

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

**MINUTES OF MEETING
April 29-30, 1997**

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 April 29-30, 1997, in Juneau, Alaska.

4/29/97

Examinations were conducted from 0830 - 1230 as listed below:

M. George	-	Core
M. Anthony	-	Core
R. Desautel	-	Reg. Local Knowledge
F. Didier	-	Reg. Local Knowledge
L. Picton	-	Klawock
F. Didier	-	Yakutat
W. Carnes	-	Nichols Passage (including Metlakatla), and Glacier Bay

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
Ms. Barbara Huff Tuckness	-	Public Member
Mr. David Stewart	-	Public Member

Staff present were: Peter Christensen, (MPC)
 Ken Truitt, Assistant Attorney General (AG)

Agenda Item 2 **Review/Set Agenda**

The agenda was accepted as written with the following amendments. Southeast Alaska Pilot's Association (SEAPA) requested that their new training program be put on the agenda for the Board's consideration and approval. Consideration of SEAPA's Training Program was designated as Agenda Item 8a. Agenda Item 5 was moved to the second day and re-designated as Agenda Item 12a. Consideration of new regulation proposals and review of the regional training requirements codified in 12 AAC 56.028 were added to the agenda and were designated as Agenda Item 13a. Mr. Berto requested that Agenda Item 20 be moved up to the first day of the meeting rather than the second to accommodate the travel schedules of some interested parties. Chairperson Bush declined to move the item to the first day as he had personally told some interested parties that the item would be discussed on the second day of the meeting, April 30th. He did say that anyone who needed to travel tomorrow, could give their public comment today. Mr. Berto then requested that the agenda item be moved from the afternoon to the morning of the second day. Chairman Bush agreed, and Agenda Item 20 was re-designated Agenda Item 13b.

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

RESOLVED to approve the agenda as amended.

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

Ken Truitt, Assistant Attorney General presented a quick overview of the Ethics Act provisions relevant to the disclosure of conflicts of interest.

Captain O'Hara declared a conflict of interest with Agenda Item 18. He explained that he had declared that conflict at the beginning of the Renwick matter, that he had never participated in the matter, and that his conflict had been upheld by the Chairperson at that time. Chairman Bush said that he would not change an earlier decision of the Chair.

Chairman Bush clarified for the Board that only those Board members previously involved in the AMP Rate Case would act on the proposed

Decision and Orders. The other Board members did not need to recuse themselves from that agenda item.

Mr. Berto disclosed that he had a subsidiary company that could conceivably be impacted by the establishment of a pilot pick-up point as described in Agenda Item 20. Chairman Bush asked that Mr. Berto participate as a Board member in the discussion of Agenda Item 20.

Captain Spence recused himself from consideration of any licensing action for a Region 1 candidate that would have the effect of adding a new license to the region. Specifically, he recused himself from any consideration of licensing actions regarding Captain George and Captain Didier. The Chair accepted his recusal. Regarding Agenda Item 19, Captain Spence stated that he was recusing himself from any action regarding Captain Luck's licensing application, but not any discussion which might occur regarding the interpretation of the statute and regulations at issue.

Agenda Item 4

Investigation/Litigation Update

The MPC related that no new investigations had been opened since the last meeting of the Board.

Ken Truitt addressed litigation in process. In the Proteus litigation, we now have a ruling from Superior Court that excuses Dr. Vandenberg from the suit filed in Alaska. The court ruled that the physical examination Dr. Vandenberg conducted of Captain Nerup for the renewal of Captain Nerup's Alaska marine pilot license, did not provide a strong enough link to Alaska to place the doctor within the jurisdiction of Alaskan courts. The plaintiff's have filed a petition of review with the Alaska Supreme Court requesting that they review the Superior Court decision. The Alaska Supreme Court has agreed to hear that petition. The deadline for the filing of briefs will close April 30, 1997. Further progress in the suit is pending until the jurisdiction issue is ruled upon by the Alaska Supreme Court. Captain Nerup's psychiatrist, Dr. Hamm, the other doctor named as a defendant in the case, has already been dismissed from the case by stipulation.

Prior to last Christmas, the SEAPA rate case was briefed in court by both parties, ASA & SEAPA. The judge has not yet ruled in that case.

Gayle Horetski - Arrived

The MPC mentioned that Captain Petrich has filed an appeal in Alaska Superior Court, regarding the Board's decision to deny his application for renewal. We are currently awaiting the filing of his brief.

Ken Truitt - Departed Meeting

Agenda Item 6 **In Memory of James F. Drahos**

Chairman Bush recalled Captain Drahos's constructive review and critique of all the Board's deliberations and actions and how much he would be missed. He then said he would ask Captain O'Hara to go next, to be followed by anyone else who desired to eulogize Captain Drahos. In addition to Chairman Bush and Captain O'Hara the following persons spoke in remembrance of Jim:

Captain Tony Joslyn, SWAPA
Captain Dale Collins, SEAPA
Mr. Pete Christensen, MPC
Captain Moreno, AMP
Mr. Joe Kyle, ASA & Industry
Captain Bob Pawlowski, NOAA/NOS
Ms. Gayle Horetski, Assistant Attorney General
Captain Dan Twohig, Past MPC, SEAPA Apprentice
Bernie Smith, Board Member
Captain Richard Desautel, SWAPA Trainee
Mr. Bob Berto

Agenda Item 7 **Public Comment**

Captain MacPherson: Requested that when or if the Board considers any changes to the Deputy Marine Pilot Regional Training Requirements, 12 AAC 56.028, that they attempt to allow some flexibility in meeting the requirements. Captain MacPherson noted that training requirements that are too specific only lead to further regulations projects due to the continually changing flow of maritime commerce in Alaska.

Agenda Item 8 **Review and Possible Amendment of Recently Adopted Regulations**

Ms. Gayle Horetski, Assistant Attorney General was in attendance to assist the MPC in presenting to the Board the changes made as a result of the Department of Law's review. The MPC passed out a revised copy of the regulation package. The revised regulation package includes the changes made by the MPC following the Department of Law's initial review of the board's adopted package. With the assistance of Ms. Horetski, the MPC led the Board through the changes made in the

regulations package following the Board's adoption of the package at their last meeting.

End of Tape 1, Side A

Ms. Horetski stated that the proposed regulations, as rewritten, add significant clarity to the licensing requirements. She agreed with the MPC's characterization of the changes, in that they clarify the Board's intentions and stay within the scope of the public comment.

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

RESOLVED to adopt the newly revised draft regulation package as presented to the Board today.

Agenda Item 8a. SEAPA Training Program Presented for Board Approval

Copies of SEAPA's new Training Program were distributed to the Board and the audience. Captain Ted Kellogg led the Board through the changes made in SEAPA's training program. Generally, SEAPA had clarified and simplified the language of their overall program. Part I was not amended except for the substitution of the training committee and general membership where it previously listed the CEO. Part II's title was changed to Supervised Training rather than Hands On Training. Parts III, IV, and V were not changed. Part VI of their program dealing with the training of apprentice pilots was substantially amended. SEAPA increased their pilot apprenticeship program requirements over and above those currently existing in State regulations. Specifically, parts VI(b), VI(f)(3) - (5), VI(h), VI(i), were mentioned as having been changed. In addition a Part VII was added dealing with Misconduct, Dismissal and Grievance Procedures. Also, a Part VIII was added titled "Amendments and Conflicts". Captain Kellogg stated that he believed that the program as drafted did not conflict with any State regulations, if anything it now exceeds State requirements. It was reported that SEAPA's general membership voted unanimously to adopt the training program as presented.

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

RESOLVED to approve SEAPA's Training Program as submitted.

1445 Break
Gayle Horetski - Departed
1500 Back on record.

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

RESOLVED to enter executive session under the authority of AS 44.62.310(c)(2), for the purpose of conducting oral examinations of Captain Frank Didier and Captain Richard Desautel.

Chairman Bush called the meeting back to order at 1615.

Agenda Item 10 **Exam Results/License Issuance/Endorsements**

Captain Michael George and Captain Michael Anthony both passed the Deputy Marine Pilot Core examination. At the suggestion of the MPC they will both receive a letter stating their attainment of trainee status.

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

RESOLVED to license Captain Frank Didier as a Deputy Marine Pilot.

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

RESOLVED to license Captain Richard Desautel as a Deputy Marine Pilot.

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

RESOLVED to issue Captain Wayne Carnes extension of route endorsements for Nichols Passage including Metlakatla, and Glacier Bay.

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

RESOLVED to issue Captain Lew Picton an extension of route endorsement for Klawock.

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

RESOLVED to issue Captain Frank Didier an extension of route endorsement for Yakutat.

Agenda Item 11 Training Pilot Endorsements

The MPC detailed for the Board the requirements to receive a Training Pilot endorsement. One of the requirements to receive an endorsement as a Training Pilot is to have held an endorsement as an unlimited pilot for five years. The five year anniversary dates of holding an endorsement as an unlimited pilot were discussed for both candidates. Captain Homers five year anniversary had already occurred. Captain Bennett's five year anniversary will not occur until November 13, 1997.

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

RESOLVED to issue Captain Joseph Homer an endorsement as a Training Pilot.

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

RESOLVED, effective November 13, 1997, to issue Captain Terry Bennett an endorsement as Training Pilot, assuming all other requirements of the endorsement are still met at the time of endorsement.

Agenda Item 14. Correspondence

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

The MPC walked the Board through the correspondence contained in the Board packet and separated into the following categories: ACP, SEAPA, SWAPA, Captain Gray, Captain Atkinson, Captain Ward, Captain Skovoth, and the BMP Membership Roster. During the review of SEAPA's Training report the MPC noted that there is a statutory requirement to ascertain the number of association members that are State residents. Although there was very little discussion of these items, Chairman Bush and the MPC did provide additional background on each of the items for the benefit of the two new Board members present.

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

1700

RESOLVED to recess for the day.

0848Back on the record **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
Ms. Barbara Huff Tuckness	-	Public Member
Mr. David Stewart	-	Public Member

Staff present were: Peter Christensen, (MPC)
Ken Truitt, Assistant Attorney General (AG)

The MPC briefed the Board regarding an exam application problem that became known last night. Captain Desautel had applied to take the Region 2 Local Knowledge exam with the intent of also testing for Icy Bay. He had the federal endorsement for Icy Bay and had intended to be tested on the entire region to receive an endorsement as a Deputy Marine Pilot for the entire region. The examination is known as the Deputy Marine Pilot Regional Local Knowledge Examination. However, historically the Icy Bay exam, and similarly for Region 1, the Yakutat examination, have never been included in the Deputy Marine Pilot Regional Local Knowledge Examination. The MPC never understood that Captain Desautel had intended to also be tested for Icy Bay. The MPC would have expected an application for an extension of route to be submitted, similar to the separate application Captain Didier submitted to take the Yakutat and the West Coast of Prince of Wales examinations. In lieu of the confusion over the content of the examination, the MPC recommended that the Board allow Captain Desautel to take the Icy Bay extension of Route examination that morning.

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

RESOLVED to allow Captain Desautel to sit for the Icy Bay examination this morning with a proctor.

0900 Recess

Board recessed to allow the MPC time to set up the proctored examinations for Captain Didier and Captain Desautel up in the State Office Building.

0905 Back on Record

The Board decided to continue the meeting and begin taking public testimony during the MPC's absence.

Agenda Item 13

Public Comment

Captain Kellogg: Advised the Board that SEAPA is working on drafting some proposed changes to 12 AAC 56.028. He expected to have the proposed changes ready for the Board in time for the summer teleconference meeting. Captain Spence asked Captain Kellogg if he would mind if the Board went ahead and considered today whether the West Arm of Chomondeley Sound should be added to the mooring/unmooring section (12 AAC 56.028(a)(1)(F)) of the Southeast Alaska training requirements. Captain Kellogg responded that he did not mind, and that the Board might also consider the areas of Rose Inlet, View Cove, and Shakan Strait.

Captain Luck: Spoke regarding his letter to the Board that is listed as Agenda Item 19 and fielded questions from the Board. He stated that he felt that the requirement for "two years of service as a Commanding Officer of United States commissioned vessels (military vessels) of not less than 1600 gross tons" was probably intended to be just that, a normal two year assignment as Commanding Officer aboard a military vessel. He made the point that due to the limited opportunities for command in the military, the chance of anyone in their career being given command of two qualifying vessels would be extremely small. He felt that the statute's intent had been changed by the Board's adoption of the regulation in 12 AAC 56.012 titled Documentation of Service. Captain O'Hara asked by what formula Captain Luck determined that The CGC ACTIVE did not qualify as a vessel of not less than 1600 gross tons. Captain Luck replied that he had used the formula used by Coast Guard licensing offices, that is: $0.55 \times \text{Displacement Tonnage} = \text{Gross Tonnage}$. Captain O'Hara stated that 46 CFR 69 Subpart E also contained a formula for converting displacement tons to gross tons. It is known as the Simplified Measurement System, and is calculated by:

$$(\text{Length} \times \text{Breadth} \times \text{Depth}) \times (0.67) / 100 = \text{Gross Tons.}$$

Captain O'Hara had ascertained the length and breadth of the ACTIVE from Jane's Fighting Ships but Jane's only includes a vessels draft not its depth. He asked Captain Luck how many decks to the weather deck and

of what height? Captain Luck replied three decks of eight to nine feet in height. Using 23' as the figure above the waterline Captain O'Hara calculated a depth of 33.5'. Plugging the values into the equation Captain O'Hara calculated a tonnage value of 1607 gross tons for the CGC ACTIVE.

Captain Collins: Clarified for the board how AS 08.62.093(b) was drafted, before it's passage by the legislature as part of the Marine Pilot Act of 1991. He stated that the language was taken mainly from the Washington statutes governing Puget Sound pilotage. The drafters felt that AS 08.62.093(b) provided an avenue of approach to a State Marine Pilot license for anyone with applicable marine service. The reason the statute requires two years of service was because the drafters recognized that military service was accumulated differently, so they required two years instead of one. The statute was passed originally requiring that the two years service be acquired "while holding a masters of ocean steam or motor vessels of any gross tons". Captain Collins maintained that the requirement "while holding" was essentially a scrivener's error and in 1995 it was changed to read "and hold a masters of ocean steam or motor vessels of any gross tons.

Mr. Kyle: Testifying as a private citizen, Mr. Kyle stated he believed that Captain Luck's service more than qualified him to be an Alaska marine pilot trainee.

Captain MacPherson: Reminded the Board that during their last meeting they had determined that the "three years of experience as a member of a professional pilot's organization", as required in AS 08.62.093(b)(5), was to be counted as underway time on a day for day basis with a required total of 1080 days as "year" is defined in 12 AAC 56.012(c)(4). He pointed out that if that determination is going to hold, then the same logic should apply to the requirement for Commanding Officer service under AS 08.62.093(b)(4). In that Commanding officer service should be counted day for day underway, with 720 days required.

Captain Picton: addressing Karl Luck's letter before the Board. He stated that "fairness" has been mentioned several times regarding Captain Luck's situation. He pointed out that under the new Act, Alaska Marine Highway Officers with inland licenses are excluded from becoming pilots. "Why is it that the most qualified, most current mariners in Southeast Alaska are precluded by statute from getting a license? If we want to base this on fairness this is the biggest inequity in the Act." He disagreed that Captain Luck couldn't get more sea time. Nothing was precluding

Captain Luck from getting a job on a Merchant vessel and qualifying in that manner.

Captain Deelstra: reported to the Board as the Chairman of the Marine Safety Taskforce. The taskforce endorsed the Voluntary Waterway Guide for this year with a couple of small changes. Everyone agrees that the guide is helpful and improves safety, especially in Southeast Alaska. For the new members he described the makeup of the Marine Safety Taskforce.

Captain Cox: President of the North West CruiseShip Association introduced himself to the new Board members.

Agenda Item 13a.

New Regulation Projects

Draft regulations initiated by the Board were distributed among the Board and the audience. The MPC led the Board through the draft as written. Captain Spence suggested that the language of the draft regulation defining "navigating" be amended to clarify that in the case of tug and tows pilots were not required to be present both on the tug and the tow, but in the case of a transit in Southeast Alaska that exceeded eight hours, a second pilot would be required. Both Hans Antonsen of SEAPA and Tony Joslyn of SWAPA requested some latitude be given to the associations during the startup of the new report after its implementation. The Board then discussed a regulation change that Captain O'Hara desired to be made to 12 AAC 56.031(b)(2)(A) and 12 AAC 56.031(b)(4).

Moving on to consideration of changes to 12 AAC 56.028, Captain Spence led a discussion regarding new areas that may soon have vessel traffic and that should be listed as alternatives in the training regulations for Southeast Alaska.

Captain O'Hara then asked a question regarding the procedure in Southeast Alaska for opening new ports. Captain Spence, Captain Hans Antonsen, and Mr. Berto all responded with their thoughts on the matter.

Mr. Stewart said that the regional training requirements included a section for moorings and unmoorings, but he noticed that the Board had not defined moorings and unmoorings in our regulations. During its review of the docking and undocking definitions the Board determined that 12 AAC 56.990(7) and (8) need to be clarified. The Board then discussed other definitions that may need to be added or clarified and finished with

End of Tape 3, Side A

Tape 3, Side B

Captain O'Hara's recommendation to have the MPC look into the matter and make appropriate recommendations to the Board.

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

RESOLVED to have the MPC notice for public comment and possible adoption by the Board, a change to 12 AAC 56.028(a)(1)(E) to include Calder Inlet and changes to 12 AAC 56.028 (a)(1)(F) to include the West Arm of Chomondeley Sound, and Rose Inlet.

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

RESOLVED to have the MPC notice for public comment and possible adoption by the Board, changes to 12 AAC 56.031(b) to amend "35,000" to "25,000" in 56.031(b)(2)(A) and the addition of the word "supervised" to 56.031(b)(4) so that the five dockings and undockings are required to be supervised.

Break
1030 Back on Record

Agenda Item 13b. Kake - Pilot Pickup Points

Chairman Bush invited public comment on the agenda item, but it was subsequently decided to first have Captain Spence present background on the issue.

Captain Spence related the following: This item arose last winter when it was proposed to establish a pilot station at Kake. Considerable discussion and disagreement over the issue ensued. The Board asked all concerned to try and find an agreeable solution and present it to the Board at some later date. Over the winter both pilot groups agreed that Kake was not a good location for a pilot station. A month or so ago, Captain Collins was in favor of establishing a pilot station in the vicinity of Noyes Island, Captain Spence favored a location in the vicinity of Cape Bartolome. Captain Spence then found that plans were being made to use the Kingsmill Point area as a pilot pickup point without any formal adoption by the Board.

Captain Spence went on to say that there were two issues involved. The first was how much latitude do pilots and industry have in deciding when and where a pilot will be put on or off a ship? The second issue is whether or not to establish, and where to locate, a pilot station in the

vicinity of Kake or Kingsmill Point. Establishment of a pilotage station would require a regulatory project.

Mr. Bob Berto pointed out that for the last 12 years Kake has been used as a pilot pickup point for Hobart Bay and for Kake. Point Retreat has been used as a Pilot Station for the past 35 years. If a pilot boards a ship in the vicinity of Kingsmill Point, he/she will be on board 80 miles before Point Retreat. In the early years Point Retreat Pilot Station was used as the pilot transfer point for the port of Juneau.

Mr. Smith questioned whether the State could exert jurisdiction over an area that is more than three miles from land. Following his question, a discussion ensued regarding the distance from land over which the State could exert jurisdiction or control pilotage. Chatham Strait south of Frederick Sound is more than six miles wide its entire length. Leaving an area in the middle of the strait that is more than three miles from land on either side. The issue of where the State could control pilotage was not settled.

1130 Mr. Stewart Captain Joslyn told the Board that the pilotage boundaries were established
left the meeting to by a committee whose criteria was simply where they felt that the State
take a phone call. had
a legitimate interest. In the cases of Southeast Alaska and other areas, the
committee drew a line from headland to headland or from a headland to
the seaward navigation aide and back to the next headland when
establishing the State compulsory pilotage areas. They did not use the
territorial sea or three miles or any other such criteria.

1145 Mr. Stewart Captain Burton stated that he felt that the Kingsmill Point area was a safe
returned. area to board a pilot. He also agreed with Mr. Berto that boarding a pilot
80 miles before the pilot station at Point Retreat will add to the safety of
the transit. Under questioning from Captain Spence, Captain Burton
replied that taking a ship within one mile of land to use the Cabras Island
pilot station is in his opinion is an unnecessary risk when he can use a
pilot pickup point in southern Chatham Strait where his ships will remain
more than five miles from land. He also said that having to turn around in
confined waters after using the Cabras Island pilot station was not a safety
improvement, and that it would not be reasonable to establish a pilot
pickup point on the outer coastline seaward of Cabras Island because it
would not be in protected waters.

End of Tape 3, Side B
1250 Break for Lunch
1235 Back on Record
Start Tape 4, Side A

Chairman Bush called the meeting back to order.

Mr. Smith made a motion to table the Kake/Pickup point issue until the fall meeting of the Board. Mr. Berto seconded.

Chairman Bush explained that under Robert's Rules no discussion is allowed of a motion to table.

A roll call vote was held. The results were as follows:

Chairman Bush	- Yes
Captain O'Hara	- No
Captain Spence	- No
Mr. Berto	- Yes
Mr. Smith	- Yes
Mr. Stewart	- Yes
Ms. HuffTuckness	- No

On a motion made by Mr. Smith, seconded by Mr. Berto, and carried by a vote of four to three, it was

RESOLVED to table the Kake/Pickup point issue until the fall meeting of the Board.

Chairman Bush explained that in his opinion tabling the issue until the fall meeting meant that the Board was not ready to interpret the requirements of the regulations as written regarding the establishment and operation of pilot pickup points.

Mr. Berto left the meeting to catch his flight.

Agenda Item 18

Renwick Case Update / Lift Stay / Referral to Hearing Officer

Ms. Horetski, Assistant Attorney General joined the meeting for this agenda item as an advocate for the Division of Occupational Licensing (Division). Mr. Kibbe, representing Captain Renwick, joined the meeting via speaker phone. Captain O'Hara left the Board table since he is recused in this proceeding.

The MPC stated that in light of the Supreme Court ruling the Board expected to receive the case back from the court system. With that in mind, and because the Board has two new members, the Board wanted to receive a case status update from Ms. Horetski, discuss lifting the stay on the proceedings and refer the matter to the hearing officer.

Accomplishment of these procedural matters will allow the case to proceed without delay. The MPC turned the proceedings over to Ms. Horetski.

Ms. Horetski reviewed for the Board the present status of the case and briefly described the purpose of the each of the three paragraphs in the order. The order pending before the Board lifts the stay on the proceedings, refers the matter to the hearing officer and directs the MPC to forward the case to the hearing officer upon it return from Superior Court. She explained that since the Board meets so infrequently the order would allow the case to proceed without being held up until the Boards next meeting.

Mr. Kibbe said that Ms. Horetski had properly stated the posture of the case as he is aware of it. He said he had reviewed the proposed order and stated that it was his understanding that the Board had not yet received the case back from the court and that the order was in anticipation of that receipt. Secondly he said he understood that there was no hearing officer at present. Chairman Bush clarified for Mr. Kibbe and the Board, that a new hearing officer named David Stebing had been hired and that he would begin working in the position next Monday, May 5, 1997. With that added information Mr. Kibbe stated that he had nothing additional to add to what Ms. Horetski had said and certainly he did not have any difficulty with the order as Ms. Horetski has proposed it.

On a motion made by Mr. Stewart, seconded by Mr. Smith, and carried unanimously by the Board members present, it was

RESOLVED to enter the order.

Agenda Item 16. Decision in AMP Rate Hearing

The MPC gave the Board copies of the prepared decisions and orders in the AMP rate hearing. He then outlined the procedural background of the case. Only the four Board members originally involved (Chairman Bush, Captain O'Hara, Captain Spence, and Mr. Smith) were allowed to vote on whether to adopt, amend or decline the decisions as written.

On a motion made by Mr. Smith, seconded by Captain O'Hara, and carried unanimously by the Board members listed above, it was

RESOLVED to accept the Decision and Order for Case No. 1950 - 97 - 1(A), which finds that sections (a), (b) - with the exception of

Kivalina, (c), (e) through (g), and (l) through (v) of AMP's 1997 Proposed Rate filing for the provision of marine pilotage services in the Western Alaska Pilotage Region are reasonable.

On a motion made by Mr. Smith, seconded by Captain Spence, and carried by a vote of three to one, (Captain O'Hara dissenting), it was

RESOLVED to accept the Decision and Order for Case No. 1950 - 97 - 1(B), which finds that sections (b) - Kivalina, (d), and (h) of AMP's 1997 Proposed Rate filing for the provision of marine pilotage services in the Western Alaska Pilotage Region are unreasonable.

Captain O'Hara declined to state which part of the decision he had a problem with or why.

Captain Moreno was informed that AMP now had 60 days to notice new rates for the ones that were found to be unreasonable by the Board and that the rates found to be reasonable were effective retroactively to January 1, 1997. Captain Moreno and Mr. Kyle, as the representatives of the two parties involved, were given copies of the decisions accepted by the Board.

Agenda Item 12a. Review/ Approve Meeting Minutes

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

RESOLVED to approve the draft Minutes of the Board Meeting, February 5-7, 1997, as corrected.

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

RESOLVED to approve the draft Minutes of the Board Teleconference, December 5, 1997, as corrected.

Agenda Item 14. Correspondence (continued)

The MPC led the Board through the last few items of correspondence.

BMP Legal Costs - Spreadsheet
BMP Expenses to Date

End of Tape 4, Side A

Tape 4, Side B

Regarding the BMP legal costs and the overall expenses of the Board Chairman Bush gave a quick explanation of the fee setting/collecting mechanism employed by the Division. He explained that the Division has a mandate from the legislature to cover all costs of regulating the occupations covered by the Division. He also briefed the Board on the Receipts bill pending before the legislature. It looks like it's going to pass, unfortunately, the Occupational Licensing receipts are not currently included in the bill.

Agenda Item 19. Evaluation & Credit for Military Sea Service:

The MPC summarized Captain Luck's letter to the Board and how the applicable statute and regulatory definitions impact the evaluation of his military sea time. He concluded by saying that he felt Captain Luck's letter contained two main issues. The first was that military vessels are measured in displacement tons and the statute language speaks of vessels measured in gross tons. The second issue is that the definition of "service" as defined in 12 AAC 56.012(c) may be improper when applied to the service requirement as stated in AS 08.62.093(b)(4).

Captain Luck then spoke on a third issue that the MPC did not address. He pointed out to the Board, that under 46 CFR Part 10.103, service as a commanding officer does not receive time and a half credit even though a commanding officer regularly works more than a twelve hour day when underway. He also pointed out that the Coast Guard probably could not provide an accurate record of his actual number of days underway because of how they define "underway" for their own internal records. The Coast Guard does not have any need to keep a record of days underway as it is done in the Merchant Marine and what service the Coast Guard does record as underway would not all qualify using the definition the Board has adopted for "underway".

Captain O'Hara then addressed the measurements to be used in the simplified measurement formula to convert the displacement tonnage of a Coast Guard 210' cutter to gross tonnage. From a previous discussion Captain O'Hara had with Captain Luck, it was Captain O'Hara's understanding that on a 210' cutter there are three decks before the weatherdeck, and that the distance involved was approximately 23'. To obtain a measurement of the ship's depth for use in the equation, Captain

O'Hara added the 10.5' draft of the cutter to the 23' to obtain a depth of 33'. Using the figures for length and width from Jane's Fighting Ships, Captain O'Hara computed the gross tonnage of a Coast Guard 210' cutter as greater than 1600 gross tons. He said that if the Board would accept his calculations and Coast Guard 210' cutters as valid service under the statute and regulations, the Board would be able to get away from debating what the intention of the legislature was when they enacted the statute. He said he was very uncomfortable with trying to determine the legislature's intent at this late date. If the Board accepts service aboard a Coast Guard 210' cutter as qualifying under the statute and the Board's regulations, then Captain Luck would have over four years assigned to qualifying vessels. Even if only 50% of his assigned time aboard the 210' and 378' cutters is deemed to qualify as "underway", he would still meet the basic experienced requirement.

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

RESOLVED to accept Captain O'Hara's calculation of gross tonnage for a Coast Guard 210' cutter.

The MPC explained to the Board that Mr. Winter had left the meeting and would not be putting on the presentation he had scheduled.

Agenda Item 15. MPC Items for Clarification (a.k.a. Stump the Board)

Biennial License Renewal - 12 AAC 56.080(f)

The MPC explained that paragraph (f) of this regulation will be in effect during the next renewal period. He had intended to send out a letter to affected license holders reminding them that the paragraph would be in force at the next renewal, when he realized he was not sure exactly what the word "exclusion" meant as used in this regulation. For instance, would Region 1 or Region 2 licensees who do not currently have Yakutat or Icy Bay on their license (as appropriate), need to acquire them before the next renewal? The MPC requested that the Board clarify how this regulation should be enforced.

Captain Twohig stated that the regulation applied only to Marine Pilots and that it was designed to require pilots who were grandfathered in with holes in their license when the 1991 Pilotage Act was passed, to clean up all their exclusions by January 1, 1999.

Captain MacPherson spoke in agreement with Captain Twohig, in that the regulation could only be reasonably applied to Marine Pilots and not Deputy Marine Pilots.

Captain Joslyn agreed with Captain Twohig's statement in that the Marine Pilots were supposed to have cleaned up their licenses. He encouraged the Board to go ahead and treat Icy Bay as an exclusion. That is to say, enforce the regulation so that Region 2 license holders would have to get Icy Bay before the next renewal. He stated that there were plenty of trips in and out of Icy Bay, so that anyone who wanted to get the endorsement would be able to get the trips.

Ms. Horetski clarified for the Board that 12 AAC 56.960(18) was written to clarify in the regulations that a State licensed Marine Pilot or State Marine Pilot meant an Alaskan State Pilot. So that when it said under the supervision of a State licensed pilot, a pilot from another state could not supervise, it has to be a Alaska state pilot.

Captain Spence said Region 1 Marine Pilots should be able to pick up Yakutat. He went on to say that in recent years there has been quite a bit of traffic to Yakutat.

The MPC stated that someday he would like to see "marine pilot" changed in the regulations to "master pilot," where appropriate, and leave Deputy Marine Pilot as is. Then the phrase marine pilot could be used exclusively to mean all marine pilots, master and deputy pilots.

Following the discussion, the Board clarified that 12 AAC 56.080(f) will not be applied to Deputy Marine Pilots and that Yakutat and Icy Bay will be considered as exclusions for the purpose of enforcing this regulation.

Comparison of 12 AAC 56.040 vs. 12 AAC 56.030

The MPC stated that he did not have all the materials in the Board packet or available to hand out that should accompany this item. He decided to introduce the issue to the Board by briefly describing the issue and then invite Captain MacPherson to give additional information. The MPC went on to review what he had recommended to the Board at their last meeting, regarding the renewal and conversion of Captain Gray's license from his previously lapsed Channel Pilot license. The MPC had told the Board that Captain Gray would use the step system laid out in 12 AAC 56.040 to remove the docking restriction on his license.

Captain MacPherson spoke and explained to the Board, that 12 AAC 56.030 was the real entry into the step system. If an applicant does not qualify under 12 AAC 56.030, then the applicant may proceed by pursuing through the requirements laid out in 12 AAC 56.040. Captain MacPherson pointed out that pilots have received their license under 12 AAC 56.030, specifically he mentioned Captain Winter and AMP pilots.

The MPC pointed out that 12 AAC 56.030(c) requires an applicant to comply with 12 AAC 56.025. 12 AAC 56.025 now requires an applicant to complete an approved training program. Captain MacPherson replied that a pilot association could develop a training program to fit the need. Captain O'Hara pointed out that training programs need to be submitted to the Board for approval.

1520 Recess
1530 Back on Record

Agenda Item 10

Exam Results/License Issuance/Endorsements - (continued)

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

RESOLVED to issue Captain Richard Desautel an extension of route endorsement for Icy Bay.

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

RESOLVED to issue Captain Frank Didier an extension of route endorsement for the West Coast of Prince of Wales Island.

Chairman Bush asked the MPC if he had any items not on the agenda that he desired to bring before the Board. The MPC related that Captain Joslyn wanted to make a short presentation to the Board regarding some changes in P.W.S. traffic patterns. Secondly, Captain Bob Winter will not be able to do his presentation scheduled for Agenda Item 21. Captain Winter had asked the MPC to clarify the Board's continuing education requirement regarding ARPA. The regulations require a pilot to complete a course "approved by the manufacturer of the ARPA." The MPC explained to the Board that with the exception of the course at Alaska VoTech in Seward, there really was no courses actually approved by the manufacturer. Other courses approved by the Coast Guard have been accepted as meeting the requirement because when the Coast Guard approved the courses they relied on the fact that the training was being conducted in compliance with the manufacturer's manuals. When the

regulation was written the Coast Guard was not approving ARPA courses. Now, since they are, the MPC recommended that the Board change it's regulation to require Coast Guard approval. Following some discussion by the Board, it was agreed to table this item until Captain Winter can make his presentation.

Before Captain Joslyn made his presentation, Captain Spence made a proposal to amend 12 AAC 56.120(b) by inserting the following language:

“When safe embarkation at an established pilot station is not possible or when travel to an established pilot station would require a vessel delay of 12 hours or more, pickups will be made only by specific arrangement with the ship's agent and pilots.”

Captain Spence stated that this regulation change would address the two legitimate concerns a ship might have for not using an established pilot station.

The foregoing was made in the form of a motion to ask the Board to authorize a regulation project to amend 12 AAC 56.120(b).

Captain O'Hara seconded the motion. Chairman Bush identified some concerns with the proposal, but agreed with it in concept.

A discussion ensued regarding when the Board should take up the matter again. Chairman Bush pointed out that, realistically any regulation drafted or adopted by the Board would not impact this summers operations. Chairman Bush encouraged Captain Spence to work with the MPC and Ms. Horetski to draft a regulation for the Board to consider. The MPC requested what the Board's intent for the draft regulation. Chairman Bush said that the intent is to devise a regulation that does not allow pickups points to be established at random, and thereby essentially undermine the requirements of the Act.

Captain Spence agreed to work with the MPC to provide a draft regulation by the next meeting that will address this issue. Captain Spence then withdrew his proposed motion. The MPC was directed to include consideration of the draft regulation on the agenda for the Board's next meeting.

Presentation re Traffic Pattern Changes in P.W.S.

Captain Joslyn presented how the vessel traffic lanes will be reconfigured in Prince William Sound. The main change will allow a more direct entrance and exit course at Hinchbrook Entrance. Currently, from abeam Cape Hinchbrook Light, the traffic lanes proceed approximately 24 miles into P.W.S., then turn right approximately 30 degrees when roughly abeam Smith Island. This dog leg in the traffic lane was designed to route ship traffic around an historic crab fishery. The crab fishery has not been in use now for many years. The change in the traffic lanes will essentially allow ships to sail a shorter distance by not completing the two sides of the dog leg and instead taking a more direct course from the entrance. There will also be an accompanying change in the escort vessels. He said also that this will require a change in the location of one of the P.W.S. pilot stations.

Agenda Item 17. Status Update of the Marine Simulator Project

Captain O'Hara began this agenda item by relating to the Board his recent experience at a simulator in San Diego run by Marine Safety International (MSI). He was invited to participate in joint training being conducted for ARCO Marine, Inc. and Crowley Maritime Corporation. Also on hand to observe the training were the following: Dennis Maguire, Alyeska Pipeline; Captain Tomasovic, BP Oil Shipping Co.; Tim Jones, P.W.S. RCAC; CDR Ron Morris, Marine Safety Office Valdez; Steve Provant, ADEC and the MPC. ARCO and Crowley asked MSI to develop interactive simulator training scenarios for their tank vessel masters and tug skippers respectively. The simulations are run simultaneously in separate rooms and are completely interactive. Captain O'Hara was invited to perform the role of pilot for the various training scenarios.

One of the scenarios was developed to see if a laden tankship that suffered an engine and rudder failure while transiting the narrows could be saved from grounding. When transiting the narrows, tankships are approximately 0.25 miles from the coastline. Captain O'Hara related that the simulation showed that with a concerted effort, it is possible to prevent a tanker in that situation from grounding. Captain O'Hara said this all ties in with pilot performance evaluations. He was very impressed with the realism of simulation, and how the training was conducted. It was a non-punitive evaluative experience and educational in nature. It is educational not only because personnel are able to sharpen their BRM, ship handling, and decision making skills, but because they have the opportunity to perform in other roles with which they are unaccustomed. This "walking a mile in the other persons shoes" creates a sensitivity to other team members challenges and allows for better coordination, communication

and decision making in future events. For instance Captain O'Hara had an opportunity to perform as the tug skipper. Captain O'Hara told the Board, "In my opinion the whole process was a super bridge resource management class. It is the goal of where we want to head in this performance evaluation." MSI indicated that they would be willing to conduct non-punitive pilot performance evaluations on the basis of education. If a pilot made a mistake in a simulation and put a ship aground, no one would be happy, but he wouldn't have to lose his license over it. The pilot would do it again, and learned how to do it. Captain O'Hara stated "If the State could somehow piggyback with ARCO, BP, Princess Lines, various cruise ship lines. Piggy back this whole bridge resource management, shiphandling, State, private, into a unit that all pilots participate in, I think that's the direction this performance evaluation should go."

End Tape 5, Side A
Tape 5, Side B

The MPC reflected on his experience at MSI and agreed with all of Captain O'Hara's comments. He then gave a brief summary of where the RFP process stood.

Evaluation of MPC

Since it had been nearly 10 months since Mr. Christensen became the MPC, Captain O'Hara asked the Board to evaluate his performance as they had done once for Mr. Twohig, the previous MPC.

Captain O'Hara said that he thought Mr. Christensen has done an excellent job, he's worked hard, he's been thorough, and he's enjoyed working with him.

Captain Spence said he could agree with that.

Mr. Bush seconded that, adding that he probably worked more with Mr. Christensen than anyone.

Mr. Smith also agreed and stated that it is a very demanding position.

Request for Purchase of "Simulated Voyages"

Captain Spence requested that the Division buy enough copies of the National Research Council's book titled "Simulated Voyages", so that each Board member could receive a copy.

The Board agreed to request 6 copies.

Captain O'Hara's Last Board Meeting

Captain O'Hara reminded the Board that this was his last meeting before his appointment expires June 1, 1997. Of course, he will continue to serve on the Board until replaced.

Mr. Smith thanked Captain O'Hara for his professional courtesy, and knowledge that he exhibited during his eight year tenure as a Board member.

The MPC thanked Captain O'Hara for his candor and said he hoped it would continue when he was in the audience.

Chairman Bush said simply "Mike we're going to miss you," and added that he hoped Captain O'Hara would continue to assist the Board from the audience.

Agenda Item 17. Status Update of the Examination Process

The MPC quickly related that the computer program that was to hold the examination question data bank was on-line, but that he had encountered problems importing questions into the program. If he wasn't able to import the questions, they would have to be entered manually. He anticipated being able to create the October Board examinations from the data base.

Agenda Item 22. Business Items

The Board set the following dates for Board meetings and examinations:

Teleconference with examinations: August 21, 1997

Meeting Dates with examinations: Oct 29-30, 1997, Jan 29-30, 1998,
Apr 1-2, 1998

On a motion made by Captain O'Hara and seconded by Mr. Smith 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