

April 14-15, 2009

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

MINUTES OF MEETING

April 14 - 15, 2009

Westmark Baranof Hotel - Juneau, Alaska

By the authority of AS 08.01.070(2), AS 08.62.030, and in compliance with the provisions provisions of AS 44.62, Article 6, a meeting of the Board of Marine Pilots was held April held April 14 and 15, 2009 in Juneau, Alaska.

April 14, 2009

Call to Order/Roll Call

The meeting was called to order at 1345 by Chairman Austerman. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum was:

Mr. Robert Arts	- Agent Member
Mr. Joe Austerman	- Commissioner's Designee
Captain Dale Collins	- Pilot Member
Mr. Les Cronk	- Agent Member
Mr. Joseph Miller	- Public Member
Captain Mike O'Hara	- Pilot Member
Mr. Mike Heimbuch	- Public Member

Staff present:

Renda Heimbigner, Marine Pilot Coordinator (MPC)

Lynne Smith, Director DCBPL

Jennifer Strickler, Chief, DCBPL

Gayle Horetski, Department of Law, AAG

Guests present:

Captain Hans Antonsen

Captain Scott Jones

Captain Terry Backen

Kate Tesar

Captain Vince Tillion

Rick Erickson

Southeast AK Pilots Association

Southeast AK Pilots Association

Southeast AK Pilots Association

AK Steamship Association

Southwest AK Pilots Association

Cruiseline Agencies of Alaska

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Ron Hildebrandt
Captain Richard Gurry
Captain Prash Karnik
Captain Greg Styrk
Captain Frank Didier
Captain Doug Hanson
Captain Vernon Adkison
Captain Rick Murphy
Captain David Arzt
Captain Ed Sinclair
Captain Kathleen Flury
Jim Lee
Gary Messer
Kirby Day
Captain Doug Sturm
Captain Larry Vose
Captain Lynn Melin

Trident Seafoods
Southeast AK Pilots Association
Holland America Lines
Southeast AK Pilots Association
Southeast AK Pilots Association
Southeast AK Pilots Association
Southwest AK Pilots Association
Alaska Marine Pilots
Alaska Marine Pilots
Southeast AK Pilots Association
Southeast AK Pilots Association
AK Maritime Agencies
Eimskip PTI
Princess Cruises
Southeast AK Pilots Association
Southeast AK Pilots Association
Shell Oil

New Member Introduction

The Chairman introduced the new public Board member, Mike Heimbuch.

Review / Set Agenda

The agenda was approved as presented.

Declaration of Potential Conflicts of Interest / Recusals

No conflicts or recusals were reported.

Agenda Item 1

Review / Approve Minutes

Mr. Cronk offered a name correction to the minutes of January 20-21, 2009 and on his motion, seconded by Captain O'Hara, and carried without dissent, it was:

RESOLVED to approve the minutes for December 16, 2008 and March 24, 2009 as presented; and to approve the minutes of January 20-21, 2009 with correction.

Public Comment on non-agenda items

No comments were presented.

Introductions

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05:57

Ms. Lynne Smith, Director of Corporations, Business and Professional Licensing (CBPL), introduced herself and thanked the members for their work on the Board.

Ms. Jennifer Strickler, Licensing Chief (CBPL), informed the Board that the MPC's workload was dramatically increasing with number of investigations, monitorings, regulatory projects, audits, and yacht exemptions. She recommended additional staff support as needed and encouraged the Board to consider the administrative demands of their directives.

She also gave caution to maintain the strictest level of reporting under current ethics standards and spoke to the MPC's responsibility to declare and report when Board members do not. She gave a reminder for the confidential nature of licensing and investigation information and the Board's liability for such. In conclusion, she recognized the Board members hours of service to the State and pledged Board member training in their support.

Questions followed. The Board requested the MPC delegate to additional staff as needed while maintaining oversight.

Agenda Item 2

Business Items

51:08

Financials - The Board reviewed their financial report without objections.

53:58

Tentative Meeting & Exam Dates – The Board reviewed and approved a meeting date for July 23.

59:14

Drug and Alcohol Report - The MPC summarized the concerns raised by Legislative Audit for the Board's oversight of drug and alcohol testing and resulting measures implemented for tracking and reporting. The Board reviewed the 2008 collection of data for all drug and alcohol testing by current licensees, trainees and apprentices, as audited by the MPC and submitted annually to the USCG.

01:00:40

Investigations - The MPC reported one new investigation opened and one closed. The Board reviewed an outline of the State investigation process and the MPC gave examples of the State's interface with USCG. She also provided a summary of highlights from a NTSB Investigation Course she attended in January and passed along their recommendations:

- 1) BRM be an integral part of all operations
- 2) conduct regular assessment of operator proficiency

She reported the Board's pilot fitness committee was currently working on pilot assessment.

Agenda Item 3

Foreign Pleasure Craft

01:18:12

The MPC provided an analysis of known foreign pleasure craft activity for 2008 which included violations, fines and number of exemptions issued. It was noted that 10% of the vessels shown had incurred a violation of State law during that time period. She reminded the Board that a revision of the application form was discussed in January with pending review by the AAG.

Mr. Poulson joined the audience and the Board took a moment to present his Certificate of Appreciation as an expiring public member of the Board.

Ms. Horetski came before the Board and summarized her revisions to the application for exemption from pilotage . She explained a general provision in statute for penalties specifically addressing foreign pleasure craft [08.62.040(f)] which characterized the bulk of her changes. Attention was given to the conditions of operation (pleasure). She strongly encouraged the Board to begin a regulation project to establish standards for qualification of an exemption.

Discussion followed. The Board directed the Yacht Committee to tackle a recommended criteria for the Boards review.

The MPC requested guidance from the Board for the approval of navigational and safety packages as described in AS 08.62.180(c). She submitted a list of recommended material provided by the Yacht Committee. Mr. Cronk explained the material was provided to the vessels in a list with electronic links. Mr. Austerman asked about a possible State-certified packet provided with the exemption. Mr. Arts felt it was better to keep agent-vessel relations. Mr. Cronk suggested the checklist be approved and let the agents distribute. He added that having certain navigational information on board the vessel could be part of the application criteria. He gave additional examples if the Board had concerns, but cautioned to not make the process too cumbersome. Mr. Miller encouraged a simplistic approach as well. Captain O'Hara suggested that the Board's discussion of the list as presented represented the review described in AS 08.62.180(c). The Board concurred.

The MPC summarized Board discussion at their last meeting to allow a foreign flagged pleasure craft to receive an exemption, then switch their pleasure status to 'for hire.' When no longer eligible, the Division determined the vessel should surrender their exemption to forgo possible penalties and maintain their options to reapply. The Board agreed and took a break at 1545.

02:06:35

Extreme Weather Presentation

The Board reconvened at 1607. Captain David Arzt shared a weather video from Adak and Kiska Harbor that he had taken in February, 2009.

Item 4

By Law Changes

02:13:10

SWAPA - Captain Vince Tillion, President of Southwest AK Pilots Association [SWAPA] outlined proposed changes to SWAPA's bylaws within Section 4. Determination of Member Shares where 60 and 80 GT licenses were re-listed as 65 and 90 GT. On a motion by Mr. Cronk, seconded by Mr. Miller and without dissent, it was

RESOLVED to accept the change to SWAPA's bylaws.

SEAPA - Captain Richard Gurry, President of Southeast AK Pilots Association [SEAPA], presented his association's bylaws with proposed changes:

Article II, Section 15: Association Management

Article VII, Section 2: Compensation

On a motion by Mr. Miller, seconded by Mr. Cronk and without dissent, it was

RESOLVED to accept the change to SEAPA's bylaws.

Item 5

Training Summaries

02:15:55

AMP - Captain Carter Whalen, Training Chairman for Alaska Marine Pilots Association [AMP] was reported delayed in Adak and unable to attend the days meeting.

SEAPA - Captain Frank Didier, SEAPA Training Chairman, summarized the progress of SEAPA's trainees, apprentices and new training pilots. He outlined new training and evaluation forms within their training program.

SWAPA - Captain Vernon Adkison, SWAPA Training Chairman, outlined proposed changes to SWAPA's by laws within Section 4. Determination of Member Shares where 60 and 80 GT licenses were re-listed as 65 and 90 GT. On a motion by Mr. Cronk, seconded by Mr. Miller and without dissent, it was

RESOLVED to accept the change to SWAPA's bylaws.

Captain Didier gave a summary of training activities and the progress of each trainee/apprentice. He submitted proposed changes to the Training Program consistent with new regulations effective 1/29/09. On a motion by Mr. Miller, seconded by Captain O'Hara, without dissent, it was

RESOLVED to accept the changes to SEAPA's Training Program.

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SWAPA - Captain Vernon Adkison, Training Chairman for Southwest Alaska Pilots Association (SWAPA), summarized the activities of SWAPA deputies and their continued licensing upgrades. Proposed changes to their training program were aimed at synchronizing requirements with new regulation. On a motion by Captain Collins, seconded by Mr. Cronk and without dissent, it was

RESOLVED to accept proposed changes to SWAPA's training program.

Agenda Item 6 **Committee Reports**

02:42:20 Pilot Assessment - Captain Vose reported on behalf of the Pilot Assessment Committee. He summarized the committee efforts to date and explained plans to investigate additional information from simulator facilities for imbedded cognitive testing. Captain O'Hara felt the committee's work would produce recommendations within the next six months.

02:44:10 Cause - Mr. Miller presented proposed language for regulation 12 AAC 56.310(c)(10) as recommended by the committee. He explained the language was intended to force communication between the association and master or vessel owner to address any issues that may have arisen. It was not felt by members of the committee that this would preclude other avenues for issues of 'cause.' Captain Collins added this was a measure to provide a 'relief valve' for less-than 'cause' issues.

On a motion by Captain Collins, seconded by Mr. Miller, and without dissent, it was

RESOLVED to move the committee's recommended language for 12 AAC 56.310(c)(10) to public comment.

02:46:58 **EXECUTIVE SESSION**

On a motion by Mr. Miller, seconded by Mr. Cronk and without dissent, it was

RESOLVED to move to Executive Session to conduct an annual review of the Marine Pilot Coordinator and hear follow-up monitoring of a Consent Agreement.

Mr. Heimbuch and Captain O'Hara asked to be recused from the monitoring briefing.

The Board recessed to Executive Session at 1650 and reconvened at 1804.

On a motion by Captain Collins, seconded by Mr. Miller, with Mr. Heimbuch and Captain O'Hara absent, and without dissent, it was

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RESOLVED to recess until the following morning.

The Board recessed at 1805.

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Chairman Austerman reconvened the meeting at 0838.

Members present constituting a quorum was:

Mr. Robert Arts	- Agent Member
Mr. Joe Austerman	- Commissioner's Designee
Captain Dale Collins	- Pilot Member
Mr. Les Cronk	- Agent Member
Mr. Joseph Miller	- Public Member
Captain Mike O'Hara	- Pilot Member
Mr. Mike Heimbuch	- Public Member

Staff present was:

Renda Heimbigner, Marine Pilot Coordinator (MPC)
Gayle Horetski, Department of Law (AAG)
Dan Branch, Department of Law (AAG)
Jun Maiquis, Regulations Specialist, CBPL

Guests present were:

Captain Lynn Melin	Shell Oil
John Kaighin	Shell Oil
Ron Hildebrandt	Trident Seafoods
Portia Babcock	ConocoPhillips Alaska
Steve Orr	Crowley
Captain Doug Hanson	SEAPA
Captain Greg Styrk	SEAPA
Bubba Cook	World Wildlife Foundation
Captain Rick Murphy	AMP
Captain Michael Terminel	Edison Chouest Offshore
Captain David Arzt	AMP
Captain Vince Tillion	SWAPA
Captain Richard Gurry	SEAPA
Marilyn Crockett	AOGA
Paul Axelson	NPM
LCDR Bill Duyor	USCG D17 Legal
Lt Maureen Johnson	USCG D17 Waterways Mgmt
Ens Kelly Hansen	USCG D17 Waterways Mgmt
Captain Ed Sinclair	SEAPA
Captain Scott Jones	SEAPA

Captain Doug Sturm	SEAPA
Prash Karnik	Holland America Lines
Captain Pete Garay	AMP
Captain Kathleen Flury	SEAPA
Captain Terry Backen	SEAPA
Captain Vernon Adkison	SWAPA
Gary Messer	Eimskip PTI
Captain Frank Didier	SEAPA
Captain Larry Vose	SEAPA
David Seris	USCG D17
Kate Tesar	ASA

Agenda Item 8 **Public Hearing**

Chairman Austerman opened the floor to public testimony.

- 01:08:00 Captain Lynn Melin, representing Shell Oil Company, spoke of her company's interest in the proposed rule making and stated Shell was opposed to the proposed regulation.
- 12:05:00 Bubba Cook, Senior Program Officer for Fisheries in the World Wildlife Fund Chukchi Bering Sea Eco Region Program , provided handouts and recommended support for the proposed amendment to regulation.
- 17:04:00 Porsche Babcock, representing Conoco Phillips, spoke to the proposed regulation and expressed opposition for the changes.
- 19:26:00 Michael Terminel from Edison Chouest testified against the proposed regulation.
- 24:30:00 Marilyn Crockett, Alaska Oil and Gas, recommended the Board take no action.
- 27:19:00 Captain Bill Dwyer, USCG, asked for clarification to the regulatory language and suggested re-drafting.
- 35:35:00 Kate Tesar, Alaska Steamship Association (ASA) requested the Board take no action.
- 41:19:00 The Chairman closed public testimony. The Board took a short break, then returned to the agenda.
- 42:19:00 AAG Gayle Horetski introduced an associate, Dan Branch AAG, from Department of Law. She then responded to comments made earlier through various testimonies. She explained the regulatory process and commended the

Board for their care to consider public comments during the project. This hearing was the third public notice for the regulation under consideration.

46:40:00

Ms. Horetski corrected a typographical error in the noticed version of proposed language and spoke to the cost of this regulation being no different than others. She explained the standard to evaluate a regulation as 'reasonably necessary to carry out the purposes of the statute' and summarized the federal oversight concerning enrolled vessels.

Horetski cited AK Statute 08.62.040(a)(1) to provide authority that the Board may establish compulsory pilotage requirements 'in the inland and coastal water of and adjacent to the state'. She gave general definition for 'inland,' 'coastal,' and 'adjacent,' and in response to public comment, reminded the Board of 08.62.180(a)(1) which exempts vessels subject to federal pilot requirements.

51:21:00

Horetski reminded the Board the proposed language was presented with discussion that pilots be required for vessels docking at exploratory drilling rigs. Inherently, the concept of pilotage is to protect the States land by requiring vessels coming in to take a pilot. She asked the Board to examine the justification to exercise authority on these particular waters. Why there? She gave examples of sensitivities needing protection and asked the Board to provide her with similar findings for this particular area to support a successful legal defense.

57:13:00

The Boards options were explained as 1) close the project without current action, 2) adopt as proposed, 3) amend and adopt as amended, or 4) dissect the package to apply the options individually. She raised the opportunity to clean up existing definitions for compulsory pilotage in general and tackle special boundaries for the arctic separate, with possible language recognizing federal requirements.

Captain O'Hara asked the AG's opinion for federal jurisdiction in the proposed area. Ms. Horetski acknowledged the federal government's role in the safety of arctic waters. If State regulation appears unclear, then effort should be made to clarify. It was understood that nothing trumps federal law.

Attention was given to the APA's proposed amendment to 'innocent passage' language. Proposed language by the USCG was also examined. Ms. Horetski suggested utilizing the exemptions referenced under 08.62.180.

Captain Collins asked about appropriate findings under protection of compulsory pilotage waters. Ms. Horetski gave an example from the Game Board who adopted regulations to protect precise findings (i.e. number of wolves, per region, etc.). In this context, she asked for answers to why this region chosen; what are the conditions there that require pilotage to protect the

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waters and shores of the State (weather, animals, water depth, shoreline, local conditions, etc.).

Mr. Arts suggested the genesis of the subject was derived from failed discussion for pilot employment between industry and Region Three licensees. He felt protection items came later.

Question for designation of drilling rigs as deep water ports was noted to be a USCG decision. Mr. Miller suggested the need to consider additional changes and adopt everything except 56.095. Ms. Horetski introduced new language for 12 AAC 56.095.

01:24:00 Captain Collins felt 56.090 was superior to previous language, but asked that 12 AAC 56.095 be considered a new regulation project, allowing time to look at the protection items. Mr. Cronk advocated the Board was reaching beyond it's authority. Captain O'Hara purported the need for pilots in the arctic was due to oil and that being where the platforms would be.

01:31:30 On a motion by Captain Collins, seconded by Mr. Miller, with objection from Mr. Arts, it was

RESOLVED to adopt 12 AAC 56.090 and 56.990 only, as amended by the AAG.

Captain Collins asked that 12 AAC 56.095 proceed. Mr. Cronk suggested the protection items be identified and brought before the Board. Discussion ensued. Ms. Horetski recommended that all items be considered for a deliberative record to support the regulation. Discussion continued.

01:50:25 Captain Collins proposed the Board revisit 12 AAC 56.095 as a new regulation project at their next meeting. Ms. Horetski suggested discussion in committee be had prior to public noticing. Mr. Cronk recommended a committee be formed. The committee was encouraged to look at the framework of 56.095 for a reference point. Mr. Heimbuch was appointed as the Committee Chair and encouraged to keep the size of the group small, and representative of stakeholders. Mr. Heimbuch expressed it was not blanket opinions desired, but rather organizing a template that could produce results.

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

RESOLVED to adjourn the meeting.

Meeting was adjourned at 1040.

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Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Joe Austerman, Chairman
AK Board of Marine Pilots