

**April 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**

**April 28, 2010**

**Baranof Hotel - Juneau, 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

April 28, 2010 in Juneau, Alaska.

**April 27, 2010**

**Call to Order/Roll Call**

The meeting was called to order at 0845 by Chairman Curtis Thayer. The Marine Pilot Coordinator (MPC) conducted roll call.

Mr. Miller's resignation was noted and members present constituting a quorum were:

Mr. Robert Arts	- Agent Member
Captain Dale Collins	- Pilot Member
Mr. Rick Erickson	- Agent Member
Captain Mike O'Hara	- Pilot Member
Mr. Mike Heimbuch	- Public Member
Mr. Curtis Thayer	- Commissioner's Designee

Staff present:

Renda Heimbigner, Marine Pilot Coordinator (MPC)  
Gayle Horetski, AAG, Department of Law

Public present:

Captain Pete Garay	Alaska Marine Pilots
Kate Tesar	Alaska Steamship Association
Captain Hans Antonsen	SE Alaska Pilots Association
Jim Lee	Alaska Maritime Agencies
Captain Greg Styrk	SE Alaska Pilots Association
Paul Axelson	North Pacific Maritime

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Captain Terry Backen	SE Alaska Pilots Association
Tom Rueter	Alaska Maritime Agencies
Ron Hildebrandt	Trident Seafoods
Captain Michael Tamney	SE Alaska Pilots Association
Captain David Arzt	Alaska Marine Pilots
Captain Doug Sturm	SE Alaska Pilots Association
Gary Messer	Eimskip PTI
Captain Larry Vose	SE Alaska Pilots Association
Captain Richard Gurry	SE Alaska Pilots Association
Captain Bob Winter	SE Alaska Pilots Association
Captain Eric Collins	SE Alaska Pilots Association

**Agenda Item 1**      **Review / Set Agenda**

The Chairman introduced a draft letter on behalf of the Board to the Alaska Attorney General regarding arctic pilotage and it was added to the agenda.

**Agenda Item 2**      **Review / Approve Minutes**

A correction to the minutes of January 27-28, 2010 was noted and on a motion by Captain O'Hara, seconded by Mr. Arts, and without dissent, it was:

RESOLVED to approve the minutes for January 27-28, 2010 as amended.

The Board moved to Agenda Item 4 while the teleconference line was secured.

**Agenda Item 4**      **Business Items**

Financials – The Board reviewed their Financial Report.

Correspondence – Captain O'Hara gave details to the Certificate of Recognition for Polar Tanker Captain George McShea from Southwest AK Pilots Association and the cooperative work being performed at AVTEC by Polar/SWAPA.

09:53      Investigations – The MPC explained one new investigation opened and one case ongoing. She provided clarification to the general investigation process with a handout provided by the Division.

13:35      Drug and Alcohol Testing – The Board reviewed the MPC's audit of 2009 drug and alcohol testing as administered by the pilot associations to licensees and trainees/apprentices in accordance with AS 08.62.040(b)(2). The audit showed 100% compliance.

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The MPC requested that the Board repeal their directive for staff to file an annual combined MIS data collection form to the USCG as it was a function duplicated by the associations. The Board agreed to reissue their memo with this change.

16:01 Tentative Meeting Dates – The Board discussed the number of exam applicants slated for July and the need to meet rather than teleconference. On a motion by Mr. Arts and without dissent, it was

RESOLVED to acknowledge the deputy licenses by teleconference in July and conclude the required orals in October with deputies present.

It was agreed to publish the following dates for future board meetings:

July 22, 2010 – teleconference  
Oct 13-14, 2010 – Anchorage  
Jan 26-27, 2011 - Anchorage

**Agenda Item 3** **Ethics Training**

25:03 AAG Judy Bockman gave a presentation on ethics as they apply to Board members under the Executive Branch Ethics Act. She explained the code of conduct was designed to prevent officers from taking actions resulting in personal benefit.

43:50 **Business Items**

Tentative Meeting Dates – At the recommendation of AAG Horetski, the Board returned to discussion of July examinations. Mr. Arts withdrew his motion for initial licensure of July applicants prior to oral examination. On his new motion, without dissent, it was

RESOLVED to conduct oral examinations in July by teleconference prior to licensure in accordance with 12 AAC 56.070(d).

**New Agenda Item** **Arctic Pilotage Letter**

48:03 Chairman Thayer explained the draft letter to the Attorney General with intent to seek advice on the Boards jurisdiction to expand pilotage waters into the Chukchi and Beaufort Seas. He offered that questions raised in meetings between Captain Garay with the Governor, and himself with the USCG Commandant, were encapsulated in the letter. He explained the diversity of thoughts by separate entities. Captain Collins motioned to return previously proposed regulatory language to the Board for discussion. Captain O'Hara seconded. Discussion ensued.

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51:25 Mr. Thayer explained the letter was drafted at the Board's direction from its previous meeting. He offered that the issue belonged to the State first and thus addressed it to the Attorney General. Discussion continued.

On the motion to put the previously noticed regulatory language for arctic pilotage on the Board's agenda, in a roll call vote 3-3, the motion failed.

01:07:45

Arts	No
Collins	Yes
Erickson	No
O'Hara	Yes
Heimbuch	Yes
Thayer	No

On a motion by Mr. Arts, seconded by Captain O'Hara, in a roll call vote 6-0, it was

RESOLVED to submit the proposed letter to the Office of the Attorney General.

Arts	Yes
Collins	Yes
Erickson	Yes
O'Hara	Yes
Heimbuch	Yes
Thayer	Yes

**Agenda Item 5**      **Public Hearing**

01:09:13      **12 AAC 56.310(c)(10)** – The MPC summarized background for the proposed language following extensive work by a committee of industry, board and pilot members. The language had received two public notices and a recommendation by Department of Law. No written comments were received during public notice.

Chairman Thayer opened the hearing for public comment. No public comments were offered.

Board discussion commenced. Mr. Erickson recognized examples in the past represented conflicts less than 'cause' and saw resolution to be in-house. Mr. Heimbuch motioned to adopt. No second was offered. Mr. Heimbuch motioned to table, with a second by Captain O'Hara. Discussion followed.

Mr. Heimbuch withdrew his motion to table with acknowledgement from Captain O'Hara. He then motioned to adopt the language as noticed, with a

second by Captain Collins. Discussion followed. On a roll call vote, 6-0, the motion failed.

Arts	No
Collins	No
Erickson	No
O'Hara	No
Heimbuch	No
Thayer	No

Captain Collins motioned to repeal current language under 12 AAC 56.310(c)(10), with a second by Captain O'Hara. Chairman Thayer opened the floor to public comment.

01:22:50 Kate Tesar, representing Alaska Steamship Association, spoke against the motion to repeal.

On a roll call vote, 3-3, the motion to repeal 12 AAC 56.310(c)(10) failed.

Arts	No
Collins	Yes
Erickson	No
O'Hara	Yes
Heimbuch	Yes
Thayer	No

01:25:30 **12 AAC 56.115** – The MPC explained the proposed language from committee by direction from the Board. The purpose was to provide criteria for application of exemption from pilotage for those vessels allowed under AS 08.62.180(b). The Chairman opened the floor to public comment.

01:28:40 Captain Bob Winter, SEAPA Pilot and FPC (Foreign Pleasure Craft) Committee Chair corrected the word 'compatible' in Paragraph (c)(2) to 'ARPA capable', and noted that documents requested in Paragraph (e)(8) and Paragraph (f) should also be provided with the application. He also recommended Paragraph (f) pertain to the captain or master, rather than entire crew.

Captain O'Hara motioned to accept the change to Paragraph (c), seconded by Mr. Arts, without dissent. Mr. Arts motioned to accept the change to Paragraph (e)(8), seconded by Captain O'Hara, without dissent. Mr. Arts motioned to accept the change to Paragraph (f), seconded by Captain O'Hara, without dissent.

01:33:45 Captain Winter provided complimenting amendments to the exemption application form. He suggested additional language for paragraph 3 to specify

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vessels 65-125' LOA, and indicate the required tools under paragraph 10.  
Discussion followed.

01:39:00

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

RESOLVED to adopt proposed language for 12 AAC 56.115 as noticed with changes.

**12 AAC 56.980 and 990** – The Chairman summarized the amended language. The MPC reported no written comments received. The floor was opened to public comment. No comment was offered.

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

RESOLVED to adopt proposed amendments to 12 AAC 56.980 and 990 as public noticed.

01:41:37

**12 AAC 56.028 and 082** – The Chairman summarized the proposed language. No written comments had been received. The floor was opened to public comment. No comment was offered. Board discussion ensued.

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

RESOLVED to adopt proposed language for 12 AAC 56.028 and 082 as public noticed.

The Board gave consideration for the cost of implementing each of the proposed regulations.

The Board took a break at 10:45, and reconvened at 11:05.

### **General Public Comment**

Mr. Paul Axelson, representing Yacht Services of Alaska / North Pacific Maritime, asked the Board to keep in mind an 'open for business' focus during considerations for foreign pleasure craft.

Board discussion ensued. The MPC suggested a look at the Board's website to offer links to related businesses. Captain O'Hara asked if a counter for 'hits' to the website was available. The MPC was directed to find out.

**Agenda Item 6**

### **Training Summaries**

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01:51:52            **AMP** – Captain David Arzt, representing Alaska Marine Pilots, reported on the activities of their one trainee and one apprentice. He provided details to a maritime arctic conference hosted by the Nautical Institute in British Columbia to which AMP would send participants. He also outlined a program with AMP and AVTEC for arctic ice navigation, resource and training activities. The Board requested they be kept up to date as the program progressed.

01:54:10            **SWAPA** – Captain O’Hara provided a brief summary on behalf of Southwest AK Pilots Association. No active trainees currently, however it was anticipated with current manpower and traffic situations that 1 or 2 candidates might be accepted within the next year. He gave details on the progression of deputies Vermette, Martin and Weston. He also reported on a 3-day ship handling course developed at AVTEC in collaboration with SWAPA and Crowley Maritime involving simulation of tankers, tugs, currents and ice at Nikiski and Drift River. Additional ports from the AVTEC inventory were noted and he encouraged others to utilize the facility for in-state training.

01:58:35            **SEAPA** – Captain Richard Gurry, President of Southeast AK Pilots Association, and Captain Terry Backen, Past Chairman of the SEAPA Training Committee (TC), presented proposed changes to SEAPA’s current training program (TP), Volume II. Revisions were considered for the following:

Part II – Training Program Organization and Overview

- 02:03:30            (b) – election of the Training Chair  
(b)(9) – direction by Training Chair for training w/specific pilots  
                          ships and ports  
(c) – establishing the number of members to the TC  
(f) – TC approval of MP continuing education courses

Part III – Requirements Applicable to All Trainees

- 02:09:40            (a) – approval of tailored training plans by TC  
(d) – trainee compliance with federal and state laws  
(e)(5) – training opportunities and waiver requests  
(i)(4) – pilot observer trips in ‘other areas’  
(j)(1)(d) – expiration on ship handling courses  
(j)(3)(c)(A) – listing of required maneuvers  
(j)(3)(c)(B) – number of assessments by same training pilot  
(j)(6)(c) – change to ‘association’-approved simulator  
(k)(3) – substitution of ‘existing’ for ‘acceptable’  
(l)(1) – attachments to quarterly reports  
(n)(4) – satisfaction of substituted movements  
(n)(5) – training opportunities and waiver requests

Part IV – Marine Pilot Trainee Requirements

(d)(1)(i) – substitution of ‘berths’ for ‘piers’

Part V – Deputy Marine Pilot Trainee Requirements

(a)(1)(i) – substitution of ‘berths’ for ‘piers’

(a)(3) – clarify moorings to ‘buoy(s)’

(a)(4) – change ‘Harbor’ to ‘anchorage’

Part VI – Deputy Marine Pilot Apprentice Requirements

(e)(3) – add expiration for BRMP course

(g)(1)(i) – substitution of ‘berths’ for ‘piers’

(g)(3) – clarify moorings to ‘buoy(s)’

(g)(4)(iii) – change ‘Harbor’ to ‘anchorage’

02:20:27

Part VII – Deputy Marine Pilot Upgrade and Continuing Education Requirements

(a)(1)(ii) – number of assessments by same training pilot

(a)(2)(i) – add vessel tonnage requirement and change time at grade

(a)(2)(ii) – number of assessments by same training pilot

(a)(3)(i) – change additional movements and vessel tonnage

(a)(3)(ii) – number of assessments by same training pilot

Part VIII – Marine Pilot Continuing Education and Training Requirements

(a)(1) – additional language for pilot proficiency

(a) and (b) – CE credit requirements

Part IX – Training Pilots

(a)(3) – time and training for endorsement

(c)(4) – notations to training records

(e)(2) – trainee impairment

(f) – trainee performance and plan

(h) – training pilot comments

02:43:00

Part X – Due Process Procedures

(a) – application and general considerations

(b) – sanctions and dismissal

(c) – allegations, hearings, and decisions

(d) – grievances after sanction(s)

(e) – arbitration

Part XI – Definitions

(b) – deputy marine pilot trainee

(s) – training evaluation reports

(t) – trainee assessment report

Part XII – Amendments, Conflicts and Assent

(a) – approval process within association

Part XIII – Appendixes to Training Program Volume II

- (1) training assessment report
- (2) training evaluation report
- (3) policies for trainees and observers
- (4) Region One designated areas
- (5) SEAPA continuing education course list

Signatory and Acknowledgement Page

02:48:20 Captain Collins asked that Department of Law look at proposed changes to Part X before Board action on that section. Chairman Thayer directed the question to Ms. Horetski, who responded ‘she could.’

Mr. Heimbuch asked if the Board could take comment from a SEAPA deputy pilot regarding the proposed changes. Chairman Thayer asked the audience for comment and none was offered.

The Board continued with their review of the remaining proposed changes which included Parts XI through XIII, and signatory page.

02:52:00 The Chairman clarified that Parts VII(a)(2)(i) and Part X remained open to questions. Mr. Heimbuch requested an AG’s opinion on the changes and asked to know how unified SEAPA was on the proposed changes. Captain Collins expressed concern for Parts VII, X, and the need to return certain training requirements back to regulation. Captain O’Hara asked about training pilots who refused to train and if the Board should look at criteria for removal of a training pilot endorsement. He also questioned the Acknowledgement Memorandum, item #5. Discussion continued.

03:00:35 Captain Collins motioned to approve the SEAPA Training Program, excluding Part VII and X. Mr. Heimbuch seconded.

03:01:10 Chairman Thayer clarified direction to the AG for draft regulation of deputy time at grade and review of proposed changes to grievance procedures as described in Part X. This was accepted as an amendment to the motion. After additional discussion, the motion was clarified to specify Part VII(a)(1) and (2), and all of Part X.

03:06:25 Captain Gurry spoke to Part VII. Captain O’Hara expressed concern for training requirements removed from regulation.

In review of the motion, the Board agreed to add SEAPA’s proposed Memorandum for Training Program Acknowledgement to the AG’s review.

On the motion by Captain Collins, seconded by Mr. Heimbuch, on a roll call vote of 6-0, it was

RESOLVED to approve the SEAPA Training Program, excluding Part VII(a)(1), Part VII(a)(2), Part X, Memorandum of Acknowledgement, and direct the AG to draft regulation for deputy time at grade and review SEAPA's proposed grievance procedures and Memorandum of Acknowledgement.

Arts	Yes
Collins	Yes
Erickson	Yes
Heimbuch	Yes
O'Hara	Yes
Thayer	Yes

**Agenda Item 7**

**EXECUTIVE SESSION**

03:10:49

On a motion by Mr. Thayer, seconded by Captain O'Hara, it was

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

The Board moved to Executive Session at 1300 and returned to general session at 1322. On a motion by Captain O'Hara, seconded by Mr. Erickson, and without dissent, it was

RESOLVED to approve deputy licensure for Captain Michael Tamney.

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

RESOLVED to accept the report and recommendations by Mr. Kenneth Holmes of *Providence Breakthrough* for Captain Richard Desautel.

Mr. Arts asked about investigations. Discussion for the investigation process and subpoenas followed.

Following discussion, it was

RESOLVED to adjourn the meeting.

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Respectfully submitted:

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Renda Heimbigner  
Marine Pilot Coordinator

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Curtis W. Thayer, Chairman  
AK Board of Marine Pilots