



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

*Department of Commerce, Community,
and Economic Development*

BOARD OF MARINE PILOTS

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**ALASKA BOARD OF MARINE PILOTS
MEETING MINUTES
11 October 2018**

**DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES BUILDING
4111 AVIATION AVE., ANCHORAGE**

By authority of AS 08.01.070(2), AS 08.62.030 and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Board of Marine Pilots was held.

Item 1. Roll call/Call to order

Acting Chair Rick Harris called the meeting to order at 0900. Board members in attendance were Harris, Capt. David Arzt, Mr. Les Cronk, Ms. Peggy McLaughlin, Mr. Tom Rueter and Capt. Ron Ward. Mr. Fred Parady attended telephonically. Marine Pilot Coordinator (MPC) Charles Ward was in attendance and recorded minutes.

Also in attendance were Capt. Frank Didier of Southeast Alaska Pilots' Association (SEAPA); Capt. Pete Garay, president of Southwest Alaska Pilots' Association (SWAPA); Mr. Paul Axelson of North Pacific Maritime; Mr. Mike Tibbles of the Alaska Steamship Association (ASA); Mr. Garry Messer of Pacific Reefer Logistics; Ms. Jenni Zielinski, business manager for SWAPA; Capt. Ed Sinclair of SEAPA; Mr. Bruce Weyhrauch, attorney for SEAPA; Capt. Scott Jones of SEAPA; Capt. Andrew Wakefield of SWAPA; Capt. Matt Michalski of SWAPA; Mr. Ben Atherly of Holland America Group; Mr. Luke Hasenbank of Alaska Maritime Agencies; Mr. Rick Erickson of Cruise Line Agencies of Alaska (CLAA); Capt. Jeff Pierce of SWAPA and Mr. Ron Hildebrandt of Trident Seafoods. Capt. Kathleen Flury, president of SEAPA, and Capt. Bill Gillespie, president of AMP, attended telephonically.

Harris stated Charles Ward had asked him to start the meeting as its chair, and offered to continue unless there was objection or if another member wanted to chair the meeting.

Charles Ward said Mike Navarre, commissioner of the Department of Commerce, Community and Economic Development, had taken a leave of absence until after the November 6 election. Said Navarre had appointed Acting Commissioner Fred Parady to the Commissioner's seat on the board. Said the board could name a new chairperson if it wanted to, but it might have to pick a new chairperson in January.

Item 2. Review Agenda

Charles Ward said there was an application from a deputy marine pilot to upgrade to a marine pilot license to add to the agenda. Said there was not an investigative report, as it had not been approved

by meeting time. Said Didier had asked to move the Southeast Alaska federal pilotage discussion to SEAPA's report.

Arzt moved the agenda be approved as amended. Cronk seconded. There was no discussion. The motion passed unanimously.

Item 3. Declarations/recusals

Charles Ward said he'd received a challenge coin from SWAPA.

Item 4. Approval of minutes

Cronk moved the minutes of the 18 July 2018 board meeting be approved. McLaughlin seconded. There was no discussion. The motion passed unanimously.

Item 5. Legislative audit – FPC documentation

Charles Ward said the board's legislative audit was finalized on 9 October 2018. Said the report recommended a full extension of the board for eight years, which is the longest extension the Division of Legislative Audit recommends. Said the auditors found the board is acting in the public interest and effectively doing its duties.

Said Legislative Audit made two recommendations. Said the first related to SEAPA's drug testing program and the second was to require foreign pleasure craft (FPC) have all required items on board when it applies for an exemption, as opposed to when it enters Alaska waters.

Harris asked if the board needed to approve the audit report.

Charles Ward said the approval came from the Legislative Budget & Audit Committee, which has approved the audit findings.

Ron Ward said the auditors had sampled seven FPC exemption applications and that five did not fully meet the regulation requirements at the time of application. Said the board had reviewed an application at its April 2018 meeting that did not meet the requirements at the time of application, and the exemption was approved. Asked if that was what the audit was referencing, or if it was just a reference to the required charts and documents at the time of application.

Charles Ward said the audit referenced charts, *Coast Pilots*, the yacht packet and other documents FPCs were required to have on board at the time of application.

Ron Ward asked if the auditors had reviewed the application he referenced having been approved at the April 2018 meeting.

Charles Ward said no, because that application fell outside the audit period. Said the audit did not review anything after January of 2018.

Ron Ward said the April 2018 application was another instance of the board issuing an exemption where the vessel did not meet the regulations. Said the board needed to be cautious about doing that.

Ron Ward asked if the audit was saying the FPCs had to have the required documentation on board prior to entering Alaska waters.

Charles Ward said that is how the regulation has been interpreted to this point. Said the recommendation from Legislative Audit was that an FPC have all the required documentation on board at the time of application.

Arzt said the recommendation does call attention to the issuance of FPC exemptions without verifying required documents are on board. Said the recommendation went beyond just the packets. Said the board should verify that everything that falls within that recommendation is complete.

Ron Ward said in previous applications there would be a notation stating a certain document or documents were not on board the FPC, but would be provided by the agent on arrival.

Charles Ward said the auditors were driving at the documents that were not on board at the time of application.

Harris asked Charles Ward if the board needed to provide instructions to him going forward, that the documents needed to be on board the FPC at the time of application.

Charles Ward said the division would start making the auditors' recommendation known, including a notation on the board's website. Said he would be in contact with the vessel agents, particularly those that work with FPCs regularly, that the documentation needs to be on board. Said that he had been online and said he believed the *Coast Pilots* and charts could be downloaded and he knew the yacht packet could be downloaded. Said the FPC could reach a spot with Wi-Fi and download the required documents, then submit the application.

Ron Ward said the checklist will be complete before the application is sent out for a vote, and the board needs to be sure it is complete before it votes.

Harris asked if a motion and vote was needed to give Charles Ward direction.

Charles Ward said the board could do that. Said the department has agreed with the recommendation and plans to move forward on it, so he didn't think a vote was necessary.

Rueter asked if the MPC's exemption checklist needed to be revised.

Charles Ward said any revisions would be minor. Said the requested items are already on the checklist. Said instead of stating "agent to provide" on the application, the applicant will need to indicate the documents are on board.

McLaughlin asked if the board was also taking the position the applicant had to have a radar certification in their possession at the time of application.

Arzt said that was how he understood the recommendation.

Ron Ward said the audit report specifically addressed the need to verify all required documentation was on board at the time of application to best serve public safety. Said the chair's recommendation made complete sense to have a vote requiring all documents were on board the FPC at the time of application.

Ron Ward moved the board require all required documentation be on board an FPC prior to the board's taking action on an application. Arzt seconded.

Parady said there should be a discussion about the practicality of the requirement. Asked if the board was imposing a reasonable request on its visitors. Said it sounded perfectly reasonable to him, but he wanted to have the discussion.

Arzt asked if the revision to the application would be as simple as adding a certification.

Charles Ward said he would look at the checklists to see if any revisions needed to be made. Said he didn't know if the checklist needed to be revised so much as requiring an FPC to have all required items on board at the time of application.

Charles Ward said that, on a U.S. Merchant Mariner Credential, it was very easy to tell if a captain had a radar observer endorsement. Said there were other licenses, including British licenses, where the radar observer endorsement was not listed on the license. Said he had done the homework on British and other licenses that met STCW criteria. Said a master's certificate was recognized by STCW, and the MPC could check the STCW criteria to determine if it included a radar endorsement.

Rueter said as a practical matter, an FPC's access to internet may be more limited than the discussion would indicate. Said most vessels would come up a coastline. Said there was preparation required and the board would review an application 30 days in advance. Said there are scenarios where an FPC may not be able to get the required documents on board 30 days in advance of its arrival. Said he did not have a specific example, but there may be an occasion where an FPC is making all efforts to comply, but is not able to.

Ron Ward said it was not an undue burden on FPCs to have the required documents on board at the time of application. Said he understood in the past, a ship would get diverted and would get charts at the last minute, but that was prior to effective satellite communication. Said he's now seen charts get faxed to ships. Said FPCs would have internet access at some point prior to arriving on the coast. Said he understood the issue with the 30-day rule, but said the board was stuck with it. Said if the FPC stated it would have the required documents prior to entering Alaska waters, he said he didn't see how the board would argue with that. Said the agent would supply the documents if the FPC applicant didn't have it. Said it was Seamanship 101 that a vessel should have all the required documents on board before entering an area.

Cronk said he thought Ron Ward's point was fair. Said he was surprised to see there had been five FPCs approved without proper documentation on board. Said he was curious to see what documents were. Said the required documents were generally readily available. Said in this day and age, it was hard to say why the required documents would not be on board, given the availability of electronic communication.

Harris asked if comments could be directed through him.

Cronk said, as an example, if a ship was coming from the Far East, it may have satellite communication, but it may not have enough bandwidth to download a *Coast Pilot*. Asked if it would be OK to hand an FPC captain those documents upon the FPC's arrival into Alaska waters. Said agents were responsible for vessels having the correct documents on board and took that responsibility seriously. Said an FPC may not have the required documents on board 30 days in advance, but needed to have it upon arrival in Alaska waters.

Arzt said the audit said the board had a responsibility to verify the documents were obtained. Said the lapse is the follow-up to ensure the documents were actually obtained.

Rueter said he understood the MPC to say the documents needed to be on board at the time of application. Said there needed to be significant clarity provided to the MPC to identify that certain

documents are on board, others will be on board prior to arrival, or the agent or pilot would be putting them on board at the FPC's first point of arrival.

Arzt asked if the MPC does a follow-up for that last category. Said if that is not happening, that is the step the board should implement.

Cronk said he agreed with Arzt. Said there should be a follow-up conversation if an FPC states on its application that a document will be received upon arrival, the exemption should be issued conditioned on that receipt, and there should be follow up to verify it happened.

Ron Ward asked if that would be undue work for the MPC to determine if the documents had been delivered. Said the audit pointed out the exemption did not include a stipulation the applicant had obtained the required documents prior to entering the applicable area. Said if the form were changed to say all documents had to be obtained prior to entering Alaska waters, that would meet the audit condition.

Charles Ward said one way to handle that for larger yachts would be that when they take on a pilot upon entry, the pilot cover the required documents and ensure they are on board as part of their briefing.

Harris said his discomfort was with approving an exemption with a statement the documents would be on board, and that promise is not followed up on. Said part of the question was how does the board get that confirmation.

Charles Ward said the answer may be spot checks by the MPC. Said he knew there had been some discomfort with that in the past.

Arzt said he didn't believe spot checks were the answer. Said he said there should be follow up and closure.

McLaughlin said there needed to be some consistent accountability.

Arzt said he agreed, and the loop needed to be closed every time. Said yachts that weren't required to take on a pilot prior to entry would have to verify possession of the required documents upon entry.

Ron Ward said the agents were licensed by the board and had some responsibility in the matter. Said the agents should provide follow-up documentation.

Cronk said Ron Ward's point was valid. Said the smaller yachts were required to receive a briefing from their agent upon arrival. Said that could be the closure point, to verify those would be provided upon arrival.

Harris asked if Ron Ward wanted to restate his motion.

Charles Ward said the original motion was to require the MPC verify the documents were on board at the time of application. Said the discussion has moved the motion beyond that point.

Ron Ward amended his motion to include a requirement that the FPC applicant obtain all required documents prior to entering Alaska waters, and that should be verified on the application. Said perhaps the agent should also be required to verify the required documents were on board. Said that was part of standard voyage planning.

Charles Ward re-read the motion. Said the motion was to have FPC applicants have the required documentation when they enter the applicable area, and that should be verified by the agent if not verified on the application.

Ron Ward said the documentation should be verified on the application. Said if the agent is going to provide the documentation, the agent should verify on the application it will provide the documentation.

Parady asked if the phrase was "verified" or "attested to."

Charles Ward said the phrase should be "attested to." Said the whole process was based on self-certification.

Ron Ward said no one was verifying the documentation was on board at that time.

Parady said he didn't know if the board could physically verify the documents are on board, but could require their presence be attested to.

Arzt said any incomplete part of an FPC application should be verified as complete by the vessel or the agent to the MPC.

Ron Ward said the audit language said the exemption did not include a stipulation. Said he believed the exemption should include a stipulation that requires attestation the documents are on board prior to entering pilotage waters.

Arzt said the agent was already doing that.

Ron Ward asked how. Asked how the FPC applicants or the agents were attesting to the documentation being put on board.

Parady said he believed attesting meant signing.

Arzt said the agent would send an email to the MPC stating the documentation would be provided on arrival. Said an additional step was needed to document that the required documents were actually placed on board.

Cronk said he was struggling with the motion. Said the motion required the documents to be on board prior to arrival. Said that wouldn't work if the agent to give the FPC the required documents when the FPC shows up.

Ron Ward said the auditors took issue with the fact the documents were not on the FPC prior to arrival.

Harris asked Axelson to read a regulation.

Axelson said the regulation for FPCs with an LOA of less than 125 feet require documents to be provided at the first port of call. Said the regulation needed to be changed if the process was going to change.

Cronk said he wanted the motion to reflect that the documents could be provided on arrival at the first port of call.

Harris said the issue was to ensure confirmation was provided to the MPC that the documentation was on board.

Charles Ward said he could send the confirmation to the board if members wanted that. Said he understood that was a busy time for everyone.

Harris said the most important thing for the board was to know the MPC has confirmation it has been done.

Charles Ward reread the motion. Said the motion was the FPCs were to have the documentation on board when they enter the applicable area, and that be verified on the application. Any incomplete documentation will be verified as present upon arrival to the MPC by the agent or the vessel.

Cronk said the last half of the motion was good.

Ron Ward asked Charles Ward to reread the second sentence of the motion.

Charles Ward said it read "any incomplete documentation will be verified as present upon arrival to the MPC by the agent or the vessel."

Ron Ward asked Charles Ward to reread the first part of the motion.

Charles Ward said "Ward moved the yachts have the documentation when they enter the applicable area and that be verified on the application."

Ron Ward said he believed the first part of the motion had to be removed, based on what the regulation stated. Said his motion was based on the audit language. Said it was hard to imagine the regulation allowed the FPC to enter pilotage waters without the documentation, but that he didn't have the regulations in front of him.

Axelson said AS 08.62.180(c) said "The operator of a pleasure craft of foreign registry of more than 65 feet overall length but not more than 125 feet overall length that has received an exemption under (b) of this section shall proceed upon initial entry into the state water to the first port of call to receive navigational and safety information from an agent registered under this statute."

Ron Ward said the statute didn't cover this situation. Said that only covered FPCs under 125 feet long. Said the larger yachts took on a pilot, who may bring information on board, but that it was not the pilot's job to do so. Said it was not an undue hardship for the vessels to have these documents on board, even in electronic form. Said the FPCs could download the information well before entering pilotage waters.

Cronk said he did not believe obtaining the information electronically was as feasible as Ron Ward said it was. Said satellite downloading may not be feasible if the FPC is coming from somewhere other than the West Coast. Said he believed the motion, as stated, may place an undue burden on FPCs.

Harris said the time for public comment had passed. Asked if the board wanted to complete its discussion of the audit recommendation, or go to public comment and come back.

Ron Ward asked if the board could go to public comment with a motion on the floor.

Parady said he wanted to go to public comment.

Harris said the motion should be acted on prior to going to public comment.

Parady said he did not believe the issue was perfectly sorted out. Said he would prefer to hold the issue for another meeting, and could vote no in the meantime.

Harris put the matter to a vote.

Parady moved to table the matter.

Charles Ward said a vote on the motion to table needed to be held. Said a motion to table did not need a second.

Harris called for the ayes and nays on the motion to table. The result of the vote was unclear.

Charles Ward suggested a roll-call vote. Harris agreed.

On a vote of 4-3, the motion to table passed. Arzt, McLaughlin and Ron Ward voted against the motion.

Harris said the discussion was fruitful, and the board would go back to the discussion.

Item 6. Public comment

None.

Item 7. Legislative audit – Drug testing

Rueter asked Charles Ward how drug testing tracking was currently being handled.

Charles Ward said he received both annual and quarterly reports from the pilot associations. Said the issue the auditors took was that, when notices were sent out, some SEAPA pilots were not reachable, particularly in the off-season. Said it was difficult to document why the pilots were not reachable. Said there was no suspicion pilots were ducking the drug tests.

Harris asked if the other pilot associations had been able to track their testing, or if they had been audited for that issue.

Charles Ward said all pilot associations had been audited for that issue.

Ron Ward said it may be good to hear from SEAPA on this issue.

Didier said SEAPA would like to address the issue during its report.

Harris called for a break so that AAG Harriet Milks could join the meeting for the discussion of rate hearing procedures.

Off record at 0944.

Item 8. Rate hearing procedures

Back on record at 0952.

Charles Ward introduced AAG Harriet Milks.

Milks said there was not much she could add beyond what was in statute. Said it had been quite some time since there had actually been a rate hearing.

Said the hearing procedures were set out in AS 08.62.046, mostly in subparagraph (c). Said that subparagraph laid out the procedures for notice. Said if there was a timely filed objection, the hearing is held before the board. Said rate hearings were specifically exempted from hearing at the Office of Administrative Hearings (OAH). Said the board could hire a hearing officer to help resolve any procedural matters.

Charles Ward said he understood his role to be limited to administrative services around the hearing.

Milks said the MPC does not have a role in the hearing process, except to ensure timelines are met.

Milks said there were specific factors for the board to consider that were laid out in statute.

Milks said it was very important to make a solid record.

Charles Ward asked if the board should hire a court reporter.

Milks said it should.

Cronk said rate hearings used to be held directly before the board. Said there was a time when the board passed those duties off to the Department of Law, and he didn't think that was appropriate. Said he believed the board should be making the determination.

Milks said the OAH statute specifically exempted rate hearings from being heard at OAH.

Harris asked about the retroactivity of a decision in a rate hearing.

Milks said the retroactivity was a legislative policy determination.

Harris said he was concerned about the timeliness of the hearing. Said the vessel owners could have to pay 1-2 years of back payments if the decision was not in their favor.

Milks said that determination was very fact-dependent. Said the board should work with the Department of Law in that instance. Said there would need to be a determination of what was being negotiated. Said negotiations may toll the time limit.

Harris said there then could be a scenario where the time limit was tolled on an application.

Ron Ward said there was no application. Said there was a published rate and, if that rate was objected to, and negotiations could not resolve the matter, the rate hearing process would begin. Said 99 percent of the time, the parties come to an agreement either right before the hearing or during the hearing, because the retroactivity of the rate made the process difficult. Said rates were published with an understanding there may be some negotiation.

Cronk said the retroactivity was problematic from an industry standpoint. Said there were issues trying to collect from a ship that sailed in Alaska a long time ago.

Didier said he and Axelson had discussions about the practicality of imposing a retroactive rate, particularly where, as in this instance, the rate doesn't exist. Said the vessel would be charged the published rate, then payment would be withheld until the rate was approved. Said if there was an old

rate that had been increased into a new rate, the vessel would be charged the new rate, and the difference between the new rate and old rate would be withheld until the matter was resolved.

Charles Ward said commenters should be careful not to discuss specifics of a matter that may come before the board.

Weyhrauch said he represented SEAPA at the first rate hearing in 1996. Said the board retained a hearing officer. Said the hearing officer worked with the board to preside over the hearing. Said the board has to conduct the hearing. Said the board may not be equipped to deal with certain procedural issues and preliminary matters. Said the board had, in the past, referred matters to the OAH or an administrative law judge to help the board parse certain matters. Said the board is the ultimate decision maker. Said the OAH facilitates the process.

Harris asked what the role of the MPC was.

Weyhrauch said at the last rate hearing, the MPC did nothing.

Charles Ward said he would do nothing except for administrative functions.

Weyhrauch said the board conducted the hearing with assistance from OAH.

Charles Ward said his role would be administrative, and he couldn't get into the weeds, because he may be called as a witness.

Hildebrandt said the costs associated with pilotage rolled back into the cost of the operation. Said there was a specific formula-based payment to holders of Individual Fishing Quotas (IFQ). Said if there was an additional cost, that cost rolls backwards into the net amount paid to the boat. Said no one wants a 2-3-year delay, and a retroactive number would roll back to the IFQ holder. Said the board should recognize there are downstream consequences to a delay if the matter pertains to fishing.

Rueter said Hildebrandt's comments could be broadened to all maritime industry.

Harris agreed with Rueter.

Axelson said his company had occasionally added a surcharge to bills in anticipation of a potential retroactive rate change. Said if the rate change doesn't happen, the surcharge is refunded. Said the process is problematic and not well received.

Arzt asked why the item was on the agenda.

Charles Ward said there had been a possibility of a rate hearing. Said that possible rate hearing would be discussed later in the meeting.

Arzt said it was a good topic as a refresher.

Item 9. Board actions between 1 July and 1 October 2018

<u>Date</u>	<u>Motion</u>		<u>Voting Tabulation</u>	<u>Action</u>
7/10/18	Approve FPC application SERENITY		Cronk (Y), Ward (Y), Harris (Y), Navarre (Y), Arzt (Y), Rueter (Y)	Approve application, exemption issued
7/13/18	Approve FPC application CONSTANCE		Cronk (Y), Ward (Y), Rueter (Y), Harris (Y)	Approve application, exemption issued
7/16/18	Approve FPC application MANGUSTA		Cronk (Y), Ward (Y), Arzt (Y), Harris (Y), Rueter (Y), Navarre (Y)	Approve application, exemption issued
8/7/18	Approve FPC application INCEPTION		Navarre (Y), Cronk (Y), Ward (Y), Rueter (Y), Harris (Y), Arzt (Y)	Approve application, exemption issued
8/17/18	Approve upgrade of Deputy Marine Pilot Mark Lundamo to 90,000 gross tons		Ward (Y), Cronk (Y), McLaughlin (Y), Rueter (Y), Navarre (Y), Harris (Y), Arzt (Y)	Approve application, upgrade license

Harris asked if Charles Ward was receiving mail votes in a timely manner.

Charles Ward said he understood board members were busy, especially when the bulk of FPC applications come in. Asked if board members could check their email as regularly as they can. Said FPC applications were automatically approved after 10 business days if there was an incomplete vote. Said with a deputy upgrade there was no time limit, but that upgrade applicant wanted to get to work on larger ships as soon as possible. Said he did not want to bomb email inboxes, but if a board member wasn't receiving anything from him, there was a good chance he had an incorrect email address.

Ron Ward said Charles Ward was very good about double checking to ensure all votes were in.

Arzt said pilots were sometimes completely out of connection for multiple business days. Said Charles Ward was very good about getting what he needed. Said the 10-business-day rule required an application to be granted if it was not acted upon.

Harris said he wanted to avoid a default application approval. Said he did not believe the board had missed any FPC applications in 2018.

Charles Ward said there had been no missed applications in 2018. Said as a point of awareness, if there was an application that would require discussion, that has to be done at a noticed meeting. Said if any board member saw an application they were unsure about, please let him know as soon as they can, because he had to publicly notice a teleconference and hold the teleconference within the 10-business-day period. Said it was five calendar days, minimum, to notice a meeting, and that it was more like six or seven, because the five-day-clock doesn't start to run until the notice appears in the Anchorage Daily News.

Harris said he had contacted Ron Ward after a meeting to ensure he understood what had happened in a discussion of an FPC. Said it was useful for the board to be aware of objections.

Arzt said if there was an objection, it should not be a reply all email. Said objections should be raised to the MPC.

Charles Ward said if three or more board members met, that was a meeting of the board, and meetings needed to be noticed.

Harris said an objection could be directed to the MPC.

Charles Ward agreed with Harris.

Item 10. Investigative report

None. Charles Ward said he would email it out once approved.

Item 11. Renewals

Parady said the Department of Commerce, Community and Economic Development has been working on online renewals for the past two years. Said they began with healthcare professions, especially nursing. Said he was happy with the program and Charles Ward's efforts.

Charles Ward provided a presentation on the new online renewal system. Said the system was an option for pilots and agents, but mailed applications would also be accepted. Said renewal information should not be sent via email.

An audience member asked what the earliest date a physical could be completed was.

Charles Ward said 60 days prior to the date of application.

Charles Ward said if there were any issues using the online renewal, please contact him and he would either address the issue, or make the proper personnel aware of the issue.

Harris said the system was impressive.

Harris asked if the individual vessel agents registered, or if it was the company.

Charles Ward said it was the company. Said the registration required the company to list its individual agents.

Ron Ward asked how many vessel agents there were.

Charles Ward said there were seven.

Arzt asked what the process was for new employees of vessel agents.

Charles Ward said the agent would send the MPC an email listing their new hires and removing employees that no longer work for them.

Item 12. Upgrade of Capt. Keith Austin to marine pilot

Charles Ward said the upgrade request included a letter from AMP regarding the dearth of traffic in Port Moller. Said Austin would not hit his three-year anniversary date until 28 October, and would not hit his one-year anniversary date until 19 October.

Ron Ward moved the board approve issuing a marine pilot license to Austin, with a waiver for Port Moller, on 28 October 2018. McLaughlin seconded.

Arzt asked to clarify Austin's one-year anniversary date of receiving his 90,000-gross-ton upgrade. Charles Ward said Austin had received his 90,000-gross-ton upgrade on 19 October 2017.

The motion passed unanimously.

Item 13. Pilot organization reports

SWAPA

Garay presented the report for SWAPA. Said SWAPA had 16 full pilots, all VLCC qualified. Said it had four deputy pilots: two at 90,000 gross tons and two at 50,000 gross tons. Said the two deputies at 50,000 gross tons should be upgrading to 65,000 gross tons very soon. Said Capt. Jordan Gould was in training, and was performing dockings and undockings. Said there were three apprentice pilots in SWAPA's training program: Daniel Butts, Chris Buckley and John Stewart. Said Stewart may be upgrading to a deputy track very soon. Said SWAPA's new pilot boat was scheduled to be delivered sometime in November. Said the new boat would improve pilot operations in the Port of Valdez.

AMP

Gillespie presented the report for AMP. Said AMP had eight full pilots and one deputy pilot, who the board had just approved an upgrade for. Said AMP had one VLCC-qualified pilot. Said Capts. Nick Garay and Wes Kuhns were in the training program and were completing the required pilotage trips. Said the trainees were moving forward at a quick pace. Said each trainee was ready to take the core examination and move into the hands-on portion of training, once approved by the AMP training committee. Said AMP was having a normal year, and all pilots should have enough days to renew their state licenses for the 2019-20 renewal period. Said AMP was actively engaged with the Army Corps of Engineers for the Dutch Harbor dredging project and the Port of Nome expansion project. Said AMP was active with the Aleutian Island Waterway Safety Committee.

Ron Ward asked if Gillespie anticipated Port Moller becoming a viable training port anytime soon.

Gillespie said at this time last year, he would have said no. Said there had been some interest this year from the fishing industry, but that never materialized into trips into the port. Said at this point he did not know.

Ron Ward asked if Port Moller became viable, would AMP require the pilots who have waivers to get trips and submit those trip records to the board.

Gillespie said he and Austin both had a waiver and, if Port Moller became a viable port, they would pursue trips there.

Harris asked what AMP's geographic service region was.

Gillespie said AMP's area was everything west of Kodiak, including the Alaska Peninsula, the Aleutian Islands, western Alaska, the Bering Strait, past Barrow and to the Canadian border. Said it was very possibly the largest pilotage region in the world. Said it was the largest pilotage region for the United States.

Harris asked about the map in the board packet that showed vessel traffic in Southeast. Asked if there was a similar map for western Alaska.

Charles Ward said if there was, he didn't have it.

Ron Ward said Marine Exchange of Alaska would have some of that data. Said they probably wouldn't be able to show the whole area.

Gillespie said Marine Exchange could show data from all locations in AMP's area, except for west of Adak.

Rueter said there were various risk assessment studies performed in western Alaska, and Marine Exchange had provided data for those studies. Said it might be interesting to have that data.

Several board members said it might be helpful to have the data on Marine Exchange's AIS locations.

Ron Ward said the maritime safety committees had that information on their websites. Said in Cook Inlet, the ships were identified by type of vessel.

Charles Ward said he thought Marine Exchange would be happy to provide the requested data.

Ron Ward asked if SWAPA had any pilots retiring.

Garay said Capts. Anthony Joslyn and Mike Stone either had or soon would retire. Said they would be missed. Introduced Wakefield and Michalski as the future of pilotage in Region 2.

Ron Ward said Joslyn had 40 years of service and had been featured in a recent edition of the *Kodiak Daily Mirror*. Said Stone had 36 years of service.

SEAPA

Didier presented the report for SEAPA.

Roster

Said Capt. Michael Clinkscales had passed away on 16 August 2018. Said Clinkscales, license No. MARM94, was first licensed 11 January 1984. Said Clinkscales had passed on his friendship and knowledge to many people, himself included, during his 34 years as a pilot. Said his friendship and wisdom would be missed. Said Clinkscales' family and friends remained in SEAPA's prayers. Said it was particularly difficult for many pilots, because Clinkscales' passing happened while they were working.

Harris and Cronk expressed their condolences.

Said SEAPA had 44 pilots, including two deputies. Said one deputy would upgrade to a full license in the spring, and the other was at 90,000 gross tons.

Said SEAPA had 17 trainees. Said it expected to have two trainees ready to take the local knowledge examination in the spring of 2019, with three more possible in mid-summer 2019. Said SEAPA would conduct another training selection 4-8 March 2019 at the Pacific Maritime Institute in Seattle. Said SEAPA currently had two training vacancies.

Operating rules

Said SEAPA had added the "do not dispatch" language of 12 AAC 56.310(c)(10) to its operating rules. Said it had originally been in the association's operating rules, then it wasn't, and now it has been put back in.

Harris asked if that was uniform across all regions.

Didier said he could not answer for other regions.

Ron Ward said it may not be in every organization's operating rules, but providing for due process following a "do not dispatch" request was a common practice.

Legislative audit

Said SEAPA has not been formally provided with the results of the board's legislative audit. Said during the audit, it seemed clear the auditor's concerns related to SEAPA's tracking notifications for pilots selected for random drug testing. Said SEAPA had addressed the problem, and solutions had been discussed with its drug testing vendor. Said it would regularly inquire if off-roster or out-of-town testing notifications have been properly documented.

2017-2018 rate publication

Said SEAPA had published its updated dry cargo, cruise and yacht rates. Said SEAPA had changed and republished its liquid cargo rate, which ASA had previously objected to. Said SEAPA wanted to withdraw the rate published in October of 2017. Said it would pursue negotiations with ASA regarding the rate it published in 2018. Said SEAPA was not pursuing a rate hearing, unless ASA objected to the new rate.

VLCS

Said two SEAPA pilots would begin gathering data aboard the *Royal Princess* in November, in order to vet the *Royal Princess* model. Said SEAPA would begin assessments of the *Ovation of the Seas* and the *Royal Princess* in December at the Alaska Vocational Technical Center (AVTEC) in Seward. Said Royal Caribbean had freely provided its model for the *Ovation of the Seas*. Said Royal Caribbean was fully supportive of VLCS cooperative project. Said SEAPA expected the project to take two weeks. Said the assessment team would consist of SEAPA pilots and Royal Caribbean representatives. Said the assessment team hoped to include representatives of other pilot associations, the board, CLAA, and the Captain of the Port of Juneau. Said SEAPA expected Princess Cruise Lines (PCL) to send representatives to participate.

Said obtaining a model for the *Royal Princess* from PCL remains difficult to obtain. Said Princess Cruise Lines is requiring SEAPA sign a non-disclosure agreement (NDA). Said SEAPA believed such an agreement, as presented by PCL, hinders the exchange of information relevant to a pilot's duties. Said the NDA would restrict the exchange of knowledge regarding the handling of the *Royal Princess* in Southeast Alaska waters.

Said SEAPA would also be conducting tractor-tug simulations at AVTEC. Said the project is meant to evaluate tractor tugs for VLCSEs and emergency response to guard infrastructure, waterways and the populations of coastal communities.

Said SEAPA pilots were scheduled for training at the Pacific Maritime Institute (PMI) in Seattle for the *Royal Princess* model in March of 2019. Said PCL had indicated it would provide a model to PMI for pilot training, but had yet to do so. Said PMI was working on behalf of pilots to obtain the model. Said PCL would again require an NDA, but it was unclear how the NDA would affect pilot training. Said PCL is considering putting a *Royal Princess* model at UAS-Ketchikan, but given other difficulties in obtaining information from PCL, this may not happen.

Harris asked if the board had role if a cruise line was being cautious about releasing critical information to pilots. Asked Charles Ward if the question was out of order.

Charles Ward said he didn't think the question was out of order, but he didn't know what the response might be.

Cronk said as in most situations, there are two sides to this story. Said he didn't know PCL's concerns. Said he hoped the matter could be resolved between the parties.

Ron Ward said he thought it would be reasonable to offer a venue at the next meeting for PCL to respond to this issue. Said the NDA is a big deal. Said the models were certainly proprietary, but the port information about the navigation and safety of VLCSes should not be proprietary. Said the NDA specifically states the information cannot be shared with the board.

Didier said there had been no issues with Norwegian Cruise Lines (NCL). Said NCL had even paid for half of the model. Said Royal Caribbean had also been very helpful. Said he felt the job of pilots was to facilitate commerce. Said ships are getting bigger and are presenting different challenges. Said SEAPA wanted to know what tools it needed to facilitate the commerce of VLCSes.

Artz said if SEAPA or any pilot association came before the board with a request for engagement, it was incumbent on the board to look further into the matter. Said it had happened in the past. Said if SEAPA believed this should be a board issue, then it should be one. Said getting information from PCL was important for the board.

Didier said SEAPA had a restrictive timeline. Said PCL knew that schedule, and would either partner or not, and SEAPA would need to know what the reasons were for not partnering.

Harris asked if there was no partnership, what would happen.

Didier said he would rather wait to have that discussion.

Ron Ward said it would make sense to be proactive and invite PCL to the table.

Didier said SEAPA had always had an excellent relationship with PCL. Said acquiring Carnival Cruise Lines had changed things. Said he had faith it would be worked out.

Ron Ward said it was not just a Region 1 issue. Said the board should also hear from the president of SWAPA, since the *Royal Princess* would also be in Region 2 in 2019.

Harris said this was an important issue. Said he lived in Juneau and there was always a group that looked to object to the cruise and tourism industry. Said the information previously provided by the *Bliss* was impressive, and showed VLCSes could operate safely in Alaska. Said the charge ultimately was to protect safety. Said he wanted to be sure the cruise industry was not caught in a problem.

Didier said Capt. Barry Olver was in charge of the VLCS committee. Said the process was open and transparent. Said that was how it was developed. Said there should be representatives from all interested parties at the January meeting.

Garay said there were similar discussions happening at SWAPA. Said he was a fan of open discussions. Said he was glad the board took the time to discuss the matter.

SEAPAC

Said the Captain of the Port of Juneau will drop the previous draft Courses of Action (COA). Said there was a SEAPAC meeting currently scheduled for 18 October in Juneau. Said the Captain of the Port of Juneau intended to work to establish a partnership to address pilotage concerns moving forward. Said the Captain of the Port of Juneau indicated interest in working with pilots on issues

affecting safe navigation in the region. Said we wanted to make clear he was not speaking for the Captain of the Port of Juneau.

McLaughlin said the result of the federal pilotage issue was a great result.

Didier said SEAPA was fond of the new Captain of the Port of Juneau, Capt. Steve White.

Didier said Flury had been appointed vice president of the American Pilots' Association's (APA) West Coast region, effective January 2019.

Harris said he noticed in the minutes that there was supposed to be outreach from Commissioner Mike Navarre to Cmdr. Nick Neely and others.

Charles Ward said that outreach had happened, and then the matter had been dropped.

Ron Ward said there needed to be an agenda item for the next meeting to bring the VLCS matter back up.

Charles Ward said he could add the item to the agenda.

Item 15. Other business – next meeting

Ron Ward moved the next meeting be at 0900 on 17 January 2019 in Anchorage. Arzt seconded The motion passed unanimously.

Charles Ward asked about the room the current meeting was being held in. There was general agreement the room was a good location for the meeting.

Rueter asked about the April 2019 meeting.

Didier said the APA West Coast meeting would be in Ketchikan, but SEAPA would wait to set the date of that depending on what the board wanted to do.

Ron Ward asked if there were tentative dates for the APA meeting.

There was general agreement the meeting should be in the first two weeks of April, so not to interfere with cruise season.

Arzt proposed 10 April 2019 in Ketchikan.

Charles Ward asked Didier to send information about the APA meeting in Ketchikan.

Harris asked if there was any legislation the board needed to be aware of.

Charles Ward said the board needed to keep track of the board's renewal bill. Said it would be good for the board to have 1-2 people available on the phone to answer questions.

McLaughlin said a short flight from Ketchikan to Juneau might solve some of the issues.

Didier said the APA meeting would be either on 8-9 April or 11-12 April.

Charles Ward asked if SEAPA had room to hold a meeting.

Didier said the room at SEAPA was small.

Several members suggested the board meeting be held at the Cape Fox.

Rueter said part of the payments and fees paid by pilots and agents take into consideration the costs of the board. Rueter said he hoped to impress on the MPC that there was funding provided for board meetings.

Charles Ward said he was not the one the board needed to impress, but he would try to do the impressing as best he could.

Item 16. Executive session

Cronk moved the board enter executive session, to receive advice from its attorney on matters of law. McLaughlin seconded. There was no discussion. The motion passed unanimously.

Off record at 1120

Back on record at 1158

Parady was not on the line when the board resumed.

Rueter moved the board leave executive session. Ron Ward seconded. There was no discussion. The motion passed unanimously.

Item 17. Other business – Legislative audit recommendations

Ron Ward reintroduced the Legislative audit. Said Navarre had asked Harris to respond on behalf of the board, but had then responded himself. Said he had not seen the board's response until today. Said the board's response made the tabled motion moot. Said the response indicated the board agreed with the auditors' recommendation regarding FPC documentation.

Charles Ward said that was true as of right now. Said the board can always change its mind.

Ron Ward said he didn't know about the letter. Asked if the board was going to wait until January to take the matter back up.

Harris said the tabled motion would need to be brought back up.

Ron Ward said he thought the board's response letter was germane to the motion. Said things that are tabled often just go away.

Charles Ward said a lot of the audience members had left prior to the board's executive session, and had not returned.

Ron Ward said those members were not on the board. Said the only board member that was no longer in attendance was Parady. Said he was uncomfortable with there having been comment from non-board members during the meeting. Said there was a public comment session for a reason. Said inviting audience members to participate in the board meeting was not common practice.

Cronk said that in his past tenure on the board, comment from public members had been common practice.

Ron Ward said it could be, if the board asked for comment on a specific issue. Said people in the audience raising their hands was not normal.

Harris said that he invited public comment, but also stated he invited objection from the board at that time.

Arzt said the comments from the audience had gotten out of hand in the past. Ron Ward agreed.

Ron Ward said his concern was not specific to this meeting or Harris as chairperson. Said it was something the board had to be careful with.

Arzt asked why there are two letters dated 2 August.

Rueter said one was written by Navarre as commissioner, and the other was written by Navarre as chairman of the board.

Ron Ward asked why the board had not seen the letters earlier.

Charles Ward said the board had discussed the response issue previously. Said Navarre would normally make the response on behalf of the department, and, as board chair, on behalf of the board. Said the board had requested Harris respond on behalf of the board because of that potential conflict. Said he had told Legislative Audit of the board's desire to have Harris coordinate its response. Said Legislative Audit required the response to come from the board chair.

Ron Ward said the same letter had been written twice.

Arzt said the letters were a little bit different. Said one is from Navarre as commissioner, and one as chairman of the board. Said the points were the same, but had been arranged differently. Said it had hamstrung the board.

Ron Ward said the motion was to ask the FPCs to attest to the documents on board. Said that attestation could come from the agent if the FPC wasn't taking on a pilot.

Arzt said the letter said the division would require the documents be on board the FPC prior to processing the application. Said that didn't allow a pilot to bring the documents out.

Cronk said the yacht packet was not something the pilot took out anyway, because it was enormous. Said the pilot does not bring the publications and charts to the vessel said the pilot brings local knowledge of the area and provides an overview. Said it required the FPCs to engage in standard voyage planning. Said a captain should not go into a port without having *Coast Pilots*, charts and navigation in line. Said if you don't have them, you do whatever you need to do to get them. Said if need be, the agent could fax the chart to the vessel in pieces, and the captain could tape them together. Said that wasn't really necessary anymore, since the charts could be downloaded.

Rueter said the letter clearly contradicts the statute as written.

Ron Ward said he didn't believe it did.

Rueter said for yachts between 65 feet and 125 feet in length overall (LOA), the statute required the vessel agent to provide the yacht packet at the first port of call.

Ron Ward said the yacht navigation packet was not the same as the required charts and navigational documents.

Rueter said the packet contained navigational aids and materials.

Ron Ward said the packet had information, but not required information, except within the statute. Said the navigational documents must be on the vessel prior to entering. Said if the U.S. Coast Guard boarded the FPC, it would ask to see those documents.

McLaughlin asked if the requirement really hamstrung the FPCs if they were required to have the documents anyway.

Cronk said his issue was with the language "prior to processing the application." Said some yachts will apply 4-5 months in advance while far away. Said they probably could download these documents online. Said the question was how do you verify that.

Ron Ward said on the application, they should be required to attest they have the documents. Said the agents would be out of the loop.

Harris asked if it was really that difficult to download the required navigational information, given the FPCs were already submitting a significant amount of documentation to apply for an exemption.

Arzt asked Charles Ward what items are generally not complete when the application is submitted.

Charles Ward said it was typically the *Coast Pilots*, the yacht packet and the local charts.

Arzt said all those items could be downloaded. Said the agent doesn't need to print off the yacht packet and provide it in physical form

Cronk said it was usually given on a jump drive.

Arzt said those components could be obtained at every port. Said obtaining the required documents at the time of application was not burdensome to any vessel. Asked why anything had to be delivered by the pilot or the agent.

Ron Ward said the regulation stated the operator of the FPC must have the required navigational items on board.

Arzt said the board was currently giving the FPCs an out that they didn't need to provide.

Ron Ward said the application language needed to be modified to require an attestation the required documents were on board

Charles Ward said the application already had such language. Said up until this point, the board had accepted applications that stated the documents would be provided by the agent.

Harris said adding ways to accept applications created extra bureaucracy. Said a black-and-white rule was better.

Arzt asked Cronk and Rueter if there was any required document that couldn't be obtained in advance.

Charles Ward said that the documents typically not on board at the time of application were the *Coast Pilots* and the local charts.

Ron Ward said he had seen the *Coast Pilot* listed on several applications as an item that would be obtained by the FPC from the agent.

Arzt said he didn't think it was a burden to have the application be complete before the board acted on it.

Cronk said he didn't think the application needed any changes. Said the board was simply directing the MPC not to put the application before the board until it was complete.

Charles Ward said he would inform applicants that their application is incomplete unless all required documentation was verified as on board.

Rueter said FPC captains would often contact an agent three or more months out and ask for assistance. Said he understood it was ultimately the master that signs the application, but a third party was completing the application process. Said there could be instances where an FPC was being diligent and wanted to receive all the required documentation, but couldn't due to limited internet.

Ron Ward said the board's duty was clear. Said regulation and statute laid out the requirements, and the board should not process the application until it met all requirements. Said an inability of an FPC to verify it meets all requirements was not the board's problem.

McLaughlin said Alaska was probably not the only state or country to have similar requirements.

Ron Ward agreed with McLaughlin.

Arzt said the board was not requiring an unreasonable amount of communication equipment.

Cronk said there are times in transit where certain satellite services do not allow large downloads. Said there may be cases where this requirement will be difficult to meet, but those were the exception, not the rule. Said many FPCs were not getting their applications submitted well in advance.

Ron Ward said that was unfortunate. Said there are specific timelines.

Arzt said an agent could transmit the required parts of the *Coast Pilot* to the FPC, without having to transmit the entire document.

Cronk said the requirement was to have the entire *Coast Pilot* on board.

Arzt said the requirement was to have the *Coast Pilot* for the given area.

Ron Ward said the FPC always had the option of taking on a pilot for its initial entry.

McLaughlin agreed with Ron Ward.

Cronk said the issue with that was the 30-day rule.

Charles Ward said he would need guidance from the board. Said the current practice is to start the 30-day clock when the division receives a substantially complete application. Said that did not start the board's clock.

Arzt said he though piecemeal applications created an additional burden. Asked if the board had a problem with charts and *Coast Pilot* sections for the areas to be transited.

McLaughlin said the board had just outlined the wiggle room.

Ron Ward said the audit was a wake-up call to the board. Said the board shouldn't approve anything that doesn't meet the statutes or regulations.

Harris asked if, in the worst-case scenario was if there was an accident, and it was determined the required navigational information wasn't on board, then who would be responsible.

Cronk said the 30-day clock was a tight one, because FPC owners would often decide to come to Alaska on short notice.

Charles Ward said the clock was 30 calendar days from the time of application until first entry, and 10 business days from the time of receiving a complete application until the board had to vote.

Arzt asked Cronk and Rueter if it would be difficult to submit a complete application if the FPC could not download a complete publication, but could download the relevant parts of that application.

Rueter said the FPC applicant must state on the application where it plans to operate, and the applicant had to attest to the fact they had all the required documentation on board.

Cronk said he thought agents could work with that concept.

Arzt said if that was the process, then there should be follow up to be sure the entire publication is on board upon arrival.

Charles Ward said the owner or the master of the FPC would attest to the required documentation being on board.

Rueter said there weren't going to be spot checks, because there weren't the resources for it. Said a second attestation was redundant, because the FPC had already attested to having the documentation on board when it applies.

McLaughlin said the board was committed by the letters, but the board change its mind.

Arzt said he was concerned that applications were coming to the board without basic requirements being verified.

Cronk said the applications should be accurate and complete when they come to the board.

Harris said there were letters from the department and the board chair making a commitment to do certain things.

Ron Ward said he would be willing to withdraw his motion if the board endorses the letters from the department and the board chair. Arzt, as seconder, said he concurred.

Arzt said the board should endorse the letters, then look to create another option at the next board meeting.

Cronk said it was similar to leaving the motion on the table. There was general agreement to his statement.

Arzt asked if there needed to be a vote to take Ron Ward's initial motion off the table, since he was withdrawing it.

Charles Ward said there needed to be a vote to take it off the table.

Ron Ward said it didn't seem right the motion couldn't be taken off the table simply because the board member who moved to table it was no longer present.

Charles Ward said there was a favorable vote to table the motion.

Ron Ward said there could be another vote to untable it, or withdraw it.

McLaughlin said there would need to be a vote to untable the motion first.

Harris said he felt uncomfortable with another vote, given the board had a fairly extensive discussion on the matter earlier, with members of the public present.

Cronk said he was inclined to leave the matter as is. Said the public had an expectation that the matter was tabled for the time being.

Harris said the matter could be placed on the board's agenda in January.

Ron Ward said the public being gone was like Parady being gone. Said it wasn't the board's problem that they had left.

Arzt agreed with Ron Ward.

Ron Ward said he didn't have an issue with allowing input from the public or all board members, but it wasn't up to the board to be sure everyone stayed.

Ron Ward said that, though he wouldn't fall on his sword, he did feel strongly about the matter. Said when there was a recommendation from the auditors, the board should look at it seriously. Said the board should support Navarre, and that he disagreed with the matter staying on the table.

Harris said there was an item that was tabled, but the board had new information that was not previously available. Said the board can act to say it supports Navarre's letters.

Charles Ward said the tabled motion could be brought back up in January.

Arzt asked why the board had to vote to support letters that had already been written.

Ron Ward said he understood his motion to be moot, since the original motion remained on the table.

Arzt asked when Navarre took a leave of absence. Asked what would happen if Parady didn't attend the board meeting in January.

McLaughlin said the matter would be on the January agenda.

Harris said he would entertain a motion that accepts Navarre's letters.

Cronk and Arzt said they didn't believe there needed to be a motion to do that.

The motion passed 4-2. Rueter and Cronk voted against the motion.

There being no further business, McLaughlin moved to adjourn. There was an unclear second seconded. There was no discussion. The motion passed unanimously.

The meeting adjourned at 1230.

Respectfully submitted:



Charles Ward
Marine Pilot Coordinator

Date: 1/24/19



Richard Harris
Chairperson

Date: 1/24/19