

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

**MINUTES OF MEETING
January 23-25, 2001**

By the authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions of provisions of AS44.62, Article 6, a meeting of the Board of Marine Pilots was held January January 23-25, 2001, in Juneau, Alaska.

1/23/01

No examinations were scheduled or administered.

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

Mr. Bush called the meeting to order at 1020. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Jeff Bush	-	Commissioner's Designee
Captain Pete Garay	-	Pilot Member
Captain Anthony Joslyn	-	Pilot Member
Mr. Jeff Thompson	-	Agent/Vessel Manager Member
Ms. Barbara Huff Tuckness	-	Public Member

Staff present was: Peter Christensen, (MPC)

Member absent:

Mr. Bob Berto	-	Agent/Vessel Manager Member
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Agenda Item 2 SWAPA Rate Hearing

Captain Pierce representing SWAPA and Mr. Kyle representing ASA appeared before the Board. Chairman Bush asked both parties if they had reached an agreement in their rate negotiations. They both stated that subsequent to the filing of the public noticed rates they had reached agreement on a new rate and asked

that the Board find the noticed rate unreasonable for the sole purpose of allowing them to notice the new negotiated rate.

On a motion made by Mr. Thompson, seconded by Ms. Huff Tuckness and carried unanimously, it was

RESOLVED to find the SWAPA rate unreasonable for the sole purpose of allowing SWAPA to re-notice their recently negotiated rates.

Agenda Item 3 **ACP Rate Hearing**

Chairman Bush announced that he wanted to hold a status conference regarding ACP's Rate hearing. Captain Baken and ACP's counsel Mr. Monkman came forward to represent ACP, Mr. Kyle represented ASA. Following the status conference Chairman Bush indicated that the department would forward their case to the Department's Hearing Officer.

Agenda Item 4 **SEAPA Rate Hearing**

Chairman Bush asked representatives of the parties to step forward to begin the hearing. Captain H. Antonsen came forward to represent SEAPA and Mr. Kyle came forward to represent ASA. After discussing the ground rules of the hearing, Chairman Bush asked both parties if they thought it would be worthwhile for the hearing to be postponed to facilitate further negotiation between the parties to resolve the dispute. Both parties indicated that a short recess to allow further negotiation might be worthwhile. Accordingly, the Board recessed until 1400.

Recess

The Board reconvened with the same members present at 1410. Chairman Bush asked both parties whether they had been able to reach agreement. Captain Antonsen indicated that they had not been able to reach agreement to resolve the dispute. Since no agreement had been reached, Chairman Bush stated that the hearing would commence leading off with Captain Antonsen and Captain Collins making their presentation.

Captain Antonsen and Captain Collins presented SEAPA's rate request and the rationale why they felt it should be approved. On their behalf they introduced three additional exhibits that were marked as SEAPA exhibits D, E, & F. Captain Antonsen and Captain Collins fielded several questions from the Board.

End Tape 1, Side A
Start Tape 1, Side B

Mr. Kyle was then given an opportunity to ask questions of Captain Antonsen regarding his presentation.

Mr. Kyle asked for a short recess before giving his presentation. The Board took a short recess.

Break

End Tape 1, Side B
Start Tape 2, Side A

End Tape 2, Side A
Start Tape 2, Side B

The Board reconvened following a short recess. Mr. Kyle then began his presentation. After a few remarks by Mr. Kyle, he asked Mr. Geldecker of Cruise Line Agency of Alaska to present a break down of pilotage costs before and after the proposed new pilotage rate is applied to an "average" cruise ship transit through S. E. Alaska. Then Mr. Kyle asked Mr. Les Cronk of Southeast Stevedoring to present a similar break down of costs for an actual cargo ship operating in S. E. Alaska. Mr. Kyle then summarized his presentation and concluded his remarks. He then responded to several questions from the Board.

Following the questioning of Mr. Kyle, Captain Antonsen was given an opportunity to question Mr. Kyle's presentation. Captain Antonsen replied that he did not have any questions for Mr. Kyle and would instead save his comments for his rebuttal. Chairman Bush then invited Captain Antonsen to give his rebuttal. Following Captain Antonsen's rebuttal, the Board asked a few follow-up questions. With nothing further offered the hearing was concluded.

On a motion made by Captain Garay, seconded by Mr. Thompson and carried unanimously, it was

RESOLVED to move into executive session for the purpose of deliberations on the hearing.

Recess

The Board returned from executive session and recessed for the day.

1/24/01

Agenda Item 5 Call to Order/Roll Call

Mr. Bush called the meeting to order at 0830. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Jeff Bush	-	Commissioner's Designee
Captain Pete Garay	-	Pilot Member
Captain Anthony Joslyn	-	Pilot Member
Mr. Bob Berto	-	Agent/Vessel Manager Member
Mr. Jeff Thompson	-	Agent/Vessel Manager Member
Ms. Barbara Huff Tuckness	-	Public Member

Staff present was: Peter Christensen, (MPC)

On a motion made by Captain Garay, seconded by Mr. Thompson and carried unanimously, it was

RESOLVED to move into executive session for the purpose of further deliberations on the hearing.

The Board returned from executive session.

Captain Garay made a motion that was seconded by Mr. Thompson to accept SEAPA's proposed rate as reasonable. The motion failed on a vote of 2 Yea and 3 No.

Agenda Item 6 Review/Set Agenda

Chairman Bush reviewed the proposed agenda with the Board. Agenda items 15 & 19 were dropped from the agenda. Agenda item 20 would be moved up appropriately.

On a motion made by Mr. Thompson, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to adopt the agenda as amended.

Agenda Item 7 Declaration of Potential Conflicts of Interest/Recusals

Chairman Bush invited the Board to declare any potential conflicts or requests for recusal from any of the agenda items. No personal conflicts or declarations of recusal were declared.

Agenda Item 8 **Investigation/Litigation Update**

The MPC informed the Board of the status of pending litigation. He stated that the Board was still waiting for decisions to be rendered in the Renwick matter and the Proteus litigation. In the Proteus matter the pending decision will decide the State's Motion for Summary Judgement. Chairman Bush added that the Hearing Officer recently informed him that he would deliver the Renwick decision next after he finishes the one on which he is working.

The MPC also informed the Board that no new investigation cases had been opened since the Board's last meeting.

Agenda Item 9 **Business Items**

End Tape 2, Side B
Start Tape 3, Side A

The MPC presented the Board's current budget report and litigation cost report to the Board and fielded questions. Next the MPC led the Board through the remaining correspondence.

The Board agreed to January 30 – 31, 2002 as next January's meeting date. The meeting location was set for Anchorage.

The MPC reminded all concerned of the April meeting date and deadline for exams. The Board then took up the issue of where to hold the October meeting. The Board discussed holding the meeting possibly in Anchorage or in Seward, but did not reach a decision.

Agenda Item 10 **Review/Approve April & October Meeting Minutes**

The Board reviewed the April 2000 and October 2000 draft meeting minutes.

On a motion made by Captain Garay, and carried without objection, it was

RESOLVED to accept the April 2000 and October 2000 meeting minutes as drafted.

Agenda Item 11 **Public Comment (Except on the Noticed Regulations)**

Captain Joan Sizemore urged the Board to adopt the proposed amendment to 12 AAC 56.025(a)(3) submitted by Captain Mark Sizemore

No other public comment was offered.

Agenda Item 12 **Consideration/Approval of Changes to SWAPA's Bylaws**

Captain Tillion came forward to explain to the Board the purpose and effect of the proposed changes to SWAPA's bylaws and fielded questions from the Board.

On a motion made by Captain Garay, seconded by Mr. Thompson and carried unanimously, it was

RESOLVED to approve the proposed amendments to SWAPA's Bylaws.

Agenda Item 13 **Captain Hanson's Request for Waiver**

The MPC explained Captain Hanson's waiver request to the Board.

On a motion made by Captain Garay, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to approve Captain Hanson's waiver request of 12 AAC 56.028(a)(1)(F) and to accept the maneuvers he had already completed as the approved substitute for the waived requirements.

Agenda Item 14 **Request for a Training Pilot Endorsement (Captain Gurry)**

The MPC stated that Captain Gurry had submitted a request to be issued an endorsement as a Training Pilot.

The MPC explained the requirements for a training pilot license and that he had reviewed Captain Gurry's file. He found that Captain Gurry met the renewal requirement for the endorsement and that he will meet have five year requirement as a holder of an unlimited pilotage endorsement in February of this year. Accordingly, he recommended that the Board approve the issuance of a Training Pilot endorsement to Captain Gurry effective on the five-year anniversary of Captain Gurry's unlimited pilotage endorsement.

On a motion made by Mr. Berto, seconded by Mr. Thompson and carried unanimously, it was

RESOLVED to approve the issuance of a Training Pilot endorsement to Captain Gurry's State Pilot license.

Agenda Item 16 Discussion – Increase Industry & Pilot Seats (ASA Ltr)

Chairman Bush reminded the Board that they had requested that this agenda item and the next be put on the agenda for this meeting.

This proposal was part of the ASA letter the Board received at the last meeting. It proposed that an additional pilot and agent seat be added to the Board so that it could directly represent each of the three main pilotage regions. This proposal could not be implemented without a legislative change.

Captain Garay stated that his Committee (To Review the ASA Letter) discussed this issue during their meeting and the consensus was that the current size of the Board was working well and they didn't need to increase it.

Other Board members commented in the subsequent discussion. Chairman Bush noted that currently there didn't seem to be any unanimity on this issue and that he thought it unlikely that the Board would ask for legislative action on the issue this year. With no further comments pending, the Board moved on to the next agenda item.

Agenda Item 17 **Discussion – Report Violations of Pilotage Statutes & Regs (ASA Ltr)**

Mr. Kyle introduced this item to the Board by saying that it was a matter of symmetry. He stated that agents are already subject to many State and Federal requirements, and that the pilots should be equally regulated.

The discussion centered on the fact that similarly to agents, State pilots are subject to many federal laws and regulations. In addition they are required by AS 08.62.157(b) to report all violations of the State and Federal pilotage acts. In accordance with 12 AAC 56.960(e) they must report all navigational discrepancies to the U.S. Coast Guard and to under State pollution regulations they must report all oil and hazardous chemical spills/releases.

End Tape 3, Side A
Start Tape 3, Side B

It was also noted that pilots are subject to additional State requirements under 12 AAC 56.310 Qualifications for Recognition (of Pilotage Associations). The Board took no further action on this agenda item.

Agenda Item 18 **Committee Report – Review of ASA Letter**

Captain Garay gave the committee report. He thanked Mr. Kyle for providing a letter that has become a catalyst for generating needed discussion on several important topics.

One of the items of agreement that arose from the committee's meeting was that some form of mandatory retirement needs to be implemented and the committee will continue to work on that issue.

Captain Garay proposed that during future Board meetings industry and pilots should continue to meet in an informal atmosphere.

Mr. Thompson stated his agreement that the committee format is working very well.

Captain H. Antonsen noted that the mandatory retirement issue was discussed in combination with the topic of better health and fitness standards.

Both Captain Garay and Mr. Thompson agreed that the only item from the ASA letter that the committee had definitely dropped was the recommendation that all State licensed pilots must be state residents. Captain Garay stated that although State residency is a very worthwhile

goal that pilots should strive to implement privately, since it is legally unenforceable, the committee decided to spend their efforts on the other items contained in the letter.

Recess Without objection the Board recessed for lunch to reconvene at 1330.

The Board reconvened at 1340.

Agenda Item 20 **Statutory Authority to Regulate Vessel Agents**

Gayle Horetski, Assistant Attorney General (AAG) appeared before the Board to discuss the topic of the Board's authority to regulate agents.

Ms. Horetski stated that the only language in the statutes that directly addresses agents occurs in AS 08.62.040(a)(3). It is the statute that sets out the powers and duties of the board and it specifically requires the Board to keep a register of agents. She mentioned that in AS 08.62.187 the purpose of keeping a register of agents is clarified in that it states that no one can act as an agent to vessels subject AS 08.62 unless their name appears on the register of agents kept under AS 08.62.040(a)(3). She summarized by stating that these are the only statutes that apply specifically to agents, thus the Board has not been given specific authority to regulate or license vessel agents.

She stated that there are general provisions included under AS 08.62.040 that gives the Board some latitude of authority to enact regulations to ensure the safety of shipping, human life and property and the marine environment. The Board is also directed to provide for a safe and efficient system of pilotage. Although, these sort of general grants of statutory authority would appear to let the Board regulate agents in some manner, in her opinion, when the quantity of specific statutes regulating pilots is compared to the two meager statutes that deal with agents, it is clear that the legislature did not envision a licensure scheme for agents. She concluded that if the Board decided that agents needed to be licensed, then the Board should ask the legislature to enact further legislation to that effect.

Having concluded her introductory remarks, Ms. Horetski fielded several questions from the Board. When pressed as to whether the Board could adopt regulations to license/regulate agents under the general authorities of AS 08.62.040 Ms. Horetski said that an argument could be made to support that position, however if the regulations were challenged in court

she felt that a fair interpretation would be that the Board did not have the authority. She also stated that she has discussed this issue with Ms. Behr, who is the State's regulation attorney, and she agreed that the Board does not currently have the necessary statutory authority.

The question of who has to have a vessel agent license was discussed. The term "Agent" is defined in 12 AAC 56.990(a)(1). It states that "agent means a person residing" (emphasis added) The definition of "person" in AS 08.01 includes natural persons as well as many entities of business such as a corporation. From the definition it has been determined that a vessel agent may either be individually registered or the company the agent is employed by must be registered. Since the governor appoints a natural person to the Board and not a corporation or some other entity of business, a vessel agent serving on the Marine Pilot Board must be registered as a natural person.

End Tape 3, Side B
Start Tape 4, Side A

The Chair then asked a question regarding quorums. Ms. Horetski stated that if the Board has a quorum to begin business and then has recusals, the chair should not accept recusals that take the Board below a quorum needed to act. In a related question it was noted that a majority of the quorum, (not the Board), is required to act. The Board's quorum is based upon the number of Board seats, not the number of persons currently appointed. For the Marine Pilot Board a quorum is 4 persons.

A question was then asked regarding the application of the definition of "persons" and the ethics act. In other words, does an agent or pilot have a conflict of interest if the corporation they represent or to which they belong has a conflict of interest. Chairman Bush clarified that the Ethic's Act talks about "personal and/or financial interest". It is discussed in terms of one's personal or financial interest, so if an individual's business has a financial impact, that in turn is a conflict.

When no further questions were forthcoming, Chairman Bush thanked Ms. Horetski for appearing before the Board.

Recess

The Board took a short recess so that Chairman Bush could talk to Senator Pearce. (Senator Pearce arrived to address the Board regarding the noticed regulations. Chairman Bush explained that the Board would be unable to hear oral comment on the noticed regulations until 1000 tomorrow. Senator Pearce agreed to try and return tomorrow to address the Board.)

The Board reconvened.

Recess Without objection the Board recessed for the day to reconvene at 0930 the next day.

1/24/01

Agenda Item 5 Call to Order/Roll Call

Mr. Bush called the meeting to order at 0940. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Jeff Bush	-	Commissioner's Designee
Captain Pete Garay	-	Pilot Member
Captain Anthony Joslyn	-	Pilot Member
Mr. Bob Berto	-	Agent/Vessel Manager Member
Mr. Jeff Thompson	-	Agent/Vessel Manager Member
Ms. Barbara Huff Tuckness	-	Public Member

Staff present was: Peter Christensen, (MPC)

In advance of the oral comment in agenda item 21, Chairman Bush indicated that he would try to get as much of the Board comment out of the way as possible before the oral comment period begins at 1000.

Captain Garay asked to make some comments. Captain Garay handed out written copies of his remarks to the Board and most of the audience in advance of his remarks. He then presented his comments to the Board.

Agenda Item 21 Take Oral Comment on Public Noticed Regulations

At 1000 Chairman Bush collected the public comment signup sheet and announced that 13 persons had signed up to comment. He also noted that Senator Pearce had asked to speak before the Board during the public comment period if her schedule allowed. Accordingly, Chairman Bush stated that he would allot 3 minutes for each person commenting.

Captain Baldry - was called to comment. He stated that since a three-minute limitation was imposed, he wished to donate his time to his association president Captain Jeff Baken

Captain Baken – spoke in support of the “pilot at the conn” regulation and he endorsed Captain Garay’s proposed wording. He noted that the pilot cannot relieve the Captain of the conn to correct a problem, however the Captain has the authority to relieve the pilot.

Chairman Bush acknowledged the presence of Senator Pearce and Representative Kott. He said he knew Senator Pearce wished to comment, and he asked whether Representative Kott wished to comment? Representative Kott stated that he would just listen.

End Tape 4, Side A
Start Tape 4, side B

Senator Peace – was invited to comment. She spoke favorably of the State statutes and regulations that the legislature has put in place in Alaska and the pilotage system that has resulted. She noted her recent visit to RTM STAR Center and how impressed and pleased she was with their facility, the professional staff, and the program that has been developed for Alaska marine pilots. She stated that she would like to see the “certification training” (the training and evaluation pilots receive at RTM STAR Center) happen as often as possible, more rather than less. Additionally she spoke strongly in favor of the Board adopting a “pilot at the conn” regulation noting that State licensed pilots are the only persons involved that are accountable to the State of Alaska.

Mr. Monkman – stated that he was asked by Captain Baken to respond to the written comment submitted by Mr. Blasco on behalf of ASA that contained a legal opinion regarding the proposed “at-the-conn” regulations. He stated that he had read the letter and all the referenced citations, including one which he had authored himself. In his opinion, he stated that the letter was misleading and where it was not misleading it was incomplete and where it wasn’t either of those it was flat wrong. He went on to offer specific examples. He stated that the Board does have the authority to do what it is proposing. The proposed (at-the-conn) language merely clarifies the legislative mandate that the pilot has direction and control of ships.

Captain Bennett – submitted written comments to the Board and read into the record the last few paragraphs of his letter. He spoke in support of adopting a “pilot-at-the-conn” regulation. He also supported Captain Garay’s proposed changes to the language, but urged the Board to take action without re-noticing the proposed regulation in order to get the regulation in place as soon as possible. To move the proposed change along he urged the Board to issue a letter to the industry this year with the proposed language as included as guidelines.

Captain O'Hara – Stated he would pass on commenting.

Mr. Kyle – directed some comments to the process that was being followed by the Board in taking written submissions on the issues. In addition he delivered several comments regarding various issues that the Board should consider before adopting any regulation requiring “pilots-at-the-conn”. He said that the controversy centered on whom is in control during dockings. He stated that the master needs to be able to take control if he deems it “is in the best interests of the vessel.” He noted that the BC guidelines are guidelines not regulations. The real issue of Bridge Team Management needs to be emphasized. He made the argument that several issues need to be clarified before the Board goes forward with a regulation and he urged the Board to re-notice whatever language might be contemplated by the Board for further public comment. He recommended that the issue be considered by the Marine Safety Task Force for appropriate language that could then come back before the Board for adoption. He stated that even if the Board waited till April to adopt the regulation, for practical purposes it would be in force for this cruise ship season. Mr. Kyle then fielded several questions from the Board.

Captain Baake – spoke for Norwegian Cruise Lines and for Captain Leon of Royal Caribbean Cruise Line and Celebrity Cruise Line. He stated that it was their position that the current regulations were sufficient and working well. The proposed regulations are totally unacceptable to them. He outlined several concerns they have with the current proposed regulation, including the possible conflict that may occur when the master assumes the conn. Captain Baake then fielded several questions from the Board.

Captain H. Antonsen – spoke in support of adopting the proposed “pilot-at-the-conn” regulation, but he was willing to accept the BC language as a compromise. He noted that many of the concerns voiced by industry concerned a perceived altering of the traditional master/pilot relationship. He stated that nothing in the proposed regulation would change that relationship. He went on to address several issues that had been raised in earlier comments.

End Tape 4, Side B
Start Tape 5, Side A

Captain Sizemore – declined to comment.

Captain Deelstra – representing Holland American Line. He presented several comments for the Board's consideration and spoke in opposition to the proposed “pilot-at-the-conn” regulation. It was his opinion that the

issue arises at docking and undocking, but not while the ship is in transit. He noted that mates and junior officers do not have the authority to relieve pilots.

Captain Graham Burton – representing Princess Cruise Line. He stated that he would like to see the best use of the resources available on the bridge and he considers the master of the vessel best able to carry out the docking of a modern cruise ship.

Captain Grobschmit – emphasized that the duties of a pilot in regulation require that the State pilots have the “direction & control” of ships that they are piloting. He stated that Alaska Marine Pilots would support any regulation that the Board chose to implement regarding this issue, whether it is as currently written, as proposed by Captain Garay, or as stated by BC.

Captain Didier – strongly support the adoption of a “pilot-at-the-conn” regulation either as proposed or with Captain Garay’s suggested amending. He stated that command creep is occurring. He defined command creep as the pilot being relieved by the master further and further away from the dock.

Captain Page, USCG – is Chief of Marine Safety for the 17th Coast Guard District. Captain Page stated that he agrees with the previous comments of Senator Pearce and Mr. Kyle. He stated that the Coast Guard is not aware of any serious safety problems with the current pilotage system in place. Perhaps the Board’s current regulations need to be clarified. He stated that the proposed regulation as worded needed to be amended. He emphasized that the Coast Guard prefers non-regulatory solutions that enhance safety and that he would recommend a non-regulatory solution if at all possible. In response to a question, Captain Page stated that Captain Garay’s proposed amended language would be worth further review as a possible solution to the problem.

Agenda Item 22 **Close Oral Comment Period**

The Board closed the oral comment period at 1130 and began its deliberations on the proposed regulations.

On a motion made by Mr. Berto, seconded by Mr. Thompson and carried unanimously, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.028(a)(1)(F).

On a motion made by Mr. Thompson, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.028(b)(1)(C) & (D).

On a motion made by Captain Garay, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.028(c)(2)(A) - (D).

On a motion made by Captain Garay, seconded by Ms. Huff Tuckness and carried unanimously, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.090 & 56.100.

On a motion made by Captain Joslyn, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.110.

A motion made by Captain Garay, seconded by Ms. Huff Tuckness to adopt the proposed amended language that Captain Garay had proposed for 12 AAC 56.960(a) on the last page of his presentation packet.

After some discussion by the Board, Captain Garay withdrew his previous motion.

End Tape 5, Side A
Start Tape 5, Side B

On a motion made by Captain Garay, seconded by Ms. Huff Tuckness and carried on a vote of four to two, it was

RESOLVED to adopt the proposed amendments to 12 AAC 56.960(a) with the phrase "to facilitate training" removed.

On a motion made by Captain Garay, seconded by Ms. Huff Tuckness and carried unanimously, it was

End Tape 5, Side B
Start Tape 6, Side A

RESOLVED to adopt the proposed regulation 12 AAC 56.990(a)(35) with the addition of the phrase "negligence, intoxication, the ship is standing into danger, and all needs of great necessity" to the end of the definition.

On a motion made by Captain Garay, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to adopt the proposed regulation 12 AAC 56.990(e).

The Chair then asked the Board whether they wished to discuss the proposed regulation change proposed by Captain Mark Sizemore. Following a short discussion the consensus of the Board was to leave the current regulation in place.

Following some additional discussion regarding future meeting locations on a motion made by Captain Garay, and without objection, the Board

RESOLVED to adjourn.

Respectfully submitted:

Peter D. Christensen,
Marine Pilot Coordinator

Approved this _____ day of _____, 2001.

Jeffrey W. Bush,
Deputy Commissioner