

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

**MINUTES OF MEETING  
October 29-30, 2003**

**B**y the authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions of provisions of AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held October October 29 – 30, 2003, in Anchorage, Alaska.

**10/29/2003**

No examinations were scheduled or administered.

Start Tape 1, Side A

**Agenda Item 1      Call to Order/Roll Call**

Chairman Clough called the meeting to order at 1335. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Al Clough	-	Commissioner's Designee
Captain Joslyn	-	Pilot Member
Captain Anderson	-	Pilot Member
Mr. Bob Arts	-	Agent/Vessel Manager Member
Mr. Les Cronk	-	Agent/Vessel Manager Member
Ms. Barbara Huff Tuckness	-	Public Member
Mr. Poulson	-	Public Member

Staff present was:      Peter Christensen, (MPC)

**Agenda Item 2      Review/Set Agenda**

Chairman Clough asked if anyone had any changes to the agenda. None were proposed.

On a motion made by Ms Huff Tuckness, and without objection, it was

RESOLVED to approve the agenda as amended.

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

Captain Joslyn mentioned that he would have to recuse himself if the Board voted on the proposed decision in the SWAPA rate case. Chairman Clough stated that they would address that issue when they arrived at that agenda item.

**Agenda Item 4**      **Investigation/Litigation Update**

The MPC requested that the Board enter Executive Session to discuss an investigative matter.

On a motion made by Captain Joslyn, seconded by Captain Anderson and carried unanimously, it was

RESOLVED to move into executive session to discuss an investigative issue.

On a motion made by Mr. Cronk, seconded by Captain Anderson and carried unanimously, it was

RESOLVED to have the MPC proceed as per the direction received in executive session.

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

The Board reviewed the April meeting minutes. The minutes seemed incomplete and needed many corrections. The Board decided to defer review of the April and July 2003 meeting minutes until the January 2004 meeting.

**Agenda Item 6**      **Business Items**

The MPC led the Board through the Budget report and gave a brief description of the correspondence in the Board packet.

He then asked the Board to set a date for its October 2004 meeting.

On a motion made by Mr. Cronk, seconded by Captain Anderson and carried unanimously, it was

RESOLVED to set the October 2004 meeting for October 27 – 28, 2004.

**Public Comment**

Noting that no opportunity was scheduled for public comment of non-agenda items, Chairman Clough asked whether anyone had any public comment at that time. Receiving no response, the Chair moved on to agenda item seven.

**Agenda Item 7**

**Pilot Association Issues**

Chairman Clough invited someone from SEAPA to address the Board regarding SEAPA's proposed changes to its Bylaws and Operating Rules.

Captain Kellogg presented an indexed summary of changes to the Board.

On a motion made by Captain Joslyn, seconded by Mr. Cronk and carried unanimously, it was

RESOLVED to approve SEAPA's proposed changes to its' Bylaws and Operating Rules.

Captain Grobschmit and AMP's counsel Mr. Cummings presented to the Board he proposed restructuring of AMP's Association as an L.L.C.

On a motion made by Captain Joslyn, seconded by Mr. Arts and carried unanimously, it was

RESOLVED to approve AMP's Operating Agreement restructured as an L.L.C.

Captain Eliassen of SWAPA presented the proposed changes to SWAPA's Training Program regarding the training of pilots transferring into their region.

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

RESOLVED to approve SWAPA's proposed amendment to its Training Program.

**Break**

**Agenda Item 8**      **SWAPA Rate Hearing Decision**

Mr. Stebing arrived at the meeting.

On a motion made by Captain Anderson, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to move to executive session to discuss with Mr. Stebing his proposed decision in the SWAPA rate hearing.

The Board returned from executive session.

On a motion made by Ms. Huff Tuckness, seconded by Captain Anderson and carried on a vote of 4 to 2 with Captain Joslyn recused, it was

RESOLVED to adopt Option 1 of the hearing officer's proposed decision.

10/30/2003

**Agenda Item 9**      **Call to Order/Roll Call**

This item was overlooked as the Board began taking public comment in agenda item 10. Chairman Clough later noted the oversight and stated for the record that the entire Board was present and had been since the beginning of the meeting that morning.

**Agenda Item 10**      **Public Comment**

Chairman Clough asked whether anyone wished to give public comment on any issues that were not already on the agenda

Mr. Axelson asked whether public testimony would be allowed on agenda items as they were addressed. The Chair replied that they would.

Representative Weyhrauch received permission from the Chair to address the Board on an agenda item for which he would not be able to be present when it was addressed later by the Board. He strongly recommended that the Board proceed with ASPA's request to establish a negotiated rule making committee to address the rate hearing process.

No additional public comment was received.

**Agenda Item 11**      **Facility Approvals for Simulator Based Marine Pilot Evaluations**

The MPC gave the Board a summary of AVTEC's letter and gave them some background regarding the Board's past decisions on this issue.

He stated that he has asked RM STAR Center for the geographical databases and ship models that the State owns and that he will give them to AVTEC as soon as he receives them. In accordance with previous guidance from the Board he stated that he would not transfer the performance evaluation system until AVTEC had established substantial compliance with the guidelines the Board will eventually establish.

Captain Collins requested that the Board assist AVTEC in any way possible and expedite the process of setting standards.

Chairman Clough summarized that the Board should do what it can to assist AVTEC in its goal to gain approval to conduct simulator based pilot performance evaluations.

**Agenda Item 12**      **Rate Setting Process/Hearings**

Chairman Clough opened the discussion regarding the ASPA request by stating that although the letter is addressed to the Department, he put it on the Board's agenda because no matter which course is pursued the matter will end up in front of the Board. He then called for public comment on this agenda item.

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

Captain Garay addressed the Board regarding the ASPA request for a negotiated rule making committee to address the issues with the rate setting process. He said that ASPA would be happy whether the issue was addressed by the Board or through ASPA in a negotiated rule making setting.

Mr. Kyle representing ASA commented that a rule making is needed to facilitate the hearing process, but that he was not sure that a negotiated rule making committee would be the solution.

Captain Collins representing SEAPA supported the negotiated rulemaking process as the best way to create rate-hearing regulations.

Mr. Bush addressed the Board regarding the past history of the rate hearing process and how past Board committee processes has functioned. He stated that the negotiated rule making process overcomes many of the problems associated with informal committees. He encouraged everyone to not be afraid of the more formal process.

Mr. Axelson stated that there is a need for a better process but he encouraged the Board to undertake the process itself. He felt that the Board would benefit from developing the regulations themselves.

The Board then discussed the issue among themselves. The Board decided to delay addressing the issue until the January meeting.

Break

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

Following the break, the Board agreed to hear comment from ASPA once more on the issue. Captain Garay addressed the Board and asked whether the Board would be receptive to ASPA drafting a regulation that would be presented to the Board at the January meeting. The Board indicated that any attempt to move the process along would be appreciated.

## **Agenda Item 11**

### **Facility Approvals for Simulator Based Marine Pilot Evaluations**

Mr. Dick Harold, Assistant Director of AVTEC asked to address the Board regarding AVTEC's letter, since he was unable to be present earlier when the Board had addressed the issue. He reiterated the requests stated in the letter. He asked whether it would be possible to get the requested materials so that AVTEC could present their proposal to the Board at its January meeting.

The MPC related that he had requested the State owned material from RTM STAR Center and that he would deliver them to AVTEC upon receipt. He stated that it was unclear as of yet whether he would also deliver the evaluation system to AVTEC at that time. He also explained that the Board had established a committee to draft guidelines for a facility to meet that desired to be approved by the Board to conduct simulator based pilot performance evaluations. He asked whether AVTEC had a

copy of the original RFP and upon hearing that they did, pointed out that the RFP would be the starting place for developing the facility approval guidelines.

**Agenda Item 13**      **Yacht Exemptions**

The MPC opened the discussion regarding the yacht committee's proposed regulations by introducing the committee's proposed regulations.

While considering the proposed regulations Captain Winter mentioned that Representative Dahlstrom would be present in 15 or 20 minutes and that she wanted to hear the Board's deliberations regarding the proposed yacht regulations. The Board decided to postpone the discussion of the proposed regulations and to move on to the situation with the M/Y LADY LOLA while the Board waited for the Representative to arrive.

Chairman Clough opened the discussion by reviewing the saga of the M/Y LADY LOLA. A general discussion ensued regarding what penalty should be applied and at what level.

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

RESOLVED to impose the maximum civil fine against the M/Y LADY LOLA.

The Board then moved on to discuss whether criminal charges could be brought against the M/Y LADY LOLA. It was suggested that the Board solicit Mr. Broward's opinion on whether it would be worth pursuing criminal penalties against the M/Y LADY LOLA.

Chairman Clough welcomed Representative Dahlstrom to the meeting and asked whether she would like to address the Board. Representative Dahlstrom addressed the Board briefly stating that she remained committed to the issue and was willing to sponsor changes to the legislation if needed.

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

The Board then discussed the proposed yacht regulations.

On a motion made by Captain Anderson, seconded by Captain Joslyn and carried unanimously, it was

RESOLVED to notice the proposed changes to 12 AAC 56.205 and the proposed new 12 AAC 56.130.

The proposed changes to 12 AAC 56.205 clarify that request for pilotage must be made to a pilot organization rather than a pilot and the proposed new 12 AAC 56.130 addresses additional requirements for yachts.

On a motion made by Mr. Poulson, seconded by Mr. Arts and carried unanimously, it was

RESOLVED to have the MPC amend the pilotage exemption application as noted in the proposal.

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

RESOLVED to request that the division purchase an annual subscription to the Lloyd's database.

Representative Dahlstrom asked whether the yacht exemption fees are being credited to the pilot's account at the Division. The MPC explained that he was not certain, but that the Board's Budget Report looked as though they were. She indicated that she would like to know for sure, because if they were not, it was something on which she would need to act.

Lunch Recess

**Agenda Item 14**      **Call to Order/Roll Call**

(The roll call after lunch was overlooked. All Board members did return for the afternoon session.)

**Agenda Item 15**      **Board's Consideration of Noticed Regulations**

To begin the discussion, Chairman Clough invited Mr. Bush to give his Power Point presentation to the Board regarding ASPA's proposed retirement program.

Mr. Bush handed out a copy of Power Point slides and then began his presentation. In the presentation he reviewed the history of the retirement

End Tape 3, Side A

Start Tape 3, Side B      issue and then presented the retirement program that was being proposed by ASPA. He answered questions from the Board and audience throughout his presentation.

The Chair offered to hear industries viewpoint on the issue.

Mr. Axelson came forward to present an opinion from industry. He stated that there were three parts to the issue: retirement plan, physical standards, and mandatory retirement age. In his opinion the mandatory retirement age of 70 is acceptable only if the 70-year-old pilot is also physically able to do the work.

End Tape 3, Side B      His comments were in opposition to any adoption of a regulation that  
Start Tape 4, Side A      mandates a retirement plan.

The Chair asked Mr. Bush to step forward to answer a few more questions. Following some more discussion, the Chair invited more public comment.

Captain Collins of SEAPA spoke in favor of implementing a mandatory retirement plan as stated in Option 2 of the proposed regulation. Captain Collins then fielded several questions from the Board.

End Tape 4, Side A      Mr. Kyle of ASA spoke against Option 2 because it memorializing a  
Start Tape 4, Side B      retirement surcharge in regulation. Mr. Kyle responded to a few questions from the Board.

Mr. Cronk read aloud a letter from Mr. Sharp of Holland America Line regarding the proposed retirement regulations. His letter lamented the fact that improved physical standards are not addressed by the proposed regulations before the Board. In addition he said “industry does not object to a retirement plan but we do object to funding the plan through new or additional fees when current tariffs are already funding pilot retirements.... On behalf of industry I ask the Board to not penalize industry with an avenue for more fees and surcharges to fund a retirement plan that is already being funded by industry. I encourage you to vote for Option 1 of proposed Regulation 12 AAC 56.310.”

Captain Eliassen of SWAPA replied to some of Mr. Kyle’s comments and stated his support of implementing a mandatory retirement plan and adopting Option 2 of the proposed regulation. Captain Eliassen responded to questions from the Board.

Captain Grobschmit of AMP urged the Board to do adopt Option 2 and do what's best for the pilotage system. He stated that a retirement system would be an important part of pilot retention in their region. It promotes an orderly retirement and would help pilot widows and survivors.

Captain Garay representing ASPA asked the Board to do what it thinks is best for the system.

Break

Captain Didier stated that he felt Mr. Bush has done a very thorough job on the plan and he thanked him for his efforts. He stated that as a pilot with most of his career ahead of him, he was willing to forego the income that will support the plan, but only if there is some infrastructure to support the retirement system.

Captain Pierce stated that the reason that a mandatory retirement plan needs to be in regulation is because with a regulation there is more assurance that the system will exist after a pilot retires. If it is instituted otherwise, pilots that follow him in his association might change the bylaws and his retirement to his detriment.

Having heard from everyone that wished to speak, Chairman Clough ended public comment and turned the issue over to the Board.

On a motion made by Captain Joslyn, seconded by Ms. Huff Tuckness and carried on a vote of five to two, it was

RESOLVED to adopt the proposed regulation 12 AAC 56.310(e) Option 2.

Following the vote Chairman Clough commented that there were compelling arguments made by both sides and that it was incumbent on everyone to hopefully prove industry's worst fear incorrect, that this not a vehicle to add on, add on, ad nauseam.

Mr. Arts commented that the makeup of the Board will change, and that hearing officers will change and an association will go to a hearing seeking an outrageous increase and history will be forgotten. He hoped that Chairman Clough's sentiment would be remembered.

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

Lacking further comment, Chairman Clough led the Board back to the issue of the facility guidelines. He urged the committee to move on developing those guidelines.

The MPC brought one more item before the Board that was not specifically on the agenda but that was in the packet as a proposed regulation to notice. A short consultation among the Board followed.

On a motion made by Mr. Cronk, seconded by Captain Anderson and carried unanimously, it was

RESOLVED to notice the proposed regulation 12 AAC 56.068(c).

The proposed new regulation 12 AAC 56.068(c) deals with trainee observer trips.

Ms. Huff Tuckness asked whether it would be possible to have something before the Board at the January meeting dealing with physical standards.

Captain Kellogg replied that he was chairing a committee that was working on the issue and that he hoped to have information for the Board to review at the January meeting.

Having concluded its business the Board adjourned.

Respectfully submitted:

Peter D. Christensen,  
Marine Pilot Coordinator

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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Al Clough,  
Deputy Commissioner