

Briefing for PWSRCAC Board of Directors – January 2023

ACTION ITEM

Sponsor: Board Governance Committee (BGC),
Donna Schantz, KJ Crawford, and
Brooke Taylor

Project number and name or topic: Director Appointment / Temporary
Recreation Seat

1. **Description of agenda item:** The purpose of this agenda item is to fill a new Temporary Recreation Seat until a full Request for Qualifications (RFQ) process can be conducted for the Board to consider seating a permanent entity to provide representation for regional recreation interests. PWSRCAC staff have received a letter of request from Jim Herbert, stating his willingness to fill the role should the Board be in support of him doing so.

Mr. Herbert meets the basic requirements the Board is looking for in an acceptable candidate for the temporary recreation seat per direction given to staff at the December 20, 2022 special Board meeting. He resides within the EVOS region (Homer) and is involved in several recreation groups and activities, including serving on the Steering Committee for the Kachemak Bay Shorebird Festival, membership in the Kachemak Bay Birder Club and Friends of Alaska National Wildlife Refuges, and as a small boat owner who spends time on Resurrection Bay and Kachemak Bay fishing, sightseeing, and birdwatching. As a technical committee chair for the Council, he already has extensive knowledge and background on the organization’s work and has a (non-voting) seat at the table during Board meetings. When Mr. Herbert lived in Seward 10 years ago, he represented the City of Seward on the Board and served as Treasurer for the organization.

To accomplish this action, the Board is being asked to:

- Waive Administrative Procedure 16-01 (attachment b) “Consideration of an Entity for the PWSRCAC Board of Directors” for the Temporary Recreation Seat,
- Approve the proposed changes to PWSRCAC Bylaws for the temporary seating of Jim Herbert (attachment a), and
- Approve Jim Herbert to fill the Temporary Recreation Seat with a term set to expire at the January 2024 Board meeting or at the completion of the RFQ process, whichever comes first.

Changes to the bylaws, including adding a new Board member to the list of Class I members, require a 2/3 vote to approve by the Board. Following the January 2023 Board meeting, a full RFQ process solicitation will be conducted through BGC to potentially fill a permanent recreation seat.

| Member Organizations | Current Term | Director Nominated |
|---------------------------|--|--------------------|
| Temporary Recreation Seat | Term set to expire January 2024 or at the conclusion of the RFQ process, whichever comes first | Jim Herbert |

2. **Why is this item important to PWSRCAC:** An issue has arisen around our recertification with the U.S. Coast Guard (USCG) and seating a temporary representative for

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recreation interests will resolve the situation, while also giving the Board time to discuss a permanent solution and conduct a RFQ process through BGC.

The Council is currently in the midst of our annual recertification process with USCG, per Sec. 5002 (o) of the Oil Pollution Act of 1990 (OPA 90). Every third year, of which this is one, it is considered a “heavy” year, which requires a full application (versus update letter), followed by a public comment period. As our application (submitted in November 2022) has worked its way through the USCG’s recertification process, we have received word from the lieutenant responsible for the legal review that our status is currently out of compliance with statute since we do not have a designated recreation seat on our Board.

The USCG has proceeded with our application process by posting it to the Federal Register (Dec. 22, 2022) and the deadline for public comments is set for Feb. 8, 2023. **At the same time, they are requesting that we provide further information on why we have not filled this seat and/or for the Board to fill the seat before the recertification officially takes place (shortly after the public comment period closes and before the Admiral issues the recertification).** If we do not address this issue, it could lead to a conditional recertification from USCG or possibly (though unlikely) failure to be recertified.

There is not enough time before our recertification is set to take place to accomplish a full RFQ as 1) after being notified of this issue staff needed more direction from the Board on how to address it; 2) staff will need to vet the draft RFQ through BGC; and 3) it will take at least a few months to conduct the RFQ posting, evaluate the applications through BGC, and allow the Board to consider any possible candidates recommended by BGC.

While OPA 90 mandates RCACs for Prince William Sound and Cook Inlet, the Council’s status as the alternative voluntary group filling that role is contingent upon annual recertification through the USCG. This is separate from our contract with Alyeska.

In addition to the above, confirmations of individuals to the Board of Directors are mandated by the PWSRCAC Bylaws.

3. **Previous actions taken by the Board on this item:**

| <u>Meeting</u> | <u>Date</u> | <u>Action</u> |
|----------------|-------------|---|
| Board | 1/22/15 | Accepted resignation of the Alaska Wilderness, Recreation & Tourism Association and amended Section 2.2.1 of the PWSRCAC Bylaws to remove the name of AWRTA as a Class I member of the Council. |
| Board | 1/22/15 | Postponed further discussion and action on approving an amendment to Section 2.2.1 of the PWSRCAC Bylaws to add Alaska Travel Industry Association as a Class I member of the PWSRCAC. |
| Board | 1/22/15 | Invited Prince William Sound Economic Development District to apply for Class II membership in the PWSRCAC. |
| XCOM | 2/9/15 | Recommended the PWSRCAC Board of Directors seat Alaska Travel Industry Association at the May 2015 meeting as a member, representing tourism and recreation public. |
| Board | 12/20/22 | Direct staff to contact individual(s) within the EVOS region to temporarily fill the recreation seat, with the intent to temporarily waive Administrative Procedure 16-01 and seat the representative selected at the January 2023 Board meeting, after which a full RFP process will be conducted. |

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4. **Summary of policy, issues, support, or opposition:** The Council previously had a Board seat for recreation, last filled by the Alaska Wilderness, Recreation and Tourism Association. Cathy Hart represented that entity on our Board until they closed in 2014. At that time, the Council received two applications from groups expressing interest in filling seats on our Board: Alaska Travel Industry Association and the Prince William Sound Economic Development District. After consideration by the Board at three different meetings, neither was approved (see attachment d for excerpts of the 2015 meeting minutes that includes the discussion on these items).

In the years since, we have provided justification to USCG during both heavy and light recertification cycles noting current Board members that represent recreation interests in addition to their designated member entity, as well as noting that the governmental interests on our Board have a recreation interest as well. During all recertifications since 2014, this was found to be sufficient, until now.

As is noted in the meeting minutes from 2015, it has also been discussed in the past that while we adhere to OPA 90 as closely as possible, it is PWSRCAC legal counsel's opinion that we are not held to all OPA 90 requirements as we fill the alternative voluntary group category under the Act. This point has been brought to USCG's attention, though currently the lieutenant in charge of our application's legal review interprets this differently, and expressed willingness to review our legal opinion. Staff has worked with our legal counsel to provide that opinion to USCG in the interest of clarity.

Given the USCG directive and after discussing the situation with legal counsel and the Board, **the following path forward has been proposed:** The Board is asked to waive Administrative Procedure 16-01 (attachment b), make the requested changes to PWSRCAC Bylaws for the temporary seating of Jim Herbert (attachment a), and approve Jim Herbert to fill the Temporary Recreation Seat. The Temporary Recreation Seat will be in place until the January 2024 Board meeting or the completion of the RFQ process, whichever comes first.

Changes to PWSRCAC Bylaws, including adding a new Board member to the list of Class I members, require a 2/3 vote to approve by the Board. Following the January Board meeting, a full RFQ process solicitation will be conducted through BGC to potentially fill a permanent recreation seat. After the January meeting, the goal would be to complete the full RFQ process and seat a new recreation member before the next recertification process starts in November 2023.

Staff are currently building a list of groups in the EVOS region to distribute the RFQ to and welcome input from Board members on any entities that should be included in that outreach.

The Board may also determine at the end of the RFQ process that no applicants are a fit for the organization, at which point the temporary seating would still end and we would submit our process to the USCG to show due diligence in attempting to fulfill this OPA 90 mandate.

The actions proposed here would fulfill the immediate directive from the USCG, giving the greatest chance of full recertification without conditions, and allow more ample time to conduct a full solicitation to fill the seat following procedures outlined in Administrative Procedure 16-01.

OPA 90, Sec. 5002 excerpts involved with this situation:

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- (d) Regional Citizens' Advisory Councils, (2) Membership, (A) Voting Members, "(v) Recreational organizations the members of which reside in the vicinity of the terminal facilities."
- (m) Definitions, "(3) 'vicinity of the terminal facilities' means that geographic area surrounding the environment of terminal facilities which is directly affected or may be directly affected by the operation of the terminal facilities;"
- "(o) Alternative Voluntary Advisory Group in Lieu of Council - The requirements of subsections (c) through (l), as such subsections apply respectively to the Prince William Sound Program and the Cook Inlet Program, are deemed to have been satisfied so long as the following conditions are met: (1) Prince William Sound.- With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on the date of enactment of this section, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by subsection (k)(2)(A) and the President annually certifies that the Committee or organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound."

5. **Committee Recommendation:** The Board Governance Committee passed a motion at their meeting on January 17, 2023, to recommend the Board pass all actions outlined in this briefing sheet (temporary waiver of Administrative Procedure 16-01, approval of bylaws amendments, and confirming of Jim Herbert to the Temporary Recreation Seat).

6. **Relationship to LRP and Budget:** None.

7. **Action Requested of the Board of Directors:** The deadline given by the USCG to address this issue is before the recertification officially takes place (Admiral signs recertification). This is currently anticipated to be shortly after the public comment period closes on February 8, 2023.

As was previously stated, the proposed actions would fulfill the immediate directive from the USCG, giving the greatest chance of full recertification without conditions. It would also allow more ample time after the January Board meeting and recertification to conduct Board discussions and a full RFQ solicitation to consider permanently filling a recreation seat following procedures outlined in Administrative Procedure 16-01.

Proposed actions (A-D):

- A. Waive Administrative Procedure 16-01 "Consideration of an Entity for the PWSRCAC Board of Directors" for the Temporary Recreation Seat.
- B. Approve the proposed amendment to section 2.2.1 of the PWSRCAC Bylaws to add "Temporary Recreation Seat" to the list of Class I Membership.
- C. Approve the proposed amendment to section 3.2 of the PWSRCAC Bylaws to add the following language: "The Board of Directors may appoint an entity or individual to serve as a Class I or Class II member on a temporary basis, on terms and conditions as may be determined by the Board, by action of the Board as provided in this section."
- D. Confirm the appointment of Jim Herbert to fill the Temporary Recreation Seat as a Class I member with a term set to expire at the January 2024 Board meeting or at the completion of the Request For Qualifications process, whichever comes first.

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8. **Alternatives:** None.
9. **Attachments:**
 - A. Proposed amendments to sections 2.2.1 and 3.2 of the PWSRCAC Bylaws
 - B. PWSRCAC Administrative Procedure 16-01: "Consideration of an Entity for the PWSRCAC Board of Directors"
 - C. Letter of request for consideration from Jim Herbert
 - D. Excerpts from 2015 PWSRCAC Board meeting minutes
 - E. Legal opinion from Levesque Law Group, LLC: "2023-01-12 SIGNED Memorandum re PWSRCAC is an Alternative Voluntary Advisory Group"

Note: Proposed new text in red.

**Proposed Amendments to PWSRCAC Bylaws
Section 2.2.1 and Section 3.2**

2.2 Membership.

2.2.1 Class I Membership. The following entities shall be Class I members of the corporation:

Alaska State Chamber of Commerce
Cordova District Fishermen United
Chugach Alaska Corporation
City of Cordova
City of Homer
City of Kodiak
City of Seldovia
City of Seward
City of Valdez
City of Whittier
Kenai Peninsula Borough
Kodiak Village Mayors Association
Kodiak Island Borough
Prince William Sound Aquaculture Corporation
Community of Chenega
Community of Tatitlek
Oil Spill Region Environmental Coalition
Port Graham Corporation
Temporary Recreation Seat

SECTION 3. BOARD OF DIRECTORS

3.1 General Powers. The affairs of the corporation shall be managed by a Board of Directors.

3.2 Number. The Board shall consist of the number of Directors equal to the number of Class I members of the corporation plus one. The number of Directors may be changed from time to time by amendment to these Bylaws, provided that no decrease in the number shall reduce the number of Directors to less than three or have the effect of shortening the term of any incumbent Director. **The Board of Directors may appoint an entity or individual to serve as a Class I or Class II member on a temporary basis, on terms and conditions as may be determined by the Board, by action of the Board as provided in this section.**

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PWSRCAC Administrative Procedure

16-01

Consideration of an Entity for the PWSRCAC Board of Directors

Approved by the Board - 1/22/2016

This procedure establishes the process to help evaluate candidate entities for inclusion as Class I voting members on the PWSRCAC Board of Directors (see OPA90 sec 5002 (d) and Alyeska Contract section 3.2.b (2)). Entities that meet criteria of OPA 90 and the contract with Alyeska mentioned above and would support and enhance the Council's achievement of duties outlined in OPA 90 section (d)(6)(A-G) may be considered for membership. Because the PWSRCAC is a regional advisory body representing citizens and communities in the Exxon Valdez oil spill region (EVOS), preference will be given to entities that are headquartered, or operate wholly within, the EVOS region.

To assist the Board in making a determination for an additional Class I voting member, an entity should provide the following information:

- A letter outlining reasons the entity believes its inclusion on the board of directors will help the Council achieve OPA90 and Alyeska contract criteria for membership;
- A statement to identify a segment of the oil spill region which is either not represented or under represented;
- Details about the entity's membership and if appropriate, how its board operates;
- A copy of minutes from board meetings, a resolution, or other document of the entity showing general discussion of the desire to be included on the PWSRCAC board, and overall board consensus; and
- In the case of a larger entity (composed of a number of smaller subgroups), a statement, resolution, or letter from the subgroups showing willingness to have the larger entity represent them on the PWSRCAC board.

When the above documents are received, the matter will be first taken up with the Board Governance Committee as to the merits of the request and whether the entity fills a need for the Council within the EVOS region. The Board Governance Committee will forward to the Executive Committee all materials received in support of the request and its recommendation on the membership application. The Executive Committee will review the entity information and make a recommendation of approval or denial as a board member to the full board at the next regularly scheduled board meeting. (Since the addition of a board entity would change the PWSRCAC bylaws per section 7 of those bylaws, a two-thirds affirmative vote is required.)

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JAMES HERBERT
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To the PWSRCAC Board of Directors:

As chair of the Prince William Sound Regional Citizens' Advisory Council's (PWSRCAC) Oil Spill Prevention and Response Committee, I was in attendance at the Board's special meeting on Dec. 20, 2022, when the issue raised by the U.S. Coast Guard regarding the Council's lack of a dedicated recreation seat on the Board of Directors was discussed. In the interest of supporting the directive given to staff by the Board at that meeting - to contact individual(s) within the EVOS region to temporarily fill a recreation seat until a complete Request for Proposal (RFP) process can be conducted – I would like to volunteer my name for consideration in filling the temporary recreation seat.

I believe I meet the basic requirements the Board is looking for in an acceptable candidate for the temporary recreation seat. I reside within the EVOS region (Homer) and am involved in several recreation groups and activities, including serving on the Steering Committee for the Kachemak Bay Shorebird Festival, membership in the Kachemak Bay Birder Club and Friends of Alaska National Wildlife Refuges, and as a small boat owner who spends time on Resurrection Bay and Kachemak Bay fishing, sightseeing, and birdwatching. As a technical committee chair for the Council, I already have extensive knowledge and background on the organization's work and have a (non-voting) seat at the table during Board meetings. When I lived in Seward 10 years ago, I represented the City of Seward on the Board and was Treasurer for the organization.

If the Board believes I would be an acceptable choice for the temporary recreation seat, I would be willing to fill that role until the January 2024 Board meeting or the completion of the full RFP process, whichever occurs first. Thank you for your consideration.

Sincerely,

Jim Herbert

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Excerpts from January 2015 through May 2015 Board and Executive Committee Meeting Minutes

From January 22, 2015 Board Meeting (3 agenda items)

- Briefing 1 of 3:** [RESIGNATION OF AWRTA AS PWSRCAC CLASS 1 MEMBER \(4-2\)](#)
- [4-02--Attachment Resignation Letter From AWRTA](#)

Administrative Deputy Director Steve Rothchild briefed the Board on the resignation of AWRTA as a Class I member of the Council and the corresponding bylaw amendment that was necessitated by that member's resignation. A briefing sheet was in the meeting notebook as Item 4-2 which outlined the disbanding of AWRTA as an entity and its resignation from the Board. Rothchild explained that the action required of the Board was to amend its Bylaws to remove AWRTA as a Class I member of the Council.

B. Johnson **moved to** accept the resignation of the Alaska Wilderness Recreation & Tourism Association from the Board of Directors and to **amend Section 2.2.1 of the PWSRCAC Bylaws** to remove the name of AWRTA as a Class I member of the Council.
Miller **seconded**.

Executive Director Swanson noted for the record that the Board Governance Committee met to consider this resignation which was accepted with regret.

A roll call was taken, as follows:

| | |
|------------|--------------------|
| Angaiak | Yes. |
| Bauer | Yes. |
| Beedle | Yes. |
| Burch | Yes. |
| Donaldson | Yes. |
| Duffy | Yes. |
| Faulkner | Yes. |
| Herbert | Yes. |
| B. Johnson | Yes. |
| J. Johnson | Yes. |
| Korbe | Yes. |
| LaBelle | (Absent for vote.) |
| Lewis | Yes. |
| Miller | Yes. |
| Moore | Yes. |
| Shavelson | Yes. |
| Totemoff | Yes. |

The bylaw amendment passed unanimously (16 in favor, none opposed – 2/3rds vote).

Briefing 2 of 3: [REQUEST BY ATIA FOR CLASS I MEMBERSHIP \(4-3\)](#)

- [4-03--Attachment A--Alaska Travel Industry Association Letter And Resolution Requesting Membership](#)
- [4-03--Attachment B--Excerpts From OPA 90 On Membership](#)
- [4-03--Attachment C--Excerpts From The Contract With Alyeska Regarding Membership](#)

Administrative Deputy Director Steve Rothchild, on behalf of the Board Governance Committee, presented a request from Alaska Travel Industry Association (ATIA) to join the Council as a Class I member. Rothchild reported that the Board Governance Committee had discussed this request and recommended that ATIA's request be approved.

President Bauer announced ahead of the discussion that the vote on this issue would be by ballot.

Legal counsel Joe Levesque gave an overview of PWSRCAC's designation and role as an alternative voluntary advisory council under OPA90, its contract with Alyeska, and the PWSRCAC Bylaws as they relate to the Council's member organizations. He noted that the Council is governed by its contract with Alyeska and its own Bylaws, not OPA90. He noted that while OPA90 requires a "recreational member," the Council's contract with Alyeska does not, nor do PWSRCAC's Bylaws specify such a designated seat. He read the entities to be included in PWSRCAC as mandated in its contract with Alyeska: cities and boroughs, Chugach Alaska Corporation, a commercial fishing organization, an environmental organization, and an aquaculture organization. He advised that if these members are not part of the PWSRCAC organization, then it could trigger a termination clause under the Alyeska contract. He emphasized that even though the organization is an alternate group under OPA90, it is not mandated to follow OPA90 even though it goes out of its way to do so. He advised that when considering adding new members, the Council should look at whether they fit into the Board and fill the purpose that the Council wants.

Rothchild noted that the recommendation from the committee to approve ATIA's membership was not unanimous.

Bauer invited Sarah Leonard, President and CEO of ATIA, to speak to the Board.

Leonard stated that ATIA is made up of 700 tourism-associated businesses, mostly small to medium-sized businesses. There are 24 board members who are elected by ATIA members. The board seats are defined by region first, as well as at-large seats, and is made up of cruise ship representatives, as well as small bed and breakfast owner representatives.

Herbert commented that ATIA's focus being tourism throughout the entire state of Alaska, and PWSRCAC's being Prince William Sound, he would recommend that an ATIA

representative on the PWSRCAC Board be someone who is familiar with Prince William Sound. Leonard stated that the ATIA board had discussed that their representative would be someone knowledgeable about the area or who operated their business in the area so they would bring their expertise or experience to the PWSRCAC Board.

Herbert followed up with a question about ATIA's stated mission being more about economic growth and value than of preserving a healthy Prince William Sound. Leonard countered that as ATIA has shifted in recent years there is more focus on sustainability of the tourism industry and there is more of a dialogue around sustainability issues.

Steve Lewis noted that PWSRCAC works for improvements in the environmental operation of large ships in Prince William Sound, and that cruise ships do not have a good record in this regard. He said he would be concerned that ATIA's cruise ship interests could pose a conflict in PWSRCAC efforts and its mission on these issues.

Levesque added for clarification that Section 2.4.1 of the Bylaws states that the Chamber of Commerce shall represent the locally based tourism industry. He pointed out that the question the Board should ask itself is whether it is for tourism or is it for recreation.

Swanson read the section of OPA90 that applies to the PWSRCAC's evaluation criteria by the USCG for recertification: "that the president annually certifies the committee or organization fosters the general goals and purposes of this [citizens' advisory council] section and is broadly representative of the communities and interests in the vicinity of the terminal and facilities in Prince William Sound." He asked the Board to consider whether adding ATIA would enhance the Council's ability to broadly represent those communities and those interests, as OPA90 directs the Council to do.

Leonard explained the funding of their organization. She stated that their main revenue comes from a contract with the State of Alaska that helps market Alaska to visitors. Other revenue comes from its membership dues and convention revenue.

Bauer pointed out that an ATIA representative on the PWSRCAC Board would have to be a resident of the State of Alaska in order to meet PWSRCAC's Bylaws requiring the member representatives to be Alaska residents, as defined in the Bylaws.

Miller **moved** to approve an amendment to Section 2.2.1 of the PWSRCAC Bylaws to add Alaska Travel Industry Association as a Class I member of the PWSRCAC. Herbert **seconded**.

Discussion continued.

Herbert said it was a significant move for the Council to add or remove members, as it is the participation of members that make PWSRCAC effective as an organization. He said he

appreciated Leonard's answering the questions, but asked all Board members to give it the due consideration it deserves before making their decision.

Cathy Hart (former AWRTA representative on the Board) explained how she supported ATIA's membership application.

Sarah Leonard thanked the Board for its time and consideration.

Faulkner **moved to postpone** further discussion and action to the May Board meeting. Shavelson **seconded**. The **motion passed** (B. Johnson, Miller, Lewis, and Bauer opposed).

Briefing 3 of 3: **4-4 PWSEDD REQUEST FOR CLASS I MEMBERSHIP**

- [4-04--Attachment A--PWSEDD Letter And Resolution Requesting Membership](#)

Administrative Deputy Director Rothchild, on behalf of the Board Governance Committee, next presented the application of Prince William Sound Economic Development District (PWSEDD) for Class I membership to PWSRCAC.

Rothchild explained that the committee had discussed the application, looked at who the PWSEDD represents, and had concluded that the organization was in many ways similar to existing PWSRCAC membership, and for that reason the committee was recommending that PWSEDD be offered a Class II membership (*ex officio* membership).

Faulkner declared that she had a conflict because she was a member of the PWSEDD board and would abstain from the discussion and voting.

Sue Cogswell, Executive Director of PWSEDD, was present to answer questions.

B. Johnson **moved** to invite PWSEDD to apply for Class II membership in the PWSRCAC. Beedle **seconded**, and discussion followed.

Thane Miller stated that he would vote against the motion because he was not sure how membership in PWSEDD was attained or the makeup of that membership, and he saw duplication of representation with that of PWSRCAC. He said he was uncertain of what benefit the organization could bring to the table that PWSRCAC did not already have.

J. Johnson **called for the question**. Beedle **seconded**. President Bauer called for a roll call vote on the motion to cut off debate:

| | |
|-----------|------|
| Angaiak | No. |
| Bauer | Yes. |
| Beedle | No. |
| Burch | No. |
| Donaldson | No. |
| Duffy | Yes. |

| | |
|------------|--------------------------|
| Faulkner | (Abstained from voting.) |
| Herbert | Yes. |
| B. Johnson | Yes. |
| J. Johnson | Yes. |
| Korbe | No. |
| LaBelle | (Absent for vote.) |
| Lewis | Yes. |
| Miller | Yes. |
| Moore | No. |
| Shavelson | Yes. |
| Totemoff | Yes. |

The **motion to cut off debate failed** on a lack of a 2/3^{rds} majority vote (9 in favor, six opposed, 1 abstention, and 1 absent from vote.)

Discussion continued briefly.

President Bauer called for a roll call vote on the main motion:

| | |
|------------|--------------------------|
| Angaiak | Yes. |
| Bauer | No. |
| Beedle | Yes. |
| Burch | Yes. |
| Donaldson | Yes. |
| Duffy | Yes. |
| Faulkner | (Abstained from voting.) |
| Herbert | No. |
| B. Johnson | Yes. |
| J. Johnson | Yes. |
| Korbe | Yes. |
| LaBelle | (Absent for vote.) |
| Lewis | No. |
| Miller | No. |
| Moore | Yes. |
| Shavelson | Yes. |
| Totemoff | Yes. |

The **motion passed** (11 in favor, 4 opposed).

From February 9, 2015 XCOM Meeting

ATIA Membership Request: Swanson explained that at its January 2015 meeting, the board discussed a request by the Alaska Travel Industry Association (ATIA) to become a Class I member of the PWSRCAC, which resulted in the item being tabled until the May

2015 board meeting. This purpose of this agenda item is to discuss and strategize the best way to move forward to ensure that board members have all the information they need to make a swift and succinct decision. Swanson explained that staff made an effort to reach out to all PWSRCAC board members to ask what further information might be needed to make a decision.

Bauer explained that one of the reasons why she was insistent that the Executive Committee take action on this is because she felt like the board postponed the vote on this because they wanted additional information. She would like to avoid a lengthy discussion and possible non-outcome at the upcoming May meeting. Bauer further explained that she felt it was important to reach out to all Board members to streamline this issue and to help formulate a recommendation to the Board from the Executive Committee.

Schantz explained that many of the board members she spoke with felt they had received enough information to make a sound decision. Schantz further explained that she asked the board members she spoke with about the possibility of conducting a request for proposals to see if there were any other recreational entities that may be interested, as that request would need to be advertised now. Most directors felt that wasn't necessary. Swanson added that staff did quite a bit of research when ATIA and the Prince William Sound Economic Development District originally applied to see if there might be another recreation organization that might also be interested. Staff concluded that there did not seem to be another recreation or tourism entity to apply.

Schantz reviewed the responses she received from the Board members she spoke with regarding this issue. Suggestions included an analysis of who ATIA's members were especially in the EVOS region, a list of what ATIA has supported in the past either by resolution or through lobbying, and ATIA's financial history and financial stability. Schantz added that a number of directors felt it important that the ATIA appointed representative be someone located and/or operating within the EVOS region. She further explained that a number of directors felt it would be helpful to hear from ATIA again, and that it would be helpful to have a recommendation from the Executive Committee.

The committee discussed the need to have broad representation on the PWSRCAC board, and that recreation representation is lacking. The committee agreed that it would be helpful to the Board if a recommendation were brought forth from the Executive Committee on this issue.

Miller moved that the Executive Committee recommend the PWSRCAC Board of Directors seat ATIA at the May 2015 meeting as a member, representing the tourism and recreational public. Lewis seconded.

Lewis suggested amending the motion to include "in the EVOS" region. Miller, as the maker of the motion, agreed.

Miller stated that every effort should be made to satisfy questions of the board members that will be voting in May. Bauer suggested a board work session/teleconference with ATIA and the board members that were interested in receiving additional information take place prior to the May board meeting.

Bauer asked for objection to the motion; hearing none, the recommendation was approved.

From the May 5, 2015 Board Meeting

Briefing:

- [ATIA REQUEST FOR CLASS I MEMBERSHIP \(4-2\)](#)**
 - [4-02--Attachment D - ATIA Solicitation For PWSRCAC Representative](#)

Administrative Deputy Director Steve Rothchild re-introduced the request of the Alaska Travel Industry Association (ATIA) for a Class I seat on the Council originally discussed at the January Board meeting and action postponed to this meeting. Colleen Stephens, ATIA's vice chair and the owner of Stan Stephens Cruises in Valdez, was present at council table for this presentation to answer any questions.

Rothchild recapped the original submission by ATIA to PWSRCAC and the recommendation of the Board Governance Committee to the Board at the January meeting to approve the request for a seat. The discussion in January was long and the consensus of the Board was that they needed more time to think about the issues raised at that time, particularly the membership makeup of ATIA, and so further discussion and action was postponed to this meeting. Subsequent to the January Board meeting, the Executive Committee also discussed the application, the membership makeup of ATIA, and other concerns raised by the Board in January. Rothchild stated that the Executive Committee had recommended approval of ATIA's request. There was also a Board discussion workshop held the previous week in which Colleen Stephens participated and explained for the Board who was on the ATIA board, how the board membership was divided, and addressed the concerns expressed by this Council about the possibility of large corporations running roughshod over the small operators.

Rothchild reiterated that the seat that ATIA was seeking was the recreation and tourism seat vacated by the Alaska Wilderness Recreation & Tourism Association (AWRTA) at the end of 2014, and both the Board Governance Committee and the Executive Committee recommended its approval.

An in-depth discussion followed.

Dorothy Moore spoke of her concern that seating ATIA, which is made up of large and small business interests, would limit the recreational representation with the effect that individual recreation users would not be represented on the Board.

Wayne Donaldson expressed his concern about a statewide organization diluting the original intent of the Council to be a local and regional organization for the people who live and work in Prince William Sound and the spill-affected area. Amanda Bauer countered that ATIA has put in safeguards that their representation on the Board would be someone from the Prince William Sound area.

Miller **moved to seat** ATIA as Class I member of PWSRCAC. Korbe **seconded**, and discussion continued.

Al Burch said he could not support the petition. He said tourism and recreation in Alaska had a seat on the Council through the Alaska State Chamber of Commerce.

Former AWRTA representative Cathy Hart reminded the Board that AWRTA was a statewide organization, not just in Prince William Sound. She said it had been the recreation and tourism seat on this Council. AWRTA was recreation but also represented all the eco-tourism businesses statewide. She asked the Board to ensure that the seat is filled with an organization that is highly interested in making sure the recreation users are represented, as well as tourism. She also said that she and Rothchild had searched statewide and that ATIA was the best fit, having 70 members who are interested in making sure that the waters of Prince William Sound provide a safe place to work. She said she was pleased with ATIA's application and their commitment to the PWSRCAC.

Thane Miller spoke in favor of the motion. He commented that while his interests as a commercial fisherman were well represented on the Council, he recognized that other users of the Sound were not, and there did not seem to be any other viable option to fulfill those needs for a voice for the recreational users and tourism industry. He said he had observed that the State Chamber of Commerce as an organization generally did not seem to represent recreation and tourism interests, especially in Valdez where there is no chamber of commerce. For that reason, he said he would support the membership of ATIA to PWSRCAC.

Colleen Stephens was invited to speak on behalf of ATIA. She said that ATIA appreciated the time and energy that the Board had devoted to ATIA's request. She said that ATIA's request was embraced wholeheartedly by ATIA's board and its staff, and it hoped its request for membership would be accepted by PWSRCAC. She also commented that ATIA had had some recent shifts in focus, one of which was on policy and planning, and membership on PWSRCAC would fit perfectly as a voice for its members in this region and that it would strengthen the voice of those PWSRCAC smaller communities. She said she anticipated that ATIA's participation would be unifying and saw it as a positive movement forward. She offered to answer any questions.

Amanda Bauer said she would support the membership of ATIA, as she did for AWRTA, which was also a statewide organization.

Orson Smith said he would vote in favor, trusting that ATIA, a trade organization, would represent the interests of their many individual clients in the recreational use of the Sound.

Moore asked the record to reflect that several issues were discussed and agreed by ATIA in the work session the previous week. Those issues included an agreement of one person one vote, the resolution of ATIA, and that ATIA make their representative on the PWSRCAC Board a person from the Prince William Sound/EVOS spill affected area.

Colleen Stephens followed up with a recap of the introduction that she made to the Board at the previous week's work session. She stated that ATIA serves as the leading trade association for the Alaska travel industry and has several hundred member businesses from across the state. Of that membership 45% have five employees or less, including the owners, and 71% of the members have 20 employees or less. Generally most of ATIA is made up of small Alaska businesses. She stated that the ATIA board is represented in that same way. It has regional seats that are designated throughout the state of Alaska – from Southeast, Southwest, Southcentral, and to Fairbanks and the Interior. There are a few seats that are designated as outside seats, at-large seats, or a cruise industry seat, but of those 24 seats, three are designated to the cruise industry. Stephens said she (as a representative of Stan Stephens Cruises) fills one of the at-large seats. ATIA has 70 members from within the Prince William Sound region and spill-affected areas, making 10% of its membership from the affected areas.

In response to a query by Mako Haggerty as to whether accepting ATIA's membership would preclude a different recreational organization to be approved down the road, legal counsel Joe Levesque advised that it probably would not; that there is not a limit on recreational representation, and it would be good if there were another recreational group because it would show that PWSRCAC's makeup had a broad base. He stated that it did not necessarily mean that another recreational organization could not come in with good credentials and be seated at some other time.

Faulkner was concerned that the designated representative from ATIA would be able to look out for PWSRCAC's best interest and not be put in a position of being dictated to by a group with a position adverse to PWSRCAC.

Smith **moved the previous question**, (calling the question to end debate). Haggerty **seconded**. The **motion passed** (10 in favor; 7 against). *(This should have been a 2/3rds vote, as later acknowledged on a point of order raised by Beedle subsequent to the action.)*

Miller **moved to amend the motion** to accept the petition of ATIA to become a Class I member of PWSRCAC and to change PWSRCAC's Bylaws to add one sentence to Section 2.4.1 to read: *The representative from the Alaska Travel Industry Association shall represent locally based recreation and tourism interests.* Korbe **seconded**.

Faulkner objected to the amendment language in that it singled out a specific member entity. Miller said it was similar to the current language on Class I membership as it pertained to the Alaska State Chamber of Commerce. He said the reason he proposed this language was because of some of the concerns he had heard about a statewide organization trying to represent the local voice and his own concerns that the Chamber of Commerce generally did not necessarily represent the recreation and tourist industry, and it was a way to express to ATIA what the Board expects of ATIA's membership.

Beedle raised a **point of order on the previous motion to end debate**, stating that it should have been a 2/3rd vote under Robert's Rules, and therefore under the 10-7 vote in favor of ending debate **the motion failed**. A brief discussion followed on how to move forward procedurally. Director of Programs Donna Schantz clarified for the Board that the first action that was being requested of the Board was whether to accept ATIA as a Class I membership (a bylaw change), then the Board could take up Miller's suggested language (a bylaw change).

Bauer called for a roll call vote on the amendment on the floor:

| | |
|------------|-----|
| Archibald | No |
| Bauer | No |
| Beedle | No |
| Berns | No |
| Burch | No |
| Donaldson | No |
| Duffy | Yes |
| Faulkner | No |
| Haggerty | No |
| J. Johnson | No |
| Korbe | Yes |
| LaBelle | Yes |
| Miller | Yes |
| Moore | No |
| Shavelson | No |
| Sughrue | No |
| Totemoff | No |

The amendment failed (4 in favor, 14 opposed).

Discussion continued on the original **motion (restated)** to accept ATIA as Class I member of PWSRCAC.

A roll call was taken on the original motion as restated:

| | |
|-----------|----|
| Archibald | No |
|-----------|----|

| | |
|------------|-----|
| Bauer | Yes |
| Beedle | No |
| Berns | No |
| Burch | No |
| Donaldson | No |
| Duffy | Yes |
| Faulkner | No |
| Haggerty | Yes |
| J. Johnson | No |
| Korbe | Yes |
| LaBelle | Yes |
| Miller | Yes |
| Moore | Yes |
| Shavelson | No |
| Smith | Yes |
| Sughrue | Yes |
| Totemoff | Yes |

The **motion, as restated, failed** for lack of 2/3rds vote (10 in favor; 8 opposed).

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MEMORANDUM

TO: Robert Archibald, President, PWSRCAC
Donna Schantz, Executive Director, PWSRCAC

FROM: Joseph N. Levesque, PWSRCAC Board of Directors' Attorney *JNL*

DATE: January 12, 2023

RE: Legal Opinion re PWSRCAC is an Alternative Voluntary Advisory Group in Lieu of Council Under the Statutory Authority of OPA 90
Our File No. 474-001

ISSUE

Our firm has been requested to provide the PWSRCAC Board with a legal opinion regarding whether the Prince William Sound Regional Citizens' Advisory Council ("PWSRCAC"), as an Alternative Voluntary Advisory Council, is required to follow the membership requirements for both voting and ex-officio non-voting members set forth in the Oil Pollution Act of 1990 (OPA 90)¹

BRIEF ANSWER

Section 5002(o) of OPA 90 is clear that as an Alternative Voluntary Advisory Group, PWSRCAC is *not required* to follow OPA 90's requirements for membership. Instead, PWSRCAC is bound to follow its contract with Alyeska Pipeline Service Company ("Alyeska") and its own Bylaws regarding membership. This interpretation and guidance has been followed and adhered to for the past three decades plus with respect to Congress and federal agencies including the U.S. Coast Guard.

¹ 33 U.S.C. Ch. 40 §§ 2732-2761.

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ANALYSIS

Relevant parts of Section 5002(o) provide:

(o) ALTERNATIVE VOLUNTARY ADVISORY GROUP IN LIEU OF COUNCIL. – The requirements of subsections (c) through (l), as such subsections apply respective to the Prince William Sound Program and the Cook Inlet Program, are deemed to have been satisfied so long as the following conditions are met:

(1) PRINCE WILLIAM SOUND. – With respect to the Prince William Sound Program, the Alyeska Pipeline Service Company, or any of its owner companies enters into a contract for the duration of the operation of the Trans-Alaska Pipeline System with the Alyeska Citizens Advisory Committee in existence on the date of enactment of this section, or a successor organization, to fund that Committee or organization on an annual basis in the amount provided for by subsection (k)(2)(A) and the President annually certifies that the Committee or organization fosters the general goals and purposes of this section and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.

The February 8, 1990 Contract (“Contract”) between Regional Citizens’ Advisory Council (now PWSRCAC) and Alyeska Pipeline Service Company states that “the function of the Committee under this Contract is not regulatory, but is advisory only”² and includes a provision that Alyeska will provide a minimum of \$2,000,000 per year (base funding) for operations, technical studies and expert support.³

The Contract requires the membership of PWSRCAC to:

...be broadly representative of the communities in the vicinity of Prince William Sound, Alaska Native organizations the members of which reside in the vicinity, commercial fishing organizations the members of which depend on the fisheries resources in the vicinity, and environmental organizations the members of which reside in the vicinity.”⁴

Section 3.2(b)(2) continues with a more detailed description of the required membership:

² Contract **Article II – SCOPE OF SERVICES**, Section 2.1 **SERVICES PROVIDED** (h.), page 5.

³ Contract **Article III – TERM AND FUNDING** Section 3.3 **Funding**, page 8.

⁴ Contract **Article III – TERM AND FUNDING** Section 3.2 **Termination**.(b)(2), page 6-7.

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The Committee shall not be considered broadly representative of the above interests if it does not include as members the cities of Valdez, Cordova, Seward, Homer, Kodiak, Whittier and Seldovia, the Kenai Peninsula Borough, the Kodiak Island Borough, Chugach Alaska Corp., a commercial fishing organization, an environmental organization and an aquaculture organization, unless the failure to include any such member is for good cause and the remaining membership continues to exhibit a regional character, broadly representative of the communities and residents in the vicinity of Prince William Sound and the users of natural resources in the vicinity. Good cause shall include, but not be limited to, the failure or refusal of any of the named members to participate in the Committee.⁵

PWSRCAC Bylaws Section 2 outlines the two classes of members for the organization and lists the entities who are entitled to designate an individual representative. Class 1 members, who may be elected to the Board as voting Directors, are:⁶

- Alaska State Chamber of Commerce
- Cordova District Fishermen United
- Chugach Alaska Corporation
- City of Cordova
- City of Homer
- City of Kodiak
- City of Seldovia
- City of Seward
- City of Valdez (2 members)
- City of Whittier
- Kenai Peninsula Borough
- Kodiak Village Mayor's Association
- Kodiak Island Borough
- Prince William Sound Aquaculture Corporation
- Community of Chenega
- Community of Tatitlek
- Oil Spill Region Environmental Coalition
- Port Graham Corporation

For the purpose of brevity, Class 2 members⁷, who are non-voting members, are not listed in this memorandum as they are not required in the Contract with Alyeska.

⁵ Contract **Article III – TERM AND FUNDING** Section 3.2 **Termination**.(b)(2), page 7-8.

⁶ PWSRCAC Bylaws **Section 2. MEMBERSHIP 2.2.1 Class I Membership**, pages 1-2.

⁷ PWSRCAC Bylaws **Section 2. MEMBERSHIP 2.2.2 Class II Membership**, page 2.

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CONCLUSION

The current membership of PWSRCAC complies with both its own Bylaws and its Contract with Alyeska. Because of the Contract with Alyeska, as detailed above, the requirements of 5002(c)-(l), including membership requirements listed therein, are deemed to be fully satisfied. Therefore, there may be some modest differences between PWSRCAC membership as an Alternative Voluntary Advisory Group/Council and that required by 5002(d).

This opinion is consistent with previous legal opinions on this topic issued by both myself⁸ and by the Law Offices of Gross & Burke⁹ and consistent with precedent followed over the past three decades.

As you know from so many years of working with the Alaska Congressional Delegation and relevant committees of Congress, the above interpretation of the relevant provisions of OPA 90 have been accepted and relied upon and have assisted the PWSRCAC in providing its advisory guidance to the U.S. Congress, to Alyeska, the U.S. Coast Guard and other relevant federal agencies.

Notwithstanding the above information in this opinion, the encouragement from the U.S. Coast Guard to the Board to pursue finding a replacement for the Alaska Wilderness Recreation and Tourism Industry (formerly represented by Cathy Hart) with an entity or individual to represent the recreation industry and recreation interests can be most helpful to the duties and responsibilities of the PWSRCAC. The views that the prior recreation interests representative provided to the PWSRCAC have been most helpful over the years. Therefore, the Board's decision to find a replacement for Cathy Hart's position appears prudent and in keeping with the Board's longtime respect and concern for recreation interests within the Prince William Sound Region.

I will be glad to discuss this with you further or with anyone at the U.S. Coast Guard and to answer any questions regarding my interpretation of the intent and meaning of the statute.

cc: Brooke Taylor, Director of Communications
Joe Lally, Director of Programs (USCG ret.)

⁸ Verbal Opinion provided during PWSRCAC Board Meeting in 2015 and Memorandum re PWSRCAC Obligations dated August 1, 2013.

⁹ FUNDING OF PROPOSED ASSOCIATION UNDER OPA 90 dated October 7, 1990.