a member of the pilot
 10 organization may not charge a tariff for the provision of pilotage services that exceeds
 11 the maximum tariff set by the board, that is different from the tariff adopted by the
 12 pilot organization, or that has not taken effect under (c) of this section."

13 Renumber the following bill sections accordingly.

14 Page 5, lines 25 - 26:

15 Delete "[IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE
 16 BOARD OR]"

17 Insert "in excess of the maximum tariff established by the board or"

18 Page 5, line 26:

19 Delete "amount set [TARIFF ADOPTED]"

20 Insert "tariff adopted"

21 Page 7, line 4, after "conditions":

22 Insert ", including tariffs."



Alaska State Legislature

Session:
State Capitol
Juneau AK 99801-1182

MEMO

Interim:
716 W 4th Avenue
Anchorage AK 99501-2133

TO: George Utermohle, Attorney
Legal Services
VIA FAX: 2029

2 pages

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: April 11, 1995

Please prepare an amendment to the K version of CS for SB 130 (RES) using the language from AS 08.62.045 (attached) which was repealed effective June 30, 1994.

The Resources Committee will be hearing SB 130 tomorrow afternoon. Please deliver the amendment to Capitol Room 115 before 12:00 p.m.. Thank you.

- (4) adopt regulations establishing
- (A) pilotage regions in the state;
 - (B) the criteria for concurring in the amount of license, application, training, investigation, and audit fees proposed by the department under AS 08.01.065;
 - (C) the criteria for recognizing pilot organizations under AS 08.62.175;
 - (5) make available, upon request, copies of this chapter and the regulations adopted under this chapter;
 - (6) review and approve the articles, bylaws, and rules of pilot organizations;
 - (7) audit a pilot organization or an individual pilot as necessary to implement and enforce this chapter;
 - (8) review and approve training programs conducted by pilot organizations; the board shall cooperate with the Department of Environmental Conservation in the review and approval of training programs for pilots of tank vessels; and
 - (9) establish and publish the dates of future license examinations.
- (b) The board may, by regulation, make any other provision for proper and safe pilotage upon the inland and coastal water of and adjacent to the state and for the efficient administration of this chapter, including establishing
- (1) different licensing criteria for a pilotage region if justified by regional differences in piloting;
 - (2) a mandatory random drug and alcohol testing program for pilots licensed under this chapter;
 - (3) criteria for trainee selection and for training programs conducted by pilot organizations; and
 - (4) standards under which a pilot may receive a license or an endorsement to a license to pilot vessels in more than one pilotage region.
- (c) The board may, for good cause, require a pilot licensed under this chapter to submit to a physical or mental examination to determine the pilot's fitness to perform the duties of a pilot.
- (d) Notwithstanding the exemption from AS 45.50.562 - 45.50.596 granted to pilot organizations under AS 45.50.572(a), the board may not adopt a regulation or take other action resulting in anti-competitive activities that, if the board were subject to AS 45.50.562-45.50.596, would violate AS 45.50.562-45.50.596.

Sec. 08.62.045. Pilotage tariffs. (a) The board shall adopt by regulation maximum tariffs that may be charged by pilots for the provision of specific pilotage services. The board shall identify those expenses that

are included in the tariff. In adopting maximum tariffs under this subsection, the board shall take into consideration

- (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.

(b) A pilot organization recognized by the board, acting on behalf of its members, may adopt a new or revised tariff for provision of pilot services if the pilot organization follows the procedures set out in (c) of this section. The tariff adopted under this subsection must include those expenses identified by the board under (a) of this section, but may not exceed the maximum tariff set by the board. The tariff adopted under this subsection may be revised annually.

(c) A pilot organization shall send a notice of intent to adopt a tariff for provision of pilot services to the board and publish the notice on at least three days during a period of 14 consecutive days in a newspaper of general circulation in the state. The notice of intent to adopt a tariff shall include a copy of the proposed tariff, the name and mailing address of the pilot organization that intends to adopt the tariff, and a statement of the time and place of adoption of the tariff. A pilot organization may not adopt a tariff until 30 days have elapsed from the later of the mailing of the notice of intent to adopt a tariff to the board or the last date of publication of the notice of intent to adopt a tariff. A tariff may not take effect until 30 days after the tariff is adopted by the pilot organization.

(d) A pilot organization recognized by the board or a member of the pilot organization may not charge a tariff for the provision of pilotage services that exceeds the maximum tariff set by the board, that is different from the tariff adopted by the pilot organization, or that has not taken effect under (c) of this section. ~~(This section repealed June 30, 1994.)~~

Sec. 08.62.050. Marine pilot coordinator. (a) The department, with the approval of the board, may hire a marine pilot coordinator who is qualified to assist the board in administering and enforcing the provisions of this chapter. The coordinator is in the partially exempt service under AS 39.25.120.

- (b) The person who is hired as coordinator may not
- (1) be an active member of a pilot organization in the state;
 - (2) work as a pilot while employed as the coordinator, except to

AMENDMENT

Bill drawn

OFFERED IN THE SENATE

BY SENATOR LEMAN

TO: CSSB 130(RES)(Draft Version K dated 4/11/95)

1 Page 2, after line 23:

2 Insert a new bill section to read:

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

4 Sec. 08.62.046. PILOTAGE TARIFFS. (a) The board shall adopt by
5 regulation maximum tariffs that may be charged by a pilot organization for the
6 provision of specific pilotage services in a pilotage region where there is only one
7 pilot organization recognized by the board. The board shall identify those expenses
8 that are included in the tariff. In adopting maximum tariffs under this subsection, the
9 board shall take into consideration

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

12 (2) differential compensation for seasonal and weather conditions, risks
13 involved in providing pilotage services, and overtime;

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

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

18 (5) other expenses identified by the board.

19 (b) A pilot organization that is subject to a maximum tariff set by the board
20 under this section, acting on behalf of its members, may adopt a new or revised tariff
21 for provision of pilotage services if the pilot organization follows the procedures set
22 out in (c) of this section. The tariff adopted under this subsection must include those
23 expenses identified by the board under (a) of this section, but may not exceed the
24 maximum tariff set by the board. The tariff adopted under this subsection may be
25 revised annually.

1 (c) A pilot organization that is subject to a maximum tariff set by the board
 2 under this section shall send a notice of intent to adopt a tariff for provision of
 3 pilotage services to the board and publish the notice on at least three days during a
 4 period of 14 consecutive days in a newspaper of general circulation in the state. The
 5 notice of intent to adopt a tariff must include a copy of the proposed tariff, the name
 6 and mailing address of the pilot organization that intends to adopt the tariff, and a
 7 statement of the time and place of adoption of the tariff. The pilot organization may
 8 not adopt the tariff until 30 days have elapsed from the later of the mailing of the
 9 notice of intent to adopt the tariff to the board or the last date of publication of the
 10 notice of intent to adopt the tariff. The tariff may not take effect until 30 days after
 11 the tariff is adopted by the pilot organization.

12 (d) A pilot organization that is subject to a maximum tariff set by the board
 13 under this section or a member of the pilot organization may not charge a tariff for
 14 the provision of pilotage services that exceeds the maximum tariff set by the board,
 15 that is different from the tariff adopted by the pilot organization, or that has not taken
 16 effect under (c) of this section."

17 Renumber the following bill sections accordingly.

18 Page 5, lines 25 - 26:

19 Delete "[IN EXCESS OF THE MAXIMUM TARIFF ESTABLISHED BY THE
 20 BOARD OR]"

21 Insert

22 "(A) in excess of the maximum tariff established by the board
 23 under AS 08.62.146;

24 (B) [OR]"

25 Page 5, line 26:

26 Delete "amount set [TARIFF ADOPTED]"

27 Insert "tariff adopted under AS 03.62.146"

28 Page 5, line 27, after "member":