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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

October 13, 2010

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 13, 2010 in Anchorage, Alaska.

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Call to Order/Roll Call

The meeting was called to order at 1305 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. Rick Erickson	- Agent Member
Mr. Mike Heimbuch	- Public Member
Captain Mike O'Hara	- Pilot Member
Mr. Curtis Thayer	- Commissioner's Designee

Staff present:

Renda Heimbigner, Marine Pilot Coordinator (MPC)

Public present:

Bruce Weyhrauch	Bruce Weyhrauch LLC
Captain Donal Ryan	Southwest AK Pilots Association
Captain Eric Collins	Self
Captain Doug Sturm	Self
Jacob Sonneborn	Ashburn & Mason
Captain Rich Preston	Self
Captain Larry Vose	Self
Captain Scott Jones	Self
Captain Bob Winter	Southeast AK Pilots Association

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CDR Jay Boyer	USCG
Captain Richard Gurry	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
Kate Tesar	Alaska Steamship Association
Captain Jeff Baken	Southeast AK Pilots Association
Christian Biagi	Self
Captain David Arzt	Alaska Marine Pilots
Les Cronk	North Pacific Maritime
Gary Messer	Eimskip PTI
Captain Frank Didier	Self
Brad Kroon	CIT&B

Review / Set Agenda

The Chairman noted that items received after the agenda had been established would be presented as ‘correspondence’ and considered for information purposes unless the Board chose to make them an agenda item.

Captain O’Hara asked that a brief summary from the Aleutians Risk Assessment be heard during public comment.

Captain Collins asked that members of the public be informed if their correspondence was not going to be considered as an agenda item and allowed to present during public comment. The Chairman directed the public comment sign-up sheet be circulated throughout the audience for that purpose.

The Chairman noted that the AG was available by telephone as opposed to having her present for the meeting at a cost to the licensees.

Declaration of Potential Conflicts of Interest / Recusals

04:45 No conflicts or recusals were declared.

Agenda Item 1 Review / Approve Minutes

04:55 On a motion by Captain O’Hara, seconded by Mr. Erickson, and carried without dissent, it was:

RESOLVED to approve the minutes for July 22, 2010 as presented.

Public Comment

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- 05:45 Captain David Arzt provided a summary to the Aleutian Island Risk Assessment project and its intended benefit for maritime transportation in the Bering Sea and the Aleutian Archipelago. He explained the project is funded by a settlement from the 2004 grounding and subsequent oil spill from the *M/V Selendang Ayu*.
- 08:28 Captain Jeff Baken, Region One Pilot, commented on training facilities and an azipod ship handling course he and Captain Larry Vose had designed. He also gave details to the capabilities for manned model training at the Maritime Pilots Institute in Louisiana.
- 11:49 Captain Scott Jones, Region One Pilot, spoke to the effects of a grievance between Captain Eric Collins and Southeast AK Pilots Association. He expressed concern for its effect on training and pilotage in Region One.
- 20:00 Captain Ted Kellogg, Region One Pilot and Southeast AK Pilots Association (SEAPA) past president, presented allegations for restraint of trade in Region One and expressed concern for the actual application of SEAPA's bylaws through graphs and charts. He requested the Board begin an investigation to resolve any question regarding violations of the laws concerning restraint of trade by SEAPA or the Board itself.
- 30:02 Captain Eric Collins provided comparisons for actual 2010 dispatch numbers in Region One with a rotational system by license size. He commented on the limitations imposed outside of license size under the current system.
- 42:15 Captain Kellogg clarified the issue for restraint of trade as entirely different from and not connected to the grievance or arbitration that Captain Eric Collins and SEAPA were involved in.
- Captain Eric Collins explained his challenge to bring testimony to the Board after it was removed as an agenda item.
- Captain Dale Collins called attention to the July 2010 Board meeting minutes which deferred 'restraint of trade' to the October meeting agenda. He objected to it being removed as an agenda item and persons delayed. He expressed his concern for persons licensed by the Board being able to practice their trade given the traffic in the region.
- Mr. Thayer explained after discussion with the AAG, it was felt that 'restraint of trade' was better discussed after completion of SEAPA's pending arbitration. Captain Dale Collins clarified the issue before the Board as separate from the SEAPA arbitration.
- Mr. Heimbuch asked for clarification to the issue as an agenda item. Captain O'Hara expressed concern for the legal nature of the issue presented by Captain

Kellogg. Mr. Heimbuch posed a question for who determined standard of fairness.

47:54 Captain Richard Gurry, current President of SEAPA, provided a history of SEAPA dispatch. He requested that if the Board's budget is affected by an audit request, that other marine pilots would bear the expense through increased licensing fees. Additionally, he suggested that if an audit were conducted, it should include all Alaska pilot organizations to provide for a thorough and fair comparative analysis between their organizational documents. He explained SEAPA's grievance process.

54.24 Captain Dale Collins asked if 'restraint of trade' was discussed during SEAPA's grievance hearing. Captain Gurry did not recall.

Bruce Weyhrauch, attorney for SEAPA, spoke via teleconference and clarified that 'restraint of trade' was not addressed during SEAPA grievance hearing.

Mr. Erickson asked for clarification to the content of the grievance. Captain Gurry explained that following 19 years of business, a deputy pilot had challenged their practice.

Mr. Thayer reported that the Board could order an audit, it could focus on an individual pilot organization, and it would be an expense to the Board. He asked for Board discussion on how to proceed.

57:20 Captain Rich Preston, Region One Deputy Pilot, gave comment that issues raised by Captain Eric Collins did not represent his thoughts. He provided letters from other Region One deputy pilots for public comment.

01:00:39 Captain Doug Sturm, Region One Deputy Pilot, commented on his experience as a deputy pilot in SEAPA. He explained that he understood full licensed pilots would work before deputies, that he would only be paid for the days he worked, that he would not be allowed winter work or be able to vote on association matters until attaining his unlimited license.

Mr. Erickson asked how that understanding was conveyed. Captain Sturm explained it was informal. Captain O'Hara asked about advancement to unlimited licensure. Captain Sturm replied it did not require a vote of the membership.

01:04:06 Mr. Heimbuch asked that the item be added as an agenda item. Mr. Thayer suggested that a committee of three board members review the issue and present at the next board meeting. On a motion by Captain O'Hara, seconded by Mr. Arts, and without dissent, it was

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RESOLVED to appoint Mr. Thayer, Captain O'Hara and Mr. Erickson as a subcommittee to review the matter of 'restraint of trade' with the AAG and present the matter to the Board at the next meeting.

Mr. Thayer encouraged the other Board members to submit any questions to the subcommittee.

01:10:56

Captain Pete Garay, President of Alaska Marine Pilots (AMP), gave comment in support of Captain Winter's letter requesting reimbursement for travel expenses as a committee chair.

Captain Donal Ryan, representing Southwest Alaska Pilots Association (SWAPA) gave comment in support of Captain Winter's letter requesting reimbursement for travel expenses as a committee chair.

Agenda Item 3

Business Items

01:13:25

Financials / Fee Assessment – Mr. Thayer explained the process by which the Department conducted fee assessments for each profession and the requirement by Statute to assure fees collected were equal to the actual regulatory costs for the occupation. He informed the Board that the Department had identified the need to adjust licensing and agent registration fees for the next biennial licensing cycle.

The Chairman identified the request for travel reimbursement by non-board members was not included in the Department's forecast and would further increase the need to expand fees.

Captain Collins expressed appreciation for non-board members serving on committees and recommended Board members step up to fill Chairman roles to maintain costs. He agreed that Captain Winter was due support if he was tasked to serve. Captain O'Hara suggested the committees be formed with that in mind.

Mr. Thayer reminded the Board that the legislature had asked all State Departments implement a 10% reduction in operating costs. He suggested consolidating board meetings and reducing travel expenses to accommodate.

Mr. Arts suggested the Board hold costs and maintain fees at their current rate. Mr. Thayer explained the current rates and costs were projected to result in a deficit.

Captains Collins and O'Hara supported the recommended rate adjustment now, as opposed to a larger one later. Discussion concluded that the Department was moving forward with public noticing a fee adjustment.

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01:24:20

Regional Pilot Authority Meeting – Captain O’Hara spoke to the proposed agenda for the regional pilot authority meeting in Vancouver, BC on December 7 and 8, 2010. He recommended against sending anyone in person and suggested that participation could be made by teleconferencing.

Investigations - The MPC reported two new investigations were opened and two were ongoing. All four were awaiting input from either USCG or Department of Law. One new complaint was in review. One monitoring report was scheduled for Board review in Executive Session.

01:28:04

Tentative Meeting & Exam Dates – Following discussion, the Chairman directed the MPC to secure meeting space at the Hotel Captain Cook during the second week of January 2011 for the next Board meeting. No determination for the April 2011 meeting was made.

Agenda Item 3

Waiver Request

01:32:45

The MPC summarized a request for extension of time by Captain Chris Biagi to complete his supervised maneuvers within three years following his Core Exam. She cited 12 AAC 56.026(e) which allowed for consideration of an extension based on insufficient ships or training pilots available.

Captain Biagi explained his final assessed maneuvers which fell outside his 3-year window and requested he be allowed to include them in his training for initial licensure. On a motion by Captain Collins, seconded by Captain O’Hara, and without dissent, it was

RESOLVED to grant an extension of time to Captain Biagi to include training maneuvers completed outside of the required three years, as allowed under 12 AAC 56.026(e).

Agenda Item 4

3yr Requirement - SEAPA

01:35:40

Captain Jeff Baken, SEAPA Training Chairman, spoke to a challenge currently experienced by a candidate who found themselves outside of the 12 months allowed for observation trips before submitting to the Core Exam. The SEAPA training program, Part V(b) requires ‘all maneuvers shall be completed within 36 months of the commencement of supervised training and within 42 months of acceptance into the Training Program. Deputy Trainees shall notify the Training Chair in writing if they are unable to comply with this requirement. Extensions to this time period may be allowed as provided for in 12 AAC 56.026(e).’

(A new audio file was started at 1450.)

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Captain Baken went on to explain the candidate had spent the past four years observing and working on his federal pilotage, while maintaining a full-time seagoing job. The candidate was requesting an extension to his 42 month requirement as defined in his regional training program.

Captain Collins recommended a six-month extension of time.

Captain O'Hara asked for clarification. Captain Vose explained that SEAPA's training program defined 'trainee' as when you began observing, and State regulation defined 'trainee' as when you began supervised movements. He specified this had been written under a different business climate when trainees needed to advance quickly to meet the economic demands. This candidate, he added, was in violation of his training program which SEAPA could not waive.

Mr. Erickson asked for specifics to the delay. It was explained the candidate was maintaining a full-time job while attempting to obtain federal pilotage.

Captain Collins motioned to grant an extension of time to this candidate for six months. Mr. Erickson seconded the motion.

06:36

Discussion followed. Captain Vose defined the request as needing Board approval for an extension of time to a provision in SEAPA's training program for one individual.

Captain Collins offered a motion for an extension of time for three years and six months for Part V(b) in SEAPA's Training Program to allow the candidate to continue his training.

Chairman Thayer called for the question to Captain Collins' original motion, seconded by Mr. Erickson, with objection from Captain O'Hara, it was

RESOLVED to grant an extension of time for six months to Captain Kelleher to complete his observer trips and submit for the State Core Exam.

Agenda Item 5

SEAPA Training Program

13:11

Part VII(a)(1) and (2) – Chairman Thayer reported that following her review at the request of the Board, the AAG saw no legal problems with proposed changes to Part VII(a) as presented by SEAPA in April 2010.

Captain Jeff Baken presented a handout to show the change in time at grade as proposed. The change represented an additional six months time at the 65k endorsement for trainees in Region One.

Captain Collins asked if any incidents were driving the change. Captain Baken said no.

Captain O’Hara motioned to accept the proposed change to Part VII. Captain Collins spoke to the need for upgrade requirements to be in regulation. Mr. Heimbuch seconded the motion. Mr. Erickson asked if deputies held back would be affected monetarily. Captain Baken said yes. Captain Collins expressed concern for a bottleneck on smaller ships.

Discussion followed.

On Captain O’Hara’s motion, seconded by Mr. Heimbuch, in a roll call vote, it was

RESOLVED to approve proposed changes to Part VII(a)(1) and (2) of SEAPA’s Training Program.

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

22:25 The Board took a break at 1515 and reconvened at 1530, absent Captain Collins.

Agenda Item 6 **Committee Reports**

23:10 **Foreign Pleasure Craft** – Captain Bob Winter, Chairman of the FPC Committee, reported that the committee had met and wished to propose an alternative pilot pickup location for foreign pleasure craft holding an exemption and intending to transit through Peril Straights. He cited 12 AAC 56.120(b)(2) which allows for embarking or disembarking pilots at a location inside of an established pilot station by agreement between a pilot organization and a ship’s agent on a trial basis. The new pickup point was recommended as Deadman’s Reach for a two year trial.

26:22 **Pilot Fitness** – Captain Larry Vose, co-chair of the Pilot Fitness Committee, reported their committee reviewed the current requirement under 12 AAC 56.970 Physical Incapacitation for a signed medical form before returning to active pilot service if physically incapacitated for a period of 90 days or more. The Committee recommended that the Board address return-to-work requirements under 90 days through regional in-house procedures for maintaining pilot fitness for duty.

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Captain O'Hara motioned to accept the committee's recommendation that the associations each employ a procedure to ensure pilot fitness for duty. Mr. Erickson seconded the motion. Captain O'Hara amended his motion to direct the associations to report their procedures to the Board at the April 2011 meeting.

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

RESOLVED to direct the associations to adopt in-house procedures to ensure pilot fitness for active duty and report their procedures to the Board in April 2011.

Captain O'Hara noted this was the last agenda item for the Pilot Fitness Committee as assigned and he considered the committee disbanded.

Agenda Item 7

Training Summaries

29:48

AMP – Captain David Arzt, representing AMP, reported one deputy pilot apprentice actively training.

SEAPA – Captain Jeff Baken, representing SEAPA, explained the appendixes had not been provided recently and the acknowledgement memo had been sent to the AAG for review with Part VII in April. The list of documents presented were:

Appendix One – TAR Report

Appendix Two – TER Report

Appendix Three – Conduct Policies for Trainees

Appendix Four – Designated Areas

Appendix Five – Continuing Education Course List

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

RESOLVED to approve SEAPA appendixes one through five.

Captain Collins joined the meeting.

The Chairman asked for approval of the acknowledgement page for trainee signature. Mr. Arts motioned to accept the page, with a second by Mr. Heimbuch. Captain O'Hara asked Captain Baken to explain the purpose of the acknowledgement form. Captain Baken declined.

36:50

The motion failed.

In accordance with the SEAPA Training Program, Captain Baken provided an update of training pilot status for Region One. He summarized SEAPA's

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training efforts to include 20 new pilots in the past seven years and up to 16 trainees actively training at a given time in the past two years.

41:51 **SWAPA** – Captain Donal Ryan, representing SWAPA, reported no trainees currently, with a ballot before the membership for a possible candidate. Deputy training in Valdez was expected this winter and a large amount of energy was being spent to develop continuing education at AVTEC.

Agenda Item 5 **SEAPA Training Program**

43:13 Mr. Erickson requested that the Board reconsider SEAPA’s proposed changes to Part VII of their regional training program. He explained that an extended time at the 65k grade in Region One, as proposed, would be unique to SEAPA and might be more appropriate in regulation.

On a motion by Captain O’Hara, seconded by Mr. Erickson, on a roll call vote, it was

RESOLVED to reconsider SEAPA’s proposed change to Part VII of their regional training program.

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

The Chairman asked for comment from each of the association representatives for their regional requirement of time at 65k before upgrade to 90k.

Captain David Arzt, representing AMP, testified that his association held to the standards set in regulation for each upgrade.

Captain Donal Ryan, representing SWAPA, testified that his association only required what was stated in regulation also.

Captain Larry Vose, representing SEAPA, explained SEAPA’s proposed change was designed to insert a time at grade requirement for 65k when one did not currently exist.

50:22 Mr. Erickson suggested that time at grade should be consistent for all regions. Discussion followed.

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Mr. Heimbuch motioned to approve the proposed change to SEAPA’s training program, Part VII. The motion was seconded by Mr. Erickson, and on a vote of 4-2, the motion failed.

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

The Chairman announced the next item of business as Executive Session.

Ms. Kate Tesar requested clarification for Board participation in licensing fees. Mr. Thayer explained no Board action needed and the Department was moving amended fees to public comment.

54:43

Captain Larry Vose asked for clarification and direction to deputy upgrade requirements at 65k. Captain Collins volunteered to head a committee to review deputy training requirements previously in regulation and provide recommendations to return appropriate items back to regulation.

He explained that training requirements in regulation were overhauled in too large a degree and the Board might have delegated too much to the associations.

On his motion, seconded by Mr. Heimbuch, on a vote of 4-2, it was

RESOLVED to form a subcommittee to review training regulations that have been repealed in the past five years.

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

Captain Collins was appointed Chair of the new subcommittee.

59:27

EXECUTIVE SESSION

The Board moved to Executive Session at 1610 to conduct oral examination of a deputy applicant and hear a Monitoring Report for a consent agreement.

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The Board returned from Executive Session and on a motion by Captain Collins, seconded by Captain O'Hara, without dissent, it was

RESOLVED to approve deputy licensure for Captain Levi Benedict.

The MPC asked for clarification on Board input on licensing fees. Captain O'Hara asked that the Department be advised to begin renewals at the new fees.

The MPC asked for clarification on the 'Restraint of Trade' Committee. Mr. Thayer agreed to be its Chair.

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

RESOLVED to adjourn.

The Board recessed at 1630.

Respectfully submitted:

Renda Heimbigner
Marine Pilot Coordinator

Curtis W. Thayer, Chairman
AK Board of Marine Pilots