

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2534

MINUTES OF TELECONFERENCE MEETING June 25, 1993

*Reed,
Springer
Watt*

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, and as noticed by a Public Announcement in the Juneau Empire, the Anchorage Daily News and the Fairbanks Daily News Miner newspapers, and in Public Service Announcements on various radio stations in the State of Alaska, an emergency meeting of the Board of Marine Pilots was held on June 25, 1993 by teleconference.

FRIDAY, JUNE 25, 1993 CALL TO ORDER/ROLL CALL

The meeting was called to order at 8:00 a.m. by Mr. Bob Watt, Chairman, Board of Marine Pilots. Present and constituting a forum were:

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

Also present and representing the Department of Commerce was Mr. Paul Fuhs, Commissioner; Mr. Jim Forbes and Mr. Gary Amendola, representing the Attorney General's office for the State, and Mr. Bob Baratko, the Marine Pilot Coordinator were also present.

Mr. Watt briefly discussed the situation in the Western Alaska pilotage region, and then asked Mr. Forbes to present the two cease and desist orders prepared by his office and delivered to addressees. (See attachments 1 and 2). A continuing discussion among Board members and State representatives, representatives from AMP and vessel agents followed.

8:25 a.m.

The Board recessed at the request of Commissioner Fuhs for consultation with the State Attorney General Representatives to explore State options for resolution of the situation which was determined to be impacting pilotage in Western Alaska.

8:48 a.m.

The Board reconvened. Mr. Jim Forbes stated that the State was not yet convinced that there was an emergency situation and asked for more proof. He also stated that several of the Board options previously discussed, in particular State dispatch of pilots, was not acceptable to the State because of liability for further legal action against the State. He did recommend that AMP be ordered back to work or:

- a) cross-regionalization of pilots be implemented
- b) court injunction to order pilots to work be pursued
- c) WAPA expedite application process by AMP members

Mr. Fuhs re-iterated that the Board has no authority to implement a State dispatch system.

Mr. Watt then solicited public comment for information which would assist in determining if an emergency situation existed in the Western Alaska pilotage region.

PUBLIC COMMENT

Public comment was heard from:

Mr. Elwood Peterson: Emergency ruling will not solve the problem of ships moving without pilots; currently he is experiencing extensive delays; cannot spread three pilots over this wide of an area; delays adversely affect the entire fishing industry; negative impact on commerce; Federal pilotage is not a good option; some ships have moved without pilots.

Mr. Reuter: no specific delays experienced; one known movement without a pilot

Mr. Runestad: no problems

Mr. Blackmore: no problems

Mr. Addington: there are 45 vessels either on or inbound to the fishing grounds, which in turn will impact 12 ports

Mr. Reuter: very important to remember that multi-million dollar vessel is not going to be hazarded by moving without a pilot

On a motion by Mr. Springer, seconded by Captain O'Hara, carried unanimously (Captain Klepper absent) it was

RESOLVED that the Board of Marine Pilots declare that an emergency exists in Western Alaska Region Three, due to the following points:

1. The potential loss of qualified pilots due to economic factors
2. The safety considerations due to the large number of ships inbound to Region Three which will require pilotage

10:35 a.m. RECESS

10:40 a.m. RECONVENE

Discussions continued within the Board and from the Public input

On a motion by Mr. Reed, seconded by Mr. Springer, carried unanimously, it was

RESOLVED to accept the Finding of Emergency

11:50 a.m. RECESS

12:00 a.m. RECONVENE

On a motion by Mr. Springer, seconded by Captain O'Hara, carried 5-2 (MR. Reed/Captain Collins), it was

RESOLVED to reconsider the above Resolution

After a Board vote to amend the Finding of Emergency, and on a motion by Mr. Springer and seconded by Captain O'Hara, and carried unanimously, it was

RESOLVED to accept the Finding of Emergency as amended (attachment three)

On a motion by Mr. Reed and seconded by Ms. Bumgardner, it was decided to accept the Order for discussion as the Board action. Captain Klepper proposed an amendment to the Order, which was passed by a vote of 6-1 (Captain Collins).

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

RESOLVED to accept the Order as amended as the Board action (attachment three)

A discussion concerning the raising of tariffs ensued based upon a motion made by Mr. Springer and seconded by Captain Collins. On the ensuing vote, 5-2 against (Mr. Springer/Captain Collins), it was

RESOLVED not to take action to raise pilotage tariffs in the Western Alaska region

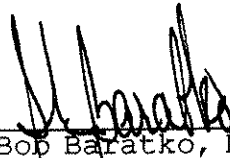
2:55 p.m.

On a motion by the Chair and carried unanimously, the emergency meeting of the Board of Marine Pilots was adjourned.

Respectfully Submitted,



Bob Watt, Chairman



Bob Baratkko, Marine Pilot Coordinator

Approved on: 10/25/93

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 23, 1993

VIA TELEFAX - 276-4125

Robert C. Erwin, Esq.
1400 West Benson Boulevard, #575
Anchorage, Alaska 99503

Re: Western Alaska Pilot Association
membership applications

Dear Bob:


Several months have elapsed since I last heard any news about the applications for membership in the Western Alaska Pilot Association (WAPA) filed by various pilots who currently belong to the Alaska Marine Pilots Association (AMP). As I am sure you are aware, a very troubling situation has developed in the western region regarding the supply of pilots available to be dispatched to various ships.

Please notify your client, WAPA, that the State of Alaska insists that WAPA comply with AS 08.62.175(c)(4), which requires that WAPA be open to membership by all persons licensed to pilot vessels in the piloted region in which the organization is recognized. If WAPA is delaying in processing membership applications, the state insists that WAPA immediately cease and desist in such delays.

Please contact me if you would like to discuss this situation further. I would appreciate an update on the status of those applications for membership in WAPA filed several months ago. My direct number is 269-5206.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James Forbes
Assistant Attorney General

JF:bev

cc: Gary Amendola
Bob Watt
Bob Baratko

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 468-3600
FAX: (907) 463-3295

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

June 23, 1993

VIA TELEFAX - 277-8235

Mark E. Ashburn, Esq.
Ashburn & Mason
1130 West Sixth Avenue, Suite 100
Anchorage, Alaska 99501

Re: Alaska Marine Pilots

Dear Mark:


This is to follow-up on our conversation on June 22 regarding the pilot situation in the western region of Alaska. I have been provided with significant amounts of correspondence between the Alaska Marine Pilots (AMP) and representatives of the Marine Pilots Board. It appears that AMP has taken the position that it will not supply pilots to the various outports in the western region. It is my understanding from the correspondence that AMP's primary motive in refusing or failing to supply pilots to the outports is economic.

AMP's refusal or failure to provide pilots to the outports has the appearance of being a boycott in violation of applicable antitrust laws. AS 08.62.180(d)(3)(B), specifically obligates pilot organizations to maintain a sufficient number of qualified pilots available for dispatch during all parts of the region and at all times of the year. AMP should therefore cease and desist in the maintenance of this boycott.

I recognize that this is a complicated situation, and I appreciate your taking the time to explain AMP's position to me. Please feel free to call or write to discuss this further after you have had a chance to consult with your client.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
James Forbes
Assistant Attorney General

cc: Gary Amendola
Bob Watt
Bob Baratko

WALTER J. HICKEL, GOVERNOR

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**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
JUNEAU, ALASKA 99811-0806
PHONE: (907) 465-2824**FINDING OF EMERGENCY AND ORDER**
June 23, 1993**FINDING OF EMERGENCY**

The Board of Marine Pilots (the Board) unanimously finds that an emergency exists and that the following order is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts and information constituting the emergency include the following:

In 1991, the legislature comprehensively amended the Alaska Marine Pilotage Act. Among other things, the 1991 amendments established the mechanisms whereby competition between pilot organizations either could or would occur. In 1992, competition in the Western Alaska pilotage region became a possibility with the creation of the Western Alaska Pilots Association (WAPA). At that time, the Alaska Marine Pilots & Dispatch Service (AMP) was, except for a very limited continued presence of the Southwestern Alaska Pilots Association (SWAPA), the only recognized pilot association in the Western Alaska region. In February, 1993, the Board of Marine Pilots recognized the Western Alaska Pilots' Association (WAPA), thereby creating two recognized pilot associations in the Western region.

Since then, the Board has closely monitored the struggle that ensued between the two organizations for control of some share of the pilotage market. That struggle has at times been both fueled and lamented by various interests in the Western Alaska region. The struggle has deteriorated to the point where it is no longer reasonable to assume that safe and efficient pilotage in the Western Alaska pilotage region will continue.

In addition, it appears that the Western Alaska pilotage region is on the verge of losing a number of qualified pilots because of the inability of the parties to resolve the conflict that currently exists in that region. Such a loss could seriously implicate the Board's ability to provide for safe and efficient pilotage in the Western Alaska pilotage region.

Indeed, on June 7, 1993, a vessel moved in Dutch Harbor without a pilot, when a pilot was available, and on June 22-23, 1993, the Marine Pilot Coordinator was informed that unless there were sufficient pilots available on very short notice, vessels involved in the salmon fisheries would move without pilots. It is anticipated that vessels would move if pilots are not available on very short notice because delays in the shipment of the product quickly result in the deterioration of it, and thus a fast and potentially significant reduction of its value.

The situation is now unacceptable and an emergency, because it creates a danger - an immediate danger - to life, property, and the coastal environment.

Based on the circumstances presented, the Board finds that it may be necessary to regulate competition in the Western Alaska pilotage region in a way that will be actively and closely supervised by the Board.

ORDER

Therefore, under the authority of AS 08.62.040, the Board orders the following:

1. AMP and WAPA shall dispatch pilots upon the request of an agent representing a vessel located in the compulsory pilotage waters of Western Alaska.
2. If AMP or WAPA fail to carry out their individual responsibility to dispatch pilots upon request,

(A) the Department of Law is requested to immediately seek injunctive relief against that association to require it to carry out its responsibility, and that the dispatch request will be given to the other organization within the region, and

(B) Within 24 hours after receiving documentation that a pilot is currently and validly licensed to pilot vessels in the western Alaska pilotage region, a pilot organization recognized in the Western Alaska pilotage region must accept that pilot for membership.

(C) The Department of Law is requested to immediately seek injunctive relief against that association to require it to carry out its responsibility as defined in paragraph (B) above.

3. The Department of Law will review the Board recognition of both organizations in the Western Region pursuant to standards and qualifications of recognition as defined in 12 AAC 56.300, and 12 AAC 56.310.

4. This order takes effect immediately.

5. This order expires September 30, 1993.

DATED: June 25, 1993
Ketchikan, Alaska


Bob Watt, Chairman
Board of Marine Pilots

FINDING OF EMERGENCY

The Board of Marine Pilots (the Board) unanimously finds that an emergency exists and that the following order is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts and information constituting the emergency include the following:

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| | | | |
|-------|------------|---------|-------------|
| To | JIM FOX ES | From | G. AMENDOLA |
| Co. | | Co. | |
| Dept. | | Phone # | |
| Fax # | | Fax # | |

Based on the circumstances presented, the Board finds that it may be necessary to regulate competition in the Western Alaska pilotage region in a way that will be actively and closely supervised by the Board.

ADOPTION ORDER

Under authority of AS 04.62.040, the attached order, prepared in proper regulation form, is certified to be a correct copy of the order adopted by the Board of Marine Pilots at its June 25, 1993 meeting, and is to take effect immediately upon filing by the Lieutenant Governor as provided in AS 44.62.100(a).

This action is not expected to require an increased appropriation.

Date: 29 June, 1993
 Valdez, Alaska

John Klapper
 John Klapper, Vice-Chairperson
 Board of Marine Pilots

FILING CERTIFICATION

I, John B. Coghill, Lieutenant Governor for the State of Alaska, certify that on JUNE 30, 1993 at 3:10 P.M., I filed the attached regulations according to the provisions of AS 44.62.

John B. Coghill
 John B. Coghill, Lieutenant Governor

Effective: June 30, 1993
 Register: 21 OCTOBER 1993

Expires October 29, 1993
 unless made "permanent"
 by the adopting agency.

Register , 1993

EMERGENCY REGULATIONS
PROFESSIONAL REGULATIONS

CHAPTER 56. BOARD OF MARINE PILOTS

12 AAC 56 is amended by adding a new section to read:

12 AAC 56.989. DISPATCH AND MEMBERSHIP ACCEPTANCE IN THE WESTERN ALASKA PILOTAGE REGION. (a) Alaska Marine Pilots (AMP) and Western Alaska Pilots Association (WAPA) shall dispatch pilots upon the request of an agent representing a vessel located in the compulsory pilotage waters of Western Alaska.

(b) Within 24 hours after receiving documentation that a pilot is currently and validly licensed to pilot vessels in the Western Alaska pilotage region, a pilot organization recognized in the Western Alaska pilotage region must accept that pilot for membership.

(c) This section is repealed September 30, 1993. (In effect // - // , by em. adop., Register)

Authority: AS 08.62.040

Emergency.MAR

June 29, 1993