

STATE OF ALASKA
Board of Marine Pilots

Minutes of Meeting
November 14 & 15, 1985

By authority of AS 08.01.070(2), and AS 08.40.040, and in compliance with the provisions of AS 44.61, Article 6 and AS 44.62.310, a scheduled meeting of the Board of Marine Pilots was held at the Elk's Lodge, 215 West Jenny Lane in Homer, Alaska.

Present, and constituting a quorum of the board, were:

Laurie Cunningham (designated by Commissioner Lounsbury)
Judy Brady
Captain James Hodgman
Captain W. Ed Murphy
William Ruddy

Board members absent:

William Barrington
Marvin Taylor

Also present were:

Nancy Ferguson, Licensing Examiner, Department of Commerce &
Economic Development, Division of Occupational Licensing
Peter Froehlich, Assistant Attorney General, Department of Law

Guests present were:

David F. Renwick - SWAPA
Anthony J. Joslyn - SWAPA
John R. Bradley - SWAPA President
Dale O. Collins - SEAPA President
Bill Sharp, S. E. Stevedoring Corp. - Ketchikan
Eiko Clarkson, North Star Terminal and Stevedore
Mary Truitt, Alaska Maritime Agencies
William A. Tingley - SWAPA
Kaare P. Elde - SWAPA
Harry Jacobsen
C. Gordon Terpening - Aleutian Marine Pilot Association
Richard D. Pennington - Aglietti Pennington & Rodey
Jim Wright - SWAPA
Jim Nordeli - Independent
Fred M. Hicks - Aleutian Marine Pilot Association
Steve Hunnicutt - SWAPA

There was a quorum present. The board went into executive session at 10:00 a.m. to give oral examinations to candidates who had passed the written examinations held on November 13, 1985.

The meeting was called to order at 1:45 p.m. A delegation of authority from Commissioner Lounsbury dated November 7, 1985 was read into the record per AS 08.62.010 by the licensing examiner. Commissioner Lou appointed Laurie Cunningham, Special Assistant to the Commissioner, as designee to chair the meeting.

Minutes of December 3 & 4, 1984: The board reviewed the minutes. On a motion duly made by Captain Murphy, seconded, and approved unanimously, it was

RESOLVED to approve the minutes.

Minutes from the May 3, 1985 Teleconference: The board reviewed the minutes. On a motion duly made, seconded, and approved unanimously, it was

RESOLVED to adopt the minutes.

Goals and Objectives - FY '86: The board reviewed the new goals and objectives proposed in the annual report. The board wished to strike the following items:

- 1) Identify and adopt regulation or statute changes necessary to clarify pilots' liability.

This was not a reasonable goal. Oregon and Washington both addressed this by legislation. Legislation has not been passed in Oregon yet. It was decided that the board adopt a "wait and see" attitude.

- 3) Identify problems and submit the necessary documentation to appropriate agencies for consideration on the question of final processing exemptions from the pilotage act.

Captain Murphy felt that this was taken care of last year, but it failed in the Legislature.

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

RESOLVED to strike item 1.

FURTHER RESOLVED that item 3 be stricken from the goals and objectives.

Captain Hodgman suggested the following additional goals and objectives:

- 1) Revision of pilot exams and amendment of pilot regulations concerning examinations. (List as item 3.)
- 2) Follow through on legislation to broaden the board's authority on disciplinary cases. (List as item 4.)
- 3) Develop regulations to require pilots to submit accident reports on a form provided by the board and to revise the form now being used on a voluntary basis. (List as item 5.)

Captain Murphy suggested that the following be a primary goal of the board in FY 86:

- 1) Powers and duties of the board item (1) "provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property." (List as item 1.)

The remaining goals were:

- 2) Encourage more Alaskans to seek education toward the marine pilot profession. (List as item 6.)
- 4) Develop methods to expedite investigations and hearings. (List as item 2.)

The board tabled the goals and objectives until the last agenda item on Friday.

Review of the Annual Report Submitted 7/25/85: The board discussed the annual report.

On a motion duly made by Mrs. Brady, seconded, and approved unanimously, it was

RESOLVED that the next annual report be done by board members and have each member sign off before it is submitted.

Presentation by Mr. Richard Pennington Representing Aleutian Pilots:

Captain Hicks was not present but Captain Terpening was present at the meeting. The board received a packet of information prior to the meeting from the Aleutian Pilots regarding:

1) Pilot station problem. Vessels are going to the pilot station for Dutch Harbor and are loading and unloading passengers and freight. They are not there to pick up a pilot. Three to five vessels may be at the pilot station without a pilot aboard. This is creating a hazardous situation.

Captain Murphy advised that since penalties were raised to \$5,000.00 reports of violations are practically nonexistent.

Captain Hodgman suggested that they make a formal report so that it could be investigated by the Division of Occupational Licensing. The compulsory pilotage regulations are before the board for approval at this meeting and, hopefully, will be law within six months.

More discussion followed with input from vessel agents Bill Sharp, Eiko Clarkson and Mary Truitt.

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

RESOLVED that if and when the new regulations are adopted, the board write the U. S. Coast Guard, National Marine Fisheries and N. O. A. A. Advise them of the requirements of the Alaska Pilots Statute.

The chairman requested that Mr. Pennington receive a copy of this letter.

2) Tariff. A clarification was needed for "stand-by time" and "travel time."

Captain Murphy referred to page 29, items 3 and 5.

Both Eiko Clarkson and Mary Truitt spoke to this question. If both "pilotage" and "standing by," then just pilotage is charged.

Bill Sharp referred to page 26 of the Southeast Tariff, Item F, specifically, numbers 1 and 2.

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

RESOLVED that these charges in Southwest Tariff be interpreted as specifically spelled out for us in the Southeast tariff.

3) Violations. Mr. Pennington suggested the following wording to clarify the regulations: "The agent exhaust all sources to obtain a pilot." Specifically, ships are moving without a pilot when advised by the agent that a pilot is not available after contacting one association.

There was a power outage at this point. Captain Renwick was able to obtain batteries for the recorder and we did go back on the record.

During the discussion, Mrs. Brady suggested that the most this would warrant is a letter to the agents asking them to make an effort to use available sources.

Captain Terpening advised that they are asking for the regulations to be followed which requires state licensed pilots on all ships that enter Alaska pilotage waters.

Captain Murphy suggested that they document when ships are advised to move without a pilot or when ships move without a pilot aboard.

Mrs. Clarkson advised that there are times when the captain of a vessel may request that a certain pilot or association not be used. What can the agent do? She also suggested a 24-hour service that would advise where the pilot is located.

Mrs. Truitt requested clarification of item 18 on page 30. The agent waits 36 hours and the pilot is not available. Do they need to wait an additional 36 hours to call another pilot?

Mrs. Brady felt that this was a legal interpretation.

On a motion duly made by Mrs. Brady, seconded, and approved unanimously, it was

RESOLVED that we not answer the question at this time. We will decide what we will do with it later.

Harry Treager: Captain Hodgman made a public announcement that our chairman for the last couple of years, Harry Treager, died this morning.

Captain Hodgman requested a moment of silence to address our sorrow in our own way.

Peter Froehlich is scheduled to address the board at 9:00 a.m. tomorrow. He has been delayed and will be unable to attend the meeting until 11:00 a.m.

Presentation by Captain Bradley, SWAPA:

1) Request that vessel agents be required to file quarterly reports similar to the pilot reports listing the date, what ship and where it was handled. This would give the board a cross reference to determine if a ship is moving without a pilot. Some agents have been known to advise the ship to move without a pilot, but SWAPA was unable to obtain a copy of the telex.

Captain Bradley advised that he had personally filed complaint forms for noncompliance but did not receive a response from the State regarding the outcome.

SWAPA decided not to file reports of violations until the boundary lines for Southwest Alaska were part of the regulations. Currently, the boundaries for Southwest are inexact and sometimes difficult to interpret.

SWAPA has a folder written in Japanese/Korean for Dutch Harbor advising foreign vessels of the state laws requiring a pilot.

Mrs. Brady noted that the board does not have the authority to require the agents to do anything. The only thing we have is the \$5,000 fine. Mrs. Brady suggested that in a specific instance, we write to the involved ship agent and carbon copy the ship's captain and head of the company.

Mrs. Brady requested that the pilots let the board know (before the annual meeting) how many reports were filed for noncompliance of the pilotage rule, where a response was not received from the investigator as to the outcome.

Captain Murphy did speak to Chuck Ward, Investigator for the Division of Occupational Licensing, regarding accident reports. Most cases come back as "case closed." The problem is that money is not available for the investigator to go to the site and board the vessel to interview people. The ship leaves a couple of days later for another area or returns to Japan, thus, we are unable to accumulate enough evidence for the Attorney General's office to prosecute and they drop the case.

Captain Hodgman mentioned that the same items were on the agenda a year ago. The board cannot do anything if there are no violation complaints on file.

2) Changing the Tariff for Southwest Alaska from the basis of pilot expenses as incurred to a per diem basis (similar to Southeast).

Currently, the tariff in Southwest Alaska is determined by actual expenses for hotels and meals. This involves obtaining receipts and justification of expenses to the agents. SWAPA would like the per diem and meals to be changed to the Federal Government rate as Southeast has in their tariff. Captain Bradley asked the board for guidance.

The board advised that concurrence must be received from all involved agents, pilots, and associations. The board could approve the amendment and put it into practice upon receipt of a letter from the industry.

Captain Joslyn noted that this is not a rate increase but an agreement to limit expenses. Captain Bradley advised that they will put it together and will keep the board advised.

Accident Reports and Procedures used by Oregon, Washington and California:
The board requested that the Licensing examiner contact Oregon, Washington, and California to determine their procedures for handling accidents.

On a motion duly made by Captain Hodgman, seconded, and disapproved by Captain Murphy, approved by all other members, it was

RESOLVED that we ask the Division of Occupational Licensing to establish a regulation project requiring submission of accident reports on a form provided by the division.

Captain Murphy advised that it was desirable to have the form but felt that it would not fly because attorneys will argue that it violates the reportee's constitutional rights.

Mr. Ruddy felt that the board probably had the authority to make this part of the regulations.

Captain Joslyn noted that a casualty report must be completed by the master of a foreign or domestic ship if an accident occurs in U. S. waters. This prime document could be obtained from the agent.

Captain Bradley indicated that the insurance held on his license says that he will not make any statements.

Captain Hodgman advised that the attorney for Southeast gave them a different response than what SWAPA received from their lawyer.

Examination Results: The following individuals took a written examination on November 13, 1985:

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

RESOLVED that Archie B. Diment be issued a permanent channel pilots license upon the waters of Southeast Alaska, from Dixon Entrance to Cape Spencer excluding the waters of Hoonah Sound, Peril Strait, Whitestone Narrows, Neva Strait, Olga Strait, Sitka Sound, Gastineau Channel, Lynn Canal, Lutak Inlet, Taiya Inlet, Glacier Bay, Icy Strait, and Cross Sound, also excluding the ports of Hoonah, Sitka, Juneau, Haines, Skagway and Klawock.

RESOLVED that William M. Hopkins be issued an unlimited pilot license for Southeast Alaska, Dixon Entrance to Cape Spencer except the waters of the west coast of Prince of Wales Island, Glacier Bay, and Port of Metlakatla.

FURTHER RESOLVED that John F. Thatcher be granted an unlimited pilot license for the waters of Southeast Alaska, Dixon Entrance to Cape Spencer, excluding the waters of Glacier Bay.

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

RESOLVED that Harry J. Jacobsen be granted a license as Alaska pilot on the Southwest waters of Dutch Harbor, Sand Point, Ports of Moller/Herendeen Bay and Adak with a tonnage limitation of 20,000 gross tons.

Investigative Report: From the Division of Occupational Licensing, an investigator was not present.

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

RESOLVED to go into executive session to discuss the investigative report.

FURTHER RESOLVED to come out of executive session.

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously, (Captain Murphy did not vote) it was

RESOLVED to accept the recommendations of the investigator with regard to the status of the cases that have been reported to us for Southwest Alaska, except case #86-278, 86-279, and 86-281, which shall remain open. The person involved be instructed to appear before the board at

the next board meeting with or without his attorney to answer questions regarding those incidents pursuant to 12 AAC 56.160(F) and (G).

On a motion duly made by Mr. Ruddy, seconded, and approved unanimously (Captain Hodgman did not vote), it was

RESOLVED to make a similar motion for reports on southeastern accidents; that we accept the recommendations of the investigator.

Recessed at 5:45 p.m.

The board reconvened on November 18, 1985 at 9:00 a.m.

An oral exam was given to Charles Bates at 9:00 a.m.

The board was on record at 9:35 a.m.

Compulsory Pilotage Waters Regulations: Captain Hodgman, chairman of the Subcommittee consisting of himself, Bill Barrington, Captain Clough, and Captain Joslyn, reviewed the history of the lines of demarcation for Alaska and the rationale used by the Subcommittee in developing a revised draft of compulsory pilotage water regulations. This draft had been previously distributed for public comment.

One comment on the revised draft was received from Joseph Cox with the American Institute of Merchant Shipping. His letter was attached to the last page of the packet that the board received.

Per Captain Joslyn, both Whittier and Bligh Reef are redundant in the draft because of the change that has occurred with the U. S. Coast Guard over the last few weeks.

The board agreed to revise the draft. It deleted items #10 and #12 on page 4; changes the number of item 11 to 10; changes the title of the new #10 to read "Valdez and Whittier;" and drops two numbers from each subparagraph from the old #13 to the end of the sequence of pilot stations.

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

RESOLVED that the board adopt the changes to chapter 56 that are before the board at this time subject to the changes in 12 AAC 56.120 that have been marked on the draft at this time.

These changes would be in the form of amendments or additions to 12 AAC 56.055; 12 AAC 56.090; 12 AAC 56.100; 12 AAC 56.110; 12 AAC 56.120; 12 AAC 56.930; 12 AAC 56.990.

Examination Results: Captain Charles Bates passed his oral exam earlier in the day.

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

RESOLVED to recommend that Charles L. Bates be issued a permanent channel pilots license Southeast Alaska, Dixon Entrance to Cape Spencer excluding the waters of Glacier Bay, west coast of Prince of Wales Island and seaward approaches to Sitka.

Captain Cecil Rice wrote a letter to the board dated October 30, 1985 requesting that his temporary permit be extended until the next scheduled examination. The letter was read into the record by the licensing examiner. The temporary channel pilot license was issued June 26, 1985. His request for an extension falls under 12 AAC 56.060(b).

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

RESOLVED that Captain Rice's permit be extended as requested.

Captain Ronald Kutz wrote a letter dated October 30, 1985 requesting reinstatement of a lapsed license without examination. The letter was read into the record along with a letter dated October 15, 1985 from the Alaska Marine Highway Port Captain H. A. Stetson.

Captain Kutz held license #AA021 with an issue date of December 31, 1969 and an expiration date of December 31, 1972. He originally applied under the grandfather law in the early 70's. Unfortunately, he never renewed his license after first issue. The licensing examiner wrote him on April 30, 1984 and May 22, 1985 advising him what he needs to do pursuant to AS 08.62.130 and 12 AAC 56.080.

Captain Kutz has been acting as a pilot on the marine highway under his federal license and is a man of vast experience; being the master of the largest ferry in the fleet. He has not violated our State laws. The board appreciates his experience and accomplishments, but the statute is clear. He will have to take the State exam if he wants the State license.

Captain Kutz also wrote Mr. Ruddy. Mr. Ruddy read the letter into the record and also his response.

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

RESOLVED that Captain Kutz's request be denied. The licensing examiner will write him a letter indicating the same, also indicate that the board is cognizant of his vast experience and professional abilities, but the statute is clear and there is nothing we can do.

Extension of Routes: The following individuals applied for additional areas and passed the exams when applicable (over the last seven months).

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

RESOLVED that we add Wrangell Narrows, Hoonah Sound, Peril Straits, Whitestone Narrows, Neva Strait, Olga Strait, and Port of Petersburg to Captain Arnt Antonsen's permanent license.

His license will now read: Channel pilot for Southeast Alaska, Dixon Entrance to Cape Spencer excluding the waters of the west coast of Prince of Wales Island, Sitka Sound, Glacier Bay, Snow Pass, and the ports of Sitka and Klawock.

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

RESOLVED that the following port endorsements be added to Michael Clinkscales' license: Kodiak Island; Alaska Peninsula excluding Cold Bay and Port Moller/Herendeen Bay; Lower Cook Inlet including the Port of Seldovia; Resurrection Bay including the Port of Seward; Prince William Sound excluding Port of Valdez and Hinchinbrook Entrance to the Port of Valdez; that the tonnage limitation of 20,000 gross tons be retained.

Captain Clinkscales also had a new application before the board to upgrade to unlimited any gross tons. The board chose not to act on his request until after the regulation discussion scheduled for later in the day. This application was not acted upon by the board at this meeting.

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

RESOLVED that Colin Jones's license be amended to add the Ports of Klawock and Yakutat.

RESOLVED that George McReynolds' license be amended to add Yakutat.

RESOLVED that George Porter's license be amended to add Glacier Bay, Metlakatla, and the waters of the west coast of Prince of Wales Island (includes Klawock).

FURTHER RESOLVED that based on successful dockings and undockings, Captain Porter's license be changed from channel pilot to unlimited any gross tons.

RESOLVED that James Randall's license be amended to add Hoonah Sound and Peril Straits.

RESOLVED that Robert Smith's license be amended to add Yakutat.

RESOLVED that Leslie Taylor's license be amended to add Cross Sound and Snow Passage.

RESOLVED that Vernon Wyatt's license be amended to add Yakutat.

Marine Pilot Register: Captain Hodgman noted that the Division of Occupational Licensing computerized the register this year. The register is much more effective and is very helpful in dispatching people. The board thanked Nancy Ferguson.

Release of Accident Reports after a case is closed. (These are reports that Dick Long receives.) The division received a request from an attorney and a dock operator for copies of these reports.

On a motion duly made by Mrs. Brady, seconded, and approved unanimously, it was

RESOLVED that the board not respond affirmatively to release accident reports during investigation or after investigations are closed. Those reports, as far as the board is concerned, remain confidential.

Pilot Liability, Tabled From the December 1984 Board Meeting: This is a continuing problem. Pilots are being sued personally throughout the country. The State of Washington has enacted a statute that puts a \$5,000 limit on liability.

If a ship damages the dock or runs aground, the cost runs into millions of dollars. No individual can stand that kind of liability (endangers livelihood and license at the risk of losing everything).

The board decided to take the item off the agenda as it has no solution at this time.

Review of Goals and Objectives:

1) Powers and duties of the board.

Item (1) "Provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property."

2) Develop methods to expedite investigations and hearings. Captain Murphy and Mrs. Brady volunteered to work on the accident form.

Captain Murphy suggested that the board direct a letter to the Commissioner of the Department of Commerce and Economic Development and the Attorney General's Office complaining about the delay in handling these cases and ask for remedial action to be taken in the future.

The chairman suggested that representatives of the subcommittee, the Division of Occupational Licensing and the Attorney General's office sit together and track the process of the investigation; to determine where the hang-up is and why it has taken two years to process the cases; then mutually resolve. The chairman can help with the resolving process.

3) Revision of the pilot examinations and regulations relating to the examination. Captain Murphy will do southwest and Captain Hodgman will do southeast. They will collaborate on the general section, completely overhaul the entire examination and suggest changes to regulations where appropriate.

4) Follow through on legislation to broaden the board's authority on disciplinary cases.

The board mentioned the letter from Mrs. Strickler which advised that the Governor is not accepting legislation from any boards or committees this year. This does not prevent a legislator from introducing legislation for the board.

Committee members will be Bill Ruddy and Laurie Cunningham. Laurie will check with the Governor's office to determine the procedures to follow.

Captain Hodgman would like the statute changed to require ". . . at least two meetings per year, which is essential to the effective operation of the board."

Mrs. Brady suggested that we do a mail-out on the proposal and if the response is negative, then wait. Other members did not respond to the suggestion.

5. Develop regulations to require pilots to submit accident reports on a form provided by the board and to revise the form now being used on a voluntary basis.

The board talked about this subject in detail November 14, 1985.

- 6) Encourage more Alaskans to seek education toward the marine pilot profession.

Captain Hodgman noted that during the last sunset hearing, the Legislature was interested in where the pilots came from; many are recruited from outside Alaska.

The WICHE program allows Alaskans to go to Cal Maritime under local State tuition. The board directed the Division of Occupational Licensing to write a letter to all guidance counselors during their December 1984 board meeting. Captain Hodgman felt that this was not done in a timely fashion. He suggested that the letter be reissued in August 1986 because the application deadline is October 15.

According to Captain Hodgman, the Ketchikan Community College is investigating establishment of a two-year program that will lead to a license. It would put students on state ferries in cadet status.

Captain Murphy advised that the Alaska Vocational Institute (Seward Skill Center) has a radar simulator that is fully approved by the U. S. Coast Guard. They also have a good maritime training program installed. Captain Murphy hopes to persuade the instructor to design a course for pilots.

The board gave approval for Captain Murphy to work with Alaska Vocational Institute and Captain Hodgman to work with the community college, and requested that they (the board) be kept advised as to the progress in that area.

Peter Froehlich, Assistant Attorney General, was originally scheduled to appear before the board on the morning of November 15 at 9:00 a.m. Mr. Froehlich called November 14 and requested that he be rescheduled for 11:00 a.m.

The board had covered all agenda items. It was 11:30 a.m. and Mr. Froehlich was not present. The board advised the audience that action would be taken at 1:00 p.m., if Mr. Froehlich was not present. Captain Bradley asked if the board was aware that the meeting dates were changed to accommodate Mr. Froehlich; people had changed their vacation schedules so that they could attend the meeting.

The board was aware of the situation.

Recess for lunch at 11:30 a.m.

Reconvened at 1:00 p.m.

Assistant Attorney General Peter Froehlich was present. He apologized for being late. His flight was delayed out of Anchorage. Mr. Froehlich explained his job responsibilities as Assistant Attorney General. He advised that the main reason he was attending this meeting was to discuss the proposed changes and existing regulations that require supervised dockings and undockings. He felt that there was not much progress in this area and mentioned the history that goes back to 1983.

Mrs. Brady asked Mr. Froehlich to run through his legal citation. Also, she wanted to hear the reason for his problem with a licensing board requiring a demonstration of practical knowledge (Mr. Froehlich implied that the pilots were misusing the requirements).

Mr. Froehlich did not have anything in writing, nor could he quote a legal citation. He did have the Sherman Anti-Trust Act. He spoke to the anti-trust attorney, Richard Monkman, about the docking and undocking requirement and it was considered a barrier to entry because the fulfillment of this requirement is controlled, not by the applicant but by the people who already have the license. In the view of the Attorney General's office, there is a definite problem with the substance and the implementation of this requirement (barrier to entry). There is movement now toward softening this by providing alternatives.

The board's frustrations were the result of regulation changes being in the works for two years. The board felt that lack of cooperation from the AG's office stemmed from refusal to offer substantive criticism so that the board can change the proposed regulations. The entire board is upset

and frustrated over the lack of cooperation. The regulations were given to Mr. Froehlich to review in December 1984. Last month, the board received a response which appears from the enclosure that someone named "B. G." made at least a partial review on May 2, 1985 (apparently the first time that anyone took a look at them). There was nothing to indicate that any other review was made. Mr. Froehlich promised at the May 1985 teleconference that he would do a written opinion within 30 days after the legislative session ended.

Mr. Froehlich's response was to look ahead, depending on what does happen with the regulations. If they are approved substantially, they can be renoticed within a short period of time (weeks), then within 30 days after that; they can be readopted and that can happen at a teleconference; it doesn't have to be at a meeting where all members are physically present. Legislation was passed last session to authorize the board to adopt regulations and take any action by teleconference.

The board considered the tone of the memorandum dated October 17, 1985 as highly inflammatory. The proposed regulations were edited, but the organization was not changed by Mr. Froehlich. The board has corrected everything that he recommended, and they are ready to deal with the substance but not with the editing.

The board advised that six new pilots received their original licenses yesterday (November 14) and the board granted five extensions this morning (November 15). There are over 100 marine pilot license holders in the register and yet Mr. Froehlich contends that the regulation (dockings-undockings) is a barrier because someone once alleged that happened, but it was never proven. Mr. Froehlich has jumped on that side and yet all the evidence contradicts that position. The board preferred to see a written brief.

The docking and undocking requirement was put in the regulations in 1970 to assure practical capability.

Mr. Froehlich advised that he was not going to write the brief. He did suggest the following alternatives:

- 1) Test practical ability on a ship or simulator (the State does not have access to either one). Proposed that a board member observe the applicant dock and undocking a ship as part of the exam rather than 20 or 40 dockings/undockings before you get to the exam.

- 2) Years of experience requirement. With five years of experience, you would not need any dockings/undockings. Move toward alternatives so that the applicant has some choices of how he can prove to the board that he has the ability.

Mr. Froehlich's preference would be to get rid of the supervised dockings and undockings completely.

- 3) Expand the proposed idea in the 1984 version regarding simulator and observer trips. They would not be under the supervision of those who already have the license.

The board noted that the simulator facilities are located on the east coast and Europe. There are none available in Alaska.

- 4) Safety Valve - avenues for an aggrieved applicant to appeal to the Commissioner of the Department of Commerce and Economic Development rather than the full board. The commissioner would use more independent evaluation.

Mr. Froehlich advised the board that they would avoid any possibility of being in violation of antitrust laws if some of these options are implemented.

The board discussed the options in some detail. They felt that 40 dockings/undockings would be required to demonstrate an applicant's ability. They felt that they are in an area of judgment and not of law and that is the board's function. The board has already demonstrated that they are a safety valve.

Mr. Sharp noted that industry is very concerned on behalf of the owners and operators of the vessel insofar as the qualifications of the pilots and the safety of their vessels go.

Mrs. Brady felt that two complaints in 14 years is not a barrier to entry. A lot of work has been done for two complaints.

Mr. Froehlich refused to sign off on the proposed regulations but will not tell the board the reason. The board may wish to speak to Mr. Froehlich's boss and tell him that they do not agree with Peter and that he will not give the board substantial legal reason why he will not sign off on the regulations, other than it is his opinion.

Mr. Froehlich held back on formally disapproving the regulations because they would need to start at the beginning if he did so. At this point, the regulation project is still alive. A new notice will be required, 30-day comment period, adopt by teleconference and the final review (60-90 days) by the Attorney General's office.

Mr. Froehlich was not prepared to sign the regulations and refused to give a "yes" or "no" answer on signing them. He felt that more editing was needed.

The board felt that Mr. Froehlich had two years to look at the regulations and that they had been working through the process for two years. They wanted an approval now or they will stay with the old rules.

Mr. Froehlich felt that the board was being unreasonable. The regulations could not be edited now because it would take longer than the time available to do a fair job. He did promise not to neglect this project, but he did not want to finish it while at the meeting.

After more discussion, Mr. Froehlich agreed to give a revised draft of the regulations and a new supplemental notice to Mr. Henderson by the Wednesday before Thanksgiving (about 10 days). Mr. Froehlich explained the process and felt that it was quite feasible that the regulations could be in effect by the end of February 1986.

Mrs. Brady summarized the alternatives:

- 1) Send this to notice and include the safety valve. Allow a 30-day comment period for finalizing.
- 2) Retain the same docking and undocking requirement as in our book dated September 15, 1985. Leave everything as it is in proposed regulations except the section about being able to substitute the simulator language and observer language for dockings and undockings. Add the safety valve.
- 3) Leave everything exactly as it is without publishing anything and just do the safety valve requirement.

More discussion followed along with the comments from the audience.

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

RESOLVED that we proceed with the new regulations, adding the safety valve that we have talked about. I don't have the language, but our legal help does. Eliminate the reference to simulator trips that might be a substitute for dockings, eliminating additional observer trips as a substitute for dockings.

Annual Report: Earlier in the meeting, the board expressed a desire to have a member of the board prepare the annual report. The deadline for the report was August 1 last year and August 15 in previous years. The licensing examiner will do the statistics and can assist in finalizing the report. Who will be designated by the board to write the report?

The board wished an opportunity to review the report before it is finalized and sent to the Governor. The board delegated the chairman to prepare the report.

Spring Meeting: Any preference on dates for the teleconference? It will require advance preparation by the staff and time will be needed to send board packets out to the members well in advance; also notification of interested parties and the public notice process.

The board felt that there may be a possibility of another meeting in conjunction with pilot accident casualty cases rather than a teleconference. The board was in agreement that one meeting a year is not satisfactory.

The chairman will research this issue and report back to the board.

One of the main concerns is that people in the audience look forward to the meeting every year.

The licensing examiner read a letter into the record, written by Barbara Branson, Licensing Supervisor, to Harry Treager, Chairman of the Board of Marine Pilots, and dated July 22, 1985. A copy of the letter is attached.

Public Notices: Captain Hodgman proposed that public notices be sent to all licensed marine pilots and vessel agents.

The examiner explained the procedures followed on public notices. She will check with her supervisor to determine if funding is available to do a mail-out to all licensees.

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

RESOLVED to go into executive session to discuss a matter which may tend to damage the reputation of someone who is not here. It is a matter that has recently arisen so there is no notice to be given.

FURTHER RESOLVED to come out of executive session.

The board clarified on the record that no action was taken by the board in executive session.

Meeting Adjourned: The board thanked Nancy Ferguson for good support work.

At 4:25 p.m., as there was no further business, and on a motion duly made, seconded, and approved unanimously, it was

RESOLVED that the meeting adjourn.

Submitted by:



Nancy Ferguson, Licensing Examiner

Laurie Cunningham, Acting Chairman