

STATE OF ALASKA  
Board of Marine Pilots

Minutes of Meeting  
December 5 & 6, 1983

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 Federal Building in Room C-121 & 122.

Present, and constituting a quorum of the board were:

Harry D. Treager, Chairman (designated by Commissioner Richard A. Lyon)

William Barrington  
Captain Jack Maroni  
Captain Donald Oldow  
Ken Peavyhouse  
Marvin Taylor

Absent:

David George

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

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

Guests present were:

Captain John Bradley, SEAPA  
Captain Harley Clough, SEAPA President  
James Gilmore, Attorney for SWAPA  
Captain Robert Hendricks, SWAPA  
Captain Anthony Joselyn, SWAPA  
Joe Merrill, Business Manager, SWAPA  
Captain Michael O'Hara, SWAPA  
Richard Pennington, Lawyer  
Commander Terry Rice, USCG  
Captain Gordon Terpening, Aleutian Pilots  
John Webb, SWAPA

The board meeting was called to order at 9:00 a.m. A delegation of authority memorandum from Commissioner Lyon was read into the record by the licensing examiner. Commissioner Lyon appointed Harry D. Treager, Director of the Division of Occupational Licensing, as his designee to chair the meeting.

OLD BUSINESS

Minutes of May 23-25, 1983: The board reviewed the minutes from the previous meeting:

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

RESOLVED to adopt the minutes as they read from May 23-25, 1983.

Review of Goals and Objectives - Interim Report:

1. Review the effects of new U. S. Coast Guard licensing on State pilotage licenses.

Captain Maroni spoke to OCMI in Juneau. The redraft of the proposed changes may be ready by the latter part of January 1984. The proposed changes are voluminous and very controversial affecting all waters of the United States.

2. Review and amend, where necessary, regulations to increase the safety of vessels in Alaska waters and allow maximum protection of fisheries and coastal resources.

The board felt that they may be over their heads because they are dealing with maritime laws and statutes.

- a. Establish guidelines for agent responsibilities and reporting of activities.

The agents feel that they know their responsibilities.

Currently, agents do not report to the Department of Commerce and Economic Development when a ship moves and a pilot is not available.

- b. Print Alaska Marine Pilot Statutes in Japanese. Pursue a method of distribution to all shipping companies in Japan.

The board felt that they may be setting a precedent. Mr. Taylor noted that possibly one in ten ships were Japanese and he felt the percentage was not there.

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

RESOLVED to shelve this project.

3. Review other states' licensing laws and consider seeking statutory amendments limiting pilot liability.

A piece of legislation may be introduced by the Legislature at the upcoming session concerning pilot liability. The staff will copy all members once it is out on the preintroduction list.

4. Full-time investigator who could spend more time on violations and investigations.

Mr. Treager noted that an investigator position was red-lined out of the administrative budget (a Range 18 at \$60,000 a year). Mr. Treager advised the board that he could not substantiate a full-time investigator for the board, but possibly a half-time.

Captain Oldow felt that the board should attempt to do something because the number of cases that were closed due to age was frustrating.

On a motion duly made, seconded, disapproved by Mr. Taylor, and approved by all other members, it was

RESOLVED to pursue adding an additional investigator not necessarily just for marine pilots (partially).

5. Amendments to the requirements in 12 AAC 56.030 and 12 AAC 56.040 qualifications for Marine Pilot licensure.

Regulation hearing scheduled for December 6, 1984 at 8:30 a.m.

10:00 a.m., Presentation by Richard Pennington: Mr. Pennington introduced his client Mr. Terpening to the board (Mr. Hicks was not present.) Mr. Pennington attended the May 1983 board meeting and felt that, after two days of hard work, the problem was resolved and the dockings and undockings would be accomplished.

Captains Hicks and Terpening spent the summer trying to comply with the compromise agreement. Mr. Pennington gave the individual board members letters from Captain Hicks and Captain Terpening outlining the results of the docking and undocking requests. Attached are copies of both letters. Captain Hicks received two supervised dockings and four supervised undockings out of 24 requests. Captain Terpening received one supervised docking out of 22 requests. Mr. Pennington felt that it was frustrating and humiliating for his clients because SWAPA members refused to supervise dockings and undockings.

Mr. Pennington felt that they have exhausted administrative remedies and cannot go further with this board. They have no other recourse, but to file a complaint with the U. S. District Court. Listed as defendants in the 17-page rough draft of the complaint are individual board members, each member of the SWAPA and Joe Merrill, business manager for SWAPA. This packet was mailed to the defendants on Thursday, December 1, 1983. A copy was also sent to Pete Froehlich, Assistant Attorney General. None of the board members received the packet but individual members from SWAPA did receive their packets.

Mr. Pennington noted that he felt there is an improper delegation of administrative authority on behalf of this board to unlimited pilots in regard to 12 AAC 56.030. Mr. Pennington had the draft of the complaint that will be sent to the U. S. District Court unless the following are met:

- 1) Revise or amend the regulations found under 12 AAC 56.030(5)(A)(B).
2. Waive 12 AAC 56.030(5)(A)(B) in regard to Captain Hicks and Captain Terpening.
3. The board deems the attempts of the applicants as good enough to satisfy the dockings and undockings requirements.

Mr. Pennington advised the board that they are before the board for the last time. They have attended meetings held December 1982, May 1983, and December 1983.

The board would like copies of the complaint this afternoon.

Jim Gilmour, attorney for SWAPA, was present and addressed the board. The individual pilots received copies of the complaint Friday, December 2, 1983. Mr. Gilmour reviewed the complaint over the weekend. Mr. Gilmour felt that the board may wish to discuss this matter with legal counsel. He cautioned the board because they are named as defendants and there is a threat that a legal lawsuit may be filed. He noted that a response or conference was requested within 10 days.

Joe Merrill, business manager of SWAPA, noted that at the May 1983 board meeting, he made arrangements with SWAPA pilots who were willing to supervise the dockings and undockings for Captains Hicks and Terpening. He followed this verbal agreement with a letter to the Aleutian Pilots dated June 6, 1983 (copy attached). The pilots dispatched to Dutch Harbor are on a two-week rotation. He felt that a reasonable effort was made by SWAPA pilots. Supervising pilots

felt that they were not competent and would not do it again. Mr. Merrill felt that they should not be elevated beyond their competence and noted that the supervising pilots' license was on the line. Mr. Merrill advised the board that Jack Johnson had had ninety jobs during the two weeks he was in Dutch Harbor and he did refuse to supervise some dockings and undockings. Mr. Merrill knew that people were doing the docking and undockings, but he was not aware that it was not working. The first contact he received was the draft of the lawsuit on Friday.

Mr. Taylor felt that if they were incompetent, then it would show on the accident reports.

Mr. Merrill felt that they are competent at 2,000 tons, so no accident reports are on file, but they may not be ready for upgrading to unlimited tonnage.

Captain Terpening advised the board that he and Captain Hicks have piloted in the area approximately 3-1/2 years. Captain Terpening noted that there was a lack of ships beginning in August this year because the crab season was closed. Most work in Dutch Harbor is done during the summer months.

Mr. Taylor noted that, legally, the individual observing is in responsible charge and not the association. Captain Oldow noted that two individuals who observed the dockings and undockings were not members of SWAPA.

Captain O'Hara advised the board that he was in Dutch Harbor for two weeks in March and two weeks in August. During that time, he was not contacted by either Hicks or Terpening to supervise dockings and undockings. He felt that it was up to them to contact him to observe on their ships.

Adjourned for lunch at 11:55 a.m. Reconvened at 1:30 p.m.

1:30 p.m., Investigator's Report: Chuck Ward was present at the board meeting to give his report.

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

RESOLVED to go into executive session per AS 44.62.310(c)(2) to hear the investigator's report.

FURTHER RESOLVED to come out of executive session.

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

RESOLVED that on the investigator's recommendation, we close 83-084, 81-103, 84-086, 84-088, and Item 13.

Cases remaining open were 84-803 and 84-804.

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

RESOLVED to rescind the motion made earlier in the meeting (during the goals and objectives portion).

The board's policy is to send all submitted accident reports to the attention of Dick Long, Investigations Section.

Continue Pennington Presentation: Mr. Gilmour and Mr. Pennington met during the lunch break along with their clients. They attempted to resolve the matter, but were unable to do so.

Mr. Gilmour advised the board that three pilots from SWAPA were willing to strike an agreement in writing to supervise Hicks' and Terpening's dockings and undockings. The three pilots were Captains Joselyn, O'Hara and Murphy.

Mr. Pennington advised the board that this would not be acceptable because ships are not available until May.

Captain Maroni noted that in Southeast Alaska, it may take six months to accomplish the required dockings and undockings and it may not be possible to do it in one season.

On a motion duly made by Mr. Taylor, seconded and approved by Mr. Barrington, Mr. Taylor, Captain Oldow, Captain Maroni, and Mr. Peavyhouse (Mr. Treager did not vote), it was

RESOLVED that, due to the efforts expended in the past 3-1/2 years, and being misled by the regulations specialist and, due to the evidence of completing dockings and undockings although not the required number in a remote area, and, further, in review of a Supreme Court opinion that a board has the right to enforce the statutes without striking it down (I mean making exceptions to), a temporary license be granted to Mr. Terpening and Mr. Hicks not to exceed a period of one year. During that time, a list of unlimited pilots serving in the Dutch Harbor area will be supplied to the candidates to accomplish removal of the temporary measure.

The licensing examiner noted that they will need to apply for a temporary permit and submit the required fee before the permit is issued.

Mr. Pennington advised the board that this will remove the threat of a lawsuit.

Extension of Temporary Permits: On a motion duly made, seconded and approved unanimously, it was

RESOLVED to extend Captain William Lyon's temporary permit (Channel pilot for southeast with exclusions) until the next meeting.

RESOLVED to extend George Porter's temporary permit (Channel pilot for Southeast with exclusions) until the next meeting.

FURTHER RESOLVED to extend Leslie Taylor's temporary permit (Channel pilot for Southeast with exclusions) until the next meeting.

Executive Session: The board moved to go into executive session to grade the examinations.

The oral examinations followed the grading of exams.

The meeting adjourned following the oral exams.

The meeting was called to order at 8:40 a.m. on December 6, 1983.

Extension of Route: On a motion duly made, seconded and approved unanimously, it was

RESOLVED to grant Captain John Baldry's extension of route to add the west coast of Prince of Wales Island except Klawock and upgrade his Channel pilot license to unlimited any gross tons.

Commander Terry Rice, U. S. Coast Guard: Commander Rice discussed federal pilotage as it might relate to State pilotage regulations. The Marine Safety office consolidated federal pilotage policy for Western Alaska and Prince William Sound effective November 15, 1983. Western Alaska begins at Icy Cape Westward and includes all of the Alaska coastline except Prince William Sound which is under control of Valdez Marine Safety Office. The federal national pilotage proposal has been in the works since 1976 and has been amended a number of times. Since 1978, the gross tonnage has been issued by experience (increments of 20,000; 40,000; 60,000; unlimited). The latest proposal is to issue unlimited tonnage with a base of 4,000 G. T. and do away with tonnage increments by experience (base of 20,000 G. T.).

Regulation Hearing: Mr. Darrell Miller read the public notice into the record and noted that the cutoff for response was December 2, 1983. Mr. Miller received written comments from the following:

- |     |                           |         |
|-----|---------------------------|---------|
| 1)  | Captain Bobby Parker      | Opposed |
| 2)  | Captain E. H. Creasey     | Opposed |
| 3)  | Captain Douglas Johnson   | Opposed |
| 4)  | Captain Vernon Wyatt      | Opposed |
| 5)  | Captain Roger S. Dunn     | Opposed |
| 6)  | Captain George McReynolds | Opposed |
| 7)  | Captain R. H. Nerup       | Opposed |
| 8)  | Captain Michael C. Spence | Opposed |
| 9)  | Captain Ervin Hagerup     | Opposed |
| 10) | Captain W. L. Bullard     | Opposed |
| 11) | Captain H. K. Elsensohn   | Opposed |
| 12) | Captain James Sande       | Opposed |

The board read the letters and then asked if anyone in the audience wished to testify.

Joe Merrill, Manager of Southwest Pilots Association spoke to the board. He felt that a license ought to be based on the demonstrated competence of the individual and there is obviously different skill levels involved in vessels of different size.

Harley Clough was before the board to represent Southeast Pilots Association. He noted that various tonnage steps by the point system was basically copied from the U. S. Coast Guard regulations. He felt that the board may be criticized during sunset hearings in the future because they are duplicating the U. S. Coast Guard's requirements. The Legislature may feel that there is no need for the board. He felt that these regulations may discriminate against the resident mariners who work on tenders, tugs, and the ferry system. He suggested a three-step tonnage increment 2,000; 20,000; unlimited. He noted that most responses received from southeast pilots holding unlimited licenses were in opposition to the proposed regulation because future pilots in southeast would be unable to receive unlimited licenses. There are seldom ships in southeast over 40,000 gross tons.

The regulation public hearing testimony was closed at 10:20 a.m.

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

RESOLVED that our public notice dated October 19, 1983 in regard to proposed changes in the regulation in the public hearing which we have just completed, that any action be tabled and that the chairman appoint a committee of State



marine pilots to come to our May meeting with other recommendations.

Amended Motion: That a committee of pilots make proposals in time to send to the regulations specialist so a hearing on the proposed regulations can be scheduled at the time of the next meeting rather than just bringing the things in.

The target date for the regulations specialist to receive the proposed regulations is March 1, 1983 for the spring meeting. Captain Harley Clough and Captain John Bradley will coordinate the committee.

Icy Bay/Yakutat Question: Mr. Miller researched the meeting minutes on file in archives from 1978.

"In the board meeting minutes of May 5, 1978, Mr. Taylor made the motion. It was seconded and carried. It was resolved that Yakutat and Icy Bay be considered in the southeast zone as far as the Board of Marine Pilots are concerned and it was further resolved to change 12 AAC 56.100 to be consistent with the Coast Guard boundaries and definitions. That took place. There was a further motion in there.. resolved...on a motion duly made, seconded and carried with Mr. Stover voting no, it was resolved to adopt the previous motion and amendment as an emergency regulation. That was filed with the Lt. Governor's office as an emergency regulation to be effective for 120 days.

The board was advised by the then director, Don Hostak, of the need for the board to have a teleconference or emergency meeting for the discussion of this emergency regulation otherwise it would die a silent death. No meeting was ever held ... no teleconference was held, therefore, the emergency regulation became null and void after 120 days. That is what happened to the Icy Bay/Yakutat jurisdiction question."

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

RESOLVED that we define the waters of Southwestern Alaska.

The board wishes that it be added to the March project.

Captain Bradley advised the board that Coast Pilot #9 defines Southwest Alaska.

Attorney General's Opinion requested by Captain Oldow. Does the U. S. Marshal have the jurisdiction to move a ship without a State-licensed pilot on board?

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

RESOLVED to grant the extension of routes for permanent licensure for Robert Smith, Edward Creasey, Kaare Per Elde, James Hurd, Robert Nerup, Michael O'Hara, Michael Spence and John Viera.  
FURTHER RESOLVED to grant licenses for extension of routes for Captain Hunnicutt and Captain Cochinos for areas they have taken and passed.

Initial Licenses: On a motion duly made by Captain Maroni, seconded and approved unanimously, it was

RESOLVED to grant unlimited licenses with exclusions for the following candidates who fulfilled the examination requirements satisfactorily: Calvin Cary, Michael Clinkscales, J. Douglas Johnson, Colin E. Jones and William Swan.

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.

Submitted by,

  
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Nancy Ferguson, Licensing Examiner

Approved by:

\_\_\_\_\_  
Harry D. Treager, Acting Chairman