

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

**MINUTES OF MEETING
October 17-18, 2005
Captain Cook Hotel, Anchorage, AK**

By 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 17 and 18, 2005, in Anchorage, Alaska.

October 17, 2005

Start Tape 1, Side A

Agenda Item 1 Call to Order/Roll Call

Board Chairman, Al Clough, called the meeting to order at 1330.

Members present:

Mr. Al Clough, Chairman	-	Commissioner's Designee
Mr. Robert Arts	-	Agent Member
Captain Dale Collins	-	Pilot Member
Mr. Les Cronk	-	Agent Member
Captain Tony Joslyn	-	Pilot Member
Mr. Jack Poulson	-	Public Member
Mr. Robert Schasteen	-	Public Member

Staff present:

David Brower, Assistant Attorney General (AAG)
Renda Heimbigner, Marine Pilot Coordinator (MPC)

Agenda Item 2 Review / Set Agenda

Additional correspondence and budget detail was acknowledged.

Agenda Item 3 Public Comment

No public comment on non-agenda items was offered.

Agenda Item 4 **Review / Approve Minutes**

Captain Ted Kellogg, President of Southeast Alaska Pilots Association offered a correction for the spelling of "ECDIS."

On a motion made by Mr. Cronk, and carried without dissent, it was
RESOLVED to approve the July 2005 minutes as amended.

Agenda Item 5 **Declaration of Potential Conflicts of Interest / Recusals**

No conflicts or recusals were declared.

Agenda Item 6 **Business Items**

The Board reviewed a September 30, 2005 Budget Report as prepared by the Division of Occupational Licensing. Revenue and expense details were discussed and it was noted that fewer Foreign Pleasure Craft Exemptions were received in FY2005 than FY2004.

Chairman Clough introduced a draft of the Board's Annual Report for FY2005 and called for comments. Captain Collins offered his feelings that the list of goals should include continued education for Marine Pilots who have achieved their full license. Mr. Poulson added that efforts to certify additional simulator facilities should be included to Goals and Objectives. Mr. Clough suggested that he and the MPC could draft additional wording to include these suggestions and resubmit to the board members for a final review. This was met with approval by the members.

Captain Kellogg summarized new bylaws presented by the Southeast Alaska Pilots Association which included the following changes:

New language under Article II. Section 4. (Membership) gives priority to marine pilots or pilot members for the dispatch period between May 1-15 and September 16-30 with additional dispatch rotated equitably. Associate Pilot Member category was repealed.

Adjustments were made to Article II. Section 5(b)(I) and (II) (Training) to clarify experience and licensing for the approval of apprentice pilot applicants.

Electronic ballots are now listed in the membership voting process and ballots for issues will require a signature under Article III. Section 4. (Postal Ballot).

A new section under Article IX. Section 3. (Long Term Care) is added to the bylaws to detail member participation.

Captain Kellogg then introduced Captain Larry Vose, Vice President for Southeast Alaska Pilots Association and Chairman of the SEAPA Training Committee. Captain Vose presented SEAPA's new Training Program to the Board.

A new paragraph, Part I, adds a defined role for the Training Committee Chairman.

Exclusions for First Class Federal Pilotage for trainees is changed by deleting Klawock and adding "areas that are unavailable, as approved by the Training Committee." (Part II(b)(ii))

A new paragraph is added to Part III which defines a 60-day dispatch requirement for Marine Pilot Trainees who have previously held a Training Pilot Endorsement in Region One and wish to re-attain that endorsement. Additional changes to Part III increase Trainee reporting requirements.

Part IV now contains language addressing Deputy Trainee reporting requirements, the timing of observed maneuvers, qualified training facilities and proficiency in the operation of SEAPA's ship simulator.

Part V has changes identical to those applied in Part IV, plus additional paragraphs (r), (s) and (t) added to make both Deputy Pilot Trainee and Apprentice programs consistent.

Satisfactory proficiency in the operation of SEAPA's ship simulator and individual responsibility for successful Pilot Performance Monitorings was added to the ongoing education of fully licensed Marine Pilots under Part VI. Also within this section, the exclusion of Klawock for First Class Federal Pilotage was removed for all Region One Marine Pilots and a deadline established to acquire the Klawock endorsement before December 31, 2007.

Language in Part VII applies the same changes as Part VI to Deputy Marine Pilots.

A new section was introduced and labeled Part XII – Physical Agility Test. This section requires all trainee applicants to

successfully pass this test as part of SEAPA's application process.

The definition of Training Activity is added to Part XIII.

Upon conclusion of Captain Vose's summary, the Board moved to approve both the new SEAPA By Laws and Training Program. Captain Joslyn moved for each and both received unanimous consent.

Start Tape 1, Side B

Correspondence - The board reviewed a letter from Kate Tesar, State Director for Alaska Steamship Association. Ms. Tesar explained that ASA wanted the Board to see action taken by other States who she viewed to be lowering pilot tariffs.

SWAPA Notice of Rate Filing - Captain Ron Ward, President of Southwest Alaska Pilots Association offered to answer any questions regarding their Notice of Intent to Revise Pilotage Rate Schedule, as filed with the Board on October 14, 2005. No questions arose.

Kate Tesar noted that a letter she sent to each Board member on September 15 was not in their packets. Although each member had received a copy directly, the audience had not and she had extra copies in the event anyone wanted one. Chairman Clough clarified for the Board members that it was the letter requesting a course of action following July's Pilot Board meeting and the Board would be addressing it tomorrow.

Physical Standards Committee Report – Captain Kellogg reported that Southeast Alaska Pilots Association resolved that all their members would voluntarily complete HealthForce agility testing by May 1, 2006.

Simulator Evaluation Committee Report – Captain Joslyn brought the Board up to date on attempts to gain possession of the Alaska geographic databases from STAR Center, who was awarded the contract to develop the program in 1998. The matter was being addressed by State of Alaska Contract Officer, Ted Bradley, as a default of the original contract. The MPC explained that each new vendor attempting to provide simulation for Alaska pilots had consistently repeated that without complete files the cost to develop was too prohibitive. Pacific Maritime Institute, the most recent interested vendor, had converted the databases provided and reported that all but one file lacked specific elements to create realistic simulation. The Board encouraged continued effort to retrieve the missing elements and full compliment of files which represent the entire program originally contracted for in 1998.

Rate Hearing Regulation Committee Report – Jack Poulson reminded the Board that the committee had been formed to explore the possibility of streamlining the rate hearing process. The Committee had last met in March 2005 and had some

questions about the Board's authority to change the procedure for rate hearings at all. A list of questions was constructed and the Board authorized submitting the questions to the Attorney General's Office for guidance. A response has been received and distributed to Board members, however, it was marked as "private attorney/client information." Chairman Clough, after advice from David Brower, AAG, advised Mr. Poulson to distribute the response to committee members so a meeting could take place. Kate Tesar, also a member of the Rate Hearing Regulation Committee, asked if discussion concerning the response could take place the following day. Captain Collins suggested the committee meet and digest its content, indicating a farther-future date would be more appropriate. Ms. Tesar asked that AAG Brower participate in the discussion with the committee.

Tentative Meeting and Exam Dates – Chairman Clough asked if the Board felt it needed to review October 2006 exam and meeting dates at this time. Comments indicated that January 25-26, April 19-20 and July 6 dates, as currently listed, were acceptable and October dates could wait for review until next meeting.

Agenda Item 7

Regulations

The MPC explained that in the strictest interpretation of 12 AAC 56.025(c) an applicant for the Core Exam would be held to fulfilling all of the experience listed in (1) through (5), when the intent was for a minimum of only one requirement, as confirmed by Department of Law. By interjecting language to clarify only one of (1), (2), (3), (4), (5) or (6) be required, it was felt that 12 AAC 56.025(c) would support AS 08.62.093 as intended.

On a motion made by Captain Joslyn and approved unanimously, it was RESOLVED to approve 12 AAC 56.025(c) for public notice.

Board action then followed for regulations previously public noticed.

On a motion made by Captain Joslyn, and unanimously approved, it was RESOLVED to approve 12 AAC 56.016 Training Pilot Endorsement.

On a motion made by Captain Collins, and unanimously approved, it was RESOLVED to approve 12 AAC 56.080 Biennial License Renewal.

On a motion made by Captain Joslyn, and unanimously approved, it was RESOLVED to approve 12 AAC 56.083(d) Continuing Education Requirements.

Note: 12 AAC 56.083(e) proposed re-wording was withdrawn.

On a motion made by Captain Collins, and unanimously approved, it was RESOLVED to approve 12 AAC 56.115 Pleasure Craft Exemptions.

On a motion made by Captain Collins, and unanimously approved, it was RESOLVED to repeal 12 AAC 56.210 Tariff for Southeastern Alaska Region; 12 AAC 56.220 Tariff for Southcentral Alaska Region; 12 AAC 56.230 Tariff for Western Alaska Region; and 12 AAC 56.240 Tariff for Kuskokwim River Region.

1447 Break

1508 Back on Record

Agenda Item 8 **Exam Results / Oral Examination (Executive Session)**

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

RESOLVED to move to executive session for the purpose of conducting Captain Montez's oral examination for Region I Deputy Marine License, piloting incidents and litigation.

The Board entered executive session at 1511.

At 1609, the Board returned from executive session and the Chair summarized discussions held during that time, which included Captain Montez's successful completion of an oral exam, piloting incidents which were deemed as not necessary of investigation, Captain Thatcher's present state of litigation and Captain Dunn's surrender of his license.

On a motion made by Mr. Cronk, seconded by Captain Joslyn, and unanimously approved, it was RESOLVED to accept Captain Dunn's license.

On a motion made by Captain Joslyn, seconded by Mr. Poulson, and unanimously approved, it was RESOLVED to accept Captain Montez as successfully completing his oral examination in accordance with his approval for Deputy Marine Licensure on July 7, 2005.

Agenda Item 9 **Public Comment on Non-Agenda Items**

The Chair asked for public comment on non-agenda items and hearing none, announced a recess until 0830 October 18, 2005.

Start Tape 2, Side A The Board adjourned at 1612.

Agenda Item 10 **October 18, 2005** The Board reconvened at 0830.

Members present:

Mr. Al Clough, Chairman

Mr. Robert Arts

Captain Dale Collins

Mr. Les Cronk

Captain Anthony Joslyn

Mr. Jack Poulson

Mr. Robert Schasteen

Staff present:

Mr. David Brower, AAG

Ms. Renda Heimbigner, MPC

The Chair noted that the Board would be accepting new business and was there any public comment at this time on non-agenda items. Non were offered.

Agenda Item 11

Ethics

Chairman Clough summarized the Attorney General's July determination on Board members conflicts of interest and the recommendation to hold a hearing to explore with board members what those conflicts were, then move forward to re-vote the SWAPA rate case. AAG David Brower advised the Board that before re-voting the SWAPA case, they would need to make a motion to the Superior Court to remand the case back to them. Discussion followed.

Mr. Monkman, Attorney for Southwest Alaska Pilots Association addressed the Board and suggested they establish a set of procedures which allowed for the conflicts of interest inherent to the make up of the members, which he felt was purposely designed by statute to satisfactorily thrash out issues such as rates. With reference to the recommendation for an ethics hearing, he stated that his interpretation was a thorough exploration into members and their conflicts of interest, however, anything the Board did would end up back in court. Thusly, he had filed a motion requesting the Court conduct the recommended ethics hearing and if the Board took action, it would only slow the process down. Discussion followed.

Mr. Blasco, Attorney for Alaska Steamship Association, came before the Board, stating he felt the Board did indeed have procedures to handle ethics issues and the Chairman was responsible for each member's compliance. He offered the example of Captain Joslyn's participation in the current discussion and how that raised new ethics questions. Any comments on substantial matters that might influence another member of the Board would be open to appeal. It was his feeling that the Ethics Act compelled the Board to follow the AG's

October 17-18, 2005

PAGE 8

recommendations themselves, which he also felt satisfied the Board's goal to not impede the rate process.

Captain Jim Wright, member of Southwest Alaska Pilots Association, offered comments that both the shipper and pilots had financial consequence from the action [rate filing]. He added that agents were standing in place of the shippers, so all are conflicted and the Board can't function unless you overlook that. He felt the court was in a better position to make the decision or at least, address it.

Start Tape 2, Side B

Mr. Arts followed with an explanation that vessel agents sign each vendor invoice as an agent only, and were not responsible nor had a direct connection to payment of that invoice. Captain Wright offered that their inability to agree was another reason to leave case with the court.

Mr. Paul Fuhs, a former Commissioner of the Department of Commerce, spoke to the statutes which formed the Board and its current structure. He felt what was happening was a clear violation of the legislative intent which was to have both sides balanced as it was known they would be involved in economic issues. What the legislature failed to address legally, in his mind, was the conflict of interest issue. He suggested that solutions be offered to the legislature during the coming year and felt the Board had come to an impasse for handling it themselves.

Captain Ward reminded the Board that the rate filing was now two years old and SWAPA would not endorse anything at this meeting that would contribute to slowing the process any more. It was a real problem, he said, for the association to retain and recruit pilots when the process takes this long. He also expressed his concern that the Chairman and ethics supervisor would be able to bring out the clear conflicts of interest in an informal hearing, rather it needed to be addressed in court. Otherwise, he felt they would never be able to get another rate decision. He pointed to a recent advising from the AAG prohibiting the SWAPA pilot board member to vote on acceptance of new SWAPA bylaws as discouraging to pilot participation on the Board at all.

Captain John Taylor, SWAPA member, said he agreed with Captain Wright, adding that he could not see where a conflict if the Board was set up to be fair and balanced to start with. Either all could vote, or none could vote. It was obviously not working.

Mr. Bob Berto said, as a previous board member, he would bring up his potential conflict at the beginning of the meeting, he was recused and that was how it was handled. He did not understand why that did not work now.

Mr. Paul Axelson stated he felt the Board's attorney had given them clear direction and it was incumbent upon the Board to act on that direction.

Captain Collins referenced Alaska Statute 08.62.046, stating that agents always had the counter balance to pilots interest. He noted that agents had previously recused themselves the same as pilots and the Board, he felt, was not dysfunctional, just reliving old history because there was a lot at financial stake. He recommended the Board take charge and do what felt was right by figuring out who had a conflict, then voting.

Mr. Cronk agreed with comments by Captain Collins and added the Board had a couple of decisions before it. He felt the issue was being complicated and the AG's opinion gave clear direction.

0945 Break
1000 Back on Record

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

RESOLVED to move to executive session with Assistant Attorney General, David Brower, for the purpose of advice on the matter before the Board.

The Board entered executive session at 0950 and reconvened at 1027.

A motion was made by Mr. Poulson, and seconded by Captain Collins, to act upon the advice of the Assistant Attorney General's office and make a motion to the court within the SWAPA appeal, to remand the issue to reconsider before the Board.

Chairman Clough, as Ethics Officer for the Board, recused Captain Joslyn from the vote. Joslyn objected and the Board was asked to vote on his recusal.

By a roll call vote 5-1, it was

RESOLVED to recuse Captain Joslyn from voting on the motion before the Board.

Clough	Yes
Collins	No
Arts	Yes
Cronk	Yes
Poulson	Yes
Schasteen	Yes

Without further discussion, and approved unanimously by roll call vote, it was

RESOLVED to make a motion to Superior Court for remand of the SWAPA case to reconsider before the Board.

Clough	Yes
Collins	Yes
Arts	Yes
Cronk	Yes
Poulson	Yes
Schasteen	Yes

Chairman Clough explained that should the case come back before the Board, they would, at that time, follow the AG's recommendation to investigate the conflict issue with board members to determine who would and would not vote. Currently, without the issue before the Board, they could not act when it was not the Board's privilege to do so.

Proposed Regulation

Captain Collins introduced a draft to modify eight regulations, removing Klawock from exclusion for pilotage endorsement and create Board determination of exemption on a case-by-case basis. Current Deputy and Marine Pilots would be required to attain missing federal endorsements for newly-active ports.

On a motion made by Captain Collins, seconded by Captain Joslyn, and carried without exception, it was

RESOLVED to public notice 12 AAC 56.026, 12 AAC 56.027, 12 AAC 56.028, 12 AAC 56.029, 12 AAC 56.031, 12 AAC 56.034, 12 AAC 56.068 and 12 AAC 56.080.

AMP Rate Hearing

Captain Joslyn inquired into the status of the Alaska Marine Pilots Association rate filing which had been scheduled for a hearing and held up by conflict of ethics questions in April 2005. Concern was raised for Board action in view that no one from AMP was present. Discussion followed. It was agreed that AMP should be contacted and unless the rate filing withdrawn, the case should be rescheduled with a Hearing Officer.

Bridge Conflict

Captain Joslyn expressed concern for the role of pilots as defined by 12 AAC 56.960 and contrary instruction to vessel captains and masters from vessel owners. Mr. Schasteen offered his experience of witnessing conflict on the bridge between master and pilot during berthing. Joslyn emphasized the risks for safety and the liability to all parties when maneuvers were performed with conflict. The

October 17-18, 2005

PAGE 11

Chairman requested the MPC to contact cruise companies and pilot associations for comments at the upcoming January Pilot Board meeting.

Mr. Bill Sharp, representing Holland America, requested that if there were specific incidents and/or dates to be specifically addressed at the upcoming meeting, everyone to be notified well in advance. Chairman Clough explained they were looking for general comment.

On a motion made by Mr. Poulson, and carried without exception, it was

RESOLVED to adjourn the meeting at 1100.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Approved:

Albert H. Clough, Chairman
Alaska Board of Marine Pilots