

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

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Springer  
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### MARINE PILOT BOARD MINUTES OF MEETING April 27-28, 1993

By authority of AS 08.01.070(2) and AS 08.62.030, 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 on April 27-28, 1993 at the City of Juneau Assembly Chambers, 155 S. Seward, Juneau, Alaska.

**TUESDAY, APRIL 27, 1993**

#### **Examinations**

At 8:00 a.m., examinations were administered to the following individuals:

Capt. R. Winter  
Capt. D. Gray  
Capt. J. Stith  
Capt. R. Cochinos  
Capt. J. Drahos  
Capt. K. Petrich  
Capt. T. Kellogg  
Capt. D. Anderson  
Capt. R. Charles

#### **Call to Order/Roll Call**

The meeting was called to order at 1:00 p.m. by Bob Watt, Chairman. Present and constituting a quorum of the Board were:

Captain Dale Collins  
Captain Mike O'Hara  
Mr. Glenn Reed  
Mr. Mark Springer  
Ms. Donna Bumgardner  
Mr. John Klepper  
Mr. Bob Watt

Also present and representing the Division of Occupational Licensing was Bob Baratko, Marine Pilot Coordinator. Gary Amendola, Assistant Attorney General was also present at various times throughout the meeting.

**Agenda Item 1. Review Minutes of February 2-4, 1993 Meeting**

The Board reviewed the minutes from the meeting held on February 2-4, 1993. Minor administrative changes to wording, and attendance correction for Mr. Klepper was made.

On a motion made by Captain Klepper, seconded by Captain O'Hara and carried unanimously, it was

**RESOLVED** to adopt the minutes as amended.

**Agenda Item 2. Review/Set Agenda**

The agenda was amended by moving agenda item 10. to after the public comment period; inserting item 13.a., Association By-law review; inserting item 14.a. Tariff Committee Report; inserting 19.a., Continuing Education Report; inserting 19.b., a discussion of the Western Alaska piloting situation; and inserting 19.c., discussion of the year end report.

On a motion made by the Chair, and carried unanimously, it was

**RESOLVED** to adopt the agenda as amended

**Agenda Item 3. Investigative Reports**

The Chair moved the meeting into Executive session where Case # 1900-90-007 was closed, and the investigative report submitted by Mr. Don Faulkenberry, investigator for the Division of Occupational Licensing was reviewed.

**Agenda Item 4. Investigative reports, public session**

On a motion by Captain O'Hara, and seconded by Mr. Springer, and carried unanimously, it was

**RESOLVED** to close Case # 1900-90-007.

Two investigative reports were received, one was reviewed under the correspondence review.

**Agenda Item 5. Hearing Officers report, Captain MacPherson**

Deferred until the arrival of Captain Luck.

## **Agenda Item 6. Review of Correspondence**

A) Settlement agreement in the case of Captain L. Taylor, Case #'s 1900-91-10/14.

On a motion by Mr. Springer, seconded by Captain O'Hara, and carried unanimously, it was

**RESOLVED** to accept the settlement

B) HB 237 correspondence will be reviewed under the end of year report

C) Letter from Alaska Maritime Agencies and other correspondence will be discussed under a separate agenda item

## **Agenda Item 7. Applications for License, Upgrades, Exam results**

A) Extensions of route:

- 1) Capt. Winter
- 2) Capt. Anderson
- 3) Capt. Cochinos
- 4) Capt. Petrich
- 5) Capt. Drahos
- 6) Capt. Stith
- 7) Capt. Charles

On separate motions made by Mr. Springer, seconded by Captain O'Hara, and carried unanimously, it was

**RESOLVED** to issue amended licenses to the above named individuals, to include the areas passed on their extension of route examinations.

B) Captain Kellogg's examination results were approved.

An ensuing discussion concerning the training requirements of Capt. Kellogg followed, with no decision being reached.

As a fallout discussion on the conflict of interest situation, and the requirement of Board members to constantly be prohibited from participating in any discussions/actions within their region, it was requested of Mr. Amendola, that a position paper be prepared by the Attorney Generals office which answers the following question:

" What constitutes the situation of a potentially unethical act, and why is statute driving that, rather than the individuals on the Board?"

A written response by Mr. Amendola is requested by the end of May.

Captain Collins recused himself from the discussions concerning Capt. MacPherson. Ms. Elizabeth Johnson, the Hearing Officer, participated via telephone in the discussions. The Board considered three options:

- 1) Accept the recommendation of the Hearing Officer: by a vote of 4-2 against (Klepper/Springer), option one was not accepted. Mr. Reed requested a reconsideration vote, which was taken, resulting in a 3-3 tie (Klepper/Springer/Reed for), and an option 1 rejection.
- 2) Return the package to a different Hearing Officer to reconsider the case, and clarify fact by fact the Hearing Officers findings; the State should give it's position regarding the pilots referred to in the Findings; and that the case should be reheard within 30 days. By a vote of 6-0, this option was accepted.
- 3) The Board should hear the case itself. This option was not considered due to the acceptance of option 2.

Captain Collins recused himself from the oral examination of Captain Kellogg. The Board then recessed to Executive session to administer an oral examination to Capt Kellogg, which passed with a score of 80%.

#### **B) License Upgrades**

- 1) Captain Winter - Captain Collins recused himself from the discussion of Captain Winter.

The Board recessed without action until 7:30 a.m., 28 April, 1993, at which time discussions will resume.

**WEDNESDAY APRIL 28, 1993**

#### **CALL TO ORDER**

The meeting was called back to order at 7:40 a.m. by Mr. Watt, Chairman. All Board members were present.

- A) The first item discussed was the situation concerning a Case dismissal concerning a licensing action re: Capt Baken.

On a motion by Captain Klepper, seconded by Mr. Springer, and carried unanimously, it was

**RESOLVED** to accept the Case dismissal.

B) Capt Anderson - tonnage upgrade to Unlimited

Captain Collins recused himself on discussions concerning Capt. Anderson.

On a motion by Mr. Reed, seconded by Capt. Klepper, and carried, (Captain O'Hara voted against) it was

**RESOLVED** to grant Capt. Anderson an Unlimited license.

C) Capt. Charles - tonnage upgrade to either 40,000gt or Unlimited

Captain Collins remains recused.

On an motion by Mr. Springer, seconded by Captain Klepper, and carried unanimously, it was

**RESOLVED** to grant Capt. Charles a 40,000gt (Step Two) license

**STAFF HAS BEEN DIRECTED TO NOT SUBMIT ANY APPLICATION TO THE BOARD FOR CONSIDERATION OF A REQUEST, UNLESS THAT APPLICATION IS COMPLETE, ACCURATE, AND THE APPLICANT IS TOTALLY QUALIFIED FOR THE REQUESTED ACTION.**

D) Captain Drahos - tonnage upgrade to unlimited

Captain Collins is requested to rejoin the Board.  
Captain O'Hara is recused.

On a motion by Mr. Reed, seconded by Captain Klepper, and carried unanimously, it was

**RESOLVED** to grant Captain Drahos and Unlimited license.

Captain O'Hara rejoins the Board, and then recused himself for discussions of Region Two training, and Capt Grobschmidt.

E) Captain Grobschmidt - tonnage upgrade to unlimited

On a motion by Captain Klepper, seconded by Ms. Bumgardner, and carried unanimously, it was

**RESOLVED** to grant Captain Grobschmidt an Unlimited license.

Captain O'Hara rejoins the Board

E) Captain Winter - tonnage upgrade to unlimited

On a motion by Ms. Bumgardner, for discussion, to issue the upgrade, seconded by Captain Klepper, the Board discussed, and heard a statement presented by Captain Winter. It was subject to a roll call vote, with the results being 4-2 against approval of the Upgrade.

**RESOLVED** to not grant Captain Winter an Unlimited license.

F) Captain Sande - Application for the Deputy Marine Pilot Training program

On a motion by Mr. Reed, and seconded by Ms. Bumgardner, and carried unanimously, it was

**RESOLVED** that Captain Sande be accepted as requested for examination and training.

Staff will review applications such as Captain Sande's for initial licensure, mail to Board Members, and then approve for testing at the next testing session.

#### **Agenda Item 10. Briefing on Status of Proposed Legislative actions**

Captain Luck presented briefings on HB 237, HB 243, and HB 170

A decision was made to address this legislation in the end of the year report, and in more depth in agenda item 19.c.

#### **Agenda Item 8. Briefing on Legislation Status (Board Approved)**

Ms. Jo Anne Cummings, Division of Occupational Licensing, presented a briefing on how Board approved legislation was progressing through approval channels.

#### **PUBLIC COMMENT PERIOD**

No comments presented

**Agenda Item 11. Discussion of Exam Procedures/Construction**

A discussion was presented concerning the gathering of questions to form a question bank for the MPC to use in the formulation of examinations. A portion of the exam process should be able to accommodate a chartlet section for examination. The MPC will solicit from the various pilot associations throughout the State, a series of questions which may be utilized as a portion of the data base of questions.

On a motion by Mr. Reed and seconded by Ms. Bumgardner and carried unanimously, it was

**RESOLVED** that the MPC will solicit questions for the construction of examinations.

**Agenda Item 12. Clarification of Core Exam requirements for re-testing**

A decision was made that the "Core" exams must be taken and passed in one sitting.

**THE BOARD MADE NOTE THAT THEY HAD RECEIVED THE SWAPA INTENT TO ADOPT A WORKING TARIFF, DATED FEB. 4, 1993**

**PUBLIC COMMENT PERIOD ON ITEMS 13 THROUGH 16**

- A) **CAPTAIN BILL SWAN - SEAPA**  
Discussed the proposed changes to SEAPA by-laws.
- B) **MR. LARRY COTTER - ASA**  
Asked that fatigue standards be reasonable, and is willing to work on defining those standards. Briefly discussed tariff establishment, and would like to see a committee formed of pilot/industry/Marine Pilot Board to work a solid proposal position for submission to support tariff reform.
- C) **CAPTAIN MIKE STONE - SWAPA**  
Asks that the HB 237 be discussed.

**D) CAPTAIN JIM DRAHOS - SWAPA**

Expressed his position against the proposed definition of "Day" to be considered by the Board. Discussed the documentation of "sea time"

**Agenda Item 13. AMENDMENT TO SWAPA AND SEAPA BY-LAWS: NOTICE OF PAYMENT TO PILOTS AND ORGANIZATION CHANGES FOR VOTING PURPOSES**

It was moved and seconded that both sets of amendments be conditionally approved, awaiting the arrival of Mr. Gary Amendola, A.G. Office, for his review. Mr. Amendola later gave his opinion that both sets of by-law amendments should be approved based upon his legal review.

**Agenda Item 14. BRIEFING ON FATIGUE STANDARDS**

Ms. Bumgardner and Captain Collins presented a briefing on their progress to date concerning the development of fatigue standards. Ms. Bumgardner and Captain Collins will continue their research, to report next Board meeting.

**Agenda Item 14.A. TARIFF COMMITTEE REPORT**

Copies were made of the letters received in response to letters sent by Ms. Bumgardner and Captain Collins requesting inputs to their research letters. These copies were made available to the public, with discussion to be ongoing.

**Agenda Item 15. DEFINITIONS, RECOMMENDED AMENDMENT to 12 AAC 56.990 (definitions)**

On a motion by Ms. Bumgardner, and seconded by Captain O'Hara, and carried unanimously, it was

**RESOLVED** to adopt the definition of a year to be 360 days, for the purpose of documenting sea time, and adopted for public notice

On a motion by Ms. Bumgardner, and seconded by Captain O'Hara, and carried unanimously, it

**REJECTED** the adoption of the definition of a "day" for the purpose of documenting sea time. A "day" will be construed to be a calendar day for the purpose of documenting sea service.



**Agenda Item 16. PROPOSED CHANGE TO AS 08.62, NEW SECTION 08.62.094  
(DOCUMENTATION FOR LICENSING)**

On a motion by Captain O'Hara, and seconded by Mr. Reed, and carried unanimously, it was

**THE BOARD ADJOURNED FOR LUNCH  
UPON RETURN FROM LUNCH, THE BOARD CONTINUED DISCUSSION, AND**

**RESOLVED** to accept the recommended change as amended, and adopt for public notice.

**Mr. Amendola rejoined the Board meeting, and was asked to comment on:**

1) Captain Collins recused himself from the discussions concerning the licensing of Captain Kellogg. Training requirements for Captain Kellogg, specifically, what requirements of training is Captain Kellogg required to fulfill before being licensed as a Deputy Marine Pilot.

On a motion by Mr. Springer, amended by Mr. Reed, and seconded by Captain O'Hara and carried unanimously, it was

**RESOLVED** to issue a Deputy Marine Pilot license to Captain Kellogg upon receipt of verification of Captain Kellogg's documentation showing that he meets the requirements of the .040 Step One licensing requirements. License will be dated upon verification of requirements.

2) Comments on Directors and Officers Insurance. The State of Alaska is a self insurer, and will defend and indemnify Board members so long as they act in good faith within the scope and authority as a Board member. The State of Alaska will not purchase separate insurance since the Board members are insured by the State. AS 08.02.020 was quoted as inverse justification. This will also work for ethics complaints and will be pursued by Mr. Amendola.

3) Regulation status. Mr. Amendola assured the Board that he will have all Marine Pilot Board legislation/regulations awaiting his attention cleared from his office within 30 days, and passed to the Board that within three months of this date, that he anticipates all Board approved actions will be on the Lt. Governors desk for signature. Mr. Amendola will review the package, and stress the urgency of passing these regulations.

4) SWAP and SEAPA by-law amendments have been reviewed and appear acceptable.

**PUBLIC COMMENT ON AGENDA ITEMS 17, 19, 19.A., 19.B., 19.C., AND 20**

**1) MR. KEN CASTNER - RCACC**

- a) Would like a 60,000 ton endorsement discussion added to the agenda for the next meeting.
- b) Would like a background and discussion on the State's 50,000 ton pilot license requirements for Cook Inlet.
- c) The conflict of interest situation is unsettling, and feels that the level of competency of the Board is adversely affected by the constant recusing of members.
- d) Endorses continuing education.

**2) MR. PAUL KIRCHNER - EXECUTIVE DIRECTOR AND GENERAL CONSUL, AMERICAN PILOTS ASSOCIATION**

- a) Maximum Tariff procedure is historically bad, and is detrimental to safety.
- b) State statutes do not establish comprehensive pilotage regulatory system that the APA thinks a State should have.
- c) Also constrained by an apparent lack of support from the rest of State government. A serious and disappointing development.
- d) Southeast Alaska is the easiest place in the United States to get a pilots license.
- e) Contract rates for ships is a bad idea.
- f) Competition in piloting is not in the public's interest because it inevitably leads to ship agent and ship owner control of pilots. The main objection is that the independence of a State pilot is probably the most important aspect of a State pilot system. Pilotage is by and large a matter of judgement and decision making. And ship navigation is a matter of decision making and judgement. If a pilot knows, or believes, that if he makes a decision contrary to the ship owners desires, he's never going to have another pilot assignment from that ship owner, he can't exercise any professional judgement on the ship.

**3) CAPTAIN DUNDAS AND CAPTAIN ANDERSON - AMP**

- a) Discussed the issue of competition in Western Alaska, stressing the fact that 70% of the revenue produced in Region Three comes from Dutch Harbor.

- b) Updated the Board on their perceptions of the central dispatch system in the Western region.
- c) Believes that the pilotage situation in Western Alaska is headed towards a situation where chaos will rule.
- d) Discussed the 4/15 - 11/15 split proposal of work allocation.
- e) There is a significant possibility of a pilot shortage in Dutch Harbor if the pilots in AMP must look elsewhere for employment.

**4) CAPTAIN SWAN - SEAPA**

- a) Believes that the Board made an illegal decision in granting Captain Kellogg a license.
- b) Concerning an ethics discussion given by the A.G.'s office to the Board during their December meeting in Anchorage, Captain Swan desires that their guidance be reviewed to ensure the A.G.'s office did not commit an ethics violation.
- c) Is disappointed in the delays in implementing State pilot regulations.
- d) Believes that the Board members should make their decisions, and if wrong, let them be challenged in court.
- e) Captain Swan requested copies of the tapes of the December meeting, which the MPC will provide.

**5) CAPTAIN SPENCE - ACP**

- a) transcript attached as "A"

**6) MR. BERNIE SMITH - TESORO**

- b) transcript attached as "B"

**7) MR. LARRY COTTER - PACIFIC STEAMSHIP ASSOCIATION**

- a) Mr. Cotter believes that the Marine Pilot Board should set up a committee of industry, Board Members, Pilot Associations, as suggested in February 1993, to work together to form consensus on HB 237
- b) Handed out a package of letters from organizations in the Western Alaska region. Mr. Cotter believes that there is a problem in Region Three. Mr. Cotter believes that both associations and industry are attempting to resolve the problem. However a great deal of animosity exists between the two associations. Mr. Cotter believes there is a possibility that there will be a shortage of pilots.

**Agenda Item 17. RECOMMENDED AMENDMENT TO 12 AAC 56.016 (TRAINING PILOT RESPONSIBILITY)**

On a motion made by Captain Klepper, seconded by Ms. Bumgardner, and carried unanimously, it was

**RESOLVED** to accept the proposed amendment, and adopt for public comment.

**Agenda Item 18. DRAFT REGULATION ON THE PHRASE "WHEN A LICENSED PILOT IS AVAILABLE."**

On a motion made by Captain Klepper, seconded by Captain O'Hara, and carried unanimously, it was

**RESOLVED** to place into draft regulation a 36 hour call for the Southeast Tariff.

**Agenda Item 18. MEDICAL STANDARDS**

The MPC briefed the Board administratively on his intentions in pursuing the quest of establishment of physical standards. Mr. Kirchner will be asked for national inputs.

**Agenda Item 19.B. THE WESTERN ALASKA SITUATION**

An indepth discussion concerning the situation in the Western Region, with special emphasis on the potential for unsafe conditions to develop during the impending "peak" season, was conducted. A telephonic conversation with Mr. Jim Forbes, State of Alaska, Attorney Generals Office, and specialist in anti-trust matters was also a portion of the considerations.

On a motion by Captain Klepper, seconded by Mr. Springer, and carried unanimously, it was

**RESOLVED** to send a letter to the five main organizations involved in shipping and piloting in the Western Region, expressing the Boards concern for the existing potential of the development of unsafe piloting conditions, and giving a time period of fifteen days to resolve these issues. Unless a resolution is reached, the Board is ready to institute a declaration of emergency regulations to ensure safe pilotage and availability of pilots to shipping.

Upon the request of the Board, Mr. Reed provided for information, the fiscal note for the Marine Pilot Board as submitted for HB 237 documentation.

**MR. KLEPPER DEPARTS THE BOARD AT 4:50 p.m.**

**Agenda Item 19.A. CONTINUING EDUCATION**

Captain O'Hara discussed requirements for continuing education for all State licensed pilots.

On a motion by Captain O'Hara, seconded by Mr. Springer, and called unanimously, it was

**RESOLVED** to prepare a draft regulation for public comment which would require that a pilot, on every second renewal, will attend ARPA, and every third renewal period, attend either a manned model simulator or bridge simulator unless the pilot is a VLCC pilot, then the requirement would be for a manned model course.

**Agenda Item 20. BUSINESS**

- A) Agenda items for the next full Board meeting
- 1) Continuing education (Captain Collins)
  - 2) Look at the 60,000gt endorsement (Captain Collins)
  - 3) Review AS 08.62.185 concerning the 50,000gt exemptions (Captain Collins)
  - 4) Look at the Pilot stations/boundaries (Captain Collins)
  - 5) Fatigue standards (Captain Collins/Ms. Bumgardner)
  - 6) Medical standards (MPC)
  - 7) Tariff discussion (Ms. Bumgardner)
  - 8) Pending legislation update (Mr. Watt)
  - 9) Dept/Div/Board relationship (Mr. Reed)
  - 10) What happens if a "pilot is available" but doesn't show? (Ms. Bumgardner)
  - 11) The use of negotiation/arbitration/binding arbitration to solve regional problems. (Captain O'Hara)

B) The MPC has been tasked to write a letter of "Thanks" to the Mayor of Juneau for the use of his facilities..

C) There will be no examinations scheduled for the next Marine Pilot Board Meeting.

D) The next meeting will be held in Valdez either the last week of September or the first week of October. The MPC will coordinate.

#### **Agenda Item 19.C. Year End Report**

A) The Chair requests that all inputs for the end of year report be submitted to the Chair not later than June 1, 1993.

B) Discussion of pending legislation ensued, and resulted in the following actions:

1) On a motion by Captain Collins, seconded by Mr. Reed, subsequently amended by Mr. Reed, with the approval of Captain Collins, and seconded, on a voice vote of 4 - 2 (Springer/Bumgardner), it was

**RESOLVED** to support the concept of HB 237 (changes to the Marine Pilot Act), and in specific, the portions pertaining to fixed tariffs; a fixed number of pilots; and a limitation on the monetary contributions permitted for lobbying/donations.

2) On a motion by Captain O'Hara, seconded by Mr. Springer, on a voice vote of 6 - 0, it was

**RESOLVED** to support the concept of HB 243 (Pilot requirements on the Kuskokwim River)

**NOTE: THIS ACTION HAS BEEN DEFERRED UNTIL THE INPUTS OF THE PILOT ASSOCIATIONS AND INDUSTRY ARE SOLICITED**

3) On a motion by Captain Collins, seconded by Captain O'Hara, on a voice vote of 6 - 0, it was

**RESOLVED** to support the continuance of the Marine Pilot Board as proposed in HB 170.

#### **RECESS**

At 5:53 p.m., The Marine Pilot Board was recessed to the call of the Chair.

## **TELECONFERENCE**

The Board was reconvened by teleconference at 2:32 p.m., Friday May 14th for the following items: continuance of the Capt MacPherson licensing hearing, discussion of the situation in Region Three, setting of the next meeting date and place, and finally, adjournment. Roll call determined a quorum present: Mr. Watt, Mr. Springer, Mr. Reed, and Captain Collins. Absent, Captain Klepper, previous commitment, Ms. Bumgardner, vacation until May 22nd, and Captain O'Hara, who could not be contacted.

## **CAPTAIN MACPHERSON**

A proposed stipulated settlement between the State and Captain MacPherson re: Case # 1950-92-09 was presented by Mr. Frank Flavin, representing the State. Captain Collins recused. After a brief discussion between Mr. Flavin and members of the Board, on a motion by Mr. Springer, seconded by Mr. Reed, and carried by a majority of the quorum (3 - 0), it was

**RESOLVED** to accept the stipulated settlement which grants Captain MacPherson a 40,000 ton license, continues his Unlimited Channel Pilot license, and will produce his unlimited license upon meeting the qualification requirements.

## **WESTERN ALASKA SITUATION**

Captain Collins rejoined the Board. A discussion concerning the Western Alaska situation concerning piloting was initiated to ascertain if conditions exist in the region which demands attention from the State in the form of emergency regulations or some other action. Comments were heard from industry and representatives from both pilot associations. Those presenting comments included:

Mr. Dave Millen, consul for AMP  
Captain Bob Boyd, WAPA  
Mr. Tom Rueter, North Star  
Mr. Joe Kyle, Pacific Associates  
Mr. Dan Blackmore, Alamar  
Captain Mork, AMP  
Mr. Jon Runestad, ANP Shipping

After listening to all comments, discussion among Board members, and solicitation by the Chair for a Motion, and there being none, the Chairman continued the agenda without action being taken or contemplated.

**NEXT MEETING**

It was decided that the next meeting of the Marine Pilot Board would be in Valdez, AK, to convene at 1:00 p.m. September 28th at the Valdez Civic Center, and set to adjourn at 5:00 p.m. on the 30th of September.

**ADJOURNMENT**

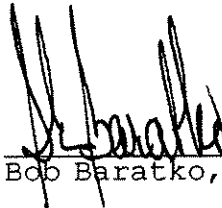
There being no further business, and on a motion by Captain Collins, seconded by Mr. Springer, and carried by the quorum, it was

**RESOLVED** to adjourn until the next Board meeting as scheduled or required by circumstance.

Respectfully Submitted,



Bob Watt, Chairman



Bob Baratko, Marine Pilot Coordinator

Approved on: 10/26/93