

STATE OF ALASKA  
Board of Marine Pilots

**DRAFT**

Minutes of Meeting  
April 16 & 17, 1981

By authority of AS 08.01.070(2) and AS 08.04.040, and in compliance with the provisions of AS 44.62, Article 6, and AS 44.62.310, a scheduled meeting of the Board of Marine Pilot Examiners was held on April 16 and 17, 1981 in the Municipal Assembly Chambers in Juneau, Alaska.

Present, and constituting a quorum of the board were:

Captain Donald Oldow;  
Captain Jack Maroni;  
Mr. Marvin Taylor;  
Mr. Ken Peavyhouse; and  
Mr. Harry D. Treager (designee of Charles R. Webber)

Mr. David George and Mr. William Barrington were excused to attend legislative confirmation hearings and both joined the meeting at 10:00 a.m.

Guests present were:

Captain Harley Clough;  
Captain Robert Herring;  
Mr. Robert Berto; and  
Mr. William Sharp

Also present were: Lisa Julian, Licensing Examiner, Marjorie Odland, Regulations Specialist, and Richard Long, Chief Investigator, from the Department of Commerce & Economic Development, Division of Occupational Licensing.

The meeting was called to order by Mr. Peavyhouse and the roll was called. Mr. Peavyhouse read a delegation of authority memo by Charles R. Webber, Commissioner of the Department of Commerce & Economic Development, in which he appointed Mr. Treager as his designee for the meeting.

Mr. Taylor said he felt Mr. Treager should also be designated as Chairman, and, with the concurrence of the board, he took the Chair.

OLD BUSINESS

Minutes of February 17, 1981 Meeting: The minutes of the February 17, 1981 meeting were reviewed. Mr. Taylor requested that the last sentence of the sixth paragraph on page 4 be deleted because it implies that the board is in agreement with the bill.

Minutes of Meeting  
Board of Marine Pilots

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, to delete the last sentence from the sixth paragraph on page 4 of the minutes.

On another motion duly made, seconded and carried unanimously, it was

RESOLVED, to add a sentence at the end of the sixth paragraph on page 4 of the minutes to reflect that it was determined the board had no authority to endorse the bill.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, to approve the minutes as amended on page 4.

Correspondence from Captain Schubert Regarding Casualty Report:

Ms. Julian reported that Mr. Richard Long, Chief Investigator with the division, had advised her that, since an investigation had been opened, this item would be covered in the Investigator's report, and, therefore, board discussion should be postponed until that time.

Mr. Treager explained that he, as Director of Occupational Licensing and at the board's request in February, wrote to Captain Schubert and requested more information regarding the casualty incident reported and reviewed by the board in February. He explained that Captain Schubert's attorney replied with a letter stating that, since the incident was under Coast Guard investigation, he would prefer not to disclose any information to the board at this time. Mr. Treager advised that he subsequently sent Captain Schubert's attorney a letter which advised him of the April meeting, inviting him to appear at that time if he so wished and then instructed the division's investigative section to begin to collect information to be presented for the board's information.

Correspondence from Captain William Johnson: Ms. Julian explained that she had notified Captain Johnson of the "recency-trip" requirements for reinstatement of the Southeast Alaska portion of his license #AA 0002, as determined by the board in February, and Captain Johnson's response and verification of trips were reviewed by the board.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, to reinstate the Southeast Alaska portion of Captain William Johnson's license #AA 0002.

Budget Report: In response to a request by board members in February, Ms. Julian reported that the Marine Pilot Board had been appropriated \$3,700 for FY '81 and had expended, to date, a total of \$7,391.40. The anticipated cost of the April meeting was \$3,000.

Minutes of Meeting  
Board of Marine Pilots

It was noted that the appropriation was based anticipating only one meeting, as required by statute, however, two additional meetings were necessary to adopt standards for determining rate increases and to conduct a hearing for the Southeast tariff.

Mr. Treager advised that more money has been requested for FY '82.

Vessel Agents Registration: Ms. Julian explained that when vessel agent registration was first implemented, in the fall of 1980, there was no stated definition of vessel agent: therefore, when agents began registering, each agency was listed rather than each agent. She also explained that some of the agencies listed gave out-of-state addresses and the definition of agent, adopted at the February meeting, specifically states that the agent must reside within the State.

After discussion, and on a motion duly made, seconded and carried four to three with Mr. Taylor, Captain Oldow, and Mr. Treager opposed, it was

RESOLVED, to direct the licensing examiner to send correspondence to agencies, with a copy of the regulation and requiring agencies to provide the name, address, and telephone number of the individual acting as agent in the State.

Tariff Hearing: At 10:30 a.m., the meeting was recessed and a public hearing regarding the proposed Southeast Alaska tariff increase was held. After testimony was heard, and discussion by the board, on a motion duly made, seconded and carried five to two, with Mr. Taylor and Mr. Barrington opposed, it was

RESOLVED, that the Southeast tariff be raised across the board in the amount of 12.75%.

General Correspondence: Captain Harold Payne's letter dated March 13, 1981, in which he requested an updated license certificate, was reviewed by the board. Ms. Julian explained that license certificates (suitable for framing) are no longer available and newly-licensed pilots have never received a certificate.

After discussion, and on a motion duly made, seconded and carried six to one, with Mr. Treager opposed, it was

RESOLVED, to request the Division of Occupational Licensing to come up with appropriate license certificates suitable for framing.

Yakutat and Icy Bay: Captain Oldow brought to the attention of the board that Yakutat and Icy Bay are referenced in both the Southeast

Minutes of Meeting  
Board of Marine Pilots

and the Southwest tariffs, and that the charges are different in each. He explained that the Coast Guard now considers Yakutat and Icy Bay as part of Southeast Alaska.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, the board reconsider its decision on its own motion and amend the tariff to provide for a charge of \$600 for Icy Bay and Yakutat keeping the other ports at a 12.75% increase.

James P. Randall: Mr. Randall's letter of April 7, 1981, in which he asked the procedure for becoming a licensed pilot, was reviewed. Ms. Julian explained that the application form was completed (but not notarized) but that no Coast Guard license, dockings/undockings or fee were submitted. Ms. Julian explained that his letter was received so close to the meeting date that she had not yet responded, and asked the board if it would be possible to set up a temporary license exam for him after he had properly completed his application.

Captain Maroni requested Ms. Julian provide to Mr. Randall the regulation booklet and when his application is complete, to contact two board members to administer a temporary license exam.

Legislative Audit Performance Report: Mr. George advised that, during his and Mr. Barrington's confirmation hearings, they were requested to address the recommendations offered in the Legislative Audit Performance Report and respond, in writing, by Wednesday, April 22. He requested that the licensing examiner provide copies of the 1979 Performance Report to board members for the next day's meeting.

Pilot Liability: Copies of legislation from the State of Washington regarding pilot liability were distributed. Captain Oldow explained there is an increasing number of pilot liability suits in which pilots are held personally responsible for damages to docks, etc. He stressed that if pilots are forced to buy insurance, tariff rates will have to reflect those charges. Alternately, pilots could be covered by shippers insurance.

Captain Oldow said he would like to have a resolution passed by the board in support of legislation limiting pilot liability and Mr. Treager cautioned the board that it has no authority over the insuring of licensees.

Mr. Treager noted that the date on the drafted legislation from Washington was 1976, and he requested Ms. Julian contact the states of Washington and Oregon and request copies of current laws regarding pilot liability.

Minutes of Meeting  
Board of Marine Pilots

Mr. Peavyhouse requested copies of other states' current law be provided by mail to board members and that the subject be an item on the next meeting agenda.

New U. S. Coast Guard Licensing: Captain Oldow explained that U. S. Coast Guard terminology for Southwest Alaska is being changed. He said that, historically, Southwest Alaska was what was "left over" from Southeast Alaska (the border being Cape Spencer), but then the Coast Guard changed the boundaries to include Yakutat and Icy Bay as ports of Southeast Alaska. Then, on June 1, 1978, Prince William Sound was excluded, and a new Coast Guard station was installed in Valdez. Consequently, he explained, the Coast Guard is now eliminating the term "Southwest Alaska" entirely and will be using Western Alaska instead; therefore, there will be Southeast, Western and Prince William Sound. Captain Oldow said that he contacted Captain Spoltman of the Western Alaska Coast Guard District and was informed that when pilots renew their Coast Guard licenses, for example, what now reads as "Southeast and Southwest Alaska pilotage" will be changed to read "Southeast Alaska, Icy Bay and Yakutat, Western Alaska, including Prince William Sound pilotage."

Captain Oldow further explained that all references to Southwest Alaska in the board's regulation booklet were based on the old U. S. Coast Guard terminology and he foresees a very complicated licensing problem if nothing is done to update the board's terminology.

On a motion duly made, seconded and carried unanimously, it was

RESOLVED, to include the matter of license terminology on the agenda for the next meeting of the board.

On another motion duly made, seconded and carried unanimously, it was

RESOLVED, to recess until 8:30 a.m. on Friday, April 17.

April 17, 1981

The meeting was reconvened at 8:40 a.m., Friday, April 17, 1981. All board members were present and Mr. Treager called the meeting to order.

Guests present were: Susan Burke, Sarah Kavasharov and Jim Isherwood, from the Attorney General's Office; Nick Coti, Management Analyst from the Division of Occupational Licensing; Captain Harley Clough; Captain Robert Herring; Captain Fred Hicks; Captain Gordon Terpening; Mr. George Brereton; Mr. Joseph Merrill; Mr. Chuck Hendericks, and Captain Michael Spence.

Meeting  
Pine Pilots

moved into Executive Session to hear the investigator's  
to administer an oral examination to Michael Spence.

moved back into open session, and on a motion duly made,  
and carried unanimously, it was

VED, to issue Michael Spence a license to read "Unlimited  
the Main Ship Channels of Southeast Alaska, except the west  
of Prince of Wales Island."

Regarding Fishing Vessels/Processors: Ms. Sarah Kavasharov,  
Office of the Attorney General, introduced Mr. Jim Isherwood,  
the Office of the Attorney General. She explained that Mr.  
is with the Natural Resources Section and is more familiar  
ing vessels and maritime law than she. Ms. Kavasharov  
the importance of defining, by regulation, the term "fish-  
l."

house said that the board has previously defined "fishing  
s a vessel which actually captures fish from the water.  
harov asked whether a processor which also fishes would  
under AS 08.62.180(2) and Mr. Peavyhouse said that any  
rich captures fish would be considered a fishing vessel.

wood stressed the importance of making documented distinc-  
between fishing and processing vessels.

Oldow explained the difference between enrolled and reg-  
vessels, and pointed out that enrolled vessels are already  
from the State Pilotage Act.

Maroni noted that, referring to a letter submitted by Mr.  
refry, attorney for the vessel "Alaska One" (Attachment #1),  
sel's skipper, Mr. Ira Bailey, should be able to apply for  
ive a State pilot's license.

ager asked Ms. Kavasharov whether the board was correct in  
ing that the vessel "Alaska One" should be required to have  
-licensed marine pilot on board, and she replied that it was  
ct determination, so long as reasonable grounds were found  
distinction between fishing vessels and processing vessels.

asharov further noted that processing vessels have tradition-  
en considered as fishing vessels in other Alaska statutes.

rid George asked Mr. Isherwood if fish processors were con-  
l when pilotage legislation was enacted, but neither Mr.  
ood nor Ms. Kavasharov could find any legislative intent  
ing processors.

Minutes of Meeting  
Board of Marine Pilots

Mr. Treager advised that a representative from the "Alaska One" would be attending the afternoon session of the meeting to address the board regarding the definition of fishing vessel, and asked that any motions related to the subject be held until after that representative has had a chance to speak.

Discussion Regarding Amended Southwest Tariff: Ms. Susan Burke, from the Office of the Attorney General, addressed the board regarding her concerns about the board's action in February 1981, which amended the Southwest pilotage tariff to delete reference to pilot boat fees (see Minutes of Meeting, February 1981). She explained that there is not enough testimony in the record of that meeting to support the board's determination.

Ms. Burke explained that she had tried to work the figures by the formula used by the hearing officer in the tariff order eliminating the \$260,000 figure referenced for pilot boat fees. She said that, without the \$260,000, the justifiable rate increase worked out to only 3.6% rather than 4.2%.

Mr. George stated that not the \$260,000 figure, but just the reference to pilot boat fees, was eliminated. He said he believes that figure should be redesignated.

Mr. Taylor said his recollection was that the \$260,000 had already been spent, and he was surprised that Ms. Burke was concerned with the elimination of the reference to pilot boat fees rather than the fact that it was also determined, as part of the same resolution, that the Southwest pilotage tariff would not be increased until 1982.

He also asked Ms. Burke to review the record of the previous day's meeting, during which the board adopted a 12.75% increase for the Southeast pilotage tariff. Mr. Taylor expressed concerns that the board acted in a very irresponsible manner in adopting the new tariff, because they abandoned the rate-setting standards and adopted a 12.75% increase based on a Consumer Price Index.

Ms. Burke indicated that she had to leave to attend another meeting, but that she would return after lunch to continue the discussion.

Discussion Regarding Supervised Dockings: Mr. Treager requested that Captain Gordon Terpening address the board regarding his concerns about recently amended regulations which require supervised dockings and undockings as qualifications for an unlimited pilots license and Captain Terpening's letter dated April 10, 1981, was reviewed (Attachment #2).

Minutes of Meeting  
Board of Marine Pilots

Captain Terpening explained that the new regulations require dockings and undockings be performed under the supervision of a licensed unlimited pilot; however, no provisions have been made to require that unlimited pilots provide the supervisory service. He said that he has requested the supervised dockings and undockings and was refused by the president of the Southwest Alaska Pilots Association.

Mr. George asked if Captain Terpening is the only pilot refused by SWAPA, and Captain Terpening replied that he had requested the dockings for himself and Captain Fred Hicks, the other member of the Aleutian Marine Pilot Association. Mr. George asked if there could have been circumstances preventing SWAPA pilots from supervising these dockings, such as inclement weather, liability risks, or busy schedules. Captain Terpening explained that he and Captain Hicks made no stipulation as to the time or location of the dockings but admitted that liability may be a problem.

Mr. Taylor said that he was very disturbed about this problem. He said he was concerned that the board is promoting "turf protection" by requiring these supervised dockings and undockings but not providing a method to obtain them.

Captain Oldow said he believes that if a person is genuinely interested in learning the pilot profession, which is the culmination of many years at sea as an officer or master, there is no problem obtaining the prerequisites for a unlimited license.

Mr. Treager noted that before the regulation was adopted, he had specifically asked members of SWAPA whether independent pilots would encounter difficulties in acquiring the dockings and undockings and was assured they would not.

The meeting was recessed at 11:50 for lunch and reconvened at 1:15 p.m. Captain Maroni had been called away and was excused for the remainder of the meeting. Mr. Dale Johnson's letter, dated April 16, 1981 (Attachment #3), was reviewed by the board.

Captain Robert Herring addressed the board regarding Captain Terpening's letter. He stated that SWAPA is agreeable to aid pilots in training to dock ships under their supervision, providing the individual pilot is comfortable with the ability of the trainee, that permission has been granted by the master and/or owner of the ship, and that the weather permits.

Mr. George said he believes there is a possible inference from all this -- that SWAPA would like to maintain its superior position in Southwest Alaska and would do so by denying otherwise qualified pilots the opportunity to perform their dockings and undockings.



Minutes of Meeting  
Board of Marine Pilots

Captain Herring stated that SWAPA has agreed to training nonmembers and has done so in the past. He said that, even considering the need for more pilots in Southwest, SWAPA pilots would not consider allowing an unsafe situation.

Mr. George asked if requests for dockings and undockings should be made to individual pilots or SWAPA and Captain Herring replied that both ways would be acceptable.

Captain Fred Hicks addressed the board and made suggestions for substitution of either unsupervised dockings or simulator dockings in lieu of supervised dockings and undockings.

Captain Oldow noted that the regulation hearing was held on February 17 and that testimony relating to the dockings and undockings should have been given at that time. He indicated there is more business on the agenda and suggested the board move on to other business.

Mr. George said he disagreed and stated that he believes this is a very important matter. He said he believes the board is in a legally precarious position by sanctioning SWAPA's "turf protection." He said he hoped that, after this meeting, the pilots would work this out themselves, but that if, at the board's next meeting, there are indications the problem still exists, the board should consider rescinding the action in which it adopted the regulations requiring the supervised dockings.

Extension of Route: The licensing examiner explained that Captain Hicks and Captain Terpening have provided copies of their recently endorsed Coast Guard licenses and wish their state pilotage license to reflect the new endorsements. After discussion, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED, to reissue Captain Hicks' State license #AA 0074 to read, "Limited: Pilotage waters of Southwestern Alaska, excluding the waters of Cook Inlet, the Port of Whittier, the waters of Resurrection Bay, the waters of Kodiak Island and the Alaska Peninsula and Aleutian Island ports of Port Moeller, Cold Bay, False Pass and Adak."

On another motion duly made, seconded and carried unanimously, it was

RESOLVED, to rewrite Captain Terpening's State license #AA 0076 to read, "Limited: Pilotage waters of Southwestern Alaska, excluding the waters of Cook Inlet, the waters of Kodiak Island, the waters of Resurrection Bay and the Alaska Peninsula and Aleutian Island ports of Port Moeller, Cold Bay, False Pass and Adak."

Minutes of Meeting  
Board of Marine Pilots

Public Input Regarding Definition of Fishing Vessels: Mr. Chuck Hendericks, manager of the Alaska Fisheries Co. (owners of the vessel "Alaska One"), addressed the board regarding the letter submitted by their attorney, Mr. Trefry (Attachment #1). Mr. George asked how the figure of \$30,000 (on page 2) was derived. He explained that there may not be as many ship movements actually requiring a pilot on board as the Alaska Fisheries Co. believes. Mr. Hendericks stated that he believes the exclusion of fishing vessels (under AS 08.62.180(2)) was intended to extend to support vessels such as processors.

On a motion duly made, seconded and carried 5 to 1 with Captain Oldow opposed, it was

RESOLVED, that at the next meeting of the board, regulations be adopted to define fishing vessels and that public notice, in accordance with the Administrative Procedures Act, be given.

Discussion Regarding Amended Southwest Tariff: Ms. Susan Burke continued addressing the board regarding the amended Southwest tariff. She said the point she was trying to make is that there is nothing in the order itself, in the minutes or in the record of the meeting, that indicated a factual basis for the determination by which the tariff was amended. She said that a review of the initial order for the adoption of the increased Southwest tariff and the order amending the tariff indicates the determination was factually inconsistent and vulnerable. She said she would be able to get together with David George, since he is based in Juneau, and possibly work out the figures to justify a 4.2% increase, even with the \$260,000 figure deleted, but that she does not believe it should be an "after the fact" justification.

Mr. George said he believes the \$260,000 figure should be redesignated as unanticipated expense and growth factors.

After discussion, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED, the figures used in the tariff remain the same and that the \$260,000 be included to represent unliquidated and contingent expenses.

Annual Reports: Mr. Nick Coti, Management Analyst with the Division of Occupational Licensing, addressed the board regarding the two annual reports, Goals & Objectives and Annual Performance Report, due June 1 and August 1, respectively. The board reviewed its goals and objectives from FY '81 it was determined that the Division of Occupational Licensing staff would draft the reports and send copies to the board members for comments. Mr. Peavyhouse

Minutes of Meeting  
Board of Marine Pilots

indicated one major area of concern is funding for more meetings and the board unanimously concurred.

Mr. Treager suggested another objective to consider would be the pursuit of reviewing the possibility of using outside marine pilot schools for training of in-State pilots. Captain Oldow noted that maritime academies produce deck officers and not qualified masters.

There being no further business, and on a motion duly made, seconded and carried unanimously, it was

RESOLVED, to adjourn.

Submitted by:

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Lisa Julian, Licensing Examiner

Approved by:

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Harry Treager, Chairman  
Designee of Charles R. Webber