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STATE OF ALASKA, DEPARTMENT OF COMMERCE,
COMMUNITY AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING
BOARD OF MARINE PILOTS

MINUTES OF MEETING

July 6, 2006

SOB Conference Room A, Juneau, AK

Teleconference

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 July 6, July 6, 2006, in Juneau, Alaska.

Call to Order/Roll Call

Chairman Clough called the meeting to order at 1030 and the Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Al Clough (Chair)	- Commissioner's Designee	Juneau SOB
Mr. Robert Arts	- Agent Member	Anchorage
Captain Dale Collins	- Pilot Member	Juneau SOB
Mr. Les Cronk	- Agent Member	Juneau SOB
Captain Tony Joslyn	- Pilot Member	Juneau SOB
Mr. Jack Poulson	- Public Member	Juneau SOB
Mr. Robert Schasteen	- Public Member	Dutch Harbor

Staff present were:

Renda Heimbigner, Marine Pilot Coordinator (MPC)	Juneau SOB
David Brower, Assistant Attorney General (AAG)	Juneau SOB

Guests present:

Kate Tesar	AK Steamship Assoc	Juneau SOB
Captain Ted Kellogg	SEAPA	Juneau SOB
Captain Larry Vose	SEAPA	Juneau SOB
Captain Richard Gurry	SEAPA	Juneau SOB
Dawn Borjesson	State of AK, Leg Audit	Juneau SOB
Scott Jones	State of AK, Leg Audit	Juneau SOB
Ivan Stepanov	State of AK, Leg Audit	Juneau SOB
Captain Jeff Pierce	SWAPA	Anchorage
Captain Pete Garay	AMP	Dutch Harbor

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John Shively	Holland America Lines	Anchorage
Captain Cees Deelstra	Holland America Lines	Seattle, WA
Captain Terry Backen	SEAPA	Juneau SOB
Captain Carter Whalen	AMP	Juneau SOB

Review / Set Agenda

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

RESOLVED to approve the agenda as presented.

Declaration of Potential Conflicts of Interest / Recusals

No conflicts or recusals were declared.

Agenda Item 1

Review / Approve Minutes

Mr. Arts offered a correction to page 3 of the April 2006 minutes, adjusting the affiliation for Captain Pete Garay from SWAPA to AMP, and on a motion made by Mr. Cronk and carried without dissent, it was:

RESOLVED to approve the April 2006 minutes with change.

Agenda Item 2

Public Comment on non-agenda items

Kate Tesar, Alaska Steamship Association, asked for the status of proposed regulations from the previous Pilot Board meeting. The MPC reported the package was due to publish for public comment within a week. Ms. Tesar asked that a time period of at least 60 days be allowed for this particular package and it was agreed. Chairman Clough directed the package be noticed with a 60-day deadline.

Captain Jeff Pierce, Acting President of SWAPA, read his prepared comments on rate procedures, retirement and retention of qualified Alaska marine pilots. Discussion among the Board members followed. Chairman Clough reminded the group that many of the items presented by Captain Pierce were on the agenda that afternoon and tabled the discussion.

Agenda Item 3

Business Items

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The MPC presented the Budget Report for review. It was noted that additional revenues from Yacht Exemption fees had been received after the report was run and an additional \$15,000 would be added before finalizing the fiscal year.

Cruise Tax Initiative – The pending ballot initiative was discussed and agreed that, other than questions of duplication, it was not a matter for the Board. John Shively from Holland America Lines warned that Alaska was already ranked the most expensive venue for cruise ships, and should the initiative pass, he predicted fewer ships for the State. Kate Tesar presented a Statement of Costs prepared by Department of Environmental Conservation which outlined estimated costs to implement a program of “Ocean Rangers.” The statement projected 60 new state employees and the program was estimated at \$5.6 million to implement. It was unclear how the proposed program would mesh with Marine Pilots.

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

RESOLVED to amend the agenda and move to Executive Session to conduct oral exams for Captains Backen and Whalen, then break for lunch.

Agenda Item 7 **Executive Session**

The Board moved to Executive Session at 1130, then adjourned at 1200.

Agenda Item 3 **Business Items**

Chairman Clough convened the meeting at 1300.

Members present constituting a quorum were:

Mr. Al Clough (Chair)	- Commissioner’s Designee	Juneau SOB
Mr. Robert Arts	- Agent Member	Anchorage
Captain Dale Collins	- Pilot Member	Juneau SOB
Mr. Les Cronk	- Agent Member	Juneau SOB
Captain Tony Joslyn	- Pilot Member	Juneau SOB
Mr. Jack Poulson	- Public Member	Juneau SOB

Members absent:

Mr. Robert Schasteen	- Public Member	Dutch Harbor
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Staff present were:

Renda Heimburger, Marine Pilot Coordinator (MPC)	Juneau SOB
David Brower, Assistant Attorney General (AAG)	Juneau SOB

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Guests present:

Kate Tesar	AK Steamship Assoc	Juneau SOB
Captain Ted Kellogg	SEAPA	Juneau SOB
Captain Larry Vose	SEAPA	Juneau SOB
Captain Richard Gurry	SEAPA	Juneau SOB
Dawn Borjesson	State of AK, Leg Audit	Juneau SOB
Scott Jones	State of AK, Leg Audit	Juneau SOB
Ivan Stepanov	State of AK, Leg Audit	Juneau SOB
Captain Jeff Pierce	SWAPA	Anchorage
Captain Pete Garay	AMP	Dutch Harbor
Richard Monkman	Sonosky, Chambers	Juneau SOB

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

RESOLVED to approved the transfer of Captain Backen's license from Region III to Region I, and approved a Deputy Marine license for Captain Whalen.

Correspondence – The Board acknowledged SEAPA's whale-reporting form and SEAPA's reimbursement to a fisherperson for net damage.

SWAPA ByLaws – Captain Joslyn commented on the proposed by-laws and cautioned against possible discrimination. He provided copies of the Federal Employment Act of 1967.

Mr. Schasteen joined the meeting from Dutch Harbor.

Ms. Tesar asked what the procedure was for information desiring Board review, submitted after Board packets were distributed. Chairman Clough reiterated the public notice process for proposed regulations, however, when the Board met only 4 times a year, discouraging review of material was not time efficient. It was felt that in honor of the process, all available material, outside of that which was regulated, should be considered whenever possible.

Mr. Poulson asked how the proposed by-laws matched current regulation. It was explained they did not. Captain Collins added that neither SEAPA nor SWAPA were currently offering retirement plans. AAG David Brower commented that removing the retirement requirement from Association by-laws did not change regulation. Captain Joslyn explained the Association would address retirement whether it was in their by-laws or not. Captain Pierce concurred.

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

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RESOLVED to approve the SWAPA bylaws as presented. Captain Joslyn recused himself from the vote.

Annual Report – The MPC directed the Boards attention to a list entitled “Significant Issues” which had appeared before the group during the previous fiscal year. To complete an annual report, the Board was asked to review the preliminary material and comment. Captain Collins suggested continuing education, retention and recruitment be part of the Boards goals and objectives for the following year. Mr. Poulson asked that pilot transfer issues be added as well. Chairman Clough suggested that additional comments be directed to the MPC following the meeting.

Tentative Meeting Dates - The date of the next meeting was set for October 18 and 19 in Dutch Harbor at the Grand Aleutian Hotel. Exams were scheduled to be in Anchorage the previous day.

Agenda Item 4

Licensing

The MPC requested a Training Pilot Endorsement for Captain Michael George on his five-year anniversary of July 17, 2006, in accordance with his regulated requirements. On a motion made by Mr. Cronk, seconded by Captain Joslyn, and carried unanimously, it was

RESOLVED to approve a Training Pilot Endorsement for Captain Michael George, effective July 17, 2006.

Agenda Item 5

SEAPA Training Program

Captain Larry Vose outlined the proposed Training Program revision for Southeast Alaska Pilots’ Association for the Board. He explained the new program would group all requirements for all trainees into one section [including a new application, selection and evaluation process], implement a plan for each trainee, expand trainee protocols, establish minimum personal safety gear and provide for record keeping. He added that SEAPA had 15 applicants recently apply for membership and seven passed the application process with no appeals or objections.

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

RESOLVED to approve SEAPA’s proposed training program as presented.

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Agenda Item 6 Litigations / Investigations

The Board reviewed the MPC's Litigation and Investigation Reports.

The Chairman requested the Board add an Item #9 to the agenda for an Executive Session to discuss the Captain Seigel's case [1900-04-005].

The Board recessed at 1355.

Agenda Item 8 Ethics Report

The Board returned from break at 1410 and Chairman Clough informed the group that all Board members could discuss the memo from AAG David Jones concerning the remanded SWAPA surcharge [1950-05-001]. Mr. Poulson asked the difference between the memo and a formal opinion. AAG Brower answered the memo could be considered with the same input as an opinion. Chairman Clough clarified there were two issues before the Board, conflicts and the SWAPA rate filing. He reminded the Board that conflicts would have to be dealt with first, before taking action on the filing. It was explained that the AAG's memo basically conflicted Joslyn from voting on the filing and Collin's participation was questionable.

Captain Collins called attention to Statute 08.62.046 which he felt clearly recognized agents as synonymous with owners of vessels. He also pointed to 08.62.010 which puts agents on the Board. He criticized Mr. Jones's memo for not considering the Statutes and recognizing the "elephant in the room." A frustration he felt was the AG's office offered inconsistent opinions and AAG Slotnick has ruled previously that agents were conflicted. He asked that Mr. Jones explain his reasoning in preparation of this recent memo. Chairman Clough pointed out that Captain Collins' comments represented a point of appeal that could provide for continued legal proceedings. AAG Brower agreed.

Captain Collins added that he felt Mr. Jones missed the content of his testimony at the first hearing of the SWAPA rate filing, which he viewed as very generic. He hoped the case would be given enough time to be considered, but questioned the information received by the AG's office which contributed to the memo. He also felt that both Pilot Board members were recognized for their regional affiliations, but not the Agent Board members, who by the nature of their organization are bound together. He summarized his comments by challenging "the fundamental and due process would not be fulfilled if agents were allowed to

vote on rates in particular regions, without consideration of their representation of vessel owners.”

Captain Joslyn concurred. He felt Mr. Jones erred in his ethics determination, having gone against Statutes and previous determinations, and felt it had become a Board of Interests excluding Marine Pilots. He did not feel it was a proper investigation.

Mr. Cronk shared his belief that State ethics laws were clear that conflict was a personal financial interest. Was he an owner of a vessel? No. He felt he represented the State of Alaska from a different perspective than pilots, but not as a direct connection for owners of vessels. In the past, he said, there were Agent Board members that did have a personal financial interest and they were recused. In regard to the SWAPA filing, he believed it was the magnitude of this particular case and the significant reaction by Industry. It represents millions of millions of dollars that Industry is concerned about. He felt there were other ways to address Pilot concerns worth working on at this time. He held that the Ethics determination was in accordance to State law.

Mr. Arts added he felt the process had played out and it was time to vote.

Mr. Schasteen expressed he was not comfortable moving forward when the Pilots could not vote. He asked Captain Collins about a direct monetary link for him, as referenced in Mr. Jones’ memo. Collins replied there was no link found, that he was a witness at the last hearing, not a serving Board member. The potential conflict was possible depending on threshold of his testimony. Mr. Schasteen then asked Mr. Brower about the possibility of Captain Collins not allowed to vote. Brower replied that the Board could determine that.

Chairman Clough asked the Board to consider that the Board was set up to be balanced and Mr. Jones’ recommendation eliminates pilot participation in the rate filings. Were they comfortable with that?

Mr. Cronk responded he felt Captain Joslyn had a personal financial interest in this case, Captain Collins did not. He did not feel it was terribly complex. Chairman Clough offered the potential opportunity for no Pilot representation in the deciding of the rate filing. Mr. Schasteen expressed he was not comfortable with that situation. Mr. Arts agreed. Discussion followed.

Captain Collins offered that historically, the Pilot member from the region represented by the rate filing would recuse themselves, and the Chairman would recuse the Agent member from same region. Never did he see at any hearing a Chairman not recuse one, and not the other. He felt the Agents had a statewide look to them, but he always felt they had a balanced Board. He added there was

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no other choice at this time but to send the current rate filing to a Hearing Officer, rather than continue on and violate “impartial decision making fundamental to due process and administrative proceedings.”

Chairman Clough asked Mr. Brower if the Board took action to attempt a final conclusion and it were appealed, would a Judge consider the case stale? Brower declined to predict, but agreed it was a point of appeal. The Chairman shared his angst with not having a balanced Board, the timeliness of the issue and the opportunity for appeal on their vote. Mr. Schasteen reiterated his concern for no pilot representation, but expressed greater concern for trusting a Hearing Officer to make a final decision.

Captain Collins made a motion to send the SWAPA rate filing to a Hearing Officer, including the final decision. Chairman Clough asked Mr. Brower for clarification on who could vote on the motion. Brower replied that all members could vote. Captain Collins stated he would refuse to vote on this filing, given the recent opinion of Mr. Jones and his memory of the information presented two years previous. Discussion followed. Captain Collins called for the question.

On the motion by Captain Collins and seconded by Captain Joslyn, by a roll call vote 4-3, it was

RESOLVED to send the SWAPA rate filing to a Hearing Officer, including the final decision.

Arts	No
Collins	Yes
Cronk	No
Joslyn	Yes
Paulson	Yes
Schasteen	No
Clough	Yes

Chairman Clough assured the Board the case would be referred to the Office of Administrative Hearing for a random selection of Hearing Officer, other than Mr. Stebing. Mr. Brower reiterated that previously, it was the Board’s decision to assign the case to Mr. Stebing, where now the procedure for assignment is now the jurisdiction of OAH. It was felt a new Hearing Officer would result.

Agenda Item 9

Executive Session

On a motion made by Captain Collins and carried unanimously, it was

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RESOLVED to move to Executive Session to discuss Captain Seigels Fit-For-Duty exams.

The Board moved to Executive Session at 1505.

The Board returned from Executive Session at 1526. No Board action was taken.

Captain Collins proposed an idea for Senior Evaluating Pilots to perform check-rides when the Board orders an evaluation of a licensee. He also proposed that these Pilots were provided by the Associations. Chairman Clough suggested this idea be included in the Boards goals and objectives for the following year.

Public Comment

Captain Ted Kellogg, President of SEAPA, reported to the Board that previous discussion regarding Pilot-Master conflict on the bridge was being addressed in Southeast with the implementation of a Master-Pilot Exchange Card. Captain Joslyn asked that copies of the card be sent to the other associations.

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

RESOLVED to adjourn the meeting at 13:45.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Albert H. Clough
Deputy Commissioner