

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

**MINUTES OF MEETING
January 26-27, 2000**

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 January 26-27, 2000, in Juneau, Alaska.

1/26/00

No examinations were scheduled or administered.

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

Mr. Bush called the meeting to order at 1340. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Jeff Bush	-	Commissioner's Designee
Captain Pete Garay	-	Pilot Member
Captain Michael Spence	-	Pilot Member
Mr. Bob Berto	-	Agent/Vessel Manager Member
Mr. Jeff Thompson	-	Agent/Vessel Manager Member
Ms. Barbara Huff Tuckness	-	Public Member
Mr. Michael White	-	Public Member

Staff present was: Peter Christensen, (MPC)

Agenda Item 2 Review/Set Agenda

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to approve the agenda as written.

Agenda Item 3 **Declaration of Potential Conflicts of Interest/Recusals**

Mr. Truitt arrived Responding to a recommendation from Chairman Bush, Mr. Truitt gave a brief summary of the Ethics Act for the Board's new member (Mr. Thompson).

Mr. Berto mentioned that "pilot stations" were on the agenda and that he felt obligated to disclose (as he has before) that although it has no direct financial impact on him, S. E. Stevedoring (his employer) operates pilot boats in SE Alaska. Chairman Bush ruled that Mr. Berto was not prohibited from discussing/voting on the pilot boat issue before the Board. This ruling was consistent with his previous rulings on the issue.

Mr. Berto also raised his participation in the SWAPA rate hearing as a possible conflict. Chairman Bush ruled that Mr. Berto could participate in the SWAPA rate hearing. Mr. Thompson raised the same possible conflict. Chairman Bush ruled that Mr. Thompson could participate in the SWAPA rate hearing. Chairman Bush noted that neither of the Board members was directly connected to the Plaintiff's and that the potential conflicts were of a conjectural nature.

Captain Spence declared three possible conflicts: Since he was a member of a regional organization Captain Spence declared a possible conflict with his participation in the oral examination and the vote to issue a license to the license applicants from SE. Chairman Bush ruled that Captain Spence could participate in the oral examination but that he could not the vote on whether to issue a license. Secondly, a possible conflict existed regarding the issue of ACP's proposed changes to its operating rules and bylaws. Chairman Bush excused Captain Spence from voting on the ACP Operating Rules. Lastly, Captain Spence asked for a ruling regarding the pilot station issue of the agenda. He noted that he was not an owner, operator or participant in the pilot boat business. In this instance Chairman Bush ruled that there was no conflict.

Agenda Item 4 **Investigation/Litigation Update**

Mr. Truitt gave an update of the Proteus litigation. He stated that the discovery phase of the litigation was scheduled to close soon, however the plaintiff's may request an extension. Following discovery, the State will be able to offer its motion to end the litigation.

The MPC updated the Board regarding the Renwick litigation. Last November's hearing was postponed when it was discovered that Captain Renwick would not be in attendance. Subsequently his counsel indicated that Captain Renwick might surrender his license. A conference to update the status of this case is to be held this afternoon, January 26, 2000. Captain Renwick's counsel is indicating now that Captain Renwick wishes to have the hearing.

Regarding investigations, the MPC stated that none had been closed and that three new investigations had been opened.

Agenda Item 5 **Review/Approve Meeting Minutes**

The Board discussed whether any changes needed to be made to the October minutes before their approval. A change was noted on page 6 of the October minutes.

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

RESOLVED to adopt the October 1999 minutes as amended.

The December minutes included the wrong last page so the Board put them aside until the correct page could be reviewed.

Agenda Item 6 **Exam Results/License Approval/Endorsements**

The MPC reported to the Board regarding the challenge and re-scoring of the marine pilot examinations that were administered last meeting. One of the candidates had challenged the examination under 12 AAC 02.400. The candidate wrote up his challenge and submitted it to the MPC. The MPC reviewed the challenges and made his recommendations. Captain Spence independently reviewed the challenges and made his own recommendations. The combined recommendations were presented to the Board in executive session during a teleconference on December 10, 1999. During their deliberation, the Board determined that the answer key was incorrect in five instances and that one question had been improperly credited to all three examinees. Since the answer key was incorrect, the Board decided to re-score all three of the examinees exams using the correct answers. When the exams were re-scored, all three examinees made a passing score on the exam.

Agenda Item 7 **Oral Examinations** – (Executive Session)

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to enter executive session to conduct Captain Jones and Captain Luck's oral examinations.

Tape off.

The Board returned from executive session.

Tape on.

Agenda Item 9 **Updates**

Chairman Bush moved to Agenda Item 9 while waiting for Mr. Berto to rejoin the Board.

The MPC gave the Board an update regarding the electronic quarterly report project. He stated that he still must sort out some formatting issues with two of the pilot associations.

Agenda Item 8 **Approve issuance of Original Licenses (as required)**

On a motion made by Mr. Jeff Thompson, seconded by Ms. Barbara Huff Tuckness and carried unanimously (Captain Spence was recused), it was

RESOLVED to approve the issuance of a Deputy Marine Pilot license of not more than 25,000 GT to Captain Karl Luck and Captain Scott Jones.

Agenda Item 9 **Updates**

The MPC stated that he was inputting questions for Region 3 and that he had recently received some new questions from Captain Garay for Region 3. Captain Spence volunteered to also check the CORE exam questions once they are entered into the database. Chairman Bush requested once again that the associations submit new questions for the examination database.

Captain Garay spoke regarding the pilot availability committee. He stated that he had been unable to hold a committee meeting during the holidays, but that he intends to hold the first meeting soon.

The MPC updated the Board regarding the Sea Trials held at RTM Star Center on the simulator based pilot performance evaluation program. The

sea trial attendees made recommendations for changes to the geographical models and ship models. When the changes are complete, RTM STAR Center will submit a letter to the Board to that effect. The syllabuses will be forwarded to the Board for review when they are complete.

For the record, the MPC wanted to confirm which associations would fill the six scheduled classes/evaluations at the RTM STAR Center simulator. The following was determined: SEAPA and ACP would jointly fill the March class at RTM STAR Center. SWAPA would fill the April class. SWAPA also will fill the first class date in October. ACP will fill the second class date in October. SEAPA will fill the November class. AMP will fill the December class.

Agenda Item 10 **Amendments to ACPA's Operating Rules**

End Tape 1, Side A
Begin Tape 1, Side B

Captain Baken presented the amendments to ACP's Operating rules and fielded questions from Board members.

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

RESOLVED to approve the proposed amendments to rules 12 and 13 of ACP's Operating rules.

Chairman Bush moved into a discussion of the rate hearing and the prehearing conference that was scheduled for 1700. Captain O'Hara asked to postpone the conference until Captain Weaver and Captain Eliassen were present.

Captain Garay noted that the Board has approved many changes to association operating rules and bylaws over the last few years and expressed a desire to review a complete copy of each association's operating rules and bylaws and possibly have the law department review them for legal compliance.

1616 Recess

The Board recessed until it could begin the pre-hearing conference.

1648

Chairman Bush held the pre-hearing conference with both parties. Other board members present included Captain Spence, Captain Garay, Mr. Thompson, and Ms. Huff Tuckness. Captain O'Hara, Captain Eliassen and Captain Wright represented SWAPA. Captain Colby was present representing industry.

Chairman Bush led the parties through a short discussion of the hearing procedure, exhibits, and potential witnesses. He then explained the various decisions the Board might reach. The parties followed with a short description of their presentations. A general discussion of the issues separating the parties followed.

1709

The Board recessed for the day.

1/27/00

Chairman Bush noted that all of the Board members were present and that the first public comment period was solely for comments on items other than the proposed regulations. The Board would take oral comment on the proposed regulations later that day.

Agenda Item 11

Public Comment

Mr. Ken Castner: recommended that the Board review and reorganize the regulation book in a more systematic manner. While at RTM STAR Center, he reviewed the syllabi to the degree that they were finished and complete. He noted some omissions and is confident that RTM STAR Center will address them. He also commented that while the simulator is less than real life in some respects (such as depth of field), he felt that RTM STAR Center provided an excellent bridge team for the evaluations.

Mr. Joe Kyle: addressed rate setting procedures as outlined in the rate setting statute. He discussed the proper use of the publicly noticed non-contractual rate. He then moved on to comment on training costs such as those outlined in SWAPA's rate.

End Tape 1 Side B
Start Tape 2, Side A

Captain O'Hara: spoke in rebuttal to two of Mr. Kyle's comments.

Agenda Item 12

Procedures to Challenge Examination – 12 AAC 02.400

The MPC introduced the topic by revisiting the Board's exam protest procedure and the provisions of 12 AAC 02.400 that allow examinees to challenge exams. During the examination challenge procedure that occurred last December, the Board noted that the challenge process outlined by regulation worked much better than the Board's protest procedures.

Chairman Bush went on to further develop the subject. Chairman Bush noted that in the case of the Bar exam, only the protesting party receives credit for a successful challenge.

Captain Spence reminded the Board that at a previous meeting he had recommended that the Board formulate written policy on all aspects of examinations including maintenance of the database, how questions are replenished, procedures for challenging an exam, and so forth. He again recommended that the Board adopt formal written regulations on these exam issues. He also stated that the challenge procedure outlined in the regulations worked much better than the Board's informal historical exam question "protest" process.

The Board agreed to consider adopting a regulation that would further define the examination process. Captain Spence volunteered to outline the content of the regulation. Mr. Thompson asked whether it might not be better to establish a committee to work on the problem. Chairman Bush stated that he felt it would be best to have Captain Spence provide a rough draft of regulation's content for review, then a committee could be established if the proposed content turned out to be controversial. The Board agreed that until such time a regulation defining the examination process is adopted by the Board, the Board will no longer use its informal examination protest procedure. Only the examination challenge procedure currently outlined in regulation (12 AAC 02.400) will be used.

Agenda Item 13

STCW License Requirements for Renewal – 12 AAC 56.080(a)(5)

The MPC outlined the issue for the Board with regard to the STCW requirements to renew a Federal pilotage license and the possible impact it could have on renewal of a State pilotage license. Effective in the year 2002, an applicant will have to meet the STCW requirements to renew a Federal license. If an applicant does not wish to meet the STCW requirements, an applicant may renew his/her Federal license for continuity. The Board's regulation for renewal of a State license (12 AAC 56.080(a)(5)) requires that the applicant "submit a current copy of the marine pilot's valid Coast Guard license. . . ." (emphasis added). The issue before the Board was what constitutes a "current" and "valid" license.

During the ensuing discussion, it was suggested that someone familiar with the STCW issues make a presentation to the Board and that the Board

should see how other State pilotage authorities will be handling the issue. Without more information the Board was not inclined to rule on the issue.

Agenda Item 14 **Oral Comment on Regulations Pending Review/Adoption**

Captain O'Hara: requested that the proposed amendment to 12 AAC 56.031(b)(4)(B) be amended to read that "at least 50% be performed within the period beginning October 1 and ending April 1.

Captain Rathgeber: recommended that the RTM STAR Center program emphasize training over evaluation. She also stated a concern that since RTM STAR Center is largely funded and used by cruise ship companies, there exists the possibility that the database will be misused by the cruise industry.

Captain Grobschmit: read a letter to the Board regarding his insurers inability to insure him against the possible loss of his license through failure to successfully pass the simulation based performance evaluation system being developed at RTM STAR Center. He asked the Board to clarify his understanding that the associations were required to charge the publicly noticed rate if a separate agreement does not exist. Chairman Bush stated that the way he read the statute, lacking a separate agreement, the pilot associations were bound by law to charge the publicly noticed rates for pilotage.

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

Captain Baken: spoke in favor of extending the notice requirements in SE Alaska as proposed and in favor of deleting the pilot stations in upper Chatham Strait.

Captain Didier: spoke in favor of deleting the pilot stations in upper Chatham Strait. He noted that pilots are only effective when they are onboard the vessel. Pilots should board vessels earlier rather than later.

Captain Hans Antonsen: gave a presentation in favor of deleting the pilot stations in upper Chatham Strait.

Captain Kellogg: gave a presentation in favor of deleting the pilot stations in upper Chatham Strait.

Captain Collins: stated that Sitka would be acceptable as an alternative to the Cornwallis Point Light pilot station, but Sitka should not be a primary pilotage station for entry into SE Alaska.

Board Recess

End Tape 2, Side B
Start Tape 3, Side A

Mr. Eley spoke in favor of retaining the current pilot stations in upper Chatham Strait.

Mr. Kyle spoke in favor of retaining the current pilot stations in upper Chatham Strait. He also read a letter from Kennecott Greens Creek Mine regarding the possible economic impact that they may incur if the upper Chatham Strait pilot stations are deleted. He also spoke in favor of passing a regulation that would require pilots to successfully pass the simulator based pilot performance evaluation program developed by RTM STAR Center.

Mr. Geldeker: spoke in favor of retaining the current pilot stations in upper Chatham Strait. Closing the upper Chatham Strait pilot stations would limit the options for getting pilots on cruise ships in the summer.

Mr. Cronk: spoke in favor of retaining the current pilot stations in upper Chatham Strait based upon economic impacts and the lack of a navigational safety problem in Chatham Strait.

Mr. Castner: spoke in favor of passing a regulation that would require pilots to successfully pass the simulator based pilot performance evaluation program developed by RTM STAR Center.

1138

Pubic Comment Period Closed.

Agenda Item 15

Consideration of Regulations Pending Review/Adoption

The Board began its consideration of the regulation package.

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

RESOLVED to amend the proposed 12 AAC 56.031(b)(4)(B) in accordance with SWAPA's earlier request.

(Captain O'Hara: requested that the proposed amendment to 12 AAC 56.031(b)(4)(B) be amended to read that "at least 50% be performed within the period beginning October 1 and ending April 1).

End Tape 3, Side A
Begin Tape 3, Side B

Captain Garay then addressed the Board regarding the proposed amendment to 12 AAC 56.083 and suggested that the regulation be

amended by substituting the phrase “training course” in place of the word “evaluation”.

1210 Lunch recess.
1315 Returned from lunch

Agenda Item 16 **Rate Hearing - SWAPA**

The rate hearing was conducted with Captains Jim Wright, Eric Eliassen, and Michael O’Hara representing SWAPA. Captain’s John Colby and John Poulus represented ATC and SeaRiver Maritime.

End Tape 3, Side B
Start Tape 4, Side A
End Tape 4, Side A
Start Tape 4, Side B

Following presentations by both sides and questions from the Board the Board returned to Executive session to deliberate and arrive at a decision.

On a motion made by Captain Spence, seconded by Ms. Huff Tuckness and carried unanimously, it was

RESOLVED to enter executive session to deliberate and arrive at a decision on the SWAPA rate.

Tape off.
1520
Tape on.

The Board returned from Executive session.

A motion was made by Captain Garay, and seconded by Ms. Huff Tuckness that the rate is reasonable based upon the validity of lost opportunity cost as a component of the rate.

A roll call vote was held and the motion failed on a vote of 3 to 3.

Following some discussion another motion was made.

A motion made by Captain Spence, seconded by Captain Garay to accept the rate as written except for the training surcharge of .006 per IGT.

Following some discussion the motion was withdrawn.

That concluded the Rate Hearing. The Board returned to deliberation of the regulation package.

End Tape 4, Side B
Begin Tape 5, Side A

Following a long discussion, Chairman Bush requested that the agenda for the next meeting include an opportunity for the Board to hear from any pilots that have completed the simulator based pilot performance evaluation program at RTM STAR Center.

After further discussion, Captain Garay made a motion to amend the proposed changes to 12 AAC 56.083 in accordance with his earlier proposal by substituting the phrase “training course” for the word evaluation.

Captain Garay’s motion died for lack of a second nomination.

On a motion made by Captain Spence, seconded by Ms. Huff Tuckness and carried unanimously, it was

RESOLVED to insert the phrase “training and” between the words “based” and “pilot” in the third line of the proposed amendment to 12 AAC 56.083(e).

Following more discussion, Chairman Bush decided to request a motion for each separate proposed regulation.

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt the proposed 12 AAC 56.031(b)(4) as amended by earlier motion.

On a motion made by Captain Spence, seconded by Mr. Berto and carried on a vote of five to one, it was

RESOLVED to adopt the proposed 12 AAC 56.080(e)(1) and 12 AAC 56.083 as amended by motion.

A motion was made by Mr. Berto and seconded by Mr. Thompson to use Hawk Inlet pilot station as a secondary or backup pilot station when the Point Cornwallis pilot station is unavailable.

The motion failed on a vote of 2 yea and 3 nay with one abstention.

On a motion made by Captain Spence, seconded by Captain Garay and carried on a vote of four to two, it was

End Tape 5, Side A
Begin Tape 5 Side B

RESOLVED to adopt the proposed 12 AAC 56.110(6) and 12 AAC 56.120(5), (44) and (45).

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt the proposed 12 AAC 56.205(b)and (d).

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt the proposed 12 AAC 56.250 as presented.

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

RESOLVED to adopt the proposed 12 AAC 56.990(a)(20) as written.

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to adopt 12 AAC 56.205(c)

Agenda Item 17

Business Items

Chairman Bush led the Board through the Budget report and Legal Billings report. The costs of the Renwick litigation were noted. The MPC mentioned that he had heard just that morning that the Renwick hearing had been rescheduled for late May.

The MPC lead the Board through the correspondence included in the Board packet.

The January 2001 meeting was set for January 24-25, 2001 in Anchorage.

The Board deliberated on whether to hold the April meeting at Lands End in Homer, Alaska. It decided to hold the April meeting in Anchorage, Alaska

Following the placement of the correct last page with the December minutes, the following motion was made:

On a motion made by Captain Spence, seconded by Captain Garay and carried unanimously, it was

RESOLVED to approve the December minutes as amended.

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

RESOLVED to adjourn the meeting.

Respectfully submitted:

Peter D. Christensen,
Marine Pilot Coordinator

Approved this _____ day of _____, 2000.

Jeffrey W. Bush,
Deputy Commissioner