

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: nancy.bennett@bopc.ca.gov
Website: www.pilotcommission.org



MINUTES
BOARD MEETING
October 22, 2009
10:00 A.M.

OPEN MEETING

Call to Order and Roll Call

President Miller, Vice President Tate, Commissioners Johnston, Osen, Roberts and Wainwright were all present, constituting a quorum. Also present: Assistant Director Nancy Hall Bennett, the acting Port Agent, Capt. Bruce Horton, Dennis Eagan (Board's government counsel), and Raymond Paetzold (maritime counsel), and Staff Services Analyst Katharine Weir. Business, Transportation and Housing Secretary Bonner was represented by Deputy General Counsel, Gabor Morocz.

After calling the meeting to order, President Miller made the following announcements:

President Miller welcomed CHP Chief, Administrative Services Division Lisa Paolini who heads the group supporting the Board's administrative needs.

President Miller then welcomed Ms. Terri Toohey who will support the Board's rulemaking activities.

President Miller announced that Captain Patrick Moloney has resigned as the Board's executive director, effective October 30, 2009. Under the Harbors and Navigation Code, as amended by the Wiggins bill – SB 1627 – in the absence of the executive director, the Secretary of Business, Transportation and Housing Agency becomes the Board's executive director. Secretary Bonner has delegated that responsibility to Gabor Morocz who became the Board's acting executive director on October 1, 2009.

The Board held a special meeting on October 15, 2009 at which it considered and modified a draft duty statement for the position of the Board's executive director. The Board further considered the search process it would use in identifying and appointing a new executive director. It established two search task forces – Task Force Alpha composed of Commissioners Miller and Tate, and Task Force Bravo composed of Commissioners Wainwright and Osen.

Task Force Alpha will review all applications received and identify those that meet the minimum

requirements for consideration. Task Force Bravo will consider qualified applications and identify a cohort of the most promising applications for further consideration. The Board will develop additional procedures at a later date, including procedures for interviewing a select number of applicants. The target date for appointing a new executive director is January 1, 2010. The special meeting on October 15th was concluded and continued to 11:00 am today. The Board will reconvene that special meeting at the conclusion of today's regular meeting.

President Miller stated that he would have additional announcements as part of agenda item 3.

1) **Request Approval of Minutes-**

Approval of the September 24, 2009 regular Board meeting and October 15, 2009 special Board meeting minutes.

It was moved by Vice President Tate and seconded by Commissioner Wainwright that the minutes of the September 24, 2009 regular Board meeting be approved without change. The motion passed unanimously.

It was Vice President Tate and seconded by Commissioner Wainwright that the minutes of the October 15, 2009 special Board meeting be approved without change. The motion passed unanimously.

2) **Report of Board Actions Taken in Closed Sessions at September 24, 2009 meeting –**
President Miller

President Miller reported that the Board held three closed sessions during the September 24, 2009 Board meeting.

The first was to consider the IRC reports and recommendations with respect to incidents involving the *M/V MORNING MERMAID* and *M/V KRITI JADE* incidents. President Miller had previously announced the Board's decisions but repeated them as follows:

- With respect to the *M/V MORNING MERMAID*, the Board agreed with the recommendation of the Incident Review Committee and found that there was no pilot error and the investigation was closed without further action.
- With respect to the *M/V KRITI JADE*, the Board agreed with the recommendation of the Incident Review Committee and found that the occurrence was a non-incident and the investigation was closed without further action.

The second was to consider the IRC report and recommendation with respect to incidents involving the *M/V XIN NING BO*. President Miller had previously announced the Board's decision but repeated them as follows:

- The Board has determined, concerning the allegation of excessive speed, that there is a rational basis for concluding that the pilot's actions or failure to act may provide grounds for suspension of the pilot's license. Staff is directed to prepare and serve an accusation for suspension of the pilot's license. Concerning the interaction with the *M/V BONASIA*, the Board has determined that there was no

pilot error, and the investigation is closed without further action.

The third was to receive reports from counsel concerning certain litigation in which the Board is involved; and to receive an update on the performance evaluation of the Board's executive director. President Miller announced that the Board received the litigation report and took no action. He also announced that the Board received an update on the executive director's performance evaluation and took no action.

3) **Announcements** – President Miller

President Miller announced that he had appointed Ms. Julie Yasuda, SFBP Comptroller, to the Board's Finance Committee to fill the vacancy created upon Kenny Levin's retirement.

President Miller announced that in the case of Simenstad vs. Board of Pilot Commissioners in which Capt. Simenstad sought to enjoin the filing of an accusation by the Board in connection with his piloting of the *M/V XIN MING BO*, the Board is represented by DAG Judith Loach.

The Board filed a demurrer which was sustained without leave to amend by San Francisco Superior Court Judge Wollard. The court held that plaintiff has failed to exhaust his administrative remedies. DAG Loach is informed that Capt. Simenstad intends to appeal the ruling.

During September, the Board issued licenses to Captains Burger and Holl. Thus far in October, the Board has issued a license to Captain Boriolo.

4) **Comments from Business, Transportation and Housing Agency Secretary Bonner-**
Acting Executive Director Gabor Morocz

Mr. Morocz reported that the Governor signed SB 300 and that the law will come into effect January 1, 2010.

5) **Acting Executive Director's Report** - Acting Executive Director Morocz

A) Correspondence/Activities since September 24, 2009 meeting:

Mr. Morocz reported on the challenges the Board faced in the month of October including technical problems with both the internet connection and problems with the Macintosh computers. He was happy to report that the Board had ordered three new HP desktop computers and they were installed on October 21.

The Board also received an eviction notice from The Port of San Francisco, due to the fact that Signature Hospitality has not paid their rent for several months. The Board is now working to acquire a lease directly with the SF Port so they will not have to continue to sub-lease from Signature Hospitality. Due to the back payment the Board was not receiving maintenance for a period of two weeks.

During a storm in the middle of the month the Board office experienced minor flooding and water damage that is being addressed by the SF Port.

Mr. Morocz reported that the board has three pilots that need to renew their licenses between today's date and the next full Board meeting:

Captain Kleese is up for renewal on October 31, 2009

Captain Dowdle s up for renewal on November 1, 2009

Captain Simensted is up for renewal on November 9, 2009

Mr. Morocz continued to report that as acting Executive Director he has been very busy with Board activities. He has been concentrating his time on the Incident Review Committee.

Mr Morocz also gave an update that the SEIU lawsuit is still in the court system.

CORRESPONDENCE-

Received-*PRA records request

Sent- *Letter to Physicians regarding Forms/Signatures

*Letter to Captain Smith, Captain Niem, Captain Reynolds regarding the Form 700 filing requirements.

B) Other Pilot Matters

6) **Port Agent's Report** - SFBP Captain Bruce Horton (Acting Port Agent)

Captain Pete McIsaac would be out for two weeks. Captain Horton would be filling in for the first week and Captain Fuller would be filling in for the second week.

Not Fit For Duty (NFFD):

Captain Welch was found NFFD on Nov 10.

Captain Fuller has been NFFD since Aug 25th due to severe back pain. He is undergoing treatment.

Captain Haggerty has been NFFD since Oct 14th after undergoing neck surgery. He is expected to remain NFFD for at least 1 month.

New Pilot Vessel *Drake*:

Repairs and final adjustments continue. The certificate of preliminary acceptance should be issued tomorrow and the boat will depart Portland (weather permitting) on Friday. The boat is expected to arrive on Monday.

Potential Low Sulfur Issues:

The number of issues have been decreasing as time goes on. There were eighteen in July, twelve in Aug, eight in Sept, and two to date in Oct. Although the issues are becoming fewer, the Port Agent felt one is one too many.

Recommended Minimum Rest Period(MRP) Exceptions:

There were thirteen over three days during the month of September. The shortest rest period was 10 hours. Five of the exceptions occurred on September 24, when three pilots were pulled pilot business for the BOPC meeting.

Billed Vessel Moves in Sept 09 compared to a 3 year average

Bar Crossings: -7.6%

Bay Moves: -26.7%

River Moves: -32.3%
Total Moves: -12.3%
GRT: 25.2M -7.2%

Compared to the first nine months of 2009 bar crossings were down 4.9% total moves were down 9.3% and GRT were down 6.4 %.

Unfinished Business

7) **Pilot Ladder Reportable Incidents** - Acting Executive Director Morocz

There were none.

8) **Non-Incidents** - Acting Executive Director Morocz

There were none.

9) **Open Incidents** - Acting Executive Director Morocz

- A) *M/V S.H. GRACE*, grounding in Sacramento DWS Channel, vicinity of Mark 49 "A" – Aug. 27, 2009; The pilot was interviewed October 21, 2009 by the IRC.
- B) *M/V TASMAN RESOLUTION*, grounding in the vicinity of Mark 35 "A" and near Light 34, San Joaquin DWS Channel – Aug. 27, 2009;
- C) *M/V VOC ROSE*, allision/hard landing, Stockton Berths 12/13 – Aug. 29, 2009. The pilot was interviewed October 21, 2009 by the IRC.
- D) *M/V XIN NING BO*, According to the Board's instructions, an accusation have been prepared by the Attorney General's office. The deputy handling the matter is Jonathan Cooper.
- E) Additional Incidents-

On Monday, the 19th, a ship incident has been reported by the SFPB. The incident occurred on October 15, 2009, and involved the *ANTONIA SCHULTE* passing by a bunkering ship at Berth 37 in Oakland and allegedly causing vessel interaction. Robert Reynolds, board investigator has been dispatched to investigate the incident. It was noted that SFPB was not notified of the incident until after the ship had left

10) **Rules and Regulations Committee** - Commissioner Wainwright

Mr. Morocz reported that now that the Board has hired a regulation writer he expects that the committee will be able to meet soon to continue on with the rule making process.

11) **Finance Committee** - Commissioner Osen

Report on results of October 21, 2009 meeting; possible recommendations to adjust one or more of the following surcharges:

- Board Operations (currently at 6.6 %)
- Pilot Continuing Education (currently at \$45.00 per move)
- Trainee Training (currently at \$9.00 per trainee per move) - possible Board action

Commissioner Osen reported that the Committee had met on October 21 and after reviewing financial reports from SFBP and a review of the Board's operations fund and the two training funds, concluded that no change to the current surcharges is warranted at this time.

The Committee discussed with CHP Administrative Services Division Chief Paolini and with BTH Deputy Secretary for Finance and Administration Karin Fish the ongoing process of tailoring an accounting system for the Board and implementing that system in such a way as to provide timely and useful information to the Board for financial decision making purposes. The Committee and Board staff will work with CHP on this project.

President Miller then requested that the Finance Committee at its next meeting consider a possible recommendation to the Board to direct staff to enter into a contract with an independent auditor to audit all surcharges collected and retained by or disbursed by the SFBP during calendar year 2009. Commissioner Osen agreed to place the item on the Committee agenda.

President Miller also requested that the Navigation and Technology surcharge be added to the agenda for the next Finance Committee meeting due to the signing of SB 300.

The next Finance Committee meeting is scheduled for November 10, 2009.

12) Pilot Evaluation Committee - Captain E. Nyborg

The Pilot Evaluation Committee met Oct. 21, 2009. In closed session, all eight trainees were interviewed individually. The current trainees include: Tylawski, Bridgeman, Martin, Ruff, Merritt, Fawcett, Peery, Kellerman. Their time in the program ranges from 5 months to 27 months. All trainees are progressing at their own rate. The Committee is certain there will be no recommendations for appointment within 3 months. There may be recommendations for 1-3 appointments within the next 6 months. There are no problems with the progress of any individual that is notable at this time.

Progress on the Trainee Entry Simulator Exam:

PEC's work with the Simulator is largely finished.

Progress on the written portion of the Entry Exam:

PEC is beginning to write questions for the written portion of the exam. The Committee hopes to make some headway with this task before the help of the psychometritians that will be required.

Roadmap for the Trainee Entry Exam:

Several items remain outstanding:

- COMIRA contracts.
- CMA contract.
- Advertising.
- Commitment to an exam date.

The PEC asked the Board to consider setting the exam month for May 2010. With this date set, an application cutoff date can be created and advertised.

PMI Train the Assessor course for PEC members:

The PEC is waiting for the funding from the Commission to proceed with scheduling this training. The PEC members hoped to attend the course this winter.

President Miller noted that the funds for the training were there, however, the issue holding up the release of those funds was expenditure authority. Commissioner Roberts suggested that the Board contract with SFBP but was informed by Assistant Director Bennett that unfortunately it was not in the contract set with SFBP.

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 PEC members reminded the Board that the program is not the responsibility of the SFBP as it is not the Maritime Employer of the trainees.

The California Highway Patrol wants to put it out to competitive bidding. The Board members showed concern with that process due to safety concerns. The preference of the BOPC would be using the same company as the SFPB because the company is USGC compliant.

Lisa Paolini explained that in order to pursue a sole sourcing contract, the Board would need approval from the Business, Transportation and Housing Agency and that it was a contracting issue, not a legislative issue.

The next PEC meeting will be Nov. 18th.

13) Pilot Trainee Selection Process - Captain E. Nyborg

Report on status of contracting psychometric services - see Item 12

14) Pilot Power Committee - Commissioner Roberts

There was no report.

15) Pension Committee – Vice President Tate

Appointment of an Interim Fiduciary for the San Francisco Pilots Pension Plan - possible Board action

President Miller stated that with the resignation of Capt. Moloney, the Board needed to appoint an Interim Fiduciary. President Miller proposed that Assistant Director Nancy Bennett be appointed to that office. It was moved and seconded that Assistant Director Bennett be appointed Interim Fiduciary. After discussion and a request for comments from the public, of which there were none, the Board voted unanimously to appoint Assistant Director as San Francisco Pilot Pension Plan Interim Fiduciary.

16) Pilot Vessel Advisory Committee - Commissioner Johnston

There was no report.

17) **UPRR Bridge** - Acting Executive Director Morocz

After discussion, it was agreed that reports concerning the UPRR bridge would in the future be part of the Executive Director's report and/or the Port Agent's report and that the agenda item "UPRR Bridge" would be discontinued.

18) **Ad Hoc Advisory Committee on Pilot Selection** – Vice President Tate

Vice President Tate reported that he had received the name of a point of contact within the CHP Human Resources group who may be able to assist in the Committee's deliberations and its development of recommendations to the Board for a plan to increase diversity among the Board's trainees and licensees. Vice President Tate would follow up with CHP.

19) **Navigation Technology Committee** - Commissioner Johnston

There was no report.

20) **Ad Hoc Committee to Review Investigation Procedures** - Commissioner Osen

There was no report.

21) **Pilot Fitness Committee** - Commissioner Roberts

Commissioner Roberts expressed his frustration that the contracting process with UCSF has frozen the Committee.

22) **Board Audit** - President Miller

President Miller announced that the Bureau of State Audits auditors had met with the Board and BTH representatives on October 20 at the Board's offices. The meeting is denominated the "Exit Conference" by BSA. Participating for the Board were President Miller, Acting Executive Director Morocz, Assistant Director Bennett, BTH Deputy Secretary for Internal Audit and Quality Improvement Michael Tritz, and Board Counsel Ray Paetzold. The Board representatives were allowed to see and comment upon a draft final audit report that included findings and recommendations. All aspects of the meeting are officially embargoed and none of the participants can disclose them.

The BTH Agency and the Board will receive a copy of the final report on Friday, October 30. BOPC will comment on the report in a letter to the BSA Agency which is due to BTH on Tuesday, November 3, and to BSA on Thursday, November 5.

23) **Legislation** – President Miller

Report on status of SB 300 (Yee) regarding clean-up legislation, NavTech Surcharge, and Rate adjuster in HNC Section 1190(a)(1)(A).

President Miller announced that the Governor had signed SB 300 which will take effect on January 1, 2010.

24) Pilot Pension Calculation - Assistant Director Bennett

Develop a standardized years-of-service form used to calculate a pilot's pension to be included in the pilot's permanent file - possible Board action

Assistant Director Bennett reported that she is working with Board Counsel to confirm that the form that is being developed to track the years-of-service for pension calculation is not subject to the rule-making process. Staff plans to update the Board on Counsel's advice at the next Board meeting.

25) Statement of Economic Interest - Assistant Director Bennett

Establish a system to follow up on Forms 700 distributed to ensure that they have been completed and that board files include a copy - possible Board action

Ms. Bennett presented a form that lists those that are subject to filling a Form 700 and will be used to track and record the Board's fulfillment of this obligation. Commissioner Roberts suggested that staff track completion of the required ethics course as well.

26) Low Sulfur Fuel – Commissioner Osen

Effect on vessel safety of implementation of recent CARB regulations - possible Board action.

Commissioner Osen reported on the October 8, 2009 Harbor Safety Commission meeting and reported that the Committee continues to be engaged in the implementation of the new California Air Resources Board (CARB) regulations that mandate low sulfur fuels when entering ports in California for Ocean Going Vessels. The Committee sent a letter dated October 14, 2009 to the California Office of Oil Spill and Response stating the following:

“The Harbor Safety Committee supports a resolution to the Administrator of OSPR requesting CARB to immediately suspend the issuance of financial penalties for a period of one year, which we believe will provide the time necessary to collect data on these performance issues, identify and address root causes and apply corrective measures.”

Commissioner Osen stated that he would be traveling to Sacramento to meet with representatives of CARB to discuss.

The acting Port Agent expressed concerns regarding the volatility and unreliability of the Low Sulfur Fuel's performance and noted that pilots are feeling the need to be more proactive.

New Business

27) Pilot Continuing Education Committee - Commissioner Roberts

Manned Model Training - Proposal to amend contract with Port Revel to add one additional class (for six pilots) during 2009 - possible Board action

Commissioner Roberts stated that the Board currently has a contract with Port Revel to provide manned model training required by Section 215(b)(1) of the Board's regulations. Pilots go in groups of six per class and are required to complete this training every five years. There are currently two classes scheduled for 2010.

Currently, there are two first year pilots that have not had manned model training. This number is expected to rise to 8-10 by the end of 2010 as apprentices complete the training program and are licensed by this Board. If a third class is not added, the push back in rotation would extend many pilots beyond their 5 year cycle, in violation of state law. It has been well documented, and learned first hand last year with the Overseas Clearmar incident outside the Golden Gate, how important this training is to Pilots, especially in their first year.

For these reasons, the Continuing Education Committee recommended that the contract with Port Revel be amended to provide for one additional class to be held on or about August 2, 2010. The additional costs would be 120,000 (in U.S. dollars) for the tuition and related fees plus up to \$6500 per pilot in travel expenses. These costs would be paid out of the revenues from the Pilot Continuing Education Surcharge.

These additional program expenses may require an amendment to the Board's expenditure authority, which may be in the form of a Spring Finance Letter. It may also be necessary to increase the surcharge rate, although this could wait for a quarterly review of the Board's expenses.

Commissioner Roberts moved that the Board's acting Executive Director, Assistant Director and/or President be authorized to take all necessary action and to execute all necessary documents to amend the Board's contract with Port Revel to provide for one additional class for six pilots to be provided during on or about August 2, 2010 for a sum not to exceed \$120,000 U.S. and for related travel expenses in the amount not to exceed \$6500 per pilot.

The motion was seconded by Commissioner Wainwright, and passed unanimous in favor.

President Miller noted that there is considerable interest in the Board's long-standing policy of authorizing business class air travel for licensees attending manned-model training at Port Revel. President Miller requested that the Pilot Continuing Education Committee do an in-depth review of the policy, including consideration of alternatives to business class travel, the practices of other California and Pacific Coast pilot groups and regulators.

Commissioner Roberts stated that he would schedule a meeting to consider the business class air travel question.

28) Confidential Information - Assistant Director Bennett

Staff recommendations on the protection of confidential information and establishment of information security policies - possible Board action

Assistant Director Bennett reported that all pilot personal materials were currently housed in a locked cabinet at all times. Mr. Morocz further discussed the need for staff to develop a policy to establish the security of information and transmittal. This policy will be administrative in nature and will not need the Board to formally accept.

Other Matters

29) Public Comment on Matters not on the Agenda

There were none.

30) Proposals for Additions to Next Month's Agenda

There were none.

31) Adjournment

The meeting was adjourned at 11:52 am