

STATE OF ALASKA
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF MARINE PILOTS

Minutes of Meeting
July 29 and 30, 1986

By authority of AS 08.01.070(2) and AS 08.40.040, and in compliance with the provisions of AS 44.61, Article 6 and AS 44.62.310, a scheduled meeting of the Board of Marine Pilots was held at the Federal Building, 701 "C" Street, Room C-121, Anchorage, Alaska.

Present, and constituting a quorum of the board, were:

Laurie Cunningham (designated by Commissioner Lounsbury)
William Barrington
Judy Brady
Captain James Hodgman
Captain W. Ed Murphy
William Ruddy

Board members absent:

Marvin Taylor

Also present were:

Chuck Ward, Investigator, Department of Commerce and Economic Development, Division of Occupational Licensing.

Nancy Ferguson, Licensing Examiner, Department of Commerce and Economic Development, Division of Occupational Licensing.

Lawrence Delay, Assistant Attorney General, Department of Law.

Deborah Ricker, Legislative Audit Division, Legislative Affairs Agency.

Guests present were:

Captain John R. Bradley, SWAPA President
Captain Dale Collins, SEAPA President
Commander Terry Rice, U.S. Coast Guard
Captain René Roussel, U.S. Coast Guard
Bill Sharp, Southeast Stevedoring
Captain Andy Santos, Port Captain, SOHIO

The meeting was called to order at 9:10 a.m. A delegation of authority from Commissioner Lounsbury dated January 1, 1986 was read into the record per AS 08.62.010 by the licensing examiner. Commissioner Lounsbury appointed Laurie Cunningham, Special Assistant to the Commissioner, as his designee to chair the meeting.

Minutes of November 14 and 15, 1985: The board reviewed the minutes. On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to adopt the minutes of the November 14 and 15, 1985 meeting.

Goals and Objectives: Captain Hodgman felt that there was progress made. The board would like the goals and objectives continued for FY 87.

FY 87 Annual Report: The board reviewed a draft of the proposed report prepared by Chairperson Cunningham. Captain Murphy suggested that the number of ship movements be included in the narrative overview and note the number of accidents reported. Captain Hodgman requested that a review of the 1981 sunset audit recommendations be included as part of the annual report.

Deborah Ricker from the Legislative Audit Division spoke to the board regarding the sunset audit. Patricia Harms is in charge of this audit. Ms. Ricker felt that the final report should be ready by fall. She returned to the meeting later in the day with copies of the 1981 sunset audit recommendations.

Per Captains Bradley and Collins, the ship movement information can be obtained from SWAPA's and SEAPA's computers.

Proposed Regulations: The board members reviewed the attached July 24, 1986 memorandum from Kevin Henderson.

Waiver of a license. 12 AAC 56.075. Mr. Froehlich would not pass on the regulation proposal unless a safety value was included.

On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED that on page 8, 12 AAC 56.075(a), the word "will" to be stricken and the word "may" be substituted.

Break for five minutes from 9:55 a.m. to 10:00 a.m.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we adopt 12 AAC 56.045 as outlined on page 6 of the draft by Kevin Henderson dated December 12, 1985 and also 12 AAC 56.050 as proposed by letter dated July 24, 1986.

Captain Murphy will assist the examiner in preparing a new form.

FURTHER RESOLVED that the board adopt proposed regulations 12 AAC 56.030, 12 AAC 56.040, 12 AAC 56.045, 12 AAC 56.050 and 12 AAC 56.075.

VLCC Regulations: The board struck this requirement. Captain Murphy proposed that a committee be appointed to submit proposed regulations for the next meeting. The chairman appointed Captain Murphy to chair this committee and he may designate the members.

On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED to create a committee to propose VLCC regulations.

Subsistence Rate for Southwest Alaska: The board had received a Letter of Agreement signed by all parties dated January 16, 1986. The board reviewed Mr. Henderson's memo dated July 24, 1986 regarding this issue.

The board felt that they did not need a public notice, and referred to "12 AAC 56.140, Consent to Rate Deviation." They are not asking for a higher rate, it is a lower rate.

On a motion duly made by Mrs. Brady, seconded, and approved unanimously, it was

RESOLVED to adopt and publish right away.

Concurrence of Fee Proposal: The licensing examiner read Mr. Henderson's memo dated July 24, 1986 into the record.

On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED to approve the director's proposed fee.

Captain Bradley advised that pilots would be willing to pay a \$1,000 license fee if they had one investigator qualified as a marine casualty investigator, but not for the fees to go into the general fund.

The chairman signed and dated the concurrence of proposed fees.

Mrs. Brady asked to be excused from the meeting for the remainder of the day. Mrs. Brady will be present on July 30, 1986. Mrs. Brady left the meeting at 10:38 a.m.

Michael Clinkscales' Letter dated May 13, 1986 regarding his applications for tonnage upgrade was reviewed. He is currently licensed with a tonnage of 20,000. He is requesting a tonnage upgrade to Unlimited as his U.S. Coast Guard license reads.

Captain Murphy advised that the U.S. Coast Guard has dropped the tonnage increments.

The examiner noted that Captain Clinkscales' application was received November 14, 1985. The application was before the board at their meeting on November 14, 1985. Although the application was discussed, no action was taken by the board at that meeting.

Captain Murphy advised that the U.S. Coast Guard has dropped the tonnage increments on federal licenses. We are in an interim period where there are no tonnage regulations on the books. Professionally speaking, he could not approve this request because Captain Clinkscales does not have the experience on larger tonnage ships. Captain Murphy felt that he was applying through a temporary loophole in the regulations.

The chairman would like to check with Peter Froehlich, Assistant Attorney General, before making a decision. She suggested that this issue be tabled until the afternoon.

Captain Hodgman agrees with Captain Murphy's position. The proposed regulations took three years to be approved. There are individuals in southeast Alaska who have recently obtained their unlimited licenses and who would not meet the requirements once the regulation becomes effective.

Captain Murphy recommended that we deny the application and send him the new regulations.

The examiner advised that the new regulations are not effective and do not have the force of law until signed by the Lieutenant Governor with an effective date. There is no statute or regulation to cite in order to deny this request.

This matter was tabled until later in the afternoon.

The board took a break from 11:15 a.m. until 11:30 a.m.

Investigative Report: Chuck Ward was present with his report for the board.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to go into executive session for Chuck Ward's report.

The board went off the record at 11:35 a.m., and were back on record at 12:20 p.m.

On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED that investigative report title case MP86-282 be closed in accordance with the recommendation of the investigator.

RESOLVED that Case #MP86-283 be closed in concurrence with the investigator's recommendation.

FURTHER RESOLVED that investigator case #MP86-284 be closed in concurrence with the investigator's recommendation.

The board had requested at their last meeting that cases MP86-278; MP86-279; and MP86-281 remain open. Mr. Ward asked if the board wished for these cases to remain open. All three cases involved the same individual. Mr. Ward reinvestigated the three minor accidents and found nothing to substantiate any further action. Mr. Ward recommendation closure.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that the cases recommended by Investigator Ward be closed: MP8-278, MP86-279, and MP86-281.

Recess for lunch at 12:40 p.m. The board reconvened at 1:20 p.m.

Federal Licenses: Captain Murphy advised that the U.S. Coast Guard has dropped the tonnage increments on federal endorsements. Passage of the regulation proposals earlier today will retain the tonnage increments on state licenses.

The U.S. Coast Guard is no longer giving exams in some ports in Alaska because domestic (American) ships do not go into the area. However, foreign ships do go into these areas: Dillingham; Clark's Point, Kvichak Bay; and in southeastern: the West Coast of Prince of Wales Island. There is seasonal foreign shipping in these areas.

Should the state require a certain number of observer trips to these areas prior to granting a state license? The U.S. Coast Guard did require local knowledge approximately three years ago. How many round trips would be required before allowing them to take the state written exam?

Commander Rice was present. He noted that the Coast Guard required five to seven trips in a minor port and 10-15 trips in a major port.

Captain Murphy suggested five or six observer trips.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we draft proposed regulations requiring a certain number of trips into ports that are not otherwise required under U.S. Coast Guard licensing regulations to have a certain number of trips.

Accident Report Form and Proposed Regulations: Captain Murphy reworded the accident report form as attached. He reviewed forms from Oregon, Washington, California and Florida. Captain Murphy thinks that the board and investigators will like this form but he feels that the form may be challenged in a lawsuit. Captain Murphy would like an opinion from the Attorney General's office regarding the accident report form.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to repeal Section 12 AAC 56.160(c) and adoption of 12 AAC 56.900(c) on page 1 of the proposed regulations dated July 23, 1986.

FURTHER RESOLVED to promulgate 12 AAC 57.910, Accident Reports, as contained in the draft of July 23, 1986, page 2.

The board approved both proposals to be sent forward for public notice as submitted.

Cruise Ship Problems in Southwest Alaska: Captain Bradley, President of Southwest Alaska Pilots Association, wrote the board a letter dated July 28, 1986. The letter is attached. Captain Bradley's letter expressed his concern for safety. A number of cruise ship masters are relieving the pilot of the conn in order to maneuver the vessel and also to dock the ship.

Is a pilot liable for damages and action against his license if an accident occurs when he did not have the conn because the master relieved him? What are the pilot's responsibilities after he has been relieved by the master?

This situation is occurring in southwest Alaska about 80% of the time, and in southeast Alaska approximately 50% of the time. It takes approximately three years to obtain a full license in southeast Alaska.

Captain Murphy made the following motion:

Move that 1) in response to Captain Bradley's letter regarding cruise ships, the board or chairwoman will write a short covering letter to be appended to this letter. These letters be distributed to S. E. Stevedoring, Alaska Maritime, cruise ship agencies for distribution to the masters; 2) the questions asked on the last paragraph of page 1 be addressed by the Attorney General's office, and 3) a letter of reply be written to the Southwest Alaska Pilot Association telling them what the board is doing with their letter.

The chairman asked that this motion be amended to include all licensed agents. Captain Murphy did amend the motion.

This motion was seconded, however, this motion was not voted upon by the board.

Captain Bradley does not want the letter to go out under his signature.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to amend Captain Murphy's motion by the board issuing the letter to the ships agents requesting the agents to pass that letter on to the ships advising them essentially of the problems that have been raised by Captain Bradley's letter.

Captain Bradley's letter will not be mailed. Mr. Ruddy will write the letter for the board's review and signature by the chairman.

The board took a break at 2:40 p.m. and went back on record at 3:00 p.m.

Captain Hodgman chaired the next section so that Ms. Cunningham could call Peter Froehlich, Assistant Attorney General, and Kevin Henderson, Regulations Specialist.

Legislation - Disciplinary Provisions: The licensing examiner asked for the board's help in completing the form entitled "Proposed Legislation." This form and the proposed legislation will be attached to the FY 86 annual report. The proposed legislation will go before the Legislature during the board's sunset review process.

Captain Murphy distributed a proposal that he has been working on. It is similar to the current proposal except that item (d) defines inattention to duty, negligence, and gross negligence, and (e) is not included.

The board agreed to go with the original proposal submitted the previous year except that they wish to amend line 26 to read "negligence or gross negligence" and delete "or an error in judgment." They agreed to delete items (d) and (e).

Per Mr. Ruddy, the definitions proposed by Captain Murphy under (d) can be done by regulation.

Captain Collins felt that the Legislature may make the amendments the board wants but they may also make other changes. He encouraged the board not to submit this proposal.

Captain Bradley opposed the whole package.

On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED to approve as amended.

Captain Hodgman will complete the form entitled proposed legislation.

Mr. Ruddy was appointed by the board as a contact person for Ms. Strickler to consult with on their legislative requests, by answering any questions for the department and Legislature.

Simplification of the Application for Licensure: Captain Hodgman proposed that the application be redrafted. Delete the requirement of the birth certificate because the U.S. Coast Guard license lists the information.

Clarification of Docking and Undocking: Definitions of master and pilot time in regard to 12 AAC 56.030(a)(5). Captain Hodgman proposed a cover sheet be attached to the application to explain the board's policy and interpretations of the regulations such as what is a master? Calendar year or 1-1/2 days' credit as the Coast Guard gives. Some of the U.S. Coast Guard rules have changed.

Captains Murphy and Hodgman will compile a list of working definitions to be reviewed by the board at their next meeting. By that time, the new regulations passed at this meeting should be law.

Revised Examinations and Examination Regulations: This project is currently being worked on by Captains Murphy and Hodgman.

The board chose to table this item until the next meeting when they can submit the package. They have a lot of things going right now.

Encouragement of More Alaskans to Seek Education Toward the Marine Pilot Profession: Captain Hodgman distributed the letter mailed to all high school counselors dated October 14, 1985. The deadline for Cal Maritime is October 15.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that the chairman direct the staff to publish the letter of October 14, 1985 updating it and sending it to all high school counselors in Alaska informing them of the fact that Cal Maritime Academy is part of the WICHE program and Alaska residents can attend that academy on in-state tuition.

Captain Hodgman advised that he will assist the examiner on revisions to the letter.

The board gave Captain Hodgman authority to work with Ketchikan Community College regarding maritime vocational education. Captain Hodgman distributed a letter to the board from C. G. Fager dated July 25, 1986. A copy is attached.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we direct the chairman to respond to the letter of July 25, 1986 from C. G. Fager, Director of Vocational Education at Ketchikan Community College encouraging him in his endeavors to provide a training program for Alaska students enrolled at Ketchikan Community College for a career in the maritime industry.

Captain Murphy reported that he attended Homer High School's career days and spent the day with juniors and seniors. He distributed Cal Maritime catalogs.

Captain Murphy advised that the school in Seward is U.S. Coast Guard approved for renewal of the five-year radar endorsement. It is a good facility. He has not had an opportunity to work with the school but intends to.

Ms. Cunningham returned to the meeting at 3:50 p.m. and took over the chairmanship.

Extension of Routes for Permanent Licensure. On a motion duly made by Captain Hodgman, seconded, and approved unanimously, it was

RESOLVED that all of the temporary extension of routes listed on the agenda for permanent licensure be approved.

This does not include the tonnage upgrades for Doug Johnson, John Larsen or Arnt Antonsen.

The extension of routes is listed as follows:

ANTONSEN, Arnt:

- 1) Add Klawock.
- 2) Add Sitka, Glacier Bay and West Coast of Prince of Wales Island.
- 3) Add Snow Pass.

BRUNEAU, Joseph

- 1) Add Sitka Sound and Sitka.

DIMENT, Archie

- 1) Add Klawock.

- 2) Add Sitka Sound and Sitka.
- 3) Add Peril Straits, Hoonah Sound, Whitestone Narrows, Neva Straits, Olga Straits, Lynn Canal, Haines, Skagway, Glacier Bay, West Coast of Prince of Wales Island.

HOPKINS, William

- 1) Add Glacier Bay.

HUNNICUTT, Steven

- 1) Add Prince William Sound, excluding western entrances, and Drift River.

JACOBSEN, Harry

- 1) Add Akutan and Bristol Bay.

PETKE, Lyle

- 1) Add Yakutat.

PORTER, George

- 1) Add Yakutat.

RANDALL, James

- 1) Add Klawock

TAYLOR, Leslie

- 1) Add West Coast of Prince of Wales Island, excluding Klawock.

THATCHER, Jack

- 1) Add Yakutat.
- 2) Add Glacier Bay.

Increased Tonnage: Ms. Cunningham spoke to Peter Froehlich, Assistant Attorney General, regarding the tonnage upgrade for Captain Clinkscapes. Mr. Froehlich's opinion is that Captain Clinkscapes' request for a tonnage upgrade must be granted by the board because there is a gap between the federal and state laws. After the effective date of the new law, all applicants will be required to meet the tonnage requirements approved by the board earlier in the day. Mr. Froehlich assured Ms. Cunningham that he will move on these regulations right away.

On a motion duly made by Mr. Ruddy, seconded, and approved by Ms. Cunningham, Mr. Barrington, and Mr. Ruddy; disapproved by Captain Murphy and with Captain Hodgman abstaining, it was

RESOLVED to vote on Michael Clinkscapes (approved).

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to call for a vote on Arnt Antonsen (approved).

RESOLVED to call for a vote on J. Douglas Johnson (approved).

RESOLVED to call for a vote on John Larsen (approved).

Letter of Censure: Ms. Cunningham spoke to Mr. Froehlich regarding the board sending a letter of censure to a pilot.

Mr. Froehlich's opinion was that the board could write a letter of concern, keeping the letter low key but noting the possible problem in his planning process to the approach, given the weather and area.

Interim Tariff: Ms. Cunningham reported to the board that Mr. Froehlich advised that this request would be considered an emergency if there was danger to public safety and property. He did not feel that the board could do this on the tariff. We are required to go through the public hearing process on this proposal.

Meeting Dates: The board would like to meet in Juneau to hold the written exams on November 11, 1986 and the board meeting on November 12 and 13, 1986. There will be at least 10 people testing in southeast. The board would like to meet face-to face with Mr. Henderson, Mr. Froehlich, and Ms. Strickler. It has been two years since the board met in Juneau.

The board would like to hold the following meeting in April.

The board recessed for the day at 4:40 P.M.

The board reconvened on July 30, 1986 at 9:10 a.m.

Present, and constituting a quorum of the board, were:

Laurie Cunningham (designated by Commissioner Lounsbury)
William Barrington
Judy Brady
Captain James Hodgman
Captain W. Ed Murphy
William Ruddy

Board members absent:

Marvin Taylor

Also present were:

Nancy Ferguson, Licensing Examiner, Department of Commerce and Economic Development, Division of Occupational Licensing.

Lawrence Delay, Assistant Attorney General, Department of Law.

Chuck Ward, Investigator, Department of Commerce and Economic Development, Division of Occupational Licensing.

Deborah Ricker, Legislative Audit Division, Legislative Affairs Agency.

Frank Flavin, Hearing Officer.

Lori Malone, Secretary to the Hearing Officer.

Guests present were:

Bill Sharp, Southeast Stevedoring
Captain Andy Santos, Port Captain, SOHIO

Midnight Sun Court Reporters recorded the meeting. Jill Mattson was the court reporter, telephone number (907) 258-7100.

Timothy Christy, Case #MP84-47: Captain Christy was present with his lawyer, James Gilmour.

Lawrence Delay was present to represent the state.

Frank Flavin presided as hearing officer.

Captain Murphy and Mrs. Brady felt that there may be some conflict of interest. After discussion by Mr. Gilmour, Mr. Delay, the board and the hearing officer, it was agreed that there was no objection to Captain Murphy and Mrs. Brady sitting on the board.

Mr. Gilmour would like to speak to the board for ten minutes.

Mr. Delay advised that the hearing was closed and further arguments were not necessary.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we hear comments of either party before executive session.

The hearing officer allowed Mr. Gilmour and Mr. Delay ten minutes each for additional comments.

On a motion duly made by Ms. Brady, seconded, and approved unanimously, it was

RESOLVED to go into executive session without the hearing officer; invite the hearing officer to come back in after sorting.

The hearing officer did attend the executive session.

The board came back on the record at 12:38 p.m.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we accept the proposed decision dated February 3, 1986 and the amended, proposed supplemental decision concerning the sanctions dated April 15, 1986 in the matter of Timothy Christy, respondent MP84-47.

The board recessed for lunch at 12:47 p.m., and reconvened at 1:45 p.m.

Robert Herring, Case #MP84-48: Captain Herring was present with his lawyer, James Gilmour.

Lawrence Delay was present to represent the state.

Frank Flavin presided as hearing officer.

Captain Murphy brought up the point of a possible conflict of interest.

The hearing officer mentioned a potential conflict of interest. Mr. Gilmour had no objection with Captain Murphy sitting as a board member.

On a motion duly made, seconded, and approved unanimously, it was

RESOLVED to go into executive session.

The hearing officer attended executive session.

Mr. Gilmour requested that the board adopt the hearing officer's decision.

The board went off the record at 2:00 p.m. and back on the record at 3:40 p.m.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED that we adopt the hearing officer's decision in the matter of the Robert Herring case #MP84-48.

The chairman expressed the board's concern that the state did not have either a pilot witness or expert witness.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, it was

RESOLVED to go back into executive session to speak with the state attorney, Mr. Delay.

The hearing officer thanked the board for their cooperation in these matters. The hearing officer gave all of the files for both cases to Chuck Ward, Investigator, Division of Occupational Licensing.

The court recorder was excused and left the meeting.

Mr. Delay asked that Chuck Ward be present during the executive session. The board agreed.

Meeting Adjourned: There was no further business and the meeting adjourned at 4:50 p.m.

Submitted by,


Nancy Ferguson, Licensing Examiner

Approved by,

Laurie Cunningham, Chairman