

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

**MINUTES OF MEETING
October 15 - 16, 1996**

By the 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 October 15 - 16, 1996, in Anchorage, Alaska.

10/15/96

Examinations were conducted from 0830 - 1230 as listed below:

Captain Richard Gurry - Icy Bay, Kodiak Island Group

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

Chairman Bush called the meeting to order at 1344. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Jeff Bush	-	Commissioner's Designee
Captain O'Hara	-	Pilot Member
Captain Spence	-	Pilot Member
Mr. Bob Berto	-	Agent/Vessel Manager
Mr. Bernie Smith	-	Agent/Vessel Manager
Mr. Dan Hensley	-	Public

Staff present were: Peter Christensen, (MPC)

Agenda Item 1 Review/Set Agenda

The agenda was accepted as written with the following amendments. An update of Captain Saudis' status was added as Agenda Item #24. Additionally a public comment period was added to the beginning of each half day.

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

RESOLVED to accept the agenda as amended.

Agenda Item 2 **Review/Approve Minutes**

The Board reviewed the draft minutes of the last three meetings and corrected one typographical error. In Item 4 of the June meeting minutes the Board noted that the word "Tropical" should be changed to "Topical".

On a motion made by Mr. Bernie Smith, seconded by Mr. Berto and carried unanimously, it was

RESOLVED to adopt the draft minutes of the previous three meetings, as presented and amended.

Agenda Item 3 **Review Agenda for Potential Conflicts of Interest and Declarations of Recusal.**

Ms. Horetski joined the meeting via telephone.

Ms. Horetski, AAG assisted the Board with determinations of recusal. Mr. Berto mentioned that he had previously recused himself from voting on the Cape Spencer Pilot Station issue because he has an indirect involvement with pilot boats, but he expected to be able to participate in the public comment regarding this issue. He also mentioned that several members of the Board would appear to have conflicts with any discussion of the renewal fees. Ms. Horetski pointed out that since the Board does not set the fees, the Board members subject to the fees do not need to recuse themselves from that discussion. Captain Spence inquired whether he should be recused from the discussion regarding approval of the ACP Amended Bylaws. Chairman Bush asked Captain Spence to assist the Board by explaining the amendments to the Bylaws, but felt that Captain Spence should refrain from voting. Mr. Smith asked Ms. Horetski for clarification on this situation. Ms. Horetski quoted AS 39.52.220(a) to the Board. It states in part, "If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating or participating in the matter." She went on to say that if a person is recused, he or she should not participate in any manner in the Board's deliberation, process, or participate in that discussion. It was determined that another member of ACP would assist the Board in determining the changes in the ACP Bylaws. Ms. Horetski went on to say that the agenda item regarding Region 1 training requirements is very similar to other issues that due to competition have given rise to claims of Ethic's Act violations. Chairman

Bush stated that the Board would deal with that possibility when it came to that agenda item. No other conflicts of interest were disclosed.
Chairman

End Tape 1, Side A Bush also offered the audience the opportunity to declare that a Board member should be recused due to a perceived conflict of interest.
e 1, Side B

Agenda Item 4 **Investigation/Litigation Update**

The MPC related that no investigations had been closed, and that one investigation had been opened regarding unlicensed piloting in Region 3.

Ms. Horetski addressed litigation in process. The Renwick case is currently in the hands of the State Supreme Court following oral argument.

In the SEAPA rate case briefing is ongoing and being handled by Ken Truitt.

The Proteus suit was also filed in the State of Washington. The Board of Marine Pilots is not a party in the Washington case. If the plaintiff's are successful in this suit, damages would be paid by the legislature.

Captain Spence asked why there is a conflict of interest in Region 1 but not Region 2 when discussing training issues? Ms. Horetski stated that Mr. Slotnick previously addressed that issue when he spoke with the Board in 1993. He stated at that time that each conflict of interest question has to be considered individually upon its own facts and context. However, Mr. Slotnick felt that the potential for a conflict of personal or financial interest is much more likely where a competitive situation exists.

End of Teleconference
with Gayle Horetski

Agenda Item 5 **Public Comment**

Captain MacPherson spoke regarding license renewal fees and noted that he was not liable for other pilots malfeasance but he is being penalized by increased fees resulting from other pilots actions.

Captain Van Noort announced his retirement from his position with NWCA. He introduced Captain John (Jack) Cox as his replacement.

Mr. Reuter spoke regarding the Agent renewal fee. He has yet to find where in the regulations it states that Agents are a regulated occupation.

How are Agents liable for Board costs simply through the act of registering with the State?

Captain Drahos asked why the Division requested comments if they were not going to be considered.

Mr. Blackmore concurred with Mr. Reuter's points. He stated that Agent fees should be reflect only the Division's actual costs of registration.

Mr. Kyle echoed Mr. Blackmore's statement and referred to his written comment containing the same argument.

Captain Collins stated that the AG's statement today conflicts with past guidance received from the AG's office. In the past the Board received guidance from an AG that as long as a quorum of the Board is seated when a conflict of interest arises, the Board may continue to act even if the recusal takes them below the quorum of four persons required to open a Board meeting. He asked if a quorum is affected, can a conflicted member remain?

Agenda Item 6

Review of New Fees

End Tape 1, Side B
Start Tape 2, Side A

Chairman Bush provided an overview of the fee process. He discussed the various cost components that comprise the total that must be funded by the fees. He defined the direct and indirect costs and the rationale used to project future costs. A discussion was held regarding the fees. The concept of allocating the Board costs by region and basing the fees accordingly for pilots in each region was discussed.

Item 7

Review of Correspondence

The MPC led the Board through the correspondence contained in the Board Packet under Tab 16. The Board noted the correspondence and discussed several of the letters. No action was taken nor contemplated regarding any of the correspondence.

Agenda Item 8

Review Examination Scores

Captain O'Hara reported that Captain Gurry passed an Extension of Route examination for Kodiak Island Group and Icy Bay.

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

RESOLVED to issue Captain Gurry extensions of route for the Kodiak Island Group and Icy Bay.

End Tape 2, Side A

Public Comment Taken in Advance

Mr. Ken Castner: Regarding agenda item 10, Region 2 Training Requirements, he stated that he had no objection to the substitution of ports with shipping, for required ports that currently do not have any shipping activity. He also stated that he would like to have more involvement with the Boards marine simulator project.

Captain Eliassen: Endorsed SWAPA's training committee's letter regarding training in Region 2. Substitution of ports will work and will not decrease safety.

Captain Joslyn: While a trainee is waiting for unavailable ports their training is languishing.

Captain MacPherson: Brought to the Board's attention that the second sentence of AS 08.62.080(c) seems to allow the Board to issue a license with exclusions for a port for which the training requirements can't be met.

The Board recessed until tomorrow.

End Tape 2, Side B
October 16, 1997
Start Tape 3, Side A

The Board reconvened and decided to address a tonnage upgrade for Captain Chadwick. The MPC briefed the Board regarding Captain Chadwick's request for a tonnage upgrade to unlimited.

On a motion made by Mr. Smith, seconded by Mr Hensley and carried unanimously, it was

RESOLVED to issue Captain Chadwick a tonnage upgrade to Unlimited.

Public Comment Taken in Advance (Resumed)

Captain Drahos: The Board should not grant time and a half credit for tug/towboat service when evaluating service to meet the requirements of AS 08.093. He objects to time and a half credit for tug/towboat service because it allows an applicant to meet the statutory sea service required in AS 08.093 with less actual service than licensed masters.

Captain Eliassen: Presented a proposal to address the Region 2 Training problems. A detailed discussion of the proposal followed.

Captain Ward: Endorsed his letter and emphasized the need for the Board to take action.

Captain MacPherson: Flexibility built into the Board's regulatory training requirements would keep the Board out of the regulation process on a regular process.

Mr. Kyle: Addressing Region 3 issues he reminded the Board that Region 3 End Tape 3, Side A is a dangerous sympathizes with AMP's recent loss. He asked the Board to encourage AMP to work with industry on regional issues.

Mr. Blackmore: Reunification of the pilot associations is working. Industry is trying to work with AMP to determine port parameters and facilities necessary to support pilotage. The Pribiloff Island workgroup is still meeting. In meeting required pilotage needs, especially during peak periods, AMP is working close to maximum utilization. The 48 hour rule is only a concern down the Aleutian chain due to transportation difficulties.

Captain Antonsen: Region 1 already has the most stringent requirements of any region. Region 1 has already added flexibility to their training regulations. Other than Skagway Ore dock dockings, there currently are no training problems in Region 1. To add flexibility to the training regulations the first paragraph of 12 AAC 56.028 should be amended to allow substitution. The tonnage of Deputy Marine Pilots does not need to be raised. SEAPA has more than enough training platforms for their trainees. SEAPA purposely secured the contracts of vessels less than 25,000 GT to accommodate their training program and their Deputy Marine Pilots.

Captain Kellogg: Took exception to Captain MacPherson's letter, he believes the comments are generated in the interests of economic gain. Regarding the Core Examination he feels it should not be given prior to completion of Federal pilotage, but the MPC should be allowed to give the

exam. He added that in the past time and a half credit for tug/towboat sea service has been granted.

End Tape 3, Side B

Side 4, Side A

Captain Luck: The Division should consider the Board's input before adopting licensing fees - AS 08.01.065(c). The requirement to apply at least 60 days in advance is mandated by statute - AS 08.062.090(c). Deputy Marine Pilot licenses are limited by statute to 25,000 GT - AS 08.062.093(d). The designation of "Channel Pilot" was deliberately left out of the 1991 law. Perhaps we need a 60,000 GT level in the license system. He proposed a regulation to give the board authority to accept port substitutes for training requirements. Regarding yachts, he couldn't recommend a solution. The rate SEAPA charged the yacht was under the maximum and was arrived at through agreement, so therefore it was within the law.

Captain Collins: SEAPA does not have a fix for the yacht problem. SEAPA purposely contracted with the smaller cruise ships to provide training platforms, but this strategy came at an economic cost. The Core examination should not be given until completion of Federal pilotage. A member of the Board and the MPC should be allowed to proctor the exam. Regarding a shortage of pilots in SE, he stated that he is worried about a shortage and he thinks there will be one, but it's not a reason to reduce the training requirements.

Captain MacPherson: Offered to give rebuttal to the remarks his letter has received or to answer any of the Board's questions.

End Tape 4, Side A
Tape 4, Side B Not Used
Start Tape 5, Side A

Mr. Reuter: Industry is trying to work with AMP. There is concern over the number of pilots working in Region 3. If mandatory pilotage areas in Region 3 or the 48 hour rule is changed, there is concern that there will be a pilotage shortage.

Don joined

Ms. Reardon, Director of Occupational Licensing, joined the meeting to take questions from the Board regarding the setting and adoption of the fees. She pointed out that the Board had been asked if they wanted to meet to consider the Divisions proposed fees and the Board decided not to convene a special meeting to consider the fees. She also stated that the costs reflected in the budget sheet were pilots, industry and Board generated. They were not public or State driven costs. Regarding fees charged Agents, AS 08.62.140 gives the Department the authority to set the fees, and for the purpose of setting fees, the Division views Agents as an occupation. Therefore an equal share of the Board direct expenses are applied to the Agent fees.

Mr. Berto stated that AS 08.62.140 refers to AS 08.01.065 and that AS 08.01.010 of that same chapter contains the list of Boards and Occupations to which the chapter applies. He noted that Agents were not included in the list. Ms. Reardon replied that she views the list as a list of Boards and programs that are governed by the chapter, not solely a list of occupations. Boards may, and in fact do, regulate more than one occupation, and AS 08.01.065(c) directs that for Boards that regulate more than one occupation the fees for each of the occupations must reflect the actual regulatory costs and expenses of the Board attributable to each occupation. Mr. Berto replied that the Board does not regulate Agents.

End teleconference
with Ms. Reardon.

Agenda Item 15

Evaluation of Terrence Backen's Core Sea Time

Ms. Horetski, AAG
Joined the meeting
via teleconference.

Ms. Horetski joined the meeting to assist the Board. Before addressing Captain Backen's sea service Chairman Bush asked if it is possible for the Board to accept an application based upon regulations which it has adopted, but which are not yet effective. Ms. Horetski stated that the Board cannot enforce any regulations which are not yet in effect.

Ms. Horetski took the opportunity to clarify the information she stated yesterday regarding whether the Board would be billed for the services of Ms. Cox, the AAG defending the Board in the Proteus suit. She stated that Ms. Cox and her staff in Risk management were funded separately and therefore the Board would not be billed for their services. Regarding any damage award that might result from the suit, she told the Board that the State was self insured in Admiralty cases up to one million dollars and that they had insurance for amounts above that. If the case was treated as a tort, then the State was self insured up to five million dollars and carried insurance for awards above that amount.

End Tape 5, Side A
Start Tape 5, Side B

Ms. Horetski led the Board through the legal issues and background surrounding the issues raised in Captain Backen's letter. The MPC introduced Captain Backen's letter and informed the Board of the results of his count of Captain Backen's sea service. The MPC explained that he counted Captain Backen's sea service in accordance with the previous guidance given by the board to Captain Twohig. The majority of the Board's discussion surrounded the following issues: conditions for qualifying service; minimum qualifying service to receive credit for a day; whether to credit service at time and a half; whether to credit his previously conducted training.

End Tape 5, Side B

The Board decided that all creditable sea service must be served underway,

Start Tape 6, Side A with the tug attached by tow, pushing ahead, or on the hip. To receive credit for a day of service the Board accepted 4 hours or more of underway sea service. They decided to credit time and a half as it would be allowed under the Federal system, each day of service credited at a day and a half. The Board then discussed whether to credit his previous training.

On a motion made by Captain O'Hara, seconded by Mr. Smith and carried with Captain Spence dissenting, it was

RESOLVED to credit Mr. Backen's previous training accumulated between April 1993 and July 1995 once he meets the core sea time requirement. Implicit in this resolution for the training garnered between 4/93 and 7/95 is a waiver of the three year expiration of training.

Break

Agenda Item 17 NOAA/NOS Presentation - Captain Pawlowski

Captain Pawlowski, with National Ocean Survey (NOS), Office of Coast Survey is the Navigation Advisor for Alaska and Hawaii. He is focusing on Charting, Tides and Currents and geodesy. He provided a packet of materials for each of the Board members and most of the audience in attendance. He explained that NOS is modernizing their charts and currently all of Alaska except the Bering Sea is available on CD Rom. In an appeal for input from the pilots he noted that in Alaska alone they have 24,000 nautical miles of hydrography needed and only one platform capable of doing 600 miles a year. He noted that tide and current information is now available on their Internet site. He concluded by inviting everyone present to a no-host reception NOAA-NOS was sponsoring later that evening.

Agenda Item 18 T/V KENAI Transit

End Tape 6, Side A
Start Tape 6, Side B

Tom Chapple of ADEC addressed the Board regarding the transit of the T/V KENAI. He explained that the T/V KENAI did not follow the transiting procedures contained in the Oil Spill Contingency Plan and that was ADEC's main concern. Recently, in a settlement between the State (DEC), Keystone Shipping, and Alyeska SERVs, an agreement was reached to implement navigational changes to the Contingency Plan to increase safety in P.W.S.

Captain O'Hara agreed that the results from the transit of the T/V KENAI have been very positive and had increased safety. However, he took exception to the accuracy of the recreated track line of the transit and to the de facto license sanction imposed upon Captain Brady. He noted that the Coast Guard did not fault Captain Bradley, the Marine Pilot Board did not fault Captain Bradley, but because of the ADEC investigation Captain Bradley was no longer working in Valdez.

Captain Bradley stated that there were many errors in the report. He took exception with the fact that the author of the report, contracted for by DEC, had not been to sea since 1972. He noted that the report was completed 90 days before it was released. It was shared before release with the RCAC, but not with the Coast Guard or Captain Bradley. He said he had 2,500 safe transits in and out of Valdez and that the Coast Guard did not fault him in their investigation, and yet it has been over a year since he last piloted a tank vessels in Valdez.

Chairman Bush related his concern to Mr. Chapple that the Board, and especially the MPC, were not consulted by ADEC during their investigation. He noted that the MPC tried on several occasions to be involved and assist ADEC in their investigation into this incident. The MPC was present in Valdez the day after the incident to investigate and would have been available to assist ADEC. He said the lack of cooperation/coordination is especially frustrating when considering the potential and eventual impact upon a pilot.

Agenda Item 19

Simulator Project RFP - Status Update

Captain O'Hara presented the fourth draft of a proposal that outlines a performance based pilot assessment/evaluation program. In the program as presented the State would contract with a third party to design and implement Alaska specific simulator programs and certify evaluators that will be conducting the pilot performance evaluations.

Chairman Bush asked all present to provide their input to this draft of the proposal because within the next month or two ADEC was going to issue a RFP for this program based upon this draft and any amendments. Speaking for SEAPA Captain Collins objected to the term "relicensing" used in the draft. He stated a concern whether all pilots will be able to satisfactorily pass a test in a simulator, he was especially concerned over what will happen to those who are able to perform in the real world, but are not able to pass the simulator evaluation. Lastly, he stated a concern

over who would be in charge of the evaluations, ADEC or marine personnel.

Captain O'Hara responded that the word "renewal" would be substituted for the term "relicensing". Regarding the simulator he explained that the simulator program would be conducted in the best simulators available and would incorporate training in the simulator before the evaluation begins. The training will allow the pilot to become familiar with the simulation and equipment before the evaluation phase of the program begins. Captain O'Hara stated that the evaluators will be under the direct control of the third party program manager contracted to run the program and not ADEC. This is the same setup and relationship that the Coast Guard uses with simulator facilities that the Coast Guard accepts for all or part of a Federal licensing requirement.

Captain Homer commented that if a pilot fails the evaluation he/she should have the opportunity to retake the program without waiting one year or three months for a second opportunity.

Captain Collins commented that he thought the software developed for the program would be able to be taken to any simulator of the pilots choosing. Captain O'Hara explained that the software was to be designed to be run on different simulators, but to maintain and ensure the fidelity of the evaluation the simulators employed would have to be full bridge simulators.

Captain Drahos commented that he felt that the simulator program should replace all the continuing education requirements. As currently designed the proposal does not include manned model training nor credit. He stated that the manned model training more closely approximates actual piloting and can be evaluated. Captain O'Hara responded that the manned model requirement for initial licensure as a VLCC pilot would not be dropped. He envisioned only the continuing education requirement for manned model training being dropped, once the evaluation program is on line. Captain Drahos disagreed with that proposal.

End Tape 6, Side B
Start Tape 7, Side A

Agenda Item 9

Region 2 Training Requirements

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

RESOLVED to send out for public notice SWAPA's proposed regulation changes as amended.

NOTE : Tape 7 is mostly indecipherable. The majority of side A and almost all of side B is affected.

Agenda Item 20B. Review Scheduling of Core Exam

An extensive discussion occurred regarding when, how, and if it was appropriate to have the MPC give the core examination and what would constitute an application for purposes of meeting the statute requiring an applicant to apply 60 days or more in advance of the examination.

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

RESOLVED to send out for public notice a regulation change to allow the MPC to proctor the Core Examination and to allow applications for the Core Examination to be accepted before completion of the Federal pilotage for the region, provided the Federal pilotage is completed before the examination is administered.

End Tape 7, Side A
Start Tape 7, Side B

Agenda Item 10

Region 1 Training Requirements

The Board discussed and reviewed the Region 1 training requirements, the appropriateness of the initial Deputy Marine Pilot license tonnage of 25,000 gross tons, and Region 1 training required for upgrade to unlimited tonnage. No formal action was taken by the Board.

Agenda Item 11

Region 3 Compulsory Pilotage Boundaries

Captain Moreno detailed for the Board the pilotage problems occurring in Region 3. These problems include the application of the general definition

End Tape 7, Side B
Start Tape 8, Side A

of pilotage waters in Region 3; the loss of Captain Cork and the inherent dangers that accompany any attempt to service the increasing amount of vessel traffic occurring in the far west Aleutian Islands, often at ports or bays with little or no existing infrastructure; and the difficulties and frustration encountered in attempting to enforce compulsory pilotage and prosecuting unlicensed activity.

The Board stated that it would welcome a draft regulation from AMP to institute compulsory pilotage within three miles of the Pribilof Islands.

Agenda Item 13 **AMP Amended Training Program**

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

RESOLVED to accept AMP's Training Program.

Agenda Item 14 **ACP Amended Bylaws**

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

RESOLVED to accept ACP's amended bylaws subject to review of the Attorney General's office.

Agenda Item 12 **Region 3 Additional Issues**

Captain Garay outlined for the Board the state of affairs in Region 3. The three main concerns he outlined were: Pilot Safety; Rules under which Business is Conducted; and Regional Stability.

End Tape 8, Side A
Start Tape 8, Side B

Regarding the solutions proposed in the response they received from the Commissioner, AMP did not feel that any geographical areas should be excluded from pilotage, nor can they raise their rates for certain areas because they are precluded by existing contracts and they would be unwilling to implement such a strategy in any event. The third proposed solution was to not take any undue risk in the performance of their job. Captain Garay stated that of the three solutions, this was by far the most useable, however they feel something more must be done. They proposed eliminating the 48 hour rule for Aleutian ports west of Seguam Pass.

Captain Moreno presented a proposed regulation drafted by AMP to implement a change in the 48 hour rule for Aleutian ports west of Seguam Pass.

Captain Thompson, Commanding Officer of Coast Guard Marine Safety Office Anchorage, invited the Board to form or participate in an Aleutian Island Work Group similar to the Pribilof Island Work Group. The

Pribilof Island Work Group encompasses all agency and public stakeholders and has been very beneficial in establishing appropriate and responsible recommendations and regulations. The Board was also invited to the next meeting of the Pribilof Island Work Group which will next meet December 3, 1996 in Anchorage.

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

RESOLVED to notice a change to 12 AAC 56.205 proposed by Captain Moreno as follows: A pilot shall be required for all vessels calling in Aleutian Island ports west of Segum Pass notwithstanding the 48 hour rule.

Agenda Item 20 **Examinations**

Chairman Bush stated that there is a severe shortage of examination questions. He encouraged each association to submit local knowledge questions for their area. Captain Spence discussed his examination proposal, a copy of which was contained in the Board packet. The MPC briefed the Board regarding a software package he saw demonstrated at the CLEAR conference for automating examination generation and printing. The cost of the software demonstrated at the CLEAR conference is \$200.00, software packages with very similar abilities cost as much \$5,000.00. The Board strongly recommended that the Division purchase the \$200.00 software for trial use.

Agenda Item 24 **Business Items**

Mr. Kyle requested that a proposal to establish a new pilot station be put on the December teleconference agenda. Chairman Bush asked him to submit the proposal and stated that he would have it put on the agenda for the next meeting.

The Board set December 5, 1996 as the date of the Board's next meeting to be held by teleconference.

The Board directed the MPC to determine a date in January and April for the next examinations.

On a motion made by Mr. Smith, seconded by Mr. Hensley and carried unanimously, it was

RESOLVED to adjourn the meeting.

Respectfully submitted: _____
Peter D. Christensen,
Marine Pilot Coordinator

Approved this _____ day of _____, 1997.

Jeffrey W. Bush,
Deputy Commissioner