

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

**MINUTES OF MEETING
January 26 – 27, 2005
Captain Cook Hotel, Anchorage, AK**

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 January January 26 – 27, 2005, in Anchorage, Alaska.

January 26, 2005

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

Board Member, Jack Poulson called the meeting to order at 1330. 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. Les Cronk	-	Agent Member
Captain Tony Joslyn	-	Pilot Member
Mr. Jack Poulson	-	Public Member
Mr. Robert Schasteen	-	Public Member

Members absent:

Mr. Al Clough	-	Commissioner's Designee (Chair)
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Staff present were:

Barbara Gabier, Chief, Division of Occupation Licensing
Renda Heimburger, Marine Pilot Coordinator (MPC)

Agenda Item 2 Review / Set Agenda

Mr. Poulson asked if any agenda items should be moved in view of Chairman Clough's absence, so the chairman could participate in those items later that afternoon. It was decided that no one felt the agenda items, as outlined, should be held up pending Mr. Clough's short absence.

The MPC asked to introduce additional correspondence to the board packet. The first, a letter and proposed regulation from Jeff Bush, representing Alaska State Pilots Alliance, and second, exhibits portraying final wording to regulations passed at the last board meeting and signed into law. Mr. Poulson asked to have them distributed at this time, while Mr. Schasteen asked if there would be public comment for anyone who wanted to respond to Mr. Bush's letter. Mr. Poulson explained it would be addressed tomorrow and that there was no public comment scheduled for this regulation, unless there was a new one for consideration.

Agenda Item 3 **Declaration of Potential Conflicts of Interest / Recusals**

Mr. Poulson asked whether anyone had a conflict of interest or wished to recuse themselves from a particular agenda item. No conflicts or recusals were declared.

Agenda Item 4 **Review / Approve Minutes**

The Board discussed whether any changes needed to be made to the October 2004 minutes before their approval. The following corrections were noted: Page 4, line 22: [shich] which; line 25, ...once it is...; line 31, [Ids] IDs; and line 33, ...therefore the [t] Trainee has... the STAR...; Page 6, line 24, schedule [form] from; Page 7, line 3, ...Chatham [Straight] Strait.

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

RESOLVED to approve the October 2004 minutes as amended.

Agenda Item 5 **Business Items**

The MPC presented the Board's Budget Report.

The MPC outlined the Pilot ID cards for 2005 and explained they would be processed in two phases. Each batch would be proofed by the MPC, then sent to the pilot associations for a second look. From there, the cards would be issued directly to the pilots. The first batch had already been sent to the Alaska Department of Labor and was expected back before the 2nd week of February. Corrections to the first batch will be re-issued when the second batch is produced.

Captain Kellogg, President of Southeast Alaska Pilots Association, asked about trainees. The MPC explained that this year, trainees and apprentices would be included in the ID program.

Concern was raised for cards needed after the second batch was processed. The MPC stated the Department of Labor had not conveyed the cost to produce the ID cards and Barbara Gabier explained that the ability for Occupational Licensing to produce the ID cards in-house was being considered. Mr. Bob Berto from Cruise Line Agencies commented that the federal government was continuing to work on port security cards and suggested the board interact with them as the pilot ID system moves forward.

Correspondence - The board reviewed a letter from SWAPA reporting the names and number of current trainees. Captain Joslyn reported that AMP Deputy Pilot Trainee Robert Baker's anniversary date was approaching and noted that an application for tonnage upgrade had been submitted. The MPC stated she would check on the application and report back.

Agenda Item 6 Simulator-based Pilot Evaluations

The MPC outlined the schedule of simulator evaluation sessions currently scheduled at RTM STAR Center in Dania, Florida. The sessions will accommodate 30 pilots total before the end of 2005.

Mr. Poulson noted that he recalled a Simulator Evaluation Committee previously formed and suggested that the MPC keep a running roster of who is on each committee and make it available at each meeting.

Chairman Al Clough joined the meeting at 1404.

The MPC was directed to include a current committee roster with each future board meeting packet.

Discussion ensued regarding how to fill the STAR Center slots and it was determined that the MPC would work with the association training chairs to coordinate the simulator sessions.

1415 Break

1422 Back on Record

Agenda Item 8 **Exam Results / Oral Examination (Executive Session)**

On a motion made by Mr. Poulson, seconded by Mr. Cronk and carried unanimously, it was

RESOLVED to move to executive session for the purpose of conducting Captain Dundas's oral examination for Region I Transfer.

The Board entered executive session at 1425.

At 1455, the Board returned from executive session.

The MPC asked that Captain Dundas be approved for his Region I Transfer, upon completion of one additional mooring and one additional unmooring within the next six months in accordance with regulation requirements.

On a motion made by Captain Anderson, seconded by Mr Schasteen and carried unanimously, it was

RESOLVED to authorize the issuance of a Region I Transfer to Captain Dundas, upon completion of the required maneuvers within the following six months.

The Chair announced a recess at 1457.

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The Board reconvened at 1510.

Agenda Item 9 **Investigation / Litigation Update**

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

RESOLVED to move to executive session with Assistant Attorney General, David Brower, for the purpose of discussing litigation before the Board, Cases #1900-04-002 and #1900-04-001.

The Board entered executive session at 15:10 and reconvened at 1540.

Agenda Item 10 **Public Comment on Non-Agenda Items**

Captain Jeff Baken – reported on the Marine Safety Task Force meeting held earlier that morning. He reported that the meeting was attended by representatives from industry, NOAA, Coast Guard and marine pilots. Their agenda items included port issues, scheduled conflicts in Tracy Arm, whale encounters, tracklines, cruise ship and fishing vessel conflicts and national security issues. Captain Baken announced he was stepping down from his co-chair position on the Task Force and Doug Hansen will now co-chair with Kirby Day. Captain Baken asked that the Board move their April meeting to the 14th and 15th to accommodate a Northwest Cruise Association meeting which industry representatives would be attending and unable to attend Marine Pilot Board meeting. The Chair suggested that Board members might also be attending the Cruise Association meeting and directed the MPC to change the meeting dates.

Kate Tesar – representing Alaska Steamship Association, expressed concern regarding the way notification takes place within the Department of Commerce regarding rate filings, objections, notification of parties, in the past. Ms. Tesar felt that an official notification process should be put in regulation regarding the exchange of information between the parties or group representatives that are participating in proceedings at the department level.

The Chair directed the MPC to fulfill the notification role, as currently required.

Kate Tesar – expressed concern that the communication from Mr. Bush, added to the board packet earlier in the day, addresses 12 AAC 56.260 which is the rate hearing regulation that the board would address tomorrow. Ms. Tesar felt it was inappropriate for correspondence to be introduced since the public comment period is closed. She suggested the board, in reading it, had indeed accepted additional comment and it should be returned to the MPC and not be distributed any further.

Captain Stephan Moreno – representing Alaska Marine Pilots and Alaska State Pilots Alliance, stated that representatives from both AMP and SEAPA had visited the facilities of Pacific Maritime Institute (PMI) and wanted to offer comments after their presentation tomorrow.

Captain Moreno added to comments made by Kate Tesar regarding an official notification process. He expressed preference for a policy instead of regulation for document exchange. In addition, with reference to Mr.

Bush's correspondence, AMP was willing to withdraw the letter at this time.

Captain Ted Kellogg – asked for the opportunity to make public comment following the presentation by PMI scheduled on the next day's agenda.

The Chair noted the request and added it to the agenda.

Captain Ron Ward – representing Southwest Alaska Pilots Association, stated that it was standard practice to serve the other party and MPC at each filing. He felt that it would save money and time to handle notification as a policy, as opposed to a regulation.

The Chair closed the public comment period and asked the board for a decision on the Bush correspondence. After discussion, the Chair directed board members to return their copies to the MPC and directed staff to ask Assistant Attorney General David Brower for guidance.

All board members, excluding Mr. Arts, surrendered their copies of Mr. Bush's correspondence to staff.

The Board recessed for the day at 1610.

JANUARY 27, 2005

Start Tape 1, Side A

Agenda Item 12 Call to Order/Roll Call

Chairman Clough called the meeting to order at 0835. All Board members were present.

Staff present were:

Barbara Gabier, Chief, Division of Occupation Licensing
Renda Heimbigner, Marine Pilot Coordinator (MPC)

Agenda Item 13 Set Meeting / Exam Dates

The Chair reminded members that the April meeting dates were changed to April 14 and 15, 2005, in Juneau.

The summer teleconference was set for Thursday, July 7, 2005 at 1000.

Fall and winter meeting dates were established as October 19 and 20, 2005 and January 25 and 26, 2006, both located in Anchorage. The April 2006 meeting was tentatively set for 19th and 20th.

The MPC asked for and received board clarification regarding tonnage upgrades for Deputy Marine Pilots. The Board acknowledged that provided all regulated requirements were met, the upgrades could be granted within the office of the MPC.

Agenda Item 14 Regulations

The Public Hearing opened at 0910.

The Chair invited public comment regarding noticed regulations 12 AAC 56.028, 12 AAC 56.031 and 12 AAC 56.082.

Captain Jeff Baken testified as follows:

Under 12 AAC 56.082, delete (H) Nichols Passage and (I) Port of Metlakatla. Captain Baken confirmed that the addition of Pelican was correct.

Captain Baken stated that adding Port of Metlakatla and Nichols Passage under 12 AAC 56.031 was correct and the removal of these two areas was only from the proposal under 12 AAC 56.082. Captain Baken explained the justification for this request was that the traffic in Nichols Passage had dropped down to one or two ships a year; therefore it was suggested these areas be transferred over to 12 AAC 56.031 (which is correct in the proposal) to give pilots the experience under .031 rather than having to travel through these areas for familiarization trips – which basically cannot be obtained. The addition of Pelican was good under .082 because the Ferry LeConte does go to Pelican once a month and transits can be obtained.

On a motion by Captain Joslyn, seconded by Mr. Cronk, and passed unanimously, it was

RESOLVED to delete Nichols Passage and Port of Metlakatla from the proposal under 12 AAC 56.082.

Ms. Gabier clarified for the record that, if adopted, this regulation amendment would remove Pt. McCarty from the existing regulations.

Captain Baken noted that in .031, Pelican was added. It was recommended that Pelican not be in both .031 and .082. 12 AAC 56.031 transits are on vessels that do not require a tonnage but just have working radar, fathometer and compass; 12 AAC 56.082 transits are on vessels with larger tonnage.

It was confirmed the Board would remove Pelican from 12 AAC 56.031 and would continue to reflect Pelican under 12 AAC 56.082.

On a motion made by Mr. Cronk, seconded by Captain Joslyn and passed unanimously, it was

RESOLVED to amend the previous motion to include deletion of Pelican from the proposal under 12 AAC 56.031.

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

RESOLVED to approve regulations 12 AAC 56.028, 12 AAC 56.031 and 12 AAC 56.082 as amended.

The Chair stated that the Board had considered the cost of the regulatory actions.

The Public Hearing was closed at 0945.

Regulation Motion (tabled from October Meeting)

Assistant Attorney General David Brower joined the meeting.

The following motion was tabled during the October 2004 meeting:
Motion made by Captain Joslyn, seconded by Mr. Paulson to:
APPROVE regulations in item 8, Rate Hearing.

The above motion references a regulation proposal contained in regulation project #04-0136, Part II, public noticed 2/13/04. It was noted for the record that the public notice for this project would become stale and require new notice as of 2/14/05.

At this time, the Board accepted a new proposal which shipping representatives and pilots presented for consideration.

The Chair recounted the events surrounding the written communication from Mr. Bush, during the previous days meeting, and stated that it was not accepted as public comment.

AAG Brower recommended not moving forward with the proposed regulation 12 AAC 56.260 as it stands before the Board, believing that the regulation conflicts with the Administrative Procedures Act.

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On a motion made by Mr. Schasteen, seconded by Mr. Cronk and carried unanimously, it was

RESOLVED to move to executive session with Assistant Attorney General, David Brower, for the purpose of discussing matters having an adverse effect upon the finances of the public.

The Board entered executive session at 1010.

The Board returned from executive session at 1020. The Chair stated that it was determined the regulation contained fatal flaws and noted that a committee of representatives from all parties, including the AAG, might work towards a better proposal.

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

RESOLVED to table proposed regulation 12 AAC 56.260.

On a motion made by Mr. Poulson, seconded by Mr. Schasteen and carried without exception, it was

RESOLVED that the Chair would appoint a working committee to evolve the rate hearing proposal, involving board members, staff, AAG and representatives from both pilots and industry.

New Regulation Changes

Staff introduced recommendations to regulation 12 AAC 56.080 which would repeal section (b)(2) and modify section (b)(7) by deleting the sentence requiring pilot performance evaluations be submitted to staff at biennial renewal. Board discussion ensued and Captain Anderson noted

section (d) of regulation 12 AAC 56.083 should be struck as the simulator evaluation center did their own evaluations and did not want outside paperwork. Captain Ron Ward, President of SWAPA, recalled that the association pilot performance evaluations were created as a stop-gap prior to simulator evaluations. He felt they provided another tool that helped the associations monitor individual pilots and did not require much time to implement. Captain Ted Kellogg explained that the pilot performance evaluations were implemented as a "peer review" process in addition to the simulator performance evaluations. He also asked for clarification on the suggested modification to 12 AAC 56.080(b)(7) referencing an approved simulator-based training. He explained that deputy marine pilots were required to complete simulator-based training from either a simulator facility or manned model facility. Staff offered to bring a proposed amendment for 12 AAC 56.083(d) to the April board meeting.

Start Tape 2, Side A

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

RESOLVED to accept staff recommendations to amend Regulation 12 AAC 56.080(b)(2) and (b)(7).

It was confirmed these amendments would not be public noticed until a later date, when additional amendments were considered.

Agenda Item 15

Simulator Presentation

Glen Paine of the Maritime Institute of Technology opened the presentation and solicitation for simulator-based training and evaluations of Alaska marine pilots at their Seattle-based facility, Pacific Maritime Institute (PMI). Gregg Trunnell, Executive Director of PMI, outlined a plan of alternating development and approval involving a review committee and sharing of the Alaska databases, models and curriculum. Mr. Paine explained that with access to the curriculum, they could put the program together, then move to develop the databases. Mr. Trunnell felt that if they could take one database per assessment per quarter, they could be on-line within two months.

Following the presentation, board discussion ensued regarding ownership of curriculum. Glen Paine acknowledged that curriculum not offered up would not hold up the development of the program. Captains Kellogg and Moreno offered their comments concerning how impressed they were with the PMI facility.

On a motion made by Mr. Poulson, seconded by Mr. Schasteen, and carried without exception, it was

RESOLVED to direct the MPC to provide PMI with a sample database as they request for the purpose of setting up a demonstration for evaluation.

The Chair appointed Captain Anderson and Captain Joslyn as lead members on behalf of the Board to work with the MPC and PMI.

The Board recessed for lunch at 1125.

Start Tape 2, Side B

Agenda Item 17 **Rate Filing AS 08.62.046**

The Chair reconvened the meeting at 1330. Administrative Hearing Officer, David Stebing, joined the meeting.

The Chair summarized for the board the rate filing by Alaska Marine Pilots and objection filed by Alaska Steamship Association. The timely filing of the objection was discussed and David Stebing of the State of Alaska, Office of Administrative Hearings, recommended the issue could be revisited through briefing.

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

RESOLVED that the Board would hear the case at its April 2005 meeting in Juneau, with a Hearing Officer.

The Chair directed Mr. Stebing to hold a pre-hearing conference and begin the process.

The Board recessed for a break at 1420.

Agenda Item 18 **Public Comment**

The Chair reconvened the meeting at 1430 and 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 Captain Anderson, seconded by Mr. Schasteen, and carried without exception, it was

RESOLVED to adjourn the meeting.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Approved:

Albert H. Clough, Chairman
Alaska Board of Marine Pilots