

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

**MINUTES OF MEETING**

**April 24, 2013**

Homer, Alaska

By the 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 Alaska Board of Marine Pilots was held on April 24, 2013 in Homer, Alaska.

**April 24, 2013**

**Call to Order/Roll Call**

The meeting was called to order at 0800 by Chairman Curtis Thayer. The Acting Marine Pilot Coordinator (MPC) conducted roll call.

Participant Members constituting a quorum were:

Hans Antonsen	- Pilot Member
David Arzt	- Pilot Member
Richard Erickson	- Agent Member
Robert Richmond	- Public Member
Tom Rueter	- Agent Member
Tylan Schrock	- Public Member
Curtis Thayer, Chair	- Commissioner's Designee

Staff present:

Director Don Habeger	Acting Marine Pilot Coordinator (MPC)
Harriet Milks	AAG (joined during Item 7)

Members of the public present:

Ed Sinclair	Southeast Alaska Pilot Association
Jenni Zielinski	Southwest Alaska Pilot Association
Annie Wiard	Southwest Alaska Pilot Association
Jim Lee	Alaska Maritime
Ron Hildebrand	Trident Seafoods
Bob Arts	ALAMAR
Bob Poe	Alaska Marine Pilots (teleconference)

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Mike Tibbles	Alaska Steamship Association
Eric Collins	Himself
Larry Pullin	Southeast Alaska Pilot Association
Bill Gillespie	Alaska Marine Pilots
Jack Poulson	Counsel to Northstar Pilot Association
Bruce Weyhrauch	Counsel to Southeast Alaska Pilot Association
Gail Horetski	Counsel to Southeast Alaska Pilot Association (teleconference)
Richard Gurry	Northstar Pilot Association

Public subscribers to the teleconference were:

Captain Vose	Himself
Paul Axelson	Foreign Pleasure Craft Working Group
Rich Preston	Foreign Pleasure Craft Working Group

**Agenda Item 1      Review and Set Agenda**

Hearing no objections to the set agenda, it was:

RESOLVED to approve the agenda.

**Declarations of Potential Conflicts of Interest/Recusals**

Board members made no declarations of potential conflicts of interest.

**Agenda Item 2      Review/Approve Minutes**

On review of the January 23, 2012 meeting minutes, there were no objections to the content or convey of Board minutes.

**Agenda Item 3      Public Comment**

The Chair opened the floor to general public comment. There was no comment from the public.

**Agenda Item 4      Business Items**

8:10

a)      Board Quarterly Revenue and Expense Report: Habeger reviewed second quarter Board revenues and expenses with the Board. He reiterated the division's commitment to timely and transparent quarterly reports, and the third quarter report will be available on schedule at the end of April and will be posted to the division web page in addition to distribution to the Board. He explained the general content of primary line items, indirect costs, and overall methodology of setting fees. He let the Board know that a working group travel reimbursement

request was denied according to current policy and invited the Board's input if they wish to have working group expenses covered as travel expense to the Board.

b) Board Annual Report to the Division: Board is required by statute to report to the division annual activity. The FY12 report was discussed in anticipation of the upcoming summer deadline for the FY13 report. Habeger encouraged the Board to begin to think about the report and to work with the new MPC on its creation. The division encourages the Board's questions and input.

c) Sunset Audit: Chair Thayer reviewed the legislative audit conducted in 2012. All six items in the report were addressed by the Board and division, and the 28<sup>th</sup> Legislature renewed the Board through June 30, 2019. Recommendation #4 regarding Foreign Pleasure Craft was discussed in particular, and the Board reinforced its desire to continue to include the program within the Board's purview due to public protection concerns.

d) Marine Pilot Coordinator Recruitment: Habeger stated the recruitment is currently open and a second wave of communication to Alaska locations with United States Coast Guard units is underway to seek a wide pool of candidates.

e) Correspondence: Chair Thayer reviewed correspondence included in the Board packet.

#### Agenda Item 5

#### Association Reports and Working Group Updates

8:15

a) Pilot Association Annual Reports:

1. Chair Thayer invited each association representative to present a report.

2. Southwest Alaska Pilots Association (SWAPA) business manager Jenni Zielenski presented the report for SWAPA, which was included in the Board packet.

3. Southeast Alaska Pilots Association (SEAPA), person and position not recorded, presented the report, which was included in the Board packet. Alaska Marine Pilots (AMP) Training Chair Bill Gillespie presented the report, which was included in the Board packet.

b) Foreign Pleasure Craft Working Group Update

1. Rich Preston and Paul Axelson (via teleconference) presented a report from the Foreign Pleasure Craft Working Group, which was handed out at the meeting. The group recommends changes to regulation regarding size of vessels under 100 feet, i.e. "mom and pop" vessels, exempting vessels from 65-100 feet in length from requiring a current mariner's license.

Captain Arzt called for a roll-call vote and the Board APPROVED the proposed regulation on a vote of 7 to 0.

**12 AAC 56.115 Pleasure Craft Exemptions. (c) On vessels over 100 feet in length**, the captain or master aboard a pleasure craft seeking a pilotage exemption must hold a current mariner's license for the vessel's tonnage. A copy of the mariner's license must be submitted with the application submitted under this section. On a pleasure craft greater than 200 gross tons, the master must hold a valid unlimited radar observer endorsement.

Moved by: Arzt  
Seconded by: Antonsen

Captain Antonsen	yes
Captain Arzt	yes
Mr. Richmond	yes
Mr. Erickson	yes
Mr. Rueter	yes
Mr. Schrock	yes
Mr. Thayer	yes

**Agenda Item 6 Pilotage Rate Issues and Updates**

8:30 Chair Thayer provided an overview of the Board rate hearing process recommended by the Department of Law in a recent memo to the Chair and the Division. Each association with disputed 2013 rates was invited to provide the Board with an update.

- a) SEAPA: Larry Pullin, SEAPA  
Bruce Weyhrauch, counsel to SEAPA  
Mike Tibbles, Alaska Steamship Association

Tibbles clarified that ASA had withdrawn their objection to SEAPA's proposed 2013 rates. Pullin stated that the original rate included a typographical error that was corrected and re-noticed. Each party stated there was no existing objection to the new corrected and published rate.

A Board member (name unrecorded) called and seconded a roll-call vote and the Board APPROVED SEAPA's new corrected and published rate on a vote 7 to 0.

Moved by: Not recorded  
Seconded by: Not recorded

Captain Antonsen	yes
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Captain Arzt	yes
Mr. Richmond	yes
Mr. Erickson	yes
Mr. Rueter	yes
Mr. Schrock	yes
Mr. Thayer	yes

Chair asked for objections. No objection was raised

Board member asked for clarification about the motion. He was only acknowledging that the two parties had reached agreement on the rates, not on the rate itself. Habeger explained that the division had asked the Department of Law for advice on the process of approving rates once a rate had received objection. Habeger underscored the Department of Law's determination that statute required the public process be preserved through Board review and subsequent vote on the disputed rates. Antonsen asked why the process was required when the objection had been withdrawn and parties were in agreement, though there were several actions among the parties to reach the final agreement that complicated the process. Habeger stated that law does not prescribe what happens at each step of the process, so a hearing by the Board or the Office of Administrative Hearings is required to approve published rates when question or dispute may arise in order to preserve the public process. Weyhrauch stated that he didn't see the point of the hearing when there was currently no dispute among the two parties. Chair Thayer responded that the Board receives its advice from the Department of Law and follows it.

a) AMP: Bob Poe, AMP (telephonically)  
Mike Tibbles, ASA

Poe walked through AMP's process of reaching agreement with ASA on currently published rates. Part of AMP's agreement with ASA is to eliminate the Marine Pilots Retention Fund. Poe asked the Board (in accordance with 08.62.046(c) and the Dept. of Law opinion on this process previously discussed at this meeting) to find this rate "not reasonable" so AMP can republish the new rates. Tibbles concurred with Poe. Board member questioned the process proposed by Poe and wondered why the republish of rates was required. Tibbles clarified that this process would allow AMP's republished rates to be effective 1/1/2013.

**MOTION:** Board vote on AMP's Marine Pilot Retention Fund rate.

Moved by: Arzt

Seconded by: Not recorded

Discussion about merit of AMP's proposal.

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Board member requested that the Board be provided opinions drafted by the Attorney General's office when they pertain to the Board. Chair Thayer agreed going forward and offered to have copies distributed during the meeting. Rueter reiterated that the Board's specific role is to determine whether the rate is reasonable, and AMP has requested a finding that the 2013 Marine Pilot Retention Fund rate is not reasonable so they may republish that rate.

Mr. Thayer called for a roll-call vote and the Board DISAPPROVED the proposed AMP Marine Pilot Retention Fund rate on a vote of 0 to 7.

Captain Arzt:	no
Mr. Richmond:	no
Mr. Erickson:	no
Mr. Rueter:	no
Mr. Schrock:	no
Mr. Thayer:	no
Captain Antonsen:	no

The motion failed unanimously. The Chair requested AMP republish a new rate for the Marine Pilot Retention Fund.

b) SWAPA: Jenni Zielinski, SWAPA

Zielinski provided additional published rate schedules that were not included in the Board packet. The Chair called a five minute break.

**Agenda Item 7**

**Northstar Pilot Association (NSP) Application**

9:40

The Chair invited Jack Poulson, attorney, and Captain Richard Gurry, founding member of NSP, to present a proposal for recognition of a new pilot organization as allowed by AS 08.62.175. Poulson stated that the documents to meet the threshold of law were in order and presented in the Board packet. He requested recognition of the organization, bylaws, and articles of incorporation at this meeting since the busy pilotage season was beginning.

Poulson walked through the organizational bylaws, articles of incorporation, training program, and cover memo at the Chair's request. AAG Harriet Milks joined the meeting during Poulson's presentation.

The Chair invited the Board to ask questions of Poulson and Gurry. There were no questions.

The Chair opened the floor to public testimony via teleconference. Captain Vost provided testimony against the proposal. Gayle Horetski, attorney for SEAPA, provided testimony against the proposal as outlined in a memo she authored that was distributed to the Board at that time.

Richmond stated the regulatory difference between recognizing an association and authorizing the association to operate. Milks concurred that there are two steps to the process and encouraged the Board to scrutinize the details of those steps when considering the proposal. Public testimony via teleconference concluded.

The Chair opened the floor for public testimony from members attending the meeting in person. Ed Sinclair, member of SEAPA, testified against the proposal. Eric Collins, Region I pilot representing himself, testified against the proposal. Larry Pullin, representing SEAPA, testified against the proposal. Public testimony on this topic concluded.

The Chair invited Poulson and Gurry to come forward to provide a response and address any questions the Board may have. Each clarified items raised in public testimony. Board member asked who was the president of NSP and why weren't the bylaws signed. Gurry stated he was and that they weren't signed yet because they were not yet a recognized organization. Board member raised concern about NSP having only one member. Gurry stated there were other potential members who would join once the organization was recognized. Gurry stated that the Board has previously recognized pilot organizations with one or two members in various regions of the state. Board member asked if Gurry was violating his own bylaws because he was a member of SEAPA and whether SEAPA would "kick him out." Gurry said that was up to SEAPA. Board member reiterated the two-step process of recognition and authorizing operation, as previously discussed, and raised concern about NSP having only one member. Gurry stated that there were other members, who Poulson said would be revealed upon recognition of the organization, along with signed bylaws. NSP representative said they preferred to become operational as soon as possible--within 30 days--and would defer that decision to the Board. Board member questioned whether the organization required licensing by the state; NSP representative stated that only a business license was required given the way NSP was to be legally organized. Arzt referred to 2010 memo requiring drug and alcohol testing for association members. Poulson said once the organization is recognized, details of NSP's program will be submitted. Gurry clarified that all members are already part of a program. Chair Thayer asked how long it will take to submit the required paperwork to become operational if NSP was recognized at this meeting. Poulson envisioned that timeline being one week.

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Board member requested clarification of what the Board could approve at this meeting. AAG Milks cited AS 08.62.175(b) and 12 AAC 56.310 which clarify the items required and the series of events which must be followed. The recognition must occur before the Board approves operation; however, there is no specified period of time in which the second event must occur. Arzt asked whether Milks could advise whether minimum standards required for recognition have been met. Milks said she could not advise the Board on that specifically but that she could speak to particular issues raised. The requirement to provide the Board with a list of its members did not clarify how many members were necessary, but that all members must be provided. There is no requirement to produce a particular type of bylaws or articles of incorporation. The applicant should assure the Board that a drug and alcohol testing program and testing program will be provided before becoming operational. Milks also spoke to the tension in revealing NSP's potential membership, as well as the intent that an operational organization maintain the interests of public safety. "Minimum standards" means minimum standards, nothing higher.

Chair Thayer asked whether one member could constitute meeting minimums and whether past practice of approving one-member organizations guides actions going forward. Milks said that setting minimums would constitute making regulations, which cannot be done outside the public process. It would be helpful to know whether the Board has, in fact, recognized one-member organizations in the past since consistency is important when applying statutes and regulations. If the Board has recognized a single-member organization in the past and does not do so at this time for that sole reason, it must provide justification for doing so.

Board member asked the Chair whether the intent is to address recognition as well as operation of NSP at this time. The Chair said it would be a decision of the Board to determine that direction. Board member said that a written determination of minimum standards by the AAG would be helpful. He also said that a one-member organization on the Kuskokwim River would be a different situation than in Region I given marine traffic. The Chair said that these were policy decisions for the Board based on the Board's interpretation of statutes and regulations, not Department of Law, and Milks concurred. Board member believed that previous approvals were done under a different Marine Pilotage Act. Board member asked Poulson whether he thought NSP was currently up and running. Poulson said it was organizing and needed recognition before becoming operational. Board member raised concern that bylaws were not signed. Respondent pointed back to regulation saying many documents were required by "a pilot organization recognized by the Board." Milks advised the Board to take care to read the wording of the statutes and regulations carefully. Board member said he needed a list of members. The Chair said he thought the bylaws should be signed, and Poulson said they could do that. Board member stated that bylaws and articles could be amended in the future if approved today, and that all



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members must follow them. He wished there was more time to read through and compare to same documents from other organizations. Additional discussion on these topics continued.

Board member asked what the organization would do if the requirements of the dispatch could not be fulfilled due to the number of members. The Chair narrowed the question to what NSP envisioned their membership size in the first year of operation. NSP responded that the initial list would be four and would grow to the contractual need, potentially eight.

The Chair asked for the will of the Board. Board member asked for clarification on process regarding rates. Habeger stated he was not intimately familiar with the program, but his interpretation was that the organization could contract with a vessel on an agreed rate. Milks agreed and said that she would appreciate more time to review. Recognition of a pilot organization does not hinge on rates. Board member concurred. Schrock asked what would protect a vessel from a high rate when that organization hasn't published rates. Milks said they wouldn't have to do business with them and that the structure of the Marine Pilotage Act allows for market forces to operate. Board member asked when published rates would come into effect for a new organization. Milks cited AS 08.62.046(b). Gurry stated that ACP adopted SEAPA's rates in the interim when they were recognized. He said NSP could do that if it helped.

The Chair asked for a proposed timeline if a two-step process was adopted. Poulson reiterated that it would be quick. Board member suggested that an organization first be recognized, then the organization comes back to the Board when ready to prove it is operational, and it cannot become operational before the board votes on the second step. Additional discussion on this topic continued.

**MOTION:** The Board recognize the Northstar Pilot Association as a pilot organization.

Moved by: Richmond

Seconded by: Schrock

Discussion about merit of AMP's proposal.

Capt. Antonsen stated a conflict of interest given his interest in a Region I pilot organization. Chair agreed and Antonsen recused himself.

Board member asked for guidance on whether more than one member was required to constitute a list of membership. Board member stated that another meeting could occur as soon as it could be public noticed; the Chair clarified that would be ten days and could be a teleconference. Milks requested that the record reflect what specific statutory section the motion referred to. The Chair said the

vote would pertain to AS 08.62.175(b) and encouraged the maker of the motion to clarify his intent.

Board member asked why the association has not complied with 12 AAC 56.310(d)(2) regarding participation in a drug and alcohol testing program. Poulson said that it was in the bylaws and that the actual program details will be submitted within a few days if recognition is approved. Board member was satisfied that it could happen before the "second step" of operation occurred.

Mr. Rueter called for a roll-call vote and the Board APPROVED the Northstar Pilot Association as a pilot organization with a vote of 5 to 0, 1 recued, 1 abstained.

Mr. Rueter	yes
Mr. Schrock	yes
Captain Antonsen	recued
Mr. Richmond	yes
Mr. Erickson	yes
Mr. Thayer	yes
Captain Arzt	abstain (Chair formally recognized him for the record)

Motion passed. The Chair asked the representatives of NSP to alert the board when they are ready to move ahead with the next stage.

**Agenda Item 8**      **SWAPA Rates (continuation of Item 6)**

The Chair recognized Zielinski, who passed around copies of SWAPA's 2013 rates and explained what was published and which rates were objected to. Tibbles stated ASA withdrew all three objections after reaching an agreement with SWAPA.

The Chair asked for a motion to approve the published rates. It was moved and seconded and passed unanimously.

**Agenda Item 9**      **Public Comment**

The Chair indulged Weyhrauch's request to be allowed to address the Board. Weyhrauch stated his belief that if SEAPA released Gurry from dispatch that Gurry would have no legal recourse. He also thought SEAPA had the right to appeal the Board's decision to approve NSP and to take action against others who may have assisted NSP's formation.

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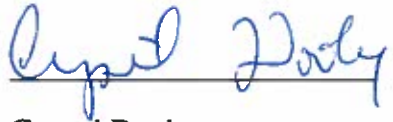
It was not recorded who made the motion and seconded the motion for the Board to move to Executive Session. The Board entered Executive Session as 12:15.

The Chair released Milks from the teleconference.

**Agenda Item 10      Executive Session**

It is not recorded who made the motion and seconded the motion for the Board to adjourn.

Respectfully submitted:



Crystal Dooley

Marine Pilot Coordinator



Curtis Thayer

Chairman

