

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

**MINUTES OF MEETING
April 14 - 15, 2004**

By the authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions of provisions of AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held April 14 – 15, 2004, 2004, in Juneau, Alaska.

April 14, 2004

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

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

Members present constituting a quorum were:

Captain Dave Anderson	-	Pilot Member
Mr. Robert Arts	-	Agent Member
Mr. Al Clough	-	Commissioner's Designee (Chair)
Mr. Les Cronk	-	Agent Member
Captain Tony Joslyn	-	Pilot Member
Mr. Jack Poulson	-	Public Member
Mr. Richard Schasteen	-	Public Member

Staff present was: Peter Christensen, Marine Pilot Coordinator (MPC)

Agenda Item 2 AAG Response to Mr. Cronk's Questions

Mr. Brower, AAG addressed the Board in response to three questions posed by Mr. Cronk.

Mr. Cronk's first question was whether the Board could adopt a regulation that allowed a separate charge to be levied in a pilotage rate to provide for the retirement program. The second question addressed whether the pilot members of the Board should vote on the pending draft regulation

mandating a retirement plan. The third question asked whether the rate setting statute permitted the notice of rates for vessel traffic or a trade that did not yet exist in Alaska. Since the trade and corresponding vessel traffic did not yet exist in Alaska, no agent would have standing to file an objection to the rate.

After consulting with the Department of Law's ethic's officers, Ms. Ritchie and Mr. Lyle, Mr. Brower stated that they had determined that the marine pilots have a direct financial interest in the regulation, along with the owners of the vessels and their agents which are on the Board. It was determined that none of the pilots or agents Board members should vote on that particular regulation. Mr. Brower noted that unfortunately, if that occurred it would leave the Board without a quorum. He proposed that the draft regulation be amended to remove the last two sentences that state that a separate charge may be levied to provide for the retirement plan and that it could be listed separately in a published rate. The first sentence mandating that each pilot organization provide a retirement program for its members did not raise ethic issues and all Board members would be able to vote on that proposed regulation.

Having answered questions 1 & 2, Mr. Brower's addressed the third question by stating that the agents could not be disqualified from filing an objection to a rate just because they did not yet represent that particular type of shipping. "Since the statute allows for the noticing of a rate and an objection it would be impractical and inconsistent to have a rate that could be noticed without an objection being filed."

Mr. Brower also addressed the proposed regulations dealing with the mandatory retirement age. He stated that the proposed regulation had come to the attention of the regulation attorney (Ms. Deborah Behr, AAG). She had ruled that as written it violates equal protection and also is age discrimination. Ms. Behr's alternative suggestion would be to have a statute enacted rather than the Board adopting a regulation.

If the Board wants to proceed with a regulation, she recommended not adopting the regulation at this meeting but rather taking testimony from medical experts on aging to gather information to build a rebuttal presumption regulation in lieu of the mandatory retirement age. A rebuttable presumption regulation would state that a pilot is presumed to be too old to pilot (at some certain age) unless s/he could show that they were competent to continue to work as a pilot.

Mr. Brower stated that the concern is that since a mandatory retirement age regulation would be discriminatory, the record must support why its is necessary. Since this is a regulation that could be challenged, it must have a good record of evidence based upon testimony, not anecdotal evidence that establishes why a mandatory retirement age is required to be established.

Mr. Brower then responded to several questions from the Board.

Agenda Item 3 **SWAPA Rate Hearing**

Mr. Clough asked the MPC to bring the Board up to date with recent pre-hearing developments in the case before the Board. The MPC noted that the first page of the packet he had handed out that morning was a letter from ASA stating that the rate portion of the rate case had been settled and that presently the remaining issues for the hearing were the surcharges for retirement, health and disability. He then stated that the packet also contained: a hearing brief from both parties; new exhibits; an amended witness list; a notice of appearance; and an order from Mr. Stebing denying the motions of both parties. The order denying the parties motions stated that they would be decided at or after the hearing.

Mr. Stebing then noted that he had some preliminary comments. He recommended that the Board go into executive session with him as their counsel and that he brief the Board on procedural options.

On a motion made by Mr. Cronk, and carried without exception, it was

RESOLVED to move to executive session solely for the purpose of deliberating on procedures regarding conducting this hearing.

The Board returned from executive session.

On a motion made by Captain Joslyn and carried without exception, it was

RESOLVED to delegate to Mr. Stebing the conduct of the hearing.

Mr. Stebing took over the conduct of the hearing. He briefed both parties on the procedures for the hearing and then addressed the parties witness lists, exhibits, and pre-hearing motions. The hearing began with the opening statements of both parties and then presentation of SWAPA's case.

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The remainder of Tape 1, and Tapes 2 – 4 were used to record the SWAPA hearing that transpired for the remainder of the day.

APRIL 15, 2004

Start Tape 5, Side A

Agenda Item 4 Call to Order/Roll Call

Chairman Clough called the meeting to order at 0815. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Captain Dave Anderson	-	Pilot Member
Mr. Robert Arts	-	Agent Member
Mr. Al Clough	-	Commissioner's Designee (Chair)
Mr. Les Cronk	-	Agent Member
Captain Tony Joslyn	-	Pilot Member
Mr. Jack Poulson	-	Public Member
Mr. Richard Schasteen	-	Public Member

Staff present was: Peter Christensen, (MPC)

Agenda Item 6 Declaration of Potential Conflicts of Interest/Recusals

The Chair asked if anyone intended to declare a conflict of interest or ask to be recused. No one responded.

Agenda Item 5 Review/Set Agenda

The Chair reminded everyone that they had a self imposed deadline to transition back to the hearing at 0930 and that they would attempt to complete the hearing that day.

The intent upon the completion of the hearing was to return to executive session to meet with the Hearing Officer to decide the best method in which to proceed with the hearing decision. He stated that it was unknown

whether there would be enough time to complete the remaining meeting agenda.

Mr. Poulson suggested that the Board should review the day's agenda and prioritize the items that they might be able to accomplish.

In response to a question from the Board the MPC stated that the Investigation/Litigation Update and corresponding executive session could be delayed.

The MPC mentioned that agenda item 13 was important to complete at this meeting. The Board decided to take it up at that time.

Agenda Item 13

License Authorizations

The MPC stated that he had reviewed Captain Hanson's application for his upgrade to Marine Pilot and found it complete. He recommended that the Board authorize the issuance of a Marine Pilot license to Captain Hanson to be granted on his anniversary date of 6/16/04.

On a motion made by Captain Anderson, seconded by Mr. Cronk and carried without dissent, it was

RESOLVED to authorize the issuance of a Marine Pilot license to Captain Hanson on his anniversary date.

The MPC explained that he had reviewed Captain Taylor's application for his upgrade to Marine Pilot and his VLCC endorsement. He found the VLCC application complete, and found that he had met the marine pilot requirements except for the 2 dockings and 2 undockings required at the Seward coal pier on vessels of over 35,000 GT (12 AAC 56.031(b)(3)). He stated that Captain Taylor had applied for a waiver of the requirement and that he recommended that the Board grant the waiver since vessels of that size no longer docked at that pier.

On a motion made by Captain Joslyn, seconded by Captain Anderson and carried without dissent, it was

RESOLVED to approve the waiver of the dockings of 35,000 GT ships at the Seward Coal Pier and accept the dockings Captain Taylor has made at that dock in lieu of the requirement.

On a motion made by Captain Joslyn, seconded by Mr. Poulson and carried without dissent, it was

RESOLVED to authorize the issuance of a Marine Pilot license with VLCC endorsement to Captain Taylor.

Mr. Arts made the recommendation that the regulation needs to be amended. The MPC and Captain Joslyn replied that it was their understanding that SWAPA was currently reviewing the training requirements for the region.

Agenda Item 10 **Review/Approve Minutes**

The Board next took up the approval of the minutes from January's meeting.

On a motion made by Captain Anderson, seconded by Mr. Poulson and carried without dissent, it was

RESOLVED to approve the minutes of the January meeting.

Agenda Item 11 **Business Items**

The MPC volunteered that the Board might be able to complete its review of the correspondence and business items in the time left remaining before it was scheduled to take oral comment on the proposed regulation package.

The MPC gave a brief overview of the budget report and the correspondence contained in the Board packet. He then reviewed the written comment the Board received regarding the proposed regulation package the Board noticed.

The Board agreed to schedule the April 2005 Board meeting for April 13 - 14, 2005 in Anchorage, Alaska.

The Chair reminded the Board of its next scheduled meeting via teleconference June 25, 2004 in Juneau, and the fall meeting October 27 - 28, 2004 in Anchorage, Alaska and the associated application deadline of August 30, 2004.

Mr. Cronk asked the Chair to table the proposed regulation establishing the Spasski Island pilot station. Mr. Cronk made a motion to table the proposed regulation establishing the Spasski Island pilot station and Mr. Arts seconded. Captain Joslyn wondered how the people felt that had written comments on the proposal. Two people that had commented that were present stated that tabling the proposed regulation was acceptable to them.

On a motion made by Mr. Cronk, seconded by Mr. Arts and carried without dissent, it was

RESOLVED to table consideration of the proposed regulation to establish a Spasski Island pilot station.

Agenda Item 7

Oral Comment on the Regulation Package

Jeff Bush (ASPA) – spoke in favor of the proposed regulation addressing rate hearings. He noted that it was his understanding that SEAPA wished to withdraw SEAPA’s written comments regarding that proposed regulation and therefore there was no adverse comment regarding that item. He spoke in support of the proposed regulation establishing a mandatory retirement age. He also stated his support of the proposed regulation establishing a retirement plan. Regarding 12 AAC 56.310(e), he suggested that the first sentence remain as written and split the remaining sentences into separate paragraphs so they could be addressed/adopted separately.

Kate Tesar (Director of ASA) – commented that the proposed regulation establishing a retirement plan was unnecessary. She noted that all the pilots and pilot organizations are already able to establish retirement plans for their members.

Ron Hildenbrand (Trade and Seafood Industry) - Commented that the total cost of the retirement plan was not apparent and that his industry was concerned.

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

Captain Collins (SEAPA) - reviewed for the Board the written comments SEAPA had submitted.

Captain Ward – (SWAPA) spoke in favor of the retirement plan.

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Captain Moreno (AMP) – stated that the adoption of the retirement program will help retention and recruitment of quality candidates for pilots in Western Alaska and throughout Alaska.

Mr. Sharp (Holland America) – spoke in opposition to the proposed retirement program. He also asked the Board to reconsider the proposed regulation dealing with a rate hearing.

Mr. Berto (SE Stevedoring) – commented that the rate hearing process needed to be reworked but it that it was probably something that needed to be addressed in the legislature. He also stated that without knowing the income of pilots it is impossible to put together a benefits package.

Captain Garay (ASPA) – requested that the Board do what is best for the system.

Public comment was closed and the Board took a short recess.

Agenda Item 3

SWAPA Rate Hearing – continued

The remainder of Tape 5 and Tapes 6 – 7 were used to record the hearing on April 15, 2004.

Start Tape 8, Side A

The hearing concluded following the closing statements of both parties.

On a motion made by Captain Joslyn, seconded by Mr. Cronk and carried without dissent, it was

RESOLVED to move to executive session solely for the purpose of deliberating with the Hearing Officer regarding the hearing.

The Board returned from executive session. Chairman Clough announced that it was the intent of the Board to work with the hearing officer to draft a decision by the Board's next meeting date of June 25, 2004.

Agenda Item 9 **Investigation/Litigation Update**

Was postponed to the Board's next face-to-face meeting.

Agenda Item 14 **Update - Facility Approvals for Simulator Based Marine Pilot Evaluations**

The MPC related to the Board that he had received the State owned information from RTM STAR Center Dania and that he would be giving to Seward VoTech a copy of the geographical databases, ship models, and the scenarios if they can be separated from the evaluation process. In response to a question from the Chair, the MPC stated that he would inform Seward that the material was available.

Agenda Item 15 **Update – Physical Standards Project**

Due to the lack of time, the Chair postponed this item until the fall meeting.

Agenda Item 8 **Board Deliberation Regarding Proposed Regulations**

The Board reached this item very late in the day and after a full day taken up by a hearing. The Chair suggested that the deliberation of the proposed regulation package be put off to the next meeting unless the Board felt that it could be completed in the next hour.

On a motion made by Mr. Arts, seconded by Captain Joslyn and carried without dissent, it was

RESOLVED to delay deliberation of the proposed regulation package until the June meeting.

Agenda Item 12 **Public Comment**

The Chair then called for any public comment on items that had not already been addressed.

Hearing no requests for public comment Chairman Clough asked if there was a motion to adjourn.

On a motion made by Mr. Joslyn, and carried without exception, it was

RESOLVED to adjourn the meeting.

Respectfully submitted:

Peter D. Christensen
Marine Pilot Coordinator

Approved this _____ day of _____, 2004.

Al Clough
Deputy Commissioner