

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

DRAFT MINUTES OF MEETING

October 27, 2015

Anchorage, Alaska

These draft minutes have been prepared by the staff of the Division of Corporations, Business and Professional Licensing. They have not been reviewed or approved by the Alaska Board of Marine Pilots.

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 27, 2015, in Anchorage, Alaska.

Call to Order/Roll Call

The meeting was called to order at 8:36 AM by Chairman Chris Hladick. 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
Chris Hladick, Chair	- Commissioner's Designee

Staff present:

Crystal Dooley	Marine Pilot Coordinator (MPC)
Sara Chambers	Operations Manager of the Division of Corporations, Business, and Professional Licensing (teleconference)
Martha Hewlett	Administrative Officer II (teleconference)
Janey Hovenden	Director of the Division of Corporations, Business, and Professional Licensing (teleconference)
Angela Birt	Chief of Professional Licensing Investigations Unit

Members of the public present:

Ed Sinclair	Southeast Alaska Pilot Association
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Paul Merrill	Southeast Alaska Pilot Association
Frank Didier	Southeast Alaska Pilot Association
Rich Preston	Southeast Alaska Pilot Association
Ron Ward	Southwest Alaska Pilot Association
Michael O'Hara	Southwest Alaska Pilot Association
Ron Hildebrand	Trident Seafoods
Mike Tibbles	Alaska Steamship Association
Bob Poe	Alaska Marine Pilots
Keith Austin	Alaska Marine Pilots
Rick Entenmann	Alaska Marine Pilots
Paul Axelson	North Pacific Maritime Institute- Yacht Services of Alaska

Bruce Wyrock from Southeast Alaska Pilot Association attended via teleconference.

Agenda Item 1 Review and Set Agenda

It was decided to move Alaska Marine Pilot's organizational report before the other pilot organizations to facilitate the representative's schedule. 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 April 16, 2015 and May 28, 2015 meeting minutes, there were no objections to the content or convey of Board minutes.

Agenda Item 3 Public Comment

The Chair opened the floor to general public comment. All public members deferred to testify in the afternoon public comment section.

Agenda Item 4 Business Items

a) MPC Report: The Chair invited the MPC to give the report. The MPC presented the Foreign Pleasure Craft Cruise Season Report. She stated that there were about 26 yachts, which was almost a record. She stated that the average yacht seemed smaller than in previous years and more seemed family-owned. She

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stated she'd like to expand her report in the future by coordinating with the pilot organizations. She recommended creating a survey to ask for feedback from yachts and that next year she'll work with agents before the application is published to make sure the application is completely clear. Mr. Erickson asked if the Board would review the questionnaire before the MPC sent it to the yachts and the MPC said yes. Captain Antonsen stated that he thought it was very helpful to compare information from 2006.

The MPC gave the investigations report. The MPC stated that since last meeting she had opened six cases, closed five cases, and that the one open case would be discussed more in executive session and would be closed after this meeting.

b) Correspondence: The Chair asked the MPC why so many letters were redacted. The MPC stated that letters from Southeast Alaska Pilots' Association (SEAPA) and Alaska Steamship Association (ASA) contained information pertaining to open investigations that couldn't be released to the Board in general session. Mr. Rueter stated that he had previously seen the letters and there weren't any open investigations since last Board meeting and this information was contained in an open document. The MPC stated that there would be further conversation when the Board reached the Ethics Training agenda item. She stated that information was part of an inquiry was protected from the Board so they didn't have to recuse themselves if the inquiry became an investigation. The Chair asked for written guidance in how redaction was done. Mr. Rueter stated that he saw a response letter from the Chair to SEAPA and that the Chair must have read the letter if he responded. The MPC stated that information could be talked about broadly, but the Division policy stated that specifics couldn't be discussed without recusing out the Board. She stated that she would provide written guidance to the Board. Mr. Rueter asked if the redaction was through written policy or guidance, and the MPC stated it was from guidance from her supervisor, which came from Division policy. Captain Antonsen asked if the financial information listed on page six was the actual amount spent on Board meetings or an estimate. The MPC stated it was an estimate for the fiscal year. Captain Arzt said he'd like to see comparative information of what was actually spent compared to the estimates.

Ms. Chambers entered the conversation via teleconference. The Chair asked why information was redacted out of public documents. Ms. Chambers stated that, per State Law and the Public Records Act, any information concerning ongoing investigations is not considered a public record. She stated that she recommended the MPC redact information since there were matters before the Board that were considered confidential, and afterwards this information would be releasable. She stated that the Board shouldn't discuss ongoing matters until they were resolved. She stated that there was a conversation if the information should have been completely withheld but it was decided there would still be value in the conversation if information was discussed broadly. She stated this was a balance

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between protecting the Board and allowing stakeholders to share their concerns. Mr. Rueter asked how the Chair responded to the letter from SEAPA without having to recuse himself. Ms. Chambers stated the information was sent to the Chair and the Chair couldn't "unsee" the information and that the response was intended to let SEAPA know they were aware of concerns and didn't respond directly to matters potentially under investigation. Ms. Chambers stated that if Board members are contacted about potential concerns, the Board member is potentially tainted through ex-parte communication. She stated that ex-parte communication was discussing potentially sensitive information outside of a Board meeting may taint Board members since they could decide using information that wasn't available to other Board members or vetted through investigations. She stated that the MPC would be giving more information to stakeholders. Mr. Rueter stated that he understood the MPC sought guidance from a reviewing Board member to see if an investigation was warranted, and was there another Board member who had been privy to the entire letter? Ms. Chambers stated that a Board member was always consulted for investigative matters, and that the Board member had to be a license holder in matters involving pilots, but in matters that did not involve licensed pilots, another Board member may be called upon. Ms. Chambers stated the process happened behind the scenes, and that the information would be brought before the Board in executive session, and the Board member who consulted with the MPC would recuse them since they had additional information that wasn't brought before the Board. Ms. Chambers stated that now the Division was trying to compromise between protecting the Board and allowing transparent information. Captain Arzt stated that he was concerned that recusing out Board members upset the balance of the Board. Mr. Richmond stated that he often picks juries in Alaska and they ask if juries had read newspaper and judges asked if juries can put aside what they've read and focus on the facts of the case. Mr. Richmond stated that he was concerned that the letter writers didn't know their responses were written off a redacted letter and that he thought the Board could follow ethics rules like a jury.

c.) Annual Report: the MPC stated the Annual Report was released in July and is a snapshot for how the Board has operated. She stated that it had been sent to the Board before and was posted online. Captain Antonsen said asked if the budget information listed on page 6 was the total amount estimated and the MPC said yes. Captain Arzt asked if the first Sunset Audit recommendation was a recommendation going forward or if it was a recommendation from a previous. The MPC stated the recommendation came from the 2012 audit.

d.) Formal Recognition of Pilots: The Board formally recognized Captain Paul Merrill, Captain Peter Garay, and Captain Norbert Chaudhary for receiving training pilot endorsements and Captain Matt Michalski for upgrading to Deputy pilot tonnage from 25K GT to 65K GT.

Agenda Item 5 **Association Reports**

a) AMP: Captain Bob Poe and Captain Entenmann reported that the summer had been really busy with Shell transiting to the Arctic, however that bubble had burst and there was now less traffic. Captain Entenmann stated that tanker and Cruise ship was up, but not predicted to be next year. He stated that Captain John Schibel was retiring on December 31 and that Captain Keith Austin had passed his Local Knowledge Exam yesterday. Captain Entenmann stated they have one trainee in the loop. He stated he was unsure how the organization was going to meet pilot needs if Shell was going to continue exploration but that it was no longer an issue. The MPC stated that Captain Schibel had been licensed since 1987.

b) SEAPA: Captain Paul Merrill and Captain Ed Sinclair represented SEAPA. Captain Merrill stated that SEAPA had 48 pilots, 47 were Unlimited pilots, and that one pilot would be an Unlimited pilot in April. Captain Merrill stated they expected one trainee to take an exam in April and they currently had seven trainees and expected new Deputy pilots one or two a year to cover retirements. He stated that Captain William Tuttle retired.

Captain Merrill stated that Captain Sam Daniels passed away unexpectedly. Captain Merrill stated that new rates were published for liquid cargos in that previous rates were published for dry bulk cargos in preparation for possible liquid water operations out of Sitka.

Captain Arzt requested how many trainees were apprentices. Captain Merrill stated there were four Deputies and three apprentices. Captain Merrill stated they were ranked on a list.

Mr. Rueter asked if he thought SEAPA would have enough pilots to cover with retirements and operations. Captain Merrill stated he believed so.

c) AMP: Captain Ron Ward stated that SWAPA had 16 Unlimited pilots and two trainees. He stated that there were two apprentices expected to be licensed in the spring and the fall of next year. He stated that AMP would be accepting one or two trainees a year for the next three or four years to cover retirements. Mr. Rueter asked if AMP had enough trainees and apprentices cover the retirements and the outlook on the region. Captain Ward stated that it depends on the Alaska LNG project, and if Alaska LNG comes online, they may be short on pilots. Captain Antonsen asked how much time is between LNG creating the project and the need for pilots. Captain Ward stated he had heard from Mr. John Taylor at LNG that it takes at least eight years before anything moves through the terminal

and approximately eight years to train a pilot from basic licensure to VLCC. Captain Antonsen asked if SWAPA could make enough pilots in time, and Captain Ward said he believed so, based on the arsenal of prospective pilots. The Chair stated that there were conceptual designs on the project but there hadn't been any financial estimates. Captain Arzt asked if there were any "breaking ground" triggers points. Captain Ward stated it had been pushed back a year and that it was unclear when this project would be started. (MPC notes the recording is garbled)

The Chair stated the Board would recess until 09: 30AM.

09:30 AM Break

09:40 AM Back on Record

Agenda Item 6

Board Revenue and Expense Report

Ms. Hewlett asked the Board to examine the Schedule of Revenues and Expenditures Report. She stated the Board had collected \$277,450.00 in revenue for the fiscal year. She stated that it was a renewal year and they received more revenue than FY14. She stated that the Board spent \$80,155.00 on personal services, and that personal services paid for the MPC's time, the regulation specialist, the paralegal, and other investigators. She stated the \$1.00 spent in the ASEA legal trust was for the regulation specialist, the Chief investigator, and office assistants that completed filing. She stated that any of the 7000 series of payments was for the personal services.

Ms. Hewlett stated the Board paid \$14,410.00 for members and staff to attend Board meetings for travel expenses, and corresponded to the 7200 series. She stated that there a "sum of encumbrance" line added for meals/incidentals and non-tax reimbursement because some Board members had not turned in their receipts for reimbursement before the fiscal year closed. She stated that if bills weren't paid by the end of the fiscal year, funds were set aside to pay them in the next fiscal year. She stated the expenses may have already been paid. Captain Antonsen asked when Board members had to turn into receipts. Ms. Hewlett stated that travelers should be submitting receipts within five days of the end of the trip, and that Admin can look up to see who hasn't turned in their receipts. She reiterated that state funds can be set aside to pay back bills from the previous fiscal year with prior year authority. She stated that the Division runs on fee-supported services, and so fees are set based on expenses. However, she stated Legislature gives the Division the authority to spend and the Division must stay within that cap. She stated that the program did have excess revenue but not the authority to spend it. She stated she would follow up if there's travel that hasn't been processed yet.

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Captain Arzt asked if yacht revenue had been added to the revenue column and Ms. Hewlett said yes. Captain Arzt asked if they could break that revenue apart from licensing revenue and Ms. Hewlett said they could. Captain Arzt asked if it could be broken down into agent, pilot, and yacht revenue and Ms. Hewlett said it could be.

Ms. Hewlett said that travel contractual line ended at \$12,220.00 and was covered in the 7300 section, and covered accounting, auditing, credit card fees, and other fees such as courier, freight shipping, advertising, and storage. Ms. Hewlett said the \$16.00 spent on Honorariums/stipend for Board members. She stated that the State had a base amount designated for travel and meals.

Ms. Hewlett stated the \$5,399.00 spent on I/A Legal was to contact the Department of Law for investigations. She stated that I/A Commission Sales fees were paid to E-Travel for State contracts to airfare and hotels for Board members if they were interested.

Ms. Hewlett stated the \$734.00 spend on business supplies and Board meetings. She asked if there were any questions on direct expenses. There were none. Ms. Hewlett stated that the Board would have a fiscal report similar to last year but it hadn't been completed yet. She stated that indirect costs were higher in FY 15 by approximately \$3,000.00 FY14 since the State adopted a historical allocation system like the Federal government. She stated that the Board was paying the MPC less than before since she was working for multiple programs, payment for an office staff, and for a short-term non-permanent employee. The Chair asked how indirect costs were calculated. Ms. Hewlett stated there were different methodologies, and that the Board was partly responsible for paying for phone services, IT support, the Commissioner's office, and administrative services. She stated that the MPC charged some of her time to Collection Agencies and Pawn Brokers, and so those programs also paid indirect expenses. Ms. Hewlett stated that the Board had a surplus of \$135,000.00 Captain Antonsen stated that there was successive surplus, when could the Division decrease fees. Ms. Hewlett stated they would get an answer to the Board. Ms. Hovenden stated that fee analysis began in May and were creating a tool so that fees could be predicted through different cycles. Ms. Hovenden explained that changing fees was a regulation project.

Agenda Item 7

Ethics Act Training

The MPC stated that Board had discussed the process before, and this training would discuss ex-parte communication and then move to why specific parts of the letter were redacted. The MPC called the Board's attention to Sec. 39.52.010, the Ethics Act policy. She stated that government entities need to be completely

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transparent, and that Executive Act is only used for specific purposes, such are information that might prejudice someone's character. She stated that closed cases could not be discussed in open session because it might prejudice someone's character, even though the case was closed. She stated that the Board struggled with ex-parte communication in casual conversation, and that it could be conversations in grocery stores, coffee shops, on watch, and that Board members should direct all questions to the MPC. She stated if a Board member was to find out about a complaint or an investigation in the beginning stages, they should also stop conversation and direct the person to contact the MPC. She stated that recusing themselves wasn't bad. She stated if there were any questions about recusals were to go through the Chair and herself.

She stated that conflict of interest may be an actual financial or personal conflict of interest or if there appears to be one. She stated that there may not necessarily be a conflict of interest, but it was a good conversation to have. The MPC stated she had written a Frequently Asked Questions after so much investigations activity. She stated that agents could not represent yachts since agents were also licensees. She stated that the yacht could choose to discuss the information with the agent, but that the MPC couldn't go through the agent to the yacht. Mr. Reuters stated that agents were registered and not licensed. The MPC stated that was correct, but agents were still in the umbrella of the program. Mr. Rueter stated that parameters of registered agent did not require more than registering with the State and wasn't sure if it counted as a license. The Chair asked if there was an agreement between the agent and the yacht if the agent was representing them in all manners, and Mr. Rueter said no. He stated that agents made arrangements for vessels and that the Board maintained a ledger of agents, and if that counted as a State license. The MPC stated that for purposes such as renewal, licensure numbers, and fees they were counted as licenses. Captain Antonsen stated that he agreed with Mr. Rueter that he didn't believe regulations or statutes used "licensee" to describe agents, but he thought it was a good idea to see what aspects of the Act applies to agents. Mr. Rueter stated he believed there was a freedom of the yacht owner to say he will be attended by and person they request. Mr. Rueter stated he wondered if the State had the authority to preclude attendance. The MPC stated that the Division decided that the agent was decided to be a licensee and could not be at the meeting, but in the future the MPC would prefer earlier notice so she can ask her chain of command. The Chair asked for more clarification. Mr. Rueter said that since it was a voluntary interview with the MPC, the yacht could decline the interview. The MPC stated that the yacht could decline an interview but the State of Alaska would have other ways to get the information. Mr. Richmond stated that in NTSB investigations they are allowed to have attorney's present and do not have to answer questions unless the attorney is present. He asked if the Division was different.

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Chief Birt was invited to address the Board. Chief Birt stated that due process rights that people are afforded under criminal rights that aren't given in civil cases, and that it is an administrative decision not to allow agents while attorney's would be allowed. She stated that if a licensee doesn't make a statement it could also cause trouble. Mr. Richmond stated asked if a licensee would be allowed a lawyer, and Chief Birt said yes but that a vessel agent was not the same as a lawyer. The MPC stated the Division decided that agents would not be allowed in interviews, but to let the MPC know in the future. The Chair asked why the agent can't be at the interview. Chief Birt said that the agent is biased towards the vessel. Mr. Erickson said the agent represents the vessel's best interests, like an attorney. Chief Birt said that this needs to be addressed in Executive Session since there is a matter before the Board involving this vessel. Mr. Erickson asked who could represent a vessel. Mr. Rueter asked if the State had specific regulations in who qualified as an attorney to attend an administrative inquiry. The Chief stated this could be arranged on an independent basis.

Mr. Rueter asked when a yacht exemption has been submitted and reviewed, there is a registered agent assigned to the vessel and the any communications from the Board should go through the agent to the licensee. The Chair stated it would depend if the agent was involved or not. The MPC stated that she wouldn't know at the beginning of an inquiry if the agent was involved or not, and thus she cannot interview the agent and the vessel at the same time. Captain Antonsen stated the Board was discussing general principles. Captain Arzt stated the Board had learned about information gathering vs. investigations, and asked if an inquiry was immediately an investigation, or if there were different thresholds where it would become an investigation. Chief Birt said there are different stages of an inquiry, and the third and most formal phase was when a case had reached the investigation level. She stated that there has to be a violation of the law that was determined to have occurred by a sitting Board member. Captain Antonsen stated that a violation may have occurred and also passing along information. Chief stated that in the complaint phase, the reviewing Board member may decide that, if the allegations are true, have they violated a law. Chief Birt stated that the statutes may be silent on particular issues. Captain Antonsen asked at what point a case went from fact-finding to an investigation, so the reviewing Board member knows to stay quiet. Chief Birt stated that as soon as the reviewing Board member determined that there may be a violation of statute or regulation, an investigation has begun. Chief stated that the reviewing Board member is involved twice, once to determine if a case is jurisdiction and to make recommendations on behalf of the Board. Mr. Rueter stated he did not agree that one member should make decisions on behalf of the Board. Captain Arzt stated that the only the time the Board would make a decision as a body would be on a Consent Agreement and not before that. The MPC stated that this process was governed by Division process. Mr. Rueter stated that a single Board member makes decisions on behalf of the Board and that the Board hasn't designated a single Board member to make

those decisions. Chief Birt stated that the 21 other Boards operated that way, and that this process protects the Board and the licensee. She stated that initial complaints are often one-sided, and that relying on a rotating person makes a decision based on historical precedent, which is a statutory precedent. Chief Birt stated the Division would do research so that similar violations received the same punishment. Chief Birt stated that most cases do not need Board involvement since they can be settled with a warning or advising.

Captain Antonsen stated that he thought there was over-sensitivity for Reviewing Board Members to recuse themselves when voting. Chief Birt stated that it was always an issue with small boards because if too many people recuse themselves there cannot be a quorum. Chief Birt stated that the Division recommended people recuse themselves out of the appearance. The Chair asked if the Board can change Consent Agreements. Chief Birt said that punishment can be lessens or the Consent Agreement can be rejected, but the Board can't add punishment once signed by the licensee. Captain Antonsen stated that a balanced Board with agents and pilots is a strength of the Board, but recusing out a pilot changes the balance. Captain Antonsen stated he understood it was a recommendation but not a requirement to recuse from voting and Chief Birt said that was correct. The MPC stated the Board could have an expert witness off the Board. Captain Arzt stated the Board had explored that and preferred to stay with the current process. Mr. Rueter asked if the Division could take action on a licensee without Board knowledge or approval. Chief Birt stated that there would be a summary suspension if there were a great risk to the public and the Board would have a teleconference. Chief Birt stated that the MPC was the investigator for the program.

Captain Antonsen asked Chief Birt if they should approach the MPC with any recusal questions, and Chief Birt said that it was up to the Chair but to use the MPC if she was more approachable. Chief Birt stated that the reason the MPC conducts a conflict check prior to assigning the case. Captain Antonsen used an example of having a long conversation with someone before understanding that it was becoming a case.

Agenda Item 8

Interpretation of “meets with any casualty” as per 12 AAC 56.960(d)
Duties of Pilots

Captain Antonsen stated that the subcommittee created a definition to go out to public comment and did not want to duplicate what is already reported to the Coast Guard. He stated that “casualty” isn't defined in State regulations and “damaged in any way” can refer to shipboard equipment that doesn't involve pilots. Captain Antonsen stated a recommendation from last meeting was to delete “casualty” and replace it with “collision, allision, and grounding”. Captain Antonsen asked if “near miss” was a category the Board was interested in.

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Captain Antonsen stated that Incident Reports and an aspect of “near miss” are used by the Puget Sound Pilot. He stated that a definition of casualty would be added to the regulation: “An actual or apparent collision, allision or grounding. A casualty is also a navigational occurrence resulting in actual or apparent personal injury, property or environmental damage. An occurrence where a pilot successfully takes action of a non-routine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damage to the environment shall therefore not be considered a casualty and is not required to be reported.” Captain Antonsen said the Board had a difference in opinion if they’d like reports of “near miss” and recommended Public Comment. Captain Antonsen stated that he believed both agents and pilots believed that “damaged in any way” should be removed in that it might not involve pilots, however a navigational occurrence could result from actions from a pilot. Mr. Erickson stated the task was to define “casualty”. He stated that he believed “near miss” should be reported and further defined. Captain Antonsen stated that in other states “near miss” isn’t for disciplinary action. Mr. Erickson stated that he believed the Board should know why there was a “near miss” and the Board could determine if there was any action. Captain Antonsen stated he’d prefer public comment, and that a “near miss” would not be a violation of statute or regulation. Mr. Erickson asked if there would ever be a situation the Board would have to take action. Captain Arzt asked that there was a mechanism with the complaint process if there was a “near miss”. Captain Arzt stated that “casualty” still needs to be defined if not stricken from the form, and “near miss” would need another form. He stated he thought “near miss” would be too broad. Captain Antonsen stated that failing to report an incident can mean a fine or jail. Captain Antonsen stated that other boards claimed there was no disciplinary action for a “near miss”. The MPC read Sec. 08.62.150(a) (1) Denial, Revocation, or Suspension to demonstrate the Board could suspend a license due to incompetence. The MPC asked if the Board could suspend licenses under Sec. 08.62.150(a) (1) for a “near miss”. Mr. Erickson stated yes. Captain Antonsen said it was possible if it was brought as a charge of incompetence. Mr. Erickson stated “near miss” would need a definition. Captain Arzt stated that Sec. 08.62.150(a) (1) was for investigations. The Chair stated this process was for “casualty” and “any damage” to determine what needed to be reported. Mr. Richmond stated that “casualty” had a broad definition and that he would define “near miss” as a casualty, and that he would want to know if there was a “near miss” between a ship and a pilot, such as an intoxicated captain. Mr. Richmond stated that pilots were the “eyes and ears” on the ship. He asked if action has ever been taken against a pilot for not meeting Incident Report requirements. Mr. Richmond stated there needed to be a better job done with “Incident Report” and the form was revised in 2014. The MPC stated she probably revised the form. Mr. Richmond stated he would want to know about a “near miss” as a Board member, and that the FAA reports “near miss” so people can learn from the pilot’s mistake. Captain Antonsen stated he disagreed from Mr. Richmond and that people had a

legal duty to report information, not for public interest. Mr. Richmond stated the FAA didn't use "near miss" to prosecute the pilot but to learn how avoid specific situations, if possible. Mr. Erickson stated that pilots may make different decisions in different waterways, and would this be used to judge a pilot's competence. Mr. Erickson stated that a "near miss" could be a transit where a pilot doesn't take action to avoid an issue and it became a "near miss", or maybe action was taken and the situation was avoided. Captain Antonsen stated the onus to report a "near miss" would be on his record as an interpretation of violations if he had a different interpretation of "near miss", and that the Board of Marine Pilots had different reporting requirements than the Coast Guard. The MPC asked if the MPC would investigate a "near miss", at MPC discretion. Mr. Rueter stated the MPC could question the pilot but would not go further. Captain Arzt stated that the Incident Report form would not be a good place for this conversation and recommended the Board go back to the original issue. Mr. Richmond stated that the word "incident" was used without a definition on forms and in statutes. Captain Antonsen stated that the Coast Guard specifically details what pilots do not have to report and the definition shouldn't be extended. Captain Antonsen stated that progress was needed on the casualty form. He also stated that "Incident" was not a defined term but referred to actions. The Chair stated that the proposed definition of "casualty" would be printed out and brought before the Board after lunch.

Agenda Item 9

Possible creation of casualty reporting requirements for foreign pleasure-craft

The MPC asked the Board if foreign pleasure-craft had the obligation to report incidents to the MPC, similar to pilots. Captain Arzt stated he thought it was important for the Board to have the same reporting standards for vessels receiving exemptions that the Board had for pilots. The Chair asked what action the Board could take. Captain Arzt stated it would be same as "near miss" reporting and that the Board may choose not to grant an exemption to a vessel if they had multiple incidents. The Chair asked if the MPC receives information from the Coast Guard and she stated that she did upon request. The MPC stated that she could only ask for information specified in statute or regulation, and that there is currently no statute or regulation that asks for past conduct of the vessel. Mr. Erickson stated that it seemed like the Board wanted to keep yachts out of Alaska, and that yachts had reporting requirements to the Coast Guard already. Mr. Rueter stated the Board had no regulation authority to preclude someone from licensure based on past history, however if an incident occurred during the exemption period it could impact their licensure. The MPC stated there would be an investigation and the Board could use a summary suspension immediately or a Consent Agreement to preclude entering State water the next year. She stated that the Board would need to add a regulation stating that the MPC would request and provide past conduct information to the Board, and that she could only request information specified in

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statute and regulation. She stated the solution would be to add a regulation to require vessels to report any filed Incident Reports, reports to the Coast Guard, and “near miss”. Captain Antonsen stated the Board should figure out what yachts are reporting and then require the pilots to report the same. Captain Arzt stated that he didn’t want to make an onerous requirement and didn’t believe this would be difficult on yachts. Captain Antonsen stated that he thought there should be a higher level of scrutiny on vessels that have an exemption from having a pilot, due to their training and experience. He stated that safety occurrences could be evaluated so the Board could report to the public that the training threshold for pilotage exemptions was effective.

The Marine Pilot stated that a committee meeting during lunch would be a violation of the Open Meeting Act and recommended the committee alert her early so she could meet public noticing requirements.

On a motion by the Chair, The Board broke for lunch at 1200pm. It was unclear on the recording who made the second.

Back on the Record on 1:07pm.

The Chair called the Board back to order. The Board had been supplied copies of the suggested definition. Captain Arzt moved to make a regulation change to 12 AAC 56.960(d) Duties of Pilots to remove “meets with any casualty” and “damaged in any way”. Captain Antonsen seconded the motion. The Chair asked if there were any discussion. Captain Antonsen stated the Incident Report form would be adjusted to reflect the change. Mr. Richmond stated that changing the language would be removing responsibility from the pilots. He supplied the Board with the State of Washington FAA form for “near miss” and stated the purpose was to inform the Board and public that something had occurred. He stated that he believed that the public had the right to know and that removing language would do away with pilot responsibility and undercut the Board and pilots. Mr. Richmond stated he didn’t know the last time a pilot had collided with another vessel. He stated that he was against this change.

Captain Antonsen stated that striking the language wouldn’t change the practical situations in what pilots have been reporting to the Coast Guard or to the State. He stated that the main definition of “casualty” was a collision, allision, or grounding. Mr. Rueter stated that allision was listed in the text. Mr. Richmond stated that he thought it was ridiculous to change the language because pilots were afraid of not reporting something and going to jail when they didn’t believe they needed to report it anyway. The Chair stated that the issue was that a pilot may not believe they have to report something while the Board believes they do. Captain Arzt stated that he wasn’t sure what the Board was missing outside of collision, allision, or grounding. Mr. Rueter stated that allision wasn’t in the text.

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Captain Arzt stated he would accept a change to the motion. Mr. Erickson asked if Captain Antonsen's definition has more "teeth" than the original definition. Mr. Richmond stated what an "actual or apparent" collision was.

After much discussion concerning language, Captain Antonsen moved a change to 12 AAC 56.960(d) Duties of Pilots to read: "If a vessel piloted by a state licensed pilot undergoes collision, allusion, or grounding, or has an occurrence resulting in actual or apparent personal injury, property, or environmental damage the pilot shall, no later than 72 hours after returning ashore after the incident, file with the marine pilot coordinator an incident report as described in 12 AAC 56.965." Mr. Richmond stated that "occurrence" in insurance policies is used very broadly.

The Chair determined the Board shall vote on the original motion. The Chair called for a vote on: "If a vessel piloted by a state licensed pilot goes aground, collides with another vessel or dock, the pilot shall, no later than 72 hours after returning ashore after the incident, file with the marine pilot coordinator an incident report as described in 12 AAC 56.965."

The motion failed unanimously.

1: 25pm The Board took a five minute break

1:30pm back on record

Captain Arzt moved a change to 12 AAC 56.960(d) Duties of Pilots to read "If a vessel piloted by a state licensed pilot is involved in a collision, allusion, or grounding, the pilot shall, no later than 72 hours after returning ashore after the incident, file with the marine pilot coordinator an incident report as described in 12 AAC 56.965." Captain Antonsen seconded the motion.

The Chair asked for discussion. There was none. The Chair requested a roll-call vote.

Captain Antonsen	Yes
Captain Arzt	Yes
Mr. Erickson	No
Mr. Rueter	No
Mr. Richmond	No
Commissioner Hladick	Yes

The vote was tied. Captain Arzt, Mr. Richmond, and Mr. Erickson were nominated to form a committee with Mr. Richmond as the Chair. The MPC stated

that all meetings would be properly public noticed for public involvement. The Chair stated it would be on the next meeting's agenda.

Agenda Item 10 **Public Comment**

The Chair opened the floor to general public comment.

Captain Ed Sinclair from SEAPA stated that an Incident Report is for when a pilot passed a report to the State when something goes awry, and that redefining it would be an arduous task that wouldn't change anything. He stated that defining length was a stumbling block with foreign pleasure-craft. He stated that using a foreign vessels' documentation has inherent issues in that all nations have a different tap measure. He stated he believed that the State needed a defined way to determine if a vessel needs a pilot. Captain Sinclair stated that foreign pleasure-craft should be required to report casualties in that if they didn't have an exemption, they'd have a pilot. He stated that it's in the State's best interest. He also stated that SEAPA observed that the State was licensing the vessel based on the experience of the crew, and the crew swapped out. He also stated that yachts received an entry packet at their first port call but it might not cover a different region. He stated that vessels should be required to have either a pilot while entering a region for the first time or expand the information packet so it covers all three regions.

Captain Rich Preston from SEAPA stated he agreed with Captain Sinclair. He stated that information was passed between the Coast Guard and the State because the MPC knew people from her Coast Guard career but that would change in a few years. He stated that defining length should be kept as simple as possible, and that the State should use a definition listed on a previous Pilotage Exemption packet. He stated he also liked the Length Overall definition created by the Panama Canal: "The length of the vessel in meters from the foremost to the aftermost points, including a bulbous bow if present". He also suggested the use of the Foreign Pleasure Craft committee if the Board wanted to assign tasking.

Mr. Mike Tibbles from Alaska Steamship Association stated that he believed the State of Alaska went off course when challenging a vessel's length overall after it had been granted a pilotage exemption. He stated the issue wasn't referred to the Board for discussion. He stated that the process impacted a customer over an inquiry if the State correctly issued an exemption. He stated that he did not understand why the vessel agent was kicked off the vessel, since the vessel was not under investigation. He stated that he believed the agent had the right to be there and the State of Alaska was too aggressive. He stated the vessel left frustrated and may not return to the State of Alaska. He stated he thought the vessel spent \$500,000.00 in Alaska and the vessel may not return. Mr. Tibbles

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stated he was frustrated with the redactions on the letter in that he thought three sentences had nothing to do with the investigation and didn't understand why they were redacted. Mr. Tibbles recommended the Board listen to minutes from a 2012 meeting concerning a regulation put forward by the Division to "be a proactive effort to support small business owners" by the use of registry to determine the length overall. He stated that, even though it was used for fees, testimony is clear that the length overall listed on registry was to be used for more than just fees. He stated he believed that there was a misinterpretation of information over time and that it changed over the last three years. Mr. Tibbles stated the registry allowed for vessel owners to know if they would qualify for an exemption before arriving and without putting the MPC on a dock.

Mr. Rueter asked Mr. Tibbles about a letter that was sent from the Board stating the Board was mistaken in issuing an exemption. The MPC stated that, in this case, the Reviewing Board Member recommended a warning letter and that it was sent out as per the investigation process. Mr. Rueter asked if the letter should be included in a Board packet or sent to the Board before it was released. The MPC stated that the Reviewing Board Member acted on behalf of the Board.

Captain Paul Merrill from SEAPA stated he agreed with Captain Sinclair and Captain Preston. He stated that, in his personal experience, one of the biggest conflicts is smaller vessels with larger vessels, and was concerned that a smaller vessel could run a larger vessel out of a channel. He stated that SEAPA had some concerns about the level of professionalism of the crews, and that a pilotage exemption shouldn't be seen as a free pass to avoid having a pilot onboard, and that yachts should have reporting responsibilities, such as familiarization and safe operations. He stated that SEAPA was in the compliance business and not the regulation business, and have the same interests as the agents and owners. He stated that vessels can have tens of thousands of gallons of fuel, an incident with them can impact shipping on a broader scale, and traffic management is considered very important. Mr. Rueter asked Captain Merrill what the training requirements for foreign vessel crews were. Captain Merrill stated that he had seen a range of experience on ships, and that some countries had yacht licenses instead of commercial licenses.

Mr. Axelson from Yacht Services of Alaska stated that the State of Alaska needed to stop reiterating what is the law but to follow it. He stated that Alaska took a black eye in yacht services by changing how length overall was interpreted, and that the way it was handled set the Board back. He stated that the pleasure craft community was small, and the Captain of a specific vessel was asking what they had done wrong after being granted an exemption. He stated that he wanted the Board to consistently interpret length overall and that he agreed with Mr. Tibbles that the Board should send the yacht a letter apologizing for not acting properly.

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Mr. Axelson stated that if the Board needed to change words of a regulation so that it didn't occur again.

Captain Frank Didier from SEAPA, representing himself, stating that he received certificate of registries from vessels that are different from the pilot card he's presented. He stated that he didn't care what the Board used, but that there could be a 10 meter difference in lengths today and a 20 meter difference in lengths in the future. He stated the Board could allow a vessel 200-ft in violation of the exemption regulation.

Captain Ed Sinclair from SEAPA stated that he didn't know what the letter sent from the Board to the yacht said, and that he didn't believe the Board had re-interpreted the definition of length overall. He stated he didn't want the Board to believe the pilots wanted more work, but pointed out inconsistencies so the Board could fix them. He stated he wanted the Board to decide on a measurement system and stick with it. He stated that pilots approached him with vessels that had a 200-ft length on AIS and that he explained the exemption was based on registry and not information advertised online. Captain Sinclair asked what the State's interest was based on length at waterline or length overall. He stated he didn't understand why a yacht's defined length was changed.

Captain Ron Ward introduced himself as the President for SWAPA. He stated he apologized to the Board for the discussion on Incident Reports. He stated that it had been a fight in Cook Inlet with some of the players that self-arresting vessels was a viable option for vessels that lose power in the ice. He stated he was piloting with Capt O'Hara and a trainee when he used self-arrest and the Coast Guard recommended writing a report to show it was a proven option. He stated he felt interrogated by the MPC over the phone about not reporting. He stated that, in years past, an Incident Report had the financial amount of damage done as a reporting threshold and the form has changed over time. He stated that the form does specifically discuss collision, allusion with a navigational aid or floating object, allusion with gill net. He stated the form also has "other" and it's unclear what that means. He stated for years, the form and the regulation have worked the way they have written, and perhaps it needs further definition. He stated that pilots would like better guidance so they don't have to report investigations to the Coast Guard. He requested the MPC remove a letter from his licensing file that was retracted by a second letter.

Captain Mike O'Hara from SWAPA claimed he was with the other pilot onboard the PYXIS THETA. He stated that "investigation" is a serious term and pilots are required to report that information to the Coast Guard, and Coast Guard follow-up could take over a year where the pilot doesn't have a license. Captain O'Hara stated that he felt intimidated by the MPC's citation of Sec. 08.62.150 when their emergency actions prevented a possible power outage in Anchorage. He stated

that he felt his license was threatened, and the Board had the opportunity had the opportunity to tighten up Incident Reporting standards. He stated the Coast Guard inspected the vessel at anchor in Homer before the vessel transited to Anchorage and there was no negligence on anyone's part. He stated that pilots are hired to prevent bad things from happening.

Captain Antonsen asked Captain O'Hara if he agreed that updating Incident Report language would prevent issues like this in the future, and Captain O'Hara stated that he did and that he felt the current language was sloppy. Captain O'Hara stated that there were too many opportunities for the MPC to investigate actions that aren't real problems. Captain Antonsen asked if he agreed with the motion presented with the terms "collision, allision, and grounding" used. Captain O'Hara stated that he did prefer that definition. Captain Antonsen asked if that would change the incidents that were reported to the MPC, and he stated no. Captain O'Hara suggested the State of Alaska request information if that's what they're looking for, but he doesn't like the threat of license suspension. Captain Antonsen thanked Captain O'Hara for demonstrating how defining language was important. Mr. Richmond asked if Captain O'Hara would mind reporting power loss due to ice and he said he did not. Mr. Richmond asked what he thought about "damaged in another manner", and he stated that shipboard incidents were outside of collision, allision, or grounding. Mr. Richmond asked if he thought environmental discharges should be reported and Captain O'Hara stated that Federal law required that. Captain O'Hara stated that broad language was open for abuse. Mr. Rueter stated that agents appreciated the efforts to save the vessel, thought the original letter was not sent to the Board for approval, and did the Board need to send a letter of reconciliation. Captain O'Hara stated no.

Agenda Item 11 Possible Definition of Overall Length

(Please note that LOA, length-overall, and overall-length are used interchangeably)

The MPC provided the Board with multiple definitions of Overall Length as well as exemption forms from 2011 and 2015, and that there was a definition listed on the 2011 definition that she recommended. Captain Arzt stated that lengths should be referenceable and verifiable. Captain Arzt stated the 2012 Memorandum from Mr. Don Habeger mentioned using the LOA for fees. He stated there was some ambiguity at determining length. He stated there needed to be some predictability so yachts could plan on receiving an exemption and the MPC doesn't need to measure the vessel. He stated that the US and British registries have different "length" measurements and often are missing an overall length line. He stated that vessels will have one length listed on the registry, and a length with a 10m difference listed on AIS. Captain Arzt stated that applications are assumed to be correct. The Chair asked for clarification. Mr. Erickson asked if ship's registry

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provided a verifiable length, and Captain Arzt stated that “length” is listed but it’s unclear what “length” it is. Mr. Erickson stated that prior meeting recordings show a discussion in 2012 using registry for fees and exemptions. Captain Arzt stated it needed to be in regulation. Mr. Erickson stated that registry was used for the last few years to determine LOA. The Chair asked what information was listed on the form and the MPC stated that LOA on the registry to be only used for fees. Mr. Erickson moved that language should be added to say length on the registry should be used for calculating fees and determining if the vessel gets an exemption. He stated that vessels would like to know if they will require a pilot before arriving in Alaska. Captain Antonsen addressed “length over deck” used in statute, however “length overall” is used in regulation. Captain Antonsen stated that he thought it would be stretch to use a regulation to expand a statute. Captain Antonsen stated that regulation could expand statute but not completely change it. Captain Arzt stated that a definition was needed. Mr. Rueter stated the language was “overall length” and that regulation was only focused on the fee. Captain Antonsen stated that the Board needed to streamline information and that LOA was not listed on registry, thus something else needed to be used. Mr. Erickson asked what length information was listed on Captain Arzt’s registry, and that LOA measurements were no longer listed on registries and were replaced with “length”. Mr. Erickson asked the MPC what value she’d use, and she stated she’d use LOA but on most registries it wasn’t listed. She stated she never receives registries with LOA listed. Captain Arzt stated that LOA wasn’t listed on registries anymore and he didn’t believe countries were providing that information anymore.

Captain Antonsen moved a change to regulation 12 AAC 56.990(a) (16) “Length Overall means the horizontal distance between the forward-most and after-most points on the hull” Mr. Richmond second the motion. The Chair asked for discussion. Captain Arzt asked how the Board would know, and Captain Antonsen stated that vessels signed on the bottom of the form and that many categories the Board voted on where not easily categorized, like crew experience. Captain Arzt stated that if there’s a challenge to the length, how would the Board verify the length. Mr. Rueter asked how hull was defined, and if bowsprits and diving platforms would be included. Captain Arzt said no. Captain Arzt stated under U.S. Coast Guard’s measurement convention system is that the formula to use to certificate of documentation to US vessels is overall length, and it is unclear how it would be measured and who would measure it. Captain Arzt stated that there were many hindrances. Captain Arzt stated that using the registry is referenceable.

The Chair called for the vote.

Motion: 12 AAC 56.990(a) (16) “Length Overall means the horizontal distance between the forward-most and after-most points on the hull

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Second: Mr. Richmond

Captain Antonsen	Yes
Captain Arzt	Yes
Mr. Erickson	No
Mr. Rueter	No
Mr. Richmond	Yes
Commissioner Hladick	Yes

Motion passed 4-2.

Agenda Item 12 Executive Session

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.

The Board came out of executive session at 4: 08pm.

Motion: Captain Austin has satisfied all conditions and requirements to become a Deputy Pilot for 25,000 GT.

Moved By: Mr. Hladick
Seconded By: Mr. Erickson

The Board APPROVED the proposed the endorsement.

Motion: Accept the Consent Agreement for case 2015-001586

Moved By: Captain Antonsen
Seconded By: Mr. Rueter
Recused: Captain Arzt

The Board ACCEPTED the Consent Agreement

The Board agreed to tentatively meet in the third or fourth week in January in 2016, and then during possibly April 12 – 13, 2016.

On a motion by Mr. Richmond, seconded by Mr. Rueter, and carried without dissent, the Board RESOLVED to adjourn at 4:30pm.

Respectfully submitted: _____

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Crystal Dooley

Marine Pilot Coordinator

Chris Hladick

Chairman