

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

MINUTES OF MEETING

**May 1, 2012
Ketchikan, 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 on May 1, 2012 in Ketchikan, Alaska.

May 1, 2012

Call to Order/Roll Call

The meeting was called to order at 0810 by Chairman Curtis Thayer. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Captain David Arzt	- Pilot Member
Captain Dale Collins	- Pilot Member
Mr. Rick Erickson	- Agent Member
Mr. Robert Richmond	- Public Member
Mr. Tom Rueter	- Agent 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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Members of the public present were:

Captain Richard Gurry	Southeast Alaska Pilots Association
Mr. Ron Hildebrandt	Trident Seafoods
Captain Josh Weston	Southwest Alaska Pilots Association
Mrs. Jenni Zielinski	Southwest Alaska Pilots Association
Mr. Gary Messer	Kloostenboer
Ms. Kate Tesar	Alaska Steamship Association
Captain Jeff Baken	Southeast Alaska Pilots Association

Eric Collins	Southeast Alaska Pilots Association
Mr. Paul Axelson	North Pacific Maritime
Mr. Bill Sharp	Holland America Line
Captain Norbert Chaudhary	Southeast Alaska Pilots Association
Captain Frank Didier	Southeast Alaska Pilots Association
Captain John Herring	Southeast Alaska Pilots Association
Captain Scott Jones	Southeast Alaska Pilots Association
Captain Larry Vose	Himself

Public subscribers to the teleconference were:

Ms. Tram Nguyen	State Legislative Auditor
Ms. Kathy Reed	State Legislative Auditor
Mr. Robert Bailie	State Legislative Auditor
Mr. Bruce Weyrauch	Attorney-at-law

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 February 16, 2012 minutes, there were no objections to the content or convey of Board meeting. On a motion by Mr. Erickson, seconded by Captain Arzt, and carried without dissent, it was:

RESOLVED to approve the minutes for February 16, 2012.

On review of the March 19, 2012 minutes, there were no objections to the content or convey of Board teleconference meeting. On a motion by Mr. Schrock, seconded by Captain Arzt, and carried without dissent, it was:

RESOLVED to approve the minutes for March 19, 2012.

Public Comment on non-agenda items

No public comments or concerns were brought forward.

Agenda Item 3 **Business Items**

- a) Financial Report: Based on the current data and projections through the remainder of the year there are no anticipated increases in the fees for licensed marine pilots or registered vessel agents.
- b) Correspondence: Noteworthy reminder of the Kodiak air-draft procedures for pleasure craft and cruise ships transiting into and out of Kodiak Harbor. Also noted Captain Peter Garay's request for waiver of federal pilotage endorsement of Icy Bay, to be addressed by the Board at a later time this meeting.
- c) Investigations Report: Status of investigations to be discussed during Executive Session.
- d) Meetings/Examinations: A Core Examination has been scheduled for May 31, 2012 in Juneau for Captain Andrew Wakefield. The next quarterly meeting is a tentatively scheduled teleconference in July, 2012. The next physical meeting will be Anchorage, tentatively scheduled for the first week of October 2012.

Agenda Item 4 **Proposed Regulations: 12 AAC 56.120 Seasonal Pilot Stations**

10:25 Mr. Thayer noted there was one public comment concerning the coordinates of the northern buoy marking the proposed seasonal pilot station in vicinity of Wrangell Narrows. MPC clarified for the record that the coordinate for buoy WN should read: "132 degrees" instead of the proposed "133 degrees."

Mr. Thayer opened the item to public discussion, where Captain Gurry read the corrected language describing the northern boundary of the pilot station.

12:30 Mr. Thayer moved for Board discussion on the proposed regulations. Captain Arzt moved to approve proposed regulations 12 AAC 56.120 with the corrected coordinate for the northern boundary of the seasonal pilot station at Wrangell Narrows; Mr. Rueter seconded the motion.

Mr. Thayer called for a roll-call vote and the Board

13:05 APPROVED the proposed regulations on a vote of 7-0.

Captain Arzt	Yes
Captain Collins	Yes
Mr. Erickson	Yes
Mr. Richmond	Yes
Mr. Rueter	Yes
Mr. Schrock	Yes
Mr. Thayer	Yes

Agenda Item 5 **Navigation & Safety Information**

13:25 In accordance with AS 08.62.180 Exemptions, navigational and safety information provided by a vessel agent to a foreign pleasure craft seeking an exemption must be annually reviewed by the Board at its spring meeting. No changes have been made to the previous season's navigational and safety checklist. The Board approved the continuance in issue of the checklist as presented.

Agenda Item 6 **2012 SEAPA Rate Schedules**

14:45 Mr. Thayer revisited ASA's objection to the 2012 SEAPA rate schedule, first presented to the Board at the February 16 meeting in Anchorage. SEAPA and ASA had pledged to continue negotiations toward an agreement and inform the Board of progress toward that end. Mr. Thayer requested a status update from the parties engaged in negotiations.

15:20 Captain Gurry, President of SEAPA, stated that the parties had targeted a mid-March date to come to an agreement, which was reached. Since that time the Northwest Cruise Ship Association informed SEAPA that no officer of ASA can bind NWCA to a contract with SEAPA, and that at this point SEAPA does not know who they are negotiating with to resolve the rate schedule objection. Captain Gurry stated that the process for filing and responding to objections had been observed, so that with this impasse SEAPA is now before the Board requesting a ruling on SEAPA's published 2012 rate schedule.

16:40 Mr. Paul Axelson, Operations Manager for North Pacific Maritime (NPC) and representing ASA, stated that ASA and SEAPA had come very close to an agreement, however the impasse is rooted in the relationship between ASA and the cruise ship industry where ASA does not represent the billing-for-services aspect of that relationship with individual entities in the cruise ship industry. Mr. Axelson re-affirmed that ASA and SEAPA were still very close to an agreement, however, if the Board thought it is necessary to schedule a hearing, then that is the next recourse.

18:05 Mr. Thayer advised that there are two avenues toward scheduling a rate hearing: either the Board can set a date and hear testimony and render a decision, or the matter can be assigned to an administrative law judge and then that judge will preside over the hearing process. The question for the Board right now is what is the parties' desired recourse, and from there the process can begin: the Board will be briefed on the pertinent statutes and regulations and the exact procedures for requesting the assignment of an administrative law judge, what the Board's rights are at that time as far as affecting the decision, or whether the Board will hear the dispute internally without an administrative law judge.

18:55 Mr. Thayer invited discussion from the Board. Captain Arzt asked whether SEAPA is requesting a rate hearing at this moment. Captain Gurry responded that

this information has been available to the Board since December 2011, that SEAPA had re-entered negotiations with ASA to resolve the issue in March, and that approximately one week ago SEAPA was informed that ASA does not represent the interests of NWCA.

20:20 Mr. Thayer asked the Board what course of action it wanted to pursue. Captain Arzt motioned for the Board to schedule a rate hearing to resolve the matter. Mr. Rueter seconded the motion, and the Board unanimously

APPROVED the scheduling of a rate hearing.

21:00 Mr. Thayer said members of the Board would be presented with more specific information regarding the two options in scheduling a hearing and they would have a course of action determined by the end of May. Mr. Thayer directed MPC to prepare a brief of the options and associated timelines for dissemination to the Board in a timely manner to meet the end of May decision point.

Agenda Item 7 SEAPA Proposed Training Amendment Proposals

21:45 Captain Jeff Baken, SEAPA Training Officer, presented the amendment to SEAPA's Training Program explaining that it allows the SEAPA Training Committee to make minor clarifying changes to be implemented immediately and also provides a checks and balances through consent from the SEAPA board and with pilot membership approval. This amendment is modeled after SEAPA's Operating Rules, which gives SEAPA's board similar flexibility.

24:05 Mr. Richmond asked Captain Baken how large the Training Committee is, and Captain Baken stated there are seven members.

24:35 Mr. Schrock asked Captain Baken whether SEAPA had defined what "minor" and "clarifying" meant in relation to the Training Program. Captain Baken replied that these terms were somewhat open-ended and not definitive.

25:15 Mr. Thayer entertained a motion to approve SEAPA's Training Program amendment. Captain Arzt made the motion, seconded by Mr. Schrock, and a roll call was conducted:

Captain Arzt	Yes
Captain Collins	No
Mr. Erickson	Yes
Mr. Richmond	Yes
Mr. Rueter	Yes
Mr. Schrock	Yes
Mr. Thayer	Yes

25:51 The proposed amendment to SEAPA's Training Program was

APPROVED with a 6-1 vote.

Agenda Item 8 **Training Summaries**

26:30 No AMP representative to present.

SWAPA provided the following summary: two (2) trainees, one (1) apprentice; and one transfer pilot, Captain Peter Garay of AMP.

SEAPA Training Chair Captain Baken handed out a prepared training summary dated 5/1/12 and discussed the following: three (3) trainees, one who took the Local Knowledge Exam on April 30th and will take his Oral Exam before the Board during executive session, another trainee has not been progressing satisfactorily and SEAPA will begin due process proceedings for dismissal.

Agenda Item 8 **Working Group Reports**

29:00 As a result of the February 16 Board meeting, where the status of Board-approved committees and working groups was reviewed, the only active working group is the Foreign Pleasure Craft Working Group. Its members are as follows:

- Mr. Paul Axelson - Co-Chair
- Captain Bob Winter - Co-Chair
- Ms Debbie Azure
- Captain David Arzt
- Mr. Rick Erickson
- Mr. Brett Farrell
- Captain Richard Gurry
- Captain Joe Martin
- Captain Michael O'Hara
- Ms. Kate Tesar

Mr. Thayer noted that the composition of the working group is intended to balance the interests of the pilots and industry. Mr. Thayer also noted that Captain Gurry was selected to replace Captain Collins, as both pilots are from SEAPA. He entertained a motion to approve this substitution. Captain Arzt made the motion, seconded by Mr. Erickson, and it was unanimously

31:55 APPROVED to replace Captain Collins with designated alternate Captain Gurry.

Mr. Thayer stated that at the last Board meeting it was decided that proposed regulation 12 AAC 56.115(c), which had been tabled for further review, should be vetted through the Foreign Pleasure Craft Working Group to determine whether

the item should move forward in its present form, in a different form, or tabled indefinitely. This is the first item before the working group.

33:50 Mr. Thayer entertained a motion to move the Alaska Board of Marine Pilots into executive session in accordance with Sec. 44.62.310(c)(2) & (3) Alaska Constitutional Rights and Privacy Provisions, and the purpose of this is the status of investigations, and an alcohol monitoring consent review, and Oral Examinations for Captain John Herring. Following executive session, the Board will move forward with any items that result from these stated purposes.

34:50 Captain Arzt made the motion, seconded by Mr. Richmond, and it was unanimously decided to move the Board into executive session. Mr. Thayer noted the local time at 0845.

35:20 The Board came out of executive session at 0940 and recessed until 1000.

Mr. Thayer entertained a motion to close nine investigations recommended for closure by the Division. Mr. Ericson read a motion to close the following MAR cases:

- 1900-04-001 incompetence
- 1900-04-002 disability
- 1900-04-003 incompetence
- 1900-04-005 incompetence
- 1900-05-002 unlicensed activity
- 1900-08-002 violation of licensing regulation
- 1900-08-003 violation of licensing regulation
- 1900-08-004 substance abuse
- 1901-09-001 violation of licensing regulation

37:35 Mr. Schrock seconded the motion, and a roll-call vote unanimously

APPROVED the recommendation for closure of these nine investigations.

Mr. Thayer stated that the two active consent agreements had been reviewed and both individuals were in compliance with the terms of their respective agreements.

Mr. Thayer entertained a motion regarding the issue of Captain Garay's Correspondence request for a first class pilotage waiver. Captain Arzt motioned for a waiver for the port of Icy Bay from the requirement for a Marine Pilot license for Captain Garay, as stated in the letter by SWAPA on his behalf. Mr. Rueter seconded the motion.

39:00 Mr. Thayer read aloud the regulation that is the basis for Captain Garay's request for waiver, 12 AAC 56.028(e), which states:

“Due to fluctuating marine traffic patterns, a training requirement specified in this section may be unobtainable from time to time. A trainee who has otherwise completed all of the training requirements specified in this section may request the marine pilot coordinator to review the availability of vessel traffic to meet specific training requirements that the trainee believes are unobtainable. The request for review must be in writing and accompanied by documentation that demonstrates the completion of all other training requirements. The marine pilot coordinator shall forward the results of the review to the board. The board will, in its discretion, grant a waiver of the training according to the provisions of this section.”

A roll-call vote was conducted and the motion was carried without dissent.

40:25 Mr. Thayer announced the next item before the Board was the matter of Captain John Herring, who had his Oral Examinations before the Board in executive session. Captain Arzt motioned for the Board to issue Captain Herring his Deputy Marine Pilot’s license. Mr. Richmond seconded the motion. A roll call vote was conducted and the Board unanimously

APPROVED the issuance of Marine Pilot License #209 to Captain John Herring of SEAPA.

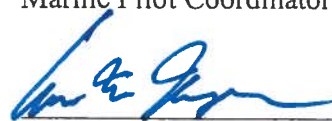
43:50 Mr. Thayer reiterated that an email would be pending to Board with the Attorney General’s Opinion specifically addressing guidance for how the Board should proceed with a rate review hearing.

44:15 On a motion by Captain Arzt, seconded by Mr. Schrock, and carried without dissent the Board RESOLVED to adjourn 1010.

Respectfully submitted:



James McDermott
Marine Pilot Coordinator



Curtis W. Thayer, Chairman
AK Board of Marine Pilots