

**January 27-28, 2010**

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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**

**January 27-28, 2010**

**Hotel Captain Cook - Anchorage, Alaska**

**B**y 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 January 27 and 28, 2010 in Anchorage, Alaska.

**January 27, 2010**

**Call to Order/Roll Call**

The meeting was called to order at 0840 by Acting Chairman Joseph Miller. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Robert Arts	- Agent Member
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

Members excused:

Mr. Curtis Thayer	- Commissioner's Designee
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Guest present:

Joe Austerman, AK Department of Commerce

Staff present:

Renda Heimbigner, Marine Pilot Coordinator (MPC)  
Gayle Horetski, AAG, Department of Law  
Brian Howes, Chief Investigator DCBPL

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Public present:

Captain Terry Backen	Southeast AK Pilots Association
Captain Ron Ward	Southwest AK Pilots Association
Captain Jim Wright	Pacific Maritime Institute
Captain Carter Whalen	Alaska Marine Pilots
Russell Sell	Harpoon Construction Corp.
Captain Steve Hunnicutt	Southwest AK Pilots Association
John Makita	Shell Oil
Greg LeBeau	Alaska Maritime Agencies
CDR Paul Albertson	USCG Sector Anchorage
Captain Eric Collins	Southeast AK Pilots Association
Captain Doug Sturm	Southeast AK Pilots Association
Andy Mack	North Slope Borough
Captain Jim Cathcart	Southeast AK Pilots Association
Jacob Sonneborn	Ashburn & Mason
Captain Barry Olver	Southeast AK Pilots Association
Jeff Johnson	BP Shipping
Captain Larry Vose	Southeast AK Pilots Association
Captain Lynn Melin	Shell Oil
Bruce Tohey	self
Captain Scott Jones	Southeast AK Pilots Association
Matthew Forney	NOAA Office of the Coast Survey
Jack Jensen	Tesoro
Captain Bob Winter	Southeast AK Pilots Association
CDR Jay Boyer	USCG
Captain Richard Gurry	Southeast AK Pilots Association
Captain Rich Preston	Southeast AK Pilots Association
Ron Hildebrandt	Trident Seafoods
Tom Rueter	Alaska Maritime Agencies
Jim Lee	Alaska Maritime Agencies
Captain Greg Styrk	Southeast AK Pilots Association
Captain Dave Anderson	Southeast AK Pilots Association
David Fauske	North Slope Borough
Gary Messer	Eimskip PTI
Kate Tesar	Alaska Steamship Association
LCDR Vivianne Louie	USCG
CAPT Melissa Bert	USCG

**Review / Set Agenda**

The agenda was re-ordered to allow for the arrival of Mr. Thayer who was weather-delayed.

**Declaration of Potential Conflicts of Interest / Recusals**

Captain Collins requested he be recused from participating in discussion of Agenda Item 8 - SEAP Bylaws. The Chairman approved.

14:45 The Board recessed to allow interested persons to sign up for public comment.

15:03 The Board reconvened and the Chairman called on those listed for public comment.

**Public Comment**

Kate Tesar, representing Alaska Steamship Association, spoke to a letter from ASA's attorney Robert Blasco to AG Daniel Sullivan regarding implications to 12 AAC 56.310. Copies of the letter were provided.

Captain Jim Wright, retired SWAPA pilot, provided information on the recent development of a new BRMP course at Pacific Maritime Institute.

Captain Larry Vose, SEAPA pilot, asked to speak on two agenda items and asked for clarification to the protocol for public comment. Chairman Miller explained the Board would entertain requests to speak on specific items and allow accordingly.

Captain Ron Ward asked to address the Board on 12 AAC 56.310 during public testimony.

Captain Carter Whalen asked to comment on the arctic if the Board chose to address the subject.

**Election of Chair**

Chairman Miller informed board members of the Governor's appointment of Mr. Curtis Thayer as a new member and Board Chair. Departing Board member, Joe Austerman, gave comment to his term with the Board and summarized his experience.

**Agenda Item 1** **Review / Approve Minutes**

26:20 A grammatical correction to the minutes of October 22, 2009 was noted and on a motion by Mr. Cronk, seconded by Mr. Arts, and carried without dissent, it was:

RESOLVED to approve the minutes for October 22, 2009 as amended.

**Agenda Item 3      Business Items**

Financials - The Board reviewed their financial report.

Board Website – The Board reviewed pages from their new website.

Investigations - The MPC reported one new investigation opened and one closed. A monitoring report for a current Consent Agreement was scheduled for Executive Session.

31:37      Correspondence – Items of correspondence to the Board included a letter from Alaska Steamship Association withdrawing their objection to SEAPA’s October rate filing. Under AS 08.62.046, a rate filed without objection becomes effective January 1.

The Board noted two informational letters from Alaska Marine Pilots Association regarding additional tug support for a large vessel in Dutch Harbor.

A letter from Southeast AK Pilots Association requested a change to language in regulation allowing Endicott Arm be substituted for Tracy Arm in supervised transits, and to replace ‘piers’ with ‘berths’ for supervised dockings and undockings. The Board agreed to address the request during Agenda Item 6 – Training Summaries.

An additional letter from Alaska Steamship Association requested the Board consider further discussion of compulsory pilotage in the Alaskan Arctic. The Board agreed to consider the request under Agenda Item 5 – Committee Reports (Arctic).

37:55      Tentative Meeting & Exam Dates – The Board reviewed and approved the next meeting date of April 28 and 29, 2010 in Juneau. The following meetings were established for July 22 and October 13-14, 2010.

**Agenda Item 4      Regulation re-consideration 12 AAC 56.980**

45:19      AAG Gayle Horetski summarized the previous discussion for registration of agents and the Boards direction to her for proposed language for regulation. The drafted language provides for the required registration of a vessel agent, biennial registration renewal, notice and upkeep of information regarding individuals representing the agent and amending language to 12 AAC 56.990(a)(1) for the definition of an agent.

Ms. Horetski explained the penalty for noncompliance was found under AS 08.62.190(b) and represented a fine.

Mr. Cronk felt the proposed language clarified the concerns expressed at the previous meeting and he supported the language.

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

RESOLVED to move the proposed language as presented by the AAG for 12 AAC 56.980 and 12 AAC 56.990 to public comment.

55:10

**NOAA Presentation**

Mr. Matthew Forney, NOAA's Alaska Navigation Manager, gave a presentation to the Board. He spoke to the work NOAA has done and plans yet to be accomplished in the future with hydrographic operations in Alaska. The Board agreed each pilot association would have more specific needs of NOAA for information in their regions and requested he provide his contact information for those interested.

**Agenda Item 6**

**Training Summaries**

01:14:20

**AMP** – Captain Carter Whalen, VP and Training Chairman for Alaska Marine Pilots, reported on the activities of their one trainee and one apprentice. He announced his association would be taking in two additional trainees. For continuing education, the group was researching appropriate ice training and gave details for what they had found to date.

01:21:05

**SEAPA** – Captain Terry Backen, Chairman of the SEAPA Training Committee, gave an update on Southeast trainees and apprentices. He gave comment to training held at AVTEC involving six of SEAPA's trainees and two tug captains from SE Stevedoring with positive results.

01:25:38

**SWAPA** – Captain Steve Hunnicutt, President of Southwest AK Pilots Association, summarized the activities of their only trainee and deputies.

01:30:54

The Board took a short break, then reconvened to resume training issues.

Mr. Thayer joined the meeting. After a brief introduction, Mr. Miller relinquished the gavel to Mr. Thayer.

01:36:00

**SEAPA** - Captain Backen returned to address SEAPA's request for amending language in regulation. He asked for consideration of amending language to 12 AAC 56.028 and 12 AAC 56.082. He explained the use of Endicott Arm, as opposed to Tracy Arm, and that SEAPA felt the degree of difficulty was similar.

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It was requested that ‘piers’ be replaced with ‘berths’ for language regarding supervised movements in Ketchikan and Sitka’s reference by ‘Anchorage’ instead of ‘Harbor.’ Because only two ports in Southeast have active mooring buoys, it was also requested that regulatory language be amended to read ‘at any mooring.’

01:41:20                                On a motion by Mr. Cronk, and without dissent, it was

RESOLVED to move the proposed amendments to 12 AAC 56.028 and 12 AAC 56.082 to public comment and a hearing.

**Agenda Item 5                                Committee Reports**

01:42:30                                **Liability Seminar** – Mr. Miller gave a summary of a recent seminar on pilot liability, presented by Attorney and Professor of Law, Mr. Michael Butterworth and hosted by Alaska Marine Pilots.

01:48:08                                **Cause Committee** – Mr. Miller presented amending language for 12 AAC 56.310(c)(10) on behalf of the Cause Committee. He explained the suggested language represented an obligation for the pilot associations to respond to an allegation of act or omission by a member pilot when informed by an owner or agent of a vessel. Ms. Horetski summarized the change to regulation was originally a proposal by SEAPA, followed by a public hearing in October 2008. A supplemental notice with adjusted language was heard on July 2009 where the Board adopted the proposed language. Department of Law referred the matter back to the Board, who directed the Committee to revise the language with regard to Department of Law’s concerns. Ms. Horetski advised the new language should go out for public comment as the previous comment periods were closed. The Board could take action at their next meeting.

Ms. Horetski responded to Mr. Blasco’s letter which had been reviewed by Department of Law. She explained her legal advice to the Board had been upheld by the Department and no change in the legal opinion warranted.

Mr. Cronk suggested the language be examined during public comment for possible revision.

Ms. Kate Tesar, representing Alaska Steamship Association, gave public testimony to the language.

Board discussion continued.

On a motion by Mr. Heimbuch, seconded by Mr. Miller, with objection from Captain Collins, it was

RESOLVED to amend the Committee's proposed language to include 15 days and move to public notice and hearing.

Ms. Tesar, again, gave public testimony to the proposed language.

On a motion by Mr. Miller, seconded by Mr. Cronk, with objection from Captain Collins, it was

RESOLVED to amend the proposed language to include the word 'operator.'

02:01:34

**Foreign Pleasure Craft** – Captain Bob Winter, Chairman of the FPC Committee, presented proposed language for regulation, as previously directed by the Board. He reported the Committee had crafted items to define criteria for approval of the application for exemption from pilotage and practices while operating in Alaska waters. In the draft before the Board, he recognized two omissions and added up-to-date tidal current tables and COFER certificate. They were explained as safety items.

Discussion followed.

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

RESOLVED to move proposed language amending 12 AAC 56.115 to public notice with a hearing.

02:15:38

**Pilot Assessment** – On behalf of the Assessment Committee, Captain O'Hara, presented a new medical form for use as described under 12 AAC 56.025(a)(10) for determining 'fit for duty.' In conjunction, Captain Larry Vose, Committee Co-Chair, explained the intent to allow the form to address the specifics under the umbrella regulation as 1) maintain State control over the examination process; 2) include a description of the pilot duties for the medical examiner; and 3) specifically address the cognitive and physical agility issues of concern to the Board. Discussion by the Board members followed.

Ms. Tesar gave public comment to the form.

Discussion by the Board members continued. On a motion by Mr. Miller, seconded by Mr. Arts, and without dissent, it was

RESOLVED to continue the discussion for the medical form at the scheduled time to consider changes to related regulation.

The Board recessed for a short break, and reconvened to continue Agenda Item 5 – Committee Reports.

02:40:56

**Arctic Pilotage** – Committee Chairman Mr. Heimbuch reported his assessment of the issue to-date and provided three options for Board action, 1) send a written request to the Governor asking that the State petition the federal government for compulsory pilotage in the EEZ Zone; 2) send a written request to the Governor asking him to query the federal administration on State expansion of compulsory waters in the Chuckchi and Beaufort; and 3) establish a team of one pilot and one industry Board member to develop a dispatch and cost strategy for Arctic pilotage. Board discussion followed.

Captain Carter Whalen gave public comment to arctic pilotage.

Mr. Russell Sell gave public comment on the arctic.

Governor  
inquired

Board discussion continued. Mr. Miller motioned a letter be sent to the requesting his opinion. Mr. Heimbuch seconded the motion. Mr. Thayer about the Coast Guard's involvement and a legal ruling on the Board's jurisdiction. He was informed the CG had participated on the Board's Arctic Committee, as well as submitting written comment during public testimony on proposed regulation. Additionally, it was explained a request for opinion from the federal government had been a consensus of the Arctic Committee. Mr. Thayer asked for time as new Board Chair to apprise himself of the issues outside of pilotage before signing the Board's letter. Mr. Miller withdrew his motion and moved to table the discussion until such time as the new agent board member and chair could familiarize themselves.

Board discussion continued. Mr. Heimbuch withdrew his second of the previous motion. The Board took no action.

03:17:50

**EXECUTIVE SESSION**

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

RESOLVED to move to Executive Session to conduct oral examination for Deputy Licensure of Captain Barry Olver and hear a compliance update for a current Consent Agreement.

Mr. Arts and Captain O'Hara asked to be recused. Each was excused and the Board moved to Executive Session at 1740.

The Board returned from Executive Session at 1805.

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

RESOLVED to approve deputy licensure for Captain Barry Olver.

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

RESOLVED to recess the meeting until tomorrow morning at 0830.

The Board recessed at 1808.

## **January 28, 2010**

### **Call to Order/Roll Call**

The meeting was called to order at 0832 by Chairman Curtis Thayer. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Robert Arts	- Agent Member
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
Mr. Curtis Thayer	- Commissioner's Designee

Public present:

Captain Eric Collins	Southeast AK Pilots Association
Captain Scott Jones	Southeast AK Pilots Association
Kate Tesar	Alaska Steamship Association
Jim Lee	Alaska Maritime Agencies
Tom Rueter	Alaska Maritime Agencies
Jack Jensen	Tesoro
Captain Richard Gurry	Southeast AK Pilots Association
Captain Terry Backen	Southeast AK Pilots Association
Captain Greg Styrk	Southeast AK Pilots Association
Captain Jim Cathcart	Southeast AK Pilots Association
Lcdr Vivianne Louie	USCG
Captain Dave Anderson	Southeast AK Pilots Association
Ron Hildebrandt	Trident Seafoods
Captain Larry Vose	self
Captain Ron Ward	Southwest AK Pilots Association
Captain Jim Wright	self
Gary Messer	Eimskip PTI

Captain Doug Sturm

Southeast AK Pilots Association

Chairman Thayer announced the order for public comment on both hearing and general topics.

**Agenda Item 7**

**Public Hearing**

02:27

Chairman Thayer opened the hearing on proposed language to 12 AAC 56.080 Biennial License Renewal.

Ms. Tesar representing Alaska Steamship Association gave comment to the proposed language.

06:19

The Board reviewed the proposed changes to regulation. No written comment had been received during the public notice period, which ended January 21, 2010.

Captain O'Hara presented a revised medical form reflecting suggestions from the AAG, as addressed in yesterday's Board's meeting. Mr. Cronk inquired as to the authority to change the form. Ms. Horetski explained 12 AAC 56.025 allowed the board to adopt the form.

Ms. Horetski asked about source and ownership of the cognitive test included with the new medical form. Captain O'Hara explained it was a nationally recognized test without ownership for any physician to administer.

Board discussion continued and included examples of the form in use. Mr. Miller asked that paragraph 14 on the medical form be changed to replace 'has any question regarding' for the word 'doubt.' The Board agreed.

Mr. Cronk motioned the language to 12 AAC 56.080 be adopted as public noticed. Mr. Arts seconded the motion. Discussion followed.

Captain O'Hara asked if the wording to the proposed language were changed, would it require supplemental public noticing. It was explained, 'no.'

With consideration to the cost of compliance to private persons, on Mr. Cronk's motion, with second by Mr. Arts, on a vote of 5-2, it was resolved to adopt the proposed language to 12 AAC 56.080 as public noticed.

Arts	Yes
Collins	No
Cronk	Yes
Miller	Yes
Heimbuch	Yes

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O'Hara	No
Thayer	Yes

Captain O'Hara motioned to accept the latest version of the medical form. Mr. Cronk seconded the motion. The Board moved to discussion.

Mr. Miller requested his change of wording to paragraph 14 on the medical form. Captain O'Hara accepted the amendment. On Captain O'Hara's amended motion, seconded by Mr. Miller and without dissent, it was

RESOLVED to adopt the amended medical form as presented with adjustment to paragraph 14.

It was noted that no interested persons had signed up to speak to 12 AAC 56.025. No written comments had been received during the public notice period ending January 21, 2010.

Chairman Thayer opened the floor to Board discussion. On a motion by Mr. Miller, seconded by Mr. Cronk and without dissent, it was

RESOLVED to adopt 12 AAC 56.025 as public notice.

**Agenda Item 8**

**SEAPA Bylaws**

Chairman Thayer asked for a motion to approve the bylaws as presented. None was provided.

Mr. Cronk asked that the Board be allowed to question the SEAPA representatives on specifics. Captain Richard Gurry, President of SEAPA, appeared before the Board and asked to withdraw the amendments presented, pending further review by SEAPA Board of Directors and membership.

The SEAPA Bylaw amendments were withdrawn.

**Public Comment**

No public comment was provided.

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

RESOLVED to adjourn the meeting.

Respectfully submitted:

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Renda Heimbigner  
Marine Pilot Coordinator

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Curtis W. Thayer, Chairman  
AK Board of Marine Pilots