

October 22, 2009

PAGE 1 OF 14

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

MINUTES OF MEETING

October 22, 2009

Hotel Captain Cook - Anchorage, Alaska

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 held October 22, 2009 in Anchorage, Alaska.

Call to Order/Roll Call

The meeting was called to order at 0840 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)
Jennifer Strickler, Chief, DCBPL
Gayle Horetski, Department of Law, AAG
John Savage, Investigator DCBPL
Dawn Bundich, Investigator DCBPL
Jasmine Boutista, Investigator DCBPL

Guests present:

Captain Vince Tillion	Southwest AK Pilots Association
Ron Hildebrandt	Trident Seafoods
Captain Richard Gurry	Southeast AK Pilots Association
Captain Cees Deelstra	Holland America Lines
Captain David Arzt	Alaska Marine Pilots

October 22, 2009

PAGE 2 OF 14

Jim Lee
Captain Lynn Melin
Kate Tesar
Tom Rueter
Gary Messer
Captain Ed Devine
Captain Bill Gillespie
Captain Kathy Flury
Greg LeBeau
Jason Brune
David Fauske

AK Maritime Agencies
Shell Oil
AK Steamship Association
AK Maritime Agencies
Eimskip PTI
Southeast AK Pilots Association
Alaska Marine Pilots
Southeast AK Pilots Association
AK Maritime Agencies
Resource Development Council
North Slope Borough

Introductions

Ms. Jennifer Strickler, Operations Chief , DCCED, Division of Corporations, Business and Professional Licensing, introduced the investigative staff in support of the Marine Pilot Coordinator and Pilot Board under the enforcement of AS 08.62.

Review / Set Agenda

On a motion by Mr. Heimbuch, seconded by Mr. Arts, and carried without dissent, it was:

RESOLVED to amend the agenda to invite general Public Comment prior to Executive Session and adjournment.

Declaration of Potential Conflicts of Interest / Recusals

No conflicts or recusals were reported.

Agenda Item 1

Review / Approve Minutes

No corrections to the minutes of July 23, 2009 were offered and on a motion by Captain O'Hara, seconded by Mr. Cronk, and carried without dissent, it was:

RESOLVED to approve the minutes for July 23, 2009 as presented.

Public Comment on non-agenda items

Kate Tesar asked that an interested persons list be established for committee meeting notification.

The MPC explained an interested persons list was already established for each committee, plus Board meetings, plus their public noticing. She encouraged

October 22, 2009

PAGE 3 OF 14

persons wishing to be included on any list to contact the MPC office directly to provide for notification.

07:20 Discussion for public comment commenced and on a motion by Mr. Heimbuch, seconded by Mr. Cronk, and without dissent, it was

RESOLVED to insert an additional time for public comment prior to adjournment on all future meetings.

Agenda Item 2 Business Items

09:43 Financials - The Board reviewed their financial report.

Correspondence

A letter from Alaska Vocational Technical Center in Seward, Alaska gave thanks to the Pilot Board for providing geographical databases and ship's models for use in simulation by Alaska-licensed marine pilots. The MPC advised an invitation for on-site demonstration to the Pilot Board members was in process.

The Board acknowledged a letter of intent to revise rates for pilotage services from Southeast Alaska Pilots Association, affecting cruise vessels. The MPC noted the process for rate filings under AS 08.62.036 which included a 60 day period currently in effect for notices of objection.

Investigations - The MPC reported one new investigation opened and one closed.

18:23 Training Pilot Endorsements – The MPC presented check sheets for Captains Joan Sizemore and Carter Whalen demonstrating completion of requirements for Training Pilot Endorsements as defined in 12 AAC 56.016. On a motion by Mr. Cronk, seconded by Captain O'Hara, and without dissent, it was:

RESOLVED to approve the endorsement of Training Pilot for Captain Joan Sizemore.

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

RESOLVED to approve the endorsement of Training Pilot for Captain Carter Whalen.

19:35 Tentative Meeting & Exam Dates – The Board reviewed and approved the next meeting date of January 27 and 28, 2010 in Anchorage. Exams were scheduled

for January 26 and committee meetings were slated for the morning of January 27.

Agenda Item 3 **Vessel Agent Registration**

23:35 CBPL Chief Strickler and AAG Horetski presented a memo each, regarding the registration of vessel agents and an option for possible regulation under present statutory authority.

Ms. Strickler explained her memo was based on complaints received and investigations by the Department, however, without standards in place the Department had no direction by which to respond. Additionally, references to 'registration' under Marine Pilot Statutes were not being upheld and she noted discrepancies where one company was registered but held no business license. Others were advertising services but not registered with the Board. For those companies registered, she reported their representatives were not listed for the purpose of securing pilotage services. She referred to a memo to the Board in 2000 which called for reform of vessel agents and warned of issues which the Department was now experiencing. She cited lawfulness, accountability and safety, and requested the Board take action to provide guidance to the Department.

Questions followed.

41:25 AAG Horetski outlined her memo provided to the Board following a request from the MPC for guidance to interpret statute and regulation regarding registered agents by name and definition, and their removal from the Board's register. She cited statutory requirements which require the Board to keep a register of agents and foreign pleasure craft to receive navigational and safety information from those agents. She also explained the history behind registration.

Accompanying the AAG's memo was draft regulation for Board consideration to which Ms. Horetski shared an additional suggestion by the Department for an agent's removal under failure to be listed with the Board while providing service. She explained the Board's authority to take someone off the list is not in the statute. However, her conclusion after research of common law was the agency that issues an authority to act is also the agency that has the authority to take that back. She felt carefully crafted regulation based on clear violations of law would be defensible.

Questions followed.

58:20 Ms. Strickler reported that all 39 other professions licensed and registered had standards and responsibilities. She explained the 2000 memo carried the

October 22, 2009

PAGE 5 OF 14

endorsement of Senator Drue Pierce with proposed standards to ensure safety. She felt it would benefit both agents and the Department. If other registered professions did not have a Board, the Department developed regulations with the help of that industry. Vessel agents, however, were unique in the absence of standards.

01:03:32 Mr. Austerman suggested listing the services expected of a vessel agent, such as distributing a State-developed navigation-safety packet as a way to maintain registered status.

Discussion followed.

01:07:38 Captain Collins submitted that with mandatory employment comes oversight. Mr. Cronk explained that if someone didn't like the service provided by one agent, they could choose another and he was not sure how an agent could be held responsible for a vessel's actions. Mr. Austerman suggested providing the safety information was an existing standard.

Mr. Miller asked the AAG for clarification to the agent's legal principle. Ms. Horetski explained 08.62.190 sets out penalty for violation and focuses on the vessel owner or master, not the agent.

Questions continued.

01:20:40 Ms. Strickler explained further difficulties for the Department to understand agents was that some were registered, some were not, some had business licenses, some not, and only one representative known for each of those companies registered.

01:21:24 To gain compliance with law, Mr. Miller suggested an approach to maintain oversight of vessel agents was through the vessel owner. He advocated for a clear registry and cleaning up regulatory language in reference to State residency. He did not feel the provisions proposed for 'de-listing' an agent were necessary.

01:22:25 Mr. Heimbuch expressed concern for contentious relations when considering an agent for 'de-listing.' Mr. Arts felt the reality was actually good working relationships between agents and pilots. Mr. Cronk and Arts explained their internal practices for hiring and training. Mr. Arts agreed that a vessel owner or master can, and has, taken action against the agent with significant damage. He felt this provided a good check and balance.

Captain Collins gave concern for oversight when employment was mandatory. Mr. Cronk clarified that only agents dispatching pilots need be registered. Ms. Horetski noted that 08.01 allowed for the Commissioner to issue a 'Cease and

October 22, 2009

PAGE 6 OF 14

Desist' Order and further allowed a hearing to determine alleged violation. She explained this to provide an avenue for persons operating without a license.

Discussion continued.

01:37:12

Mr. Austerman summarized the areas of concern within the Board's authority and asked the Board to consider the Department's request for guidance to the registration of agents. Captain Collins motioned to move the AAG's proposed language for regulation to public notice. Mr. Heimbuch seconded. With objection from Mr. Arts, Mr. Cronk, Captain O'Hara and Mr. Miller, the motion failed.

01:39:50

Mr. Miller suggested the Board could address the Department's concerns through the proposed language, but drop the wording to 'de-list.' He motioned to ask the AAG make revisions in that direction by deleting the offending language and possibly provide administrative direction on how registration occurs. Ms. Horetski clarified on points for registering representatives. Mr. Arts questioned the work load it would mean for agent companies given their seasonal employment. Captain O'Hara suggested the companies submit their employee roster. Ms. Strickler gave an example of how they managed changing names and addresses regularly.

Discussion followed.

01:48:00

The Board recessed for a break, then reconvened at 1050.

Mr. Austerman summarized the motion before the Board. Mr. Arts requested the motion be withdrawn and in its stead, a letter from the MPC to each registered agent requesting a list of their representatives. Mr. Cronk asked how this would affect his staff which provided service to a vessel other than ordering pilotage. Mr. Miller suggested an amendment to his motion to include the language for acting under the chapter.

Questions followed.

Mr. Miller felt the proposed regulation was responsive to the Division's request with respect to their administrative concerns. He felt there were already abilities within the law to address complaints. It required the MPC to be more aggressive in prosecuting a vessel owner if they had been misdirected by an agent, then the vessel owners would go against the agent civilly.

Mr. Arts suggested a written request from the Department for a list of names to keep the process informal. Mr. Austerman offered that regulation gave definitive scope for who the registered persons were. Ms. Horetski cited 12 AAC 56.090(a)(1) provided for an agent's role.

Captain O'Hara seconded the motion. Mr. Miller restated the motion. Mr. Cronk clarified the regulation did not require each representative to be registered separately as vessel agents, but rather listed representatives of the single registered agent company. Captain Collins clarified that only those representatives listed could order a pilot or distribute safety and navigational information to a foreign pleasure craft in lieu of a pilot. Ms. Horetski requested the Board examine current language for 12 AAC 56.090(a)(1) and amend accordingly. Captain Collins motioned to amend Mr. Miller's motion to include the required safety/navigational information and it was accepted.

Mr. Heimbuch asked for the difference of who had to pay the registration fee. It was explained the intent allowed representatives to act through the registered agent without a separate fee. 'On-sight operations' was clarified to be a licensing issue for the Department, not a determinant for registration.

02:06:45

On Mr. Miller's motion, seconded by Captain Collins, without dissent, it was

RESOLVED to direct the AAG to provide regulatory language to resolve in-state residency, provide the administrative process for registration and include provisions to identify those who will act as an agent.

Item 4

Regulation re-consideration 12 AAC 56.310

02:07:10

AAG Gayle Horetski spoke to her memo, dated October 14, 2009, to the Pilot Board outlining the problems identified by Department of Law for proposed changes to 12 AAC 56.310(c)(10) approved by the Board at its last meeting. She summarized the legal challenge to the regulation and advised the Board their amended language was far worse. It removed the requirement to 'show cause', and requirement for due process. She advised the Board to repeal the regulation and reminded it was they who decides who is licensed, suspended, revoked, or re-trained. The Board did not have the power to give that authority over to a third party.

Questions followed.

Mr. Miller presented the intent to provide for communication. Mr. Heimbuch concluded the need for a reasonable amount of time by all parties when a complaint is received. Captain Collins stated he felt this was a contractual matter and to not overlook the impact on the pilot. He explained the punitive extent with each day of interrupted dispatch. He objected to the regulation.

Discussion continued.

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

RESOLVED to return the language for 12 AAC 56.310(c)(10) back to the Cause Committee for possible recommendation, and the addition of Mr. Heimbuch as a committee member.

The Board recessed for lunch at 1145.

LUNCH

The Board reconvened at 1333.

Item 5

SEAPA articles

02:43:23

Captain Richard Gurry, President, Southeast Alaska Pilots Association, gave details to the proposed changes to SEAPA's Training Program with discussion by the Board. The proposed changes included:

Part II(b) - appointment of the Training Chair

Part II(b)(9) - direction to Trainees for specific pilots, ships
and waterways

Part II(c) – membership of the Training Committee

Part II(f) – process for approval of training courses for Trainees

Part III(a) – process for approval of tailored Trainee training
plans

Part III(d) – violation of federal or state laws by Trainees

Part III(e)(5) – non-availability of training opportunities

Part III(i)(2) – addition of Appendix 4 for designated observer
trips

Part III(i)(4) – allowance for additional prescribed observer trips

Part III(j)(1)(i) – exclusion of unavailable areas for supervised
maneuvers

Part III(j)(1)(iv) – deadline for ship handling course prior to
Deputy license

Part III(j)(3)(iii) – reorganize assessment maneuvers

Part III(j)(5) – synchronizes wording w/56.026(c)

Part III(j)(6)(iii) – designates simulator approval

Part III(j)(8) – changes purpose of addtl prescribed
supervised transits

Part III(k)(3) – synchronizes wording w/56.025(a)(3)

Part III(l)(1) – eliminates evaluation forms as part of
Trainee quarterly report

Part III(l)(1) – changes evaluation summary of activity to only
completed maneuvers

Part III(n)(4) – includes Deputies in requirement for completion
of training in port if it becomes active, unless

- substituted
- Part III(n)(4) – sets deadline for training in port if it becomes active, unless substituted
- Part III(n)(5) – supports definition of non-availability
- Part III(r) – gives definition for ESH courses and deadline for their completion
- Part IV(d)(1)(i) – switches piers to berths
- Part IV(d)(2) – eliminates night requirement
- Part IV(d)(3) – clarifies moorings
- Part IV(d)(4) – reduces anchorings
- Part V(a)(4) – reduces anchorings
- Part VI(e)(3) – sets deadline for BRMP course completion
- Part VI(h)(1)(i) – switches piers to berths
- Part VI(h)(3) – clarifies moorings
- Part VI(h)(4) – clarification for port of Sitka
- Part VII(a)(1)(ii) – defines allowance for same training pilot
- Part VII(a)(2)(i) – sets tonnage minimum and increases time at 90k prior to unlimited licensure
- Part VII(a)(2)(ii) – defines tolerance for same training pilot
- Part VII(a)(3)(ii) – defines tolerance for same training pilot
- Part VIII(a)(1) – sets general subjects for CE
- Part VIII(a)(2) – sets starting period for CE credits
- Part VIII(a)(2)(ii)(A)-(B) – sets criteria for completion
- Part VIII(a)(2)(ii)(D) – phases out multiple credits for Dania course for CE, sets expiration time for CE courses
- Part VIII(d) – designates responsibility for CE expenses
- Part IX(a)(3) – synchronizes requirement w/56.016
- Part IX(a)(3)(E) – establishes general subject category for CE
- Part IX(c)(4) – removes training log and evaluations from TP purview
- Part IX(e)(2) – clarity for refusal of a trainee
- Part IX(f) – clarity for progression in training
- Part IX(h) – request for TP comments
- Part X – rewrite of grievance procedure
- Part XI(e) – additional requirement added
- Part XI(i) – language adjustment
- Part XI(k) – word change

Discussion continued.

04:04:19

The Board asked that changes be made to the Training Program and on a motion by Mr. Heimbuch, seconded by Captain O’Hara, it was

RESOLVED to postpone the review of SEAPA’s Training Program

October 22, 2009

PAGE 10 OF 14

and return the document for revisions based on concerns raised during discussion.

Mr. Arts asked that submissions to the Board's meeting packets be cut off two weeks in advance and be delivered to the Board within five working days of the meeting.

04:08:02 Captain Collins recused himself from discussion of SEAPA's Bylaws as having a financial interest and left the table.

Captain Gurry noted a disparity to the document presented through electronic formatting. The MPC explained how in the future, submitted changes would be indicated on the 'document of record' by Board staff, for Board review.

04:11:50 Captain Gurry began explanation to changes submitted for SEAPA's Bylaws with questions from the Board. It was determined the Bylaws presented were to coincide with changes to the training program. Discussion continued.

04:22:44 The Board continued their review of the Bylaws and Captain Gurry gave clarification to distribution of income as highlighted in the document. Questions followed.

04:38:36 On a motion by Mr. Cronk, seconded by Mr. Arts, it was

RESOLVED to postpone the review of SEAPA's Bylaws as presented.

04:40:00 The Board began a review of SEAPA's Operating Rules. Captain Collins returned to the table. Captain Gurry responded to questions.

Proposed changes included:

Section 1, C – additional language for 2 pilots/6 hours

Section 1, DI – off dispatch w/o loss of earnings for fatigue

Section 1, E – change in permission

Section 1, F – Ketchikan and Juneau as dispatch ports

Section 1, G – language for travel arrangements

Section 1, K – delete coach airfare, clarify medical/family leave

Section 3, C – incident clarification

Section 3, E – adding address criteria

04:50:40 On a motion by Mr. Miller, seconded by Captain O'Hara, it was

RESOLVED to approve SEAPA's Operating Rules as presented.

The Board recessed for a break, then reconvened.

Agenda Item 6 AMP Training

04:52:17

A letter regarding an intended course in Pilot Liability from AMP was acknowledged by the Board. A course curriculum and speaker biography was provided and invitation to Board members who might want to participate. Captain David Arzt answered questions from the Board. Captain O'Hara, Mr. Cronk and Mr. Miller expressed interest in attending.

On a motion by Captain Collins, seconded by Captain O'Hara and without dissent, it was

RESOLVED to accept the course under AMP's continuing education program.

Agenda Item 7 Committee Reports

04:55:45

Arctic Pilotage – Mr. Heimbuch reported his assessment of the progress of the committee to-date. He cited opposing opinions on the subject matter and felt them to be well entrenched. He provided their mission statement but did not believe the committee saw a proactive approach to fact finding unfolding. He spoke to requesting an opinion from the federal government before proceeding.

Mr. Austerman explained it was the Board's option to send a letter but added that the Department was looking to get the State's delegation involved for a more immediate response. Mr. Cronk supported contact with the administration and delegation. Ms. Horetski responded to questions by explaining if the Board were to adopt a regulation going beyond the 3 mile limit, the ability of the Department of Law to defend it would be based in part on how that regulation was adopted.

Mr. Heimbuch explained as one of 50 states in a federation, local control and autonomy was an issue throughout the world. He felt they were in tense negotiations for rights of countries and geopolitical positioning, giving example to Canada's development of a 200 mile limit.

It was agreed that more information was needed.

Mr. Heimbuch expressed his interest for providing as much opportunity for differentiating arctic interests as possible. He suggested a January 1, 2010 deadline for submissions. Mr. Cronk expressed interest for federal jurisdiction.

October 22, 2009

PAGE 12 OF 14

Lynn Melin, Asst. Maritime Contract Manager for Shell Exploration & Production, spoke to Shell's plan to bring a drill ship into the Beaufort at first open water. She estimated drilling to occur 10-12 miles offshore.

05:08:24

Pilot Assessment - Captain O'Hara gave a background summary to cognitive and physical agility for age >65. He presented proposed language for regulation removing only the age requirement and providing for the added requirement at both initial licensure, as well as biennial renewal. He attested to the MMI test attached as a recommended standard for State medical screening.

Discussion followed.

The MPC explained the use of the SEAPA-developed job task analysis (JTA) in situations of additional screening or 'red flags.' She noted the proposed regulation would include cognitive screening at initial licensure as well, providing a benchmark in a case of decline. She gave example to the use of cognitive testing as part of trainee application in Canada.

Kate Tesar, State Director for Alaska Steamship Association, asked if the USCG had produced a new medical standard. Captain O'Hara explained no, and the need to address age requirement before the next State renewal.

Discussion followed.

Ms. Horetski explained the need for a standard. The MPC noted proposed changes to the State medical form called for the attending physician to indicate recommendations for follow-up in the event of 'un-fit.' Captain O'Hara suggested Board action for proposed change to regulation and continued work on the State medical exam.

Discussion for the history to mandatory retirement ensued. It was agreed the Board's intent was to maintain qualified pilots on the bridge.

On a motion by Captain O'Hara, seconded by Mr. Heimbuch, with objection from Mr. Arts, it was

RESOLVED to move recommended language for 12 AAC 56.080 and 56.025 to public comment.

oral

It was noted the board would accept written comment and hold a hearing for comment at their next meeting.

05:27:46

Foreign Pleasure Craft – On behalf of Captain Winter, the MPC provided materials giving insight to interest by Homeland Security for small passengers

October 22, 2009

PAGE 13 OF 14

vessels under port security guidelines. She spoke to the network established between the Board, USCG, State Troopers and US Customs in ensuring enforcement of the State requirements for foreign pleasure craft.

Mr. Cronk explained the committees work on safety and navigation items.

The MPC spoke to the service provided by Marine Exchange of Alaska after enabling her computer to access their AIS tracking system. She explained the use of the tool during investigation.

Mr. Cronk felt communication with the yacht community was improving and yacht business was seen as a potential for economic development.

Agenda Item 8

Training Summaries

Each region reported no changes to training or trainees.

The MPC explained the Board's involvement in determining challenges to questions on the State's Core Exam.

05:35:28

Public Comment

Captain Eric Collins addressed the Board to explain his apprehension with his association bylaws and expressed concern for its distribution of income. He asked the Board to determine compliance with regulation for fair and equitable distribution, specifically Section VI, B. He expressed concern for his financial liability should the document be determined not equitable in the future and asked the Board to establish that point with the current document.

Questions followed.

Captain E. Collins agreed to provide his comments in writing for the Boards next review.

05:39:55

Captain Gurry, President of SEAPA, spoke to Captain E. Collins remarks. He assured the Board that the current policy for income distribution had been Board-approved for many years. Each association's policies had grown with the needs of the membership.

Discussion ensued.

On a motion by Mr. Miller, seconded by Mr. Cronk, and without dissent, it was
RESOLVED to move to Executive Session to hear a compliance update for a current Memorandum of Agreement/Consent Agreement.

October 22, 2009

PAGE 14 OF 14

Mr. Heimbuch asked to be excused to catch his flight. Mr. Arts and Captain O'Hara asked to be recused. Each was excused and the Board moved to Executive Session at 17:15.

EXECUTIVE SESSION

The Board reconvened at 1729.

The Board directed the MPC to request the Probation Monitor provide the attending Counselor's recommendation for consideration of the licensee's request.

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

RESOLVED to adjourn the meeting.

Meeting was adjourned at 1730.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Captain Dale Collins
Board Member on behalf of the Chair
AK Board of Marine Pilots