

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

**MINUTES OF MEETING
January 26, 2006
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 AS AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held January 26, 2006, in Anchorage, Alaska.

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Start Tape 1, Side A **Call to Order/Roll Call**

Board Chairman, Al Clough, called the meeting to order at 0830.

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

Members participating by teleconference:

Mr. Robert Schasteen	-	Public Member	Dutch Harbor
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Staff present:

Renda Heimbigner, Marine Pilot Coordinator (MPC)

Review / Set Agenda

Chairman Clough outlined agenda changes, which incorporated removing Litigations from Executive Session, deleting the SE Marine Safety Task Force Report and adding a report from Region One. Additional correspondence was acknowledged.

Public Comment on Non-Agenda Items

No public comment on non-agenda items was offered.

Agenda Item 1 **Review / Approve Minutes**

Mr. Poulson offered a correction on Page Nine, replacing a reference to Mr. Fuhs with Paul Axelson. All board members concurred. The MPC will verify.

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

Agenda Item 2 **Declaration of Potential Conflicts of Interest / Recusals**

No conflicts or recusals were declared.

Agenda Item 3 **Business Items**

The Board reviewed a January 3, 2006 Budget Report as prepared by the Division of Occupational Licensing. Revenue and expense details were discussed and it was noted that billings from Department of Law were running around three months out, but should be closer to the reporting date at the next meeting.

The MPC presented additional details to the report with a list of pilotage exemptions that had been issued after the beginning of the fiscal year.

Training Pilot Endorsements – The MPC introduced checklists for Captains Anthony, Backen, Entenmann and Richard Murphy who had all met their qualifications for Training Pilot endorsements in Western Alaska.

On a motion made by Captain Joslyn, and carried without dissent, it was
RESOLVED to approve their Training Pilot endorsements.

Physical Standards Committee Report – Captain Ted Kellogg reported that all members of the Southeast Alaska Pilots Association (SEAPA) will have vetted the physical agility and cognitive module at HealthForce by May 1, 2006. He went on to give details about the test, the facility, credentials and cost. In addition to members of the Association, Kellogg added that all new applicants were required to go through the exam as well. Discussion followed.

Training and Evaluation – Captain Kellogg asked to be added to this committee. The Board unanimously assented.

Chairman Clough returned to the subject of SEAPA's cognitive testing and asked for an example. Captain Kellogg provided details about the pilot ladder and associated instructions that a Pilot was to follow to complete that portion of the testing.

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Tentative Meeting and Exam Dates – The next Board meeting date was set for April 5 and 6, 2006 in Juneau.

Region Two Report – Captain John Taylor, President of Southwest Alaska Pilots Association, expressed to the Board that attracting good quality candidates is becoming more difficult, and harder for Alaska based on conversations with Pilot Associations from the Lower 48. He reported the U.S. Merchants Marine has been shrinking for years and those that currently have jobs do not want to leave, which is where most candidates are drawn. The quality of available candidates is falling and he felt this was in immense problem.

Start Tape 1, Side B

Chairman Clough asked about shortening the license process. Captain Taylor replied that when adding up the trip performance, it becomes very expensive. He did not feel many candidates could make it through the process without financial assistance.

Taylor acknowledged that SWAPA did not currently have an Apprentice Program. Captain Collins offered SEAPA's experience with the Program. Taylor said they had lost at least 50% of their trainees who couldn't make it financially through the process. Discussion commenced regarding stipends.

Region Three Report – Captain Pete Garay, President, Alaska Marine Pilots, introduced a handout he had prepared and began a summary of major impacts towards the development of his Association, focusing on recruitment, retention and conflict. His feelings for the Apprentice Program were that it was intended as a supplement, rather than a substitute for pilot recruitment. He also felt there was a dwindling loss of institutional memory at work and outlined the major events that shaped the development of AMP and subsequent problems with retention, which included:

- 1) Bob Boyd forms AMP
- 2) Bob Boyd leaves AMP and forms WAPA, creating competition and two additional Pilots leave AMP: Captains Will Anderson and Gordon Kirken
- 3) AMP strikes
- 4) Captain Willy Cork dies on the job and six more Pilots make plans to leave: Captains Grobschmitt, Backen, Moreno, Dundas, Garay and Adikson
- 5) 2004 AMP Rate Filing held up resulting in erosion of AMP

Captain Garay explained that AMP's concern is if anyone is removed from the Board for being conflicted, it will effectively paralyze the system. Although a legislative fix was a possible option, he was not recommending it. He voiced instead that conflict was the glue that held the system together.

Start Tape 2, Side A

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Captain Garay then introduced Bence' Braden to the Board and audience as AMP's new Business Manager.

AMP Training Program – The MPC introduced an amended Training Program for Alaska Marine Pilots as submitted for Board approval. The Board reviewed the changes and confirmed that the Association membership had approved it.

On a motion made by Captain Joslyn and seconded by Captain Collins, it was RESOLVED to approve the AMP Training Program as presented.

1000 Break

1010 Back on Record

Chairman Clough announced a request for Training Pilot Endorsement from Southeast Alaska Pilots Association for Board approval. Captain Larry Vose, SEAPA Training Chairman, came forward to present Captain Richard Gurry's checklist of completed requirements. Gurry is a cross-region transfer and had met both regulated and Association requirements for the endorsement.

On a motion made by Captain Joslyn and seconded by Mr. Cronk, it was RESOLVED to approve Captain Gurry's Training Pilot endorsement.

Chairman Clough summarized the agenda for the rest of the morning, moving Agenda Item 7 forward, followed by Item 5, followed by lunch.

Agenda Item 7

Manned Model Presentation

Captain Ed Goudy, representing the Cowichan Marine Research Facility, conducted a video presentation for the Board and audience, sharing the latest development of their manned model training facility. The facility is located on Vancouver Island and projected to be open in 2007.

Start Tape 2, Side B

Captain Goudy estimated cost per pilot to be 2/3 of going to Port Revelle or Poland. He also explained they planned to have a cruise ship model with pods. Discussion was held and the presentation was concluded

Agenda Item 5

Exam Results / Oral Examination (Executive Session)

On a motion made by Mr. Poulson, without dissent, it was RESOLVED to move into Executive Session for the purpose of oral exams with Captains Ryan and Sinclair.

The Board entered executive session at 1100.

At 1125, the Board returned from executive session and the Chair asked for action

on discussion during the session.

On a motion made by Mr. Cronk, and seconded by Captain Joslyn, it was
RESOLVED to approve Captain Sinclair's Deputy Marine Pilot license.

On a motion made by Captain Collins, and seconded by Mr. Arts, it was
RESOLVED to approve Captain Ryan's Deputy Marine Pilot license,
pending successful completion of his drug test.

On a motion made by Captain Collins, the Board adjourned at 1130.

The Board reconvened at 1303.

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

Members participating by teleconference:

Mr. Robert Schasteen	- Public Member	Dutch Harbor
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Staff present:

Mr. David Brower, AAG
Mr. David Jones, AAG
Ms. Renda Heimbigner, MPC

Agenda Item 8

Board Discussion with Ethics AG

Mr. David Jones, Assistant Attorney General, introduced himself to the Board and summarized the recommendations by AAG Paul Lyle to examine the Board members individually. He expressed it was going to be difficult to resolve the ethics issues in a meeting forum without having the benefit of complete information and the opportunity to look it over with proper consideration. His recommendation was to give the attorneys time to submit written paperwork in support of their positions and give the Board an opportunity to request advice on whether the challenged Board members have personal or financial interest that would be affected by the SWAPA surcharge.

Chairman Clough reminded the Board that AAG Paul Lyle had concluded Captain Joslyn to be clearly conflicted out and should not have participated in the Rate Filing vote, and that the information Paul had did not indicate to him the other members

had conflicts, but could not say they did not. So the recommendation to the Board, because of the assertions made, was to research the issue. Recently, APOC-type filings were sent to all Board members, and concurrent with those, the Board received a series of filings from attorneys that various members did or did not have conflict issues. The AG Ethics Section would now have considerable information to make a more detailed decision on all members of the Board in these matters, which would keep the issue moving forward.

Mr. Cronk asked AAG Jones for his interpretation of the recent decision by the Superior Court on the 2003 SWAPA Rate Filing which the Board had filed a Motion to Remand. Jones replied he understood the judge to have ruled there might be some other members that have conflicts that would prohibit them, under the Ethics Act, from participating in the vote.

Chairman Clough added that the various scenerios available to the Board were to simply disqualify Captain Joslyn's vote, re-tally the votes and not delve into Captain Collins being new to the board, but rather stick to the original Board at that time. Then, the question was posed did other members have conflicts. It was one of the issues that Paul Lyle brought up in his opinion, but did not rule on it. AAG Jones, having examined the issue more deeply, felt the judge did not expect the Board to re-tally the votes, but did expect them to investigate the details of the issue. The Chair then asked AAG David Brower to give his opinion on the recent ruling by the Superior Court

Start Tape 3, Side A

Agenda Item 11

Superior Court Decision on SWAPA 2003 Rate Filing

AAG David Brower stated he felt the Judge's statement left significant question as to whether the Board can revote as suggested. In his motion for remand, he had included reference to AAG Paul Lyle's opinion which would indicate looking at other members. There may have been a suggestion that simply throwing out one particular vote that shouldn't have been there would have resulted in a 3-3 vote, and he believed that was what the judge was referring to when she said she had significant question on the revote.

Mr. Brower also pointed to past Board meetings where rate hearings and other issues were involved where various members would recuse themselves. *"In rate hearings, certainly the Pilot who was involved in the rate hearing would recuse themselves. And it was clear that an agent member would do the same thing. It seems to have worked up until this particular hearing. The question might be are there other conflicts that need to be looked at? Judge Collins [Superior Court] had mentioned there might be an opportunity for a mediator in these types of situations, however, that's not the way the law reads (AS 08.046). However, the law does not circumvent the APA or the Ethics Act so we have to look at all those laws in conjunction. Until there is any direction from the legislature, this is where we are at, which is not an easy process."*

Chairman Clough suggested the Board provide the Ethics Branch of the Attorney General's Office with all the information offered, pertaining to conflicts of interest by various members on this case, and allow rebuttals. Then, he felt the Board could get a more expanded ethics guidance from the AG's Office, which should allow the Board to better understand which members can or cannot vote. AAG David Jones added that the Superior Court Judge asked the Board give her notice within 90 days of what the Board had done. He recommended that appropriate action would be to rescind the earlier vote, based on Paul Lyle's opinion, and then follow the Chair's recommendation by soliciting additional information from those who have been challenged. Then, let the Judge know the Board is taking a closer look at whether anyone else is prohibited from participating, based on the Ethics Act. Once the Board has conflicts sorted out, they could take another run at the SWAPA case.

Discussion followed as Board members expressed their thoughts regarding the Board's ability to decide on their own. Mr. Jones summarized two options available to the Board as to decide on their own or to seek advice. In view that concerns had been raised against the Board's decision, he recommended the latter.

Discussion by the Board members continued. Mr. Blasco, Attorney for Alaska Steamship Association and Mr. Monkman, Attorney for Southwest Alaska Pilots Association, were asked for their comments.

Mr. Blasco explained he had participated in the hearing before Judge Collins in Superior Court where she entertained the Board's motion for remand. He did not agree that a commitment was made to the Judge to revote and urged the Board to comply with the court order which he felt was to void the vote and rescind the surcharge.

Mr. Monkman pointed to Page 10 of the Board's October 2005 Board Meeting minutes which include the Chairman's comments explaining future action, should the case come back before the Board. That action was listed as, "*follow the AG's recommendation to investigate the conflict issue with board members to determine who would and would not vote.*" Mr. Monkman stated that approach was one that SWAPA could support and they were glad to proceed in that direction. He also called attention to AS 08.62.046 which defines the rate process and proposed that the Board must take action to approve or disapprove the rate, one or the other.

Start Tape 3, Side B

Captain Collins asked if, after recusals, the voting Board was to drop below four, could the Board vote without a quorum. After discussion, Mr. Brower advised that "*the APA says if you can't be fair, then you can drop out, unless you jeopardize a quorum. The Ethics Act, however, says you must drop out if you can't be fair.*" Discussion continued.

Mr. Brower read the Board's motion for remand. *"The Board of Marine Pilots, through it's attorney, moves pursuant to Appellate Rule 520(c) to remand this appeal to the Board of Marine Pilots for further consideration in light of the Attorney General's Informal Opinion dated July 5, 2005. At its regular meeting on October 18, 2005 the Board voted to request the superior court to remand the case to the board to allow it to void its initial vote and revote after considering possible conflicts of interest of various board members."* The Board requests remand to allow compliance with the recommendation. With the AG opinion that the SWAPA pilot should not have voted, and the vote of the seven-member board was four to three, the decision must be invalidated. Since the board is the entity charged by statute to rule on disputed pilotage rate hearings, the court should remand this matter to the board to allow it to invalidate the original vote. Then the board would be able to engage in a determination if there are other impermissible conflicts among board members before it reconsiders the rate that is subject of this appeal."

Mr. Brower also noted that in review of previous Board meeting minutes, there was an issue where a rate failed on a 3-3 vote. Consequently, he felt a 3-3 vote doesn't get to go back. If it doesn't pass, it doesn't pass.

Mr. Cronk asked if the Board needed a motion to comply with the court order. Chairman Clough recommended the Board follow the course of action outlined earlier, which was to fully investigate the ethics allegations for all members and get an expanded opinion from the AG's office. Discussion among the Board members followed.

Mr. Brower pointed to a case he cited in his motion to Judge Collins where the Alaska Supreme Court held that *"if a Board member with a disqualifying interest cast a deciding vote for an ordinance, the ordinance shall be invalidated. In addition, the Court should remand this matter to the Board to allow it to invalidate the original vote. Then the Board would be able to engage in determination if there are no other permissible conflicts among Board members before it considers the rate that is the subject of this appeal."* Mr. Brower went on to state the request was to remand the case to the Board to invalidate the original vote. That vote can be invalidated, so it would be a non-vote. It does not make it a 3-3 vote. The vote is invalidated. Discussion followed.

Captain Collins explained that in the past, the agents would conflict out the pilots, and the pilots would conflict out the agents. He felt what didn't happen this time was that SWAPA didn't object to agents setting on the rate hearing because they assumed everyone was going to sit in on it. He added that the current opinion from the AG didn't hit the mark or set where the conflict was. The conflict, he felt, was that agents set on this Board instead of the owner or master. When you read the Statute, he felt they were the same. He also added the Statute says they were the only ones who can object. For those reasons, he stated that agents had as much conflict as pilots. Discussion followed.

Chairman Clough recommended the Board invalidate the vote, based on the recusal of Captain Joslyn, then begin the detailed ethics determination of all members to allow the Board to revisit the vote under that formal guidance. Mr. Arts asked that the vote be invalidated and the rate rescinded. Discussion followed.

Mr. Brower clarified that by invalidating the vote, it meant the vote didn't exist and the matter remained before the Board. Captain Collins asked about his participation in the first hearing of the rate filing and his ability to vote. He reminded the Board that he did not hear the full rate case and he had testified on one side. Chairman Clough reiterated his recommendation. Mr. Arts asked that the Board take a short recess.

1410 Break

1430 Back on Record

Mr. Blasco proposed to the Board that if they invalidate the vote, they rescind the rate, which would satisfy the Judge. Then allow all the parties to submit legal briefs. He stated a serious reservation that the Board could revoke.

Start Tape 4, Side A

Mr. Monkman expressed to the Board he felt it would be grossly improper to take a second vote without advice from the Attorney General's office. He proposed the Board follow through on gaining expanded guidance.

Mr. Poulson proposed the Board take the first step and void the vote as directed to by the court, which would put the Board back to where they were before the vote was made. Then the Board be directed by the Ethics Branch to proceed from there. Discussion followed. Poulson stated the motion for clarification, "to void the improper vote as directed by the Superior Court," which was seconded by Mr. Arts.

Mr. Brower advised the Board that Captain Joslyn would have a conflict to vote on voiding the vote. Captain Joslyn objected and asked Chairman Clough for an ethics determination. Captain Collins asked Mr. Brower if the agents could vote. Mr. Brower explained the similarity to Joslyn's recusal when the Board voted for remand of the case. Chairman Clough, as the Board's Ethics Officer, recused Captain Joslyn from the vote. Joslyn then objected to being conflicted and objected that Mr. Arts and Mr. Cronk be allowed to vote. AAG David Jones noted that the Ethics Act was clear that Captain Joslyn could not vote on his ethics determination.

By a roll call vote 6-0, it was

RESOLVED to recuse Captain Joslyn from voting on the motion to void the improper vote.

Clough Recuse

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Collins	Recuse
Arts	Recuse
Cronk	Recuse
Poulson	Recuse
Schasteen	Recuse

Chairman Clough ruled that Mr. Cronk did not have a conflict to vote on the motion to void the improper vote. Captain Joslyn stated his objection and reasons. The Board was asked to vote on his recusal.

By a roll call vote 2-4, it was

RESOLVED to allow Mr. Cronk to vote on the motion to void the improper vote.

Clough	Allow
Collins	Recuse
Arts	Allow
Joslyn	Recuse
Poulson	Allow
Schasteen	Allow

Chairman Clough ruled that Mr. Arts did not have a conflict to vote on the motion to void the improper vote and Captain Joslyn stated his reasons for objecting. The Board was asked to vote.

By a roll call vote 2-4, it was

RESOLVED to allow Mr. Arts to vote on the motion to void the improper vote.

Clough	Allow
Collins	Recuse
Cronk	Allow
Joslyn	Recuse
Poulson	Allow
Schasteen	Allow

Chairman Clough clarified the motion before the Board. Specifically, they were voting to invalidate the results of the improper vote and the issue remaining before the Board would be the hearing, prior to the Board taking the initial vote. Mr. Poulson confirmed that the improper vote was whether or not to adopt the proposed decision by the Hearing Officer. The Chairman then explained the next step would

be to fully vet the ethics conflict issues and get sound advice on which Board members were allowed to make final determinations.

By a roll call vote 6-0, with Captain Joslyn recused, it was

RESOLVED to void the improper vote as directed by the Superior Court.

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

After further discussion, Chairman Clough directed the Attorney General's Office, in consultation with the Ethics Branch, to fully vet the conflict issues that have been brought before the board and report back as soon as possible with recommendations, allowing the Board to move forward appropriately on the SWAPA case.

2004 AMP Rate Filing

Chairman Clough informed the Board that the AMP Rate Filing had been withdrawn, pending further developments.

2005 SWAPA Rate Filing

Chairman Clough summarized the October 2005 SWAPA Rate Filing which had received an objection by Alaska Steamship Association, in a timely manner. Chairman Clough explained one option available to the Board was to assign the filing and the decision to the Hearing Officer. Discussion followed.

Start Tape 5, Side A
(Note: Tape 4, Side B
not used for recording)

A motion was made by Captain Joslyn, and seconded by Mr. Poulson, to assign the 2005 SWAPA Rate Filing and final decision to a Hearing Officer. Discussion followed. The Board took a recess.

1512 Break
1527 Back on Record

Chairman Clough summarized the motion before the Board, which was to assign the filing and final decision to a Hearing Officer.

By a roll call vote 5-2, it was
RESOLVED to assign the hearing and final decision to a Hearing Officer.

Schasteen	Yes
Poulson	Yes

Joslyn	Yes
Cronk	No
Arts	No
Collins	Yes
Clough	Yes

Disclosures

Chairman Clough summarized the process by which Board members had recently been issued questionnaires for business and personal financial disclosure. These forms would be included in the Attorney General’s packet as conflicts of interest were examined in anticipation of the Board’s attention to the remanded 2003 SWAPA Rate Filing.

Mr. Cronk asked how the AG’s office would proceed. AAG David Jones explained his intent was to contact individual Board members to flush out the nature of relationships, in addition to contacting Mr. Monkman and Mr. Blasco for their possible filings. Chairman Clough encouraged everyone to view the process in the spirit of gaining solid guidance for the purpose of conducting business.

Public Comment

Captain Kellogg reviewed for the Board a language issue in regulation referencing “board-approved simulator” and “simulation course,” which currently had no written definition. The issue was recently discussed by Association Training Chairmen and Presidents in a meeting with the MPC, where a national standard was suggested as a possible solution. Kellogg explained that a national Classification Society, Det Norske Veritas, provides a standard which gives requirements for the performance of maritime simulator systems. For the Boards’ consideration, he proposed that regulation be crafted to reference, where “simulator” and “simulation course” are listed, “the most recent requirements of Det Norske Veritas Standard for Certification of Simulation Systems” to satisfy a clear definition for acceptable facilities and course content. He clarified the standard as IMO-certified and added that all major simulator facilities measured themselves against the DNV criteria, including Pacific Maritime Institute in Seattle, STAR-Center in Dania, Florida and VocTec in Seward. He offered to provide copies of the standard and preliminary language for change in regulation.

On a separate subject, Captain Kellogg addressed the efforts that SEAPA was exploring to ensure a new alternative for pilot candidate or pilot training selection, which includes a written and simulation process. This process follows that which has been employed by the San Francisco and Puget Sound Associations. SEAPA is continuing their work on this project with the assistance of an assessment specialist.

Captain Jim Wright presented himself for comment concerning a recent meeting between the Pilot Association and Alaska Steamship Association on the subject of retirement. He felt the discussion had covered elements that would eventually

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involve the Pilot Board, including an idea for the Board to adopt a “user’s manual for retirement” into regulation. This, he felt, was an acceptable proposal, however, he did not condone a second idea which challenged that all pilot jobs were not the same, or required the same level of skill.

Bridge Conflict

The MPC reminded the Board that she had been directed at the October Pilot Board meeting to contact representatives of the cruise companies and pilot associations following comments by Captain Joslyn regarding “conflict on the bridge.” A discussion on this issue had occurred between the Pilot Association Presidents and she asked the Board to hear their comments.

Captain Ted Kellogg reported that he and Captain Taylor did indeed discuss the issue and felt a solution was to explore the individual issues with the companies associated. In addition, if they did identify any policies were in place that were contrary to statute or regulation, they could report such to the Board. Chairman Clough encouraged the team to report if such discrepancies existed. Captain Taylor concurred with Captain Kellogg’s report. Captain Joslyn added that his concerns were being addressed if there was continued work on this problem. Captain Kellogg also added that Captain Pete Garay from AMP would be joining in on the project.

With no other contributions to public comment, and on a motion made by Captain Collins, and carried without exception, it was

RESOLVED to adjourn the meeting at 1600.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Approved:

Albert H. Clough, Chairman
Alaska Board of Marine Pilots