

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

MINUTES OF MEETING

**April 16, 2015
Westmark Baranof Hotel
127 North Franklin St.
Juneau, Alaska**

These minutes have been prepared by the staff of the Division of Corporations, Business and Professional Licensing and approved by the Alaska Board of Marine Pilots on May 28, 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 special meeting of the Alaska Board of Marine Pilots was held on April 16, 2015 at Westmark Baranof Hotel.

April 16, 2015

Call to Order/Roll Call

The meeting was called to order at 1:03 PM by Chairman Chris Hladick. The Marine Pilot Coordinator (MPC) conducted roll call.

Members present constituting a quorum were:

Hans Antonsen	- Pilot Member
David Arzt	- Pilot Member
Richard Erickson	- Agent Member
Tom Rueter	- Agent Member
Shirley Marquardt	- Public Member
Robert Richmond	- Public Member
Chris Hladick, Chair	- Commissioner's Designee

Staff present:

Crystal Dooley	Marine Pilot Coordinator (MPC)
Martha Hewlett	Corporations, Business, and Professional Licensing Admin Officer I

Members of the public present:

Mike Tibbles	Alaska Steamship Association
Bill Gillespie	Alaska Marine Pilots

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Bob Arts	Alaska Maritime Agencies
Jim Smith	NOAA – OCS
Paul Axelson	North Pacific Maritime
Luke Hasenbank	ALAMAR
Jim Lee	Alaska Maritime Agencies
Jeff Baker	SEAPA
Doug Sturm	SEAPA
Bob Berk	CLAA
Pete Garay	SWAPA

Jenni Zielinski from SWAPA subscribed telephonically.

Agenda Item 1 Review and Set Agenda

Hearing no objections to the set agenda, it was:

RESOLVED to approve the agenda.

Agenda Item 2 Review/Approve Minutes

On review of the January 29, 2015 and March 31, 2015 meeting minutes, there were no objections to the content or convey of Board minutes.

Motion: Approve January 29, 2015 and March 31, 2015 meeting minutes.

Moved by: Captain Arzt
Seconded by: Ms. Marquardt

The Chair asked if there were any comments or changes. Captain Antonsen stated that page 3 on the January 29 minutes stated that there were few licensees that hadn't renewed and Captain Antonsen stated that agents were registered, not licensed.

Captain Antonsen asked if travel reimbursement conversations from last meeting should be discussed in context to the minutes or be placed on the agenda. The Chair requested to have the conversation within the agenda.

The Chair asked if there was any objection to the minutes and there were none. The Board APPROVED the minutes unanimously.

Agenda Item 3 Public Comment

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The Chair asked if there was anyone signed up for public comment and there was none.

Agenda Item 4

Business Items

a.) Board Revenue and Expense Report: Ms. Hewlett introduced herself to the Board as the Administrative Officer and explained that Ms. Chambers couldn't attend. She requested the Board examine their FY 15 report. She stated that the third fiscal quarter had ended on March 31 and that licensing revenue had ended at \$222,200.00, the Board was in a renewal year, direct personal expenditures had ended at \$53,180.00 and that direct personal services were the MPC's time working on the program, other investigators, the regulation specialists or the paralegal if they were assisting the Board. Ms. Hewlett stated that expenses were further defined by account number code on the second page. Ms. Hewlett stated that travel ended at \$8,612.00 and it corresponded to the 7000 series listed on the second page, starting at a category for airfare and ending at a category for meals and incidentals. She stated that tax reimbursements were the reimbursements going to Board members for travel. Ms. Hewlett stated that contractual costs were \$4,052.00, and those costs correlated to the 7300 series listed on the second page, beginning at training and conferences and ending at commission sales. She stated that, within that, the honorariums/stipends category was if a Board member lived in the community where the meeting was taking place, the Division would pay round-trip mileage from the Board member's home to the location of the meeting and a stipend for meals. Ms. Hewlett stated that the I/A commission sales category was minimal amount of fees paid for E-Travel, hotel room fees, and other costs. Ms. Hewlett stated that legal fees were \$3090.00, and that was all spent on regulations and advice. Ms. Hewlett stated that supply costs were \$567.00 and were the 7400 series listed on the second page. Ms. Hewlett stated there was \$26.00 spent for office supplies, such as the binders used for Board packets. Ms. Hewlett stated that food supplies covered the coffee and tea the Board purchased for meetings. Ms. Hewlett asked if there were any questions.

Mr. Erickson asked Ms. Hewlett if legal fees covered the attorney general's presence at meetings. Ms. Hewlett stated that she didn't believe the Board was billed for that time unless the Board invited them to speak. Ms. Hewlett explained that it was used when the MPC had questions or needed advice from the attorney through the Department of Law.

Captain Arzt stated that there was one more quarter to close out the fiscal year, and that when he compared this year to FY 14 and FY 13, he saw a large surplus due to renewal year, and understood that there was still information missing for the last fiscal quarter. Captain Arzt asked if Ms. Hewlett had an estimation of what the Board could expect to have by the end of the quarter. Ms. Hewlett said that she believed the Board would definitely end with a surplus and the surplus

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would carry the Board through a non-renewal year. Ms. Hewlett stated she wasn't positive on how many licensees were still outstanding on the renewal process. The MPC stated that she had about five or six licensees that still needed to be renewed.

Captain Arzt asked if the Attorney General's office charged by the hour and Ms. Hewlett said they did. She stated there was a separate rate for the paralegals and attorneys, and she believed the paralegals charged \$138/hour and the attorneys charge \$167/hour.

Captain Arzt stated that the Board had previously requested the Attorney General to attend meetings and now the Board chooses to have the Attorney General available by phone if needed. Captain Arzt stated it saved a lot on legal fees.

Captain Antonsen asked, if in off years when the cumulative surplus is increasing, could license fees possibly be reduced? Ms. Hewlett stated that the Director and Ms. Chambers were planning to do fee analysis after Session and would contact Boards with their recommendations. Captain Antonsen asked if there was a rough time Ms. Chambers would report back, and Ms. Hewlett said she didn't know. Ms. Hewlett stated that programs would be analyzed as their programs came up for renewal. Ms. Hewlett stated that the Director and Ms. Chambers would be going through the analysis process, contacting boards for their recommendation, and then public noticing regulation changes, which was a lengthy process. Ms. Hewlett stated that the Division was attempting to complete fee analysis earlier so that licensees had more time to complete their renewals.

The Chair asked if the licensing fee was in statute and how it could be changed. Ms. Hewlett stated that it was not in statute and that fees were set in regulations. She stated that, by statute, Boards should set fees where revenues offset expenses. Ms. Hewlett stated that the amount is set in regulations, and that the regulation specialist would send the regulation to the Department of Law for review, and then to the Lieutenant Governor's office for signature and approval. She stated when that process is complete and the regulation is back to the Division, the regulation is changed, the fee is set, and it's legal to send out renewal notices.

The Chair asked when renewal notices would be sent. Ms. Hewlett stated they had to be sent out 30 days before renewal dates, and that some boards required renewal information be sent out 60 days before renewal dates. Ms. Hewlett said that the Division would like to do analysis earlier in the season so that licensees received their renewal notices 60 – 90 days in advance of renewal. She stated this would be easier on licensees and for the Division in that the Division wouldn't receive a massive amount of renewals in a short period of time, thus making it more streamlined between the front desk staff and the examiners. Ms. Hewlett stated that this information would be brought before the Board either by person at

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a Board meeting or by email so that licensees could present feedback to the Division.

The Chair asked for more questions and there were none.

b.) Foreign Pleasure Craft Update: The MPC requested the Board to examine a spreadsheet detailing vessels requesting exemptions for FY 15, which were broken down by vessels requesting exemptions after July 1, 2014 until the present. The MPC stated that there were four vessels approved and two vessels on her desk, and that May was the most popular month. She stated that last fiscal year the Board granted 15 exemptions, and that she believed there would be a similar amount this year. The MPC asked if there were any questions. The Chair asked if it were possible to get more vessels and the MPC said it was.

Captain Arzt asked why Exemption #191 (the M/V REST ASSURED) paid only \$750.00 for the exemption, and asked if it was based on the length overall of the vessel, in that the vessel was only 75-ft long. The MPC said that was correct.

c.) Captain Herring Unlimited Endorsement: The MPC gave the Board a packet with the MPC's checklist of Captain Herring's information.

The Chair asked for a motion:

Motion: Accept the Marine Pilot application for Captain Herring

Moved by: Ms. Marquardt
Seconded by: Captain Arzt

The Chair asked for discussion. Captain Antonsen said that motion should be changed to give an endorsement. Captain Antonsen asked when Captain Herring's anniversary date was and the MPC said May 2.

The motion was amended:

Motion: Grant Captain Herring's license as a Marine Pilot upon his anniversary date:

Moved by: Captain Antonsen
Seconded by: Mr. Rueter

Ms. Marquardt asked if there had been discussion on this question before, in terms of if the marine pilot application had been made, and the Board reviews it to make sure all requirements have been met, and then the Board up or down votes

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on the particular issue, or does the Board set the requirements and when it's demonstrated the requirements are all met, the Board issues a license.

Captain Antonsen said that the Board determined that regulations and statutes stated that it was an action of the Board to grant endorsements and that the Board may have no grounds to deny a license if all requirements are met, the Board still must take an action to license a marine pilot on a specific date. Captain Antonsen said that the Board may not vote no, but the Board should not abdicate the responsibility so that promoting a pilot is an action of the Board. The Board concurred that Captain Antonsen's recollection was correct.

Captain Arzt said that if requirements are completed and the only outstanding thing are anniversary dates, the Board could accept a pilot had met all the standards that a license will be issued. Therefore, the Board could vote at Board meetings even though it didn't go into effect until the last component is reached.

Captain Antonsen said the Board had previously voted to grant a license to take effect on a specific date.

The Chair asked for a roll-call vote.

Motion: Grant Captain Herring a promotion to Unlimited Pilot upon the completion of the anniversary date:

Hans Antonsen	Yes
David Arzt	Yes
Richard Erickson	Yes
Robert Richmond	Yes
Tom Rueter	Yes
Shirley Marquardt	Yes
Chris Hladick, Chair	Yes

The motion passed.

d.) Captain Gillespie Training Pilot Endorsement: The Chair asked for discussion. The MPC stated that Captain Gillespie would be granted the endorsement to take effect immediately in that his three year anniversary date had already passed.

Motion: Accept the training pilot endorsement for Captain Gillespie, effective immediately

Hans Antonsen	Yes
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David Arzt	Yes
Richard Erickson	Yes
Robert Richmond	Yes
Tom Rueter	Yes
Shirley Marquardt	Yes
Chris Hladick, Chair	Yes

The motion passed.

e.) Update on Regulations Project: The MPC drew the Board's attention to the draft of 12 AAC 56.120 (a) the Board had passed at the last meeting and asked the Board if they were comfortable with the language before it was moved to the Regulation Specialist. She stated that the Regulations Specialist would move the regulation into a 30 day public comment period, and that the Board needed to decide if they wanted to accept oral testimony at a teleconference or only accept written testimony, or if the Board preferred to wait until the next scheduled meeting in October. The MPC recommended the Board to set a teleconference date approximately 30 days in advance to hear oral testimony and adopt the regulation. The MPC stated she had attached the flowchart of the regulations process, and showed the Board where they were in the process. The MPC stated that the Regulations Specialist could not publish the Public Notice until the Board had agreed if they wanted to hear oral testimony and when the teleconference to adopt the regulations would be. The MPC stated that the Board had to accept written testimony but could choose to accept oral testimony. The MPC recommended May 20, approximately 35 days from the meeting.

Motion: Accept oral testimony on the proposed regulation change approximately 35 days from the Board meeting

Moved by: Captain Antonsen
Seconded by: Mr. Rueter

The Chair asked for further discussion. There was none. The motion PASSED unanimously.

f.) Board Travel: Captain Antonsen referred to the Board to minutes from the previous meeting. He stated that the Board had been told that expense reports from the October meeting that did not get reimbursed were to be reported to the MPC, and that he had reported information to the MPC and did not receive payment back. Captain Antonsen said he asked if there was a separate form, and he was informed that the Division was going to using a different system. Mr. Rueter stated that he was successful in getting reimbursed for his October expenses through coordination with the MPC and Ms. Chambers. Captain Antonsen stated the estimate of expenses done by the MPC are done months in

advance of the meeting, but by the time the Board members are making arrangements, the air travel rates have drastically changed and certain rates are no longer available. He stated that Board members were told by previous Chair that the Board was self-funded, and that all expenses would be reimbursed and that the Board was traveling directly to and from the meeting location. Captain Antonsen stated that Ms. Chambers said, regardless of the fact the Board was fully funded by licensees, they were also under the same condition of other Boards.

The Chair stated that he would discuss the issue with Ms. Chambers, and that he believed the issue was between the State of Alaska's estimate of airfare and the purchased fare. Captain Antonsen asked if there was another way to solve this issue, and if the MPC could do a first and second estimate of prices closer to the meeting date.

Mr. Richmond asked if he could purchase the cheapest round-trip ticket from Juneau to Anchorage and if it would be an issue if he traveled to Seattle and paid the difference himself. Mr. Richmond stated that he believed the State wouldn't reimburse those tickets. Mr. Erickson said the conversation at the last Board meeting was that the former Chair stated the Board was self-funded, and the group decided to pay all prices and that Board members were not booking first class tickets. The MPC stated that Ms. Chambers was the expert, but the Division had a policy on how much they would pay for hotel rooms and flights, and that the MPC believed the trigger for the reapprove process was more than \$100 over the estimate or 20%. She stated that Ketchikan was an issue in that she used E-Travel to price out tickets approximately six weeks in advance, as per Division policy, and the tickets are always much higher than the estimate. She stated that there was a process in place to deal with this situation. She stated that Board members were used to filling out a form after a Board meeting, however Board members will now forward receipts to the MPC and the MPC will forward the information to the Travel Desk, and the Travel Desk will complete the form for Board members. She stated that there was very little travel costs under her control as the MPC.

Captain Antonsen asked if there was a certain amount of time the MPC was required to release the estimate, and the MPC stated she was required by the Division Standard Operating Procedure to release the information approximately six weeks to two months in advance. The Chair stated he would get up to speed on the issue.

- a.) SEAPA : Captain Doug Sturm stated he was representing SEAPA on behalf of Captain Ed Sinclair. Captain Sturm stated the organization had 49 full pilot members, 1 general pilot and 1 deputy pilot. He stated that the deputy pilot was at the 90,000 K tonnage and that she would be an unlimited pilot in a year. He stated that SEAPA had two trainees, Captain Lundamo and Captain Palmer, in the initial phase of training, and that Captain Hagerup retired over the winter. He stated there would be a trainee candidate selection exam in May in Seattle at the Pacific Maritime Institute, and at present there were 18 applicants. He stated that SEAPA had not decided how many trainees would be accepted but the list would determine who would be brought on when SEAPA decided to allow more in. Captain Sturm stated that Captain Sinclair had mailed a letter to the cruise line companies detailing piloting best practices and the information was given in the Board binder.
- b.) SWAPA: Ms. Jenni Zielinski addressed the Board via teleconference. She stated the organization had 15 unlimited pilots and one deputy pilot, four trainees, and that three of the trainees were on the apprentice track, and that one pilot would upgrade to unlimited this year, and one trainee would be sitting for an exam in early 2016, one projected for late 2016, and one projected for late 2017.
- c.) AMP: Captain Gillespie represented AMP and stated the organization had nothing to report.

The MPC requested the Board recognize Captain Ron Ward from SWAPA for the actions he took on January 21, 2015 when a tanker he was onboard lost propulsion, dropped anchors, and how he solved the issue.

Captain Arzt asked if there were any license upgrades from the last meeting to be recognized and the MPC said there was none.

The Chair stated the Board would recess until 1:50 pm.

1:52pm Back on record

Agenda Item 6 Subcommittee Brief on the Investigative Process

Mr. Reuter stated that Captain Antonsen, Mr. Richmond, and he, under the guidance of the MPC, met as a subcommittee. He stated that originally the subcommittee believed that the investigative process didn't have any real reference to the Board. He stated that on the draft version of the investigative matrix 95% of the complaints that come to the Division either die on their own accord or are very simplistic and don't become a major investigation. He stated that the subcommittee received some clarity. The Chair asked if the investigation process handout was the current process and if the process was changing. Mr.

Rueter stated the second matrix provided clarification. Mr. Rueter stated that Board interaction occurs in two occasions, and that the investigation could go to multiple places before it was pushed to the investigations section. Mr. Rueter stated the subcommittee received clarification on what the Board's role was in investigations.

The Chair asked if Mr. Reuter wanted the Board to have more involvement in the process. The Chair asked if there was any liability to the Board. Captain Arzt asked if the subcommittee had created the new matrix or if it was created by the Division. Captain Arzt stated that the Board had been informed for, he thought, the first time that investigations happened within the Division and not within the Board and the matrix applied to all boards.

Mr. Rueter asked the MPC to explain the new matrix. She stated that she did not create it, but that the investigation process belongs to the Division, and that there is confusion from many boards about the investigative process. She stated the Investigations Division heard the feedback and created a clearer chart, however the actual process hadn't changed. The MPC stated the third chart was created by the MPC and adopted by the Chief for all boards, and demonstrated where the Board actually made decisions on disciplinary actions. The MPC stated that investigations were a Department and Division process and the Board had little pull, expect the Board could choose how they used a Reviewing Board Member (RBM). She stated that the subcommittee discussed if a RBM could be a member of the Board that would recuse themselves from voting, or would vote regardless, or if it would be someone who wasn't part of the Board.

Captain Antonsen said that Board member could act as a RBM and still vote, and that there are states where Board members are the investigating officers and the entire Board would vote on it since all Board members would have the same information.

Mr. Richmond asked when a case proceeds to an investigation, would the second matrix explain the process of the case? The MPC said yes, and that the second matrix gives more information of what happens to a complaint before it reaches the investigation stage. The MPC stated that one chart was generation one and the second chart was generation two in a way that makes more sense to the Board members and the MPC.

Mr. Richmond said he understood the Board had more pull on a complaint before it went to the investigations process and the Chair asked the MPC if that was correct. The MPC said yes and that determining if a case was jurisdictional and a violation was a conversation between the RBM and the MPC. She stated that if it was decided a case was jurisdictional and there was a violation, the Board would move to the complaint into the investigations phase. The MPC stated that the

RBM and the MPC would determine that many cases aren't jurisdictional or a violation and would close them before informing the Board.

Captain Arzt asked what triggering event would start an inquiry or investigation. The Chair stated that he understood a complaint was received and then there was a high level inquiry before moving to the investigation process. The MPC said there were a couple ways that an investigation could get started. She stated that she could receive a written complaint packet or that she could find out information via something like the news. She stated that the MPC may choose to investigate an Incident Report or not.

Captain Arzt stated that he looked over the Incident Report form and that he didn't see a definition of "incident" or "casualty" in the statutes, and that he wanted to see that there was accurate jurisdictional language and vagueness if a form was required.

Captain Antonsen said there was a box for Board Member Review (RBM), and that the Board member would review if a case was jurisdictional or not. Captain Antonsen stated he didn't think it was a lot of guidance. He stated that the MPC could determine if a case was jurisdictional based on the geography or if it involved a marine pilot. Captain Antonsen said that if it was a matter of subject matter, the RBM could come in handy to determine if the case had any substance to allege a violation. He stated the information gathering box on the chart gave a wide range of information that wasn't germane to the Board of Marine Pilots, and that interviews could be information-gathering. He wasn't sure if subpoenas counted towards information-gathering. He stated that having a RBM involved for jurisdiction, information gathering, and substance gathering for a violation could be combined so that the RBM could direct the MPC to gather the information needed for the RBM to determine if there was a violation or not. Captain Antonsen said it wouldn't be considered an investigation but information-gathering. He asked if the Board could be informed of a case had come before a RBM and the RBM and the MPC decided to close it so that both parties would be covered under the umbrella of the Board of Marine Pilots in that the Board agreed with their actions.

Mr. Richmond stated that he thought there shouldn't be much discussion in subject matter jurisdiction. He stated he thought it was an easy decision, and if it were decided there was no jurisdiction, the case is out the window. Captain Antonsen said he agreed, however if it wasn't clear if there was a violation or not, then the RBM could direct the MPC to get more information or save the MPC the effort of gathering the information. Captain Antonsen said that he agreed that determining jurisdiction should be simple most of the time, but he didn't have any training. Mr. Richmond said that jurisdiction was covered within the statutes. Captain Antonsen said he had never heard of three jurisdictional areas (subject

matter, geographic, and personal) until he started digging into this process. Mr. Richmond stated that he didn't think the RBM needed to look into the case multiple times. He stated the RBM was like a District Attorney in that he would decide if there was enough evidence to try the case, and that the same District Attorney may be the one that tries the case and wouldn't be disqualified from the case. Mr. Richmond stated that he thought it would be an issue if the Board directed the investigation.

Ms. Marquardt stated that, in most cases, it would be easy to determine jurisdiction, however there could be cases where it would be more difficult, and in that case, what is the process if the MPC and the RBM have conflicting ideas if this needs to be an investigation? Captain Antonsen said he agreed with the question, and wouldn't the public be better served if the Board knew and concurred with the issue? Captain Antonsen said he thought it would be a good check-and-balance for the State of Alaska and the accused. The Chair asked if they were referring to a violation of regulation or statute. Captain Arzt said he remembered from the last Board meeting that Chief Birt said that the RBM would have all the facts but the Board would still have a say in license action when it was presented to the Board and that the RBM may not have to be recused.

Captain Antonsen stated that he agreed with Ms. Marquardt's question about what happened if the RBM and the MPC disagreed on investigation action and shouldn't that go before the Board. She stated that she didn't think it was a difficult issue to fix. She stated that she thought it would be simple for that information to go before the Board. The Chair asked if that would require legal opinions, and Ms. Marquardt stated she thought the Board would have that through the MPC when the case went to the complaint phase. Captain Antonsen asked if there was any reason why the Board couldn't be informed after the RBM and the MPC had determined if there was a violation or not and before the MPC chased down information. Captain Antonsen asked if the Board was covered by insurance and Mr. Richmond stated the Board was not. Ms. Marquardt reiterated that she would like a report to the Board. Captain Arzt stated that he was thrown when Chief Birt informed the Board of the process, but he stated the Marine Pilot Board had always completed investigations differently if it was a vague case and it was unclear if there was, in fact, a violation.

The MPC stated that she was the investigator for the Board of Marine Pilots, and that the process was owned by the Division. She stated she could request the Board be briefed at that point, but there was a legal precedent set for all boards so that boards weren't tainted. She used an example of a pilot that drove too fast through a no-wake zone. She stated that someone could send a complaint through the Board and it may be unclear if there was a violation and so the information would be brought to the Board. She stated the Board could decide there was no violation. However, she stated that if the pilot appeared before the Board again

due to going aground, could the Board be tainted knowing the pilot was once in trouble for a complaint against a no-wake zone even though there was no violation. She stated that the Division and the Department of Law have issues about how much information goes through the Board, and the RBM does represent the Board, and that the RBM and the MPC have to be comfortable going before the Board about the decision they made.

Mr. Richmond asked if an investigator could take action against a medical license without Board action and how that was accomplished. The MPC stated that, in a summary suspension, there is a clear and immediate threat to public safety. She stated that if there was a doctor conducting surgeries while intoxicated, the Division could pull their license since it was an issue of public safety. She stated that if there was a less immediate issue, like record keeping, it could go through the consent agreement route and the Board could choose to accept or reject a consent agreement. Mr. Richmond stated the Medical Board was involved in the process, and the MPC said yes, but that she wasn't sure how the Medical Board conducted RBM. The Chair asked the MPC that if the Board knew a member was under investigation before it may impact them in the future, and the MPC said yes, that was why the information couldn't come before the Board. Captain Antonsen said he didn't have a problem with the investigation process flowchart and where the RBM is involved, but he agreed with Mr. Richmond that subject matter jurisdiction may be fuzzy. He stated that if there's a violation that is referred to a list where the terms aren't properly defined, it would be difficult to determine jurisdiction and it may be better to define it in regulations. He stated he was still unsure why the Board wasn't involved, though he understood there was no insurance. Mr. Richmond stated that the Board was acting on behalf of the State and the State would protect them.

Captain Antonsen said this process more clearly defined the roles of the Board in the investigation process. Mr. Rueter stated that he understood it was the Division's matrix and that the Board could give input and force it through the MPC, but beyond that, the Board needs to be aware of what was found and what was not found. Captain Antonsen asked if they were able to change things. The Chair stated the Board was involved at the end when all information was received. The MPC said that was correct. The Chair stated the Board wanted to be more involved in the actual decision making stage.

Mr. Rueter stated there had been an issue in the past where an investigation had been completed and that a consent agreement had been brought before the Board, and the Board didn't approve the consent agreement. Mr. Rueter stated that this was a loss of time and effort on behalf of the Division in that the consent agreement didn't meet the desires of the Board. The Chair asked if it had to be a Board member and the MPC said it did not, but it had to be a licensed member and could be a retired Board member. Captain Antonsen said that he wasn't

concerned if the RBM was part of the Board or not, but the determination of violation or not was taken to the Board concerned him. Captain Antonsen said that if the Division said no, he understood. Captain Antonsen said he was unclear if the Division really cared about the Board's input. The Chair asked if there any other comments. The MPC stated she would look into the Board's concerns and would report back.

Agenda Item 7

Possible Regulations Project 12 AAC 56.960 Duties of Pilots

Captain Antonsen brought the Board's attention to 12 AAC 56.960(d) Duties of Pilots. Captain Antonsen stated there are many incidents that happen on a cruise ship that may be reported, based on the Coast Guard's minimum reporting requirements for pilots and the VTS system. Captain Antonsen said that there are two levels of reporting, one for engine casualties and one for issues such as collision, allision, hitting a fixed object, etc. Captain Antonsen stated that, in paragraph (d), if a pilot doesn't make a required report, they can be subject to the penalties such as \$15,000.00 fine or prison time. Captain Antonsen stated that his concern was that in the list of reportable actions, there were a few that weren't defined. He stated that "aground" and "collision" was easily defined, however there was no definition for "meets with a casualty" or "is damaged in any way". He stated that there were definitions of marine and maritime casualties in the CFR specify what constitutes a marine casualty; however there are no regulations for the State of Alaska. Captain Antonsen said that "any casualty" was really broad. He stated that the Coast Guard had a list of what the pilot and the captain shall report, but that it was different than what was coming under the jurisdiction under the pilot board. He stated that whatever a pilot was required to report should be under the jurisdiction of the Board of Marine Pilots, and so actions of a pilot and not vessel operations like blackouts and loss of steering should be reported. He stated that the Coast Guard can prevent a vessel from getting underway until the issue is fixed. Captain Antonsen stated that, on one vessel, he had a complete blackout near a glacier. He stated the vessel was at a safe speed and away from the glacier, so they drifted for approximately 10-12 minutes. He stated that it was reported to the Coast Guard. He stated that, in the case of Captain Ward, the vessel had a loss of propulsion, anchors were dropped, and the vessel was safe. No casualties occurred. Captain Antonsen said he saw that there would be no reason to report this to the MPC since the Board did not have any jurisdiction over engine equipment. Captain Antonsen proposed the Board eliminate undefined terms and limit the regulation to a list so it was clear and there was no ambiguity. Captain Antonsen said that, instead of taking the Coast Guard's definition of a casualty of things under their purview, but to use terms that are only under the Board's preview.

Captain Arzt stated that he agreed with Captain Antonsen, and read the Coast Guard's definition of a "casualty". Captain Arzt asked if the Board was interested having that information reported to them, and that there was no "incident". Captain Arzt stated that there could be a collision or an allision with something because the pilot's actions, but if that didn't occur, that was information that would be filed on a CG-2692. He stated, as a Board member, he'd like to define it. Mr. Erickson stated that he understood that the ship was responsible to reporting to the Coast Guard during a loss of power situation.

Ms. Marquardt stated she understood the desire for pilots not to be overly concerned in reporting information the MPC, and that when she reads "casualty", she thinks of an event that ends badly, not something that happens while docking or in transit since those things happen all the time. She stated she was trying to understand the language in that it was clear that it was physical damage to the vessel, not just an incident that occurred. She stated that she supported the Board either way if they wanted to update ambiguous language, but if not, she agreed with the Board defining "casualty".

The Chair asked if there were a lot of people reporting casualties when there was nothing to report. Mr. Erickson stated that the Coast Guard required the ship to report information, such as someone slipping in the shower or hurting their finger. He stated the Coast Guard had their guidelines, and that he believed the pilots would check with the Masters that a CG-2692 would be filed. Mr. Erickson said the Board needed to determine what they wanted to have reported. Mr. Erickson stated that if someone required more than a Band-Aid, they encouraged the vessels to file a CG-2692s.

The Chair stated that Black's Law dictionary uses the word "shipwreck". Mr. Richmond stated that Google gave definitions like "misfortune". Mr. Richmond stated that the FAA requires pilots to report anything that happens on the aircraft, regardless of their piloting activities. He stated that the NTSB defines accidents and incidents differently, and he believed the Board should stick with that definition because he thought the citizens of the state and the MPC should know if engines fail, even though it has nothing to do with piloting. He asked if the captains were nervous about being personally responsible for something they didn't report.

Captain Antonsen stated that he did have a problem leaving the regulation as-is because the terms weren't defined. He stated that it was unclear which definition the Board was using, and that the Coast Guard had a specific definition for what needs to be reported to them. He stated that the regulations, definitions, and paragraph (d) do not define "casualty". He stated that he would be guilty of a misdemeanor, fined, and imprisoned for something that isn't defined. He stated that "damaged in any way" is also an issue if a vessel can scrape an iceberg but

not impact the safety or navigation of the vessel. He stated the Board needed to have clear language strike it.

Captain Antonsen suggested moving to amend paragraph (d) and striking “meets with any casualty”, but leave “damaged in any way” so the public can give input on “damage on any way” during Public Comment.

Captain Arzt drew the Board’s attention to Captain Ward’s certificate of appreciation from the Coast Guard concerning an engine failure. Captain Arzt asked if the Board wanted to take action on this. Mr. Richmond stated that he looked up the CFR definition and that there is a second definition of “serious marine incident”. He stated that “reduction or loss of vessel’s electric power”. Captain Arzt stated that the Board wasn’t discussing the Coast Guard’s regulation but the State of Alaska’s regulations to vessels conned in State waters, and if he looked at State Incident/Accident report, he saw incidents where pilotage could be a concern. He stated he found the Coast Guard’s definitions too vague for this purpose and did Captain Ward’s incidents fall under the purview of the Board or not. He stated that there were many incidents that fall under the Coast Guard CG-2692 and the Marine Safety Office, and since the terms were undefined, there would be many things he would have to report to the Board, such as pollution incidents that weren’t caused by pilot error. He stated that, because the terms are undefined, it’s unclear what belongs on the form and pilots are subject to fines and legal proceedings.

Mr. Richmond stated that he believed it was a casualty. Captain Arzt said that he agreed it was a casualty under a definition, but did it fell under the purview of the Board of Marine Pilots in that it was a pilot’s action that caused the incident? Captain Arzt described a vessel in San Francisco that lost power, dropped two anchors, drifted, and hit a bridge. He stated that actions were related to the pilot, and if the vessel had stopped 500 yards from the bridge and didn’t hit the bridge, would it be under the Board’s purview to be enforceable.

Captain Antonsen asked the Chair if he’d be interested in hearing public comment. The Chair opened it to public comment.

Captain Pete Garay from SWAPA addressed the Board. He stated from his perspective and from well over 100 pilots, that pilots would feel very strongly about this discussion. He stated that Captain Ward shut down the engine to prevent it from overheating and seizing up, therefore it wasn’t a casualty. He stated it was in direct course to keep the engine from seizing, and once the engine was operating correctly, they returned to the dock. He stated there was more to this situation and that it needed to be released for public comment.

Mr. Richmond asked Captain Garay if, under the Coast Guard definition, by shutting the engine down there was a marine casualty. The MPC reminded the Board and the public that the Board would need to go into Executive Session to discuss this situation if it met the criteria of creating “undue prejudice, reputation, and character of any persons”. She stated that if the discussion got too specific on one pilot, it wasn’t fair to him.

The Chair stated the question was if the Board should define “casualty” or strike it from the language.

Motion: Captain Arzt, Captain Antonsen, and possibly Captain Garay present a definition at the next Board meeting.

Moved by: Mr. Richmond

Captain Antonsen stated that he had previously made a motion and it wasn’t recognized. The Chair apologized and allowed him to make his motion:

Motion: Amend 12 AAC 56.090 (d) Duties of Pilots to strike “Meets with any casualty”.

Moved by: Captain Antonsen

Seconded by: Ms. Marquardt

The Chair asked for discussion. Mr. Richmond asked if the Board had the authority to change the regulations right now. Captain Antonsen said no, but it would go out to generate public comment. Captain Antonsen stated that he thought a simple amendment would generate public comment and possibly give a definition or delete further things, such as “damaged in other ways”.

The Chair asked the MPC if the Board was to prepare a draft, and she stated the Board would create language to vote on at the next meeting, the Department of Law would decide if this was a regulation the Board could create, and then the Board would go through the Public Comment section. She stated a draft will come back to the Board, and then it would go out for Public Comment.

Captain Antonsen asked if there is a reason the Board couldn’t come up with a draft right now. Mr. Rueter said the Board demonstrated this with the submission of changing pilot locations, and that it was drafted and presented by a pilot association, the Board reviewed it, adopted the draft, and then had a discussion if it should move forward into the regulation process. He stated the Board had accepted the draft, and after 35 days the Board would have a teleconference to discuss public comment and that this regulation change would fall under the same

area. He stated that it would not serve the Board appropriately to use the time now. He stated that he recommended there would be a draft to review.

The Chair asked if other pilot organizations around the U.S. dealt with this issue. Captain Antonsen stated that he thought the conversation was only germane to pilots in this state to give input. Mr. Erickson stated he understood the Coast Guard and CFR had a definition, and that he could only assume that the captain onboard the vessel Captain Ward was piloting had to file a CG-2692. He asked if it made sense for this Board to discuss what a marine casualty is to a pilot.

Captain Arzt stated he disagreed with Mr. Erickson in that he wasn't concerned in what the Coast Guard required, and that he thought "damaged in any way" should be removed as well, in that a crane with a topping lift could damage cargo and that would have nothing to do with pilot actions. He asked if the Board wanted reports for those types of things, and he thought not. He thought the Board would be most interested in what a grounding, stranding, collision, and an allision with another vessel. He stated the Coast Guard's requirement and enforcement of the CG-2692 wasn't germane to the conversation.

Mr. Erickson said he understood the pilot wasn't responsible for the form but the ship was. Captain Arzt stated he didn't want that information to come before the Board because it wasn't the pilot's actions.

The Chair asked Captain Arzt if he'd like to use the definition on the form. Captain Arzt said he'd like to qualify paragraph (d) to be more homogeneous with the form, and that there is ambiguity in the language, and asked if the Board or the MPC would like the pilots to file a form documenting what happened with Captain Ward's incident. Mr. Rueter asked what obligations pilots had to fill out the CG-2692. Captain Antonsen said that there is a communication from the Coast Guard with minimum reporting requirements to the Coast Guard, and gives very specific language for what the pilot should report. Captain Antonsen stated that the Coast Guard said that even if the ship reported something, the pilot was still responsible for reporting it. He stated that the company must report something, but the pilot may have to. He stated that it is the Coast Guard's definition of "marine casualty", which is different than "casualty" and a "serious marine incident". Mr. Erickson said he agreed, and there was a mechanism in place for ship's to file with the Coast Guard.

Captain Antonsen asked the Chair, with the MPC's input, if it would be better to solicit a draft. Captain Antonsen stated that his motion was withdrawn.

Ms. Marquardt asked if there is a list of what a marine casualty is, and she asked Captain Arzt if that was the list he wanted to use. He stated that he did not in that

it didn't relate to the safe conning of the vessel. The Chair stated that more research was needed.

Captain Arzt stated that more clarification was needed on the roll the Board of Marine Pilots have on a vessel and what role the Coast Guard has. He stated that the FAA covered both bodies. He stated the actions of pilots were falling into multiple categories that he didn't believe should fit.

The Chair asked if the motion should be to work between now and the next meeting to work on some language. The Chair asked if Captain Arzt and Captain Antonsen would be comfortable working together.

Motion: Captain Arzt, Captain Antonsen, and Mr. Erickson will develop a draft for the next meeting to be presented to the Board 60 days before the next Board meeting.

Move: Captain Antonsen
Second: Ms. Marquardt.

Captain Arzt stated that the subcommittee would be discussing engine and gyro failures, issues that were required to be reported to the Coast Guard, and that the list would be provided through the Marine Pilot Coordinator.

The Chair asked for further questions. There were none. The motion PASSED unanimously:

Agenda Item 8

Next Meeting

The MPC stated that the Captain Cook was already reserved on October 27. The MPC asked the Chair if the Board would rather have the meeting in the Atwood Building in that the building was free and the Captain Cook. The MPC estimated the Captain Cook cost a few hundred dollars. The Board decided to say with the Captain Cook. October 29 was tentatively planned with the dates to be firmed up after late April.

The Chair asked for any upcoming agenda items. Ms. Marquardt asked what the procedure was for setting agenda items. The MPC stated she'd like to get her packets out a week early, and the Chair asked if the Board could provide agenda items. Mr. Rueter commended the MPC on her efforts to get packets out early. She requested the MPC to email the Board a month before to remind them.

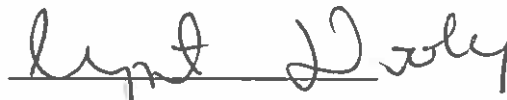
At 3:15 pm, the Board entered Executive Session under AS 44.62.310 Open Meetings Act for the purpose of subject's undue prejudice, reputation, and character of any persons provided the person may request a public discussion.

Agenda Item 9 Executive Session

The Board came out Executive Session at 3:37 pm.

On the motion by Captain Antonsen, seconded by Captain Arzt, and carried without dissent, the Board RESOLVED to adjourn at 3:37 pm.

Respectfully submitted:



Crystal Dooley

Marine Pilot Coordinator



Chris Hladick

Chairman