

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
BOARD OF MARINE PILOTS**

MEETING MINUTES

MAY 29, 1996

By authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions of AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held via teleconference call on May 29, 1996.

Agenda Item I Call to Order

The meeting was called to order by Chairperson Bush at 8:08 a.m. Members present and constituting a quorum were:

Mr. Jeff Bush
Mr. Bob Berto
Mr. Bernie Smith
Mr. Dan Hensley
Captain O'Hara

Members absent were:

Captain Spence
(It was noted Captain Spence would join the call once he reached port.)

Public Member Position Vacant

Staff present were:

Catherine Reardon, Director, Division of Occupational Licensing

Gayle Horetski, Assistant Attorney General, Department of Law

Barbara Gabier, Program Coordinator, Division of Occupational Licensing

Members of the public present in Juneau and on-line were:

(Ketchikan, Homer, and Gulf of Mexico)

Captain Doug MacPherson
Captain Joe Homer
Captain James Drahos

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Kate Tesar
Captain Kathleen Rathegeber
Richard Monkman
Captain John Larsen
Captain Colin Jones
Captain Sharrif Saudi (Captain Saudi called in at the beginning of the meeting, however, was voluntarily disconnected. He agreed to call back nearer the time his agenda item was scheduled.)

Agenda Item II Approval of Agenda

The Chairperson read the most current version of the meeting agenda (Revised 6/28). After Approval of Minutes, Identification of Potential Conflicts of Interest was added as an item. The Chairperson asked that this item be added at the beginning of all future agendas.

On a motion made by Berto, seconded by Hensley and carried unanimously, it was:

RESOLVED to approve the agenda as amended.

Agenda Item III Minutes

Since some members had not received their packet, review and approval of the April 1996 minutes was tabled until the next regularly scheduled meeting.

**New Agenda
Item**

Identification of Potential Conflicts of Interest

No members reported potential conflicts with any of the agenda items currently listed.

Agenda Item IV

Consideration of Captain Rathgeber's License Application

Ms. Gabier reported that review of Captain Rathegeber's application file and supporting documents (copies had been mailed to board members earlier) reflect all requirements for licensure as having been met. It was clarified that this determination was made based on regulations which became

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effective this date (May 29, 1996). Captain O'Hara noted it was his understanding that the board had already approved Captain Rathgeber's license.

Discussion followed concerning advance approval of Captain Rathgeber's application based on proposed regulations which are not yet in effect. Prior to filing proposed regulations with the Lieutenant Governor's Office, the Department of Law can make amendments. As licensure decisions must be made based on the laws in effect at the time a license is granted, it was determined that the appropriate process was to ask the board to take action on Captain Rathgeber's application during this meeting, based on regulations in effect at this time.

On a motion made by O'Hara, seconded by Berto and passed unanimously by roll call vote, it was

RESOLVED to grant a deputy marine pilot license for Southeast Alaska to Captain Rathgeber.

Roll Call: Hensley - Yes
 O'Hara - Yes
 Berto - Yes
 Bush - Yes
 Smith - Yes

Note: License application contains Klawock as an exclusion.

Agenda Item V

Memorandum of Agreement (MOA)

(MOA Case #1900-94-014)

Ms. Horetski stated that she was present representing the division before the board. It was clarified for the record that Ms. Gabier had spoken with Captain Bates regarding this meeting and he was provided the opportunity to be included on the call. Due to his work schedule, he advised he would not attend.

Captain Larsen addressed the board on behalf of the Alaska State Pilots Alliance. He noted the board has many options in dealing with pilots who come before them, such as requiring additional training, censure, reprimands, peer review, conditions or limitations, and suspension. The Alliance is concerned with the developing trend of a "one strike and you are out" position which seems to be frequently taken by

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division staff and the Attorney General's Office. In his opinion, even when a pilot has an unblemished record, revoking a license after one mistake seems to be a developing trend. Natural attrition added to the increased number of revocations could lead to a pilotage shortage.

Ms. Horetski stated that she was unaware of any position or trend being taken by division staff or the Department of Law. She noted that she has worked on numerous cases for the board and as the results reflect, they have ended up at both ends of the enforcement spectrum. Each investigation is handled individually and action taken based on the merits of the case.

Refusal by Captain Bates to take a breath test was discussed. It was questioned whether a pilot's refusal to take an alcohol breath test was the same as an automobile driver's refusal to take a breath test. Ms. Horetski confirmed that a pilot's refusal to take a breath was not a misdemeanor criminal offense in a matter such as this.

On a motion duly made by O'Hara, seconded by Hensley and passed unanimously by roll call vote, it was

RESOLVED to adopt the MOA in Case #1900-94-014
(Captain Bates).

Roll Call: Hensley - Yes
 O'Hara - Yes
 Berto - Yes
 Smith - Yes
 Bush - Yes

Agenda Item VI Correspondence

ADEC Letter - A May 21, 1996, letter from Michele Brown, Commissioner of Department of Environmental Conservation (DEC), was reviewed. The letter was provided for informational purposes only. Funding has been allocated for the simulator project and DEC will be working on a Request For Proposals (RFP) this summer. Board members are invited to participate in the simulator development project and may get on the interested parties list by contacting Ernie Piper at DEC. DEC is the agency that will develop the RFP; however, they will accept input from the board and Department of Commerce and Economic Development staff.

**New Agenda
Item**

Regulation Update

Regulations regarding apprenticeship programs were filed on May 16, and become effective June 16. Also regulations changing the pilot station at St. George will be effective soon. Ms. Horetski noted that, to her knowledge, all board regulations which had been adopted by the board have now been transmitted to the Lieutenant Governor's Office and have been signed. Ms. Horetski advised that she was not aware of any regulation projects for the Board of Marine Pilots pending in the Attorney General's Office.

Agenda Item VII Marine Pilot Coordinator Selection Process

Ms. Reardon explained that she and Barbara Gabier would be conducting telephone interviews with selected applicants. On June 13, a board meeting would be convened (board members could be in person or connected via telephone) and the top candidates would be interviewed in-person by the department. Board members would be welcome to participate in the in-person interviews. After the interviews, the department would present the name of its nominee and the board could vote to accept or reject the nominee.

Agenda Item VI Correspondence - (Continued)

Captain Sheriff Saudi Correspondence

Captain Saudi had not called back at the commencement of this agenda item; however, as there was no objection, discussion of Captain Saudi's correspondence began. Numerous correspondence regarding Captain Saudi's qualifications and acceptance into the Alaska Coastwise Pilots apprenticeship program were reviewed.

A draft letter from Catherine Reardon to ACP was also reviewed. Concerns involved whether the board has any authority to accept or reject apprentice applicants into a training program. Current regulations do not allow the board to approve or reject applicants. Ms. Reardon's draft letter clarified that the selection of apprentices is the jurisdiction of the pilot associations; therefore, the department's position is

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that, since ACP has notified the board that Captain Saudi has been accepted as an apprentice in their training program, board records reflect the apprenticeship. It was noted that the association bylaws is where the selection criteria for apprentices are to be set out. The role of the board is to approve or reject the apprenticeship programs and bylaws. The board does not have a role in reviewing applicants and deciding which ones are to be accepted by an association.

Representatives from ACP noted that Mr. Twohig's April 8 letter raised concerns with what would happen with Captain Saudi four years down the road when his training was completed. Thus, ACP is seeking guidance from the board and division. Ms. Horetski noted that she understood ACP's concerns, as well as the concerns Mr. Twohig addressed in his April correspondence. However, Ms. Horetski advised that the statute does not give the board authority to prevent Mr. Saudi from being an apprentice. Apprenticeship programs must be run in accordance with the association's approved plan and bylaws. The board's role is to approve a person's application for examination and licensure. Regardless of whether a person has completed a program with an association, it does not mean that he/she is qualified to be a pilot. No person that is accepted into a program has a guarantee that he/she will ever be licensed. In this instance, although Mr. Twohig's letter was well intentioned, Ms. Horetski views the provisions which indicate "has not had access to the maritime employment opportunities required to qualify for entry into the pilotage profession" to mean "not had access to maritime employment opportunities while holding a coast guard license" which is what the Alaska Statute requires. The issue is how one interprets that phrase "had not had access to maritime employment opportunities."

In Ms. Horetski's opinion, Ms. Reardon's draft letter accurately reflects the law and it is up to the associations to choose their observers, apprentices, and trainees. It is up to the board to decide ultimately whether the person has met the criteria for licensure. The statute contains a "notice" requirement, not an approval requirement.

Captain Saudi joined the meeting and was updated as to the board's discussion. Captain Saudi confirmed he understood that the board was not acting on his application for apprenticeship and that he would take up the training requirements and acceptance with ACP.

**New Agenda
Item**

Other/Comments

Mr. Berto updated the board on permits being issued to passenger vessels in Glacier Bay. Thirty-two vessel entry permits have been received for the Glacier Bay whale season (June - August). The process of getting the permits has been very labor intensive. There was an agreement with the Department of Interior in Washington, which would allow a phase in process to increase the permits by 72. The process has been continually stalled and, as of last week, the National Park Service in Washington, D.C. created an additional requirement by adding an environmental minimization clause on the permit which basically requires substantial change from what was anticipated. The environmental plan has required air, water, and noise pollution review, which goes beyond what is required by other federal and state laws. This new requirement will cause some scheduling problems; they may have to cancel some trips.

Second issue Mr. Berto reported on was an issue he felt may develop into a problem: The Cape Spencer pilot station was just added to the list of stations this year, and some of Mr. Berto's customers who transit the area are being advised by SEAPA that they must use the station. Mr. Berto has maintained that it is the option of the vessel operator to use the station preferred by the ship based on the characteristics of the ship, the master, and the pilot's decision. There is some concern that there may not be a "choice" any more. With ships that are transiting from Glacier Bay to Sitka, there has been some discussion that pilots would have to be taken off at Cape Spencer and then reboarded at Sitka. Also, many of Mr. Berto's ships coming from Hubbard Glacier, with a pilot from Region I on board, would like to keep the pilot for the entire transit to Juneau rather than having to take on another pilot at Cape Spencer. Industry believes that the option is available and, if pilot groups want to change that, it should be through their contract negotiations and any savings should be passed on to the ships.

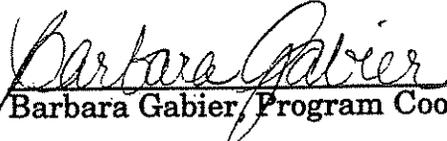
Chairperson Bush noted that the board establishes pilot stations and ensures that pilots are in the mandatory pilotage waters but whether a particular association can insist upon when a pilot is to get on or off at a particular pilot station is a matter between the association and the industry.

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On a motion duly made by Captain O'Hara, seconded by Smith
and passed unanimously, it was

RESOLVED to adjourn 9:10 a.m.

Respectfully submitted:



Barbara Gabier, Program Coordinator

Approved:

Jeffery Bush, Chairperson
Board of Marine Pilots

Date: _____