

STATE OF ALASKA
Board of Marine Pilots

Minutes of Meeting
December 6 & 7, 1982

By authority of AS 08.01.070(2) and AS 08.40.040, 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 Pilots was held in Anchorage at the Frontier Building, Third Floor Conference Room at 3601 "C" Street.

Present, and constituting a quorum of the board were:

Harry D. Treager, Chairman (designated by Commissioner Webber and newly-appointed Commissioner Richard A. Lyon)
William Barrington
Captain Jack Maroni
Captain Donald Oldow
Ken Peavyhouse
Marvin Taylor

Mr. David George was unable to attend the board meeting.

Also present, from the Department of Commerce & Economic Development, Division of Occupational Licensing, were:

Nancy Ferguson, Licensing Examiner
Richard Long, Chief Investigator
Darrell Miller, Regulations Specialist
Chuck Ward, Investigator

Guests present were:

Captain Bob Boyd, SWAPA
Captain Richard Cochinos, SWAPA
Captain Robert Hendricks, SWAPA
Captain James Hodgman, SEAPA
Captain Steve Hunnicutt, SWAPA
Captain Anthony Joslyn, President, SWAPA
Captain John Larsen, Alaska Marine Highway
Joe Merrill, Business Manager, SWAPA
Captain Michael D. O'Hara, SWAPA
Richard Pennington, Lawyer
Lt. Commander Terry Rice, USCG
Captain Ray Spoltman, USCG
Captain C. Gordon Terpening, Aleutian Pilots
Lt. Brent Whitener, USCG, Chief Investigator

The board meeting was called to order at 9:15 a.m. A delegation of authority memorandum from Commissioner Webber was read into the record by the licensing examiner. Commissioner Webber appointed Harry D. Treager, Director of the Division of Occupational Licensing, as his designee to chair the meeting.

Old Business

Minutes of May 24, 1982 Meeting: The board reviewed the minutes from the May 24, 1982 meeting.

On a motion duly made by Mr. Peavyhouse, seconded and passed unanimously, it was:

RESOLVED, to accept the minutes of May 24, 1982.

New Business

Extension of Routes: Captain J. Randall and Captain W. Bullard both took extension of route exams to add additional endorsements to their Alaska State licenses.

On a motion duly made by Mr. Peavyhouse, seconded and passed unanimously, it was:

RESOLVED, to approve Captain Bullard's extension of route for permanent licensure.

FURTHER RESOLVED, that Captain Randall's extension of route for permanent licensure be granted.

Regulations: Darrell Miller, new Regulations Specialist, Division of Occupational Licensing, was introduced to the board.

12 AAC.56.190(5)

The board reviewed the final version of the definition for "fishing vessel" listed under 12 AAC 56.190(5); to become effective December 17, 1982.

12 AAC 56.020

At the December 1981 meeting, the board approved amending 12 AAC 56.020, to change the annual meeting from December to January. This amendment was never submitted to the Lieutenant Governor's Office for an effective date because the board was waiting for a decision on the docking and undocking problem.

The board prefers to keep the annual meeting in December to remain consistent with past years, because it is a time everyone is able to plan on if they wish to attend the meeting.

12 AAC 56.080(a)(2)

The board needs to change the \$200 biennial license renewal fee to \$300 to be consistent with AS 08.62.140(2). This will require a public notice.

12 AAC 56.080(b)(1)

Mr. Miller advised the board that it needs a definition to clarify the regulation pertaining to "working in a licensed deck officer capacity."

Captain Oldow felt that this regulation is unworkable. A licensed deck officer is a licensed officer in the deck department working as a master, pilot, second or third mate.

The board discussed the meaning of "area." The board reviewed the current established boundaries under 12 AAC 56.100(a) for Southeast Alaska. Under 12 AAC 56.100(b), boundaries for Southwest Alaska, it was noted that the terminology is archaic and needs to be updated. Mr. Taylor felt that the definition of area falls under 12 AAC 56.120, pilot stations or pickup points.

On a motion duly made by Captain Oldow, seconded and approved unanimously, it was:

RESOLVED that 12 AAC 56.080(b)(1) and (2) be repealed.

Chairman Treager directed the staff to take the appropriate action to repeal 12 AAC 56.080(b)(1) and (2).

Chairman Treager also directed the staff to research the definition of "area."

Old Business

Pilot Liability

A. Presentation by Joe Merrill, Business Manager for SWAPA.

Mr. Merrill introduced Captain Spoltman and Lt. Commander Terry Rice, with the U.S. Coast Guard. They are attending the meeting to listen to the proceedings and are also available to answer questions.

Mr. Merrill attended the American Pilot Association meeting and the West Coast Pilot Association meeting earlier in the fall. The West Coast Pilot Association was attended by representatives of all west coast pilot associations, insurance representatives, and maritime lawyers.

Mr. Merrill noted that Oregon is the only state that has a Memorandum of Understanding with the Coast Guard and he encouraged the Alaska board to do a similar memo.

It was noted that the Alaska memorandum is in draft. The board felt that the Oregon Memorandum of Understanding was still pending and the U. S. Coast Guard had not issued a formal statement.

Mr. Merrill noted that companies or independent businessmen are going directly against the pilots for damages incurred during pilotage. In years past, the ships acted as a buffer but this is no longer true. There are currently 23 lawsuits against pilots for civil damages. Pilots are unable to obtain insurance to protect themselves against damages (similar to malpractice insurance). There is a trip-by-trip insurance available for \$100 million, but the insurance company will cancel the policy upon receiving their first claim from the pilots.

Three possible alternatives:

- 1) A trip insurance policy whereby the captain of a ship signs a slip absolving a pilot from damages and receives a reduced tariff rate. If the ship's captain does not sign, then the tariff would be increased to protect the pilot against damage claims.
- 2) In England and Canada, the individual pilot files a \$1,000 bond. This would do away with the waiver of liability in cases where the captain does not understand what he is signing.
- 3) Encourage the board to pursue the possibility of exempting the pilots from liability through state law.

Mr. Merrill asked the board to:

- A. encourage adequate funding for investigations;
- B. resurrect and pursue a Memo of Understanding with the U. S. Coast Guard; and
- C. Pursue statutory exemptions for pilot actions (liability).

- B. Captain Ray Spoltman, Commander with the U. S. Coast Guard, spoke to the board regarding pilot liability.

The U. S. Coast Guard has an agreement with the American Pilots Association to send them copies of all investigation reports that involve pilots. The American Pilot Association goes to the state agency and properly polices it. The Coast Guard is concerned because they feel that states are not policing pilots adequately.

Captain Spoltman suggested that the board may wish to contact a marine attorney.

Captain Oldow noted that the board may not be able to do this because the Attorney General's Office may not permit the board to do it.

Captain Maroni realizes that Mr. Long's investigation section is understaffed and he does need an adequate work force to do the job required. The only alternative is for the individual board members to speak with legislators and budget people regarding this problem.

Captain Spoltman wondered if there were enough causes and casualties to warrant a full-time investigator for the board.

Chairman Treager designated Mr. Peavyhouse, Mr. Barrington, and Captain Oldow to work on an Alaska Memo of Understanding and coordinate this with Captain Spoltman's office. Mr. Peavyhouse asked if Mr. Merrill could also work with the committee.

The board asked if they could contact a maritime attorney on the consultant level. Chairman Treager advised the board that the contract would have to be reviewed by the Attorney General's Office first. In the past, no one on the staff with the Attorney General's Office has had experience as a maritime lawyer.

Chairman Treager suggests that the staff correspond with the Oregon State Board to determine how the board researched this matter and their position. Also, contact the American Pilots Association, Columbia River Bar Pilots, Marine Officer Protective Services (Insurance), Coos Bay Pilots. Determine their position and the research compiled on this issue. The board also was interested in finding out who submitted the Oregon bill.

Mr. Taylor feels that the shipping companies should be advised of the board's intent. They may have researched this matter and established positions.

Chairman Treager directed the staff to notify all people on the mailing list that this subject is under discussion and being pursued by the board. Also, notify all licensed agents and pilots by the same informational letter, so that the board will receive replies from all sides.

Investigator's Report

Chuck Ward appeared before the board to give his report.

On a motion duly made by Mr. Taylor, and seconded, the board moved to go into Executive Session. Present during the Executive Session were Lt. Commander Terry Rice, LCDR, and Lt. Brent Whitener, Senior Investigating Officer with the U. S. Coast Guard.

On a motion duly made by Mr. Taylor and seconded, the board moved to come out of Executive Session.

On a motion duly made by Mr. Taylor, seconded and approved unanimously, it was

RESOLVED to close items 1 through 7; item 8 shall remain open and active.

The following case numbers shall remain open and active:

MP81-103, MP82-109, MP83-077, MP83-080, MP83-079, MP83-078.

Increasing Tariff 1-2%:

Mr. Peavyhouse discussed increasing the tariff fee by 1 or 2 percent to help fund an additional investigator and additional meetings if necessary.

Captain Maroni noted that all license renewal fees go into the general fund.

Dedicated funds are illegal in Alaska.

Captain Oldow feels that this tariff increase is a tax to the shipper and the vessel. Captain Oldow cannot see the associations or the pilots collecting money for the State or vice versa.

Captain Maroni felt that the only solution was to speak with the Chairman of the House Finance Committee and lobby for additional funding for an investigator.

Upgrading Licenses

Richard Pennington is a lawyer representing Captains' Hicks and Terpening in the matter concerning upgrading their limited pilots license to unlimited. Both captains are unable to obtain the required supervised dockings and undockings under 12 AAC 56.030(5)(a) or (b).

Captain Terpening sent letters to pilots holding unlimited licenses in May 1982. He asked for their help in meeting the docking and undocking requirements. Only two replies were received and neither individuals could help.

Mr. Pennington feels that Captain Terpening has exhausted all alternatives.

Mr. Pennington feels that the effect of this regulation is anticompetitive and he suggests:

- 1) promulgate a new regulation that is workable; or
- 2) repeal the existing regulation.

Captain Terpening contacted Captain Gene Clark regarding Captain Maroni's suggestion. Captain Clark felt that his retirement might be in jeopardy because if he supervised Captain Terpening's dockings and undockings, he is a member of a union and Captain Terpening is not.

Captain Terpening suggested amending the regulation to allow a substitution of a course at a recognized pilot school in lieu of the docking and undocking requirements.

Mr. Taylor has felt that 12 AAC 56.030(5)(a) or (b) is restrictive and is similar to a closed shop. Mr. Taylor noted that people were docking ships before the State license was in effect and dockings and undockings were not required (1968).

Recess until 9:00 a.m., December 7, 1982.

Captain Oldow discussed the application process through the Southwest Pilots Association and time spent training in France. The Southwest Pilots Association has grown from 6-20 members.

Captain Oldow noted that dockings and undockings are not required to receive U.S. Coast Guard license. He feels that the requirements should be more stringent because life and property are involved.

Mr. Taylor felt that the board needs to do something with the regulation that will allow a man to prove his ability or inability. Currently, there is no way to do this because of the way the regulation

is written. If the board does not take some action, the courts may intervene and make a decision for the board.

On a motion duly made by Captain Oldow, seconded and passed unanimously, it was:

RESOLVED that the board appoint a committee of the entire board to review the qualifications for State pilots license and renewals to insure that they reflect the intent of the statute and the mandate of this board, and that they can meet the qualifications without unnecessarily restricting applicants.

The committee is particularly directed to address the requirement for experience and skill in shiphandling of the vessels of the size and type operating in Alaska waters.

The regulations specialist will correspond with the board members by mail to formulate a proposed regulation draft for the special March meeting. The public notice needs to be in the paper 30 days prior to the meeting.

Chairman Treager directed the staff to inform the Department of Law of the problem and do research for the board. The board should also do some research.

The March committee meeting must be open to the public and should be termed a special meeting. The Board will need one day for taking testimony and a second day to put it together and formulate. They may need a third day to complete all the board's business. Then, the board will be able to finalize the regulation at their May meeting.

The staff will need to write all currently licensed marine pilots and vessel agents an informational letter asking for their input and advice on this matter.

Send copies of what the board sends to:

- 1) Richard Pennington
733 W. 4th Avenue, Suite 206
Anchorage, Alaska 99501
- 2) Captain Gordon Terpening
Box 385
Dutch Harbor, Alaska 99692

James Hodgman, SEAPA

Captain Hodgman spoke to the board regarding the problem of gillnetters having nets in fairway (main) ship channels. Fishermen fish

where the fish are and, at times, there may be a large concentration of gillnetters in a narrow channel. If the screw is turning slow on a large ship, the whole net may be taken, which involves loss in fishing time and the loss of the net.

Power vessels are required to stay out of the fishermen's way and the pilots do attempt to avoid fishing areas if there is an alternate route or if the channel is wide enough. The International Rules of the board require a lookout, safe speed, light and whistle signals, and radio messages on more than one channel. On the average, one-to-three gillnets are destroyed per year.

The gillnetters are required to have someone on watch 24 hours a day (this is impossible - man has to sleep). Gillnetters are not allowed to impede a vessel's passage in a narrow fairway. They also are required to have a red over white light and a white light in the direction of the net.

Mr. Treager, Captain Clough, and Cass Parsons (president of the Fisherman's Association), met on November 30, 1982 to discuss some of the problems.

Sunset Legislation

There is a need for the board and the licensing of marine pilots. The department agrees that the board should be continued.

Mr. Treager is seeking additional funding that would allow the board to meet three times a year. The auditors suggested that we delete the date of birth and race from the initial application. The desk manual needs to be completed by the licensing examiner.

Mr. Treager feels that there will be funding to send one marine pilot and one agent to represent the board during the Sunset hearings.

Mr. Treager will send each board members a copy of the audit report and the department's response.

12 AAC 56.190(5)

The new regulation definition for fishing vessels will become effective December 17, 1982.

We need to notify all agents of the new definition and the board asked the examiner to notify all current licenses.

Two fish processors which will fall under this definition are the Alaska I and the Golden Alaskan (new one - German built).

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On a motion duly made by Mr. Barrington, seconded and passed unanimously, it was:

RESOLVED to approve the extension of routes for Captains O'Hara and Cochinos.

Meeting adjourned: There was no further business and, on a motion duly made, seconded and passed unanimously, the meeting adjourned at 11:15 a.m.

Upon conclusion of the board meeting, oral examinations were conducted. Examiners were:

Captain Maroni
Captain Oldow
Ken Peavyhouse

Those examined were:

1. Bob Boyd
2. David Renwick
3. Steve Hunnicutt
4. John Larsen

Passing were:

1. Bob Boyd
2. Dave Rennick
3. Steve Hunnicutt
4. John Larsen

Conclusion of the record.

Submitted by:

Nancy Ferguson

Nancy Ferguson, Licensing Examiner

Approved by:

Harry D. Treager, Acting Chairman