

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

**MINUTES OF MEETING**

February 16, 2012  
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 February 16, 2012 in Anchorage, Alaska.

February 16, 2012

**Call to Order/Roll Call**

The meeting was called to order at 0905 by Chairman Curtis Thayer. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Mr. Robert Arts	- Agent Member
Captain David Arzt	- Pilot Member
Captain Dale Collins	- Pilot Member
Mr. Rick Erickson	- Agent Member
Mr. Robert Richmond	- Public Member
Mr. Tylan Schrock	- Public Member
Mr. Curtis Thayer	- Commissioner's Designee

Staff present were:

James McDermott	Marine Pilot Coordinator (MPC)
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Guests present were:

Captain Richard Gurry	Southeast Alaska Pilots Association
Mr. Ron Hildebrandt	Trident Seafoods
Captain Joe Martin	Southwest Alaska Pilots Association
Mrs. Jenni Zielinski	Southwest Alaska Pilots Association
Mr. Tom Rueter	Alaska Maritime Agencies
Mr. Gary Messer	Eimskip PTI
Ms. Kate Tesar	Alaska Steamship Association

Captain Jeff Baken	Southeast Alaska Pilots Association
Captain Tony Joslyn	Southeast Alaska Pilots Association
Mr. Paul Axelson	North Pacific Maritime/ASA
Mr. Jim Lee	Alamar
Captain Scott Jones	Southeast Alaska Pilots Association
Captain Bill Gillespie	Alaska Marine Pilots
Captain Bob Winter	Southeast Alaska Pilots Association
Mr. Don Habeger	DCCED
Captain Carter Whalen	Alaska Marine Pilots
Mr. Bill Sharp	Holland America Line
Mr. Kirby Day	Princess Cruises
Mr. Jacob Sonneborn	Alaska Marine Pilots
Mr. Russell Sell	Past Board Member
Mr. Richard Monkman	Sonosky, Chambers, Sachse, Endreson & Perry
LTjg Matthew Forney	NOAA, OCS
Nick Atwood	AAG, State of Alaska
Quinten Warren	Chief Investigator, CBPL (afternoon session)
Gary Keiser	Investigator, CBPL (afternoon session)

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

Hearing no objections to the set agenda, it was:

RESOLVED to approve the agenda.

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

Board members made no declarations of potential conflicts of interests.

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

On review of the November 9, 2011 minutes, Mr. Thayer advised that there were no declarations of potential conflicts of interest or recusals at the November 9<sup>th</sup> meeting in Seward.

Hearing no objections to the November 9, 2011 minutes, it was

RESOLVED to approve the November 9, 2011 meeting minutes with amendments.

**Public Comment on non-agenda items**

Mr. Thayer advised that Public Comment for Item 4 Proposed Regulations should be held until that item comes forward. Accordingly, there were no public comments presented to the Board.

**Agenda Item 3      Business Items**

a)      Financial Report: Mr. Thayer commented that the Financial Report has more information included than normal, and noted that at roughly six months into the fiscal year, the schedule is on track or doing better than in previous years.

b)      Correspondence: Mr. Thayer noted the letter from SWAPA indicating new officers for 2012; a training pilot endorsement for Captain Donal Ryan (SWAPA); and the Office of the Governor's response to a National Transportation Safety Board's Safety Recommendations. On behalf of the Board Mr. Thayer thanked the pilot organizations for their timely and thorough responses; and the annual MIS Reports and Status of Members.

06:45

c)      Investigations Report: Mr. Thayer advised that a consent agreement, monitoring of an existing agreement, and the status of investigations would be deferred to Executive Session.

d)      Tentative Meeting/Exam Dates: Mr. Thayer presented previously discussed meeting dates and venues for future Board meetings. The Board decided to convene on April 25, 2012 in Ketchikan. Also discussed as tentative dates were: telephonic meeting in July, if necessary; September 19, 2012 in Anchorage; and January 9, 2013 in Anchorage.

Mr. Erickson recommended that the September meeting be moved to early October in deference to the active cruise ship season. Mr. Thayer recommended that the Board should have definitive discussion of possible dates for the follow-on meetings at the April 25<sup>th</sup> meeting.

e)      New Business:

09:40

1)      Review of Board-appointed committees:

Mr. Thayer led discussion on status of several special appointed committees. Upon consultation with appointed committee members, it was decided to retain the Foreign Pleasure Craft Committee, to be co-chaired by Captain Bob Winter (SEAPA) and Mr. Paul Axelson (Yacht Services of Alaska).

With no objections, the following special committees were disbanded by the Board:

Deputy Pilot Training Committee;  
Restraint of Trade Committee;  
Arctic Pilotage Committee;

Pilot Fitness Committee; and,  
“Cause” Committee

- 12:30 Captain Arzt requested determination of the status of a letter dated April 29, 2010 from the Chairman of the Board to (then) Attorney General Daniel S. Sullivan re: Arctic Marine Pilotage. This letter requested advice on the issue of the Board’s authority under existing state and federal laws to adopt regulations that extend the state’s mandatory marine pilotage waters to include large areas of the Chukchi and Beaufort Seas. Mr. Thayer indicated there would be an update to this request at the next Board meeting.
- 13:35 2) Proposed Regulation: 12 AAC 56.120(a) Pilot Stations or Pickup Points.
- Mr. Thayer referenced a letter dated January 17, 2012 stating the agreement between SEAPA and YSA regarding Trial Pilot Stations in the Wrangell Narrows active from June 1<sup>st</sup> to August 31<sup>st</sup> signed by SEAPA President Captain Richard Gurry and YSA Vessel Agent Mr. Paul Axelson. Mr. Thayer requested that Captain Gurry and Mr. Axelson approach the Board and explain their position regarding proposed regulation change to create two (2) Wrangell Narrows Seasonal Pilot Stations.
- Captain Gurry voiced concern that the proposed regulation does not articulate stipulations of the January 17 agreement that are critical to operation of the Petersburg Bar Range Station in vicinity of Petersburg, Alaska.
- Mr. Axelson concurred with Captain Gurry that the proposed regulation does not meet the terms of their existing agreement, and voiced concern that the proposed regulation does not provide for the accommodation of pilotage services for vessels with pilotage exemptions that, per AS 08.62.180(b) Exemptions, are still required to employ a licensed pilot while in the Wrangell Narrows.
- 17:30 Discussion followed, whereby Mr. Thayer cited that there are no objections to the concept of two (2) seasonal pilot stations in the Wrangell Narrows, Mr. Thayer said that he would entertain a motion that the Board move the proposed regulatory package forward for 30 day public comment prior to the scheduled April 25, 2012 Board meeting, to include the four (4) criteria in the January 17, 2012 Trial Pilot Station letter be incorporated into the proposed regulations.
- 19:15 Mr. Schrock asked Mr. Thayer whether there was any procedural precedent to suggest that the Board is not able to summarily amend proposed regulation and forward for 30 day public comment. Mr. Thayer replied that the Board had expedited proposed regulation in this manner before: taken proposed regulation, directed specific inclusion of amplifying provisions, and moved forward for 30 day public comment.

Mr. Erickson asked whether the current agreement between SEAPA and YSA would still be in force if the proposed regulation for the two (2) seasonal pilot stations did not meet the June 1<sup>st</sup> timeline. Mr. Axelson answered that he and Captain Gurry would honor the agreement between their respective organizations if such a scenario developed.

Mr. Thayer directed MPC to ensure that the following changes are incorporated into the proposed regulation:

- (A) only vessels with valid exemptions as per Sec. 08.62.180(b-e) and for the purpose of transiting Wrangell Narrows between Petersburg and Point Alexander may embark or disembark pilots;
- (B) transit shall be only during the period 30 minutes before and after slack water at the Port of Petersburg;
- (C) transit shall be during daylight or civil twilight hours;
- (D) transit shall only be during periods of visibility which allow the Petersburg Bar Range to be viewed visually from Buoy WN;
- (E) during transit, a minimum of 5-foot under keel clearance must be maintained between Buoy WN and Buoy 60.

Further, that the new proposed regulations get circulated to the Board members and SEAPA / YSA stakeholders, prior to submission for 30 day public comment. Mr. Thayer further suggested that in early April, pending the responses from the 30 day public comment, the Board reconvene via teleconference or internet in order to ensure that the proposed regulations reflect the objectives set by SEAPA and YSA to expedite approval prior to June 1<sup>st</sup>.

On a motion by Mr. Schrock, seconded by Mr. Erickson, a roll-call vote was conducted to decide whether to go forward for 30-day public comment regarding the proposed regulations which add the Petersburg Bar Range and Point Alexander as season pilot stations listed in 12 AAC 56.120 Pilot Stations or Pick Up Points; and also to incorporate the operational stipulations (see (A) through (E) above) that were part of the trial pilot station agreement between SEAPA and YSA.

Mr. Schrock	Yea
Mr. Erickson	Yea
Mr. Arts	Yea
Captain Collins	Yea
Captain Arzt	Yea
Mr. Richmond	Yea
Mr. Thayer	Yea

21:40 RESOLVED to go out for 30-day public comment on the proposed regulations, pending incorporation of aforementioned criteria.

Mr. Thayer took this opportunity prior to proceeding to Item 4 to recognize outgoing Board member Mr. Robert Arts for his 10 years of service to the Alaska board of Marine Pilots. Mr. Arts was presented with a Certificate of Appreciation and accompanying Letter of Appreciation signed by Governor Sean Parnell. Mr. Arts was also presented with a Certificate of Appreciation signed by members of the Board.

**Agenda Item 4** **Proposed Regulations: 12 AAC 56.115 Pleasure Craft Exemptions**

23:50 Mr. Thayer outlined the process the Board would use in addressing these proposed regulations: each regulation amendment would be addressed individually by Mr. Don Habeger, Director of the Division of Corporations, Business and Professional Licensing (CBPL); public comment would then be heard; the Board would then discuss the proposal; then the Board would vote on the proposed regulation before proceeding to the next proposed regulation.

Mr. Habeger directed the Board to the CBPL's Memorandum dated February 16, 2012 which reiterated the Division's position that the proposed regulations are aligned under the Governor's call for proactive support to Alaska's entrepreneurs and small business owners. Mr. Habeger presented the first proposed regulation, 12 AAC 56.115(a)(3)(H), and noted that DEC and the MPC had a close working relationship to facilitate the processing of pilot exemption applications. Mr. Habeger stated that DEC, to their knowledge, had not denied an application for Certificate of Financial Responsibility (COFR) to a foreign pleasure craft (FPC). CBPL wanted to institute a process whereby a copy of the FPC's application for a COFR will suffice to begin processing an application for pilot exemption. Mr. Habeger reiterated that if the COFR is not granted, the Board can still withhold or revoke the FPC's pilot exemption application.

32:15 Mr. Richmond asked for clarification how a COFR is acquired by a vessel owner. Discussion followed. The COFR is proof that the vessel owner has the resources to address an environmental mishap the vessel is responsible for.

Captain Arzt asked what mechanism is in place to ensure that the FPC owner has a COFR when the Board grants the FPC a pilot exemption.

Mr. Habeger replied that instances of a FPC requiring a COFR and a pilot exemption on short notice are a small subset of the overall volume of FPC applications. In addressing these circumstances MPC will work with DEC toward a process to make it as smooth as possible.

Captain Arzt stated that the pilot organizations have no role in the process of ensuring that FPCs coming into Alaska meet this COFR requirement. Captain Arzt wanted assurance that a prudent procedure would be implemented so that if the exemption was granted using an application for a COFR, there would be follow-up to confirm that the FPC did in fact receive a COFR.

36:40

Mr. Schrock pressed Mr. Habeger for more detail on the practical level for how such a procedure might work.

Mr. Habeger cited that the MPC may suspend the application until enough information had been gathered to forward to the Board for vote.

Captain Arzt commented that a FPC coming into state waters without a COFR was more of a DEC component than a Board of Marine Pilots component.

Mr. Arts remarked that if the FPC came into state waters without applying for a pilot exemption, the COFR would still be DEC responsibility. The Board's connection to this process rests in the application for exemption.

Captain Arzt said he has a problem granting an exemption for a FPC that is in state waters, when a component requirement is external to the FPC exemption application process. He wanted elaboration for how that check and balance would be achieved.

Mr. Habeger responded that MPC would be responsible for double-checking with DEC to ensure that all is in order prior to forwarding the application to the Board.

42:00

Mr. Erickson noted that there are guidelines already in place for forwarding applications for Board approval. He understood that this proposed regulation will allow both the COFR application and the pilot exemption application to proceed simultaneously. Mr. Erickson said it will be the Board's decision whether to grant, deny, suspend, or revoke a FPC's pilot exemption application or certificate.

Captain Collins requested confirmation that the department (DCCED) is comfortable with CBPL recommending to the Board that it grant an exemption to a foreign yacht with a COFR pending; that the foreign yacht may sail in state waters with a pilot exemption and no approved COFR.

Mr. Habeger replied that DEC has its processes and it is responsible for the COFR; and that CBPL, as a licensing division, is looking at the process for all professionals in the field.

Captain Collins stated that a master or owner that enters state water without a COFR, or doesn't know he needs one, and so does not have one pre-approved is not much of a professional.

- 44:50 Mr. Richmond asked whether a vessel transiting through other state or sovereign waters will have to show a COFR prior to visiting Alaska.
- Captain Collins replied that the vessel owner may have a COFR, but may not have filed it with the State of Alaska, a procedural process that is mentioned in the *Coast Pilot*.
- Captain Arzt reiterated that his central concern is the process whereby the COFR is approved so that the requirements for the exemption are met. Captain Arzt opined that the burden of notification that the COFR has been approved should be on the FPC applicant. He noted that nothing in the regulation addresses how that approval will get transmitted to the Board.
- 48:15 Mr. Thayer called for public comment on the proposed regulation, advising the public to keep comments under three minutes.
- Captain Bob Winter (SEAPA) addressed the Board. He stated that two years ago the FPC committee, acting upon the Attorney General's advice to the Board that the application criteria had to include objective requirements. The FPC committee recommended that the FPC master had to have a COFR in hand. He referred to Captain Collins' comment that any competent master will consult the *Coast Pilot* before entering an unfamiliar area. He said that he had a problem with vessel masters that claim they did not know they needed a COFR. He suggested that the FPC master could type out the COFR application online, never submit it, but receive his pilot exemption and travel in state waters without ever having applied for a COFR. Captain Winter cited the *Rainbow Warrior*, which entered state waters approximately six years ago with no COFR, spilled oil, and then left the state to cover clean-up costs. He said there have been multiple FPC exemption violations since 2003 and the Board has been very remiss in doing anything about it. He also voiced concern about the COFR being a DEC issue, while the exemption is a Board issue. Under the existing statute, the FPC must apply for an exemption 30 days prior to entering state waters – more than enough time to get a COFR. Further, if these masters are professionals, they will know this and take care of it ahead of time. Captain Winter concluded that this proposed change puts the state at risk and the onus of confirming the approval of a COFR on the MPC.
- 52:30 Mr. Thayer asked the Board if there were any questions for Captain Winter. Mr. Richmond asked Captain Winter what we know about the training and experience of these foreign pleasure craft captains. Captain Winter replied, "Zero." Mr. Richmond then asked whether we assess how the FPC masters compare to the skill level of the state licensed pilots.



Captain Arzt agreed with Captain Winter that the issue of a pilot on board and the issuance of an exemption is a separate issue from the COFR discussion.

Mr. Erickson asked Captain Winter how times DEC has rejected an application for a COFR. Captain Winter referred to Mr. Habeger's statement that as far as he knew DEC has not rejected an application for a COFR. Mr. Erickson said that according to this language, prior to the exemption application going forward to the Board a copy of the COFR application has to be reviewed by MPC, and also that DEC has not rejected a COFR in the past. Captain Winter replied that there is no implicit requirement for proof that the COFR application actually went forward to DEC.

55:30

Mr. Thayer reminded the floor that public comment is for testimony. The next testimony was delivered by Ms. Kate Tesar.

Ms. Tesar, representing the Alaska Steamship Association (ASA), noted that most of the written public comments were from the pilots, with only a couple of comments provided by industry. Ms. Tesar prefaced her statement, in support of the proposed regulation, referencing ASA's attempt in the previous year to contact the chairman of the FPC committee to discuss issues relevant to these proposed regulations, though the chairman declined to meet. Ms. Tesar pointed to DEC's exemplary record with regards to the processing of COFRs. She said that both the COFR and the pilot exemption process usually take place at the same time. Ms. Tesar asserted that the COFR issue is a DEC concern, and its timeline should not hold up the processing for a pilot exemption.

59:15

Captain Richard Gurry, President of SEAPA, provided a statement for the record. The main points he raised were: 1) these proposed regulations weaken state pilotage regulations for the first time in the history of the state; 2) they lower basic safety standards, which is precisely the wrong message to be sending – one that Alaskans themselves will not want to accept; 3) that highly trained masters still have mishaps; and that the FPC captain may operate with no required training, no required licensing, no penalties, and no approved COFR. Captain Gurry requested that the Board defer this proposed regulation to a process of negotiated regulation-making under AS 44.62.710 because there are a limited number of identifiable interests affected by the proposed regulation and it is likely that a regulation committee convened on the matter will have balanced representation of persons who are interested in the issue.

1:03:29

Mr. Thayer asked the Board if there were any questions, comments for Captain Gurry. Mr. Thayer asked Captain Gurry whether a pilot has ever made an error that has caused damage to the marine environment in the State of Alaska. Captain Gurry indicated that has happened.

Mr. Richmond asked for clarification on the data concerning training of yacht captains. Captain Gurry replied that current regulation requires a minimum license level been shown by FPC master for the class of vessel that he is on.

Mr. Richmond stated that Captain Gurry's comments attest to the level of training state-licensed pilots have, but do not address the level of training that the FPC captain has because there is no data to form a basis for comparison.

1:06:00 Mr. Schrock asked MPC whether the only way the Board will be engaged in the COFR discussion will be if the FPC has been identified as requiring a COFR through its application for a pilot exemption. MPC affirmed Mr. Schrock's assessment of the process.

1:07:30 Mr. Paul Axelson (YSA) said that YSA handles approximately 90% of the yachts that come to Alaska, and not all yachts that come to Alaska follow the timeline that would provide for the timely processing of a COFR and then a pilot exemption. These are two separate issues (issuance of a COFR and issuance of a pilot exemption) that should be kept separate. He emphasized that the Board's decision to grant a pilot exemption should not be inhibited by a pending application for a COFR. Mr. Axelson concluded his comments urging passage of this proposed regulation.

1:10:05 Captain Joe Martin, SWAPA Secretary and Treasurer, said that FPC masters that require a COFR should at least have the knowledge that they need a COFR prior to entering state waters. Captain Martin cited the U.S. Coast Guard website that explains a COFR is issued to a vessel operator who has demonstrated his ability to pay for the clean-up and damage costs up to a liability that regulations require. It is not a statement of responsibility; it proves the owner has the capacity to pay for the damage done. He said under this proposed regulation an FPC may come in, do damage, and be unable to pay. Captain Martin concluded with a quote from the public comment letter submitted by the American Pilots' Association: "allowing an applicant for a pilot exemption to have merely submitted an application for a COFR effectively eliminates the COFR as a prerequisite for a pilotage exemption certificate."

1:11:30 Mr. Thayer opened the Board to discussion on the proposed regulation.

Captain Collins wanted confirmation from the Department (CED) that it supports this proposed regulation, and further that DEC supports it as well, because should a worse-case scenario accident occur it will be profoundly embarrassing to the Board. Captain Collins said that he would vote against this proposed regulation as it currently reads.

1:15:30 Mr. Thayer stated that the Board represents the State of Alaska, and that his concern is being addressed at the moment.

Mr. Erickson said that all the Board is considering is whether to allow the FPC to apply for the pilot exemption without the COFR in hand.

1:19:05

Captain Arzt noted that the provisions of 12 AAC 56.115(a)(3) all stipulate conditions that must be met, and that including this proposed regulation will qualify a copy of a COFR application as a condition that must be met, with no mention of approval for that COFR. He said that he supports having the exemption application proceed forward, up to the day a vessel enters state water. He stated that the language was flawed, but he did not think there needed to be any changes to it, so long as it was understood that the COFR application had to be approved prior to granting a pilot exemption.

Discussion followed regarding criteria for processing an application for pilot exemption. Mr. Erickson requested that Mr. Axelson approach the Board to clarify the processing of a pilot exemption package. Specifically, could Mr. Axelson confirm that the MPC needed a COFR in hand before going forward with an application for a pilot exemption.

1:23:35

Mr. Axelson stated that the previous MPC held up the application for pilot exemption if the FPC did not have the DEC-issued COFR; the application for pilot exemption was not allowed to move forward without that certificate, and he thought it was a reasonable determination based on the language in the regulation.

Mr. Schrock supported the concept of allowing both application processes to progress at the same time, although the pilot exemption certificate should be contingent on the DEC's approval of a COFR. He said that the focus of the discussion should be on the application process, so that Board members may approve an application contingent on confirmation of the COFR.

Mr. Thayer asked if the Board was ready to move for a vote.

1:27:55

On a motion by Mr. Richmond, seconded by Mr. Arts, the Board APPROVED proposed regulation 12 AAC 56.115(a)(3)(H) with a 5-2 roll-call vote:

Mr. Schrock	Yea
Mr. Erickson	Yea
Mr. Arts	Yea
Captain Collins	No
Captain Arzt	No
Mr. Richmond	Yea
Mr. Thayer	Yea

Mr. Schrock requested clarification for where in the process there would be the assurance that no pilot exemption would be issued without confirmation of a DEC-approved COFR. Mr. Thayer asked Mr. Habeger to approach the Board and clarify CBPL's intended policy addressing the issue of contingent approval.

Mr. Habeger offered that CBPL would work on the internal process in conjunction with DEC that will provide the assurance that the Board will have confirmation of an issued COFR prior to the granting of a pilot exemption.

1:31:30 Mr. Thayer proceeded to address the second proposed regulation, 12 AAC 56.115(a)(4), which would add a new paragraph directing MPC to use a vessel's length-over-all as the standard for assessing application fees. MPC may use a copy of the vessel's registry in this assessment. Mr. Thayer invited public testimony from the audience in attendance.

Captain Joe Martin (SWAPA) stated that the Legislative Audit of the Board of Marine Pilots dated November 18, 1998 Recommendation (2) advised that the Board should consult Department of Law regarding the practicality of enforcing the current piloting exemption statutes. After such consultation the Board should develop proposed statutory changes for consideration by the Legislature. Captain Martin asked the Board if that recommendation was in practice. Mr. Thayer affirmed that Department of Law is consulted in matters of statutory proposals.

1:35:10 Mr. Thayer asked the Board members if there was any discussion on the proposed regulation.

On a motion by Mr. Richmond, seconded by Mr. Arts, the Board APPROVED proposed regulation 12 AAC 56.115(a)(4) with a 6-1 roll-call vote:

1:37:00

Mr. Schrock	Yea
Mr. Erickson	Yea
Mr. Arts	Yea
Captain Collins	No
Captain Arzt	Yea
Mr. Richmond	Yea
Mr. Thayer	Yea

Mr. Thayer read the third proposed regulation, 12 AAC 56.115(b), then requested Mr. Habeger approach the Board to explain CBPL's position.

1:39:25 Mr. Habeger explained that CBPL's position strengthens the Board's power to assess fines, and that the Legislature recognizes that a FPC operating in violation of AS 08.62 is a serious offense, it articulated in statute directing a fine up to \$10,000 (AS 08.62.040(f)), whereas Title 8 Centralized Statutes for all other professions, unless specifically mentioned, directs a maximum fine up to \$5,000.

Mr. Habeger stated that the Board of Marine Pilots is the only program that assesses fines and a third party is paid. He said that the onus is on the Board to assess fines to FPCs that are in violation.

1:42:25

Mr. Thayer invited public comment restricted to this proposed regulation.

Captain Winter (SEAPA) stated his objection to the proposed regulation is the deletion of the provision that allows the pilot organization access to the FPC's track data with regard to the violation, which allows the pilot organization to bill the owner of the vessel for pilotage services. Captain Winter commented on an occasion two years ago where a FPC was issued an exemption, ran a charter operation under this exemption, and when the master was sanctioned for operating in violation of his exemption the fine amounted to \$3,500. The vessel left the state without paying.

Mr. Thayer asked Captain Winter where this instance occurred. Captain Winter replied it happened approximately three years ago. Captain Winter related another instance during the summer of 2011 where a large sailboat was operating a charter with a pilot exemption and the vessel was neither sanctioned nor fined. Captain Winter mentioned that when the Yacht Committee developed its list of applicant requirements the intention was that an exemption could not be issued until the checklist was completed. In many instances the previous MPC contacted the FPC and requested more information before submitting the applicant's package to the Board.

1:48:25

Ms Tesar (ASA) provided comment from a prepared statement that highlighted the following points: 1) there are already substantial layers of penalties in place in Alaska law for yachts that attempt to operate in compulsory pilotage waters in Alaska without a pilot; 2) past administrations have decided against pursuing fines or penalties against most yacht owners found to be in violation of pilotage statutes; 3) instead, only the pilot organizations have been guaranteed payment; 4) neither agents or pilot groups have any idea how many yachts will be coming to Alaska in any given season, therefore billing for pilot services not rendered is extra, unanticipated income; and 5) in no other instance in Alaska are fees in lieu of fines for violations of state statute collected by private-for-profit organizations.

1:51:50

Captain Gurry, President of SEAPA, stated that SEAPA does take into account the number of yachts that come into Southeast Alaska for manning requirements. Also, SEAPA does not always bill the yachts for unfulfilled piloting service.

Mr. Thayer explained to Captain Gurry that by Supreme Court ruling, a pilot organization is allowed to bill a client for pilotage services that were not rendered, and that as the regulation stood, the state was in an awkward position where it was enforcing payment to a third party when that ability to collect is already provided for in the Supreme Court ruling.

1:55:25 Mr. Richmond asked how many yachts SEAPA was anticipating for the summer. Captain Gurry replied that the expectation was between five and ten full-time yachts.

1:56:35 Captain Joe Martin (SWAPA) provided comment in response to Ms. Tesar's testimony, stating that the fee structure is of no consequence to the FPC in violation unless they get caught. Captain Martin mentioned that the pilot organization puts a maritime lien on the vessel, which strengthens the state's position toward recovering assessed fines.

1:59:25 Mr. Thayer opened the proceedings to Board discussion.

Mr. Schrock requested clarification for proposed regulation deletions. Mr. Habeger said that the only proposed for deletion is "(2) PAYS THE APPROPRIATE CHARGES FOR PILOTAGE SERVICES IN ACCORDANCE WITH 12 AAC 56.205(a), (b), (c), or (d)].

Captain Arzt enquired about the status of the proposed "matrix" directed during the previous Board meeting in Seward on November 9, 2011. Mr. Habeger replied that CBPL had done some preliminary work toward a draft matrix, however was not refined enough for presentation at this meeting.

Captain Arzt questioned what was significant about this proposed regulation that would further empower the state's ability to enforce maritime commerce. Mr. Habeger replied that historically the Board has not been inclined to impose fines, in part because the third party was collecting monies. Mr. Habeger said that this proposed regulation puts the Board in control, state policy is served, while 12 AAC 56.205 (Availability of Pilots) provides a mechanism for the pilot organizations to consider collection for pilotage services based on their availability to service the pleasure craft.

Mr. Thayer clarified that the proposed deletion does not prevent the pilot organization from billing the FPC.

2:04:10 Captain Arzt commented that the referenced regulation, 12 AAC 56.205, only takes into account the availability component.

Mr. Richmond asked Mr. Thayer if his reference to Supreme Court ruling in favor of the pilots was an 1851 Supreme Court case. Mr. Richmond described the 1851 Supreme Court case as the ruling that Pennsylvania pilots could bill for services not rendered, and further explained that the fees collected went toward a fund for decayed pilots.

2:06:50 Captain Collins stated that he would have to RECUSE himself from a vote on this proposed regulation owing to a financial conflict of interest. Mr. Thayer asked Captain Collins to explain his conflict of interest. Captain Collins replied that if he votes for it he is also voting in his financial interest, because statute already allows for it. He said that he participated in the conversation, but he wanted the record to show that he abstained from the vote.

Captain Arzt referenced Ms. Tesar's statements noting that the majority of opposing public comments were submitted by pilots. He said that three individuals – two of them former Board members – that submitted letters were not pilots. Captain Arzt also questioned how Ms. Tesar knew which pilot groups were paid or not paid for services rendered.

Mr. Schrock commented that this proposed regulation does not take away the pilots' ability to exercise their rights, and that deterrence is the proper role of the Board, and this proposed regulation does strengthen the Board's initiative.

2:10:20 On a motion by Mr. Schrock, seconded by Mr. Richmond, the Board APPROVED proposed regulation 12 AAC 56.115(b) with a 5-1 roll-call vote:

Mr. Schrock	Yea
Mr. Erickson	Yea
Mr. Arts	Yea
Captain Collins	Abstain
Captain Arzt	No
Mr. Richmond	Yea
Mr. Thayer	Yea

Mr. Thayer read the fourth proposed regulation, 12 AAC 56.115(c), then requested Mr. Habeger approach the Board to explain CBPL's position.

2:12:10 Mr. Habeger stated that this proposed regulation is a matter of parity regarding the master's credentials on both US and non-US pleasure craft. He referenced Coast Guard Sector Juneau's Commanding Officer, Captain Bornemann's letter in public comments, which stated that there are not many requirements. Mr. Habeger presented that there were no specific requirements for the master onboard a US-flagged pleasure craft, and the same policy should be extended to non-US-flagged pleasure craft.

Mr. Thayer invited public comment restricted to this proposed regulation.

Captain Winter (SEAPA) approached the Board and stated his opposition to this proposed regulation. He said that the original provisions were put into the regulation to prevent wealthy, but inexperienced, foreign yacht owners from coming into state waters without oversight. The FPC committee settled for a

license commiserate to the tonnage of the vessel, which would require some training in navigation and shiphandling, etc. The RADAR requirement came from the USCG requirement for any vessel over 100 GT. If the master has a STCW certificate then he also has the RADAR endorsement.

Ms. Kate Tesar (ASA) provided comment from a prepared statement that highlighted the following points: 1) the Coast Guard establish or regulate qualifications, requirements or minimum manning levels for any recreational vessel at all, whether US or foreign flagged; the current endorsement goes far beyond what the US Coast Guard requires of any pleasure craft operators; 3) many experienced private yacht owners, particularly in the owner/operators category, most certainly will not have these licenses or endorsements; 4) and, the state has benchmarks in place that allows the Board to review qualifications and operational conditions that must be met prior to the issuance of a pilotage exemption. The state rightfully requires these foreign pleasure craft to be private, yet these owners are currently being held to the standards of a commercial vessel by the need for a mariner's license and the radar observer endorsement.

2:18:30

Mr. Paul Axelson (YSA) referred to AS 08.62.180 Exemptions, which describes the LOA categories and corresponding pilotage requirements. Mr. Axelson stated that this regulation might be responsible for single-handedly turning FPCs away from Alaska waters because most masters of 70 or 100 foot yachts do not hold the required mariner's credentials, though they may be very experienced. He said that "valid RADAR endorsement" is a US requirement that many foreign masters cannot obtain unless they get certified in the US. Even if the FPC master had the tonnage credential, he would not have this endorsement. Mr. Axelson said that currently the state is making the FPC owner attest that his vessel is not commercial, but then holds the master to the same licensing standard as a commercial vessel. Mr. Axelson stated his support to the proposed regulation.

2:21:50

Captain Gurry, President of SEAPA, said that the RADAR endorsement is not just a US requirement. It is an international STCW requirement.

Captain Martin (SWAPA) said that his interpretation of this proposed regulation is that a master will be required to have a USCG license. He said that the verbiage is flawed.

Mr. Thayer opened the proceedings to Board discussion.

2:22:45

Mr. Richmond queried whether insurance underwriters actively looked into the credentials of their policy holders prior to taking them on. Mr. Richmond also asked whether Coast Guard vessels had licensed or endorsed personnel onboard its cutter fleet.



Mr. Robert Arts offered that from his experience insurance underwriters require the master of a vessel to disclose his mariner's qualifications as part of his liability disclosure.

Mr. Schrock commented that the proposed amendment seems to be an argument of no distinction, in that it seems to effectively remove any requirements for the master of the FPC, and that the proposed language does not provide clarity for what qualifications the master is expected to have. Mr. Schrock said he is hesitant to require things of individuals that should not be required, as he is to remove an existing requirement.

2:27:15 Captain Arzt said this proposed amendment has not been vetted sufficiently. Captain Arzt said he would move to table this proposed amendment and that it gets put forth to the existing FPC committee.

Mr. Thayer asked Captain Arzt if he wished to move to table this proposed regulation and refer it to the FPC committee. Captain Arzt agreed.

2:29:00 On a motion by Captain Arzt, seconded by Mr. Schrock, the Board unanimously voted to TABLE proposed regulation 12 AAC 56.115(c) and REFER it to the FPC committee for vetting.

At 1105 Mr. Thayer recessed the Board until 1120.

2:31:10 Mr. Thayer called the Board of Marine Pilots back on the record at 1120.

**Agenda Item 5** **Proposed 2012 SEAPA Rate Schedules**

Mr. Thayer referenced letters in the Board packet; and requested that Captain Gurry (President of SEAPA) and Mr. Axelson (North Pacific Maritime) approach the Board and provide an update.

Captain Gurry said that SEAPA and members of industry were in negotiations and had agreed upon a self-imposed deadline of March 15, 2012, indicating that was sufficient time to work out differences. Captain Gurry requested that the Board table this item under representatives of industry and SEAPA come to an agreement on this issue, with March 15<sup>th</sup> as the deadline.

Mr. Axelson concurred with Captain Gurry.

2:33:10 Mr. Thayer said that the Board would expect a progress update from SEAPA and industry after March 15<sup>th</sup>.

**Agenda Item 6** **Wrangell Narrows Pilot Station**

Item addressed during the proposed regulation under Item 2 Business Items.

**Agenda Item 7**

**SEAPA Bylaws**

Captain Gurry, President of SEAPA, noted the addition to Article II, Section 3: "except such persons may not be a member or, or dispatched by, another pilot organization in the state."

2:36:00

On a motion by Mr. Schrock, seconded by Captain Arzt, the Board APPROVED the amendment to SEAPA's Bylaws on a 6 to 1 roll-call vote:

Mr. Schrock	Yea
Mr. Erickson	Yea
Mr. Arts	Yea
Captain Collins	No
Captain Arzt	Yea
Mr. Richmond	Yea
Mr. Thayer	Yea

**Agenda Item 8**

**Training Summaries**

2:36:45

a) AMP: Captain Carter Whalen, President of AMP, briefed that Captain Jay Boyer tested and passed his Local Knowledge Written Exam on February 15, 2012. No other training activity noted.

Captain Whalen asked for a moment of silence in memory of Captain Doug Hanson who passed away in December 2011.

b) SEAPA: Captain Jeff Baken briefed the status of three (3) trainees and nine (9) Deputy Marine Pilots. The three trainees are conducting supervised maneuvers. Of the nine DPs, one is in the not-more-than 25,000 GT level, four (4) are at the not-more-than 65,000 (GT) level, and four (4) at the not-more-than 90,000 (GT) level. Projected progression: by 2013, six (6) of these DPs will be fully licensed pilots; by 2014, three (3) others will be fully licensed pilots; one trainee will be a DP in 2015, and two (2) trainees will be DPs in 2016.

Mr. Thayer acknowledged for the state that as cruise ship volumes are increasing SEAPA is increasing its junior ranks.

Captain Baken commented on SEAPA initiatives for continuing education involving simulator training at the Maritime Pilot's Institute in Port Tammany, Louisiana and at AVTEC in Seward, with emphasis on ice piloting.

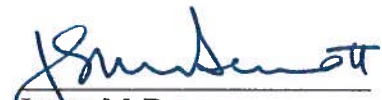
c) SWAPA: Captain Joe Martin briefed that SWAPA has one transferring pilot, Captain Peter Garay (AMP), two (2) riders in SWAPA's training program,

with one of them set to take the Core Exam in summer 2012, and the other in the fall of 2012. There is one ballot out for the rider program which closes on March 7, 2012.

- 2:41:35 Mr. Thayer wanted the Board to be aware that MPC and the Project Manager for Tourism, Ms. Roberta Graham, will work together in a possible advertising campaign aimed at outreach to the foreign yachting community and awareness of Alaska's pilotage requirements. He said state funding support is available, and that MPC and Ms. Graham will have a conversation with the yacht committee on this topic. Mr. Thayer also asked if Mr. Axelson would serve as co-chair with Captain Winter for the FPC committee. Mr. Thayer requested that they query the existing members of the committee for interest in continued membership on the FPC committee, and then forward list of members to MPC.
- 2:43:25 The Board stood at recess at 1135, to reconvene at 1300.
- Agenda Item 8**  
2:45:30 The Board reconvened and at 1305 voted to move into Executive Session for purposes of discussing a consent agreement, status of investigations, and to administer the oral examination for Deputy Pilot candidate Captain James Boyer for Region 3.
- 2:46:44 At 1456 the Board came out of Executive Session. Mr. Thayer stated that the issue at hand was the consent agreement between Captain Lewis Picton and the State of Alaska, Case No. 2011-000845. The Board decided to reject the consent agreement as proposed. Mr. Thayer indicated there were some points that still needed to be refined in the consent agreement. He outlined that the Board would go back into Executive Session and discuss terms for an agreement, at least in concept, that the Board could approve. Mr. Thayer asked that Mr. Richmond discuss the points that the Board wants to see in the consent agreement.
- 2:47:50 Discussion followed. Mr. Richmond outlined an amended consent agreement that will: 1) direct Captain Picton to have a follow-up exam prior to March 31, 2012 with medical certification that he is fit for duty as a Marine Pilot; 2) thereafter the Sleep Diagnostic Clinic will provide quarterly reports through the end of 2013 indicating compliance with the prescribed treatment plan; and, 3) pay a fine of \$2,500.00.
- Mr. Monkman, representing Captain Picton, indicated he would relate the Board's terms that afternoon to facilitate a consent agreement prior to the Board's adjournment.
- 2:55:30 At 1505 the Board voted to go back into Executive Session to conduct the Region 3 oral exam for Captain Boyer and discussions of consent agreement monitoring.

- 2:56:45 At 1525 the Board came out of Executive Session. Mr. Thayer set the post-Executive Session agenda to vote for Captain Boyer's advancement to Deputy Marine Pilot.
- 2:57:20 On a motion by Mr. Schrock, seconded by Mr. Arts, the Board voted unanimously to award Captain Boyer Deputy Marine Pilot's license #208.
- Mr. Thayer noted for the record that Captain Collins was not in attendance for the Board's afternoon business.
- 2:59:35 Mr. Thayer recessed the Board to reconvene upon notice from Mr. Monkman, Captain Picton's representative.
- 3:07:30 The Board reconvened 1535.
- On a motion by Mr. Schrock, seconded by Mr. Arts, and carried unanimously, it was
- RESOLVED to authorize the consent agreement under the amended terms discussed by the Board. This consent agreement was to be signed by Mr. Don Habeger, Director of CBPL under the authority of the Board, thereby lifting the suspension on Captain Picton's Marine Pilot license and directing terms of compliance.
- On a motion by Mr. Arts, seconded by Captain Arzt, and carried unanimously, it was
- RESOLVED to adjourn the meeting.
- Meeting of the Board of Marine Pilots adjourned at 1540.

Respectfully submitted:

  
James McDermott  
Marine Pilot Coordinator

  
Curtis W. Thayer, Chairman  
AK Board of Marine Pilots