

**STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
BOARD OF MARINE PILOTS**

**MINUTES OF MEETING  
February 5-7, 1997**

By authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions of AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held February 5-7, 1997.

Examinations were conducted from 0840 - 1350.

2/5/97

**Call to Order/Roll Call**

Chairman Jeff Bush called the meeting to order at 1354.

Members present constituting a quorum were:

Mr. Bob Berto  
Mr. Jeff Bush  
Captain Mike O'Hara  
Captain Mike Spence

Members absent were: Mr. Bernie Smith

Staff Present were: Peter Christensen, Marine Pilot Coordinator (MPC)

**Agenda Item 1**

**Review/Set Agenda**

The agenda was accepted as written with the addition of three items. A letter request received from Alaska Marine Pilots (AMP) regarding Captain Mike Anthony was designated as agenda item 14(6.). A verbal request from Captain Courtney. . . . was designated as agenda item 17(5.). Discussion of the issue of required pilotage for yachts was added as agenda item 19. During a later discussion an Oral Exam for Captain Gray was scheduled to immediately follow agenda item 12. It ended up being held immediately following agenda item 11.

**Agenda Item 2**

**Review/Approve Minutes**

Review of draft minutes for the October and December 1996 meetings were moved to the agenda of the next meeting.

**Agenda Item 3**      **Agenda Review for Potential Conflicts of Interest and Declaration of Recusal**

Assistant Attorney General Ken Truitt joined the meeting via speaker phone to assist the board during agenda items two and three.

Captain O'Hara declared a potential conflict of interest with Agenda Item 9 and the Southwest Pilot Association (SWAPA) rate hearing scheduled for 0830, February 7, 1997. Chairman Bush stated he would allow Captain O'Hara to recuse himself provided the board maintained a quorum in accordance with AS 44.62.450(c). Mr. Berto declared a potential conflict of interest with agenda items 9, 10 and both rate hearings scheduled for February 7, 1997. Chairman Bush ruled that in accordance with AS 44.62.450(c) for the purposes of maintaining a quorum, Mr. Berto would have to remain for the SWAPA rate hearing, but if the quorum could otherwise be maintained Mr. Berto could recuse himself during the AMP hearing. Captain Spence declared a potential conflict of interest regarding Captain Gray's Oral Examination and was therefore recused.

**Agenda Item 4**      **Litigation and Investigation Update**

The MPC informed the board that no new investigations had been initiated since the last meeting. Mr. Ken Truitt addressed the board regarding pending and on-going litigation.

In the Proteus suit, motions regarding personal jurisdiction are pending before Judge Carpeneti. No formal discovery process has begun yet in this case.

In the Renwick case at Supreme Court all briefing is complete and oral arguments have been heard. We await the Judge's decision.

Captain Petrich is appealing the boards decision regarding renewal of his license to Superior Court.

Appeal of the Board's decision in the Southeast Alaska Pilot Association (SEAPA) rate hearing is also in Superior Court. All briefing is complete and oral arguments have been heard. We await the Judge's decision.

**Agenda Item 5**      **AMP Request for Training Endorsements**

The MPC briefed the board regarding the applicable requirements for a training pilot endorsement in Region 3 and recommended that the Board approve all five pilots for the endorsement. The board discussed when the requirement for five years experience as a state marine pilot while holding an unlimited tonnage state pilot license would be effective in Region 3. It will be in effect on or after March 1, 1988.

On a motion made by Captain O'Hara and seconded by Mr. Berto and carried unanimously, it was

RESOLVED that training pilot endorsements would be granted to Captain Mork, Captain Dundas, Captain Grobschmit, Captain Garay and Captain Moreno..

**Agenda Item 6**      **Approval of SEAPA Bylaws**

The board discussed the use of the phrase "controlled substances" on page five of the bylaws. The phrase was interpreted to mean what controlled substances as defined in 12 AAC 56.940(d)(3). The MPC volunteered to provide copies of AS 11.71.140 - AS 11.71.190 to all pilot associations. The board sought and received additional clarification from Captain Antonsen regarding SEAPA's training program and Article X Section 1.

On a motion made by Mr. Berto and seconded by Captain O'Hara and carried unanimously, it was

RESOLVED to accept SEAPA's amended bylaws subject to any later finding regarding discriminatory issues.

**Agenda Item 7**      **Tonnage Upgrades**

The MPC briefed the board regarding Captain Brown's application for a tonnage upgrade to 40,000 GT, and recommended that the board approve

End of Tape 1, Side A      the upgrade.

On a motion made by Captain O'Hara and seconded by Captain Spence and carried unanimously, it was

RESOLVED to approve Captain Brown's request for a tonnage upgrade to 40,000 GT.

The MPC briefed the board regarding Captain Rathgeber's request for a tonnage upgrade to 40,000 GT upon her one year anniversary as a Deputy Marine Pilot, and recommended that the board approve the upgrade. The board noted that her one year anniversary was not until May, and declined to grant the upgrade in advance. However they delegated the issuance of tonnage upgrades under the new system to the MPC and directed him to issue the upgrades when in receipt of an application which meets all of the applicable requirements.

**Agenda Item 8**

**Examination Results and Endorsements**

The MPC informed the board that Captain Hunnicutt passed the extension of route examination for Icy Bay, and recommended that the board grant the extension of route.

On a motion by Captain O'Hara and seconded by Captain Spence and carried unanimously, it was

RESOLVED that Captain Hunnicutt would be granted an extension of route endorsement for Icy Bay.

The MPC informed the board that Captain Haggerup passed the extension of route examination for Yakutat Bay, and recommended that the board grant the extension of route.

On a motion by Captain Spence and seconded by Mr. Berto and carried unanimously, it was

RESOLVED that Captain Haggerup would be granted an extension of route endorsement for Yakutat Bay.

The MPC informed the board that Captain Brown passed the extension of route examinations for Yakutat Bay and Klawock, and recommended that the board grant the extensions of route.

On a motion by Captain Spence and seconded by Mr. Berto and carried unanimously, it was

RESOLVED that Captain Brown would be granted an extension of route for Yakutat Bay and Klawock.

The MPC informed the board that Captain Chadwick passed the extension of route examination for the West Coast of Prince of Wales Island, and recommended that the board grant the extension of route.

On a motion by Captain Spence and seconded by Mr. Berto and carried unanimously, it was

RESOLVED that Captain Chadwick would be granted an extension of route endorsement for the West Coast of Prince of Wales Island.

The MPC also informed the board that Captain Gray passed both the Core and Regional Local Knowledge Examinations and recommended that he be orally examined by the Board. The Board scheduled the oral examination to follow immediately after the public comment scheduled for 1000 on February 6, 1997.

Recess

The Board recessed for a brief 10 - 15 minute break in the proceedings.

Mr. Frank Flavin, Hearing Officer for the Division of Occupational Licensing joined the meeting approximately at 1519.

**Agenda Item 9**

**Prehearing Conference Regarding the Proposed rate Filing by SWAPA.**

The prehearing conference in this case was not expected to be necessary and was postponed by the board till Friday morning at 0830.

**Agenda Item 10**

**Prehearing Conference Regarding the Proposed rate Filing by AMP.**

With the assistance of Mr. Flavin the board conducted the prehearing conference. Captain Steve Moreno and Mr. Robert Poe were present representing Alaska Marine Pilots and Joe Kyle was present representing Alaska Steamship Association. Mr. Flavin explained the process that would be used during the hearing to both parties. He directed the parties to exchange any exhibits they felt that they would use and to provide a copy of each to the MPC for copying.

Mr. Flavin departed at approximately 1533.

**Agenda Item 13**      **M/V BANEASA**

End of Tape 1, Side B

The MPC summarized the events that led up to his decision to not require a pilot aboard the M/V BANEASA when it was towed out of Adak by a tug. He explained that his decision centered on the definition of 'navigation' as used in AS 08.62.160. The board heard public comment on the issue and discussed the ramifications for other vessels in similar situations if the MPC's interpretation was correct.

On a motion by Captain O'Hara and seconded by Captain Spence and carried unanimously, it was

RESOLVED to begin a regulation project to define the term navigation in AS 08.62.160 as 'underway' and that vessels under tow require just one pilot.

Recess

At approximately 1620 the Board recessed for the day.

End of Recording on Tape 2, Side A

**2/6/97**

Tape #3, Side A

**Call to Order/Roll Call**

Chairman Jeff Bush called the meeting to order at 0839.

Members present constituting a quorum were:

Mr. Bob Berto  
Mr. Jeff Bush  
Captain Mike O'Hara  
Captain Mike Spence  
Mr. Bernie Smith

Staff present were:

Peter Christensen  
JoAnne Cummings, Regulation Specialist

**Agenda Item 11**      **Regulation Project: Review of Written Comments, Oral Comments, Any Changes and Adoption.**

Summary of Public Comment:

Peter Garay - The issue is safe and efficient pilotage in Western Alaska. Changing the 48 hour rule to a 96 hour rule just changes the shape of an existing loophole, it does not fix the problem. Recommended adding the phrase "unless otherwise mutually agreed" to current proposed regulation. The Board engaged in a lengthy question and answer period with Captain Garay following his statement.

Ken Castner - Regulations for training of deputy marine pilots should reflect the reality of commerce and not be tailored to specific ports based on past history. The RCAC would like to see a procedure established for familiarizing pilots with new ports before actual piloting of ships is begun. They would also like to see a 60,000 GT endorsement established in regulation thus requiring additional training before a pilot receives an unlimited tonnage endorsement.

Jim Drahos - Requested the board address the inconsistency in the regulations that appears to allow training in an area before the federal pilotage endorsement for the area has been received. He also questioned whether the board intended to give the MPC the authority to approve candidates to take the exam. The board stated that it is within their authority and that it is their intent to delegate to the MPC the authority to review applications and approve qualified applicants to take the respective exam.

Tony Joslyn - Responded to the concern voiced by Ken Castner regarding pilot procedures for familiarization with new ports. He stated pilots have always been involved with shippers and engineers when a new ship is entering the a port or a new port is being designed and built.

Ted Kellogg - Stated that he had the same questions as Captain Drahos and that he was satisfied with the judgement of the board on this issue.

Rick Kniazowski - "AMP is looking for a stick to bring everyone together to coordinate their activities, but what they're asking for is more along the lines of a nuclear weapon." The language AMP suggests to add sounds a little too vague to really be effective as a regulation. The main issue is that Kiska is 48 hours away from Dutch Harbor. One of his customers argued that if they notify the pilots when they leave Dutch Harbor then AMP has received 48 hour notice for the entry into Kiska. But there is no other way to get to Kiska other than on the tramper when it departs Dutch Harbor. So it's not fair for industry to expect a pilot to pack up and be

End of Tape 3, Side A

gone for two weeks with only two hours notice. He is working with his customers so that he receives notice earlier and in turn can give the pilots better notice. Safety is another issue, but this regulation does not address that. He feels that the compromise discussed to increase the required 48 hour notice to a 96 hour notice is the preferred alternative if the board is going to address this issue through regulation. The Board engaged in an extensive question and answer period with Mr. Kniazowski following his statement.

Stuart Laney - The Board of Marine Pilots has the authority to establish pilotage regulations. If the board removes the 48 hour rule from regulation they will have given broad authority to one pilot group to decide which ports they want to service. Under the current regulations it has been said that if a pilot is not provided for a vessel in Kiska, then that vessel may roam freely in and out of pilotage waters in the western Aleutians. This is a deceptive statement. By regulation a vessel still has to give 48 hour notice every time it enters or leaves a port. We feel the safety requirements they have recently given us are a little vague. For instance we don't know if they would accept a new lifeboat as an acceptable pilot transfer vessel. We prefer a 96 hour requirement be instituted rather than having no rule and leaving it totally up to the pilot association. Despite AMP's assurances to act reasonably, we feel the need to be able to give a client a fixed timetable as to when the client can reasonably expect a pilot to be available. The Board engaged in a lengthy question and answer period with Mr. Laney following his statement.

Jonathan Spool - Described fishing industry operations in the Aleutians. He expressed dismay in the way this process was going forward. Most of the letters addressing this issue have been speculative. The problem has not been quantified. There is an awful lot of effort going on here, for something that has not been quantified to be a major problem, yet. The question is, do you eliminate the rule or find alternatives. The rule was designed to protect commerce if the pilot associations could not for some reason provide a pilot. I'm a licensed master. I understand the concerns of safety, and the weather concerns. Safety is really a big issue here. But, if there are safety problems they should be addressed, abolishing the 48 hour rule will not address the safety concerns. Jeopardizing commerce is not going to create a solution for the safety issues. Riding pilots or maybe prearranged pickups of pilots in Tanaga or Kiska may be a solution. Changing the rule to 96 hours is a good compromise.

Douglas MacPherson - Applauds the boards efforts regarding making the exams more accessible for trainees, because it is being done without omitting anything. Favors counting federal observer trips towards meeting the state requirements where applicable.



Joe Kyle - Pilot availability is a problem. State licensed pilots don't live where they make a living. We don't know if the 48 hour notice system has been abused and he objects to that assumption. Abuse implies intent. If the 48 hour notice has not been given it was due to operational problems inherent to the fishing industry and not in an effort to avoid using pilots. Once the industry understood the ramifications of the proposed change to the rule, discussions were held with AMP. A handshake agreement was made that a 96 hour notice would be given for waters west of Atka Island. Following a subsequent discussion between AMP and one of their clients, AMP withdrew from the agreement. If the Board adopts the regulation as presented in AMP's proposed amendments this morning the market will react. Recent changes to the Magnuson Act allow the off loading of fishing boats outside the three mile limit. Implementing regulations have not yet been written, but when they are, industry will lobby to have them written to allow vessels to transfer their cargo outside the three mile limit and then they won't need pilots. The board should force the compromise agreement that AMP and industry reached 1/9/97, and that is to require 96 hour notice for waters west of Atka Island.

End of Tape 3, Side B

The board requested Captain Moreno to step forward to answer additional questions from the board. In response to various board questions Captain Moreno conveyed the following opinions. There were three instances in which a vessel moved without a pilot due to short notice. Transfer problems in Tanaga Bay and the resulting "radio pilotage" that occurs was described. It's his belief that the regulations regarding pilot availability are premised on the existence of an available means of transportation. "There is no available means of transportation in Kiska. There is no available means of transportation in Tanaga Bay." The association has had two pilots sitting in Tanaga Bay with no way to bring those two pilots back to Dutch harbor. It is an inefficient use of manpower. It's also not a practical application of manpower to dedicate pilots to one ship. If dedicating pilots was required, five pilots would be necessary in Togiak. It is currently served by one. Safe and efficient pilotage is what we're supposed to provide. Safe not just in regard to piloting, but also in regard to the pilots safety. But efficient use of our manpower is not occurring. Industry is focusing on the 48 hour rule. What we need to focus on is how do we ensure we have pilots on these ships, not how long do they wait before proceeding without a pilot. To satisfy industry concern regarding availability we have proposed dedicating two men to the area. The other issue is we need to have a safe way to transfer pilots in the area so those pilots can be efficiently used. Adding to the proposed regulation the phrase "unless mutually agreed

otherwise” is a good solution to this issue. The 96 hour rule will not solve the situation but it probably would help.

The MPC proposed that the regulation project be split into two parts to allow additional information to be added to the proposed revisions of 12 AAC 56.025 and 56.070. The board asked that he accomplish the rewrite that evening so that it could be reviewed by the board following the hearings the next day.

Chairman Bush asked the board for any comments or discussion regarding the proposed amendments to 12 AAC 56.028. Captain O’Hara requested the board to review the apparent conflict between 56.027(a) and 56.028(b) as described by Captain Drahos in his letter to the board. The board felt that any interpretation of 56.028(b) would have to take into account 56.027(a), and that the clarity of 56.027(a) would prevent any training from be conducted or accepted unless the requisite federal endorsement had already been obtained.

NOTE: 12 AAC 56.026(c) also supports the boards position on this matter.

Chairman Bush asked the board for any comments or discussion regarding the proposed amendments to 12 AAC 56.205. Mr Smith suggested that the board encourage the two parties to continue negotiation and attempt to work out a mutually agreeable proposal for the amendment of 56.205. Chairman Bush expressed some concern with AMP’s proposed additional phrase “unless mutually agreed otherwise” and the potential abuse that could result. He stated that he was leaning toward the 96 hour proposal. Because anything more than 96 hours was on the edge of seriously inconveniencing shipping and commerce. Chairman Bush suggested that the board move this regulation proposal to tomorrow’s agenda for consideration.

On a motion made by Mr. Smith and seconded by Captain Spence and carried unanimously, it was

RESOLVED to table consideration of the regulation package until late tomorrow, (February 7, 1997), immediately following the AMP hearing.

1100 - Board recessed  
1112 - Board Reconvened

**Captain Gray’s Oral Examination**

On a motion made by Mr. Smith and seconded by Captain O'Hara and carried unanimously, it was

RESOLVED to go in to executive session for the purpose of conducting Captain Gray's oral examination.

Captain Spence recused himself from the oral examination of Captain Gray.

Executive Session

The board entered executive session at 1114 and the recorder was turned off.

The board returned from executive session 1143 and recording of the meeting continued.

On a motion made by Captain O'Hara and seconded by Mr. Berto and carried unanimously, it was

RESOLVED to grant Captain Gray a Deputy Marine Pilot license with docking exclusions for Region 1.

Captain Spence abstained from voting.

## Agenda Item 12

### Public Comment

End of Tape 4, Side A

Ken Castner - The M/V Baneasa discussed in agenda item 13 should have had a pilot on board. The board needs to formalize when a pilot is required for towed ships, overturned barges and other uncommon occurrences. The Alaska marine simulator/pilot reevaluation project needs to continue. Captain O'Hara assured Mr. Castner that the project would continue. Chairman Bush suggested Mr. Castner might want to join the P.W.S. Risk Assessment Committee. Mr. Castner went on to address his earlier comments regarding a 60,000 GT endorsement and establishing a process or procedure for opening new ports. Someone had mentioned to Mr. Castner that he was an "Unlimited Pilot" with the inference that additional requirements are not necessary. Mr. Castner stated that unlimited pilot does not mean omnipotent pilot and that a systematic approach to the qualification of pilots is needed.

Captain Bennett - Regarding examination security it is probably shortsighted to expect that any examination question which has been given is afterwards secure. There is room for improvement in how the state gives examinations and the board may want to look at how other states

develop and administer their examinations. A given examination should probably only be used once. Our current process lends itself to being corrupted.

Captain Drahos - In respect to the double counting of observer trips, the State should amend its regulations to express only what the State wants to actually require over and above whatever the Coast Guard requires. The portion of his written comments which dealt with the format of exam questions resulted from miscommunication. If the format is not limited to Coast Guard type questions, the format will be fine. The best way to provide exam security is through a large data bank of questions. Having the questions in an electronic form will facilitate correction and updating of the questions. Probably the best way to produce the examinations is in the manner stated by the MPC and the Board should go forward with that idea. The certification against non-certification is similar to locks put on to keep honest people honest. Perhaps the Board should put out a statement to the effect that the questions should not be shared and leave it at that. Captain Drahos in addressing Mr. Castner's comments regarding the opening of new ports noted that no matter how much involvement or what recommendations are made by pilots towards the construction and opening of a new port, the pilots do not have any control over how it is finally built, positioned, etc. Captain Drahos also noted the fine effort made by pilots and industry to develop the new simulator operated by Marine Safety International in San Diego, without a regulatory or statutory mandate. While he noted some problems with its current software, he felt that it was a worthwhile effort and is continuing to improve.

Captain Spence followed these remarks with a statement echoing Captain Drahos's suggestion that the Board determine and declare a policy that clarifies the Board's position on the circulation of exam questions.

Captain Antonsen - The Board should move to encourage the circulation of questions. Examinations are tests of memory. Training is the measurement of ability. Knowing the types of questions faced by other trainees, a trainee has a better idea of what to study. The test is only one step of many in the process of obtaining a license. The entire process is a measure of determination and memory. Preparation is all part of the process. Human nature may be that we want to share examination information, but that is not a negative trait.

Captain MacPherson - If the Board is going to build a database of questions will it be available to the public? If it is available, it should be available equally to everyone.

End of Tape 4, Side B      Captain Collins - The shift by the Board to a regional examination process rather than 20 separate, limited geographic examinations for a region is a good thing. The limited examinations just did not contain enough questions.

Lunch                              The board recessed for lunch at 12:34 pm.

Reconvened                        The board reconvened at 1:17 pm.

**Agenda Item 14      Correspondence**

The MPC led the Board through the correspondence in the Board packet. The first item was Wayne Carnes request to take an Extension of route exam before he has completed the requisite trips necessary for the Coast Guard endorsement. The Board stated that they were not going to bend the rules. They had turned down Frank Didier who presented a similar request during the December teleconference meeting of the Board.

Next the Board reviewed the Attorney General (AG) billings to the Board since FY 1995 presented in a spreadsheet prepared by the MPC. The MPC promised the Board that he would continue to track the AG billings and present them at each future meeting.

The board discussed AMP's request that Mike Anthony be allowed to take the core exam without a complete endorsement for Region 3. Regulation 12 AAC 56.028(c) states that an "omission of one or more of the required ports on the applicant's federal license will be accepted by the board only upon a showing of good cause". The Board discussed the request at length.

The MPC asked Captain Moreno to verify that it was really their intent, as stated in their letter, to not allow Mike Anthony to start training until he receives the complete federal endorsement on his Coast Guard license. Captain Moreno said "Yes, that is correct. We feel it's very important."

On a motion made by Captain O'Hara and seconded by Captain Spence and carried unanimously, it was

RESOLVED to let Captain Mike Anthony take the Core examination without possessing the full Federal endorsement for Region 3, subject to meeting all other requirements.

**Agenda Item 15**

**Exams**

The MPC proposed that the Board consider holding examinations outside of full Board meetings in order to hold them more frequently. The Board had several concerns regarding the proposal. It was pointed out that successful examine's would still have to wait for a full meeting of the board so that the Board could approve the appropriate licensing action. Captain O'Hara noted that the Board currently gives examinations much more often than most other west coast pilotage jurisdictions. Chairman Bush noted that the Marine Pilot Board holds tests more frequently than most other regulated professions in Alaska. Captain O'Hara also raised a concern regarding examination security. If examinations were given on a more frequent basis, they could be captured even more readily by the examines. The issue of examination security is already a concern of the Boards'.

The MPC asked the Board to resolve the issue surrounding the certification statement that was proposed to accompany all exam question submissions from the field. It was brought up that the pilot's current reluctance to submit questions may have more to do with the electronic format that's been requested for submission, than the certification statement submitted with the questions. The discussion broke down and went off on several tangents. In response to some concerns mentioned by Captain Drahos, regarding the type of questions currently being solicited, the MPC made three points. First, since we are in the beginning stage of building the examination electronic database, we should initially include only simple format questions such as T/F, multiple choice, fill in the blank type questions because we are just learning how to use the new software. Questions which use a graphic as part of their display or which require a drawing to be made should be held until the system is operating more fully. Secondly, the MPC took strong exception with the emphasis being placed on the written examinations. He stated that written examinations are not an accurate measurement of an applicant ability to conn a ship. He said that he has seen too many good test takers get their federal license, while watching mariners who can control a ship as easily as most people drive their cars fail to get their license due to poor test taking ability. Lastly, he assured Captain Drahos that the type of questions he was currently soliciting were only the first step in building and operating the new examination database.

The MPC stated that his long range goal regarding examinations was to divorce the Board as much as possible from the process except for the review of examination questions before they go in to the database. To get the database to a point where he is able to give examinations on demand.

End of Tape 5, Side A      Captain O'Hara expressed some reservations as a board member regarding being divorced from the examination process.

Captain Spence requested that a sentence be added to the Exam Room Protocol that is signed by each applicant on the day of the examination. He requested that the Board add the sentence "applicants should not disclose or circulate examination questions to anyone following the examination". The Board agreed to add that sentence to the Exam Room Protocol.

**Agenda Item 16      Concurrent Counting of Observer Trips**

This agenda item was placed on this agenda at the last meeting of the Board. The MPC once again explained the counting of the Federal observer trips towards meeting the State requirements for licensure in Southeast Alaska. The issue does not pertain to any other pilotage region in Alaska. After some discussion everyone understood how the Federal pilot observer trips could be applied to meet some of Southeast Alaska's State training requirements.

**Agenda Item 17      Miscellaneous MPC Clarification Items**

The MPC requested clarification regarding how the three years of pilotage service required in AS 08.62.093(b)(5) were counted. A long discussion ensued in which it seemed everyone had a different definition of "service" and how it should be counted. The most accepted viewpoint seemed to be that it should be counted as we count other service on a day for day basis to comprise 1080 actual days of actual pilotage service with another pilotage association. Towards the end the MPC was directed to check on the service presented by Captain Tuttle when he was attempting to qualify in our regulatory scheme.

The MPC asked what role the Board had in protecting State licensed pilots from de facto license sanctions as may be imposed by outside agencies or companies. The MPC went on to explain how Captain O'Hara requested and received a transcript of the Board's discussion with Tom Chapple of ADEC. Upon receipt of the transcript Captain O'Hara wanted to pay what it had cost to have it made. Unfortunately, the Division of Occupational licensing and the Department have great difficulty receiving money after a service has been performed. After the fact, it was impossible for Captain O'Hara to pay and the MPC had thought that the transcript was to be used by the State to defend against the actions taken by ADEC in essentially de facto sanctioning a SWAPA pilot. In the future it was agreed that anyone

**End of Tape 5, Side B**

requesting a transcript will be provided with a tape of the requested conversation which they may then have transcribed. The MPC was informed that the Board does not have a real role in defending pilots against other agencies actions.

Captain Spence asked the Chair to have the previous issue, of how to count the three years of pilotage service required in AS 08.62.093(b)(5), placed on the agenda of the next meeting for public comment and more discussion by the board. The Chair so directed.

The MPC withdrew his request for clarification of the conversion of Channel Pilot licenses.

The MPC requested clarification on the requirements for a licensee moving into another region in which they have previously held an endorsement. It is the MPC's understanding that old endorsements held in a previous regions do not expire, just that you can only be licensed in one area at a time. Should the move be treated as a renewal of a lapsed license? Should the applicant only have to perform the familiarization trips required to renew a lapsed license under 12 AAC 56.082? What if it's been more than five years since the endorsement was last active, or held? The Boards position is that if an old endorsement has lapsed for more than five years then it has expired. The marine pilot licenses do not have an "inactive" status authorized in regulation. Later the discussion returned to this topic and members of the audience felt that a former Board told licenses that they would not lose an endorsement just because it could no longer be printed onto the license, due to a statutory change. It was the impression of members of the audience that the Board actually passed a resolution dealing with this issue. The MPC stated that he would research past Board minutes for the existence of such a resolution.

The MPC asked if an applicant could combine service, as applicable, from two different paragraphs in AS 08.62.093(b) to qualify under one of the paragraphs. The MPC was informed that the language of the Statute did not allow combining service from two different paragraphs under AS 08.62.093(b).

1504 Board Recessed  
1525 Board Reconvened

**Agenda Item 18**

**Status Update**

The next item was a status report of the marine simulator project RFP. The RFP has been drafted by fiscal. It is on MPC's desk for review and



amendment. When the MPC feels that it is clean enough to be reviewed by the Evaluating Committee he will forward it to them. Project deadline for submitting it to the evaluation committee is February 28, 1997. Chairman Bush asked if the MPC had been in touch with or was coordinating his efforts with the industry personnel who are in control of the T/V KENAI money? No, the MPC has been unable to get in touch with the only point of contact he has with that group and that is Steve Provant of ADEC. Captain O'Hara wanted to know how the list of RFP recipients would be compiled. The MPC stated that he was not sure, but that he would find out. He went on to say that he knew for a fact that the RFP would be advertised nationally in a magazine or newspaper of broad circulation. The MPC was unsure if any mailing would go out that would target specific service providers or anyone was targeted directly to receive the RFP. Chairman Bush was uncertain but felt that the rules might be such that we cannot directly target specific companies for receipt of the RFP. Once the RFP is on the street, the associations would be free to make their favorite provider of services aware of the RFP so that they could request a copy.

The MPC asked that the quarterly reports submitted by the associations need to be brought up to the requirements of the regulation. Chairman Bush suggested that if the MPC receives quarterly reports which are not in compliance with the regulatory requirements, the MPC should return them and request that they be corrected. The MPC pointed out that as the reports are submitted now, it would be extremely difficult to pull traffic information from them because the reports do not reflect the full route of travel of the ships. Captain Spence suggested that the regulation proposal already pending on this issue should include a requirement to report the waters and intermediate ports that the ship passes through.

**Agenda Item 19**

**Yachts**

The Board discussed ways in which this troublesome problem could be fixed. The statute as written is a significant enforcement problem. Actions discussed included a rewrite of the statute requiring pilotage for yachts, to a statute which would allow waivers of some statutory/regulatory requirements. It was determined that no one wanted to chance opening the statute for legislative action. The issue was tabled until it is brought up again, probably sometime during this summer.

End of Tape 6, Side A

Chairman Bush received a request to allow Ken Castner to address the Board before the Board recessed for the day. The question Mr. Castner posed was "are there any other places in Alaska where an applicant could

apply his Federal observer trips to his State of Alaska licensing requirements"? After some deliberation, the answer was determined to be no. There is no other place where the Federal observer trips may be used to meet the State requirements for licensure. Only portions of the State of Alaska required training for Southeast Alaska can be met by using Federal observer trips.

The board recessed for the day.

End of Tape 6, Side B

2/7/97  
Tape 7, Side A

### **Call to Order/Roll Call**

Chairman Jeff Bush called the meeting to order at 0835.

Members present constituting a quorum were:

Mr. Bob Berto  
Mr. Jeff Bush  
Captain Mike O'Hara  
Captain Mike Spence  
Mr. Bernie Smith

Staff present were:

Peter Christensen  
Frank Flavin

### **SWAPA Rate Hearing**

Mr. Flavin noted for the record that it was Case # 1950-97-2. Chairman Bush introduced Mr. Flavin to the audience. Mr. Flavin is a hearing officer that will assisting the Board with the two hearings today.

Chairman Bush stated that the Board received a signed request from SWAPA earlier in the week. At this point Captain O'Hara recused himself from the proceeding and left as agreed for reasons previously stated on the record two days before. Mr. Bernie Smith offered to recuse himself, although he stated he didn't really feel he needed to. However Chairman Bush declined Mr. Smith's offer of recusal in order to maintain a bare quorum for purposes of conducting the hearing.

Chairman Bush stated that the Board had received a signed request from SWAPA and signed by ASA to adopt rates other than those noticed. He then asked if representatives of both parties were in attendance. They answered affirmatively. Chairman Bush went on to say "that the Board did not have the statutory authority to adopt the new rates proposed by the parties. The Board also lacks any authority to permit the noticing of new rates, without a finding of unreasonableness for the currently noticed regulations. However, the Board is aware that both parties have reached a negotiated settlement in lieu of their noticed rates. And I'm going to ask the parties is that in fact true. Let the record reflect that both parties indicated yes, affirmatively." Mr. Flavin recommended to the Chair that he have the parties identify themselves for the record. "Tony Joslyn, President of Southwest Alaska Pilots Association." "Joe Kyle, Executive Director of Alaska Steamship Association (ASA)." Chairman Bush stated "the Board infers from the settlement and the written request for new rates, that both parties agree that the previously noticed rates were and are now in error. Do both parties agree that the rates were in error?" "On behalf of ASA, yes." "On behalf of SWAPA, yes." Chairman Bush continued "Since a settlement in this matter has already been reached, the Board would like to avoid the expense of a lengthy hearing, as you can well appreciate. However the negotiated rates cannot be noticed without a formal finding by the Board that the rates which were noticed by SWAPA on October 12th, 13th & 14th, 1996, are unreasonable. That's what we've been advised by our attorney's. For the sole purpose of facilitating the negotiated settlement now existing between the parties, and for no other purposes, do the parties agree with the Board's intention to find the previously noticed rates unreasonable?" "On behalf of ASA, yes." "On behalf of SWAPA, yes." Chairman Bush continued "Thank you. Then in compliance with AS 08.62.046(e). . . . I think I'll take a Board motion at this point."

Mr. Spence made a motion that the Board finds the rates unreasonable for the sole purpose of implementing the negotiated settlement. The motion was seconded by Mr. Berto. Chairman Bush pointed out that the findings of the Board were not based upon the merits of the rates, because the Board has not in fact done any determination of that. In fact the findings are merely to facilitate the settlement between the parties and he wanted that clearly understood on the record. Mr. Flavin noted for the record that there had been no objection noted from any other party. A roll call vote was taken on the pending motion. Mr. Bush, Mr. Spence, Mr. Berto, and Mr. Smith all voted in favor of the motion. Chairman Bush pointed out that SWAPA now had sixty days to renote their rates. He also pointed out that lacking any objection of those rates, they would go into effect retroactively from January 1, 1997.

0850 Board recessed  
0905 Board reconvened

### **AMP Hearing**

Chairman Bush turned over the running of this hearing to Mr. Flavin. Mr. Berto recused himself from this hearing as previously arranged. Mr. Joe Kyle represented ASA and gave testimony. Captain Steve Moreno represented AMP and gave testimony. Captain Pete Garay also testified for AMP regarding Kevalina. Captain Garay was questioned by Mr. Kyle. The Board questioned all concerned. For sake of brevity I will not recount the actual hearing.

1055 Board recessed  
1100 Board reconvened

1101 Off record.  
1102 Back on record.

The hearing continued as before.

Tape 3, Side A

1228 Board recessed for lunch.  
1310 Board reconvened.

Following lunch closing arguments were made.

Executive Session

Approximately 1430 the Board went into executive session to deliberate.

The Board reconvened at 1520.

### **Adoption of New Draft of Regulation Project**

Mr. Joe Kyle and Captain Steve Moreno presented their draft regulation which represented their negotiated settlement. The Board was pleased that they were able to reach a compromise. With the assistance of JoAnne Cummings the MPC presented the redraft of the regulations that they accomplished the previous evening.

On a motion made by Captain Spence and seconded by Mr. Smith and carried unanimously, it was

RESOLVED to adopt the regulations 1-6 as presented and with the amendments presented today.

The Board set the next meeting date for April 29-30, 1997.

On a motion made by Captain O'Hara and seconded by Mr. Smith and carried unanimously, it was

RESOLVED to adjourn the meeting.

Respectfully submitted: \_\_\_\_\_  
Peter D. Christensen,  
Marine Pilot Coordinator

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Jeffrey W. Bush,  
Deputy Commissioner