

**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 30, 2014

Anchorage, Alaska

These draft minutes have been prepared by the staff of the Division of Corporations, Business and Professional Licensing, and have been approved by the Alaska Board of Marine Pilots on January 29, 2015.

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 Alaska Board of Marine Pilots was held on October 30, 2014, in Anchorage, Alaska.

Call to Order/Roll Call

The meeting was called to order at 9:10 AM by Chairman Curtis Thayer. The Marine Pilot Coordinator (MPC) conducted roll call.

Participating members constituting a quorum were:

Hans Antonsen	- Pilot Member
David Arzt	- Pilot Member
Richard Erickson	- Agent Member
Robert Richmond	- Public Member
Tom Rueter	- Agent Member
Tylan Schrock	- Public Member
Curtis Thayer, Chair	- Commissioner's Designee

Staff present:

Crystal Dooley	Marine Pilot Coordinator (MPC)
Sara Chambers	Director of the Division of Corporations, Business, and Professional Licensing
Colleen Kautz	Operations Manager I
Angela Birt	Chief of Professional Licensing Investigations Unit

Members of the public present:

Ed Sinclair	Southeast Alaska Pilot Association
Paul Merrill	Southeast Alaska Pilot Association

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Jenni Zielinski	Southwest Alaska Pilot Association
Josh Weston	Southwest Alaska Pilot Association
Andrew Wakefield	Southwest Alaska Pilot Association
Ron Hildebrand	Trident Seafoods
Mike Tibbles	Alaska Steamship Association
Jim Lee	Alaska Maritime Agencies
Clay Christie	Alaska Marine Pilots
Bob Poe	Alaska Marine Pilots
Rick Entenmann	Alaska Marine Pilots
Bill Gillespie	Alaska Marine Pilots
Paul Axelson	North Pacific Maritime Institute- Yacht Services of Alaska
Gary Messer	Pacific Reefer Logistics
Luke Hasenbank	Alaska Maritime
Matthew Lee	Inch Cape Shipping Services

There were no public subscribers to the teleconference.

Agenda Item 1 Review and Set Agenda

Hearing no objections to the set agenda, it was:

RESOLVED to approve the agenda.

Declarations of Potential Conflicts of Interest/Recusals

Board members made no declarations of potential conflicts of interest.

Agenda Item 2 Review/Approve Minutes

On review of the May 01, 2014 meeting minutes, there were no objections to the content or convey of Board minutes except to correct a typing error.

Agenda Item 3 Public Comment

The Chair opened the floor to general public comment. There was no comment from the public.

Agenda Item 4 Business Items

a) Board Quarterly Revenue and Expense Report: The Chair invited the MPC to give the report; the MPC invited the Director, Sara Chambers, to take the floor. She stated that the final FY 14 figures were released and the Board showed a deficit of \$16,000; however it was not unusual for this point in a biennial life

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cycle since the Board was now engaged in renewals, and, by January the Board would see replenishment of that source. She said the deficit cycle was replicated in FY 10 and FY 12. Ms. Chambers stated that personal service costs were lower for FY 14 and that the Board was doing a great job maintaining expenses, and that total expenses were still down as well. Ms. Chambers said there was a highlight on indirect expenditures and that the Division would publish more information in a week or so. She stated that she was creating an informational pamphlet for Board members to explain how the financial aspect worked. She also stated that there were changes to indirect cost allocations and she hoped to publish information by November 1 with fiscal information from the Admin Services Division. The Chair requested why the Board was still charged for a legal trust for a union employee that the Board didn't employ. Ms. Chambers said she would have the Admin Officer look into which specific employee assisted the Board. Mr. Schrock asked why there was a significant increase in indirect expenditure and wondered why they had tripled or quadrupled that cost. Mr. Schrock said that he understood Ms. Chambers would publish more information, but wondered if the method of calculating indirect costs had been higher and the Board had been tagged appropriately. Ms. Chambers said she hadn't gotten the documents she needed yet, and that the Division was taking "accounting speak" and putting it into "laymen's terms". She stated that, unfortunately, it wasn't completed and that she couldn't give a good explanation at that moment. She stated that the cause of the increase would be published and that she would give a more specific analysis to why this program was impacted in such a dramatic way, and that she believed the members had a right to know how the process was created. Mr. Schrock stated that the indirect costs looked about four times what the costs had been and that he understood that they were real and he was looking forward to an explanation and that the licensee's fees paid for the indirect costs. The Chair requested if Ms. Chambers could distribute that information to the Board on November 1, and then from there the Board could address it as a teleconference or wait until the winter meeting. The Chair said that there were several boards that the State had carried, and that the Board of Marine Pilots had been successful at maintaining fees. The Chair asked if the Division was attempting to re-balance that with other boards. Ms. Chambers stated absolutely not, and that all costs are tied to very specific sources. She stated that indirect allocation methodology is based on rationale not tied to rebalancing of expenses across programs, and that an explanation of the methodology would be clear, apparent, and direct when the information was sent out in the following week. Chair Thayer said he thought it was a dramatic increase and that the Board knew there were certain issues they couldn't control and that this issue was specifically concerning to the Board. The Chair stated that he understood overhead and expenses assigned to that. Captain Antonsen stated that he liked the idea of receiving the November 1 report and that the Board should be polled if they were interested in having a teleconference before the January meeting. Captain Antonsen stated that expenditures were \$30,000-50,000 less than previous years, there was still a deficit, and he'd like the information to

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pass on to the members paying the fees. Mr. Schrock asked if the implementation of the indirect costs was part of the new budget cycles and if this was considered a done deal or if the Board had any ability to change it. Mr. Schrock said he believed the Board would receive the most palatable response to paying four times what they were used to, and requested to know if the Board had any ability to push back. The Chair stated that the Board has a Legislative process and that the Board could go to the finance chairs, and that other boards could also bring up their respective issues. The Chair stated that he hoped the Board would meet in Juneau during their winter meeting to have that option. Mr. Schrock said he preferred to have the conversation sooner rather than later, and before Session.

The Chair asked Ms. Chambers what methodology was used to calculate indirect costs, such as the size of the board or the number of licensees. Ms. Chambers stated the process within the last few years was first tied to the level of effort within the two major cost drivers, business and professional licensing, and then allocated around the number of professional licenses. She stated that the Division had dug deeper this year into indirect costs at the end of the fiscal year and reduced costs by almost a million dollars by allocating indirect expenses to the programs that were using them. She stated that some changes were very simple, like programs that had teleconferences that were costing several thousand dollars a month and the programs were requested to pay for that. She stated the Division also dug in a more complex way by looking at lines of financial transactions in the receipt support, reconciliation support, and other general accounting information. She stated the Division looked into how many financial transactions boards needed and allocated those indirect expenses more appropriately. She stated that this program has a lower number of licensees and an increase in summer activity; however the number of financial transactions for this board remained low. She stated that a board such as the Board of Nursing has over 20,000 licensees, thus there would be a much larger number of financial transactions. Also, the Division looked into how the Admin Support Unit was really spending their time. She stated that it was tied to a rational methodology and more information would be released soon, and that she understood the challenge was on her shoulders.

The Chair asked if the Board could have a comparison of their board to others so the Board could see what their rates were. Ms. Chambers said yes and that each board would receive that.

Captain Antonsen said he was really looking forward to the November 1 email and that he believed that, based on Ms. Chambers' explanation, their indirect costs should be much lower than what was reflected. Ms. Chambers said she appreciated the scrutiny.

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b) Correspondence: The Chair directed the Board to the Correspondence section. He stated that the MPC was interested in attending a four-day training that would cost the Board \$1,500. The Chair stated that this was more training that the MPC normally received and that it was more traveling that the Board had paid for in the past. The MPC stated Reid training was named after the company, and that it was given to law enforcement to watch for verbal and non-verbal clues within interviews to determine truthfulness. The MPC stated the Chief of the Investigations Unit requested her to attend, however the MPC said she didn't do very many investigations. The MPC stated that she thought it was great training; however she might not use it as much as the other investigators. Mr. Richmond requested clarification on the training the MPC just attended. The MPC stated she attended NCIT Basic training in mid-September, which was the "30,000-ft view" and that other MPC's had attended that training in the past. She stated it was three-day training on regulatory investigations, while this one was specifically on interview techniques. Mr. Richmond said he spent time in interrogation training while in the Army and that he didn't think "baiting techniques" were appropriate training for interviewing people for licensing investigations. He stated that the investigations were for finding the truth, and that Reid techniques were about hypothetical questions, and that the Board was more about finding facts. Captain Arzt said the Board was still trying to wrap their minds about how the Board was going to run investigations and the MPC's role in that, and he believed sending the MPC to this investigations training was premature until the Board had decided how investigations would be ran. The Chair stated that discussion was coming up with this meeting.

Mr. Schrock said that if indirect costs had quadrupled, he didn't think the Board was in the business of having the highest end of investigative techniques, the Board was trying to run more efficiently, and this was a budget item the Board should hold off on.

Captain Antonsen said that since the Board was re-evaluating the MPC position and trying to reduce indirect expenditures, he stated the Board could get a better idea of training in the future when they redo the MPC position in-house. Mr. Richmond asked if there was some intent that the Board of Marine Pilots was to foot the bill for the training when she would be assigned to do other work for other programs by the Investigations Unit. The Chair said he did not hear a motion for the MPC to attend this training and the Board was ready to move on.

The Chair requested the Board to examine the rate filing information from multiple pilot organizations. The Chair stated that statute was clear that pilot organizations had to publish rates and he thought it was interesting that SEAPA published rates in the Fairbanks Daily Miner and not in the area that they serve. The Chair asked why SEAPA chose to do that and asked anyone from a pilot organization to explain it. Captain Ed Sinclair from SEAPA stated that the pilot

organization traditionally used that newspaper because it was within the rules and as a cost saving measure. The Chair asked if the Ketchikan newspaper was more expensive than the Fairbanks Daily Miner, and Captain Sinclair said he thought the Fairbanks Daily Miner had a wider distribution, and he didn't know off the top of his head. Captain Sinclair stated this wasn't a new practice. Captain Antonsen said that costs of publishing a few columns in a newspaper with a wide readership can range between hundreds or thousands of dollars, it seems a formality within the electronic age and that people who are directly impacted are informed through agents, this fulfilled a legal obligation, and was not necessarily informing a particular community. Captain Antonsen says this abided by the letter of the law but also kept costs down. It was confirmed that statute did not require a particular community.

Agenda Item 5 **Association Reports**

- a) SEAPA: The Chair requested that Captain Sinclair walk the Board through the changes in the training manual. Captain Sinclair introduced Captain Paul Merrill as the training chair. Captain Merrill stated the Board had approved changes in volume II of the training program years ago, and stated that to make a training pilot, the training pilot needed five years of experience. He stated the Board changed the time to three years instead of five, and included a "train the trainer" class. Captain Merrill said the class doesn't exist anymore, and that SEAPA requested the Board approve changes so that the pilots could become training pilots after five years or three years and attending the course. Captain Merrill said that this built more flexibility into the program as to when they are eligible to become a training pilot and keeps the roster of training pilots high. The Chair confirmed that SEAPA had one change. Mr. Richmond asked where the actual change was, and was shown that it was on page 25. Mr. Erickson asked what course Captain Merrill went to. Captain Antonsen stated they went to a "train the trainer" or "train the assessor" course in Seattle and that all training members at that time were encouraged to go. He stated the course was "out-of-the-house" to encourage more continuity when filling out evaluation forms and that SEAPA submitted themselves to an outside firm to get better training on how to write a more similar evaluation. Mr. Richmond asked if it was an administrative training and asked what was in the process of training someone to become a trainer. Captain Antonsen that pilots' experience, but it was a more logical look at training pilots to give training evaluations to trainees, and examined the art of evaluations. He stated that managers probably took similar courses to remove bias from evaluations, it looked similar to Bridge Resource Management training, and it gave a clear expectation of what was expected and based on what training level a trainee was in. It helped training pilots to give a more fair and balanced evaluation with more consistency. Mr. Richmond asked for clarification and if pilot trainers were involved in this training. Captain Antonsen said yes, senior pilots were involved with the firm to make sure the course was very applicable to

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pilots and piloting. Captain Arzt asked if the course was still offered. Captain Merrill said the course hadn't been offered in a while, and he didn't think that SEAPA would have enough pilots to fill an entire class. Captain Arzt said he understood the need for flexibility and need to bring in training pilots, having five years as a marine pilot in addition to being a deputy pilot was enough experience, and he supported the associations in that associations knew best about how to train within their specific regions without Board interference. Captain Antonsen said he thought the Board should ask if this represented an increase or decrease in training. He stated that the Board had decided previously that five years of experience was the appropriate amount of time to be a competent pilot and handle the stress of watching someone else make different decisions than the training pilot would. Captain Antonsen said that at one point there were 12 trainees and that SEAPA was willing to adopt a lower level if there was a decision made to adopt some consistency, which is why the Board chose to go with five years or three years and the train-the-trainer course. Mr. Richmond asked if the course was pass/fail. Captain Merrill said that no one had ever failed at this point, but he believed it was possible to fail. Captain Antonsen said that if someone was failing, they were required to do remedial training until they passed. Mr. Richmond asked if there was a written curriculum and how long did the course take per pilot, and if the length was different per pilot.

Captain Merrill said he believed it was three or four days, and that he had taken a version of this class before in previous occupations, and that issues such as cross-culture conversations were really effective for someone who wasn't a professional teacher.

The Chair asked for a motion to approve the changes to SEAPA's training plan.

Motion: Approve changes to SEAPA's Training Manual

Moved by: Mr. Erickson

Seconded by: Mr. Richmond

The Board APPROVED the proposed changes to the training plan unanimously.

b) SWAPA: Chair Thayer invited SWAPA to the table and invited them to walk the Board through their changes in their training manual. Captain Weston said there was only one change, although numbering and page numbers were updated. SWAPA requested to change one of the qualifications for Prince William Sound from four round trips through Knight Island due to traffic. Captain Weston stated that SWAPA was adding another avenue for qualification since traffic conditions had changed so that this requirement was no longer feasible. Ms. Zielinski stated there was one ship in 2013. Mr. Erickson said that there was a similar issue with Nicholas Pass in Southeast Alaska and that pilots do not transit

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through that pass due to the decrease in traffic. The Chair asked for questions and there were none.

Motion: Approve changes to SWAPA's training manual.

Moved by: Captain Antonsen
Seconded by: Mr. Richmond.

The Board APPROVED the proposed changes to the training plan unanimously.

c) AMP: The Chair called AMP to the table. Mr. Bob Poe introduced himself and requested the Board approve minor changes, such as grammatical errors and cleaning up language. Mr. Poe said that mistakes were caught over time and a section was incorrectly bulleted. Mr. Poe stated that part of page 12 was considered unnecessary language. He stated that the change on page 12 allowed the AMP training committee to decide what courses were best for their region to qualify for continuing education.

The Chair asked if in b(1) and b(2) the words "Board approved manned model" and "Board approved course" had been stricken. The Chair inquired who "Board" was referring to.

Mr. Poe said it was referring to the Board of Marine Pilots. The Chair confirmed that the Board was voting to strike reference to the Board of Marine Pilots determining continuing education courses and allowing AMP to make that determination. Mr. Poe stated yes and no, the paragraph that AMP pilots were required to comply with the applicable statute in 12 AAC 56.083, and felt it was redundant to state it twice in the same paragraph. Mr. Richmond said that there was a list of classes, and it said "Attend one but not limited to the following" and that AMP couldn't know what all classes would be over time. Mr. Poe confirmed in that there may be training opportunities as technology changes became available that weren't known at the moment and they'd rather not wait until Board approval. Mr. Poe stated that the training manual had limited their ability to send people to training in the past. Captain Antonsen stated that even if a class was not listed, a pilot would still need the AMP training committee's approval for the class to count as continuing education. Mr. Poe said that was correct and it would be quicker through the AMP training committee than the Board of Marine Pilots.

Captain Antonsen asked if AMP was going to give the list of classes to the Board on an annual basis or at written request. Mr. Poe said that once a certificate was issued, it would be sent to the AMP office and the MPC. Captain Antonsen confirmed that the MPC would need the list so she knew that received certificates were approved as continual education by AMP. Mr. Schrock stated that he thought the strike through #2 on Page 12 has been replaced by #1, and he was

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confirming that the Board approved courses listed were about to become AMP approved courses, and if it really was a substantive change. Mr. Poe confirmed that yes, it was a substantive change.

Captain Arzt said that the only current Board approved courses are the manned model courses and the simulator courses, defined by regulation to have been completed within every third biennial renewal period. Captain Arzt stated that 12 AAC 56.083(f) said that pilot associations must have a training manual approved by the Board, and that the Board never approved the list of courses. Captain Arzt said that in the other two regions' training manual, the Board had never accepted or denied a course, but had allowed associations to decide what courses they wanted to accept. Captain Arzt said that the Board had never examined particular courses and decided if the Board would like to approve it or not. Captain Antonsen said that associations were giving "above and beyond" requirements that the professionals believe they should take and this was additional requirements beyond state requirements. Mr. Schrock said he wanted to note that it was substantive change and that he did not want the Board to approve a list of courses but to have the minutes reflect that this was a substantive change from previous training manuals. Captain Arzt said that it did align itself with the other region training manuals, and this change would take out repetitions of statute and regulation.

Captain Arzt said the bigger issue was if this was taking Board authority from approving a list of courses or not. Mr. Poe said if a pilot would like to take more classes, it would be up to the training committee. Mr. Poe stated that other changes were cleaning up language and removing references to outdated technology, such as fax machines. The Chair asked if there were more questions. Mr. Richmond asked how many courses pilots were expected to take during renewal. Mr. Poe said one. Mr. Richmond asked how much courses cost, such as the maritime law course listed in the training manual. Mr. Poe said it would be several thousand dollars. Mr. Richmond asked if individual pilots paid for the course or if the training committee paid. Mr. Poe said the training committee paid. Mr. Richmond asked how much a "Train the Trainer" course in Seattle would cost. Captain Arzt assumed \$800 for airfare, a few days of lodging, and that it would cost a few thousand dollars. Captain Arzt stated that if a pilot wanted to take multiple courses, it would depend on the training committee and that it can be several thousand dollars to send a pilot to one day of training at AVTEC. Mr. Richmond said if he were on a training committee and trying to save money, he would send pilots to the cheapest courses. He asked why a training association would choose to send a pilot to one course over another course. Captain Christie said that AMP had negotiated with industry to have a training and safety fund. Mr. Poe said that pilots needed to stay trained and that drove decisions on each training a pilot needed. Captain Arzt said that associations did not dictate what class each pilot took, and that continuing education was designed for pilots to stay

abreast of their strengths and weaknesses and determine which classes they'd take to enhance their skill set. Captain Antonsen said the extra requirements helped pilots get the best training tailored to them since pilots come from diverse backgrounds, such as tug-and-tow, Coast Guard, to the Marine Highway, and that pilots had a good sense of what they needed to work on. He stated that this allows pilots to address continual education on an individual basis.

Mr. Richmond asked Mr. Poe if AMP had negotiated with industry for this contract, did industry have a way of knowing all the money was spent on training? Mr. Poe said yes, it was part of the contract, and that industry wanted to see that information. The Chair asked for questions and there were none:

Motion: Approve changes to AMP's training manual

Moved By: Mr. Richmond
Seconded By: Captain Antonsen

The Board APPROVED the proposed changes to the training plan unanimously.

The Chair stated the Board would recess until 10: 30AM.

10:30AM Break
10:40AM Back on Record

**Agenda Item 6 Division of Corporations, Business, and Professional Licensing
Investigations Process Training**

The Chair invited Chief Birt and Ms. Chambers to address the Board. The Chair directed the Board's attention to investigative materials listed under tab 5. Chief Birt introduced herself as the new Chief to the Investigations Unit and stated she served 23 years in the Army and six years as a contractor in Afghanistan and Iraq. She stated that she joined the Division in November 2012 and became the Chief in September. Chief Birt stated she had been Chief for approximately 60 days and that Ms. Chambers had been the Director since April 1. She said that one of the first things that she and Ms. Chambers did was look at how investigations worked for all of the boards, and that investigations had 19 direct reports to the Chief. Chief Birt said that the current investigations structure wasn't effective and that the investigation structure would be broken into health care and non-health care disciplines. Chief Birt stressed that this would not impact the MPC since she was not located in the Anchorage office. Chief Birt stated that the Division wanted to maximize training dollars. She stated that Reid training was not held in Alaska often and that the Division got cost savings by sending more investigators. Chief Birt recommended sending the MPC in that she was one of the newer

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investigators onboard and that she should be included in this opportunity. Director Birt said she understood if the Board chose not to send the MPC.

Chief Birt said that the MPC was often used to assist other boards, and that the MPC had recently assisted the Medical Board. Chief Birt said that the Division was rounding out the MPC's investigative skill set, and although it may not be used much within the Board of Marine Pilots, it would still be used in other areas. She stated that she noticed when talking with other boards that there's confusion and lack of information about the board's role in the investigative process, and many other boards have claimed they aren't sure what their role is in investigations. Chief Birt drew the Board's attention to a flow chart supplied in the Board binder. She said the areas highlighted in yellow on the flow chart were places where board members get involved. She stated that about 30% of cases are people who contact the Investigations Unit with questions or concerns but don't follow through with the investigative process.

She said at the top of the flow chart was a box that said "Report Received by Marine Pilot Coordinator", although it could be any investigator. Chief Birt said that it had to be a signed document, something like a police report, or some other triggering event. The Chair asked to confirm if a signed report was needed because previously the MPC has gotten phone calls of alleged activities that took her down rabbit trails that hadn't produced anything. The Chair stated he liked it that they needed a signed report. Chief Birt said that there could be a triggering event that wasn't a signed report, like two boats colliding. Chief Birt said that the Investigative Unit may investigate things that are apparent that won't have signed complaints, and in other professions, it often starts with a criminal arrest. She stated that when someone was arrested, it could be in the media, the information would be considered common knowledge and the Investigations Unit can proceed.

Chief Birt stated an initiated case is termed a "complaint". She stated that in the initial complaint process, complaints may be received that aren't jurisdictional to a board. For example, she said in other disciplines that there are a lot of cases that aren't jurisdictional to the board unless it involves fraud. She stated that there may be frivolous complaints, such as someone claiming they didn't like how their doctor treated them and felt they were rude to them. Chief Birt said that people may feel strongly and may sign a written complaint, but it was not jurisdictional to the Medical Board. She said the Investigations Unit takes information to a board member representing the board and asks them to decide if it were a violation and if it can be investigated. She stated that many cases end at the reviewing board member because, while the board member may find it is unfortunate, it is outside the authority of the board. Chief Birt said if, however, they do see something that may be a violation, the time and expense of an investigation occurs if the reviewing board member believes there's enough

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information that a violation may have been committed and the Investigations Unit should begin interviews. She stated that once the investigation is complete and all the facts are complete, the Investigations Unit will go back to the reviewing board member. She said the reason only one board member is used is that when the information comes back to the board body for action, the board would be tainted by knowing the preliminary facts, it may influence the boards' decision, and thus having a reviewing board member is a protective measure. The reviewing board member would have all the facts and would be making decisions on behalf on the board, but the board would still have a say in what happens when license action is presented to the board.

The Chair asked who would determine the reviewing board member because the board was made of agents and pilots, thus full of inherent conflict. Chief Birt said that boards had solved that issue differently. Chief Birt stated that reviewing board members are always asked if they have a professional or personal conflict that would prevent an unbiased opinion or the appearance of an unbiased opinion. The reviewing board member would be asked questions such as if they went to school or are they in business with the person. The Chair stated he understood, but since it was a board of seven, who would reach out to make initial contact and who would be assigned. The MPC stated she had only two licensed pilots. Chief Birt recommended that it should always be someone licensed in that profession, so if the pilot is against a pilot, the reviewing board member would be one of the two pilots on the Board. Chief Birt said the Board could designate someone, either on a revolving basis or a consistent basic to act on behalf of the Board.

The Chair asked if a member of the Board would be disqualified from voting. Chief Birt said it would not prevent the Board member from discussion of the event, however the Board member should recuse themselves from voting on decisions like consent agreements. Captain Arzt said the Board, in the past, had used retired pilots as expert witnesses to appraise and assess situations so the Board didn't lose votes on recusals. Chief Birt said the Board could choose to designate someone the MPC could always go to since the Board was small and didn't want to lose knowledge from a recused person. Captain Arzt stated that it made sense since the Board not a neutral board, where removing one member from voting wouldn't alter the make-up of the board.

The Chair stated that if it's an issue with a pilot's license, there's a 33.33% chance it would be someone from their organization. Chief Birt recommended designating on the record that all board reviews done by specific expert witnesses, retired board members, or members of the community would be acceptable. Chief Birt stated that smaller boards choose to do that because a person may be out of town, one person may be recused, and now the board no longer has a quorum. The Chair stated one or two retired pilots with board experience would be the ideal person to represent the Board. Captain Antonsen asked if the intent was to have

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someone as distant as possible from the subject or be most familiar with the region of the person that's the subject of the complaint. Chief Birt said it was balance in that they had to be professionally distant so that their finding couldn't be attacked, however they needed enough familiarity with the profession and the area so they could make good decisions representing the Board. Captain Antonsen said, since the Board has two pilots, if it's the pilot that's most familiar with the region, it would be the pilot that was in conflict since he'd be in the same association as the pilot that's the subject of the complaint. Captain Antonsen said if the pilot from the other region was used, they'd have to recuse themselves and the pilot from the same region would have to recuse themselves as well, and that would mean two pilots would be removed from voting. Captain Antonsen said this was another reason an outside expert witness should be used, and that he thought board experience was less of a priority than experience as an expert witness. Chief Birt said that it's something for the Board to consider, and that the Division can properly vet experts to make sure there's no issues with their past in case the expert witness had to testify in court, put them under contract with the Board, and that time spent reviewing cases would be billed towards the Board. Chief Birt asked if she could move on and the Chair said that she could.

Chief Birt said that when the reviewing board member and Division determine there's a violation, several things may happen. She stated that there could be a consent agreement drafted, with terms and conditions acceptable to the board based on historical precedent. Chief Birt stated that the Investigations Unit researches how the board has historically handled an issue and would present it to the reviewing board member to make sure the board is acting consistently with the statutory requirement. Chief Birt stated that if a board departed from the historical precedent, they have to articulate why they chose to. She said that it could be a particularly egregious case or a benign case, and that it would be acceptable for a board to depart from their precedent. She stated that the licensee could choose to accept the negotiated agreement, and if the licensee chose to reject the agreement, the Board would proceed with litigation. She stated that if the consent agreement is signed by the licensee, it comes before the entire board. She said the Investigations Unit would brief the case, and the board has the opportunity to vote it up or down. She stated that boards may choose to reject the consent agreement because they believe the punishment is too high or too low.

The Chair stated that approximately two years ago, the Board of Marine Pilots was approached with a consent agreement from the Investigations Unit that they were not originally consulted on. The Board chose to reject the agreement and had the investigator re-write the consent agreement with Board input. The Chair stated it was an extra step that should not have happened, and that he thought it would have been better if the investigator drafted the consent agreement with the Board's wishes instead of after the fact. Chief Birt said that's why it's useful to have someone on the Board acting as the reviewing board member because of the

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specifics of the discipline, but the Board could have someone else give the recommendation from the Board since only a Board member would be familiar enough with the Board to know what they would accept.

The Chair stated that the Board discussed everything as an open board, and that the Board set the direction, not the Chair. Chief Birt said the issue with the Board discussing the case before the facts were known was that it could prejudice the Board. She stated that subjects would inform the Board with the story in the light most favorable to themselves, and the Chair agreed. Chief Birt said that people often make a value judgment on the first information they hear and that it's difficult for people to change their minds because people don't like to feel wrong. She stated that the Division preferred to wait until the investigation was complete to present the facts to the Board so the Board wasn't prejudiced against the licensee. Mr. Richmond said that he believed the judicial system operated with a judge getting a complaint in front of him of one side of the allegations, and people assume the Judge is fair and looks at all of the allegations before making a ruling. Mr. Richmond said that judges don't disqualify themselves because they've heard one side of the story first and make decisions based on all the evidence. Mr. Richmond said he didn't like the idea he would have to recuse himself from voting based on information he heard that wasn't corroborated by evidence or a witness. Mr. Richmond stated that there would never be a summary judgment decision made by a judge if judges couldn't make decisions based on waiting for all the evidence when it may take three months to collect it all.

Mr. Schrock said he understood that Chief Birt didn't want the Board involved until all the facts were known, however he had an issue that a consent agreement would be drafted without the Board's input, and that he felt something was missing between the investigations and the deliberations stage. Mr. Schrock asked for clarification that a reviewing board member was the only board member involved with the closure box on the flow chart and Chief Birt said that was correct. Mr. Schrock said that he felt the Board wasn't involved at all, and that the Division could choose a cease-and-desist, a consent agreement, or other options to put the issue to bed, but where was the Board involved in that process? Chief Birt said that the reviewing Board member acting on behalf of the entire Board would assist with those decisions.

The Chair and Mr. Schrock protested, and the Chair stated he had a fundamental issue with a reviewing Board member making decisions on behalf of the Board. The Chair stated that Alaska Statute 08.62.150 said "The Board shall impose...", and that it didn't say one Board member, the Board consisted of seven people, and the Chair didn't understand how to overcome that statute. Ms. Chambers said there may be a semantic difference between Chief Birt and Chair Thayer, in that the reviewing Board member is involved to provide mentorship and insight based

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on the statutory and regulatory knowledge, knowledge of the industry, and consistency of the Board.

The Chair confirmed that there is approximately one investigation per year. Ms. Chambers said that final disciplinary decisions are always up to the Board and the reviewing Board member cannot take action on behalf of the Board. She said the reviewing Board member could be the day-to-day adviser to the investigator to make sure the investigator is following the Board's precedent. Ms. Chambers stated that the reviewing Board member did not make decisions to supersede the Board's decision-making process or undermine due process rights to appeal a decision. Mr. Richmond said that he understood the Division was calling on one person to have the industry experience and pilot experience; however it would be very difficult to find the one individual within the Board that would have the right amount of experience. Ms. Chambers said that this was the process in the Standard Operating Procedures for all the programs and that she understood it was a balance. She said that it was similar to the Big Game Commercial Services Board, in that there are hunters, guides, transporters, land owners, and members of the public with very different knowledge and were experts in different ways. She stated that in that Board, they work with the expertise of the investigator and direction of the Board to find the right person for the case. She stated that a big game guide may see a situation differently than a transporter, which would bring a different fullness to the case.

Mr. Richmond confirmed that where the flow chart said "consent agreement", it really meant "consent agreement by the Board". Ms. Chambers confirmed that was correct, and Mr. Richmond asked if the Board needed to approve surrenders and the answer was yes. Captain Arzt said the Board needed to be involved in drafting consent agreements, and if the decision went to litigation, he thought it made sense for an expert witness to assist the investigation and it wouldn't take out the diversity of the Board by needing someone to recuse themselves from voting. He stated that the Board was leery they would not be involved in advising implementing action. The Chair stated that the Board didn't fit into the standard operating procedure flow chart based on how they were laid out in statute, and that he thought there should be a "happy medium". He said that he thought the Board agreed that a reviewing Board member would be helpful but when it came down to decision-making, the Board wanted to make the decision.

Chief Birt said that the Board could implement a disciplinary matrix. She stated that specific violations may merit a specific level of censure, and that the Board wouldn't be consulted because they would have approved the punishment in advance by creating the matrix. She stated that for some boards it's a matter of practice for the Division to refer to the disciplinary matrix, make a simple call to the Board Chair that there is a first violation in a specific area, and brief them that according to the matrix, there would be a specific censure. The Chair stated he

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understood, but it would be over-complicated since the Board has crossed the gamete. He stated that actions onboard a ship are more difficult to create a matrix for, and that Board members can enlighten the Board in why something happened, and if it were up to the Chair or someone else, they wouldn't necessarily have those facts and could come to a different conclusion.

Captain Antonsen asked why a second flow chart within the board binder had been removed. The MPC said there was a last minute decision to remove the flow chart, however she had a copy. The MPC stated that the second flow chart was approximately 30 degrees off-course and she was hoping to get the Board back on track. Captain Antonsen said he did approve of having a written complaint and that it put someone on the record. Captain Antonsen said there needed to be a ground-truthing to make sure there's a real violation or if someone was not happy and there was a personality conflict. He stated that the strength of the Board was a balanced conflict of interest, and very few things required Board members recusing themselves. He stated that anything in his region would be his association; however he may be the best person to ground-truth common conduct in his region. He stated that an expert investigator retired pilot from Region II may want to ground-truth with someone in Region I if that's where the case occurred. Captain Antonsen said he liked the written document, he liked ground-truthing, and that he agrees that the Board's strength is acting as a balanced board. He stated that the public was protected that way and that the person accused is best served by having the Board involved. Captain Antonsen asked Chief Birt that if a Board member is selected, are they the investigator or they are assisting the investigator following the flow chart? Chief Birt they were assisting the investigator as the expert in the field. Captain Antonsen said asked if the investigator was going to be the MPC, and Chief Birt said that was correct. Captain Antonsen said he still saw difficulty in that there's a person could sway and influence the investigator, and that it would be better to have more distance instead of proximity for the person on the Board. Chief Birt said that when the Division does conflict checks for someone within the same association, if the reviewing board member feels there isn't a conflict, there isn't one. Chief Birt said the Division does that as a protective measure so reviewing board members can't be attacked.

Captain Antonsen said that on the Board of the Marine Pilots, the judge if there is conflict or not is the Chair, and if it wasn't the Chair, who would it be? Chief Birt said it was possible that cases without names could be ran past the Chair and ask the Chair to designate the most qualified person. She said since the Board has such few violations, that may be a happy medium for the Board and the Division to agree to. The Chair stated the Board should agree upon a list of people to be chosen from each region. The MPC mentioned Captain Wiley, Captain Murphy, and Captain O'Hara as examples of pilots from other regions that could assist with investigations. Chief Birt confirmed that the MPC is both the investigator

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and the examiner for the program, and that she was specifically selected for her background and experience and that the Investigations Unit didn't have anyone with the MPC's background; however investigations currently aren't a full time job for the MPC.

Captain Arzt asked if using the MPC for other board business was billable back to the Board of Marine Pilots, and Chief Birt confirmed that it wasn't. Chief Birt gave an example of the MPC delivering documents on behalf of the Medical Board, and that time was charged to the Medical Board. Captain Arzt asked if time spent enhancing the MPC's skill set was only billable to the Board of Marine Pilots and Chief Birt said she understood what he was asking. Ms. Chambers said that the training the MPC was proposed to attend, while it wouldn't be used daily within the Board of Marine Pilots, would allow her to assist other boards in either a proactive or reactive way. She said the only way the Division could assign a training expense to other boards would be to charge all boards as an indirect cost. Captain Arzt asked if the MPC as a full time position was totally billable to this position and the Chair said that was correct. The Chair stated the Board had the discussion about lending the MPC to other boards as a measure of keeping costs down, and now the Board may be paying 2/3 of her salary. The Chair stated there was only one set of training so far, and the Board may discuss other trainings, and if the Division felt that the MPC needed more training, the Division could assist in paying. Captain Antonsen said there was a benefit to the Board in that the more training and investigative experience was going to benefit the Board in that the Board would have a more qualified investigator. He stated it might be "win-win".

Mr. Schrock said he would approve of the training if paid for by the Investigations Unit, even though he understood the cost would circle around as an indirect cost. Mr. Schrock said he felt both flow charts were confusing and he was unclear if the Division was training the Board on a specific model or if the Board could have a discussion about different models. Mr. Schrock said that he thought it was a monumental mistake to lose the benefit of having a stake-holder driven Board involved with investigations to a more linear process, and if loading a member of the Board with more information wasn't a conflict of interest, wasn't this an ex-parte communication issue and not a conflict of interest issue? Mr. Schrock said he didn't understand the MPC's "course correction". The Chair stated that, from his point of view, the Board had this discussion at a previous Board meeting and that he didn't see the investigations flow chart as final and felt the Board had decided the flow chart didn't fit the Board's model. He stated that he was not involved in the decision to remove the second flow chart from the Board binder, and that the Board was discussing how the Board went from there because there was no specific statute or regulation in how the Board proceeds with investigations. The Chair stated there were guidelines, the Board understood the options the Board could take, but there were no regulations or statute that said the Board had to follow a specific flow chart.

Mr. Schrock said that in a few investigations the Board got involved very late and it felt dysfunctional, and in a different case Mr. Schrock learned via discussion that a case that sounded very bad wasn't, in fact, that big of a deal. Mr. Schrock said he could see a case at the bottom of the flow chart where, if the Board had gotten involved early on, the case may have ended up on a different pathway in that someone from outside the industry would have no idea how things operate. Mr. Schrock asked if the Board was being forced to make a change or was simply clarifying how the Board wanted to do investigations. He repeated his question if the Board was forced to change their investigative process. The Chair said he didn't think so, and gave the floor to Ms. Chambers.

Ms. Chambers said that when the Board last initiated this conversation, the Division was having this conversation internally and had engaged the Department of Law with the defensibility of the investigations process. Ms. Chambers stated that the Department of Law has concerns about the original flow chart and process, the process had not been codified or finalized by the Department of Law, and that the Board's decision could have legal exposure for appeals or be voided. She stated the Division had statutory investigative authority, the Board was in partnership with the Investigative Unit, but the day-to-day process is required by statute to be performed by the Investigative Unit. She stated that the Board needed to work daily in a tight manner to ensure that final outcomes are defensible and that the Board's process isn't as sound as it should be. She stated she wanted to show the Board of Marine Pilots what the other 39 boards with similar make-up are doing so the Board of Marine Pilots could fit into that process to avoid confusion, train the MPC under the Chief, and utilize the MPC in other investigations roles. The Chair said that he had been Chair for five years, and that the Board had made all decisions with the Attorney General walking them through each step. He stated that he didn't believe the Department of Law had concerns in that the Board has paid for legal assistance and that the Board had never done anything without the Attorney General signing off on the decision. Ms. Chambers thanked the Chair.

Captain Arzt said he read the overview and that the overview made more sense than the flow chart. He stated that he saw in the overview that the consent agreement is written up by the Division, and he suggested the Board change the language to "Board Assistant or Designee", so that an expert in the field was utilized with the Attorney General's assistance. He stated the flow chart was bottom heavy and spelled out better in the overview.

The Chair suggested that the Board form a committee with one public member, one pilot, and one agent to work with the Division for solutions for the winter meeting and approve at the spring meeting. The Chair stated that everyone is interested that the outcome of investigations is fair and equitable. Mr. Richmond

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said that he agreed the flow chart was heavy in the decision making at the bottom of the chart.

Captain Antonsen said he understood the Division believed the Board would be doing things the “new” way, and that he had no problem as long as the Board could interact with the Investigations Unit, and the Board could make it work as long as there was a consensus on the process.

Chief Birt said that the percentage of cases that end up in litigation is very, very small and that most cases there will be Board member involvement so the Board doesn’t want to waste time and money on complaints that are frivolous or non-judicial. She believed that the Investigations Unit could meet that deadline.

The Chair asked for volunteers. Captain Antonsen, Mr. Rueter, and Mr. Richmond volunteered.

Mr. Schrock said he was curious what the Department of Law’s concerns were, since someone from the Department of Law was always involved. The Chair stated that when he first became Chair, Ms. Milks sat in the audience. He stated that as a cost saving measure, she became available on the phone, and now she’s available if there’s a question by phone. Mr. Schrock asked if there would be a list of concerns provided to the subcommittee and the Chair also asked for a list of reviewing board members to be provided.

Captain Arzt asked if this flow chart was for all boards, and Chief Birt said yes. She stated that there were some nuances and that the Dental Board used a committee and sometimes the committee had differing opinions. She stated the Board could have a reviewing board member and a sitting board member. Captain Arzt said he understood there couldn’t be a different process for each board and that it might just take a minor change in language for the Board to approve.

Chief Birt reassured the Board that the power and authority rested with the Board, and that the Investigations Unit was there to support them. She said that she didn’t want the Board to feel that the Investigations Unit was wasting time, money, and resources solving cases that weren’t important. The Chair stated he appreciated the insight and could see the path forward.

Ms. Chambers clarified that she didn’t want the licensees and the public members to think that the Department of Law had issues with the Board’s decision making, but this was a codification of a process that the MPC had attempted to capture in writing and that generated this discussion.

The Chair said the Board has spent a lot of money on the Department of Law. The Chair stated that there was an uptick in cases one year; however it was cases left

open in GL Suites and the Board had to waste time to close them. The Board stated the spike year was the Board doing cleanup on cases that had been resolved but not officially closed with Board action.

Agenda Item 7 **Interpretation of sea time as per Sec. 08.62.093(b) Qualifications for Deputy Pilots**

The Chair introduced the topic to the Board. Captain Arzt stated that there was a question from the MPC about interpretation of a specific regulation when someone was eligible for a training program or the apprenticeship program. Captain Arzt said this was clearly discussed under statute. The Chair called Captain Merrill to the floor.

Captain Merrill stated he was the vice president and training chair for SEAPA. He stated that the agenda item started with a fairly innocent question to the MPC in the spring.

He stated that SEAPA had a trainee who had qualified sea time for the deputy pilot in the three of the five categories, but he didn't have enough time in one category to qualify as a deputy and is training as an apprentice. Captain Merrill asked if the MPC or Board had the authority to interpret statute for sea time or must interpret by the letter of the law?

Captain Antonsen rephrased that a candidate met statute qualifications as an apprentice but did not meet qualification standards as a deputy in that the candidate had almost two years of required service as Chief Mate. Captain Antonsen said the trainee was then promoted to Master and would have gotten the remaining days if he had stayed as a Chief Mate. Captain Antonsen said the trainee got promoted and then earned Master time instead of Chief Mate time; however he would now have to abandon over 700 days of Chief Mate time and accumulate an additional one year as Master. Captain Antonsen asked if a person should be penalized for being promoting from Chief Mate to Master and, under the statute, is there any room to consider sea time within two categories. Captain Antonsen said both Captain Arzt and himself fell back on the reading of the statute because this issue hadn't been tested before. Captain Antonsen asked if there were any room for the Board to request a proposal.

The Chair stated that this was this was a matter of statute; he recommended talking to the Attorney General's office. The Chair stated that regulations can be changed, however statute cannot be changed by the Board and that the Board should seek clarification with the Department of Law.

Captain Antonsen asked Captain Merrill if that was something the Association would like the Board to ask the Attorney General. Captain Merrill said yes.

The Chair stated that the Board could draft up a letter and ask for an opinion as soon as possible. The Chair stated that he believed the request was reasonable.

Captain Antonsen said that he believed, efficiency-wise, it would be better not to ask the Association for a proposal until the Board was sure if it was something they could deal with. The Chair confirmed.

The Chair stated that the MPC, with the assistance of Captain Antonsen and Captain Arzt to the Attorney General. The Chair recommended showing the problem and suggesting a solution to get a faster result from the Department of Law.

Mr. Richmond confirmed that SEAPA claimed the person in question had more training than statute required. Captain Arzt said there were certain requirements to be eligible to under one program and other requirements to be eligible other another. Captain Arzt said that SEAPA wanted room under the interpretation.

Mr. Erickson asked for clarification. Captain Antonsen asked Captain Merrill to give the Board an explanation.

Captain Merrill stated there are five categories to qualify, and that that this individual had qualifying sea time in three out of the five categories. Captain Merrill requested the Board to examine a spreadsheet the MPC had created. He showed the Board that after the trainee got his Federal Masters license, his time came up to 257 days as Master of an inland vessel. It was confirmed the trainee needed two years and that SEAPA was following Coast Guard guidelines in that a year was 360 days, so the trainee needed 720 days. Captain Merrill went through the three different columns to demonstrate the Board how much time the trainee had within the separate categories. Captain Merrill said that this was a new situation, and that normally most pilots have their sea time in one column, not in multiple columns. Captain Antonsen said it was a reasonable question to ask and the Chair thanked Captain Merrill.

Agenda Item 8

Sec. 08.62.180 Exemptions Applied to Government Vessels

The Chair stated the Board had seen government vessel traffic between meeting and believed there would be more government vessel traffic with the opening on the Inside Passage. He requested the Board discuss next steps. He stated that statutes were clear on Canadian vessels; however, there was a case of a Mexican

vessel entering Seward with a pilot and departing Seward without a pilot, and requested how the Board wanted to proceed with that case.

Mr. Rueter asked what the definition of an official government vessel was. Mr. Rueter stated that, outside the purview of the Board, a government vessel was utilized for commercial operations. The Chair stated he believed the Mexican vessel was a tall sailing ship on a goodwill mission. The Chair stated that it was important to have this issue on the Board's radar because it involved pilots and vessel agents.

Captain Arzt asked what part of the exemption regulations Section 08.62.180 this Mexican vessel was listed under. The Chair stated that it did not fit, but the Chair believed that if the Board attempted to take action on a vessel that wasn't Canadian, the State Department may choose to get involved. The Chair requested where the Board wanted to "put their toe in the water". He stated that there was no written complaint on this vessel. Captain Antonsen stated he preferred to stay in the shallow end.

The Chair said that the Board had the same issue a few years ago with a Russian vessels with swimmers onboard, and that the MPC sent an email and never received confirmation that it was received, and that the State Department told the Board to stand down. The Chair repeated that he raised the issue since it came up at the last Board meeting and it happens once or twice a year. The Chair asked if the Board if they wanted to monitor the situation.

Captain Arzt said the Board should continue to write letters and if the State Department gets involved, the Board can allow the letters to fall through the cracks.

Agenda Item 9 **Interpretation of Sec. 08.62.046 Rates for Pilotage Services**

The Chair stated this was already discussed earlier in the meeting.

The Chair asked the Board when they'd like their next meeting. The Board tentatively scheduled the winter board meeting in Juneau the week of January 26, 2015 and a possible spring meeting in Dutch Harbor the week of April 20, 2015.

The Board entered Executive Session under AS 44.62.310 Open Meetings Act for the purpose of subject's undue prejudice, reputation, and character of any persons provided the person may request a public discussion.

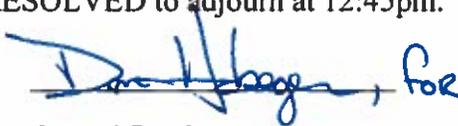
Agenda Item 10 **Executive Session**

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The Board came out of executive session at 12: 45pm.

On a motion by Mr. Schrock, seconded by Captain Arzt, and carried without dissent, the Board RESOLVED to adjourn at 12:45pm.

Respectfully submitted:



Crystal Dooley

Marine Pilot Coordinator

Tylan Schrock

Chairman