Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
Pier 9, Suite 102, San Francisco, CA 94111
Phone: (415) 397-2253 Fax: (415) 397-9463
E-mail: allen.garfinkle@bopc.ca.gov
Website: www.pilotcommission.org

BOARD OF PILOT COMMISSIONERS
MINUTES

April 22, 2010
Morning Session at 9:30 A.M.

OPEN MEETING
Call to Order and Roll Call-9:33 a.m.

Vice President Johnston, Commissioners Tate, Roberts, Wainwright, Osen and Sullivan were all present, constituting a quorum. Ex officio member Dale Bonner, Secretary of the Business, Transportation and Housing Agency was represented by Deputy General Counsel Gabor Morocz. Also present were Port Agent Capt. Peter McIsaac, Dennis Eagan (Board Counsel), Raymond Paetzold (Maritime Counsel), and Executive Director Allen Garfinkle.

1) Approval of Minutes

There was a motion and second to accept the March 25th, 2010 regular Board meeting minutes as presented. The motion was passed by unanimous voice vote.

2) Announcements– Vice President Johnston

Announcement of events affecting Board business since the last monthly Board meeting:
There were no announcements.

3.) Board member Activities - Board Members

Reports by board members having board business related activities since the last board meeting or planned prospectively.

Vice President Johnston pointed out that Opening Day on the Bay was to be April 25th this year.

President Miller, in absentia, asked that three items be read. They are as follows:

- That Executive Director Garfinkle and I attended a "round table discussion" of stakeholders interested in AB 2637 on Monday, April 5 at the Capitol. There is further discussion below. See Agenda Item 16B.

- And that Executive Director Garfinkle and I testified at a hearing on our Spring Finance Letter request for a personnel augmentation. The hearing was before Assembly Budget Subcommittee 5. Executive Director Garfinkle will discuss the hearing during his report.

- And that I attended a briefing on Tuesday, April 20 at Headquarters, Sector San Francisco (on Yerba Buena Island) by USCG Capt. Paul Gugg and his staff. The subject was progress in construction and outfitting of the new Interagency Operations Center. The center will house the Sector Command Center, VTS and port partner liaisons. It potentially will serve as an immediate convergence point for significant incident responses in the Bay Area.

There were no other reports.

4) Executive Director's Report– Executive Director Garfinkle

A) Correspondence and activities since the March 25, 2010 meeting. Staff has been receiving many applications for the Staff Services Analyst position vacated by K. Weir. Review of the applications and interviews will be scheduled for next month. President Miller and I attended a "Stakeholders Meeting" in Sacramento sponsored by Assemblyman Chesbro's staff. Those participating in the meeting had a chance to share their goals and concerns. While nothing was resolved all parties were able to put issues on the table. Finally, the Department of General Services representatives Pamela Reiss and Eddie Chu visited the Board Offices in the course of negotiating our lease with the Port of San Francisco. Their goal was to inspect and survey the office space to better educate themselves for ongoing discussions with the Port.

B) Report on pilot licensing matters in the past month and current month.

In the month of April the Commission renewed seven licenses: Pate, Aune, Melvin, Pinder, Kirk, Lemke and Livingstone.

C) Report of Budget subcommittee hearings. President Miller and I testified at the Assembly Budget Subcommittee 5 and after a brief question and answer period the Subcommittee voted to approve our Spring Finance Letter request for staff personnel augmentation. As the Senate did not approve this request the matter will be presented in conference between the Assembly and Senate.

5. Port Agent's Report– San Francisco Bar Pilot (SFBP) Port Agent Captain Peter McIsaac

A) Monthly report on SFBP ship piloting business activity.

Billed Vessel move in March 2010 (compared to a 3 year average): Bar Crossings: (508) -15%, Bay Moves: (98) -39%, River Moves: (30) -26%, Total Moves: (636) – 20%, GRT : (23.1M) -13% It was also noted that when compared to the first three months of 2009, bar crossings were down 12% and total moves down 16%, while March has shown some improvement over the first two months of the year and the trend has continued into April.

Pilot Vessel (PV) CALIFORNIA was out of service for maintenance dry-docking and ABS modifications from March 8th through April 20th. PV SAN FRANCISCO scheduled dry-docking has been postponed until June1st at the request of the shipyard. PV GOLDEN GATE was out of service for 3 days beginning April 6th while a cylinder head was replaced.

The Port of San Francisco is moving forward with the Pier 27 Cruise Ship Terminal Project. Unlike the present cruise ship terminal, Pier 27 is fully exposed to the tidal currents. San Francisco Bar

Pilots have had meetings with the Port and their engineering firm and discussed their concerns. In May they will run a series of simulations on the engineering firm's simulator in San Francisco to develop initial operating guidelines.

The Annual West Coast Pilot Meeting was held in Portland, Oregon last week. All the groups reported business down in 2009. Hawaii and Oregon were hit the hardest while the British Columbia Coast Pilots suffered the least.

Low Sulfur Fuel Oil Potential Issues included 2 that were reported in March: One vessel could not go astern if the hull speed was in excess of 3 knots, and another vessel did not start astern initially.

B) Monthly report on pilot availability and absences.

Capt. Simenstad has been Absent for medical reasons (AMFR) since February 27th. Capt. Gates has been AMFR since April 11th and Capt McIsaac was AMFR from March 16th through April 10th, when he resumed his Port Agent duties.

6) Reported Safety Standard Violations and Investigations- Executive Director Garfinkle

No new reports have been received.

7) Non-Incidents- Executive Director Garfinkle

Executive Director Garfinkle presented the Incident Review Committee's (IRC) report on the MAERSK BERING. The MAERSK BERING moved from anchorage nine to anchorage five through areas of reduced visibility. There was no damage to the vessel or objects and no law were broken or guidelines violated. The IRC determined this was a non-incident. There was a motion and second to accept the determination of the IRC that this was a non-incident and it was passed unanimously by voice vote.

8) Report of New Incidents - Executive Director Garfinkle

No new incidents to report.

9) Incident Review Committee Report – Vice President Johnston and Executive Director Garfinkle

A) Consideration of Captain G. Kleess proposal to amend board order for practice trips to substitute simulator time to satisfy Board Mandated practice trips. **Possible Board Action.**

Capt. Kleess petitioned the Board to accept the following as equivalent to two of the four required trips mandated by the Board: Two solo trips by him as a pilot, both prior to the board decision and December 2, 2009 stipulation; Simulated transits through three areas of the Sacramento River Deep Water Ship Channel that he completed in March 2010 at the Corps of Engineers Ship Simulator in Vicksburg, Mississippi.

The IRC recommended against accepting the petition for a number of reasons. Foremost among these is that the Board does not have the authority to reconsider one of its own decisions when 30 days have passed after the IRC's report on the incident to the Board.

It was noted that the Executive Director, in consultation with the Port Agent concerning the number of deep draft ships calling on Sacramento, can grant extensions on the time allowed to complete these trips. The Executive Director is prepared to grant such an extension and will consult with the Port Agent.

10) Rules and Regulations Committee - Commissioner Wainwright

A) Report on April 15, 2010 committee meeting.

The Committee met on April 15, 2010 and a quorum was present. The draft regulations on Portable Pilot Units was reviewed and minor changes were made. The Committee consented to have this draft presented to the full board to go forward to formal rulemaking. The committee also reviewed a revised draft of the Commission Investigator Minimum Standards and consent was given to present this draft to the full board to go forward with formal rulemaking. Also considered were the first draft of clean up regulations to bring the regulations in line with statutory changes done previously.

B) Presentation of final draft of regulations on commission investigator minimum standards and the use of Portable Pilot Units. Recommendation for approval of the proposed regulations. Recommendatiion for the approval of submission of the regulations to the Business, Transportation, and Housing Agency and then to the Office of Administrative Law for adoption. **Board action.**

The draft of Regulations regarding Portable Pilot Units was presented to the Board with the recommendation to authorize the Executive Director to go forward with formal rulemaking. A motion was made and seconded and the motion was passed by unanimous voice vote.

The draft of Regulations regarding Investigator Minimum Standards was presented to the Board with the recommendation to authorize the Executive Director to go forward with formal rulemaking. A motion was made and seconded and the motion was passed by unanimous voice vote.

11) Finance Committee–Commissioner Osen

A) Report on April 15, 2010 committee meeting.

Finance Committee met on April 15th with a quorum present and all agenda items were covered. Fund and authority condition report through February 28th, 2010 was reviewed and discussed at length. Cash balances, revenue projections and projected expenditures were analyzed and acceptable surplus amounts are anticipated through the end of the fiscal year. At this time no surcharge amendments are recommended.

B) Report of recommendation by the Finance Committee with respect to adjustment to authorized SFBP bar pilotage mil rate. **Possible Board action to ratify the adjustment.**

In accordance with the Harbors and Navigation Code Section 1190, the mil rate adjustment calculation has been made and it was recommended that the Board accept the mil rate of .09104 per gross ton, which corresponds to 58 licensed pilots as of April 1, 2010.
There was a motion and second to accept the recommendation of the Finance Committee and it was passed unanimously by voice vote.

C) Quarterly review of the Navigation Technology surcharge and adjust if necessary. **Possible Board action**

The committee recommended no change at this time.

D) Review of Pilot Boat surcharge and adjust if necessary. **Possible Board action.**

The committee recommended no change at this time.

12) Pilot Evaluation Committee – Captain McIsaac for Capt. Nyborg

A) Report on April 21, 2010 committee meeting.

The Pilot Evaluation Committee met on April 21, 2010. In closed session, all 6 trainees were interviewed individually. The current trainees include: Captains Tylawski, Ruff, Merritt, Fawcett, Peery, and Kellerman. Their time in the program ranges from 10 months to 33 months. All trainees are progressing at their own rate. There may be a recommendation for one appointment at the May Board meeting. Status of the Trainee Drug Testing Program: The program is active and working well, but needs to transfer over to the custodianship of the Board. The contract for testing by the Board is being drafted by board staff and should be ready by July.

B) Discussion on Trainee Exam Progress and Timeline. **Possible Board action to modify the date of the exam or cancel the exam.**

The exam will go forward as planned. All necessary dates have been set to accomplish the remaining tasks prior to the exam. On May 4 and 5. we will begin the vetting of the written exam questions with the assistance of COMIRA and 6 pilots during two 7 hour sessions. For the simulator exam, six days have been reserved with CMA for the vetting of the work to date on the Simulator Exam. COMIRA and PEC will run up to 12 fresh pilots thru the simulation over the next 2 months. The process will be complete by early June. It is anticipated that the test process will require 90 to 110 pilot days in a relatively short period.

New Trainees
Trainee Kris Laakso is due to start June 1st. He is moving to the area from out of state and has yet to receive written confirmation or the contract.

Next PEC meeting is scheduled for May 19th.

There was a short recess from 11:15 a.m. to 11:23 a.m.
At 11:23 a.m. the meeting reconvened with a quorum present.

13) Pilot Fitness Committee - Commissioner Roberts

A) Report on April 19th, 2010 committee meeting.

The Committee met on April 19th with a quorum present. Dr. Kosnik reported he had met with 2 or the 4 board physicians. He also has reviewed available mariner medical policy from around the country and world wide. There was a discussion at length concerning the (then) draft letter from Dennis Eagan concerning the Port Agents Report of Pilot Illness.

B) Discussion on Pilot medical privacy issues and Licensure. **Possible Board action.**

There was a discussion of Dennis Eagan's memo concerning Port Agent Reports of Pilot Illness which recommends that the Port Agent continue to give oral reports to the Board at its meetings concerning pilot absences because of illness with the sole limitation that the nature of the illness not be identified. The oral report would be confined to naming the pilots who are ill and stating the probable duration of the pilot's absence and the anticipated date of the pilot's return to duty. The Port Agent would be then required to render his complete report in a confidential letter to the Board.

14) Pilot Pension Committee – Commissioner Tate

No report.

15) Low Sulfur Fuel– Commissioner Osen

No report.

16) Discussion of Pending Legislation.

A) Review bill analysis for AB 1888. **Possible Board action to approve or modify the draft analysis.**

A draft Bill Analysis regarding AB 1888 was provided to the commissioners in advance of the Board meeting. President Miller drafted it to reflect his own best judgment with respect to the position the Board should recommend through BTH to the Governor, to wit: Neutral on passage. There is agreement between the bill sponsor (SFBP) and PMSA with respect to most elements of the bill, but there is disagreement as to whether vessels exempted from pilotage fees should also be exempted from the collection of surcharges. President Miller's view is that it is best for the stakeholders to resolve that question and that the Board should assume a posture of neutrality. The Board discussed the draft Analysis and chose not to modify it.

There was a motion and second that the Board takes a neutral stand on this bill and forward the Bill Analysis to Business, Transportation and Housing. The motion was passed unanimously by voice vote.

B) Review bill analysis for AB 2637; **Possible Board action to approve or modify the draft analysis.**

As referenced in Item 3, above, Executive Director Garfinkle and President Miller attended the stakeholder meeting on AB 2637. The meeting was at the invitation of Emily Rogers, legislative assistant to Assemblyman Chesbro who represents Assembly District 1 which includes Humboldt Bay. Others participating in the meeting were Emily Rogers representing Assemblyman Chesbro, Karin Fish and Traci Stevens of BTH, Acting Port Agent Captain Bruce Horton and SFBP lobbyist Fred Taugher, Mike Jacob of PMSA and Paul Deiro, a PMSA lobbyist, Executive Director David Hull of the Port of Humboldt Bay and the Port's lobbyist, and the two serving Humboldt Bay pilots. There was a productive discussion but there was no resolution of questions regarding the bill. Mike Jacob offered a conceptual amendment to facilitate the continued consideration of the bill by the Legislature.

AB 2637 (Chesbro) would bring the waters of Humboldt Bay and pilotage on those waters under the jurisdiction of our Board. It also would bring the two pilots now serving on Humboldt Bay into our pilot training program. As introduced the pilots would by law begin the program without sitting for the trainee selection exam. The Humboldt Bay pilots have proposed that they be allowed to sit for the exam and if successful enter the pilot trainee training program. Mike Jacob of PMSA proposed an amendment that I would describe as being "in the nature of a placeholder" to allow the bill to proceed through the Legislative vetting process. The bill was neither heard nor amended at the Assembly Transportation Committee meeting Monday, April 19, but may be amended later in the process. The larger question is whether Humboldt Bay has "pilot problem" or whether it has an economic development problem.

17) Discussion of Proposal for Staggering of Commissioner Terms

Consider draft language for staggering the term of one pilot and one industry member of the Board. **Possible Board Action to recommend seeking legislation to enact the proposed change.**

Vice President Johnston gave background for this bill: Every four years the Board faces the prospect of not being able to establish a quorum to do essential business. That would include taking action on IRC reports, imposing a summary suspension of a pilot's license as was done in the aftermath of the COSCO BUSAN incident, declaring that a trainee has completed the training program, licensing new pilots, and many other functions. The quorum problem occurs because every four years five board members' terms expire and immediately thereafter, five Board members are up for initial appointment or reappointment – and if the appointing authority (the Governor) has not acted before the expiration of the two month holdover period, the Board would be left with only two voting members plus the Secretary of BTH, ex officio. President Miller has proposed, and the Board at its last meeting agreed in concept, to staggering the terms of the pilot and industry members. Public members' terms already are staggered. Attached to this memorandum is draft language that would change the terms of Board members in those categories prospectively. It is not intended to extend or truncate the terms of serving members. Also attached is a draft document titled "Proposed Amendment to Harbors and Navigation Code"

President Miller has been working with Mike Jacob, Fred Taugher (SFBP lobbyist), and Marc Beyer (former commissioner and Tesoro representative to WSPA) on the appropriate language.

With that in mind, Vice President Johnston asked for a motion for the process go forward so that BTH can take the next steps as soon as there is agreement among the stakeholders as to the final proposed language.

> Moved, that the Board recommend to the Governor through the Business, Transportation and Housing Agency that Harbors and Navigation Code section 1150 be amended to stagger the terms of newly appointed pilot members and industry members after December 31, 2012. The Board President and Executive Director are directed to draft language to amend the statute to achieve this result. The Board recommends that an amendment to stagger these terms be offered to AB 1888 or other appropriate legislation.

There was a motion and second to endorse the above amendment and direct staff to achieve to draft language to achieve this result. The motion passed unanimously by voice vote.

18) Discussion of Board Contracting Matters – Executive Director Garfinkle

A) Status report of current Board contracting objectives.

The Executive Director reported on the state of current and future Board contracts.

The Port Revel Continuing Education contract has regularly run over budget and each year since the beginning of the contract they have had to borrow from the coming year. Continuing with the same trend plus our recently submitted Spring Finance Letter should allow for these classes to continue through the end of the contract.

The Comira contract was finalized recently, but only by very hard work by the Contract Services Unit of the California Highway Patrol. This has allowed our Pilot Trainee Selection Exam to continue forward as planned.

The Ghirardo contract is currently expired but an amendment is in the works in Sacramento.

Two Board investigators have contracts with the Board now, Capt. Reynolds and Nick Neim.

The contract for new website services and a new Trainee contract are in process and we should have progress on them soon.

B) Discuss Maritime Counsel/Back up Maritime Counsel contract. **Possible Board action to authorize Staff to pursue Maritime Counsel contracts.**

Contracts for Maritime Counsel and back up Maritime counsel must first proceed by getting permission to hire outside counsel from the State Attorney General's Office. A letter will be drafted requesting permission from the Attorney General's Office.

19) Executive Director Performance Appraisal – Commissioner Tate

Commissioner Tate gave a short explanation of the Performance Appraisal process and the Appraisal forms with stamped return envelopes were distributed to each Commissioner and Ex-Officio Member Morocz.

20) Public Comment on Matters not on the Agenda

There were none.

21) Proposals for Additions to Next Month's Agenda

There were none.

22) Adjournment

There was a motion and second to adjourn. The motion was passed by unanimous voice vote and the meeting was adjourned at 12:10 p.m.

Respectfully Submitted,

Allen Garfinkle
Executive Director