BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF
SAN FRANCISCO, SAN PABLO AND SUISUN

STATE OF CALIFORNIA

IN RE: PETITION OF THE SAN FRANCISCO BAR PILOTS FOR INCREASED PILOTAGE RATES	RESPONSE BY THE PACIFIC MERCHANT SHIPPING ASSOCIATION IN OPPOSITION TO THE PETITION; SUBMISSION OF WRITTEN EVIDENCE IN SUPPORT OF RESPONSE Hearing: April 1, 2015

I. INTRODUCTION

In 2014 the rates in the existing pilotage tariff produced higher pilot revenues than at any other time in the 160+ year history of compulsory state pilotage on the San Francisco Bay, and with ever larger ships calling on the Port of Oakland it stands to increase further still. Meanwhile, pilot expenses have actually decreased over the past two years and these have been easily and readily paid out of the pilots' record high revenue levels. The piloting corps is virtually at full strength and recent exams have proven effective at recruiting excellent classes of new trainees waiting in the wings, without any rate increase over four training list cycles. For these reasons, and as further demonstrated by the facts provided to the Board, the pilots fail to carry their burden to prove that a change in the rates is justified.

Accordingly, the Pacific Merchant Shipping Association ("PMSA") respectfully requests that the Board of Pilot Commissioners reject the Petition for pilotage rate increases submitted by the San Francisco Bar Pilots ("SFBP"). To that end, PMSA hereby submits its Response to the SFBP Petition and written evidence in support of this Response pursuant to 7 CCR §236(d), Harbors & Navigation Code ("HNC") §1201.5(b).

II. STANDARD OF REVIEW AND APPLICABLE RATEMAKING LAW

The Harbors & Navigation Code requires that the Board shall make recommendations to the Legislature on rates for pilotage and hear petitions for rate changes from any party directly affected by pilotage rates. HNC §§1200-1201. While any ultimate disposition of ratemaking must come from a change in statute by the Legislature, the recommendation process takes the form of a quasi-judicial hearing where the Board sits as a finder of fact, not as a policymaker, and must only approve a requested change in a pilotage rate if it "is warranted by the evidence." 7 CCR §236(j).

When considering whether a change in rates is "warranted by the evidence," the Board must apply a standard of review such that "the party proposing a rate adjustment shall have the burden of proving by a preponderance of the evidence that a change in the rates is justified." 7 CCR §236(c).

The "preponderance of the evidence" standard means that the party advocating for a rate change, in this case the SFBP, "must persuade you, by the evidence presented [ ] that what he or she is required to prove is more likely to be true than not true. … After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence." CACI No. 200 (rev. 2005)(California Civil Jury Instructions). Or, stated another way, a "'[p]reponderance of the evidence' means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on the other side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it." BAJI, 2.60 (California Jury Instructions, Civil).

When weighing the evidence and whether or not it is persuasive, the Board's regulation also directs that the Board shall consider a series of factors when going through the rate recommendation process. 7 CCR §236(f). However, while the consideration of the evidence related to these factors is required, "the weight to be given to each of these factors enumerated in this subsection may vary depending on prevailing circumstances and shall be left to the sound discretion of the Board." 7 CCR §236(f)(12). As a result, the Board at the very least must consider these factors, but this requirement does not tie the Board's hands nor undermine its evidentiary standard.

In addition to these limitations on the Board, the U.S. Constitution limits the authority of a state to impose fees directly on ocean-going vessels engaged in interstate and foreign commerce; therefore, the State must take care only to impose fees upon navigation which are demonstrably "reasonable" charges "for services rendered." *Clyde Mallory Lines v. Alabama,* 296 U.S. 261, 267-268 (1935). If a state goes beyond these basic precepts with charges upon vessels then these are no longer simple fees, they become unconstitutional duties of tonnage and unlawful burdens on interstate and foreign commerce under the U.S. Consitution. *Id.* This analysis is similar to the definition of a "tax" under the California State Constitution (Art. XIIIA, Sec. 3(b)). As a result, the Board must take care to ensure that the total amount of the approved pilotage fees "must enhance the safety and efficiency of interstate and foreign commerce, … must be used to pay for the service, … [and] the fee can place at most a small burden on interstate and foreign commerce." *New Orleans S.S. Ass'n v. Plaquemines Port, Harbor & Terminal Dist.,* 874 F.2d 1018, 1021-1022 (5th Cir., 1989).

III. STRUCTURE OF THE CURRENT PILOTAGE TARIFF

Vessels are required to pay the current rates in the pilotage tariff as adopted in statute by the state Legislature. HNC §§1190-1191. Every vessel crossing the bar is charged a rate based on gross registered tonnage ("GRT") and draft per §1190. Every bay and river move and miscellaneous task is charged based on the rates set by §1191, which may also be adjusted based on ship size.

As a result of this tariff structure, rates, ship size, and moves are each an equally important independent variable to consider when calculating pilotage revenues. For example, even when statutory rates remain unchanged pilotage billings per ship have historically increased as vessels' GRT increases, and each ship's billing will be unique based on its particular size. Likewise, even if the statutory rates remain unchanged and vessels' GRT remains unchanged, pilots may earn higher total cumulative pilotage fees when they move more vessels but lower total cumulative pilotage fee revenue when they move less.

In addition to base pilotage rates there are a number of surcharges which are charged to vessels. These include: the Board Operations Surcharge (HNC §1159.2),

which generates the entirety of the revenues necessary to pay for the administration of the Board's activities; the Pilot Continuing Education Surcharge (HNC §1196), which pays for the entirety of pilots' attendance at training courses and classes after licensing; the Trainee Training Surcharge (HNC §1195), which pays for the entirety of expenses associated with the exam for trainees and for training these trainees before licensing; the Pilot Boat Surcharge (HNC §1190(a)(1)(B)), which pays for the entirety of the costs of pilots' boats construction, modification, and life extension; and, the Pilot Pension Surcharge (HNC §1165), which pays the entirety of the costs of the pilots' unfunded defined benefit pension plan as established by statute.

IV. CURRENT RATES

The current rates, while authorized by the Legislature in HNC §§1190-1191 are not specifically enumerated in either of these statutes; rather they are published privately by the SFBP consistent with the direction of these sections. The current §1190 rates for crossing the bar, whether inbound or outbound, are 92.43 mills (or $0.09243) per GRT and $10.26 per foot of draft. Exh. 2. The current §1191 rates (aka "blue card" rates) vary by move, ship size, and service provided to a vessel. Exh. 3. Aside from periodic adjustments which as of 2014 are no longer occurring (see SFBP Petition, pg. 1, fn.2), the current rates for all §§1190-1191 charges have remained unchanged since last increased on January 1, 2006.

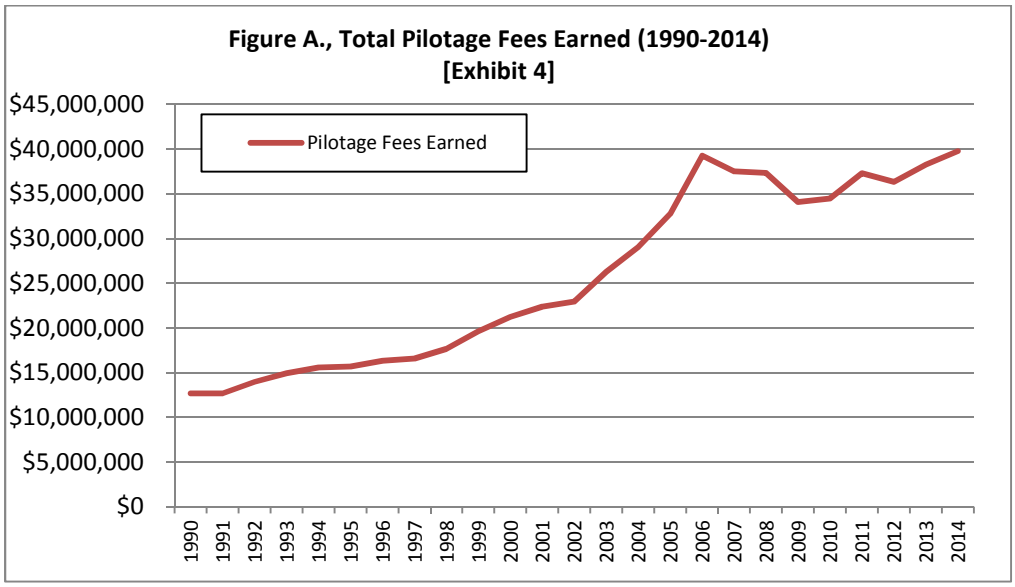
In addition to the pilotage fees, vessels pay the numerous surcharges listed above (See Sec. III, *supra*). While they are all set independently of the §§1190-1191 rates which are the subject of this Petition, these surcharges are relevant to rate-setting. Some surcharges, like the Pilot Boat and Navigation Technology surcharges specifically reimburse pilot expenses, which indirectly boosts pilot average net income. Others, like the Board Operations Surcharge and Pilot Pension Surcharge, are directly related to pilotage revenues, and are of particular concern to industry. The Board Operations Surcharge is a straight percentage of total pilot revenues, thus as pilotage revenues increase so does the Board Operations Surcharge unless future actions are taken by the Board and state Department of Finance.

The Pilot Pension Surcharge is imposed on vessels in order to pay the entirety of the unfunded defined benefit pension benefits of pilot retirees. Because these benefits are based on average net incomes of pilots, and the liabilities increase when new pilots retire, higher rates will necessarily further exacerbate the existing unfunded liability associated with this Pension Surcharge – which is substantial. In recent years, the pension surcharge has risen to about 20% of total pilotage fees. Because of these surcharges, the effects of any rate increase are multiplied and result in even greater costs to vessels hiring pilots.

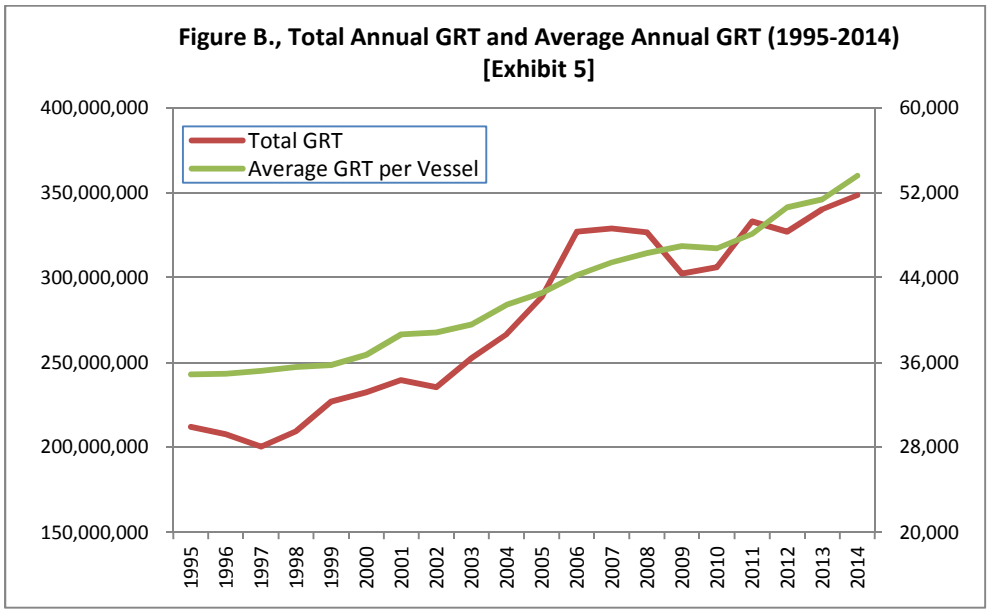
V. THE CURRENT RATE GENERATED RECORD-HIGH REVENUES IN 2014 AND HAS ALLOWED PILOTS TO EARN MORE WHILE WORKING LESS

A. The Current Rate Generated The Highest Pilotage Fee Revenues In The History of the Pilotage Ground on the Highest Tonnage In The History of the Pilotage Ground in 2014

The current rate generated total pilotage fees of $39,754,055 in 2014, the highest total annual pilotage fee ever collected. Exh. 4.

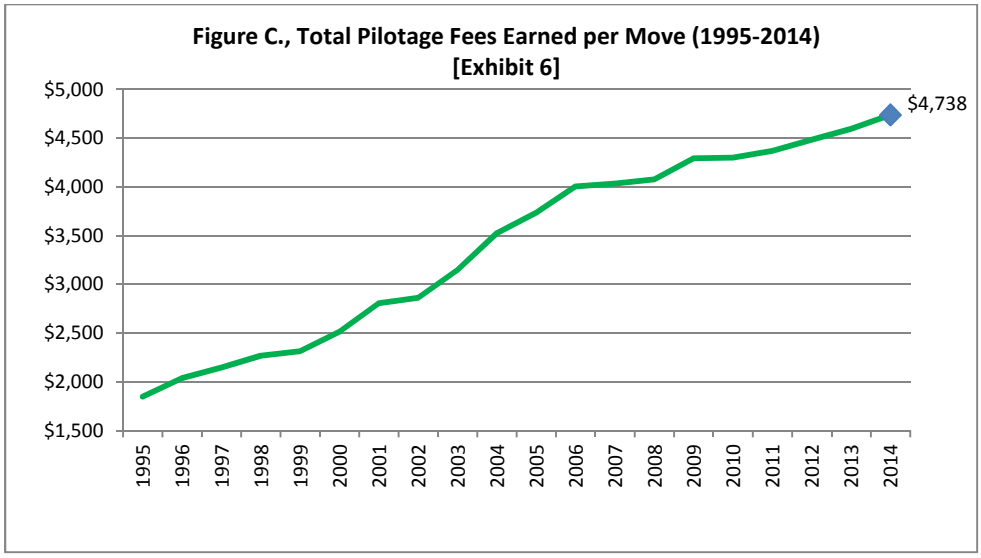


The pilots also moved the most vessel gross registered tonnage ever in their history when they moved tonnage of 348,416,806 in 2014. Exh. 5.

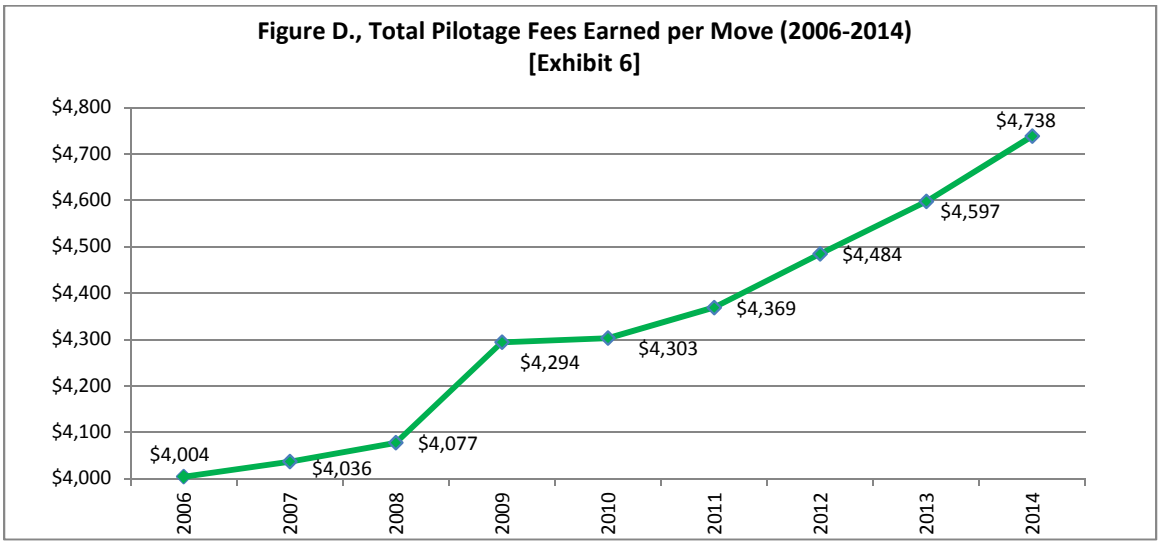


B. <u>2014 Also Generated The Highest Pilotage Fee per Move Revenues In The History of the Pilotage Ground</u>

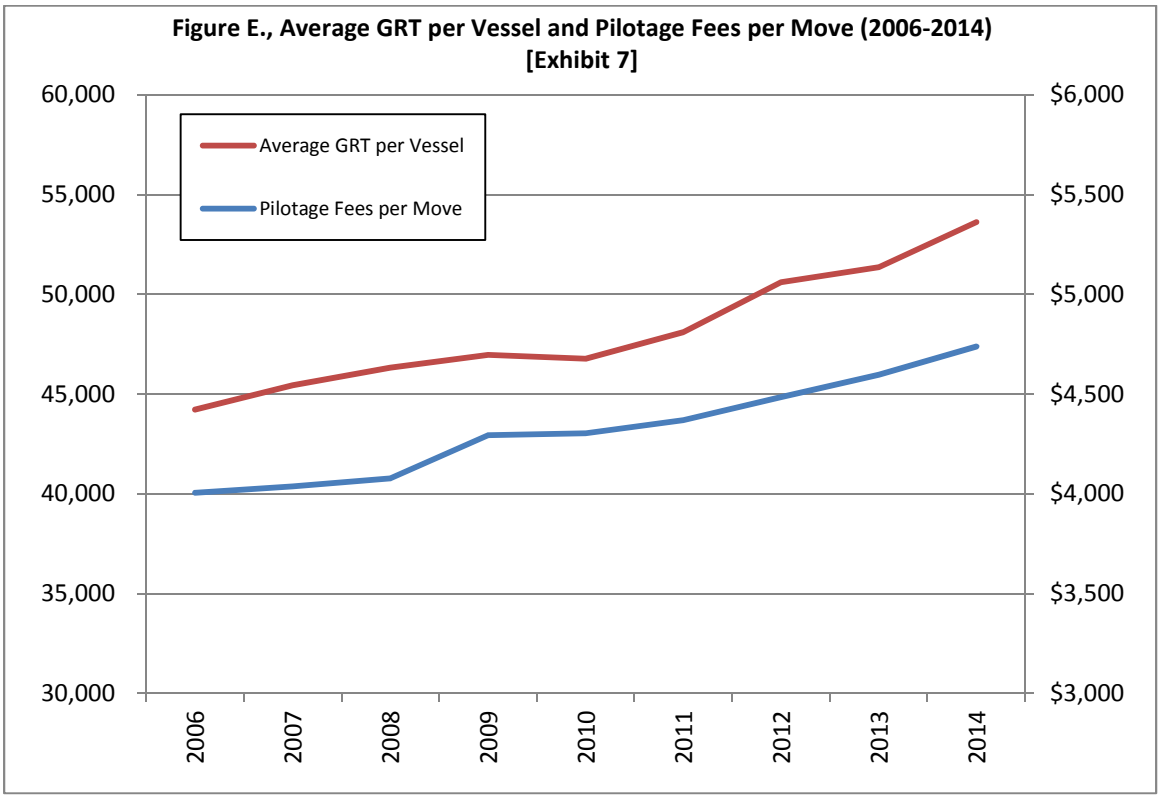
Regardless of whether a rate increase has or has not occurred, pilotage revenues earned per vessel move have increased continuously every year for the past 20 years – reaching a record $4,738 per move in 2014. Exh. 6.



This unabated steady increase continued even without a rate increase from 2006 to 2014 - from $4,004 per vessel to $4,738 per vessel in 2014 – also the highest ever.

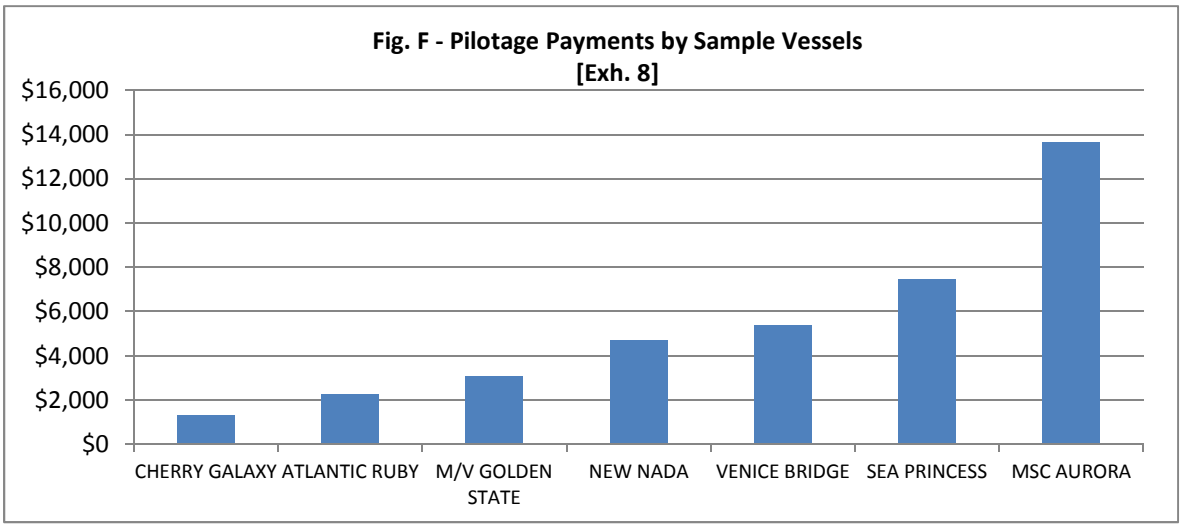


The §1190 tariff formula ties rates directly to the independent variable vessel GRT, such that increases in vessel size are directly correlated with an increase in average pilot revenue per vessel by design. Exh. 7.

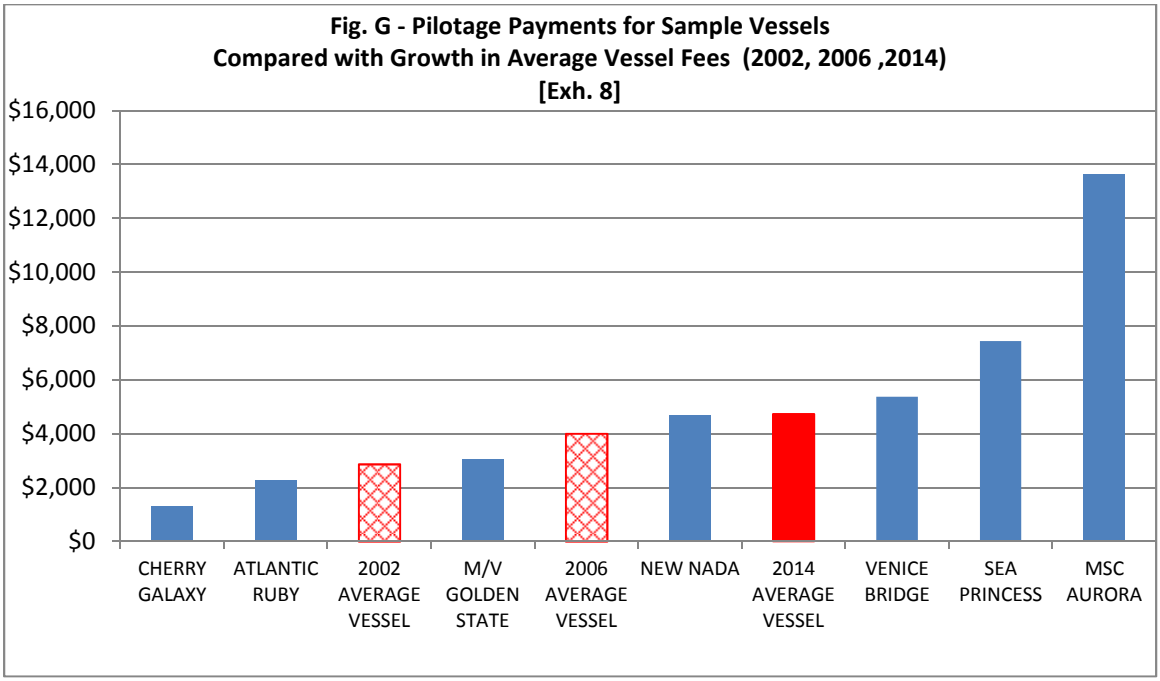


As projected in the SFBP Petition, and endorsed by PMSA in this Response, the historic trend of continually increasing revenue per vessel is projected to continue unabated (see Sec. VII below).

Viewed across different types and classes of vessels, the tariff structure manifests itself in large differentials in pilotage fees paid on a vessel-by-vessel basis. Exh. 8.

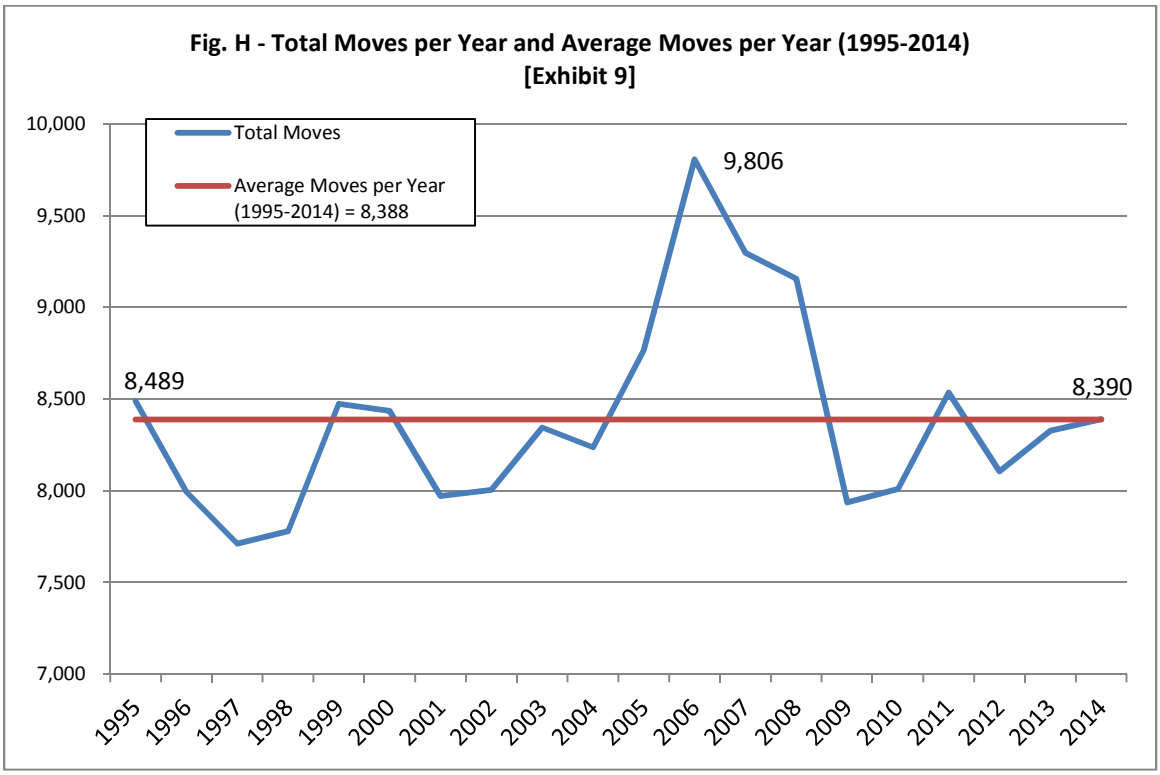


The growth in average revenue per vessel can be viewed through this same lens, because revenues increase when more large vessels call. Average revenue per vessel moves up through smaller vessel classes and sizes over time because average payments increase.



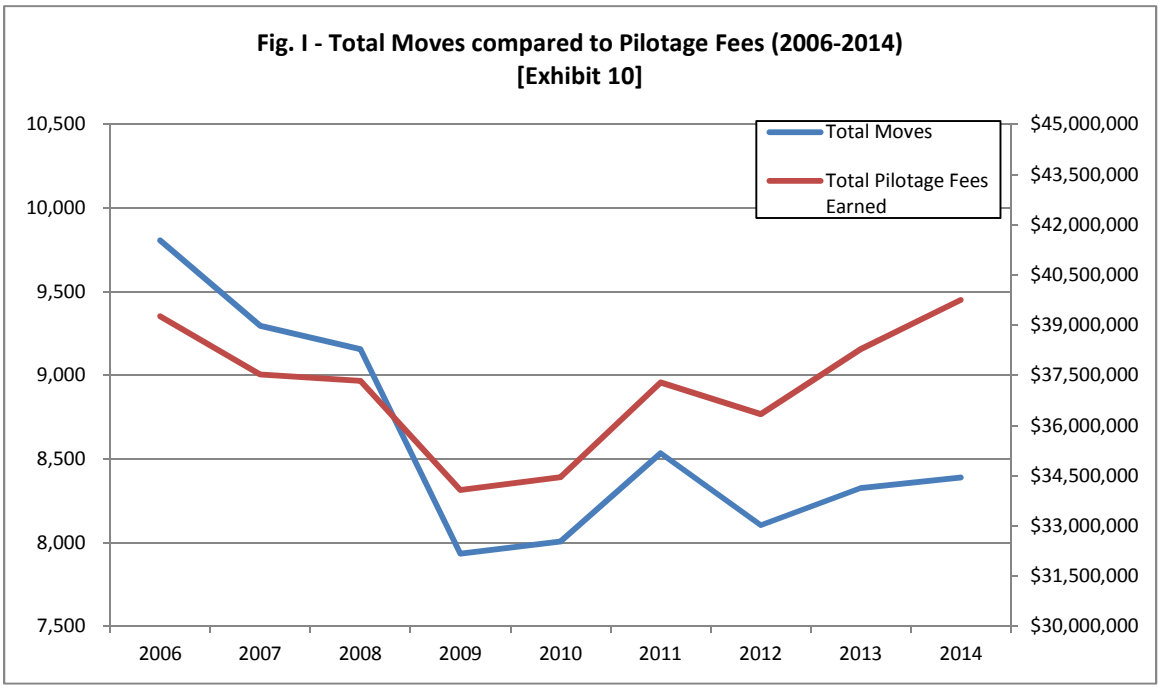
C. Record Revenues and Tonnage Occurred Despite the Fact that Pilots Moved Fewer Vessels in 2014 than in 2006

The most unpredictable independent variable in evaluating the economics of pilotage revenues is estimating total future ship moves.[1] Annual ship moves have historically varied from year to year – since 1995 they have ranged from a low of 7,711 to a high of 9,806 per year. The low year was in 1997, but the spike year of 9,806 was 2006. In 2014 total moves totaled 8390. This is almost exactly the historic average of the past twenty years (1995-2014) of 8,388 moves per year. Exh. 9.



[1] Neither the SFBP Petition nor this Response attempts to pinpoint with any specificity the number of future total vessel moves. Because they can vary for any number of commercial reasons – everything from broad trends in the maritime industry to costs of local port calls and competition from other ports for the same cargoes to labor issues or other service disruptions to national trade trends and the very health of the economy of the United States as a whole - projections of total overall ship calls are not easily or readily available. And, as demonstrated by the SFBP 2011 Petition, projections when done without being mindful of broader industry trends are prone to unreliability. (See Sec. VIII, IX, below)

Changes in total pilotage fees collected are directly correlated with changes in total moves (and amplified by steady growth in vessel size) – and, as a result, when pilots move more ships which are ever-larger they earn higher total revenues faster, but when pilots move fewer ships they will eventually earn lower total revenues regardless of vessel sizes. Exh. 10.



This correlation exists independent of changes in rates. Exh. 11.

Total Moves and Total Pilotage Fees Change Year to Year Independent of Rate Changes (2006-2014) (Exh. 11)

Year	Total Moves	% Change	Pilotage Fees Earned	% Change	Bar Rate % Change
2006	9,806	-	$39,264,873	-	-
2007	9,296	-5.20%	$37,523,239	-4.44%	0
2008	9,156	-1.51%	$37,330,873	-0.51%	0
2009	7,935	-13.34%	$34,071,805	-8.73%	0
2010	8,008	0.92%	$34,456,762	1.13%	0
2011	8,534	6.57%	$37,281,993	8.20%	0
2012	8,104	-5.04%	$36,341,646	-2.52%	0
2013	8,326	2.74%	$38,276,060	5.32%	0
2014	8,390	0.77%	$39,754,055	3.86%	0

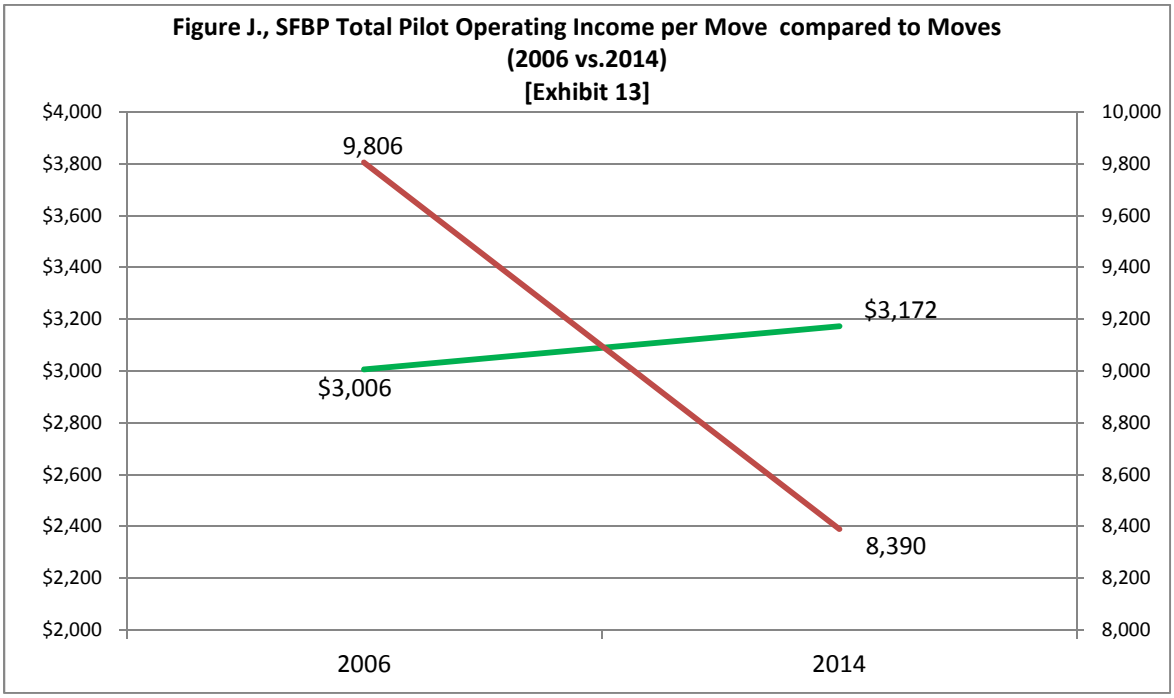
Thus total pilot revenue most clearly reflects the number of total moves completed, not rate changes.

D. Comparing 2014 Income to 2006 Income, Pilots Are Earning More per Move, While Moving Fewer Ships

1. SFBP Earns Pilotage Fees Faster and Works Less

While the SFBP cites the lack of an increase in rates since 2006 as a reason for its rate request, it would be wrong to equate the lack of a rate increase with a lack of income increases. Pilots only earn revenues on a per move basis, and the rate only affects what a ship pays on a per move basis, so to determine a pilot's rate of income, it needs to be reviewed on a per move basis.

From 2006 to 2014, the SFBP's total Operating Income (total Pilotage Fees less Operating Expenses) per Move has increased 5.5%, from $3,006 to $3,172. Exh. 12. SFBP income per move has increased along with ship sizes since 2006, even while total moves decreased from 2006's peak. Exh. 13.

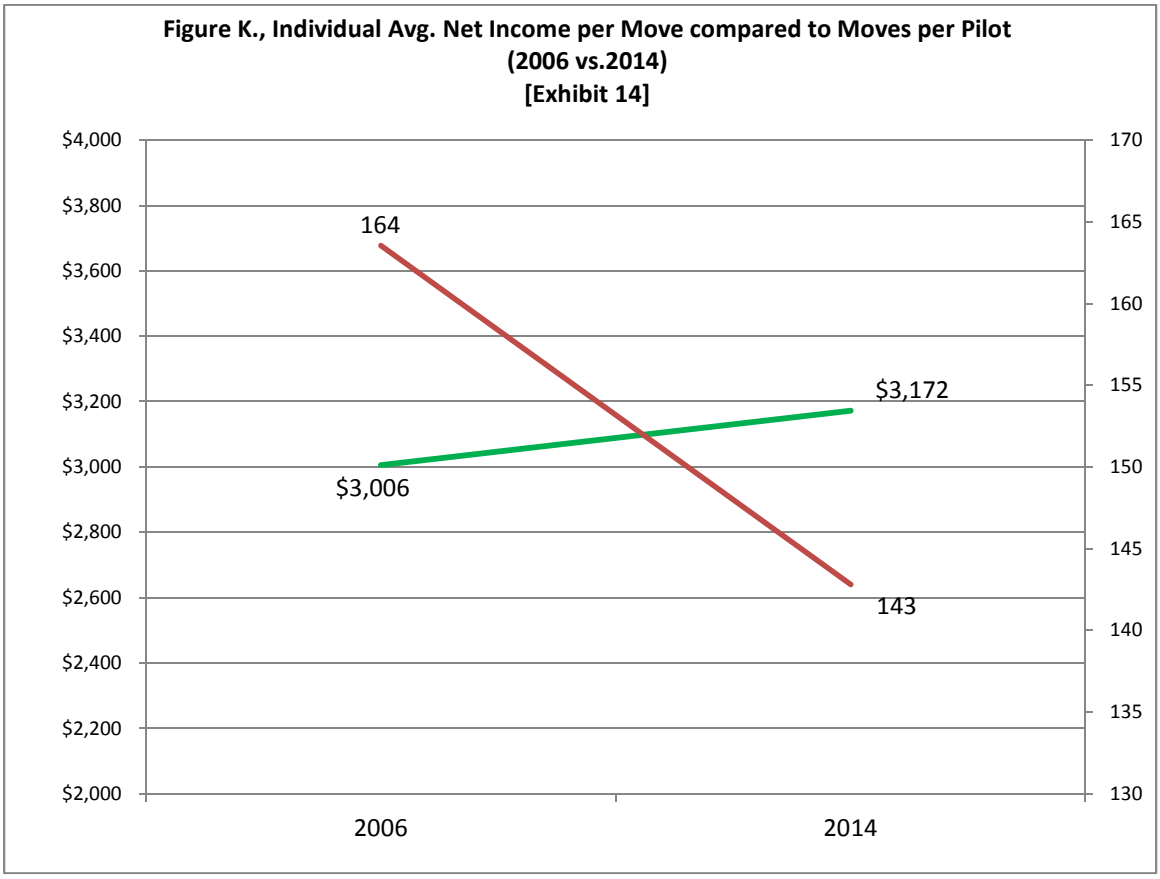


2. Individual Pilots' Earning Power Increases As Well

Like any other independent contractor job where non-employees can only earn an income on a per-job basis, when pilots work more they earn more, and when they work less they earn less. (See Fig. I, *supra*) As such, to isolate the rate by which income is earned, it is critical to compare pilot incomes from year to year on a standardized basis.

(i) Individual Pilots Earn More in 2014 than in 2006 When Standardized Per Move

To standardize pilot incomes for an apples-to-apples comparison for 2006 and 2014, this measurement eliminates the variable of total ship moves. In 2014, an individual pilot moved average of 143 ships that year, while in 2006 each pilot averaged 164 moves – meaning that there is now 15% less work to go around. Exh. 14. However, upon isolating this variable, it turns out that when a pilot in 2006 was working harder, he was earning less per job, at $3,006 per move than that pilot who worked less in 2014, but earned $3,172 per move. That is an increase in average net income per move of 5.5%.



Put another way, if a pilot in 2014 had moved the same number of ships that he had moved in 2006, but at 2014's rate of income, his Average Net Income for 2014 would have equaled $520,208 – 5.7% over and above 2006's peak year income. Thus, while 2014's Average Net Income is lower than 2006's, it is the result of pilots moving fewer ships, not because the current rate is inadequate at raising pilotage fees.

(ii) Publicly-Available Databases and Records Lead to the Estimate that Pilots Earn More per Hour in 2013 than in 2005-2006

Another method to compare standardized 2014 and 2006 earnings per pilot would be to evaluate pilot income on a per-hour of pilotage services performed basis.

The records which specifically demonstrate pilot assignment data to this level of detail have not been disclosed to the public. While, PMSA acknowledges that it has received assignment records and database records from the Port Agent under the Public Records Act for the months January to June of 2013, and it relies on those databases to make its estimates they do not provide the detail necessary to evaluate actual pilot work.[2]

PMSA also relies on the database of pilot assignments and the SFBP Work Rules which were both made public in the case of *Miller v. Commissioner* T.C. Memo 2011-219 (September 8, 2011)(Exh. 15) for its estimates in this section. This is new evidence which has only come to light since the last rate petition, and it weighs sharply against any rate increase based on income since we now know that the workload of a San Francisco Bar Pilot is such that it can be legally characterized by the U.S. Tax Court as a secondary, part time job when compared to real estate work. *Miller* at 10-12 ("A taxpayer will qualify as a real estate professional if: (i) more than one-half of the professional services performed in trades or businesses by the taxpayer … are performed in real property trades or businesses …, and (ii) such taxpayer performs more than 750 hours … in real property trades…"). The Tax Court found that even a pilot with an "extraordinary" work ethic, "generally is not required to actually work for all of his seven days 'on'," (*Miller* at 4) of

[2] This Board has actively sought to deny to itself and the public access to the database which contains definitive information about individual pilot work hours. PMSA asked the Board in 2011 to request such information from the Port Agent, but the Board refused to make such an inquiry for the Port Agent's records which would have made this information public. This refusal in turn led to the Public Records Act litigation which concluded in the Court of Appeals ruling of *Bd. of Pilot Commissioners v. Superior Court,* (2013) 218 Cal.App.4th 577 (holding that the Port Agent is a public officer, at least when conducting public duties). Subsequently, PMSA has submitted Public Records Act requests directly to the Port Agent, bypassing the Board, and received numerous records from the pilot dispatch board and piloting assignment database – but it is incomplete with respect to individual pilot hours. The Board remains on notice of the conclusion by the Court of Appeals in *Bd. of Pilot Commissioners* that such assignment database information should eventually be made public in the course of its Hours of Service rulemaking. The probative value of this information to the Board is obvious in both the context of evaluating a request for a rate increase and in setting hours of service regulations and should be remedied by the Board independent of PMSA's inquiries. In any event, the lack of access to definitive records of hours worked should not be held against PMSA in this forum, or otherwise be used to impeach its arguments in this process, since PMSA is necessarily reduced to estimates based only the partial disclosures of pilot assignment databases and the database and copy of the Work Rules produced in the *Miller* case at the U.S. Tax Court.

course does not work on his seven days off, and actually "spent more time on his construction work and rental properties than he did piloting vessels in the years at issue."[3] *Id.,* at 12.

For purposes of this comparison, this pilot spent 709.75 hours in 2005 and 690 hours in 2006 "actually piloting client vessels for the SFBPA." Exh. 16. As a result, this pilot earned $582.17 per hour in 2005 and $712.89 per hour in 2006 for pilotage. The average of these two hourly income figures is $647.53 per hour.

This is an appropriate estimate to use by the Board in many respects. First, it is based on actual pilot income, as presented to the United States Tax Court in an internal revenue case in which income is a material issue, and is therefore reliably accurate. Second, it is a good approximation of all pilot incomes because by the Board's own regulations, "[e]very pilot is required to perform his or her full share of assignments as a pilot unless prevented by illness or other cause satisfactory to the Port Agent and the Board." 7 CCR §219(b). Finally, we can be confident that these work hours represent the contributions of a pilot who is doing his "full share" since the sworn testimony of the Port Agent provided to the Tax Court in the *Miller* case was that this individual pilot "is highly respected for his work ethic." *Miller*, Transcript, at 211; Exh. 17. Moreover, SFBP represented to this Board, via counsel in the last rate hearing, that "[p]ilots are paid the same. They divide all the profits equally." (Rate Hearing Transcript 23:9-10, April 6, 2011)

For 2014, total moves and 237(d) workload data were cross-referenced with the SFBP Work Rules, to estimate total hours worked for the total piloting jobs. Exh. 18. According to this estimate, total pilot hourly workload totaled 37,680 hours in 2013 for total Net Income of $26,656,575, leaving a net income at $707.45 per hour.

These estimates show that average individual pilot incomes have grown from an average $647.53 per hour for a pilot in 2005-2006 to an approximated $707.45 per hour in 2014. This is an estimated increase of $59.92 per hour or 9.25%.

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[3] Upon making this finding, the Tax Court concluded that this pilot, actually worked so few hours that pilotage was not his primary, full-time profession, rather it was his real estate development business which was his principal occupation. *Miller* at 12.; Exh. 15.

VI. THE PILOTS' PETITION AND EVIDENCE DOES NOT PROVIDE A REASONABLE JUSTIFICATION FOR RATE INCREASES ON EITHER AN "INCREASED EXPENSES" OR "ATTRACT AND HOLD" BASIS

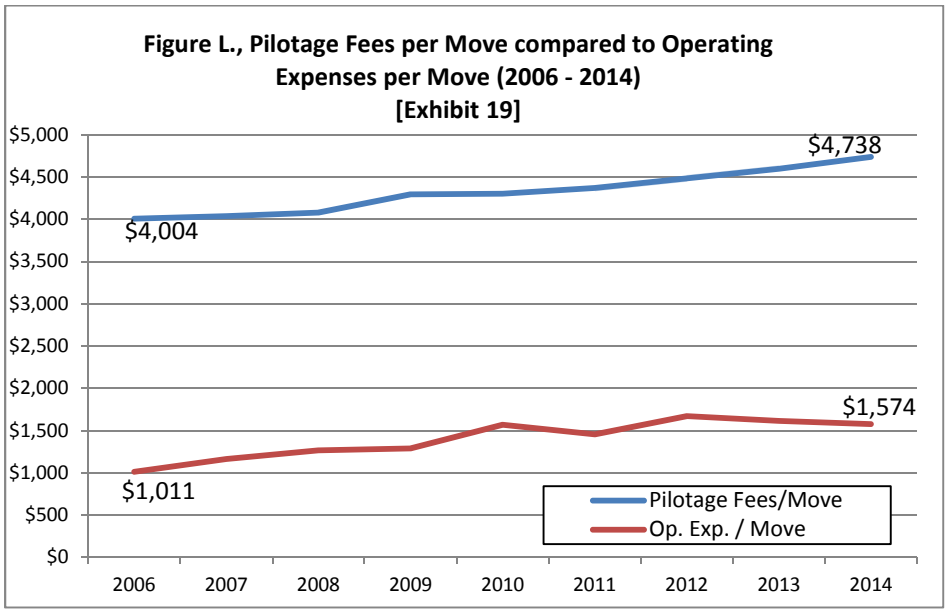
The stated "Purpose of this Petition" is "to recover increased expenses …, thereby allowing SFBP and the Board to be competitive in attracting the best candidates to meet the anticipated needs." SFBP Petition, pg. 5. The evidence submitted does not provide a justification for a rate increase on these grounds.

A. Evidence Demonstrates that Pilot Expenses Are Already Adequately Covered By the Current Rates

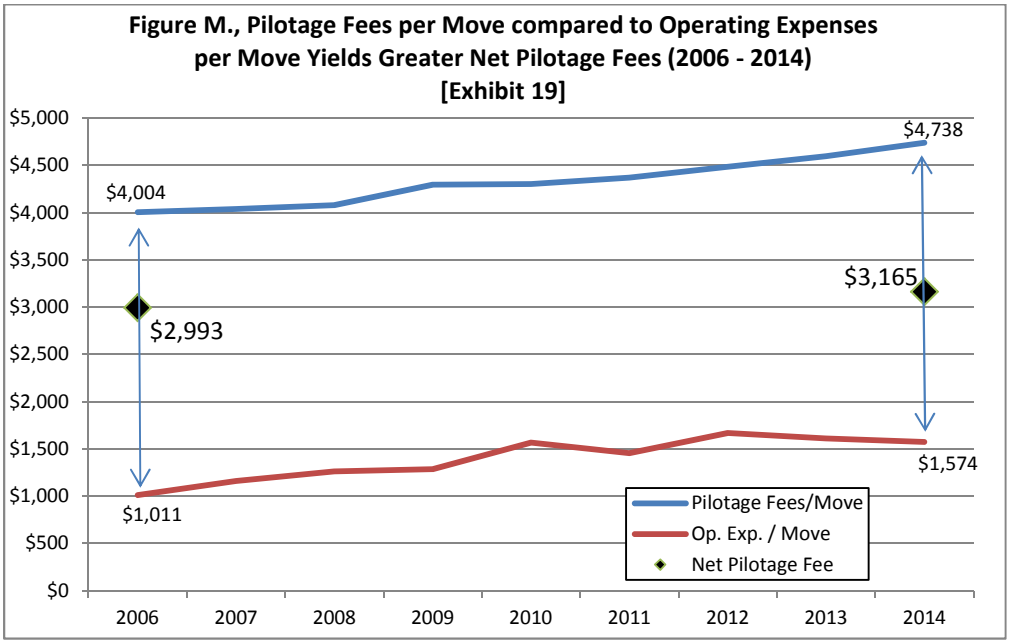
The pilots seek to "recover" increases in their expenses, implying that when compared to the rate of expense they incurred in 2006 that their 2014 expenses are too high, increased too fast, or are unreasonably large. This is not an accurate representation of the relationship between expenses and revenues or between these two years.

1. Revenues per Move from 2006-2014 Grew Faster Than Expenses per Move from 2006-2014

The SFBP Petition rests on the fact that their expenses increased by 33% from 2006 to 2014. This is not a meaningful statistic with respect to pilot income unless the growth in expenses is also compared to the growth of revenues, and once again to compare apples-to-apples the rate of expense growth must be standardized. Exh. 19.

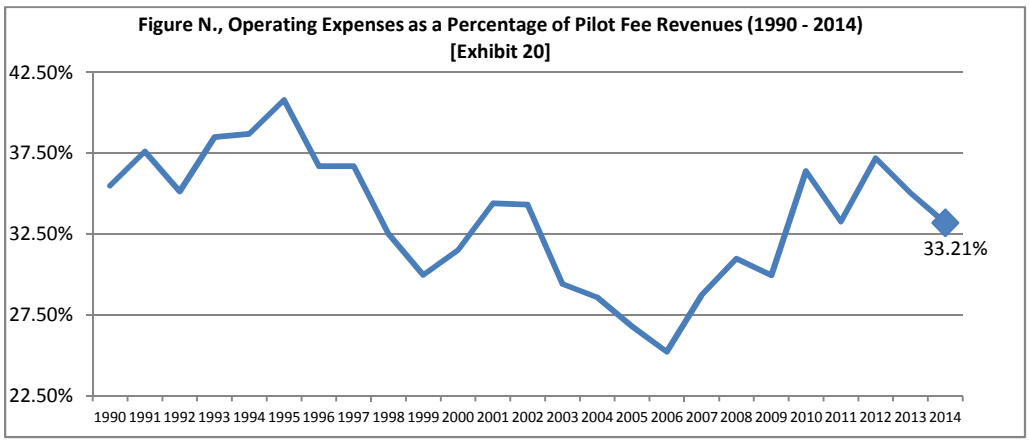


When properly reviewed in this context, it is clear that growth in pilotage fee revenues actually outpaced growth in pilot expenses. While pilotage revenues increased by $734 per move from 2006-2014, pilotage expenses only increased by $563 per move; as a result, SFBP actually netted an additional $172 per move in 2014, or 5.74% over what it earned per vessel move in 2006. This does not present a case for "recovering expenses" through a rate increase. Exh. 19.

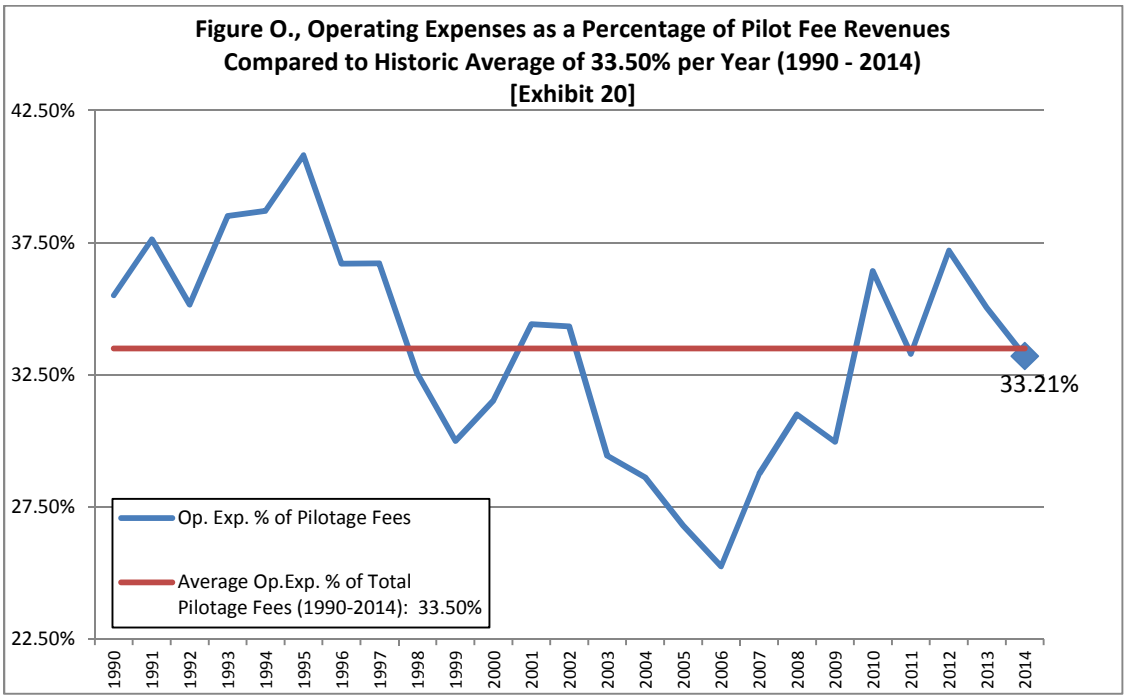


2. 2014 Pilot Expenses as a Percentage of Revenues Are At Historical Averages and Should Not be Compared to 2006, A Historical Outlier

When comparing 2014's operating expenses of $13,202,155 with 2014's pilotage fees of $39,754,055, expenses represent 33.21% of total pilotage fee revenues. Exh. 20.



The historical average ratio of pilot expenses to pilotage fee revenues has been 33.5% over the last 25 years. 2014's operating expense ratio is almost exactly on this average, at 33.21%, meaning there is nothing extraordinary about current expenses.



By comparison, it is obvious that 2006 was again a once-in-a-quarter-century outlier, because that year had the lowest ratio of expenses to pilotage fee income of any other out of the past 25 years. By definition, when comparing the expenses for any other year to 2006, the results will *always* be higher and *always* seem disproportionately large – even when comparing 2006 to an average year like 2014.

3. Pilot Expense Reductions in 2013-2014 Are An Indication that SFBP Is Properly Managing Expenses, An Incentive Provided by the Existing Rate Structure

Since the SFBP's Operating Expenses, both as a ratio and in real dollars, have actually decreased in 2013 and 2014, there is no direct upward pressure on rates. It also means the current tariff is working as structured, providing pilots an incentive to promote efficiency for ratepayers. The current rate is set at a level which provides this incentive because when the pilots reduce expenses they get to keep the savings as higher average net incomes. This is a win-win situation: pilots get to enjoy higher operating incomes

and industry is assured that expenses are kept low which will in turn avoid artificial upward pressure on spending that may result in unnecessary rate increases.

Since the existing rates produced these expense reduction outcomes, these incentives to right-size expenses have been effective. Since there is now less upward expense pressure on rates at this time they should not be increased.

(With respect to projected expenses, see Sec. VII, below)

B. Evidence Demonstrates That There is No "Attract and Hold" Issue Which Needs to Be Addressed By A Rate Change

The Petition raises the spectre of the argument that the state will no longer be able to adequately attract new trainees to its pilot training program without a rate increase. This claim, that the number of trainees or quality of trainee applicants will vary substantively with pilotage rate increases, was also made in the SFBP 2011 Petition (Exh. 21)("for the SFBP to attract and hold qualified pilots certain rate adjustments are necessary"). Yet the Petition lacking any evidence whatsoever that can correlate a proposed rate increase to any of the "attract and hold" performance claimed.

This claim also runs squarely counter to the fact that the current trainee applicant pools are full, have produced very good results, and have been able to fully re-populate the pilot corps. In addition, the SFBP itself has argued against using "attract and hold" analysis this way in its 2002 Petition when it viewed this metric skeptically:

> While the "attract and hold" factor tends to raise doubts about the adequacy of compensation … it is a poor indicator of compensation adequacy.
> … in a profession such as piloting, where there are very large barriers to mobility, "attract and hold" are lagging indicators of organizational dissatisfaction. …
>
> The Board should therefore place little weight on 'attract and hold' as a means of determining whether pilot compensation is fair and reasonable.

Exh. 22.

1. The Board's Training Program Draws Talented Applicants and Maintains Pilot Power Levels Independent of Pilot Income Variability

The Board's trainee exam and training program is well-managed, produces high quality exams that effectively distinguish and highlight the best applicants for each trainee class, and has kept the pilotage corps near capacity, regardless of pilot incomes.

(i) No Quantitative Correlations Between Rate Increases or Pilot Average Net Income and Trainee Class Size or Attrition

When comparing the evidence submitted by the SFBP in its 2011 Petition (Exh. 23) with the facts surrounding the creation of the last five trainee lists – including the size of the class of trainees, the attrition rate of the class of the trainees, rate changes and pilots' average net income for the year of the exam - there are no obvious correlations between income or rate changes and the size or success of any class of trainees. Exh. 24.

Table of Trainee Class Statistics (Exh. 24)

Trainee List Year	*Total Trainees*	*Completed Training*	*Did Not Complete*	*Attrition Rate*	*Avg. Net Income for List Year*	*Rate Increase in List Year?*
2002	18	11	7	39%	$253,717	Yes
2006	10	6	4	40%	$491,892	Yes
2007	12	9	3	25%	$450,673	No
2010	12	8	4	33%	$393,207	No
2014	13	-	-	-	$453,766	No

The evidence exposes many disconnects from the theory that a higher rate equals more trainees: the two classes separated by the largest amount of income, 2002 and 2006, have the same attrition rate; subsequent to 2002 each class of trainees is smaller, but all have higher incomes; both classes after 2006 has a lower attrition rate despite lower average net income; the largest class was in the year with the lowest income and a rate increase and the smallest class was in the year with the highest income and a rate increase; but, the classes with the lowest rates of attrition came in years without a rate increase.

The theory also ignores clear facts of which this Board is well aware: instead of going backwards on recruitment tied to a lack of rate increases over time, the opposite is true - the 2014 trainee class was actually slightly larger than the 2010 trainee class and the current list and numbers of applicants and candidates has been very steady. As Executive Director Garfinkle explained it to the Board:

> "The last exam, we had 12 candidates on the list, a very similar number and, in actuality, all the numbers are very similar, roughly 50 applications last time, roughly 30 or so taking the exam, roughly the same amount, 22 taking the simulator this time, 25, and then last time

> a list of 12, and this time a list of 13. So we've gotten pretty consistent results."

Exh. 25,at pg. 36.

It is common sense that not every pilot's career decision hinges exclusively on salary, making it even harder to draw a direct correlation between pilot average net income and either attraction to or attrition from the trainee corps. For instance, it was reported that one of the trainees from the 2010 class dropped out of the program and is now piloting vessels in Grays Harbor, Washington. Exh. 25. Pilot income in that port was approximately $237,500 in 2013 (Exh. 26), about $190,000 less than in San Francisco that year. The evidence is that there is no quantifiable conclusion that a rate increase results in attracting more trainees.

(ii) The Board Successfully Attracted High Quality Candidates To Its Latest Exam and Many Are Now Current Trainees

The evidence also proves that the current rate and average net income to pilots are more than adequate to "attract and hold" quality applicants. High quality candidates are already attracted to this pilotage ground and the Board has demonstrated consistent success at recruiting highly talented new trainees under its current exam and training program, and at current rates and current levels of pilot income.

For instance, the latest 2014 exam review has been laudatory: the testing regime was "very strong" and that it "performed effectively in identifying the candidates who possessed the job knowledge required of a pilot trainee." Exh. 27. According to Executive Director Garfinkle, "the Applicants leaving the exam room were saying that it was the hardest exam they'd ever taken." Exh. 25, at pg. 33. As a result it was his assessment that "we did very well in achieving this list. We've got very qualified candidates and, as you can see, the first nine candidates are tightly grouped in score and written exam, and simulator exam, and total points are all tightly grouped." Exh. 25, at pg. 35-36.

It is mere speculation to hazard a guess at whether or not there may be a qualified mariner somewhere in the United State who may or may not choose to sit for an exam for a license in San Francisco based on our rate structure. But it is also wholly irrelevant and

unnecessary to do so, because the evidence is that the Board is successfully attracting "very qualified candidates."

Regardless of pilot incomes, or the scope, number, or breadth of the pool of applicants of whatever qualifications they happen to be, it will always remain incumbent on the Board and its Pilot Evaluation Committee to be effective gatekeepers when selecting and evaluating pilot trainees. In recent years the Board has addressed the question of how to ensure high qualitative trainee standards through multiple efforts, including efforts to both broaden the pool of applicants (Exh. 28) and to decrease the number of applicants sitting for the exam (Exh. 29). Along the way, the Board created a very strong and meaningful exam which accurately assesses pilot trainee competence. Exh. 27. These significant non-financial efforts to broaden, decrease, and improve the exam and trainee selection process are direct actions taken to improve training.

By all accounts the Board's efforts and the Pilot Evaluation Committee's work in this field have been very successful. Having achieved these successes within our existing rate and income structure, the evidence is that the current rate is more than adequate to attract qualified applicants.

2. Pilot Average Net Income Remains Higher Than the Incomes for the Pool of Applicants From Which Trainees Are Drawn, and Industry Supported a 20% Increase in Pilot Trainee Stipends to Remove Hurdles to Trainee Access to Pilot Training

The potential pool of pilot applicants identified by the SFBP in their 2011 Petition was all "U.S. mariners nationwide who hold the necessary U.S. Coast Guard license and have the necessary experience to apply for the Board of Pilot Commissioners' Pilot Training Program Entrance Exam." Exh. 23. When compared to the incomes of the individuals within this pool, the average net incomes of San Francisco pilots remain well above the average pay of potential pilot trainees.

According to the U.S. Bureau of Labor Statistics, the nationwide average compensation for the 30,290 "Captains, Mates and Pilots of Water Vessels" in the United States is $36.34 per hour or $75,580 per year. Exh. 30. Compared to pilot compensation of $707.45 per hour (estimated, see Sec. V above) or $453,729 per year in 2014, the pay differential for these individuals is significant and undoubtedly a tremendous incentive to advance ones career towards pilotage.

The Board has already identified that the monetary issue which looms largest for potential trainees is not rates or pilot income, but rather the financial challenge of living on "the much-reduced compensation afforded to pilot trainees in the form of a $60,000-per-year stipend over a training period that can last as long as three years." Exh. 28. The Board staff in 2014 has taken steps to address this challenge, and proposed a 20% increase in stipends to help eliminate this financial hurdle for trainees; and when the Board's Finance Committee approved this increase, it was supported by the Industry Commissioner and by PMSA. Exh. 31.

3. Cost of Living and CPI Factors When Compared to Actual Pilot Revenues and California Recruitment Base Do Not Warrant A Rate Increase

The CPI and Cost of Living analyses provided by SFBP in this Petition do not change the pilots' income dynamics. First of all, the Petition points out that total CPI changes from 2002-2014 in the San Francisco Bay Area have increased by 30.6%. SFBP Pet., Cohen Decl., Exh. B. Over that same time period total Pilotage Fee revenues have grown from $22,927,581 to $39,754,055 - a phenomenal increase of 73.4% - and average net income per pilot has increased from $253,717 to $453,729, an increase of 78.8%. Jacob Decl., Exh. A. These cumulative increases are well in excess of CPI and have only served to compound the ongoing attractiveness of the existing pilotage revenue versus the applicant pool.

The Petition's economists' comparison of San Francisco pilots' income in 2010 with pilots from New Orleans in 2010 also demonstrates exactly what is wrong with these types of comparisons. SFBP Pet., Cohen Decl., ¶8. ("the average San Francisco pilot in the same year had an income of the equivalent of (100/163.8 x $395,714) or $241,583.") Pilots in San Francisco did not have an income of $241,583 in 2010, they had an income of $395,714 in 2010. The minimization of the actual spending power of SFBP income presents a purely academic argument in the face of the existing "attract and hold" evidence: $395,714 in San Francisco in 2010 may only have allowed you to live as if you had an income of $241,583 in New Orleans, but the evidence shows that it is income enough to have steadily resulted in quality trainees coming to San Francisco.

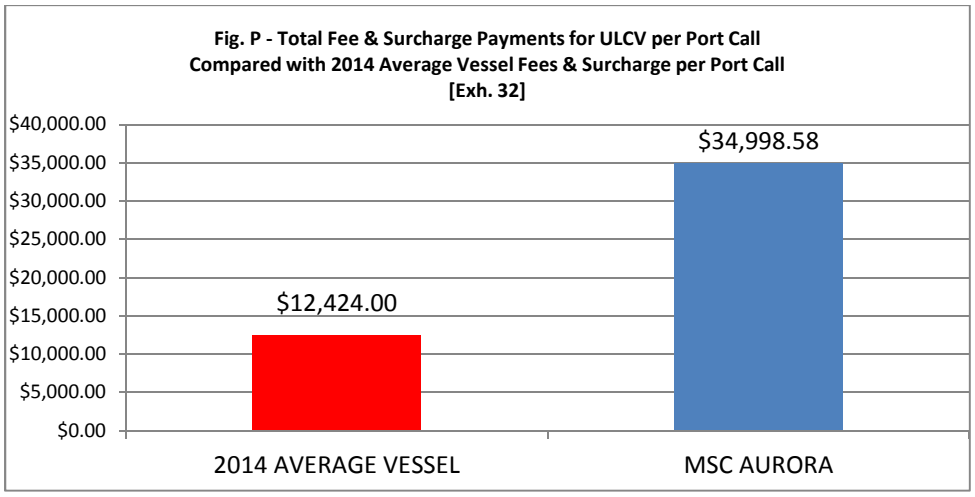
Moreover, this presents an anti-California bias, which is unnecessary. While it is true that California and the Bay Area have relatively higher costs of living than do other out-of-state places from which trainees may be recruited, according to the BLS, many trainees are already living here: California is ranked as the state with the second highest employment level in the "Captains, Mates, and Pilots of Water Vessels" occupation category. Exh. 30.

The economic statistics offered in support of this Petition are not evidence that an increase in the existing pilot rate is necessary in order to create an even larger incentive for applicants who have not already chosen to apply to become a state pilot trainee.

VII. PILOTS DO NOT NEED A RATE INCREASE IN ORDER TO RECEIVE HIGHER PER MOVE REVENUES FROM CONTAINERSHIPS AND PORT COMPETITIVENESS DYNAMICS AT THE PORT OF OAKLAND FURTHER MILITATE AGAINST A ULCV-FOCUSED RATE INCREASE

A. The Petition's Own Projections Of Increased Ultra-Large Container Vessels Predict Natural Increased Pilotage Fee Revenue Growth in Excess of Future Expenses

As discussed above, the current rate structure of the pilotage tariff results in higher pilotage fees when ships get larger. (See Fig. F & Fig. G, above) Nowhere is this more apparent than with the continuing introduction of Ultra-Large Container Vessels ("ULCVs") into the fleets of containerships calling at the Port of Oakland. On a per move basis, a ULCV vessel may pay a total pilotage invoice of $17,499.29. SFBP Pet., Tylawsky Decl, Exh. (A-3). As a result, for every port call in Oakland that ULCV will pay approximately $35,000 for pilotage, while an average vessel costs $12,500. Exh. 32



The SFBP Petition isolates their estimated additional transportation costs of providing services to these vessels as $516 per move in 2016, increasing to $579 per move in 2019. SFBP Pet., McCloy Decl., Exh. B. The Petition also expects that there may be approximately $200,000 over three years in additional Navigation Technology expenses because of the requirements necessary to move ULCVs. McCloy Decl., ¶9.

The additional income from a single ULCV already eclipses these additional variable expenses, in addition to that vessel's share of average piloting expenses generally. Netting out the costs of providing service to the ULCVs, a single ULCV move will still provide operating income per vessel move of $15,280. Exh. 33.

Comparison of Total Pilotage Paid by ULCV per "E-Pilot" Dispatch with Pilot Expenses (Exh. 33)

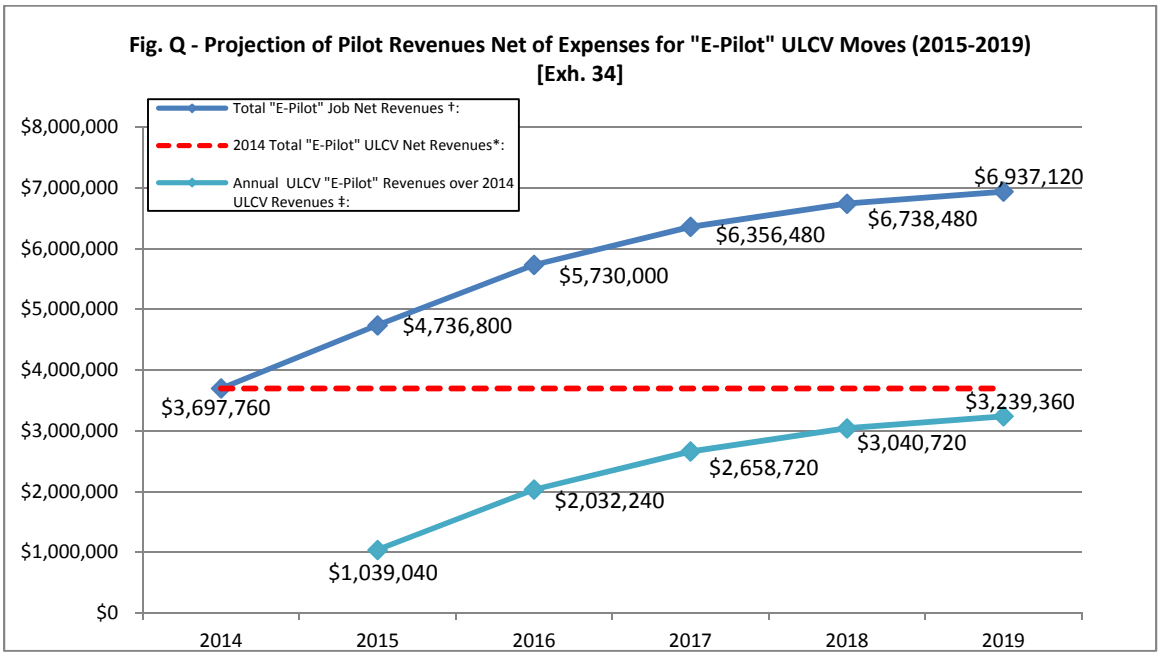
ULCV Vessel	MSC AURORA
Total Paid by ULCV per Move	$17,499
2014 Avg. Expenses per Move	-$1,574
2014 ULCV "E-Pilot" Cost per Job	-$483
Estimated Share of "PilotMate" Expense	-$162
Total Expenses per Call	-$2,219
Total Net Revenue to SFBP per ULCV Move	$15,280

The net revenues of $15,280 per ULCV are **482% higher** than the net Operating Income earned from an average vessel move in 2014 of $3,172. Exh. 12.

As ULCVs generate higher average vessel revenues without a rate increase, the rate at which pilotage fees are earned will continue to steadily increase without actually increasing the rates themselves, so long as there are additional ULCVs calling on the Port of Oakland. This is precisely what the SFBP Petition predicts will occur - as additional "e-Pilot" dispatches are predicted to increase every year from now until 2019, tracking the increased number of ULCV's calling on the Port of Oakland over time.[4] SFBP Pet., McCloy Decl, Exh. A.

[4] While the SFBP Petition does not define a "ULCV" with any specificity or its dispatch procedures for when an "ePilot" is necessary, these are both issues that PMSA anticipates may be clarified by stipulation at the pre-hearing conference held on March 24th. While the total number of ULCV moves that will result from the projected number of "ePilot" dispatches, because a second pilot is not required to be dispatched for every ULCV move both inbound to and outbound from the Port of Oakland

Relying on SFBP's projections, this will result in significantly higher pilotage fee revenues from ULCVs when compared to 2014: $1.0m more in 2015, $2.0m more in 2016, $2.6m more in 2017, $3.0m more in 2018, and $3.2m more in 2019. Exh. 34.



The ULCV trend will doubtlessly continue, and PMSA endorses the SFBP projections in this Petition as a reasonable estimate of the growth of the future calls for this class of container vessel. This forecast is consistent with the media reports which redound with the news of ever-larger ships being ordered, floated and delivered, and calling on West Coast container ports, including the Port of Oakland. Exh. 42. While pilotage fees increase steadily from this trend under the current rate structure, it is the industry that bears the cost of the enormous seaport infrastructure changes necessary to accommodate such vessels, such as dredging berths, improving and expanding terminals, and purchasing and installing new cranes.

The continuation of the current trend - welcoming higher ULCV port calls - is a win-win-win scenario for the SFBP, the Port of Oakland, and the maritime industry: more ULCVs produce higher average pilotage fee revenues for pilots, more ULCVs represent growth at the Port, and for the maritime industry it means improved economies of scale and enhanced competitiveness.

B. Evaluation of Rates Charged for Comparable Services in Container Shipping Must Reflect the Port of Oakland's Actual Competitors

The SFBP Petition focuses on several issues relating to container shipping at the Port of Oakland as a basis for their rate increase: the growth of ULCVs at the Port of Oakland as a prime driver of costs and the loss of revenue associated with the PMA-ILWU contract negotiations' lasting impacts on Port of Oakland. Evaluation of these arguments requires comparison not just to ports with presumed comparability by 7 CCR §236(f)(4)[5], but also to geographically proximate ports that compete for the same vessel traffic which is being specifically contemplated in this Petition.

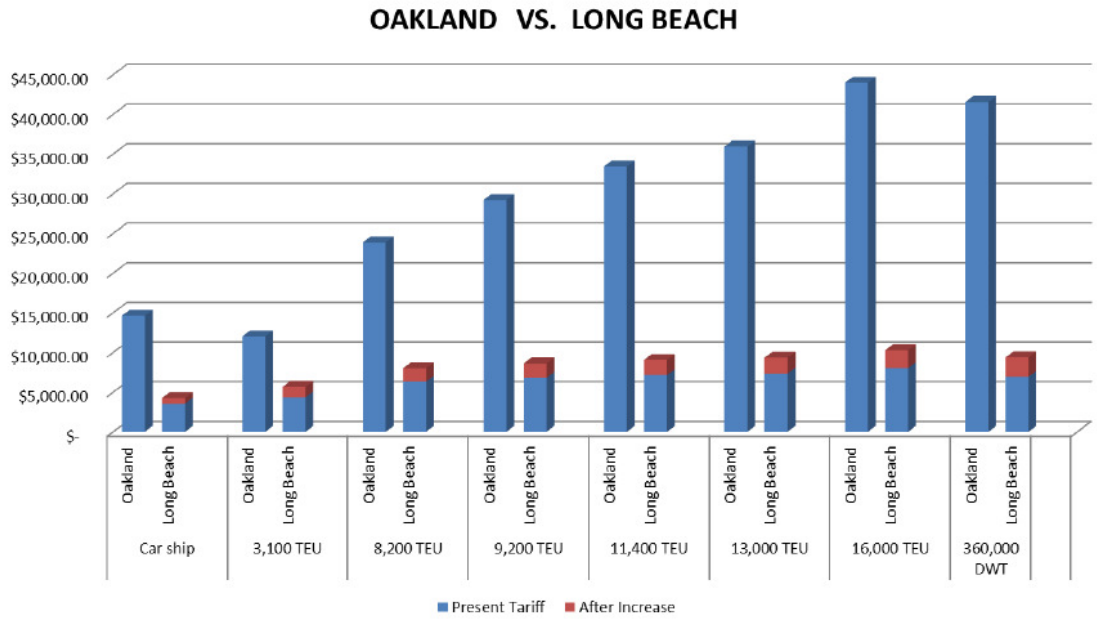
Two obvious comparable port jurisdictions which are not only similar in vessel traffic and type of vessel movements but that are also geographically relevant to the Port of Oakland, are the Ports of Los Angeles and Long Beach. These two Ports are also the largest direct competitors with the Port of Oakland for cargo and vessel traffic, and according to the Port of Oakland's 2013 Export Market Study. Exh. 35.

In 2014, the Port of Long Beach conducted a review of its pilotage rates and it was presented with a survey of "major North American ports, including Long Beach, Houston, Los Angeles, Mobile, New York, Oakland, Puget Sound, Tampa and Vancouver." Exh. 36. The Port of Long Beach staff memo concluded that current pilotage rates in Oakland were highest amongst each major port in every vessel category except for tankers calling the Port of Houston:

	New Century 1 Car Carrier	OOCL Fidelity 3,100 TEUs	Hanjin Korea 9,200 TEUs	MSC Altair 13,000 TEUs	CMA/CGM Marco Polo 16,000 TEUs	Polar Alaska 190,000 DWT	Genmar Vision 360,000 DWT
Long Beach	3,554.00	4,358.00	6,790.00	7,340.00	8,030.00	5,530.00	7,022.00
Houston	7,529.12	10,482.34	27,703.02	31,227.10	40,663.81	27,770.90	48,777.14
Los Angeles	2,800.00	3,430.00	5,348.00	5,780.00	6,324.00	4,352.00	5,530.00
Mobile	8,194.76	5,497.34	15,567.66	18,771.50	22,625.54	13,457.16	22,382.48
New York	13,152.00	13,810.00	16,244.00	18,220.00	19,138.00	16,710.00	19,138.00
Oakland	14,630.13	12,032.07	29,214.53	35,939.52	43,980.12	22,525.90	41,556.75
Puget Sound	12,382.15	10,255.73	26,572.56	32,712.23	40,118.98	19,609.37	36,825.29
Tampa	10,101.92	9,192.80	19,835.78	24,095.98	29,216.92	16,851.92	28,743.42
Vancouver	8,403.32	10,978.76	20,042.08	23,060.78	28,828.40	23,053.46	37,757.26

[5] The hearing criteria for "Rates Charged for Comparable Services in Other Ports" includes "pilotage from sea to dock in ports with generally similar geographic and hydrographic parameters, vessel traffic in density and in size and type of vessel movements" amongst other potential criteria. CCR §236(f)(4) Only a handful of the ports on the presumptive "comparable" ports list are even container ports, much less competitive container ports; as such those ports do not have "generally similar … vessel traffic in density and in size and type of vessel movements" when compared with the Port of Oakland.

With respect to container port competitiveness, the Jacobsen Pilot Service, which serves the Port of Long Beach, specifically presented the Port of Long Beach with "comparison" evidence that even after approval of its proposed rate increases, its rates would still be a "fraction of Oakland's" across all vessel categories. Exh. 37.



Maintaining and improving the economic competitiveness of our state's freight transportation system, and our container ports in particular, is an established goal of the State's California Freight Mobility Plan ("CFMP"), as promulgated by the California State Transportation Agency, of which this Board is a component agency. Exh. 38. The CFMP declares that the State must "marginalize costs in order to stay ahead of increasing competition and support the state's economic growth." Exh. 38, at 175. The Board's recommendations should also accomplish these important state goals.

Even before the recent labor disruptions associated with the ILWU-PMA contract negotiations, California's seaports have been losing market share to other competitor seaports throughout North America. Exh. 42. After the labor dispute these trends will need to be addressed by reducing costs and making the West Coast ports attractive to cargo once again, or the diversions of cargo will get even worse. Exh. 42.

Industry acknowledges that the recent labor issues impacted the operations of the SFBP, but no one knows better than the ocean carriers and marine terminal operator longshore-employers that large costs can be associated with drawn-out labor negotiations. Exh. 42. However, these negotiation issues are occasional and unpredictable events, not

long-term trends which justify permanent or long-term increases in pilotage rates. Indeed, in the short-term, many in the industry view the labor negotiation disruptions as a road bump to continued growth in the container trades, while others see long-term concerns about west coast ports' ability to rebound to a robust market-share. Exh. 42.

VIII. REVENUE PER VESSEL GROWTH TRENDS WILL COVER PROJECTED EXPENSE GROWTH PER VESSEL INDEPENDENT OF THE UNCLEAR FUTURE NUMBER OF TOTAL SHIP CALLS

A. No Evidence Is Presented by SFBP's Petition of Projected Future Revenues or Ship Moves, Except for Growth in ULCV'S Calling on the Port of Oakland

The SFBP Petition fails to present the Board with any projection whatsoever of expected future revenues, even though it asks the Board to raise rates to cover "expense projections for 2015 to 2019" (SFBP Pet., at 3). The Petition also fails to present the Board with any projections of future ship moves, other than its projections regarding the continued growth in the number of ULCV's calling at the Port of Oakland. (SFBP Pet., McCloy Decl., ¶8)

B. Evidence Supports Projections Continuing Historical Trend of Higher Annual Pilotage Fees Per Move Without A Rate Increase

Without any projections by the SFBP except for increases in ULCVs, the Board is left with the task of evaluating a rate increase without evidence submitted by the Petitioner of two of the three main factors necessary to project estimated total revenues, average revenues per move (reflecting vessel size and GRT) and total moves. This Response provides the Board with the evidence necessary to project the most likely future average revenues per move and total moves.

1. With Respect to GRT and Average Revenues per Move, SFBP's Petition and PMSA's Response Provide Evidence That Ships Calling On This Pilotage Ground Are Projected to Continue to Get Larger

The SFBP Petition describes a vessel which is representative of the "ULCV" class, the MSC AURORA, as 352m long with a GRT of 143,521. SFBP Pet., Tylawsky Decl., Exh. (A-3). The SFBP Petition also projects ULCV "arrivals" to increase from 242 in 2014 to 454 in 2019. SFBP Pet., McCloy Decl., ¶8, Exh. A.

PMSA concurs that the MSC AURORA is a representative ULCV. PMSA also concurs that there will be ULCV growth at the Port of Oakland, and for purposes of this Response will use the SFBP's projected growth of "E-Pilot" moves. The summary of application of the MSC AURORA data to the SFBP's ULCV projections is at Exh. 34 (see Fig. Q).

Growth in ULCVs is also consistent with supplemental evidence submitted by PMSA, including articles demonstrating ever-larger ships being built and pressed into the global container trades. Exh. 42.

PMSA also submitted evidence of the historic trend of growth in GRT per vessel move in this pilotage ground over the past 20 years. Exh. 5 (see Fig. B). From 2006 to 2014, average GRT per Vessel grew from 44,212 to 53,611, a total increase of 21.25% or 2.65% per year.

Aside from SFBP documenting ULCV growth from 2011-2014 (SFBP Pet., McCloy Decl., ¶8, Exh. A), the definitive evidence regarding total vessel moves is that the total number of moves in 2014, 8,390, almost exactly matches the 20 year historical average of total moves per year, 8,388. Exh. 9 (see Fig. H). With respect to future port calls by containerships at the Port of Oakland aside from the ULCV trend, the newspaper articles which are in the record are definitively mixed with respect to whether or not overall cargo volumes at the Port will be increasing or decreasing. How these commercial pressures may impact overall vessel moves is unclear.

2. The Evidence Which Is In the Record Leads to the Conclusion that Pilotage Revenues Will Continue to Increase per Move and Continue to Cover Projected Expenses

Any Board estimate must rely on the evidence in the record, and there is no evidence to support a conclusion that the historical trends where Pilotage Fees earned per vessel move will do anything but continue to increase year-over-year unabated. This is confirmed by the additional evidence that ULCV calls are projected to increase, which will inevitably increase GRT per vessel, and GRT per move correlates to growth in Pilotage Fees earned per Move. Exh. 7 (see Fig. E). SFBP has failed to carry its burden to prove otherwise, so as to justify a rate increase.

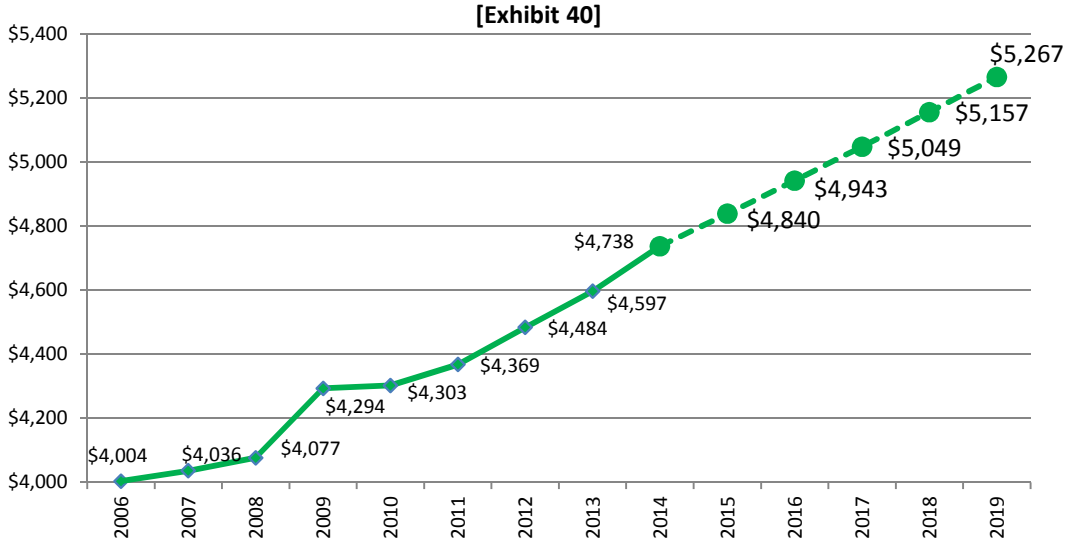
The inevitable conclusion is that total pilotage fees earned per move will continue to increase – just as they have for every year for the past 20 years. For similar reasons the Board found in its 2011 Findings and Recommendations on the Rate Petitions that tonnage would continue to increase consistent with the historical trends (Exh. 39):

> 41. The volume of future ship traffic, both in terms of vessel calls and the gross registered tonnage of individual vessels – both of which have a direct effect on pilot net income – are difficult to predict. SFBP predicted that aggregate gross registered tonnage would remain at or about current levels for the next four or five years, while PMSA predicted a steady increase. The PMSA prediction is more consistent with historical trends. It is likely that, given the gradual recovery from the recession and the recent statistics concerning bar crossings, that aggregate gross registered tonnage will gradually increase over the period covered by the recommended rate adjustments.

The Board was correct in 2011, and the evidence is now bolstered by three more years of growth in total GRT and Average GRT per Vessel. Exh. 5 (see Fig. B) Taken with the difficulty of predicting total vessel calls, the Board should re-affirm these trends.

The evidence also demonstrates that pilotage fee revenues per move also continuously increased over the past 20 years without abatement. Looking solely at the present period in which there were no rate increases, 2006-2014, pilotage fee revenues per move grew from $4,004 to $4,738. Exh. 6 (see Fig. D). This growth averaged 2.1% per year. Exh. 40. A simple projection of total pilotage fees earned per move at the same annual rate that they increased year-over-year from 2006-2014 can be extrapolated:

Figure R., Total Pilotage Fees Earned per Move (2006-2014)
& Fees per Move Projection (2015-2019)
[Exhibit 40]



Assuming no additional moves are added to the current number of vessel moves of 8,390, these projected fees per move result in following projected Total Pilotage Fees calculations (Exh. 40):

2015: 8,390 moves x $4,840 per move = $40,603,886
2016: 8,390 moves x $4,943 per move = $41,471,885
2017: 8,390 moves x $5,049 per move = $42,358,439
2018: 8,390 moves x $5,157 per move = $43,263,945
2019: 8,390 moves x $5,267 per move = $44,188,808

Under this projection total pilotage fee revenue in 2019 is $4,434,753 higher than the current pilotage fee revenues of $39,754,055 in 2014.

An alternative estimate based strictly on adding ULCV revenues to 2014 total pilotage fee revenues of $39,754,055 yields similar results. Exh. 34 (see Fig. Q).

2015: $39,754,055 + $1,039,040 = $40,793,095
2016: $39,754,055 + $2,032,240 = $41,786,295
2017: $39,754,055 + $2,658,720 = $42,412,775
2018: $39,754,055 + $3,040,720 = $42,794,775
2019: $39,754,055 + $3,239,360 = $42,993,415

Under this projection, total pilotage fee revenue in 2019 is $3,239,360 higher than 2014 total pilotage fee revenues, based on an assumption that ULCV calls will increase independent of any other vessel move changes.

Either scenario would result in increases to total pilotage fees revenues in excess of any projected increases in pilot operating expenses year-over-year.[6]

IX. 2014 SFBP REVENUES AND INCOME WELL EXCEED THE REVENUE AND INCOME LEVELS PROJECTED FOR 2014 IN THEIR 2011 PETITION

Given the continued growth of GRT and Pilotage Fees earned per vessel move, the premise that was given to the Board for the 2011 Petition by the SFBP – that "aggregate gross registered tonnage would remain at or about current levels for the next four or five years" (See Exh. 39, ¶41) – has been thoroughly undermined. As a result, pilots have earned far more revenue that they anticipated over the past 3 years.

[6] PMSA anticipates a stipulation at the pre-hearing conference wherein SFBP Projected Expenses are agreed to for purpose of the hearing. Under the likely stipulation, total operating expenses are projected to increase less than $2m in total from 2015 to 2019, leaving $2.4m in additional revenues (income) over expenses under the Fees per Move projection and $1.2m in additional revenues (income) over expenses in the ULCV projection scenario.

As a basis for its 2011 Rate Petition, the SFBP predicted that it would suffer dramatic *decreases* in revenues and average net income by 2014 unless it was granted a substantial rate increase. (Exh. 41):

SFBP CURRENT RATES	2014
Total Pilotage Revenues	$34,926,843
Total Expenses	$13,198,047
Net Income	$21,728,796
Average # Pilots	60
Average Net Income per Pilot	$362,147

To address this projected decrease, the SFBP sought a series of rate increases and surcharges, which it told the Board would make it possible to achieve the following financial outcomes by 2014. (Exh. 41):

SFBP CASE – PETITION	2014
Total Pilotage Revenues	$37,022,454
Add Rent Surcharge	$1,312,388
Add Fuel Surcharge	$1,058,154
Add Transportation Charge	$716,805
Adjusted Total Revenues	$40,109,801
Total Expenses	$13,187,384
Net Income	$26,922,416
Average # Pilots	60
Average Net Income per Pilot	$448,707

When the actual financial information from 2014 is compared with SFBP's "ask" and predictions from 2011, SFBP finds itself better off on both counts and without any rate increase over the same time period:

2014 ACTUAL	2014
Total Pilotage Revenues	$39,754,055
Total Expenses	$13,202,155
Net Income	$26,656,575
Average # of Pilots	58.75
Average Net Income per Pilot	$453,729

Two things are striking. First, SFBP is today ahead of where it said it wanted to be in 2011 in terms of income. Second, SFBP's 2011 projections of revenue and income they expected in 2014 were wildly inaccurate: Total Pilot Revenues, Net Income, and Average Net Income per Pilot are radically larger than what the SFBP expected in a "no rate increase" scenario.

2014	"SFBP CURRENT RATES"	"SFBP CASE – PETITION"	ACTUAL
Total Pilotage Revenues	$34,926,843	$40,109,801	$39,754,055
Total Expenses	$13,198,047	$13,187,384	$13,202,155
Net Income	$21,728,796	$26,22,416	$26,656,575
Average # Pilots	60	60	58.75
Average Net Income per Pilot	$362,147	$448,707	$453,729

SFBP got only one thing right in 2011: its projected expenses.

Despite this, SFBP's current rate petition is premised on the exact same false assumptions as in 2011: that, despite a continuing trend of vessel growth, rates must increase so pilots can make more money. To this, they add one new remarkable assertion: that their current expenses are unreasonably high. Yet, as the above clearly demonstrates, in reality, expenses are exactly where SFBP expected them to be and, as described in Section V above, exactly on their historic average.

While SFBP cites other "comparable" pilotage grounds increasing rates by an average of 11.2% since 2011 as a basis for an increase (SFBP Petition, at 4), those increases pale in comparison to the 25.2% growth of actual net income per pilot from what they expected to receive versus what they earned in 2014 over the same period. Thus, relative to rate growth in "comparable" ports' rates, SFBP pilots are not only better off in 2014 than they are in 2011, but their individual income has outperformed the rate increases in those comparable ports.

As the actual financial results since the 2011 Petition hearing have proven, the current rates are capable of producing higher pilotage fee revenues without increasing the rates. The same conditions which existed in 2011, growing GRT, larger ships on the horizon, and increasing Average Pilotage Fees per Move, still exist today. These factors need to be recognized and accounted for by the Board if the mistakes of the past are to be avoided again. Indeed, the SFBP's projections of future revenue and income were so far

off in 2011, that the pilots' actual average net income per pilot in 2014 ($453,729) was higher than they had even hoped to receive under their own 2011 Petition ($448,707).

As a result, pilots are not only receiving an unexpected 25% bump in average net income, but they are even outperforming what they had asked for and been denied by the Board who awarded them a smaller increase than requested at the time. When pilots are exceeding their own prior income requests, they should not be petitioning for even more money now.

X. CONCLUSION

The Petition by the San Francisco Bar Pilots for a compounded 19.2464% rate increase over four years is unjustified and should be squarely rejected by the Board of Pilot Commissioners. The Petition has not provided the Board with a preponderance of evidence that a rate increase is necessary at this time, as it has not demonstrated that the current rate is deficient at covering the pilots' operating expenses and has not shown that a rate increase is necessary to attract and retain pilot trainees.

With respect to the balance of factors for the Board to consider under 7 CCR §236(f): the pilots' actual earnings compared to their expected earnings grew 25% in the past three years, which is faster than rates at "comparable" ports and well in excess of CPI; the pilotage rates to call at the Port of Oakland remain significantly higher than its other competitor ports in the containerized trade; maritime industry trends point to ever larger ships calling in the San Francisco Bay, which will inevitably lead to increasing pilot fee revenues and incomes without the need to increase rates; the Board is doing a good job of attracting applicants and trainees are well-qualified; and, it is imperative that the Board remain faithful to the state's stated goals of preserving Port competitiveness.

Finally, pilotage revenues collected by the SFBP in 2014 outperformed even its own stated income goals from 2011 – and did so without a rate increase. These increases are consistent with the past 25 years of pilotage revenue growth history, and the SFBP's own predictions of an ever growing ULCV presence at the Port of Oakland. All of the parties agree that the trend of larger ships calling on the San Francisco Bay will continue; as a result the evidence is undeniable, applying the existing rate to larger ships will generate pilotage fee revenues increases without any need for a rate increase.

Date: March 20, 2015

By: 

Michael Jacob
Vice President & General Counsel
PACIFIC MERCHANT SHIPPING ASSOCIATION
250 Montgomery St., Suite 700
San Francisco, CA 94104
Ph: (415) 352-0710
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SUBMISSION OF WRITTEN EVIDENCE IN SUPPORT OF RESPONSE BY PACIFIC MERCHANT SHIPPING ASSOCIATION
pursuant to Harbors & Navigation Code §1201.5(b) and 7 CCR §236(d).

EXHIBITS

Exh. 1. Declaration of Michael Jacob

Exh. A. - Summary of San Francisco Bar Pilots Annual Audited Financials "Statements of Income" Page (1990-2014)
Exh. B. - Summary of San Francisco Bar Pilots Annual Moves, Vessel GRT and Draft

Exh. 2. SFBP Bar Pilotage Rates Letter, January 1, 2015

Exh. 3. SFBP Service Code and Charge Listing, January 1, 2015

Exh. 4. Total Pilotage Fee Revenues (1990-2014)

Exh. 5. Total Annual GRT and Average Annual GRT (1995-2014)

Exh. 6. Pilotage Fees Earned per Move (1995-2014)

Exh. 7. Correlation of Average GRT to Average Pilotage Fees per Move

Exh. 8. Small vs. Large Ship Comparisons of Bar Pilotage Costs, plus Average Pilotage Fees

Exh. 9. Total Moves per Year (1995-2014)

Exh. 10. Total Moves Compared to Total Pilotage Fees (2006-2014)

Exh. 11. Total Moves and Total Pilotage Fees Change Year to Year Independent of Rate Changes (2006-2014)

Exh. 12. Operating Income per Move (2006-2014)

Exh. 13. Operating Income per Move and Number of Moves (2006 vs. 2014)

Exh. 14. Average Net Income per Move and Number of Moves (2006 vs. 2014)

Exh. 15. *Miller v. Commissioner* T.C. Memo 2011-219 (September 8, 2011)

Exh. 16. Excerpts from *Miller v. Commissioner* Petitioners Opening Brief, March 10, 2011, pg. 7

Exh. 17. Excerpts from *Miller v. Commissioner* Transcript of Proceedings, December 10, 2010, pp. 207-211

Exh. 18. Estimated 2014 Hourly Workload per Pilot

Exh. 19. Pilotage Fees per Move vs. Expenses per Move (2006-2014)

Exh. 20. Operating Expenses as Percentage of Total Pilotage Fees Earned (1990-2014)

Exh. 21. Excerpts from SFBP Petition Memo, 2002 Rate Petition to BOPC, pp. 1, 5

Exh. 22. Excerpts from SFBP Petition Memo, 2011 Rate Petition to BOPC, pp. 1-2

Exh. 23. Declaration of Capt. Ed Melvin, 2011 Rate Petition to BOPC, and all Exhibits

Exh. 24. Table of Trainee Class Statistics

Exh. 25. Excerpts from BOPC Monthly Board Meeting, July 24, 2014 Transcript of Proceedings, pp. 29-42

Exh. 26. Declaration of Capt. Michael M. Moore, March 20, 2015

Exh. C. - "Port of Grays Harbor Pilotage Services Division Financial Data And Projections"

Exh. 27. Interim Report on the Pilot Trainee Selection Examination by Progeny Systems Corp., Prepared for the BOPC (DRAFT), July 23, 2014

Exh. 28. Initial Statement of Reasons, Trainee Qualification Regulation Amendments to 7 CCR 213 (e) and 7 CCR 213 (f) (Approved by OAL, February 27, 2014)

Exh. 29. AB 1025 (Skinner)(Chap. 324, Statutes of 2011) Assembly Bill Analysis, Concurrence in Senate Amendments, August 31, 2011

Exh. 30. United States Bureau of Labor Statistics, Occupational Employment Statistics Website, Occupational Employment and Wages, May 2013 53-5021 Captains, Mates, and Pilots of Water Vessels http://www.bls.gov/oes/current/oes535021.htm (visited March 17, 2015)

Exh. 31. BOPC Finance Committee, Minutes (Draft), September 17, 2014

Exh. 32. Comparison of Total Pilotage Cost for ULCV per Port Call with Average Pilotage Fees and Surcharge per Call

Exh. 33. Comparison of Total Pilotage Paid by ULCV per "E-Pilot" dispatch with Pilot Expenses

Exh. 34. Projection of Total Net Pilotage Revenue to SFBP (2015-2019)

Exh. 35. Port of Oakland Export Market Study, Anne Landstrom – Moffatt & Nichol, January 10, 2013

Exh. 36. Port of Long Beach, Staff Memo, "Tariff Amendment to Port of Long Beach Tariff No. 4, Item 220 – Rate Increase on Pilotage Charges" May 27, 2014

Exh. 37. Excerpt from Jacobsen Pilot Service, Inc., PowerPoint presentation "Pilotage Rate Increase -2014", May 27, 2014, slide 23

Exh. 38. Excerpts from California Freight Mobility Plan, California State Transportation Agency (CalSTA), December, 2014, pp. viii, 175

Exh. 39. "FINDINGS AND RECOMMENDATIONS" of Board of Pilot Commissioners, 2011 Rate Petition Hearings

Exh. 40. Fees per Move with Yr.-Yr. Growth and Projections

Exh. 41. Declaration of John Cinderey, 2011 Rate Petition to BOPC, and Exhibit C

Exh. 42. Newspaper and Trade Publication Articles of Relevance

BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF
SAN FRANCISCO, SAN PABLO AND SUISUN

STATE OF CALIFORNIA

IN RE: PETITION OF THE SAN FRANCISCO BAR PILOTS FOR A CHANGE IN PILOTAGE RATES	DECLARATION OF MICHAEL JACOB IN SUPPORT OF THE RESPONSE BY THE PACIFIC MERCHANT SHIPPING ASSOCIATION IN OPPOSITION TO THE PETITION Hearing: April 1, 2015

I, Michael Jacob, declare as follows:

1. I am General Counsel for Respondent Pacific Merchant Shipping Association ("PMSA") in this matter, and I make this declaration in support of PMSA's Response in Opposition to the Petition.

2. PMSA is a California mutual benefit corporation trade association representing the interests of ocean carriers and ocean-going vessels under U.S. and foreign flags, marine terminal operators, and other maritime industry and maritime-related companies conducting business on the Pacific coast of the United States, excluding the Columbia River. PMSA is headquartered in San Francisco, and maintains offices in Long Beach and Seattle.

3. Attached hereto as Exhibit A is a spreadsheet which I created to summarize San Francisco Bar Pilot financial data included on the "Statements of Income" page of the audited Annual Financial Statements of the San Francisco Bar Pilots for the years 1990 to 2004, and the Consolidated Annual Financial Statements of the SFBP & SFBP Benevolent & Protective Consolidated for the years 2005 to 2014, records of which are contained in the offices of PMSA in San Francisco.

4. Attached hereto as Exhibit B is a spreadsheet which I created to summarize San Francisco Bar Pilot assignment, vessel move and tonnage data. For the years 2003-2014 this data is taken from SFBP 237(d) Reports , for the year 2002 from internal PMSA files as 2002 SFBP 237(d) Report is not on file, for the years 1998-2001from the document SFBP Pilot Power Data dated January 9, 2002, 1996-1997 from the 2002 SFBP Rate Petition, Exh. K, and for 1995 from the Technical Report to BOPC

by E. Chase, CMA dated February 2006, all of which are contained in the files of PMSA in San Francisco.

5. Attached hereto as Exhibits 2, 3, 15, 16, 17, 21, 22, 23, 25, 27, 28, 29, 30, 31, 35, 36, 37, 38, 39 and 41, respectively are true and correct copies of the following documents:

6. Exh. 2. - SFBP Bar Pilotage Rates Letter, January 1, 2015

7. Exh. 3. - SFBP Service Code and Charge Listing, January 1, 2015

8. Exh. 15. - *Miller v. Commissioner* T.C. Memo 2011-219 (September 8, 2011)

9. Exh. 16. - Excerpts from *Miller v. Commissioner* Petitioners Opening Brief, March 10, 2011, pg. 7

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14. Exh. 25. - Excerpts from BOPC Monthly Board Meeting, July 24, 2014 Transcript of Proceedings, pp. 29-42

15. Exh. 27. - Interim Report on the Pilot Trainee Selection Examination by Progeny Systems Corp., Prepared for the BOPC (DRAFT), July 23, 2014

16. Exh. 28. - Initial Statement of Reasons, Trainee Qualification Regulation Amendments to 7 CCR 213 (e) and 7 CCR 213 (f) (Approved by OAL, February 27, 2014)

17. Exh. 29. - AB 1025 (Skinner)(Chap. 324, Statutes of 2011) Assembly Bill Analysis, Concurrence in Senate Amendments, August 31, 2011

18. Exh. 30. - United States Bureau of Labor Statistics, Occupational Employment Statistics Website, Occupational Employment and Wages, May 2013, 53-5021 Captains, Mates, and Pilots of Water Vessels http://www.bls.gov/oes/current/oes535021.htm (visited March 17, 2015)

19. Exh. 31. - BOPC Finance Committee, Minutes (Draft), September 17, 2014

20. Exh. 35. - Port of Oakland Export Market Study, Anne Landstrom – Moffatt & Nichol, January 10, 2013

21. Exh. 36. - Port of Long Beach, Staff Memo, "Tariff Amendment to Port of Long Beach Tariff No. 4, Item 220 – Rate Increase on Pilotage Charges" May 27, 2014

22. Exh. 37. - Excerpt from Jacobsen Pilot Service, Inc., PowerPoint presentation "Pilotage Rate Increase -2014", May 27, 2014, slide 23

23. Exh. 38. - Excerpts from California Freight Mobility Plan, California State Transportation Agency (CalSTA), December, 2014, pp. viii, 175

24. Exh. 39. - "FINDINGS AND RECOMMENDATIONS" Board of Pilot Commissioners, 2011 Rate Petition Hearings

25. Exh. 41. - Declaration of John Cinderey, 2011 Rate Petition to BOPC, and Exhibit C

26. Attached hereto as Exhibit 18, is an estimation based on a true and correct recitation of the relevant section of Rule 1.9 of the San Francisco Bar Pilots "Work Rules" to the analysis. A true and correct copy of the Work Rules was disclosed to the public as part of the case files of *Miller v. Commissioner* T.C. Memo 2011-219 (September 8, 2011), and that copy is on file in the offices of PMSA.

27. Attached hereto as Exhibit 42, are true and correct copies of the following news articles:

28. Oakland Reports Progress in Recovering from Labor Standoff – Journal of Commerce, March 6, 2015

29. For Many Shippers, it's Time for a West Coast Review - Journal of Commerce, March 1, 2016

30. Carrier Debt Hard to Sustain Amid Declining Demand, AixPartners Finds – Journal of Commerce, March 20, 2015

31. Panama Canal Aims to Keep Volume Gains Fueled by West Coast Congestion – Journal of Commerce, February 23, 2015

32. Port of Oakland Cargo Volume Down 36.6% in February – Port of Oakland Press Release, March 17, 2015

33. Cargo Count Slides in February – Port of Long Beach Press Release, March 17, 2015

34. Oakland Port Congestion Receding After 37 Percent Volume Decline – Journal of Commerce, March 17, 2015

35. Ports Gridlock Reshapes the Supply Chain – Wall Street Journal, March 5, 2015

36. Planned Deployment of New Asia-East Coast Services Rattles West Coast Ports – Journal of Commerce, March 19, 2015

37. $500 Million Oakland Logistics Center Takes Trucks Off Roads, Adds Rail Cars – Bay Area News Group, March 4, 2015

38. Federal Maritime Commission Chairman: US Must Invest In Port Infrastructure – Long Beach Press Telegram, March 19, 2015

39. After Labor Deal, Western Ports Turn To Long-Term Challenges – Bond Buyer, March 19, 2015

40. Giant Ships In West Coast Ports' Future – San Jose Mercury News, February 28, 2015

41. Drewry: L.A./Long Beach Q4 delays cost carriers $150M – Cargo Business News, March 18, 2015

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed March 20, 2015, at San Francisco, California.

MICHAEL JACOB

Exhibit A - Summary of San Francisco Bar Pilots Annual Audited Financials "Statements of Income" Page (1990-2014)

Year	Pilotage Fees Earned	Total Revenue	Operating Expenses	Operating Income	Net Income	Avg Net Income Per Pilot
1990	$12,660,951	$12,660,951	$4,495,400	$8,165,551	$8,164,795	$145,800
1991	$12,678,326	$12,678,326	$4,769,883	$7,908,443	$7,905,093	$141,162
1992	$13,949,705	$13,949,705	$4,904,018	$9,045,687	$9,024,055	$150,401
1993	$14,915,881	$14,915,881	$5,744,391	$9,171,490	$9,177,262	$154,300
1994	$15,574,707	$15,574,707	$6,027,437	$9,547,270	$9,548,239	$161,385
1995	$15,684,790	$15,684,790	$6,401,405	$9,283,385	$9,275,305	$157,296
1996	$16,299,650	$16,299,650	$5,983,020	$10,316,580	$10,316,820	$172,442
1997	$16,555,759	$16,555,759	$6,079,599	$10,476,160	$10,486,667	$176,649
1998	$17,644,966	$17,644,966	$5,740,792	$11,904,174	$11,918,194	$196,590
1999	$19,620,156	$19,620,156	$5,885,286	$13,734,870	$13,732,331	$220,457
2000	$21,221,807	$21,221,807	$6,690,605	$14,531,202	$14,531,241	$234,375
2001	$22,372,301	$22,372,301	$7,700,438	$14,671,863	$14,791,334	$239,419
2002	$22,927,581	$22,927,581	$7,871,171	$15,056,410	$15,370,171	$253,717
2003	$26,274,483	$26,744,473	$7,735,347	$19,009,126	$19,041,283	$320,830
2004	$29,032,632	$29,293,905	$8,306,753	$20,987,152	$21,003,355	$354,487
2005	$32,762,467	$32,971,613	$8,782,158	$24,189,455	$24,242,331	$413,198
2006	$39,264,873	$39,387,965	$9,915,852	$29,472,113	$29,493,841	$491,892
2007	$37,523,239	$37,652,755	$10,789,031	$26,863,724	$26,959,229	$450,673
2008	$37,330,873	$37,385,112	$11,573,783	$25,811,329	$25,813,895	$451,450
2009	$34,071,805	$34,138,430	$10,209,794	$23,928,636	$24,139,387	$427,153
2010	$34,456,762	$34,532,817	$12,551,164	$21,981,653	$21,814,013	$393,207
2011	$37,281,993	$37,352,903	$12,409,407	$24,943,496	$24,981,421	$451,336
2012	$36,341,646	$36,401,706	$13,518,269	$22,883,437	$23,108,259	$405,266
2013	$38,276,060	$38,327,020	$13,413,168	$24,913,852	$24,968,251	$429,155
2014	$39,754,055	$39,818,635	$13,202,155	$26,616,480	$26,656,575	$453,729

Sources: SFBP Audited Annual Financial Statements 1990-2004, SFBP & SF Benevolent & Protective Consolidated Annual Financial Statements 2005-2014, "Statements of Income" page

Exhibit B - Summary of San Francisco Bar Pilots Annual Moves, Vessel GRT and Draft

Year	Total Moves	Bar Moves	Bay Moves	River Moves	Total GRT	Average GRT	Average Draft
1995	8,489	6,084	2,147	258	212,192,348	34,877	30.37
1996	7,993	5,945	1,767	275	207,699,608	34,949	30.09
1997	7,711	5,696	1,678	337	200,488,731	35,203	30.23
1998	7,778	5,891	1,588	299	209,507,524	35,564	30.34
1999	8,473	6,348	1,802	323	226,966,392	35,754	30.26
2000	8,435	6,328	1,699	408	232,385,781	36,723	30.59
2001	7,971	6,199	1,375	397	239,667,804	38,662	30.54
2002	8,003	6,064	1,518	421	235,444,965	38,827	
2003	8,344	6,386	1,604	354	252,660,845	39,577	30.88
2004	8,235	6,437	1,424	374	266,582,454	41,414	30.89
2005	8,765	6,781	1,558	426	288,339,422	42,522	31.61
2006	9,806	7,366	2,015	425	326,995,034	44,212	31.44
2007	9,296	7,240	1,672	384	328,931,300	45,433	31.48
2008	9,156	7,056	1,770	330	326,728,348	46,318	32.20
2009	7,935	6,439	1,261	235	302,390,464	46,962	31.54
2010	8,008	6,545	1,181	282	306,046,927	46,760	32.90
2011	8,534	6,921	1,186	427	333,063,441	48,103	32.36
2012	8,104	6,463	1,214	427	327,047,728	50,603	32.91
2013	8,326	6,623	1,272	431	340,141,826	51,358	32.24
2014	8,390	6,499	1,376	515	348,416,806	53,611	32.43

Sources: 2003-2014 SFBP 237(d) Reports , 2002 PMSA files [2002 SFBP 237(d) Report Not on File],
1998-2001 SFBP Pilot Power Data (1/9/2002), 1996-1997 2002 SFBP Petition Exh. K,
1995 Technical Report to BOPC by E. Chase, CMA (Feb. 2006)

SAN FRANCISCO BAR PILOTS ASSOCIATION
Pier 9 East End
San Francisco, CA 94111
415-362-5436 Fax 415-362-0861

January 1, 2015

RE: BAR PILOTAGE RATES AS DEFINED IN
THE HARBORS AND NAVIGATION CODE
STATE OF CALIFORNIA

To All Customers: As of January 1, 2015 the following mill rate will be in effect:

The basic Bar Pilotage rate (mill rate) per high gross registered ton will be 92.43 mills ($0.09243), and ten dollars and twenty-six cents ($10.26) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, pursuant to Section 1190(a)(1). The minimum charge for bar pilotage, pursuant to Section 1190(a)(2), will be $662 for each vessel piloted plus the following additional charges.

The **Pilot Pension Plan Surcharge**, authorized by Section 1165, will be 22.04 mills ($0.02204) per high gross registered ton for each vessel piloted as provided by Section 1165(a)(1). This portion of the total mill rate, shown separately on our invoices, is calculated quarterly for the adjustment of tonnage and any changes in the number of pensioners.

A **Pilot Boat Surcharge**, authorized by Section 1190 (a)(1)(B), will be 3.27 mills ($0.00327) per high gross registered ton for each vessel subject to the bar pilotage fee described above.

The **Board Operations Surcharge**, authorized by Section 1159.1, will be one percent (1.0%) of all pilotage fees as per the direction of the State Board of Pilot Commissioners, effective January 1, 2013.

The **Pilot Continuing Education Surcharge,** authorized by Section 1196, is $10.00 per move per the State Board of Pilot Commissioners, effective January 1, 2015.

The **Pilot Trainee Surcharge,** authorized by Section 1195 is $10.00 per trainee per move per the State Board of Pilot Commissioners, effective January 1, 2015.

The Service Codes for 2015 remain the same as 2014. It is anticipated that these fees will remain constant throughout 2015, with the exception of the quarterly Pension Plan Surcharge and the Pilot Boat Surcharge and Trip insurance. Trip insurance coverage, if accepted, will be $6,283 per move. Please advise if you need a copy of the Service Code Listing or Trip Insurance information.

Sincerely,

Captain Peter McIsaac
Port Agent

San Francisco Bar Pilots
SERVICE CODE AND CHARGE LISTING
January 1, 2015

NOTE: The only rate change since January 1, 2013 has been an annual increase in the Optional Trip Insurance Coverage.

CODE	SERVICE DESCRIPTION	CHARGE
	INBOUND/OUTBOUND BAR PILOTAGE	
891 IN	PILOTAGE FROM SEA TO BERTH, ANCHORAGE	Per Rates Listed
891 OT	PILOTAGE FROM BERTH, ANCHORAGE TO SEA	Per Rates Listed
894 IN	HALF-CHARGE, PILOTAGE FROM SEA TO BERTH, ANCHORAGE	Variable

When Bar Pilots are required to perform duties other than the uninterrupted passage of vessels from sea to all ports and berths of San Francisco, San Pablo and Suisun Bays, between the UP Bridge and Hunters Point; or, return from these ports and berths to sea, additional charges shall be made as detailed below:

	SURCHARGES - ADDITIONAL TO INBOUND/OUTBOUND CHARGES	
617 SC	BETWEEN HUNTERS POINT AND SOUTH	$1493
618 SC	BETWEEN S P BRIDGE - AVON, MARTINEZ TERMINAL	1114
619 SC	BETWEEN S P BRIDGE - PORT CHICAGO	1324
620 SC	BETWEEN S P BRIDGE - PITTSBURG	1552
621 SC	BETWEEN S P BRIDGE - ANTIOCH	1679
622 SC	BETWEEN S P BRIDGE - SACRAMENTO OR STOCKTON	3161

BAY AND/OR RIVER MOVES/SHIFT CHARGES
(BM = BAY/RIVER MOVE; BA = FLAT TOW)

		BM	BA
601 BM (BA)	S F (SOUTH OF NORTH END T. I.) TO HUNTERS POINT	$858	$1716
602 BM (BA)	S F AREA TO RICHMOND, PT. SAN PABLO	988	1976
603 BM (BA)	S F AREA TO SOUTH OF HUNTERS POINT	1493	2986
604 BM (BA)	S F AREA TO SEQUOIA, OLEUM	1325	2650
605 BM (BA)	S F AREA TO AVON, MARTINEZ TERMINAL	1552	3104

CODE	SERVICE DESCRIPTION	CHARGE	
CONT'D	**BAY AND/OR RIVER MOVES/SHIFT CHARGES (BM = BAY/RIVER MOVE; BA = FLAT TOW)**	**BM**	**BA**
606 BM (BA)	BETWEEN OLEUM, S P BRIDGE AND AVON	1114	2228
607 BM (BA)	BETWEEN AVON, PORT CHICAGO AND PITTSBURG	1172	2344
608 BM (BA)	S F AREA TO NORTH EXTREMITY SUISUN BAY	2082	4164
609 BM (BA)	S F AREA TO MARE ISLAND, VALLEJO, MARTINEZ, BENICIA	1432	2864
610 BM (BA)	BETWEEN SEQUOIA, OLEUM, MARE ISLAND AND S P BRIDGE	1141	2282
611 BM (BA)	BETWEEN OLEUM, S P BRIDGE AND NORTH SUISUN BAY	1552	3104
615 BM (BA)	S F AREA TO PORT CHICAGO	1819	3638
616 BM (BA)	BETWEEN OLEUM, S P BRIDGE AND PORT CHICAGO	1325	2650
623 BM (BA)	BETWEEN SAN FRANCISCO AND SACRAMENTO	3487	6974
624 BM (BA)	BETWEEN SAN FRANCISCO AND STOCKTON	3487	6974
625 BM (BA)	SACRAMENTO TO STOCKTON	3487	6974
626 BM (BA)	STOCKTON TO SACRAMENTO	3487	6974
627 BM (BA)	SHIFTING AT SACRAMENTO OR STOCKTON	1114	2228
628 BM (BA)	S F AREA AND ANTIOCH	2191	4382
629 BM (BA)	BETWEEN OLEUM, S P BRIDGE AND ANTIOCH	1671	3342
630 BM (BA)	BETWEEN OLEUM, S P BRIDGE AND SACTO/STOCKTON	3161	6322
631 BM (BA)	BETWEEN AVON, PORT CHICAGO AND ANTIOCH	1302	2604
632 BM (BA)	BETWEEN AVON, PORT CHICAGO AND SACTO/STOCKTON	2466	4932
633 BM (BA)	BETWEEN PITTSBURG, ANTIOCH AND SACTO/STOCKTON	2005	4010

895SC **VESSEL LENGTH SURCHARGE**

Computed for vessels 600 ft. or longer on base rate charges of Surcharges and Bay/River Moves listed above. Vessels from 600 ft. to 625 ft. in length overall shall be charged an additional 14 percent of the base rate. Thereafter, an additional 4 percent shall be charged for each increment of 25 ft., computed to the nearest 25 ft. level below the actual length of the vessel.

LENGTH FT.	ADDITIONAL CHARGE		
600 - 624	A	Base Rate Plus	14%
625 - 649	B	114% of Base Rate Plus	4%
650 - 674	C	Sum of B Above Plus	4%
675 - 699	D	Sum of C Above Plus	4%
Et Cetera			

CODE	SERVICE DESCRIPTION - MISCELLANEOUS CHARGES	CHARGE	BA
	Those charges noted in separate column for BA are computed as double standard for all dead ship or flat tow pilotage.		
817 DD	DOCK TO DOCK, EXCLUDING ABOVE ANTIOCH	$425	850
818 AD	DOCK STERN-IN OR DOWN-TIDE (BM/BA)		
	The higher of 14% of Pilotage Fee or $101		Doubled
821 AD	ADJUST COMPASS, RDF, RADAR - 1 SWING	991	
822 AD	ADJUST COMPASS, RDF, RADAR - 2 SWINGS	1172	
831 SB	STANDBY TIME PER HOUR, charged in ½ hour increments	211	
840 CP	CANCEL SERVICE LESS THAN 4 HOURS	258	
840 DT	PILOT CARRIED AWAY, PER DAY, plus expenses incurred in returning	2028	
841 CN	CANCEL AFTER PILOT REPORTS	528	

CODE	SERVICE DESCRIPTION - MISCELLANEOUS CHARGES		CHARGE
CONT.			
			BA
845 EX	PILOT ON BOARD EXCESS 8 HOURS, PER HOUR	352	
851 ET	ENGINE OR DOCK TRIALS, PER HOUR	528	
853 AN	ANCHORING AFTER DEPARTURE	314	628
871 DT	DELAY ENROUTE, INCLUDING VTS ORDERED, PER HOUR Charged in ½ hour increments, 1 hour minimum	410	
899 CM	CREDIT MEMO	Varies	
899 DM	DEBIT MEMO	Varies	
TPINS	TRIP INSURANCE COVERAGE (per move, if accepted)	6,283	

Exhibit 4 - Total Pilotage Fee Revenues (1990-2014)

Year	Pilotage Fees Earned
1990	$12,660,951
1991	$12,678,326
1992	$13,949,705
1993	$14,915,881
1994	$15,574,707
1995	$15,684,790
1996	$16,299,650
1997	$16,555,759
1998	$17,644,966
1999	$19,620,156
2000	$21,221,807
2001	$22,372,301
2002	$22,927,581
2003	$26,274,483
2004	$29,032,632
2005	$32,762,467
2006	$39,264,873
2007	$37,523,239
2008	$37,330,873
2009	$34,071,805
2010	$34,456,762
2011	$37,281,993
2012	$36,341,646
2013	$38,276,060
2014	$39,754,055

Source: Jacob Declaration, Exhibit A

Exhibit 5 - Total Annual GRT and Average Annual GRT (1995-2014)

Year	Total GRT	Average GRT per Vessel
1995	212,192,348	34,877
1996	207,699,608	34,949
1997	200,488,731	35,203
1998	209,507,524	35,564
1999	226,966,392	35,754
2000	232,385,781	36,723
2001	239,667,804	38,662
2002	235,444,965	38,827
2003	252,660,845	39,577
2004	266,582,454	41,414
2005	288,339,422	42,522
2006	326,995,034	44,212
2007	328,931,300	45,433
2008	326,728,348	46,318
2009	302,390,464	46,962
2010	306,046,927	46,760
2011	333,063,441	48,103
2012	327,047,728	50,603
2013	340,141,826	51,358
2014	348,416,806	53,611

Source: Jacob Declaration, Exhibit B

Exhibit 6 - Pilotage Fees Earned per Move (1995-2014)

Year	Pilotage Fees Earned	Total Moves	Average Pilotage Fees per Move
1995	$15,684,790	8,489	$1,848
1996	$16,299,650	7,993	$2,039
1997	$16,555,759	7,711	$2,147
1998	$17,644,966	7,778	$2,269
1999	$19,620,156	8,473	$2,316
2000	$21,221,807	8,435	$2,516
2001	$22,372,301	7,971	$2,807
2002	$22,927,581	8,003	$2,865
2003	$26,274,483	8,344	$3,149
2004	$29,032,632	8,235	$3,526
2005	$32,762,467	8,765	$3,738
2006	$39,264,873	9,806	$4,004
2007	$37,523,239	9,296	$4,036
2008	$37,330,873	9,156	$4,077
2009	$34,071,805	7,935	$4,294
2010	$34,456,762	8,008	$4,303
2011	$37,281,993	8,534	$4,369
2012	$36,341,646	8,104	$4,484
2013	$38,276,060	8,326	$4,597
2014	$39,754,055	8,390	$4,738

Source: Jacob Declaration, Exhibits A & B

Exhibit 7 - Correlation of Average GRT to Average Pilotage Fees per Move

Year	Average GRT per Vessel	Pilotage Fees per Move
2006	44,212	$4,004
2007	45,433	$4,036
2008	46,318	$4,077
2009	46,962	$4,294
2010	46,760	$4,303
2011	48,103	$4,369
2012	50,603	$4,484
2013	51,358	$4,597
2014	53,611	$4,738

Source: Exh. 5 and Exh. 6

Exh. 8 - Small vs. Large Ship Comparisons of Bar Pilotage Costs, plus Average Pilotage Fees

arranged by GRT from smallest to largest; charges are per bar pilotage move, no blue card rates imposed - double "total" for sample cost per vessel call

Vessel Type	VESSEL	GRT	Length	Pilotage*	rcharges**	Total	Source:
Chemical Tanker	CHERRY GALAXY	12,044	147m	$1,313	$388	$1,701	SFBP Pet Tylawsky # (A-7)
Bulker	ATLANTIC RUBY	21,441	180m	$2,290	$636	$2,925	SFBP Pet Tylawsky # (A-4)
2002 Average	2002 AVERAGE VESSEL			$2,865			PMSA Exhibit 8
Tanker	M/V GOLDEN STATE	29,527	183m	$3,066	$848	$3,914	SFBP Pet Tylawsky # (A-2)
2006 Average	2006 AVERAGE VESSEL			$4,004			PMSA Exhibit 8
Car Carrier (RO/RO)	NEW NADA	47,677	180m	$4,709	$1,324	$6,033	SFBP Pet Tylawsky # (A-6)
2014 Average	2014 AVERAGE VESSEL			$4,738			PMSA Exhibit 8
Container	VENICE BRIDGE	54,519	294m	$5,379	$1,504	$6,882	SFBP Pet Tylawsky # (A-5)
Passenger	SEA PRINCESS	77,499	261m	$7,446	$2,106	$9,552	SFBP Pet Tylawsky # (A-8)
Container (ULCV)	MSC AURORA	143,521	352m	$13,660	$3,839	$17,499	SFBP Pet Tylawsky # (A-3)

Sources: PMSA Exh. 8 & SFBP Petition, Tylawsky Decl., Exh. A (as noted above)

* Pilotage = Tonnage Charge + Draft Charge

** Surcharges = Pension + Misc. + Commission + Pilot Boat

Exhibit 9 - Total Moves per Year (1995-2014)

Year	Total Moves
1995	8,489
1996	7,993
1997	7,711
1998	7,778
1999	8,473
2000	8,435
2001	7,971
2002	8,003
2003	8,344
2004	8,235
2005	8,765
2006	9,806
2007	9,296
2008	9,156
2009	7,935
2010	8,008
2011	8,534
2012	8,104
2013	8,326
2014	8,390

Average Moves (1995-2014): 8,388

Source: Jacob Declaration, Exhibit B

Exhibit 10 - Total Moves Compared to Total Pilotage Fees (2006-2014)

Year	Total Moves	Total Pilotage Fees Earned
2006	9,806	$39,264,873
2007	9,296	$37,523,239
2008	9,156	$37,330,873
2009	7,935	$34,071,805
2010	8,008	$34,456,762
2011	8,534	$37,281,993
2012	8,104	$36,341,646
2013	8,326	$38,276,060
2014	8,390	$39,754,055

Source: Jacob Declaration, Exh. A & Exh. B

Exhibit 11 - Total Moves and Total Pilotage Fees Change Year to Year Independent of Rate Changes (2006-2014)

Year	Total Moves	% Change	Pilotage Fees Earned	% Change	Bar Rate % Change
2006	9,806	-	$39,264,873	-	-
2007	9,296	-5.20%	$37,523,239	-4.44%	0
2008	9,156	-1.51%	$37,330,873	-0.51%	0
2009	7,935	-13.34%	$34,071,805	-8.73%	0
2010	8,008	0.92%	$34,456,762	1.13%	0
2011	8,534	6.57%	$37,281,993	8.20%	0
2012	8,104	-5.04%	$36,341,646	-2.52%	0
2013	8,326	2.74%	$38,276,060	5.32%	0
2014	8,390	0.77%	$39,754,055	3.86%	0

Source: Exhibit 10

Exhibit 12 - Operating Income per Move (2006-2014)

Year	Operating Income	Total Moves	Operating Income per Move
2006	$29,472,113	9,806	$3,006
2007	$26,863,724	9,296	$2,890
2008	$25,811,329	9,156	$2,819
2009	$23,928,636	7,935	$3,016
2010	$21,981,653	8,008	$2,745
2011	$24,943,496	8,534	$2,923
2012	$22,883,437	8,104	$2,824
2013	$24,913,852	8,326	$2,992
2014	$26,616,480	8,390	$3,172

Source: Jacob Declaration, Exhibits A & B

Exhibit 13 - Operating Income per Move and Number of Moves (2006 vs. 2014)

Year	Total Moves	Operating Income per Move
2006	9,806	$ 3,006
2014	8,390	$ 3,172

Source: Exhibit 15, Jacob Declaration Exhibit B

Exhibit 14 - Average Net Income per Move and Number of Moves (2006 vs. 2014)

Year	Total Moves	# of Pilots*	Moves/Pilot	Avg. Net Income	Avg. Net Inc. / Move
2006	9,806	59.96	164	$491,892	$3,006
2014	8,390	58.75	143	$453,729	$3,172

Source: Jacob Declaration, Exhibits A & B

* # of Pilots computation:

2006 Net Income = $29,493,841; 2014 Net Income = $26,656,575

Net Income (Exhibit A) / Average Net Income (Exhibit A) = Number of Total Annual Pilots Paid

DRB

T.C. Memo. 2011-219

UNITED STATES TAX COURT

TOM AND NANCY MILLER, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 21655-09. Filed September 8, 2011.

Michael J. Low, for petitioners.

John M. Wall, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

KROUPA, Judge: Respondent determined deficiencies in petitioners' Federal income taxes of $28,357 and $50,036 for 2005 and 2006 (years at issue), respectively, and $5,671.40 and $10,007.20 accuracy-related penalties under section 6662(a) for those years. With respect to 2005, petitioners dispute the entire deficiency and penalty except for $8,998 of disallowed

interest expense and a $17,350 rental activity loss from a property at Avenida Monteflora in Desert Hot Springs, California.[1] With respect to 2006, petitioners dispute the entire deficiency and penalty except for an $18,596 rental activity loss from the property at Avenida Monteflora.

We are asked to decide two issues. The first issue is whether petitioners' rental real estate losses for the years at issue were passive activity losses subject to the limitation under section 469(a).[2] We hold that petitioners' losses were not passive activity losses for two of their rental properties but were passive activity losses for the remaining four properties. The second issue is whether petitioners are liable for the accuracy-related penalty under section 6662(a). We hold that they are not.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulations of facts and accompanying exhibits are

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[1]The parties stipulated that petitioners failed to report $8,998 of interest income for 2005 and that they did not materially participate in the rental real estate activity reported for the property at Avenida Monteflora in Desert Hot Springs, California during the years at issue.

[2]All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure, unless otherwise indicated.

incorporated by this reference. Petitioners resided in Petaluma, California at the time they filed the petition.

Tom Miller (Mr. Miller), the older child of German immigrants, had an interest in building, drafting and architecture growing up. He pursued his interest in boats, however, after his father met an instructor at the California Maritime Academy.

Mr. Miller graduated from the California Maritime Academy in 1980 with a bachelor of science degree in nautical industrial technology. He quickly left his first job, which required him to spend months at sea, because it kept him away from Nancy Miller (Mrs. Miller).[3] He took a job with a tugboat company that allowed him to be nearer to Mrs. Miller, who is now his wife of 27 years, and to return to the San Francisco Bay area. Petitioners have two daughters.

At the age of 29, Mr. Miller became a partner in the San Francisco Bar Pilots Association (SFBPA) and began piloting commercial seagoing vessels for SFBPA.[4] During the years at issue, Mr. Miller piloted client vessels for the SFBPA, including large container ships, passenger cruise ships and large military

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[3]Mrs. Miller is a bookkeeper by training.

[4]The SFBPA is a partnership for Federal income tax purposes. During the years at issue, SFBPA was limited, by statute, to 60 pilots. All SFBPA pilots were equal partners of the SFBPA and received equal distributions.

ships. He piloted these client vessels from 13 miles at sea, outside the San Francisco Bay Channel, throughout the San Francisco, San Pablo and Suisun Bays, including the Sacramento and San Joaquin Rivers.

Mr. Miller's schedule as an SFBPA pilot requires that he work seven days and then have seven days off. Mr. Miller generally is not required to actually work for all of his seven days "on." His schedule is also somewhat flexible and predictable. SFBPA pilots know roughly when they will have to work during their "on" time and can trade turns in the pilot rotation, subject to limitations.

Despite his piloting work, Mr. Miller did not lose his interest in building and drafting. He acquired a class B general contractor's license in 1997, which he held during the years at issue. He provided construction services for clients in 2005, including kitchen remodeling, replacing home siding, building decks, building fences and replacing windows. He also drafted and worked on approximately a dozen building plans for houses, including during the years at issue.

Petitioners owned six rental real estate properties during 2005 and seven during 2006. Petitioners conceded that they did not materially participate in the rental real estate activity with respect to a property at Avenida Monteflora, and therefore the losses from that property are passive activity losses.

Petitioners argue, however, that the losses from their remaining rental properties are not passive activity losses.

For each of the rental properties at issue, petitioners found tenants by placing ads and pictures on Craigslist.[5] Mrs. Miller prepared the written leases for the properties, which petitioners both reviewed and signed. Petitioners collected the rents. Petitioners also spent substantial time researching and bidding on various rental real estate properties, including during the years at issue.[6] Mr. Miller created contemporaneous timesheets, detailing time spent on his rental real estate activities and construction business.[7] The parties provided to

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[5]Craigslist is a network of online communities featuring online classified advertisements for housing, jobs, goods, services, romance, local activities, advice and more. Craigslist sites, found at www.craigslist.com, serve hundreds of cities across the United States and in dozens of countries, attracting millions of visitors every month.

[6]Mrs. Miller described some of the time-consuming process and challenges of researching country homes. In addition to online research, petitioners would travel to the locations, research zoning laws and meet with the health inspector regarding water wells and septic systems. On the basis of their research, petitioners sometimes chose not to bid on the properties they researched. When petitioners did make an offer, they did not always acquire the property, for example when there was a higher bidder.

[7]As with his piloting logs, Mr. Miller did not record administrative time spent on his rental real estate activities. Mr. Miller's real estate administrative work included planning construction and repair jobs, amending timelines and ordering materials.

the Court a number of other timesheets and summaries of petitioners' time allocation as well.[8]

Petitioners' first rental property was on Pepper Road in Petaluma, California. Petitioners bought five acres of land surrounded by dairy ranches in 1990, and Mr. Miller built two homes on the land. Mrs. Miller assisted her husband with the interior design of the homes. Petitioners resided in one of the homes and continued to reside in that home at the time of trial. Petitioners leased the second home (Pepper Road property). Mr. Miller performs maintenance work for the Pepper Road property, including maintenance of the well, septic system and all or most of the yard. Mr. Miller also performed repair work on the Pepper Road property, including repairs to the fence, washing machine, garbage disposal and back door.

Petitioners and Martin Miller, Mr. Miller's brother, owned and leased a single-family home on Morning Glory Drive in Petaluma, California from 2000 through the years at issue (Morning Glory property). Petitioners held an 85-percent interest in the Morning Glory property until September 2006, when they acquired Martin Miller's 15-percent interest. Martin Miller resided next door to the Morning Glory property during the years

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[8]The Court notes that petitioners' timesheets had some inaccuracies and were imperfect. Nevertheless, the timesheets provided useful guidance when coupled with petitioners' testimony.

at issue. He would occasionally mow the lawn at the Morning Glory property, although the tenants would usually maintain the property and mow the lawn. Martin Miller had a new carpet installed at the Morning Glory property in 2005. Mr. Miller and Martin Miller, along with an associate of Mr. Miller, installed a fence on one side of the Morning Glory property in 2005. Martin Miller hired a fence company to build a fence on the other side of the Morning Glory property in 2006, and Mr. Miller reimbursed Martin Miller for some of the costs.

Petitioners purchased a single-family home on Lind Avenue in Clovis, California in June 2005 (Lind property). The Lind property is in a community governed by a homeowner's association. Homeowners in this community pay monthly homeowner's association fees for maintenance of common areas and mowing and maintenance of the front yards of homes within the community. Petitioners rented the Lind property during the years at issue.

Petitioners purchased a single-family home on N. Price Avenue in Fresno, California in October 2005 (Price property). Petitioners hired a landscaper to provide weekly mowing and gardening services for the Price property for $65 per month. Petitioners rented the Price property in 2006.

Petitioners and Martin Miller purchased a single-family home on E. Emerald Avenue in Fresno, California in June 2005 (Emerald property). Petitioners and Martin Miller held equal interests in

the Emerald property. Petitioners hired and paid an individual to provide bi-monthly mowing and gardening services for the Emerald property. Petitioners rented the Emerald property during the years at issue.

Petitioners purchased a single-family home on Bennett Valley Road in Santa Rosa, California in October 2006 (Bennett Valley property). Mr. Miller and his subcontractor, Delmont Bogart (Mr. Bogart), made a number of improvements to the Bennett Valley property. The improvements included building a retaining wall, replacing decks, remodeling a bathroom, installing new gutters, replacing the plumbing and repairing the furnace. Mr. Bogart described Mr. Miller as a workaholic who worked on the home after his piloting job and performed manual labor alongside him for each project on the property. Petitioners leased the Bennett Valley property.

In addition to Mr. Bogart, other witnesses described Mr. Miller's work ethic as extraordinary. A friend, pilot and partner of Mr. Miller's at SFBPA testified to his "one in a million" work ethic, saying that he did not know anyone who worked harder. Mrs. Miller testified that she had to go to Mr. Miller's construction sites to see her husband.

Mrs. Miller prepared petitioners' joint returns for the years at issue. Petitioners did not make an election to treat

all their interests in rental real estate as one activity under section 469(c)(7)(A) before or during the years at issue.

Respondent issued the deficiency notice to petitioners, disallowing the Schedule E rental real estate losses for the years at issue and determining the deficiencies and accuracy-related penalties for those years. Petitioners timely filed a petition.

OPINION

We must decide whether a pilot of commercial seagoing vessels spent more time on his construction and rental real estate activities than on piloting, and whether he and his wife materially participated in certain rental real estate activities so that they may deduct rental real estate losses for the years at issue. We begin with the burden of proof.

Determinations of the Commissioner in a deficiency notice are presumed correct, and taxpayers bear the burden of proving otherwise. Rule 142(a); Welch v. Helvering, 290 U.S. 111, 115 (1933). Deductions are generally a matter of legislative grace, and taxpayers bear the burden of proving entitlement to claimed deductions. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934). The burden to disprove a claimed deduction may shift to the Commissioner if the taxpayers prove that they have satisfied certain conditions. Sec. 7491(a); Snyder v. Commissioner, T.C.

Memo. 2001-255 (citing H. Conf. Rept. 105-599, at 240-241 (1998), 1998-3 C.B. 747, 994-995). Petitioners have neither claimed nor shown that they complied with the substantiation requirements of section 7491(a). The burden of proof, therefore, remains on petitioners. See Rule 142(a).

Petitioners claimed losses of $71,464 and $143,091 from their rental real estate activities for the years at issue. The deduction of passive activity losses is generally suspended. Sec. 469(a). A passive activity loss is the excess of the aggregate losses from all passive activities for the taxable year over the aggregate income from all passive activities. Sec. 469(d)(1). A passive activity includes the conduct of any trade or business in which the taxpayer does not materially participate. Sec. 469(c)(1). A rental activity generally is treated as a per se passive activity. Sec. 469(c)(2), (4).

A taxpayer may, however, avoid having his or her real estate activity classified as a per se passive activity if the taxpayer is a qualifying real estate professional and satisfies the material participation requirements of section 469(c)(1). A taxpayer will qualify as a real estate professional if: (i) more than one-half of the personal services performed in trades or businesses by the taxpayer during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and (ii) such taxpayer performs more

than 750 hours of service during the taxable year in real property trades or businesses in which the taxpayer materially participates. Sec. 469(c)(7)(B).

A taxpayer may establish his or her participation in an activity by any reasonable means. Sec. 1.469-5T(f)(4), Temporary Income Tax Regs., 53 Fed. Reg. 5727 (Feb. 25, 1988). This Court has acknowledged that "reasonable means" is interpreted broadly and that the temporary regulations may not provide precise guidance. Goshorn v. Commissioner, T.C. Memo. 1993-578. Nevertheless, a postevent "ballpark guesstimate" will not suffice. See Lee v. Commissioner, T.C. Memo. 2006-193; Goshorn v. Commissioner, supra.

Where, as here, a joint return has been made, the foregoing real estate professional requirements are satisfied if either spouse separately satisfies those requirements. Sec. 469(c)(7)(B). Thus, if Mr. Miller meets the foregoing requirements, petitioners' rental activities are not per se passive and the normal passive activity loss rules of section 469(c)(1) will apply. We now consider whether Mr. Miller qualifies as a real estate professional.

On the basis of the record and testimony provided at trial, we find that Mr. Miller has established that he spent more than 750 hours performing significant construction work as a contractor and on his rental real estate activities. We find

that Mr. Miller spent more time on his construction work and rental properties than he did piloting vessels in the years at issue.

Respondent highlights that Mr. Miller was a partner in the SFBPA. Respondent also notes that Mr. Miller occasionally spent additional time on SFBPA-related activities outside of piloting. Nevertheless, we find petitioners' testimony and evidence compelling. Mr. Miller completed a number of significant construction projects, both as a contractor and as a landlord, in the years at issue. He also performed a number of additional real estate tasks including researching properties, bidding on properties, finding tenants, collecting rent and performing maintenance work at rental properties. Mr. Miller presented contemporaneous work logs for his construction and rental activities and provided compelling testimony and witnesses. Thus, we find that Mr. Miller is a qualified real estate professional within the meaning of section 469(c)(7)(B).

Having found that Mr. Miller is a qualified real estate professional, we now consider whether petitioners materially participated in their rental activities. For this purpose, each interest in rental real estate is treated as a separate rental real estate activity unless the qualifying taxpayer makes an election to treat all interests as a single activity. See sec. 469(c)(7)(A). Petitioners did not make such an election. Also

for this purpose, we must consider both spouses' efforts. Sec. 469(h)(5); sec. 1.469-9(c)(4), Income Tax Regs. Thus, we consider whether petitioners' joint efforts amount to material participation with respect to each rental real estate activity.

Material participation is defined generally as regular, continuous and substantial involvement in the business operations. Sec. 469(h)(1). A taxpayer can establish material participation by satisfying any one of the seven tests provided in the regulations. Sec. 1.469-5T(a), Temporary Income Tax Regs., 53 Fed. Reg. 5725 (Feb. 25, 1988); see Akers v. Commissioner, T.C. Memo. 2010-85. Two tests are particularly relevant here.

A taxpayer is treated as materially participating in an activity if his or her participation in that activity during the taxable year constitutes substantially all of the participation[9] in the activity for that year. Sec. 1.469-5T(a)(2), Temporary Income Tax Regs., supra. A taxpayer is also treated as having materially participated if the taxpayer participates in the activity for more than 100 hours during the taxable year and the taxpayer's participation in the activity for the taxable year is not less than the participation of any other individual. Sec.

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[9]"Participation" generally means any work done in an activity by an individual who owns an interest in the activity. Sec. 1.469-5(f)(1), Income Tax Regs.

1.469-5T(a)(3), Temporary Income Tax Regs., 53 Fed. Reg. 5726 (Feb. 25, 1988).

We are satisfied that petitioners participated in the rental real estate activities at the Pepper Road property and the Bennett Valley property for over 100 hours per year for the relevant years.[10] We are also satisfied that their participation was not less than the participation of any other individual for those years. It follows, and we hold, that petitioners materially participated in the rental real estate activities at the Pepper Road property and the Bennett Valley property in the relevant years and the deductions attributable to those activities are not subject to limitation under section 469.

Petitioners have not shown, however, that they participated in the rental real estate activities at the Morning Glory property, the Lind property, the Price property or the Emerald property for over 100 hours per year for the relevant years. They also have not carried their burden of proving that their participation in the rental real estate activities at each of these four properties constitutes substantially all of the participation for those properties in the years at issue. We particularly note Martin Miller's participation at the Morning Glory property, which is adjacent to his home. We sustain

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[10]As aforementioned, petitioners did not own the Bennett Valley property in 2005.

respondent's disallowance of losses with respect to the real estate activities at the Morning Glory property, the Lind property, the Price property and the Emerald property for the years at issue.

We now address whether petitioners are liable for the accuracy-related penalty for a substantial understatement of income tax for each year at issue. A taxpayer may be liable for a penalty of 20 percent on the portion of an underpayment of tax attributable to, among other things, a substantial understatement of income tax. Sec. 6662(a), (b)(2). There is a substantial understatement of income tax if the amount of the understatement exceeds the greater of 10 percent of the tax required to be shown on the return, or $5,000. Sec. 6662(d)(1)(A); sec. 1.6662-4(b)(1), Income Tax Regs. We find that respondent has met his burden of production if Rule 155 computations show petitioners have a substantial understatement of income tax. See Higbee v. Commissioner, 116 T.C. 438, 446 (2001); Jarman v. Commissioner, T.C. Memo. 2010-285.

A taxpayer is not liable for an accuracy-related penalty, however, if the taxpayer acted with reasonable cause and in good faith with respect to any portion of the underpayment. Sec. 6664(c)(1). The determination of whether the taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances

including the taxpayer's efforts to assess his or her proper tax liability. Sec. 6664(c)(1); sec. 1.6664-4(b), Income Tax Regs. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of all the facts and circumstances. Sec. 1.6664-4(b)(1), Income Tax Regs.

Petitioners state in their petition that they acted with reasonable cause and in good faith, and we so find. Petitioners prevailed on the threshold question of whether Mr. Miller qualifies as a real estate professional. They also prevailed on the question of whether they materially participated with respect to two of their rental properties. As for the remaining properties, petitioners provided evidence and gave credible testimony but simply failed to meet their burden of proof. Nevertheless, petitioners provided extensive records of their rental real estate activities, including contemporaneous timesheets. We find that petitioners acted with reasonable cause and in good faith in claiming rental real estate losses for the years at issue. Accordingly, we decline to impose a penalty upon petitioners.

We have considered all arguments made in reaching our decision and, to the extent not mentioned, we conclude that they are moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be entered under Rule 155.

US TAX COURT
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UNITED STATES TAX COURT

US TAX COURT
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MAR 10 2011

TOM MILLER and NANCY MILLER,	)
	)
Petitioners,	)
	)
v.	) Docket No. 21655-09
	)
COMMISSIONER OF INTERNAL REVENUE,	) FILED ELECTRONICALLY) Username: MICHAEL JOHN LOW
	)
Respondent.	)
	)

PETITIONERS' OPENING BRIEF

MICHAEL J. LOW
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Tax Court Bar No. LM0474

SERVED Mar 15 2011

itemized from other work performed on the properties on the same days). (SOF ¶¶ 139 & 142; Ex. 91-J; Ex. 94-J.)

6. In 2006, petitioner Tom Miller spent approximately 1125 hours in his construction business and real estate rental activities. That total does not include administrative time, time spent researching potential acquisitions which were not ultimately acquired, time spent bidding jobs that were not awarded, and travel (except for time driving to and from the Fresno and Clovis rental properties, which are not separately itemized from other work performed on the properties on the same days). (SOF ¶¶ 140 & 143; Ex. 92-J; Ex. 95-J.)

7. In 2005, petitioner Tom Miller spent approximately 790.75 hours actually piloting client vessels for the SFBPA. (SOF ¶ 57; Ex. 18-J; Ex. 21-J; RT 78:16-18; RT 78:22-25.)

8. In 2006, petitioner Tom Miller spent approximately 680 or 690 hours actually piloting client vessels for the SFBPA. (Ex. 19-J; RT 78:19-21; RT 78:22-25.)

9. Petitioner Tom Miller operated a construction business. In 2005 he provided construction services to customers (SOF ¶ 133.) In 2006, he constructed properties only for his own account. (SOF ¶ 135; RT 13:22-14:7; RT 57:21-25; RT 92:13-19.)

UNITED STATES TAX COURT

In the matter of	)	
TOM and NANCY MILLER,	)	
Petitioners,	)	
v.	)	Docket No.: 21655-09
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

Volume: 2

Pages: 158 through 216

Place: San Francisco, California

Date: December 10, 2010

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IN THE UNITED STATES TAX COURT

In the matter of	)	
	)	
TOM and NANCY MILLER,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No.: 21655-09
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

Courtroom 2-1350
Federal Building and
U.S. Courthouse
450 Golden Gate Ave.
San Francisco, CA 94102

The above-entitled matter came on for trial, pursuant to notice, at 10:11 a.m.

BEFORE: HONORABLE DIANE L. KROUPA
Judge

APPEARANCES:

For the Petitioners:

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C O N T E N T S

E X H I B I T S

EXHIBITS:	IDENTIFIED	RECEIVED
Respondent=s		
148-R	169	179

1 CROSS EXAMINATION

2 BY MR. LOW:

3 Q Good morning, Captain McIsaac.

4 A Good morning.

5 Q You testified that, you know, generally you know -
6 - generally you being as a pilot, not as the Port Agent --
7 you know roughly when you=re going to have a turn when
8 you=re on the board, is that right?

9 A Correct.

10 Q And, in fact, yesterday you saw Captain Fuller
11 here, didn=t you?

12 A Yes.

13 Q And this is actually Captain Fuller=s on-week,
14 isn=t it?

15 A Yes, it is.

16 Q So, when you know in advance that you have to do
17 something or be somewhere, there is some flexibility to make
18 trades, or whatever you need to do to make time
19 accommodations, even on your on-week. Is that right?

20 A Correct, within certain parameters. You can=t
21 trade into a 12-hour minimum rest period exception.

22 Q Mr. Wall asked you about, kind of, moves for
23 pilots, he asked more generally, do certain pilots, say,
24 pilots that are certified as River Pilots, have a
25 disproportionate type of certain kinds of assignments?

1 MR. WALL: That is outside of direct. I didn=t ask
2 anything about a River Pilot, and I was actually asked to
3 stop talking about that aspect of it. Well, I didn=t ask
4 anything about River Pilots.
5 THE COURT: Well, that part, I do know. But he
6 asked -- I=m sorry, you need to rephrase or ask another
7 question.
8 MR. LOW: Certainly, Your Honor.
9 BY MR. LOW:
10 Q There are times when Mr. Miller is moved down in
11 the rotation because there are -
12 MR. WALL: Objection, I didn=t ask any question
13 about Mr. Miller and --
14 THE COURT: Well, I know, much to the Court=s
15 dismay. I=m starting to figure out why it was relevant.
16 So, I=m going to allow this question.
17 BY MR. LOW:
18 Q Captain McIsaac, is Mr. Miller a River Pilot?
19 A Yes.
20 MR. WALL: Objection, that=s stipulated to. We
21 have that in --
22 THE COURT: Sit down, Mr. Wall.
23 BY MR. LOW:
24 Q Are there River Pilots, including Mr. Miller, that
25 are sometimes moved down, or held out of the rotation

1 because there is a river job coming up, which can only be
2 done by the next River Pilot?
3 A Yes, that is true. I think currently we have 12
4 or 13 River Pilots who are also commissioned by the Ports of
5 Sacramento and Stockton, who pilot on the rivers.
6 Q And typically, a river job would not involve
7 having to go out to sea, it would be something within the
8 Bay and River system without going out to sea. Is that
9 right?
10 A Correct.
11 Q You said that, as -- was it within your capacity
12 as Port Agent that you signed off on ESA Logs?
13 A Yes.
14 Q When you were Port Agent, signing off on ESA Logs,
15 and there were entries on the logs for Aflat tow planning,@
16 would it make any difference to you whether the flat tow
17 planning was --
18 MR. WALL: Objection, I didn=t ask a word about
19 flat tow planning and --
20 THE COURT: No, you -- I am going to allow this
21 question.
22 BY MR. LOW:
23 Q Would it make any difference, Captain McIsaac,
24 whether or not a pilot did the flat tow planning from 800
25 hours until 1100 hours? Or 1300 hours to 1600 hours?

1 MR. WALL: I did not ask that question --
2 THE COURT: Overruled.
3 THE WITNESS: No, it would not make any difference.
4 BY MR. LOW:
5 Q Was Mr. Miller one of the pilots at the Bar Pilots
6 Association --
7 THE COURT: I need you to ask, ADid you verify that
8 the time that the sea pilot put down was the actual time?@
9 When you signed off on it, what were you signing off?
10 THE WITNESS: The, uh -- no, I did not verify that.
11 BY MR. LOW:
12 Q When you joined the Bar Pilots Association, was
13 Mr. Miller one of the then existing pilots?
14 A Yes.
15 Q You said that student pilots have either one or a
16 small number of pilot evaluators, but that they rode with
17 many different pilots. Did you ride with Mr. Miller when
18 you were a pilot trainee?
19 A Yes, I did.
20 Q And how long have you known Mr. Miller?
21 A Uh, since just about the time I got in the
22 training program, which was 1992.
23 Q Based on your knowledge of Mr. Miller for all of
24 those years, do you have an opinion about his work ethic?
25

1 MR. WALL: Your Honor, that=s far outside of my cross,
2 days outside of my cross.
3 THE COURT: Overruled.
4 THE WITNESS: Yes, Mr. Miller is highly respected
5 for his work ethic.
6 BY MR. LOW:
7 Q Captain McIsaac, there=s a chart next to you
8 labeled Exhibit 148-R, I know that you didn=t personally
9 compile these charts, but as Port Agent, are you familiar
10 with MRP=s and the kind of data that=s kept on this chart?
11 A Yes, but typically what I see is the monthly
12 summary, I don=t see it by individual pilots.
13 MR. LOW: Nothing further.
14 THE COURT: All right, Mr. Wall?
15 MR. WALL: If I could just have a couple moments.
16 I have no further questions, but if I could just have a
17 couple moments?
18 THE COURT: All right. A couple of moments, do we
19 take a break or --
20 MR. WALL: A short break, please.
21 THE COURT: Yes, okay. Can we release him?
22 MR. WALL: Yes.
23 THE COURT: Yes, all right. Thank you, Captain.
24 THE CLERK: All rise.
25 (Off the record.)

Exh. 18 – Estimated 2014 Hourly Workload per Pilot

SFBP Work Rules (Rule 1.9):
"when the dispatcher has doubt about a sailing … the following times shall be adhered to:

Golden Gate to Station	1.5 hours
Station Boat to Station	2.0 hours
SF Waterfront to Station	2.5 hours
Oakland, Alameda and Richmond Outer Harbor	3.0 hours
Oleum and Vicinity and Richmond Inner Harbor	4.0 hours
Martinez, Benicia and Vicinity	5.0 hours
Port Chicago	5.5 hours"

Estimate Methodology:
The average time according to the work rules, as well as the time which would apply to the most transits, would be the Oakland/Richmond Outer time of 3 hours per Bar Move, but to be conservative and capture the most moves, including all container ship moves, most tanker moves, and a metric which captures all bar moves to all of the Bay's public ports, we use the 4 hour time per Bar Move as average.

To be conservative we will also use the 4 hour time for all Bay Moves as well.

Finally, we will conservatively assign a 12 hour time for all River Moves since that is the maximum time for which a pilot may be assigned without violating the voluntary SFBP minimum rest period.

2014 Total Moves:

In 2014, there were 8,390 total moves broken down into 6,499 bar moves, 1,376 bay moves, and 515 river moves.

Estimated Total Hours:
4 hours x 6,499 bar moves = 25,996 hours
4 hours x 1,376 bay moves = 5,504 hours
12 hours x 515 river moves = 6,180 hours
Total 37,680 hours

Net Income per Estimated Hour
2014 Net Income = $26,656,575

$26,656,575/37,680 = $707.45 per Hour

Exhibit 19 - Pilotage Fees per Move vs. Expenses per Move (2006-2014)

Year	Pilotage Fees Earned	Operating Expenses	Total Moves		Pilotage Fees/Move	Op. Exp. / Move	Net Pilotage Fee
2006	$39,264,873	$9,915,852	9806		$4,004	$1,011	$2,993
2007	$37,523,239	$10,789,031	9296		$4,036	$1,161	$3,000
2008	$37,330,873	$11,573,783	9156		$4,077	$1,264	$3,000
2009	$34,071,805	$10,209,794	7935		$4,294	$1,287	$3,000
2010	$34,456,762	$12,551,164	8008		$4,303	$1,567	$3,000
2011	$37,281,993	$12,409,407	8534		$4,369	$1,454	$3,000
2012	$36,341,646	$13,518,269	8104		$4,484	$1,668	$3,000
2013	$38,276,060	$13,413,168	8326		$4,597	$1,611	$3,000
2014	$39,754,055	$13,202,155	8390		$4,738	$1,574	$3,165
							2014 v. 2006 Net:
				2014 v. 2006:	$734	$562	$172

Source: Jacob Declaration, Exhibits A & B

Exhibit 20 - Operating Expenses as Percentage of Total Pilotage Fees Earned (1990-2014)

Year	Pilotage Fees Earned	Operating Expenses	Op. Exp. % of Pilotage Fees
1990	$12,660,951	$4,495,400	35.51%
1991	$12,678,326	$4,769,883	37.62%
1992	$13,949,705	$4,904,018	35.15%
1993	$14,915,881	$5,744,391	38.51%
1994	$15,574,707	$6,027,437	38.70%
1995	$15,684,790	$6,401,405	40.81%
1996	$16,299,650	$5,983,020	36.71%
1997	$16,555,759	$6,079,599	36.72%
1998	$17,644,966	$5,740,792	32.54%
1999	$19,620,156	$5,885,286	30.00%
2000	$21,221,807	$6,690,605	31.53%
2001	$22,372,301	$7,700,438	34.42%
2002	$22,927,581	$7,871,171	34.33%
2003	$26,274,483	$7,735,347	29.44%
2004	$29,032,632	$8,306,753	28.61%
2005	$32,762,467	$8,782,158	26.81%
2006	$39,264,873	$9,915,852	25.25%
2007	$37,523,239	$10,789,031	28.75%
2008	$37,330,873	$11,573,783	31.00%
2009	$34,071,805	$10,209,794	29.97%
2010	$34,456,762	$12,551,164	36.43%
2011	$37,281,993	$12,409,407	33.29%
2012	$36,341,646	$13,518,269	37.20%
2013	$38,276,060	$13,413,168	35.04%
2014	$39,754,055	$13,202,155	33.21%

Average Operating Expense % of Total Pilotage Fees Earned (1990-2014): 33.50%

Source: Jacob Declaration, Exhibit A

BEFORE THE BOARD OF PILOT COMMISSIONERS
FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN

In Re the Petition of the San Francisco Bar Pilots For Fuel and Rent Surcharges and a Change in Pilotage Rates	)	SAN FRANCISCO BAR PILOTS' REQUEST FOR AND DOCUMENTARY EVIDENCE IN SUPPORT OF THEIR REQUEST FOR A FUEL SURCHARGE, A RENT SURCHARGE, AND A CHANGE IN PILOTAGE RATES

I. INTRODUCTION

On February 11, 2011, the San Francisco Bar Pilots ("SFBP" or the "pilots") filed their Petition for a hearing at which the Board of Pilot Commissioners (the "Board") is to consider certain changes in pilotage rates and other charges. On the same day, the Pacific Merchant Shipping Association (the "PMSA) filed its own Petition, seeking to reduce the pilotage rates which the Board set in 2002. The PMSA's filing was apparently in response to an earlier suggestion from the SFBP that the pilots meet with representatives of the PMSA, to attempt to negotiate an agreement on rates, to avoid the necessity of a full-blown rate hearing. The PMSA advised the SFBP that it had no interest in negotiating. Also, the PMSA advised the Board, by letter dated October 11, 2010, that the PMSA believes that surcharges based on unusual cost increases, such as those being requested by the pilots now, should be considered only in the context of a full rate petition. *See* Flynn, Delich & Wise LLP letter of October 11, 2010, Ex. K to the Declaration of Forrest Booth (the "Booth Declaration"), filed herewith, Tab 11, p. 7.

Therefore, two Petitions will now be heard concurrently.[1] Since 2006, the pilots have experienced a 20% decrease in their net return (income). After adjusting for local CPI, the pilots in 2010 earned less than pilots in any of the comparable ports listed in 7 CCR § 236(f)(4), with the sole exception of the Puget Sound Pilots. Apparently the PMSA wishes to have its members' ships piloted by less-skilled, less-experienced, less-well-trained and less-highly compensated bar pilots than those which the SFBP has previously provided to them.

The pilots' Petition for certain rate increases and surcharges enjoys support in the maritime industry. For example, the Port of San Francisco believes that now that the

[1] The Hearing is scheduled for April 6, 2011. Pursuant to the Board's rule making regulations set forth at Title 7, Division 2 of the California Code of Regulations, Section 236(c), the SFBP, as Petitioner, is required to file all written evidence in support of its Petition at least 30 days before the date set for the Hearing. Any responding party must file its evidence with the Board at least 10 days before the date of the hearing, pursuant to Section 236(d). At the conclusion of the Hearing, the Board will make its recommendations to the Legislature, which sets pilotage rates for the Bays of San Francisco, San Pablo and Suisun in Harbors and Navigation Code Sections 1190 and 1191.

economy is on upswing, "... it is only fair that the pilots are granted an increase to help defray the increased costs and to allow you to attract the best pilots to the San Francisco Bay region ...". *See* Exhibit 1 hereto. The Port of San Francisco stated that the Port "... would like to be on record for supporting ..." the proposed increases. *Id.*

For the SFBP to attract and hold qualified pilots, certain rate adjustments are necessary. The members of the SFBP have experienced a decline of 20% in their incomes since 2006, the effective date of the last rate increase approved by the Board in 2002. *See* Ex. A to the Declaration of John Cinderey (the "Cinderey Declaration"), filed herewith, Tab 15. The threat of inflation has returned in California, and many experts believe that the coming years will bring significant monetary inflation. *See* the Booth Declaration, Tab 11, Exs. X and Y. To address this problem and to insure net return (income) to the pilots sufficient to attract and hold qualified trainees and pilots, the SFBP could justifiably ask for a large, across-the-board rate increase, but they are not seeking that. Rather, the SFBP requests that, effective in 2012, the Board impose a fuel surcharge on all invoices for inward or outward bound ship movements, to be calculated in a manner set forth below, to defray the costs of fuel for the SFBP's pilot vessels, and to protect the pilots' incomes from the rapidly-escalating world price of petroleum products. The pilots already have experienced significantly increased fuel costs. Most shipping lines already have fuel surcharges in place. One, Matson Navigation Co., recently increased its fuel surcharge to 35%, the second monthly increase in a row. Booth Declaration, Tab 11, Ex. N. With projections that the cost of crude oil will soon rise to well over $100 per barrel because of strife in the Middle East (Brent Crude is already in excess of $105/barrel, *Id.*, Ex. A), the pilots' future fuel costs will dramatically increase, and will further adversely impact pilots' incomes.

The pilots also request that, effective in 2012, the Board impose a rent surcharge on all such movements, to be calculated in the manner set forth below, to defray the recent 323% increase in the cost of rent the SFBP pays to the Port and the City and County of San Francisco. Coincidentally, the majority of the pilot boat surcharge which shipowners currently pay is due to expire in September 2011, resulting in a savings to industry of about $1.9 million per year, starting in 4Q 2011, offsetting almost all of the fuel and rent surcharges being requested.

The pilots further request:

- For the year 2013, in addition to the fuel and rent surcharges set forth above, the Board impose a transportation fee of $87.75 per vessel move, to defray the pilots' costs of land-side transportation and launch services ("transportation fee") incident to their provision of pilotage services;

- For the year 2014, the imposition of the aforesaid fuel and rent surcharges, a transportation fee of $89.51 per vessel move, and a 6% increase in the current rates per draft foot and per high gross registered ton imposed by Harbors and Navigation Code Section 1190;

BEFORE THE BOARD OF PILOT COMMISSIONERS
FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN

In Re the Petition of the San Francisco Bar Pilots For a Change in Pilotage Rates	)))))	SAN FRANCISCO BAR PILOTS' ARGUMENT AND DOCUMENTARY EVIDENCE IN SUPPORT OF THEIR REQUEST FOR AN INCREASE IN PILOTAGE RATES

I.

INTRODUCTION

The San Francisco Bar Pilots ("SFBP") filed their Petition for a hearing at which the Board of Pilot Commissioners (the "Board") is to consider a change in pilotage rates. The Hearing is scheduled for April 30, 2002. Pursuant to the Board's ratemaking regulations at Title 7, Division 2 of the California Code of Regulations, Section 236(c), the SFBP, as petitioner, is required to file all written evidence in support of their Petition at least 30 days before the date set for the hearing. Any party wishing to respond must file its evidence with the Board at least ten days before the date of the hearing. At the conclusion of the hearing, the Board will make its recommendations to the Legislature, which sets pilotage rates by statute in the Harbors and Navigation Code.

The SFBP requests an increase in rates that will eliminate a large disparity between the compensation of the members of the SFBP and the compensation of pilots elsewhere in the United States. Rates sufficient to compensate members of the SFBP at fair and reasonable levels commensurate with pilots serving comparable ports require an across-the-board increase of 35.3 percent in pilotage rates. The SFBP also requests that the Board approve automatic annual adjustments in rates based on changes in the cost of living as reflected in the applicable consumer price index ("CPI"). Automatic annual CPI adjustments are quickly becoming the industry norm, allowing for rate stability and predictability. The result of automatic CPI adjustments is fewer rate cases disrupting the other essential work of regulatory bodies such as the Board.

The SFBP requests a one-time increase of 35.3 percent in the rates for all bar and inland tariff items, excluding surcharges, effective January 1, 2003. In addition, the SFBP requests that the Board recommend to the Legislature annual automatic rate adjustments each January 1 beginning in 2004 that are equal to the percentage change over the most recently reported previous 12 month period in the CPI maintained by the United States Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, San Francisco-Oakland-San Jose.

Considering the risks to life and limb to which the pilots are exposed every day, it seems very reasonable to provide some additional security to the pilots and their families in case of disaster. This is particularly true since September 11. Armed Sea Marshals accompanying pilots on most transits are a constant reminder that there is an ongoing, serious and credible threat of suicidal terrorists commandeering vessels with deadly intentions. This new risk certainly should justify the modest insurance coverage requested.

The total of all amounts budgeted for operating costs in 2003, absent finalization of a negotiated agreement on costs prior to April 30, is $8,224,456.

2. Attract and Hold.

Submitted herewith as Exhibit B is a letter from the Board's Executive Director describing the attrition rate in the SFBP pilot training program since 1986. According to the Board's Executive Director, 49 individuals have been offered positions in the program, of which 41 accepted, completed the program and are now pilots. This reflects an attrition rate of 16 percent. Of the eight individuals who did not enter and complete the program, two did not accept the initial offer to join the program, three accepted the offer but subsequently resigned, and three more accepted the offer but were subsequently dismissed for cause.

An attrition rate of 16 percent from the training program is surprisingly high, considering that piloting is generally considered to be the apex of maritime careers, with candidates drawn from the ranks of experienced mariners in mid-life who already have a history of success in other high ranking maritime positions. If compensation were adequate, one would expect virtually no voluntary refusals or departures. Similarly, if compensation were adequate, the program would be selecting from only the finest candidates available, and there should almost never be a reason to dismiss any such trainees for cause.

While the "attract and hold" factor tends to raise doubts about the adequacy of compensation, the SFBP does not rely heavily on it, as it is a poor indicator of compensation adequacy. According to the testimony of Dr. Carl Gotsch, a highly regarded Stanford economist, in a profession such as piloting, where there are very large barriers to mobility, "attract and hold" are lagging indicators of organizational dissatisfaction. See Exhibit C, §§ 17-20. When pay is so low that the quality of candidates attracted to the training program is obviously deficient, or when good candidates in the training program (or worse yet from the ranks of the pilots) begin to leave, the organization would be in crisis. Id.

The importance of a highly qualified, highly motivated force of pilots to the safety of the public and the environment is too important to risk pushing the organization to the verge of a compensation crisis. The Board should therefore place little weight on "attract and hold" as a means of determining whether pilot compensation is fair and reasonable.

BEFORE THE BOARD OF PILOT COMMISSIONERS
FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN

In Re the Petition of the San Francisco Bar Pilots For Fuel and Rent Surcharges and a Change in Pilotage Rates	)	DECLARATION OF CAPTAIN ED MELVIN

I, Captain Ed Melvin, declare as follows:

1. I am a San Francisco Bar Pilot and a member of the SFBP. I have been a fully accredited San Francisco Bar Pilot since 1988.

2. Attached hereto and marked as Exhibits A through E, respectively, are true and correct copies of the following documents, which I prepared or which were prepared under my supervision:

3. Exhibit A: a chart of the number of U.S. mariners, nation-wide, who hold the necessary U.S. Coast Guard license and have the necessary experience to apply for the Board of Pilot Commissioners' Pilot Training Program Entrance Examination;

4. Exhibit B: a pie chart showing the number of candidates and the attrition rate for the 2002 class of trainees;

5. Exhibit C: a pie chart showing the results and the attrition rate of the class of 2006 trainee program;

6. Exhibit D: a pie chart showing the results and the attrition rate of the class of 2007 trainee program;

7. Exhibit E: a pie chart showing the results of the 2010 examination for the pilot training program, and its applicant and test-taker failure rates;

8. As ships in general, and containerships in particular, get larger and larger, they become more difficult to pilot. The tolerances are smaller, and there is less margin of safety. Since larger ships have larger underwater areas, they are more susceptible to cross-currents. As ships and their on-deck containers become higher and higher, they have more sail area, and are pushed more by the wind.

9. Large ships have a much larger turning radius than smaller ships. In addition, because of their increased mass, they are slower to start and slower to stop. Their handling characteristics differ from those the pilots were trained to handle.

10. Very large ships need more tugs to assist them; some need four and even six tugs, requiring the pilot to give more tug commands and keep track of what is going on with each of them.

11. Larger ships are closer to the bottom and to the sides or a narrow channel such as the Oakland-Alameda Estuary. There are more problems with bank suction and bank cushion. At the same time, larger ships must go slower. Their mass is much larger, they displace more water, and if they pass other ships which are tied up, they can pull them off the dock and break their mooring lines. Also, as they are moving more slowly, the wind has greater effect on them.

12. Lateral docking speeds are much lower for larger ships. Many existing docks are not built for ships of this size; the overhang of large ship's bows can impact and damage container cranes on the docks.

13. Large ships have air draft issues; they are too tall to go under some bridges at conditions of low tide. Also, because the house is in a different position on larger ships, natural range markers and landmarks are not always visible, or are seen from a different perspective.

14. The sight lines on large containerships are very different, and often the view forward is obstructed by the stacks of containers. In addition, there is essentially no view from the wheelhouse to the side and down, as the ship is docking or undocking.

15. Finally, larger ships present a greater environmental risk. Many large ships today carry as much fuel as many tankers, so a casualty can result in a much larger oil spill and greater environmental damage.

I declare under penalty of perjury under the laws of the State of California at San Francisco, California that the foregoing is true and correct on the _____ date of March, 2011.

Captain Ed Melvin

12174/0000/892730.1

QUALIFIED APPLICANT ATTRACTION RATE = < 1%

Conservative estimations yield a Nationwide Pool of 3,750 mariners who would possess the necessary USCG license and experience to apply for the Board of Pilot Commissioners Pilot Training Program Entrance Examination.

In 2010, the Commission attracted <1% of these individuals.

Conservative Estimations

A factor of 2 was used to determine an estimate for the number of full time Master's in the deep sea and inland fleets.

In reality, the deep sea number is larger as Chief Officers and Relief Masters work a portion of the year in substitution.

The inland numbers are likewise larger as most companies employ more than 2 Master's per vessel.

US Flag Merchants 272

Military Sealift Command 112

112+272= 384

384 x 2 =

Masters= 768

Tugs>100T (Harbor/Towing):

1,491

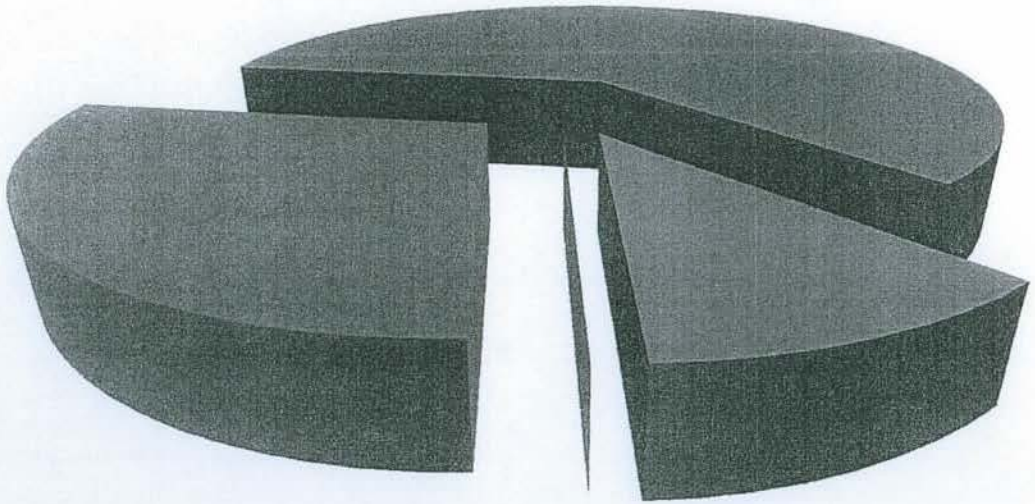
1,491 x 2 =

Masters= 2982

Applicant Pool = 3,750

2002 Trainee List

Finalist (passed written and simulator exam)



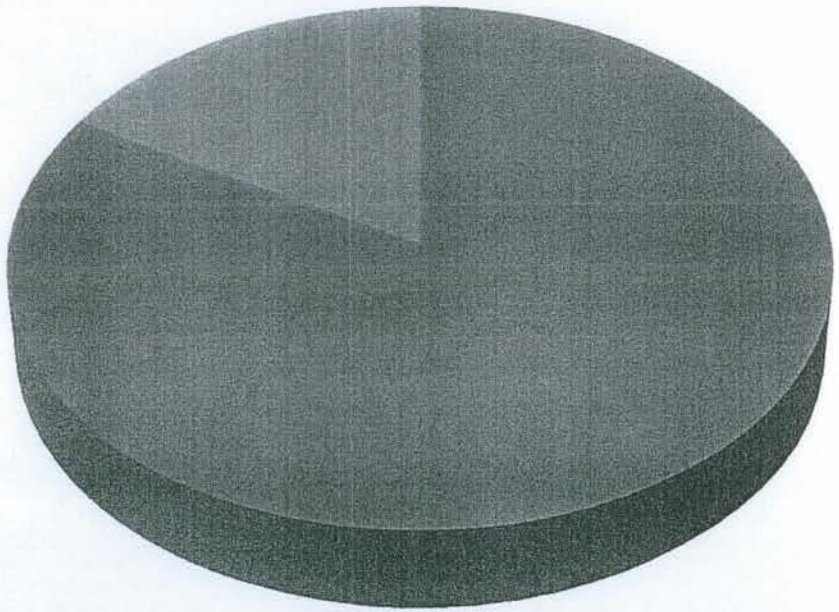
- Complete Training (11)
- Resigned (2)
- Released (0)
- Did Not Accept Posistion (5)

Total trainees (18)

Attrition Rate 39%

Trainee Lists 2002 - Present

Demographics



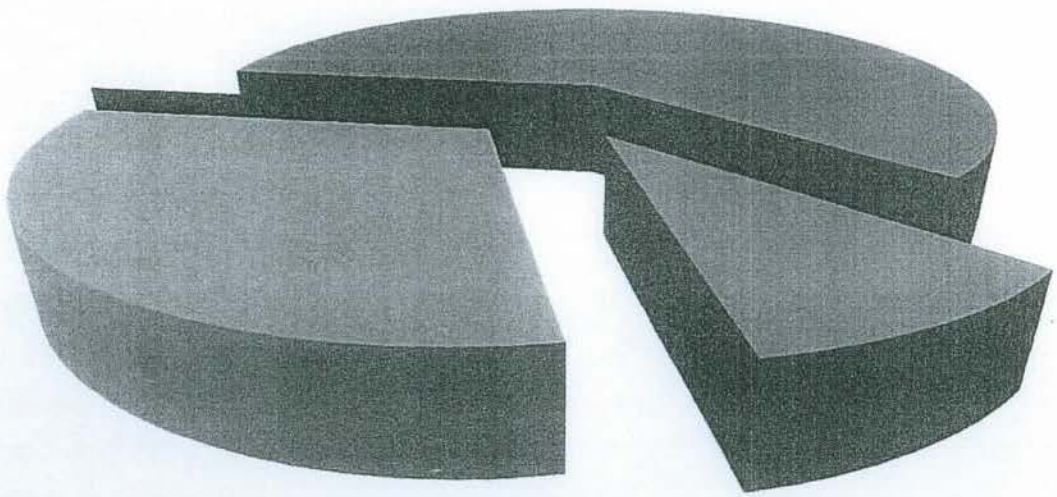
California (20)

Other (4)

THERE HAVE BEEN 24 TRAINEES THAT HAVE SUCCESFULLY COMPLETED THE TRAINING PROGRAM SINCE 2002. THIS GRAPH SHOWS THAT 80% OF THOSE WHO BECAME PILOTS WERE FROM CALIFORNIA (SPECIFICALLY THE BAY AREA) AND THE OTHERS FROM ELSEWHERE IN THE U.S.A. THIS DATA CLEARLY SHOWS THAT THE SAN FRANCISCO BAR PILOTS ARE NOT ATTRACTING CANIDATES NATIONWIDE, BUT LOCALLY. THE COST OF LIVING, ADDED LIABILITY AND PRESENT INCOME LEVEL IS NOT ATTRACTING THE BEST IN THE INDUSTRY NATIONWIDE.

2006 Trainee List

Finalist (passed written and simulator exam)



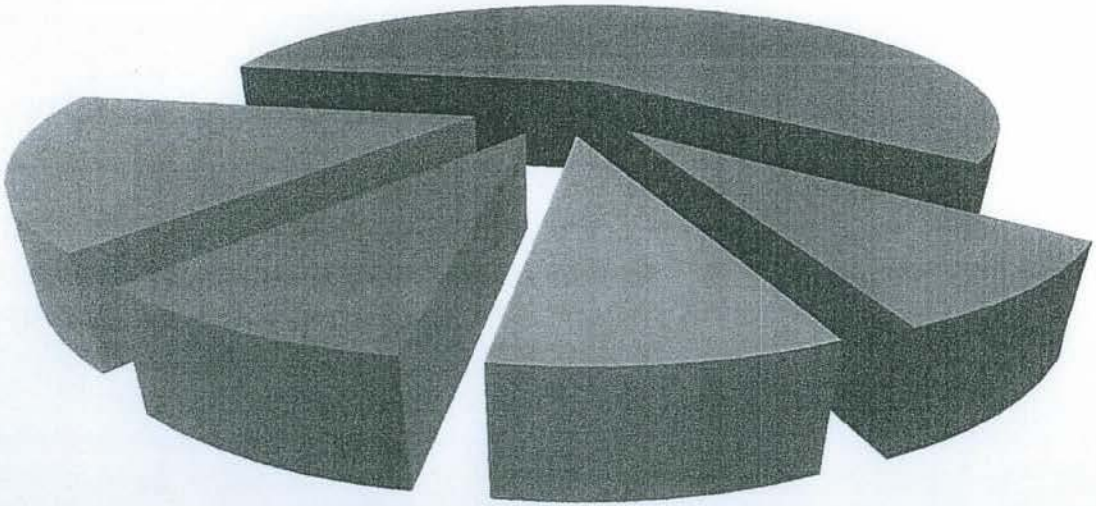
- Complete Training (6)
- Resigned (1)
- Released (3)
- Did Not Accept Posistion (0)

Total trainees (10)

Attrition Rate 40%

2007 Trainee List

Finalist (passed written and simulator exam)



- Complete Training (7)
- Resigned (1)
- Released (1)
- Did Not Accept Posistion (1)
- Not Complete (2)

Total trainees (12)

Attrition Rate 30% (to date)

Commission Training Program Examination 2010 Results

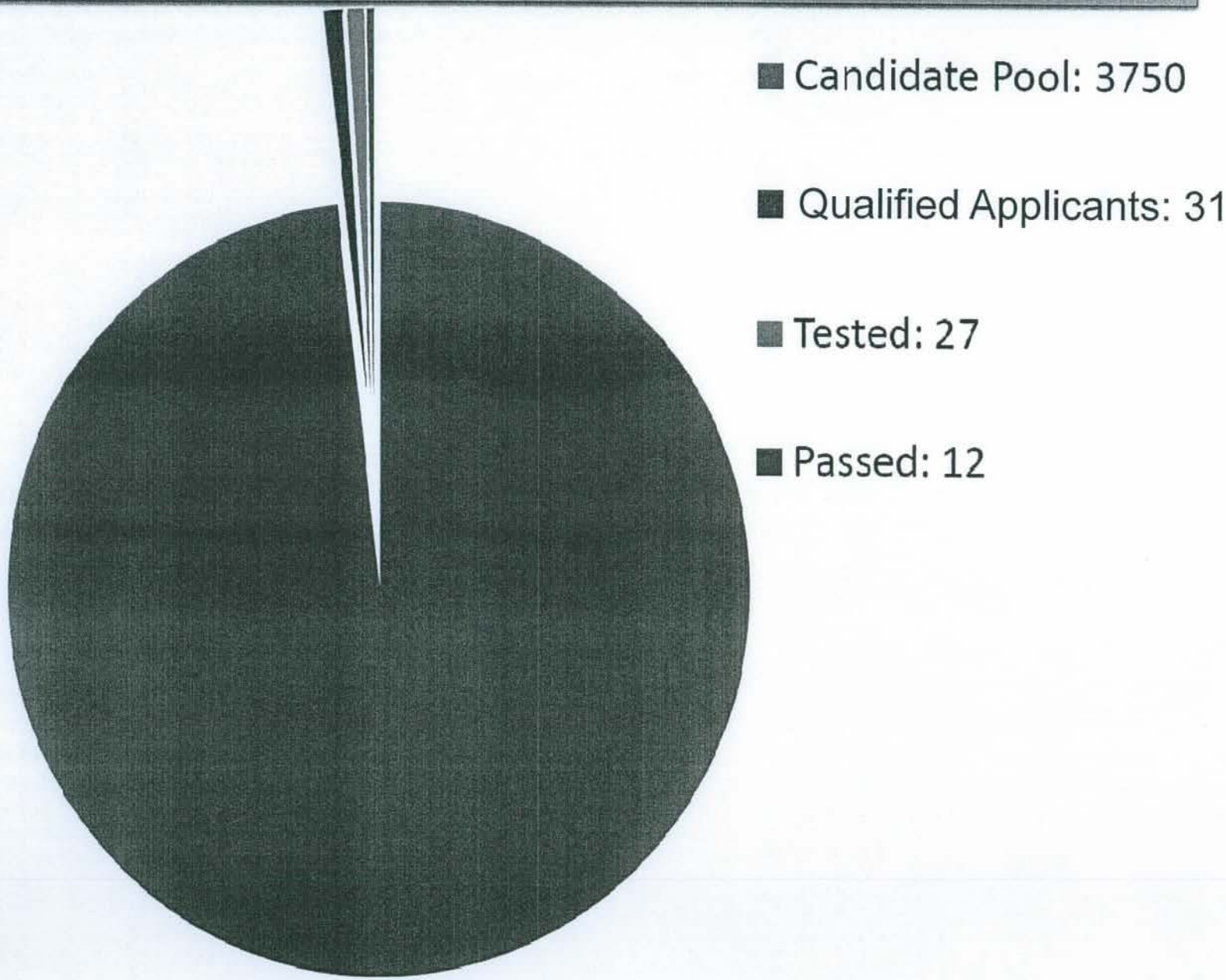


Exhibit 24 – Table of Trainee Class Statistics

Trainee List Year	*Total Trainees*	*Completed Training*	*Did Not Complete*	*Attrition Rate*	*Avg. Net Income for List Year†*	*Rate Increase in List Year?*
2002*	18	11	7	39%	$253,717	Yes
2006*	10	6	4	40%	$491,892	Yes
2007*	12	9**	3	25%**	$450,673	No
2010***	12	8	4	33%	$393,207	No
2014***	13	-	-	-	$453,766	No

† Jacob Declaration, Exh. A
* Exh. 25 - Melvin Declaration,
** 2010 List was not exhausted at the time of Melvin declaration in 2011. Final two trainees from 2010 list completed training in 2014. (Capt. D'Aloisio on 6/19/2014 and Capt. LeSieur on 9/25/2014).
*** Exh. 24 - Garfinkle transcript, at pg. 36

Board of Pilot Commissioners

MONTHLY BOARD MEETING

July 24, 2014, 9:30 a.m.

660 Davis Street

San Francisco, CA 94111

Reported by; Julie Link

APPEARANCES

Board Members Present

Francis Johnston, President, Public Member
David Connolly, Vice President, Public Member
Capt. Joe Long, Pilot Member
Capt. Steven R. Roberts, Pilot Member
John Joseph Schneider, Public Member

Staff Present

Allen Garfinkle, Executive Director
Roma Cristia-Plant, Assistant Director
Dennis Eagan, Board Counsel
Capt. Einar Nyborg
Knute Michael Miller
Acting Port Agent Capt. John W. Carlier

Public Present

Capt. Craig Reeder - Appellant

Index

Index (Contin.)

1

1 to separate those two functions so there's no
2 misapprehension among the pilots that this is a
3 personal physician, and this physician will be
4 counseling in any way, or the personal physician
5 would, or that the kinds of tests for general
6 health that a personal physician might order may
7 or may not be required by the examining physician
8 (indiscernible).
9 CAPTAIN NYBORG: Thank you very much.
10 PRESIDENT JOHNSTON: Any other questions?
11 Hearing none.
12 **ITEM 12. Report of Pilot Power Committee**
13 PRESIDENT JOHNSTON: Commissioner Long.
14 COMMISSIONER LONG: Thank you, Mr.
15 President. The Pilot Power Committee met on July
16 8th, that was myself, Commissioner Connolly,
17 Commissioner Schneider, and we primarily focused
18 on the Pilots Survey (ph) and the need to
19 contract with additional trainees for entry into
20 the training program. We did not have the 237(d)
21 data available for review. Commissioner Roberts
22 sort of touched on some of the reasons for that.
23 We plan on having that available mid-September
24 for Board review. But anyway, 237(d), that was
25 not particularly relevant to what our goal was

1 anyway, so we were just fine without it.
2 We took a look at the Retirement Survey
3 and what we have now are 59 licensed pilots, one
4 training in the training program who, as we know,
5 is very close to the end. So that gets us to 60
6 licensed pilots whenever that happens. It looks
7 like at least one of the not-fit-for-duties,
8 there's at least a pretty good chance that they
9 may not return to duty, so back down to 59.
10 The Retirement Survey looks like over the
11 course of the next four years, there's going to
12 be 15 retirements, so we came up with a
13 recommendation to contract with four trainees as
14 soon as the contracting process will allow that
15 to happen, and bring them into the training
16 program, and an additional two to be brought in
17 in February, so a total of six spread out with a
18 few months in between to eval.
19 PRESIDENT JOHNSTON: So four now and two
20 in February? Is that correct?
21 COMMISSIONER LONG: Four now, two in
22 February. And it sort of represents a little bit
23 of a shift in the way we've done it in the past.
24 Typically we've done it very conservative with
25 bringing people into the training program for

1 good reason, maybe taken out of their career path
2 with an uncertain outcome, but with the
3 implementation of the new fitness regs, the
4 fatigue study, which has kind of reignited
5 concerns over MRPs, I think we need to take a
6 slightly more aggressive approach towards getting
7 people in the pipeline and stand very near 60
8 licensed pilots, so our recommendation reflects
9 that.
10 PRESIDENT JOHNSTON: Does this reflect
11 also the support of the PEC?
12 COMMISSIONER LONG: I've spoken with
13 Einar about it and he seemed to indicate that we
14 were in the right zone.
15 CAPTAIN NYBORG: Yeah, I can't think of
16 any better way to pick a number of how many
17 trainees we have. Our biggest concern is having
18 too many at once so that we can't send them up to
19 Sacramento in one car to get the training done
20 and the transportation done without a lot of
21 juggling. So I think the number you've come up
22 with works for us just fine. That's not speaking
23 toward the manpower needs, only PEC's ability to
24 handle trainees.
25 PRESIDENT JOHNSTON: Gotcha. So do you

1 have a motion that you'd like to make on, I guess
2 it would be 12C. I think you should probably go
3 12B first. First we've got to approve the list
4 and then the second will be taking four of those
5 people from the list.
6 COMMISSIONER LONG: Yeah, okay. The Fire
7 Power Committee didn't address Agenda Item B, to
8 my recollection, we didn't --
9 EXECUTIVE DIRECTOR GARFINKLE: Yeah, I
10 was prepared to present Item B and present it to
11 the Board. I just thought that Item 12 is the
12 best place to put it on the agenda, so I snuck it
13 in there.
14 So I would like to take a moment to talk
15 about our exam process. You've heard a lot about
16 it in the past three months and all the work that
17 went into it, there was an incredible amount of
18 work. This is only the second one I've
19 participated in in the four years I've been here,
20 and the support we got from SFBT was astounding
21 and I thank them so much for that. Using Captain
22 Gates' last exam as a Bar Pilot, this exam is a
23 contractor, independent contractor to the Board,
24 was extremely helpful, and the cooperation we got
25 from CMA in scheduling simulator time, scheduling

1 a room for the exam, everything about it, I can't
2 say enough, and then Dr. Hertz, of course, about
3 how well it went and what great input we had from
4 everyone. So accolades all around on that.
5 We held the exam on June 23rd in the new
6 dining hall, a spectacular location for the exam,
7 floor to ceiling windows with a view over the
8 Carquinez Straits. Thirty-eight applicants were
9 approved to test, two backed out prior to the
10 exam, and four were no shows, so we had 33 taking
11 -- no, three no shows, so 33 examinees taking the
12 exam, the written exam. That was a 150 question
13 test, first time we've gone from 100 questions up
14 to 150, four and a half hours, quite a rigorous
15 exam. Some of the comments of the Applicants
16 leaving the exam room were that it was the
17 hardest exam they'd ever taken.
18 Coming out of that exam, we had 25
19 passing. I should note that the cut score for
20 the exam is created by what is called the
21 Modified Hancock session where subject matter
22 experts rank each question and level of
23 difficulty as far as the percentage of minimum
24 qualified candidates they believe could answer
25 the question. So a number of subject matter

1 experts sit down, I think in this case at least
2 six, so they might be detailed in Captain Hertz's
3 report, which is on item 12 in your binder.
4 And those people sit down and give a
5 percentile score to each question, and those are
6 tallied up and a cut score is derived. It has
7 absolutely zero relation to how anyone did on the
8 exam, they don't see any of the test scores, they
9 don't see how anyone did, they just rate the
10 question as to how they feel the question is in
11 difficulty, and that derives a test score and it
12 created a list of 25 to move on to the
13 simulation. And the simulation was a 25-minute
14 simulation, very challenging simulation with far
15 more of the events occurring in that 25 minutes
16 than you would usually find in real life. It
17 tested a whole variety of areas of expertise, and
18 we had three days to run it, we started the exam
19 simulations on Thursday morning and we ended
20 Saturday afternoon.
21 From that simulation, another session was
22 done, this time with 12 subject matter experts,
23 and a cut score was derived for the simulation
24 and from that cut score, out of the 25 we ended
25 up with a list 13 candidates who passed the

1 simulation.

2 You can see on the last page of this

3 report that to scale, we scaled their experience

4 points on the written exam, which was 150 points,

5 we scaled the experience points after that, and

6 we also scaled the simulation which had a maximum

7 score of 106 available, scaled out to 150. And

8 that created a total score based on experience,

9 written exam, and simulation, and the candidates

10 on the list were ranked by their total score.

11 Interestingly enough, the highest scoring

12 on the written exam was very nearly the highest

13 score in the simulator, and it seemed to go that

14 way for several of the candidates. The last page

15 under Item 12 is a list of the 13 candidates that

16 did pass and you can see on that list in yellow

17 those candidates that passed the simulation and

18 their total point scale on the very right-hand

19 column. In the brown, there are candidates who

20 took the simulator and did not pass it, and then

21 at the bottom of the page is those who took the

22 written exam and did not pass it.

23 So I present to you today a list of 13

24 candidates. I think we did very well in

25 achieving this list. We've got very qualified

1 candidates and, as you can see, the first nine
2 candidates are tightly grouped in score and
3 written exam, and simulator exam, and total
4 points are all tightly grouped.
5 So I would seek a motion from one of the
6 Commissioners to approve the list and this list
7 is good for a three-year period from date of
8 approval. Those candidates remaining on the list
9 in three years who have not been invited into the
10 training program, the list dissolves, and those
11 candidates remaining on the list have to re-
12 examine. The last exam, we had 12 candidates on
13 the list, a very similar number and, in
14 actuality, all the numbers are very similar,
15 roughly 50 applications last time, roughly 30 or
16 so taking the exam, roughly the same amount, 22
17 taking the simulator this time, 25, and then last
18 time a list of 12, and this time a list of 13.
19 So we've gotten pretty consistent results. But
20 in the last list that lasted three years, eight
21 of the candidates were invited into the program
22 and one took a position in Grays Harbor, and the
23 other three fell off the list. We had a
24 significant number of retirements indicated, more
25 than were indicted in 2010, so it may be likely

1 that we will go through this list and staff is
2 anticipating holding another exam in two to three
3 years, or three years maximum an interval, and
4 with that in mind we are working to contract with
5 Kathleen Gates early on, either through a non-
6 competitive bid, a sole source agreement, or
7 through a cooperative effort with CMA to have him
8 hired on as staff at CMA, and we'd contract with
9 CMA for his services. In either case, we'd like
10 to get started on the exam early and build
11 several simulations to use going forward to use
12 our efforts. This simulation was based on a
13 fictional Harbor and we used it several times,
14 and I think we've pretty much played out its use
15 and we'll have to create a new fictional harbor
16 and new routes to test the candidates on. We
17 don't ever want to reuse a tester route because
18 we have several candidates who test multiple
19 times.
20 PRESIDENT JOHNSTON: Okay, looking for a
21 motion to approve the list of those candidates
22 who were successful in passing both the written
23 exam and the simulated exam on the results of the
24 2014 Border Power (ph) Commissioners Training
25 Program. Do I hear a motion? Oh, yes, Captain?

1 COMMISSIONER ROBERTS: I move to approve
2 the ranked list of those candidates who were
3 successful in passing both the written exam and
4 the simulator exam.
5 COMMISSIONER LONG: Seconded.
6 PRESIDENT JOHNSTON: Discussion? Public?
7 All those in favor, say "aye."
8 (Ayes.) Opposed? Hearing none, the
9 motion passed. Yes, go ahead.
10 COMMISSIONER LONG: I'm sure you
11 mentioned it, I think I missed it, the list here,
12 that the names are ranked in order of final
13 score?
14 EXECUTIVE DIRECTOR GARFINKLE: Yes, total
15 score.
16 COMMISSIONER ROBERTS: All right, thank
17 you.
18 I have a question for Allen. Should my question
19 have included the three-year term of the list?
20 EXECUTIVE DIRECTOR GARFINKLE: No, that's
21 in Regulation.
22 PRESIDENT JOHNSTON: Okay, now I'm
23 looking for a motion to accept Commissioner
24 Long's adding to the Pilot 20 Program. You want
25 to make a motion, Captain?

1 COMMISSIONER LONG: Yeah, let me make a
2 motion for that. So for Agenda Item 12C, I move
3 that the Board direct staff to contract with four
4 trainees as soon as the contracting process would
5 allow, and two additional trainees in February,
6 so February 1.
7 COMMISSIONER ROBERTS: Should we make the
8 motion for a ranked order?
9 COMMISSIONER LONG: Yeah, okay.
10 PRESIDENT JOHNSTON: Do we do February
11 now? Or should we wait?
12 EXECUTIVE DIRECTOR GARFINKLE: That's
13 covered in Regulations also.
14 PRESIDENT JOHNSTON: Should we do
15 February? That's a long way off, should we just
16 do the four assigned now and --
17 COMMISSIONER LONG: We discussed that at
18 the Pilot Power Committee Meeting and based on
19 the results of the Retirement Survey, which we
20 know can change, but there were some really big
21 numbers on there, we were concerned in MRPs
22 fitness ranks, fatigue study, and it just seemed
23 like a good idea to get something going and have
24 them ready to go.
25 PRESIDENT JOHNSTON: So a motion?

1 EXECUTIVE GARFINKLE: And I have a
2 comment to add to Joe's, that based on the ranked
3 list, it looks like the two that will fall into
4 the February positions are both out of state
5 applicants and the Committee discussed the need
6 to notify them of the positions so they could
7 make arrangements and schedule the jobs
8 accordingly if they choose to accept, so it gives
9 them some certainty in looking forward.
10 PRESIDENT JOHNSTON: That's six months
11 away. If you make a commitment now and something
12 happens in February, you don't need two more, do
13 they have cause to come against us?
14 EXECUTIVE DIRECTOR GARFINKLE: Yeah,
15 actually my recollection of the Committee Meeting
16 was there was a little caveat on there pending a
17 second look in December or January.
18 COMMISSIONER LONG: Well, that was more
19 to if anything changes and we look like we might
20 need more than two was my recollection. Frank,
21 to address your concern a little bit further, one
22 of the things we took into account, as well, is
23 that the training program lasts three years. So
24 if those two start in 2015, they can exist in the
25 training program for three years, and that takes

1 us to 2018, and if you take a look at the survey,
2 it just doesn't seem like there's any way
3 possible that we would not need them in a
4 program.
5 PRESIDENT JOHNSTON: Okay, You're happy
6 with that. We have a motion by Captain Roberts.
7 A second? I thought you made the motion. Okay,
8 second. All those in favor, say "aye."
9 (Ayes.) Okay, discussion. Captain
10 Nyborg.
11 CAPTAIN NYBORG: In support of Joe's
12 mention of the second two in February, one of the
13 problems we get into is a late notice to people
14 on the list, and then they want to defer, and
15 they want to put off for a while. If you give
16 them this notice, it will give them that
17 opportunity to defer now, and we can move down
18 the list and get the next guy if deferrals are
19 still possible. But it throws a wrench in our
20 work when a guy defers or says, "Can I come in
21 two months from now?" Instead of February, he'll
22 start in March, April or May, and now we're
23 behind the ball in man power and the Committee
24 providing finished trainees to the Board. So the
25 more notice we can give them within these safe

1 limits, the better off we all are and the
2 candidates as well because they get the notice
3 they need. They need to transfer the package to
4 a local U.S. Coast Guard office and get the ball
5 rolling on testing and so forth. There's a lot
6 of foot work to do before they actually come
7 through our door. So thank you for that, Joe,
8 I'm looking forward to that and I would support
9 that.
10 PRESIDENT JOHNSTON: Any further
11 discussion? Vote? All those in favor, say
12 "aye."
13 (Ayes.) Opposed? Hearing none, the
14 motion passes. Anything more on Pilot Power
15 Committee? Joe, anything more?
16 COMMISSIONER LONG: No, that's all I
17 have.
18 **ITEM 13. Report of Pilot Fitness Committee.**
19 PRESIDENT JOHNSTON: Mr. Miller.
20 MR. MILLER: Good morning. The Pilot
21 Fitness Committee met yesterday. All members of
22 the Committee participated in the discussions.
23 We reviewed the implementation of the new fitness
24 protocols, which was discussed by staff earlier
25 today. We then turned our attention to the

BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF
SAN FRANCISCO, SAN PABLO AND SUISUN

STATE OF CALIFORNIA

IN RE: PETITION OF THE SAN FRANCISCO BAR PILOTS FOR A CHANGE IN PILOTAGE RATES	DECLARATION OF MICHAEL M. MOORE Hearing: April 1, 2015

I, Michael Moore, declare as follows:

1. I am employed by Respondent Pacific Merchant Shipping Association ("PMSA") as Vice President in its Seattle office.

2. I regularly attend meetings of the Washington State Board of Pilotage Commissioners. Attached hereto as Exhibit C is a true and correct copy of the document entitled "Port of Grays Harbor Pilotage Services Division Financial Data and Projections" made available to the public in conjunction with the Port of Grays Harbor 2015 Tariff Proposal. Grays Harbor pilots are employees of the Port of Grays Harbor.

3. It was confirmed at Board meetings that the item "PGH Regular Wages" reflected wages paid to two licensed pilots at the Port of Grays Harbor for 2012 and 2013. For 2013, the average individual pilot wage was $237,622.

4. For 2014 and beyond, the Port of Grays Harbor submitted projections for training and adding a third pilot. The 2014 audited financials have not yet been made public so actuals for 2014 and updated projections for 2015 are not yet available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed March 20, 2015, at Seattle, Washington.

M R Moore

MICHAEL MOORE

Port of Grays Harbor
Pilotage Services Division
Financial Data and Projections

	2012	2013	2014 Projection	2015 TARIFF PROPOSAL
Vessel Arrivals / Pilot Assignments	82 / 178	103 / 246	109 / 258	120 / 276
OPERATING REVENUES				
Pilotage Services	971,127	1,266,644	1,474,000	1,653,120
Misc Revenues	1,200	1,201	1,200	1,200
TOTAL OPERATING REVENUES	972,327	1,267,845	1,475,200	1,654,320
OPERATING EXPENSES				
Personnel				
PGH Regular Wages	435,178	475,243	582,533	831,268
Incremental Duty Pay	-		-	60,000
Gain Sharing Distribution	49,402	65,816	61,655	-
Seminars/Confs./Training	7,500	1,105	10,000	15,000
State Pilot License Fees	13,000	13,000	19,500	19,500
Benefits	148,701	188,790	179,326	256,048
Total Personnel	653,781	743,953	853,014	1,181,816
Purchased Services				
Advertising	45	58	500	500
Insurance	1,911	1,892	1,924	2,500
Legal	2,518	215	1,000	1,000
Pilot Launch Services	153,516	250,391	260,700	280,200
Outside Repair/Maint. - Equipment	6,936	26,302	30,000	40,000
Pilot Trainee Stipend	-	50,323	78,000	-
Other Purchased Services	249	555	2,130	1,000
Total Purchased Services	165,174	330,075	374,454	325,200
Utilities				
Telephone	2,625	3,692	4,540	4,750
Supplies				
Office Supplies	-	586	200	200
Operating Supplies	360	5,894	1,000	1,000
Repair/Maint. Supplies	853	5,537	7,000	2,000
Small Tools/Equipment	821	2,096	6,800	6,800
Total Supplies	2,034	14,112	15,000	10,000
General / Administration				
Miscellaneous	120	3,524	660	500
Taxes	17,521	21,229	19,446	23,616
Travel, Lodging, Meals	8,523	4,265	12,000	7,500
Allocate Port G&A	48,074	61,044	99,893	80,000
TOTAL GENL/ADMIN	74,238	90,062	131,999	111,616
TOTAL OPERATING EXPENSES	897,851	1,181,855	1,378,967	1,633,382
OPERATING INCOME (LOSS) BEFORE DEPRECIATION	74,476	85,990	96,233	20,938
Direct Depreciation	(22,057)	(22,934)	(31,000)	(22,814)
Allocated Depreciation	(3,078)	(2,279)	(3,638)	(1,654)
TOTAL DEPRECIATION EXPENSE	(25,134)	(25,213)	(34,638)	(24,468)
OPERATING INCOME (LOSS) AFTER DEPRECIATION	49,342	60,777	61,595	(3,530)

Interim Report on the Pilot Trainee

Selection Examination

By

Progeny Systems Corporation

Prepared for the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

Submitted to Captain Allen Garfinkle

Executive Director

July 23, 2014

DRAFT

San Francisco Pilots Examination Report

Overview

The selection program applied by the Board of Pilot Commissioners (BOPC) for the Bays of San Francisco, San Pablo, and Suisun to select pilot trainees consists of three equally weighted components. All three components must be passed by the candidate. The values for each of the components are equally weighted. The scores for the three components, experience, written, and simulator are totaled with the candidates ranked by the sum of the three scores.

The process begins with an application by the candidate to establish that they have sufficient experience to meet the requirements of 7 CCR, Division 2, Article 4, Subsection 213(e). The application is evaluated and those candidates who can establish proof of sufficient experience and meet the other requirements are able to sit for the written examination.

The written examination consists of 150 multiple-choice questions. Each question is weighted one point. The questions are distributed according the weight of the subject matter areas. The weights were established according to the results from a job analysis. There are four subject matter areas: (a) pre-transit planning, (b) master/pilot transition, (c) route piloting, and (d) mooring and unmooring. Multiple focus groups reviewed all of the questions in BOPC's item bank. Every item was renewed/refreshed by reformulating the stem and/or the distracters. Also, every item was referenced to a current reference. Additionally, new questions were written for the new editions or new references. Every item on the examination had been edited or was new so none of the candidates had seen the items previously to sitting for the examination.

The simulation examination evaluates candidates on the following seven areas: (a) situational awareness, (b) appropriate response, (c) ability to respond correctly under stress, (d) communication and bridge presence, (e) fundamental shiphandling, (f) bridge resource management, and (g) rules of the road. The development of the simulation examination was an intensive process involving a computer programmer, a coordinator who was a retired pilot, multiple active pilots, the BOPC staff and a psychometrician. The development was a process of multiple iterations of developing, live testing with pilots, and revising. Multiple revisions were necessary to ensure that virtually all of the actions that could be taken by pilots were identified and built into the system. The scoring system was designed around the metrics of +2 for highly effective, +1 for acceptable, 0 for ineffective, -1 for touching, and -2 for a collision or alison. Evaluation forms were designed such that the candidates' evaluations were standardized. Numerous iterations of the evaluation form were necessary in order to achieve consensus about the wording, rating scales, and order of presentation of the measurement opportunities. A great deal of planning and effort were devoted to ensuring that the examination experience was the same for each candidate. To enhance the measurement accuracy, 53 measurement opportunities were developed.

Results

Experience Points. The BOPC evaluated the applications and determined that 38 individuals met or exceeded the minimum requirements to sit for the written examination. Individuals were awarded from 10 to 35 points. The points awarded would be combined to the points earned from the written examination if they passed the written examination.

Written Examination. Candidates were afforded 4 ½ hours to respond to the 150 multiple–choice items. The candidates were seated in the California Maritime Academy's cafeteria at large round tables, two candidates to a table. The arrangement ensured that candidates were not able to observe other candidate's responses. Of the 38 qualified candidates, 33 sat for the written examination.

The measurement properties of the examination were very strong. Of the thirty-three persons who sat for the examination, 25 achieved a passing score. The lowest score was 60 and the highest was 139. The mean score was 109.58 and the median score was 113.00. Of particular note was the excellent reliability (coefficient alpha) of .94. For a perspective, the maximum positive reliability coefficient possible is 1.00. The examination functioned very effectively and the items discriminated consistently between the high performing candidates and the lower performing candidates. In other words, the higher performing candidates consistently answered the items correctly while the lower performing candidates were much less consistent. The written examination performed effectively in identifying the candidates who possessed the job knowledge required of a pilot trainee.

For licensing examinations, it is necessary to establish a passing score (cut score) based on the concept of minimal acceptable competence. The methodology most frequently applied and which was used for the written examination was the modified Angoff. For this examination seven pilots, referred to as subject matter experts(SMEs), evaluated the performance expected of minimally competent trainees. After the SMEs received training in the process, they responded to the following question. "What percentage of minimally competent candidates (pilot trainees) would answer the item correctly." The data was aggregated across all items and all raters and divided by seven, the number of SMEs. The results from the workshop established the passing score (cut score) at 101. With the passing score at 101, 25 candidates passed the examination and eight failed. The passing score was optimally established—the closest score above was 104 and the closest below was 96 which left clear gaps on both the pass and fail sides of the passing score.

Simulation Examination. The evaluators engaged in examination development received extensive training in the procedures for evaluating and scoring the candidates. For the training, the evaluators proceeded as if the person piloting the simulator was an actual pilot. Each evaluator conducted their evaluation independently. After each simulation experience, after the test pilot had been

evaluated, the three evaluators convened to discuss the candidates performance to ensure that nothing in the design of the simulation negatively impacted the try-out candidate's performance

The processes applied for training the actual evaluators proceeded along the same lines. The evaluators observed and rated pilots during numerous dry runs until the evaluators were consistent in their evaluations of the level of performance exhibited by the test pilots. The pilots were knowledgeable regarding the consequences of their ratings. Two perspectives were weighed by the evaluators. The first is the necessity that the pilot trainees are able to protect the public's health safety and welfare. The second is the interest to ensure that the candidates' are assessed fairly and provided opportunities to succeed in the examination program and selection process. The evaluators represented the BOPC's Pilot Evaluation Committee, state licensed pilots from another jurisdiction, and industry representatives with command experience on deep draft vessels.

The simulation examination was offered at California Maritime Academy on a full bridge simulator over three days, June 26th, 27th, and 28th, 2014. On the 25th, the candidates who were successful on the written examination were fully briefed on the process, received materials designed to assist in preparing for the examination which they were allowed to take from the site, received an hands-on orientation to the bridge, and observed the vessel's track through the simulation exercise.

At the scheduled examination time, the candidates were required to arrive in time to return study materials and to make final preparations prior to entering the simulator. There were six evaluators who observed the candidates performance and participated in the discussion of the candidate's performance as based on the scoring sheets. Participation by all six evaluators assisted in ensuring that the performance of the candidates was accurately recorded. From those six, three primary evaluator's ratings were recorded for each candidate to compute the candidate's ratings. To obtain a final score for each candidate the ratings were summed across the three evaluators and the 53 measurement opportunities. This means that the candidate's performance was measured 159 times resulting in an accurate scoring process. In psychometric measurement as with taking measurements with a ruler, multiple averaged ratings results in accurate measurement.

Similarly to the written examination, a modified Angoff passing score workshop was conducted. There were 12 SMEs who participated in the workshop. Included were the six evaluators, three PEC members, and three pilots who participated in the development of the simulation exercise. All of the evaluators were intimately familiar with the content of the examination and the evaluation process. All had been engaged in training pilots so they had an in-depth appreciation of the skill set needed by pilot trainees. They was asked to evaluate the level of performance that a minimally competent candidate would perform on each of the 53 measurement opportunities. They were asked to judge the level of performance based on the examination rating system, +2, +1, 0, -1, and -2. The passing score was a scaled 52.

Scaling. The three components of the assessment process were equally weighted. Because, the possible number of points that could be obtained varied by examination, it was necessary to scale the experience points and the simulation exercise. The maximum score achievable on the written examination was 150 so the maximum experience points and the maximum simulator scores were scaled to equal 150. The maximum experience points was 90 which was scaled to equal 150 and the maximum score achievable on the simulation exercise was 106 which was also scaled to equal 150.

Data: The candidates are ranked based on the sum of their performance scores for the three components. The passing candidate results and their rank on the list is provided in Table 1.

Table 1

Passing Candidates Ranked by Total Score

ID Num	Experience Scaled	Written	Simulation Scaled	Total Score
33	33	139	74	246
32	33	122	75	230
17	42	127	59	228
14	33	122	71	226
3	17	133	74	224
11	33	121	68	222
27	33	115	67	215
21	33	121	60	214
25	33	109	66	208
24	25	108	64	197
4	33	109	53	195
6	33	104	55	192
15	17	113	55	185

Table 2

List of Candidates who Failed Simulation

Written Passing = 101 Simulation Passing = 52

ID Num	Experience Scaled	Written	Simulation Scaled
1	33	122	9
5	25	118	26
9	33	129	42
13	25	117	30
16	33	104	32
18	33	120	20
19	33	109	44
20	33	128	42
22	25	132	43
23	17	112	47
26	25	115	36
28	58	106	13

INITIAL STATEMENT OF REASONS
Title 7. Harbors and Navigation
Division 2. State Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo and Suisun
Article 4. Training Programs

PURPOSE OF THE REGULATORY ACTION

The purpose of the regulatory amendments is to broaden the pool of eligible applicants for the pilot trainee training program of the Board by making changes in the minimum requirements for applicants and in the point counts assigned to various types of experience.

Proposed changes in the minimum qualifications and applicable point counts for applicants with deep-sea experience will be altered to allow more qualified applicants from that side of the mariner pool. Proposed changes in the minimum qualifications and applicable point counts for applicants with tug experience will be increased slightly. Alternative types of qualifying tug experience will be altered, resulting in more experienced qualified applicants from the tug captain side of the mariner pool.

Alterations in the experience-point schedule will reduce the maximum number of experience points, remove credit for experience used to meet the minimum eligibility requirements, establish new categories of experience, and change experience credit for some existing categories of experience.

IDENTIFICATION OF THE PROBLEMS OR ISSUES

Section 213 of the Board's regulations prescribes the selection process for admission to the pilot trainee training program. Subsection (e) sets forth minimum eligibility requirements for application to the program, including the type of federal master's license held and the required length of experience as master. Subsection (f) assigns points for various types of experience. Experience-point totals determine whether an applicant will be permitted to take the written examination and also the applicant's final score, when combined with scores on the written examination and the simulator exercise pursuant to Subsections (f), (h), and (j). Subsections (e) and (f) prescribing minimum eligibility requirements and assigning experience points, respectively, have existed in substantially their present form since their adoption in 1999.

Issues regarding deep-sea experience

The current minimum eligibility requirement for those with offshore, deep-sea experience is two years' service as master of a self-propelled vessel of not less than 1600 gross tons. This two-year requirement tends to reduce the number of applications received from mariners having deep-sea experience. This is so because the limited number of openings for deck officers on U.S.-flag vessels makes it difficult to achieve—except over a long period of years—the successive experience as third mate, second mate, and chief mate that is required to qualify for a master's license on vessels of the size that typically transit ocean and near-coastal waters. Thereafter, this

same shortage of available positions lengthens the time that it takes to obtain the Board-required two years' service as master commanding vessels of not less than 1600 gross tons.

The number of openings for deck officers on U.S.-flag vessels is limited because of the small number of deep-draft American ships under enrollment or registry. Therefore, although in theory a deck officer on deep-draft oceangoing ships can obtain a license as master of ocean or near-coastal steam or motor vessels of any gross tons in as little as six years after graduation from a maritime academy, it takes far longer to earn such a master's license because of the limited number of deck officer positions available. The required experience cannot be obtained in a continuous, uninterrupted fashion because of the limited openings available. Further, the deck officer position that can be obtained at any given time may be of a lower grade than that for which the officer is licensed, thereby delaying acquisition of experience in the officer's licensed grade that is necessary for advancement to the next grade or to meet the Board's experience requirement as master.

Given the foregoing realities, it is estimated that in most cases it will take an offshore mariner 15 to 18 years after maritime academy graduation to acquire the two years' experience as master that the Board requires. That far into their careers, potential deep-sea applicants for the training program have achieved a compensation level that makes it very difficult to accept the much-reduced compensation afforded to pilot trainees in the form of a $60,000-per-year stipend over a training period that can last as long as three years.

Issues regarding tug experience

Since adoption of the current version of the regulations in 1999, the increasing number of tractor tugs and the accelerated advancement to master that is possible on these tugs has significantly decreased the number of years of overall maritime experience possessed by many tug masters applying for admission to the training program. Mates on tugs are now able to start acquiring the Board-required two years' experience as master at an earlier point in their careers than formerly. This circumstance has resulted in some of the applicants for pilot training with tug experience having less overall maritime experience than formerly.

Current regulations separate qualifying tug experience as master into two different categories: command of tugs engaged in ship assist and command of tugs engaged in bay or ocean towing where the combined gross tonnage of the towing vessel and vessel towed is not less than 1600 gross tons. This separation arguably excludes from consideration as applicants tug masters who perform a mixture of the two types of work.

The proposed amendments to the minimum qualifications would also broaden the pool of qualified applicants by recognizing command time on tugs of not less than 99 gross tons engaged in towing. The floor on tug size would exclude from consideration performance as master on smaller tows by tugs under 99 gross tons. Tows with a combined tonnage of lot less than 1600 gross tons would still qualify, even if the towing tug was less than 99 gross tons.

Issue regarding experience point counts

The current permissible total points for experience is quite high and it provides credit for experience used to meet the minimum eligibility requirements of Subsection (e) that is not necessary. The proposed changes would lessen the weight given to experience points in the selection process.

Subsections (f)(1)(E) and (f)(2)(E) currently allow experience points in certain circumstances for piloting service where the piloting was performed by a member of a vessel's crew who was either the master or "second in command" of the vessel. The "second-in-command" provision is not specific enough and as such it creates difficulties in verifying the claimed experience.

RATIONALE OF THE REGULATORY ACTION

The Board has concluded that making revisions to the minimum eligibility requirements and the experience-point schedule of Section 213 would enhance the overall quality of applicants for entry into the training program as well as the overall quality of those ultimately selected for admission to the program.

Accordingly, the proposed amendments include the following revisions:

- Under the alternative minimum eligibility requirement for those with deep-sea experience, reduce from two years to one year the required experience as master of a self-propelled vessel of not less than 1600 gross tons.
- Under the alternative minimum eligibility requirement for those with tug experience, increase slightly the minimum length of overall maritime experience so that it more closely approaches the length of overall maritime experience accumulated by those applicants qualifying with deep-sea experience.
- Alter the alternative types of qualifying tug experience to broaden the applicant pool and remove from consideration experience not deemed relevant.
- Eliminate a provision for waiver of one element of the command-experience recency requirements for persons "employed in the maritime industry in a position closely associated with the operation and navigation of vessels."
- Alter the experience-point schedule in Subsection (f) to reduce the maximum number of experience points, remove credit for experience used to meet the minimum eligibility requirements of Subsection (e), establish new categories of experience, and change experience credit for some existing categories of experience.
- Eliminate from the experience-point schedule piloting experience as "second in command" of the vessel piloted.
- Require applicants to submit either certificates of discharge or declarations complying with Code of Civil Procedure section 2015.5 that the experience submitted to establish service time as master and to support award of experience points is true and correct.

Rationale for changing deep-sea experience minimum eligibility

With respect to deep-sea experience, the proposed regulation recommends the reduction in service time as master from two years to one year. It is designed both to increase the quality of the overall applicant pool and to increase the quality of the group that is ultimately selected for admission to the training program. The premise is that increasing the number of qualified applicants for the same number of trainee positions will result in a more select group being approved for admission into the program.

The reduction from two years to one year of experience as master will negatively affect the quality of applicants with deep-sea experience. Oceangoing vessels are continuously underway, and as a result, deck officers other than the master all stand navigational watches, from chief mate through third mate. The officers acquire ship-handling skills for these large vessels long before they become masters. Further, given the years-long progression up through the deck-officer grades to master, deep-sea mariners reach an age and a level of "seasoning" that enhances their desirability as applicants.

Rationale for changing tug experience minimum eligibility

With respect to tug experience the separation between the two different categories of command (ship assist and bay or ocean towing) arguably excludes from consideration as applicants tug masters who perform a mixture of the two types of work. Therefore, the proposed amendment would make clear that a mixture of towing and ship-assist work is permissible for consideration.

Further, amendments will allow a master of tugs of not less than 99 gross tons to qualify using towing experience even if the combined gross tonnage of the towing vessel and the vessel towed was less than 1600 gross tons. This change would also broaden the pool of applicants with tug experience. The floor on tug size would exclude from consideration performance as master on smaller tows by tugs under 99 gross tons. Tows with a combined tonnage of not less than 1600 gross tons would still qualify, even if the towing tug was less than 99 gross tons.

Rationale for changing point counts

The proposed amendments in point counts would reduce the maximum number of experience points, remove credit for experience used to meet the minimum eligibility requirements of Subsection (e), establish new categories of experience, and change experience credit for some existing categories of experience. The overall effect of these changes would be to lessen the weight given experience points in the selection process.

With respect to allowing experience points in certain circumstances for piloting service where the piloting was performed by a member of a vessel's crew was "second in command" of the vessel, elimination for claimed piloting service is proposed. The "second-in-command" provision creates difficulties for verifying the claimed experience and thereby creates possible inequity.

DESCRIPTION OF THE PROPOSED REGULATIONS- SECTION BY SECTION

Subsection (e) of Section 213

Subsection (e)(3) of the current regulations requires presenting documentation to demonstrate ship master experience. The revision specifies that the documentation has to consist of either certificates of discharge or declarations complying with Code of Civil Procedure section 2015.5 by both the applicant and the person verifying the experience.

With respect to deep-sea experience, Subsection (e)(3) of the current regulations requires two years of command experience. The proposed revision changes that to one year by striking the two-year requirement in Subsection (e)(3) and inserting the one year requirement into Subsection (e)(3)(A).

With respect to tug experience, Subsection (e)(3)(B) of the current regulations requires two years command experience in ship assist or ocean towing operation. The level of master's license held while this experience is being obtained is not specified. The first revision specifies that this command experience must be obtained while the applicant holds a valid federal master's license for vessels of not more than 1600 gross tons. Further revisions specify that, with one exception, command experience on tugs engaged in ship assist or bay or ocean towing must be on tugs of not less than 99 gross tons. The exception is for command experience on a tug of less than 99 gross tons if the combined gross tonnage of the towing vessel and the vessel(s) towed is not less than 99 gross tons. The length of required experience remains at a minimum of two years.

With respect to recency of deep-sea experience, Subsection (e)(4)(A) and (B) of the current regulations requires that the command experience must have been within the five years immediately preceding the application cut-off date and that one year of the required command experience must have been within the three years immediately preceding the application cut-off date. The proposed revision in Subsection (e)(4)(A) alters the recency time to four years immediately preceding the application cut-off date. In addition, the revision requires that six months of the command experience must have been within the two years immediately preceding the application cut-off date.

With respect to recency of tug boat experience, Subsection (e)(4)(A) and (B) of the current regulations require that the two years of command experience must have been within the five years immediately preceding the application cut-off date and that one year of the required command experience must have been within the three years immediately preceding the application cut-off date. The proposed regulation keeps both recency requirements and places them in amended Subdivision (e)(4)(B).

The current provision in Subsection (e)(4)(C) about meeting the recency requirements refers to subparagraphs (A) and (B). For proper identification the references are updated to "subsections (4)(A) and (4)(B)."

Subsection (e)(4)(D) of the current regulations allows for waiver of certain recency requirements if the applicant can provide verified documentation that applicant has been employed in the

maritime industry in a position closely associated with the operation and navigation of vessels. The proposal removes this waiver authorization by striking Subsection (e)(4)(D).

Subsection (f) of Section 213

Subsection (f) of the current regulations does not prescribe the verification requirements for experience claims by applicants. The proposed revision, similarly to the revision in Subsection (e)(3), requires that applicants in documenting their experience must submit supporting declarations that comply with Code of Civil Procedure section 2015.5.

Point count with respect to tug boat experience

Subsection (f)(1) of the current regulations allows a maximum of 30 points for tug boat experience. The revision changes the overall point count for this class of experience a maximum of 35.

Subsection (f)(1)(A) of the current regulations allows 10 points for any command experience on tugs, with a minimum of one year. The proposed regulations remove this experience credit.

Subsection (f)(1)(B) of the current regulations allows 5 points for offshore command experience on combined tug and tow where the combined gross tonnage is not less than 1600 tons, not included with any other experience and not less than one year. Corresponding to the revised tug boat experience description in Subsection (e)(3)(B), the revised provision requires that this offshore experience as master of a towing vessel must be obtained while holding a federal master's license for vessels of not more than 1600 gross tons. The experience may not be combined with any other experience used to meet minimum eligibility requirements The point count remains 5. The provision is renumbered as Subsection (f)(1)(A).

Subsection (f)(1)(C) of the current regulations allows 5 points for 2 to 5 years of command experience. The revision changes that to 10 points allowed for 3 to 5 years as a master. The provision is renumbered as Subsection (f)(1)(B).

Subsection (f)(1)(D) of the current regulations allows 5 points for over 5 years of command experience. The amendment makes the nonsubstantive change of substituting time "as master" for "command" time. The provision is renumbered as Subsection (f)(1)(C).

Subsection (f)(1)(E) of the current regulations allows 5 points for serving as pilot on "own vessels" of not less than 1600 gross tons combined tug and tow (minimum 100 moves) in pilotage waters with "own vessels" meaning vessels for which the applicant was also the master or "second in command." The revision increases the point award to 15 points but reduces the number of minimum moves from 100 to 25. As a new addition, the revised provision will require that the applicant must obtain the experience while holding a current, valid federal license as master of vessels of not more than 1600 gross tons and that serving as a pilot must be performed in pilotage waters in which a pilot is required by state, federal, or foreign law and for which the applicant holds a pilot endorsement. The revision also makes an exclusion stating that moves performed as master of a tug engaged in assist and/or escort duty do not qualify for points

under this subsection. The revised provision changes the meaning of "own vessels" by excluding piloting services by one who was “second in command.” The provision is renumbered as Subsection (f)(1)(D).

Point count with respect to deep draft experience

Subsection (f)(2) of the current regulations allows a maximum of 30 points for Deep Draft Experience. The revision increases the overall point count for this class of experience to a maximum of 35.

Subsection (f)(2)(A) of the current regulations allows 10 points for any command experience on self-propelled vessels in navigation of not less than 1600 gross tons (minimum one year). The revision removes this experience credit.

Subsection (f)(2)(B) of the current regulations allows 5 points for experience in command of self-propelled vessels over 10,000 gross tons (minimum one year, not included with any other experience). The revision requires that the experience must not be combined with experience used to meet minimum eligibility requirements described in Subsection (e)(3). The provision is renumbered as Subsection (f)(2)(A).

Subsection (f)(2)(C) of the current regulations allows 5 points for 2 to 5 years command experience on vessels with minimum 1,600 gross tons. The revised provision will allow the same point count for 1.5 years of such experience. The provision is renumbered as Subsection (f)(2)(B).

Subsection (f)(2)(D) of the current regulations allows 5 points for over 5 years command experience on vessels with minimum 1,600 gross tons. The revised provision will allow 10 points for 2-5 years of such experience as master. The provision is renumbered as Subsection (f)(2)(C).

Subsection (f)(2)(E) of the current regulations allows 5 points for experience serving as pilot on own vessels (minimum 100 moves) in pilotage waters with "own vessels" meaning vessels for which applicant was also the master or second in command. The revised provision allows 5 points for over 5 years as master on vessels with minimum 1600 gross tons. The provision is renumbered as Subsection (f)(2)(D).

A new Subsection (f)(2)(E) will allow 10 points for experience serving as a pilot on own vessels (minimum 25 moves, minimum 1600 gross tons) in waters in which a pilot is required by state, federal, or foreign law and for which the applicant holds a pilot endorsement. The new definition of “own vessels” excludes piloting services by one who was “second in command.”

Point count with respect to piloting experience

Subsection (f)(3) in current regulations allows a maximum of 40 points for piloting experience. The revision decreases the overall point count for this class of experience to a maximum of 20.

Subsection (f)(3)(A) of the current regulations allows 15 points for experience serving as a commercial pilot, not a member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons (minimum one year) in waters in which a pilot is required by state, federal or foreign law. The revised provision will decrease the point count to 10, and will require 1-2 years of such experience serving as a full-time commercial pilot.

Subsection (f)(3)(B) of the current regulations allows 15 points for serving 2 to 5 years as a full time pilot. The revised provision will decrease the point count to 10, and require the experience of over 2.5 years serving as a full-time commercial pilot, not a member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons in waters in which a pilot is required by state, federal, or foreign law.

Subsection (f)(3)(C) of the current regulations allows 10 points for experience over 5 years as full time pilot. This factor and point count will be repealed in the revised regulations.

BENEFITS OF THE REGULATORY ACTION

The benefits of the proposed regulatory action will be enhancement of overall quality of applicants for entry into the training program as well as of the overall quality of those ultimately selected for admission to the pilot trainee training program.

Given the realities of limited opportunities for deep-sea sailors to acquire a two years' service as master, the pool of applicants with such experience is relatively small. Reducing the requirement to one year of service will broaden the applicant pool from that side of mariner expertise.

Given the realities of the increasing number of applicants with tug experience but with decreased number of years of overall maritime experience, the difference between the "seasoned" merchant marine experience of deep-sea and tug experienced applicants is widening. While the change in increasing the minimum length of experience for tug masters will somewhat reduce the applicant pool, other changes will allow the consideration of more types of tug experience, resulting in a wider applicant pool that is more experienced.

The proposed changes in the experience point allowances set forth in Subsection (f) will eliminate or reduce credit for certain types of experience, some of which is difficult to verify, and will eliminate double-counting of experience used to meet the minimum qualifications requirements of Subsection (e).

ALTERNATIVES FOR REGULATORY ACTION

The minimum eligibility requirements and experience point credits for pilot trainee training applicants are currently in Board's regulations. To change the requirements, regulatory amendments are needed. Therefore, there was no other alternative considered to solve the problems with the regulations.

STATEMENT ON REASONABLE ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

INCONSISTENCY OR INCOMPATIBILITY WITH EXISTING REGULATIONS

The proposed regulations in amending current provisions are not inconsistent or incompatible with existing regulations. The minimum eligibility requirements and experience point credits for applicants to pilot trainee training are described in Subsections (e) and (f) of Section 213. Therefore, revising these provisions does not pose inconsistency or incompatibility in any other sections of the Board's regulations.

ECONOMIC IMPACT ANALYSIS

The Board determined that the proposed regulations will have no potential adverse economic impact on California business enterprises and individuals and they will not impose unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements.

The Board also determined that the proposed regulations will have no effect on:

- the creation or elimination of jobs within the state;
- the creation of new businesses or the elimination of existing businesses within the state;
- the expansion of businesses currently doing business within the state.

Creation or Elimination of Jobs Within the State of California

The proposed amendments will not create or eliminate jobs within the state. The Board conducts a pilot trainee training program so that it will have available to it a pool of trained pilots to replace the licensed pilots lost through attrition. The Board sets the number of licensed pilots necessary to serve vessels that transit the pilotage grounds. That number will not change as a result of these amendments. The sole purpose of the amendments is to alter the requirements for entry into the training program.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed amendments will not create new businesses or eliminate existing businesses within the state. The proposed amendments will have no effect on businesses. If adopted, they will affect only individuals who wish to apply for admission to the Board's pilot trainee training program.

Expansion of Businesses Currently Doing Business Within the State of California

The proposed amendments will not affect the expansion of businesses currently doing business with the state. The proposed amendments will have no effect on businesses. If adopted, they will

affect only individuals who wish to apply for admission to the Board's pilot trainee training program.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed amendments will enhance the overall quality of applicants for entry into the training program, the overall quality of those ultimately selected for admission to the program, and the overall quality of pilots ultimately licensed to pilot vessels on the pilotage grounds. This increase in quality will increase the safety of future pilot operations and reduce the potential for pilot error. That will enhance the health and welfare of California residents, increase worker safety, and protect the state's environment.

EVIDENCE OF NO SIGNIFICANT ADVERSE ECONOMIC EFFECT

The proposed regulations merely change minimum eligibility requirements and experience point counts used in determining qualifications of applicants for pilot trainee training. Therefore, the proposed amendments will affect only individuals' qualifications for a specific training. As such the amendments have no effect on current or potential business affairs.

IDENTIFICATION OF STUDIES, REPORTS OR DOCUMENTS

In proposing the amendments to the minimum eligibility requirements concerning applicants for pilot trainee training, the Board did not rely on any studies. The issues raised by the current regulations and necessary revisions to solve the problems with the current system have been thoroughly discussed and worked out by an ad hoc advisory committee of the Board, and then reviewed and approved by the Board.

Copies of the minutes of the ad hoc committee are posted under the "Regulations" tab of the Board's website at www.bopc.ca.gov

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulations will not mandate the use of specific technologies or equipment.

REGULATION MANDATED BY FEDERAL LAW

The proposed regulations are not mandated by federal law or regulations.

BILL ANALYSIS

CONCURRENCE IN SENATE AMENDMENTS
AB 1025 (Skinner)
As Amended August 22, 2011
Majority vote

ASSEMBLY:	70-0	(May 12, 2011)	SENATE:	38-0	(August 30, 2011)

Original Committee Reference: TRANS.

SUMMARY : Revises procedures for the investigation and reporting of equipment safety violations basically changing specified responsibilities from the assigned commission investigator to the executive director.

The Senate amendments provide non-substantive clean-up in reference to the position of career executive assignment and the deletion of the obsolete term "inland pilots" as there are no inland pilots operating in California.

EXISTING LAW :

1)Establishes the Board of Pilot Commissioners (Board) for the Bays of San Francisco, San Pablo, Suisun, and Monterey, to license and regulate maritime pilots who guide vessels entering or leaving those bays. The seven members of the Board are appointed by the Governor with the consent of the Senate. Prescribes pilotage rates for vessels and requires vessels to pay a specified rate and surcharges of bar pilotage through the Golden Gate Bridge and into or out of the bays of San Francisco, San Pablo, Suisun, and Monterey, as well as the inland ports of West Sacramento and Stockton. In the past, inland waters, such as the Sacramento and San Joaquin Rivers, were piloted by inland pilots.

2)Requires the Board to adopt a continuing education program for pilots and inland pilots funded from fees from the surcharge for each movement of a vessel using pilot services. Requires the Board to adopt training standards and a training program for pilot trainees.

3)Requires the executive director of the Board to assign a commission investigator, if suspected equipment safety

standard violations are reported to the board, to personally inspect the equipment for its compliance with the relevant safety standards. Requires the commission investigator to report preliminary conclusions to the executive director. Requires the commission investigator to submit a report, required to remain confidential, to an incident review committee and the committee is required to report its findings, if any, to the Board.

4)Requires the Governor to appoint one assistant director to serve at the pleasure of the Governor. Requires the assistant director to have the duties as assigned by the executive director who is appointed by the Board.

AS PASSED BY THE ASSEMBLY , this bill was substantially similar to the version passed by the Senate.

FISCAL EFFECT : According to the Assembly Appropriations Committee, there will be minor annual revenue, in the thousands of dollars, from examination fees collected by the Board.

COMMENTS : Bar pilots are responsible for steering an arriving vessel through the Golden Gate Bridge of San Francisco Bay, the bay waters, and adjoining navigable waters, which include San Pablo Bay, Suisun Bay, the Sacramento and San Joaquin Rivers, and its tributaries. Pilotage services are also provided for Monterey Bay. When a vessel approaches the "SF" buoy 12 miles west of the Golden Gate Bridge, a bar pilot boards the ship and takes navigational control. It becomes the bar pilot's responsibility to guide the ship to its berth. The bar pilots provide service to all types of vessels, from 100-foot tugs to 1000-foot supertankers. Inland pilots (the last one has retired) are not licensed to operate outside of the Golden Gate Bridge in the open ocean area but pilot in the inland bays and

river channels.

Maritime pilots licensed by the Board are required to pay the Board a percentage of pilotage fees collected by them. These moneys are used to pay expenses of the Board and its officers in licensing and regulating the bar and inland pilots. The fund is also used to pay per diem of the Pilotage Rate Committee for San Francisco, San Pablo and Suisun Bays. In addition to the pilotage fee paid by commercial vessels and distributed to the pilots, there are a number of other additional surcharges for various purposes, including trainee and continuing education

programs.

According to the author, her intent is to make the functions of the Board more efficient and consistent with its mission. Further, her explanations for the bill changes are as follows:

1)Remove references to "inland pilot." The last inland pilot has retired and there is no longer a distinction between "inland pilot" and "pilot." Accordingly, the term is now obsolete and unnecessary.

2)Change the appointing authority from the Governor to the Secretary of the Business, Transportation and Housing Agency (BT&H) for the assistant director, as a career executive, of the Board. On January 1, 2009, the Board was moved from an independent entity existing in state government to be a part of BT&H. The Secretary of BT&H was added as a non-voting Member of the Board. Because the Board is now under the aegis of BT&H, the Secretary is much closer to the administration of the Board, and thus, for consistency purposes, it makes sense to have the Secretary make the appointment rather than the appointment coming from the Governor's Office.

3)Establish an examination fee to be charged in an amount determined by the Board to each applicant to the Board's pilot trainee training program. The fee would only cover the cost of the examination. There were instances of individuals taking the bar pilot test and not applying to be a San Francisco bar pilot. The test results for these individuals do not matter but the written examination and the simulator examination are almost impossible to duplicate or be accessible for people in the industry without charge. As the Board's examination has a good reputation and is free, it draws applicants wanting to do free "exam prep" or to get free simulator time. The Board's pilot evaluation committee has expressed frustration with individuals who take the test and have no plans to become a San Francisco bar pilot. Allowing the Board to charge a fee, only to cover the cost of the exam, hopefully would be a disincentive for those that take the exam and have no plans to become a San Francisco bar pilot.

4)Modify the investigation and reporting procedure for safety equipment to put the executive director in the lead position, rather than the commission investigator.

The Pacific Marine Shipping Association and the Bar Pilots indicate that this jointly sponsored bill represents a collaborate effort to make the statutes governing the Board efficient and effective.

Analysis Prepared by : Ed Imai / TRANS. / (916) 319-2093

Occupational Employment Statistics

Occupational Employment and Wages, May 2013

53-5021 Captains, Mates, and Pilots of Water Vessels

Command or supervise operations of ships and water vessels, such as tugboats and ferryboats. Required to hold license issued by U.S. Coast Guard. Excludes "Motorboat Operators" (53-5022).

National estimates for this occupation
Industry profile for this occupation
Geographic profile for this occupation

National estimates for this occupation: Top

Employment estimate and mean wage estimates for this occupation:

Employment (1)	Employment RSE (3)	Mean hourly wage	Mean annual wage (2)	Wage RSE (3)
30,290	4.0 %	$36.34	$75,580	1.8 %

Percentile wage estimates for this occupation:

Percentile	10%	25%	50% (Median)	75%	90%
Hourly Wage	$16.13	$22.93	$33.62	$45.78	$58.94
Annual Wage (2)	$33,550	$47,690	$69,920	$95,230	$122,590

Industry profile for this occupation: Top

Industries with the highest published employment and wages for this occupation are provided. For a list of all industries with employment in this occupation, see the Create Customized Tables function.

Industries with the highest levels of employment in this occupation:

Industry	Employment (1)	Percent of industry employment	Hourly mean wage	Annual mean wage (2)
Inland Water Transportation	8,430	31.54	$36.55	$76,020
Support Activities for Water Transportation	6,920	7.50	$40.47	$84,170
Deep Sea, Coastal, and Great Lakes Water Transportation	5,120	12.92	$38.93	$80,960
Scenic and Sightseeing Transportation, Water	2,080	14.91	$25.25	$52,520
Federal Executive Branch (OES Designation)	1,260	0.06	$34.70	$72,170

Industries with the highest concentration of employment in this occupation:

Industry	Employment (1)	Percent of industry employment	Hourly mean wage	Annual mean wage (2)
Inland Water Transportation	8,430	31.54	$36.55	$76,020
Scenic and Sightseeing Transportation, Water	2,080	14.91	$25.25	$52,520
Deep Sea, Coastal, and Great Lakes Water Transportation	5,120	12.92	$38.93	$80,960
Support Activities for Water Transportation	6,920	7.50	$40.47	$84,170
Commercial and Industrial Machinery and Equipment Rental and Leasing	930	0.70	$38.20	$79,460

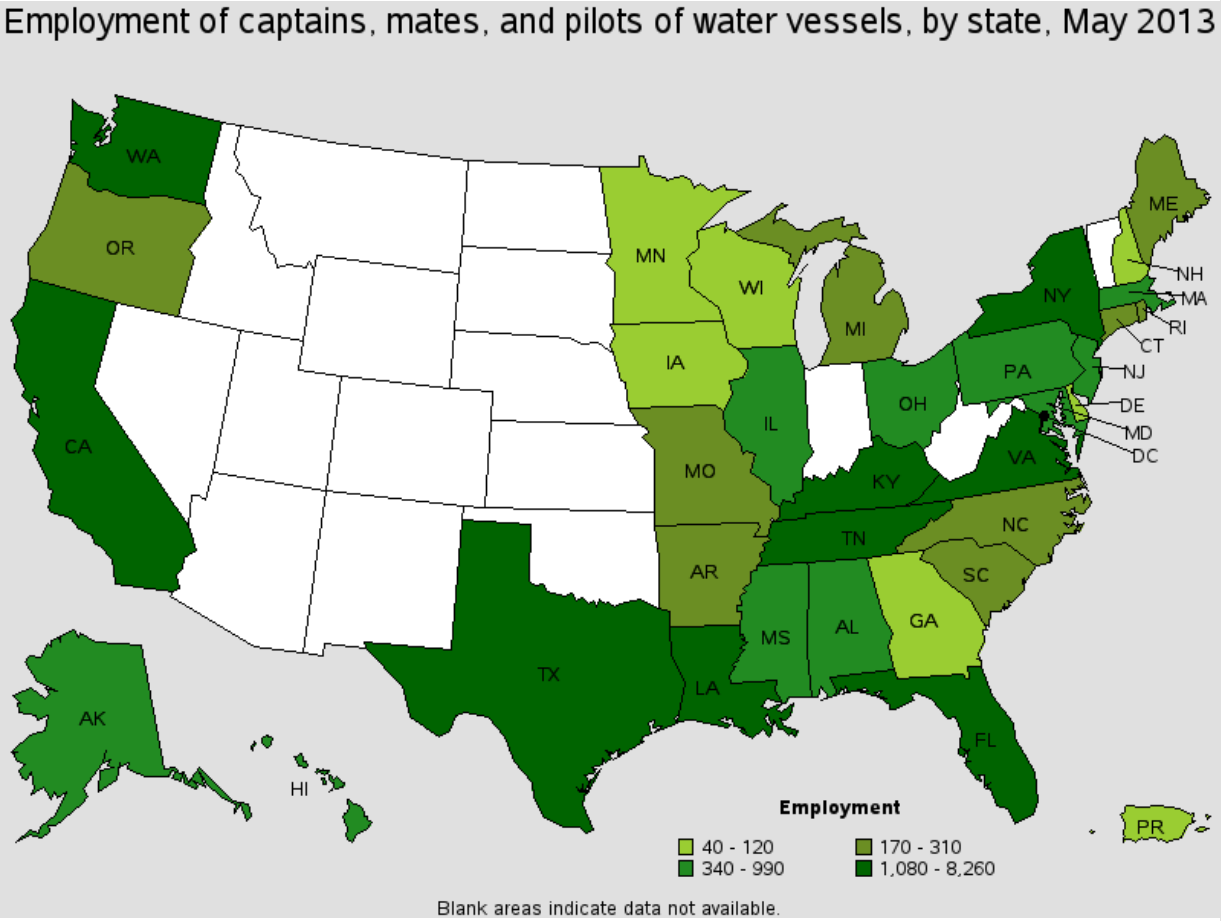
Top paying industries for this occupation:

Industry	Employment (1)	Percent of industry employment	Hourly mean wage	Annual mean wage (2)
Scientific Research and Development Services	70	0.01	$45.51	$94,670
Management of Companies and Enterprises	(8)	(8)	$44.71	$93,000
Petroleum and Petroleum Products Merchant Wholesalers	210	0.22	$43.99	$91,510

Support Activities for Water Transportation	6,920	7.50	$40.47	$84,170
Deep Sea, Coastal, and Great Lakes Water Transportation	5,120	12.92	$38.93	$80,960

Geographic profile for this occupation: Top

States and areas with the highest published employment, location quotients, and wages for this occupation are provided. For a list of all areas with employment in this occupation, see the Create Customized Tables function.



States with the highest employment level in this occupation:

State	Employment (1)	Employment per thousand jobs	Location quotient (9)	Hourly mean wage	Annual mean wage (2)
Louisiana	8,260	4.38	19.18	$39.72	$82,610
California	2,280	0.16	0.68	$36.60	$76,130
Texas	2,180	0.20	0.87	$41.83	$87,000
New York	1,820	0.21	0.92	$32.27	$67,120
Florida	1,690	0.23	0.99	$33.39	$69,450

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun
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DRAFT MINUTES TO BE APPROVED AT THE NEXT FINANCE COMMITTEE MEETING

MINUTES
September 17, 2014
9:30 A.M.

Committee members present

John Schneider, Chairman
Mike Jacob
John Cinderey
Capt. Steve Roberts

Staff present

Allen Garfinkle, Executive Director
Roma Cristia-Plant, Assistant Director
Kelly Dolcini, Staff Services Analyst
Sigrid Hjelle, Office Technician

Public present

Ray Paetzold, San Francisco Bar Pilots' General Counsel

Open Meeting

1. **Call to Order and Roll Call.**

   Chairman Schneider called the meeting to order at 9:40 a.m.

2. **Approval of minutes of Committee meeting of June 3, 2014.**

   MOTION: Mr. Jacob moved to approve the minutes from the June 3, 2014, meeting with clerical, non-substantive changes. Capt. Roberts seconded the motion.

   ACTION: The Committee unanimously approved the minutes on a voice vote.

3. **Determine the number of licensed bar pilots anticipated on October 1, 2014 and prepare a report to the Board and possible recommendation for adjustment to pilotage rates for the calendar quarter beginning on that date as specified in Harbors and Navigation Code section 1190(a)(1). [Note that while retirements prior to October 1, 2014 are known, the number of new pilots who might be licensed on or prior to that date is not known. The recommendation to the Board may need to reflect several different possibilities, allowing the Board to authorize that which reflects the anticipated number of licensees as of the date of possible Board action.] Possible recommendation for Board action to specify bar crossing mill rate to be charged by licensees during the calendar quarter beginning October 1, 2014 pursuant to Harbors and Navigation Code section 1191 (a)(1)(A).**

Mr. Cinderey noted that as of September, 2014 there are 59 licensed Bar Pilots. He added that there is one trainee in the evaluation stage, who is expected to become a pilot at the September 23rd Board meeting. Executive Director Garfinkle apprised the Board that based on the SFBP audited annual income for 2013, it is projected that the fourth quarter pilotage mill rate should remain 0.09181 if the trainee does not become a licensed pilot in September. Otherwise, he indicated that if the trainee does become a licensed pilot at the September Board meeting, the Committee should recommend that the Board increase the mill rate to .092423 (the rate for 60 pilots). After discussion, it was determined that the Finance Committee should make a fourth quarter pilotage rate recommendation to the Board at its September meeting setting forth a pilotage rate for both 59 and 60 pilots, and the Board could then approve the applicable rate based upon the actual number of licensed pilots as of October 1, 2014.

> **MOTION:** Commissioner Roberts moved that the Finance Committee authorize its Chair to recommend to the Board at the next Board meeting that the fourth quarter pilotage mill rate effective on October 1, 2014, be 0.09181 if there are 59 pilots, or .092423 if there are 60 pilots. Mr. Jacob seconded the motion.
>
> **ACTION:** The Committee unanimously approved the motion on a voice vote.

4. **Review BOPC fund condition, revenue and expenditure projections and monthly data for all pilotage fees and vessel moves and their effect on:**

Ms. Cristia-Plant presented the Committee with a report on the status of the Board's fund condition of the Board's three funds for the 2013-2014 fiscal year, as prepared by the California Highway Patrol's (CHP) accounting staff. She explained that the funds are enterprise funds, and that the State uses modified accrual accounting to determine the fund balance. She stated that funds are encumbered under contracts, and encumbered funds are reflected as if spent.

a) **Board Operations Surcharge (currently 1.0%) – develop possible recommendation to Board to adjust rates if necessary.**

The Committee reviewed and discussed the Board Operations Surcharge and fund condition, and determined that no change to this surcharge was necessary at this time.

b) **Pilot Continuing Education Surcharge (currently $50/move) – develop possible recommendation to Board to adjust rates if warranted.**

The Committee reviewed and discussed the Continuing Education Surcharge and fund condition and discussed lowering the rate to $25/move due to a large fund balance.

c) **Trainee Training Surcharge (currently $35/trainee/move) – develop possible recommendation to board to adjust rate if warranted.**

The Committee reviewed and discussed the Trainee Training Surcharge and fund condition and discussed not changing the surcharge amount.

The Finance Committee made the following motion and action related to the three surcharges:

MOTION: Commissioner Roberts moved that the Committee recommend to the Board that the Board make no changes to the Board Operations Surcharge (currently 1%) and Trainee Training Surcharge (currently $35/trainee/move) at this time, and to decrease the Pilot Continuing Education Surcharge from $50/move to $25/move. Mr. Jacob seconded the motion.

ACTION: The Committee unanimously approved the motion on a voice vote.

5. **Review current Pilot Vessel Surcharge rate (currently at 3.27 mills -- $.00327) revenue, expenditures and reserve balance. Develop possible recommendation to the Board for Pilot Vessel Surcharge rate adjustment, if warranted.**

Mr. Cinderey reported the P/V PITTSBURGH is in its annual dry-dock period and is receiving a service life extension, and that the upgrade is going well and all invoices should be received by mid-October. He stated that net vessel life extension repair costs are estimated to be approximately $100,000 after the Carl Moyer Grant monies are applied. He also apprised the committee that the Pilot Vessel Surcharge Committee should meet in November to discuss final expenditure authorization and for that committee to develop a recommendation to the Board at that time.

Ms. Cristia-Plant informed the Committee that there are sufficient Pilot Vessel Surcharge funds to cover $120,000 of repair costs, if needed.

The committee members discussed the Pilot Vessel Surcharge fund balance, and concluded that it is not necessary to adjust the Pilot Vessel Surcharge at this time.

MOTION: Mr. Jacob moved that the Committee inform the Board that it has reviewed the Pilot Vessel Surcharge fund balance and rate, that up to $120,000 in surcharge funds exists to cover costs related to the service life extension of the P/V PITTSBURG, and recommend that there be no change to the Pilot Vessel Surcharge rate. Mr. Cinderey seconded the motion.

ACTION: The Committee unanimously approved the motion on a voice vote.

6. **Review staff Proposal to increase trainee stipend amount from $5,000 per month to $6,000 per month based on increases in Consumer Price Index for the San Francisco Bay Area. Possible recommendation to Board to increase trainee stipend from $5,000 to $6,000 per month.**

   Mr. Garfinkle discussed staff's analysis and recommendation to increase the trainee monthly stipend from $5,000 per month to $6,000 per month effective January 1, 2015. He indicated that in developing the new stipend amount staff considered, among other things, the historical increase in the cost of living in the Bay Area. The committee discussed the fiscal impacts of commencing the stipend increase earlier than the beginning of the next year, and concluded that there was sufficient funds and budget authority in the trainee training budget to increase the stipend at a date earlier than the staff recommendation.

   MOTION: Mr. Cinderey moved that the Committee recommend to the Board that it raise the monthly stipend paid to trainees from $5,000 to $6,000 effective November 1, 2014. Mr. Jacob seconded the motion.

   ACTION: The Committee unanimously approved the motion on a voice vote.

7. **Public comment on matters not on the agenda.**

   There were no comments.

8. **Proposals for additions to next meeting agenda.**

   The committee decided to meet next on December 4, 2014, at 9:30 a.m.

9. **Adjournment.**

   The Committee Adjourned at 11:05.

Respectfully submitted,

Kelly Dolcini,
Staff Services Analyst

Exh. 32 - Comparison of Total Pilotage Cost for ULCV per Port Call with Average Pilotage Fees and Surcharge per Call

Vessel Type	VESSEL	GRT	Length	Pilotage*	Surcharges**	Total (one-way)	Total per Call***
2014 Average	2014 AVERAGE VESSEL	53,610 †		$4,738 ‡	$1,474 ±	$6,212	$12,424.00
Container (ULCV)	MSC AURORA	143,521	352m	$13,660	$3,839	$17,499	$34,998.58

* Pilotage = Tonnage Charge + Draft Charge
** Surcharges = Pension + Misc. + Commission + Pilot Boat
*** Total per Call = Inbound + Outbound bar pilotage = Total (one-way) x 2

ULCV Source: SFBP Petition, Tylawsky Exhibit # (A-3)
2014 Average Vessel Source: †Jacob Decl., Exh. B; ‡ PMSA Exhibit 7; ± PMSA Exhibit 2

Exh. 33 - Comparison of Total Pilotage Paid by ULCV per "E-Pilot" dispatch with Pilot Expenses

		Source:
ULCV Vessel	MSC AURORA	SFBP Petition, Tylawsky, Exh. A-3
Total Paid by ULCV per Move	$17,499	PMSA Exh. 33
2014 Avg. Expenses per Move	-$1,574	PMSA Exh. 20
2014 ULCV "E-Pilot" Cost per Job	-$483	SFBP Petition, McCloy Decl, Exh. B
Estimated Share of "PilotMate" Expense	-$162	SFBP Petition, McCloy Decl ¶9; $200,000 averaged over 2016-2018
Total Expenses per Call	-$2,219	
Total Net Revenue to SFBP per ULCV Move	$15,280	

Exh. 34 - Projection of Total Net Pilotage Revenue to SFBP (2015-2019)

	2014	2015	2016	2017	2018	2019
"E-Pilot" ULCV Jobs*	242	310	375	416	441	454
Revenue Net of Expenses per ULCV Move**:	$15,280	$15,280	$15,280	$15,280	$15,280	$15,280
Total "E-Pilot" Job Net Revenues †:	$3,697,760	$4,736,800	$5,730,000	$6,356,480	$6,738,480	$6,937,120
2014 Total "E-Pilot" ULCV Net Revenues*:	$3,697,760	$3,697,760	$3,697,760	$3,697,760	$3,697,760	$3,697,760
Annual ULCV "E-Pilot" Revenues over 2014 ULCV Revenues ‡:		$1,039,040	$2,032,240	$2,658,720	$3,040,720	$3,239,360

* SFBP Petition, McCloy Decl., Exh. A

** PMSA Exh. 33

† Total "E-Pilot" Job Net Revenues = ULCV Jobs x Net Revenues per ULCV Move

‡ Annual Additional ULCV "E-Pilot" Revenues = [Year] Total Job Net Revenues - 2014 Total Job Net Revenues

Port of Oakland Export Market Study

January 10, 2013

Anne Landstrom – Moffatt & Nichol

PORT OF OAKLAND

moffatt & nichol

Port of Oakland Export Market Analysis

- Market analysis main purpose is to quantify
  - Export commodity volume trends and potential growth
  - Services and port coverage for exports
- Key questions:
  - What volume/commodity exports have “leaked” to other ports and why?
  - Macro trends impacting major commodity flows?
  - What are sources of potential growth in containerized exports?
- Identify strategies that can position the Port of Oakland to benefit from commodity exports with high potential growth

PORT OF OAKLAND

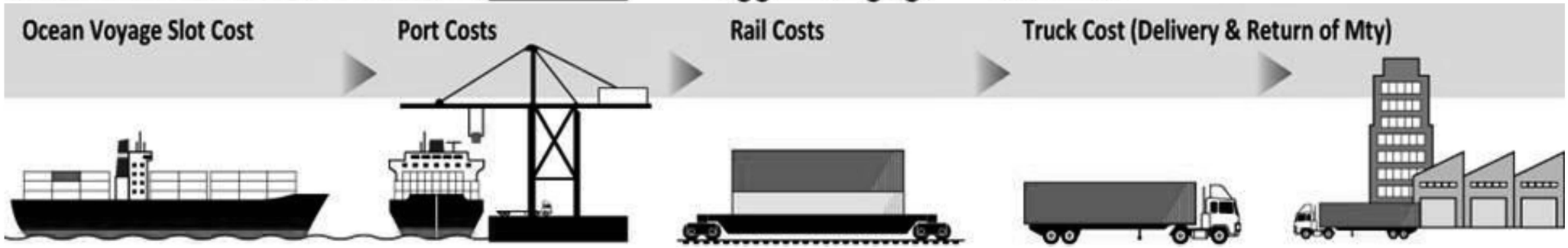
moffatt & nichol

Study Methodology

- To determine the Port of Oakland's market area, data is gathered and analyzed using the Freight Analysis Framework (FAF) data from the Federal Highway Administration (FHWA)
  - The Freight Analysis Framework (FAF) integrates data from a variety of sources to create a comprehensive picture of freight movement by mode, by value and by tonnage
- This data provides the foundation for determining what share the Port of Oakland has of its FAF region and what share is being "leaked" to other competing ports
- Once the trade-flow data framework has been established, the "Least Cost Market Area" or LCMA analysis is overlaid in order to determine:
  - Total volumes that are within the Port's LCMA
  - What volumes can be attracted by adjusting certain cost or service transportation parameters
  - Calculation and identification of growth opportunities based on these cost factors
- This quantitative approach is then augmented with stakeholder interviews to provide a qualitative element to the results

Cost Elements of LCMA

- Port costs - foreign port
- Ocean liner service cost – ocean portion of transportation cost
- North American port costs
- Inland transportation costs (rail/truck)



PORT OF OAKLAND

moffatt & nichol

Market Analysis

To determine the sources of growth, the Moffatt & Nichol consulting team looked at three fundamental sources:

- Business generated by current customers of the Port of Oakland
- How to increase share of current market by capturing a bigger share of specific target commodities
  - Marketing initiatives for key commodities
  - Increased visibility to equipment availability – potentially develop a specific function within the port marketing group to assist in this effort
- How to expand the geographic market area
  - Potentially through infrastructure improvements that create a cost advantage
  - Marketing and strategic initiatives targeted at specific target commodities

Findings

- Total leaked TEU – import and export – 320,000 TEU (102,000 export – 218,000 import)
- Main ports carrying leaked cargo – Los Angeles/Long Beach
- Oakland has very low penetration into Southern California which is dominated by LA/LB.
- Within the local Sacramento market, Oakland accounts for 57% of the trade volume.
- The "Remaining" regions of California (which include far northern – and central counties) are split relatively evenly between Oakland and LA/LB.
- Denver is roughly equally shared between Oakland and LA/LB, compared to the historic share which favored Oakland.
- Oakland currently holds a greater share of Salt Lake City

Ports	Coast	TE	*tal*
Oakland	West	657,229	*7*
A	West	64,639	*17%*
NYNJ	East	45,357	*5*
SEATAC	West	22,317	*2*
Houston	Gulf	18,447	*2*
Nor olk	East	14,716	*2*
Savannah	East	13,815	*1*
Portland OR	West	9,770	*1*
Other		34,069	*3*

TOTAL	980,360

PORT OF OAKLAND

moffatt & nichol

File #: HD-14-293, **Version:** 1

DATE: 5/27/2014

TO: Board of Harbor Commissioners

FROM: Don Snyder, Director of Trade Development

SUBJECT: Tariff Amendment to Port of Long Beach Tariff No. 4, Item 220 - Rate Increase on Pilotage Charges

Requested Action

Adopt the Resolution and approve the first reading of the Ordinance to amend Port of Long Beach Tariff No. 4, Item 220 - Pilotage Charges. Jacobsen Pilot Service, Inc. ("Jacobsen") is requesting that the Port of Long Beach increase the current Tariff pilotage rates with an effective date of June 1, 2014. The proposed Tariff amendment includes a 10% increase in pilotage charges based on the existing Overall Length of Vessel; an increase in the existing Gross Tonnage charge from $0.0043 to $0.0062 per gross registered ton; an increase in the existing surcharge under Item 220 (e) from $66.00 to $116.00; and the addition of a draft surcharge as the proposed addition of Item 220 (f). Vessels that have less than 30 feet of draft will be charged $2 per foot of draft, and vessels with 30 feet and more of draft will be charged $8.40 per foot of draft. This proposal will generate additional funding to assist with the increased costs of providing safe, efficient, professional and environmentally friendly vessel navigation within the Port.

Background

Jacobsen has provided uninterrupted pilotage service for vessels calling the Port of Long Beach since 1922. Its commitment to safety is underscored by their continuous use of the latest technology such as Radio Detecting and Ranging ("RADAR") in the 1940s and current, state-of-the-art Global Positioning Systems ("GPS"). To ensure its pilots are well trained, Jacobsen mandates a 3-year training program which is also the longest in the U.S., as well as providing the most advanced on-going training. It also has access to the Vessel Traffic Service ("VTS") which improves vessel traffic efficiency and safety. The Port of Long Beach last increased pilotage rates in 2010. Pilotage rates were increased by 7% on January 1, 2010, followed by an additional 8% on July 1, 2010.

Description of Current Issues

Jacobsen surveyed current pilotage rates at a sample of major North American ports, including Long Beach, Houston, Los Angeles, Mobile, New York, Oakland, Puget Sound, Tampa and Vancouver. The sample vessels included one car carrier, two oil tankers and four container vessels. The conclusion is that Jacobsen's pilotage rates will remain to be amongst the lowest, with the exception of the Port of Los Angeles, despite the proposed

pilotage rate increase. As a matter of practice, the Port of Los Angeles stopped raising its pilotage rates about ten years ago and began offsetting the costs of the piloting operation (POLA's pilots are City of Los Angeles employees and the operation is not a separate cost center); therefore, a true comparison to POLA is difficult to make. The survey indicates that our rates are substantially lower than any prominent port in the U.S. and we would remain in a competitive position.

The following table reflects the difference in current pilotage rates at the above mentioned ports:

	New Century 1 Car Carrier	OOCL Fidelity 3,100 TEUs	Hanjin Korea 9,200 TEUs	MSC Altair 13,000 TEUs	CMA/CGM Marco Polo 16,000 TEUs	Polar Alaska 190,000 DWT	Genmar Vision 360,000 DWT
Long Beach	3,554.00	4,358.00	6,790.00	7,340.00	8,030.00	5,530.00	7,022.00
Houston	7,529.12	10,482.34	27,703.02	31,227.10	40,663.81	27,770.90	48,777.14
Los Angeles	2,800.00	3,430.00	5,348.00	5,780.00	6,324.00	4,352.00	5,530.00
Mobile	8,194.76	5,497.34	15,567.66	18,771.50	22,625.54	13,457.16	22,382.48
New York	13,152.00	13,810.00	16,244.00	18,220.00	19,138.00	16,710.00	19,138.00
Oakland	14,630.13	12,032.07	29,214.53	35,939.52	43,980.12	22,525.90	41,556.75
Puget Sound	12,382.15	10,255.73	26,572.56	32,712.23	40,118.98	19,609.37	36,825.29
Tampa	10,101.92	9,192.80	19,835.78	24,095.98	29,216.92	16,851.92	28,743.42
Vancouver	8,403.32	10,978.76	20,042.08	23,060.78	28,828.40	23,053.46	37,757.26

Fiscal Impact

The proposed Tariff increase outlined above, along with the expiration of the temporary reduction of the permit fee from 3% back to 13% will result in additional estimated annual revenue of $1,360,000 to the Port of Long Beach.

Recommendation

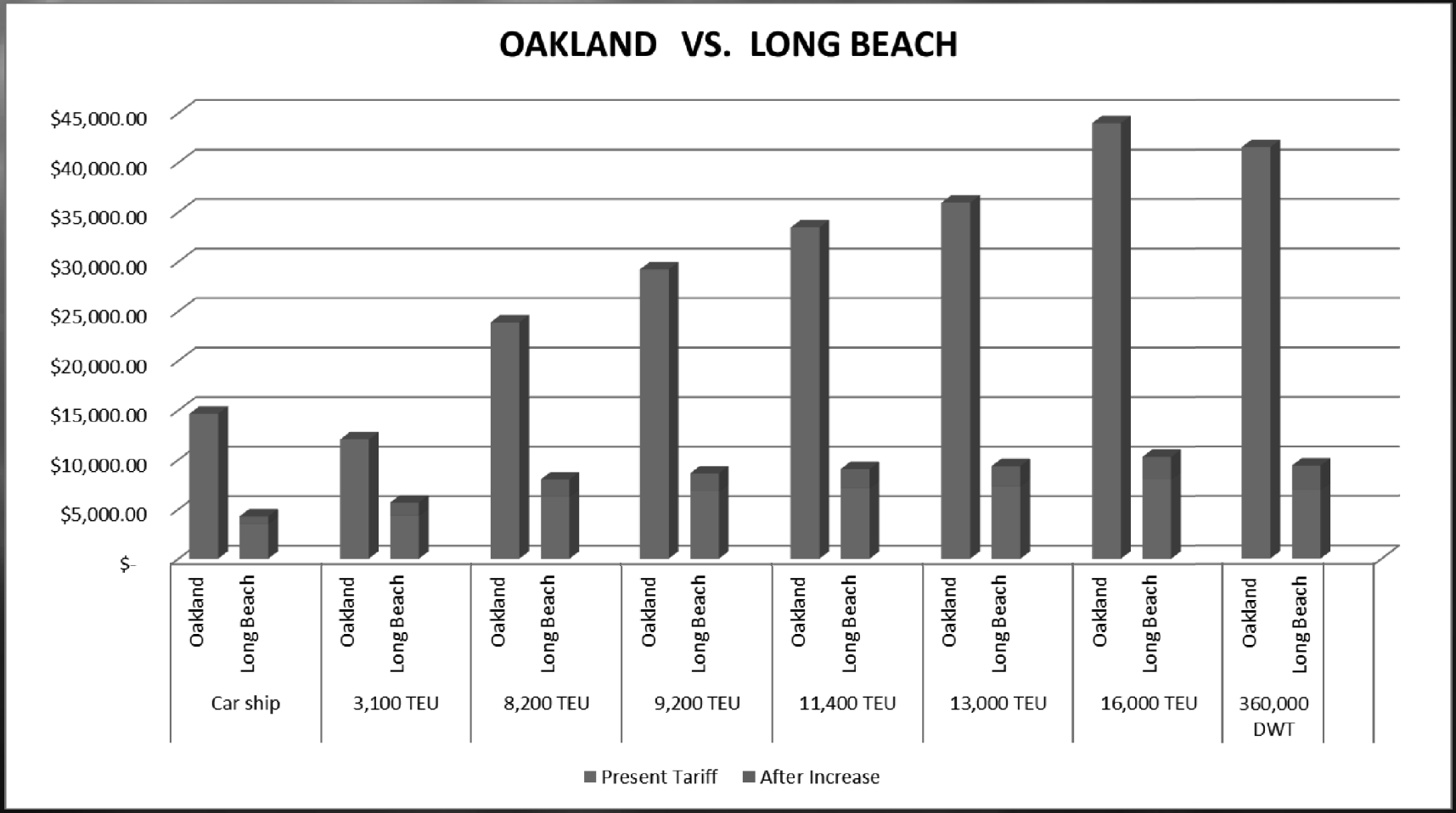
At the industry's request, staff recommends the Board of Harbor Commissioners approve an increase in the current Tariff pilotage rates under the Port of Long Beach Tariff No. 4, Item 220 with an effective date of June 1, 2014.

Attachments: Current Tariff Language
Draft Tariff Language
Resolution
Ordinance

Jacobsen Pilot Service, Inc.

Comparison

POLB pilotage rates are a fraction of Oakland's



California
Freight Mobility Plan

December 2014

CalSTA
CALIFORNIA STATE TRANSPORTATION AGENCY

Caltrans

and the Goals for the CFMP as well as advising the State on CFMP content and other matters. The CFAC is a permanent State advisory group but individual membership is subject to change.

California Freight Mobility Plan Goals

Economic Competitiveness
Improve the contribution of the California freight transportation system to economic efficiency, productivity, and competitiveness

Safety & Security
Improve the safety, security, and resilience of the freight transportation system

Freight System Infrastructure Preservation
Improve the state of good repair of the freight transportation system

Environmental Stewardship
Avoid and reduce adverse environmental and community impacts of the freight transportation system

Congestion Relief
Reduce costs to users by minimizing congestion on the freight transportation system

Innovative Technology & Practices
Use innovative technology and practices to operate, maintain, and optimize the efficiency of the freight transportation system while reducing its environmental and community impacts

global economy. California's roads, highways, bridges, seaports, rail, and international borders are invaluable assets that are critical to our future. Most of the state's highways and bridges were built in the 1950s and 1960s, at a time of major public investment in California's transportation system. Recent highway investments have focused on system preservation, rehabilitation, and operating improvements, rather than capacity expansion and environmental and air quality considerations.

California is an attractive global gateway because of its geographic position, large population, and robust and vast transportation system. The state must continue to improve this system and marginalize costs in order to stay ahead of increasing competition and support the state's economic growth. Failure to invest will put the state and the rest of the nation, which depends on our gateways, at a competitive disadvantage at a time when production and the supply chain offers greater geographic flexibility. The 40 percent of the nation's trade with Asia that passes through California doesn't have to transit the state. If California fails to maintain the competiveness of its freight system, that 40 percent, and the jobs associated with it, could go to other states or even to Canada or Mexico.

Traffic congestion adds cost for shippers, carriers, and manufacturers, and those costs are ultimately passed on to consumers through higher prices or reduced economic competiveness. In 2005, the Federal Highway Administration reported that delay costs truckers $26.60 per hour.[46] But beyond labor costs, truck operating costs are directly connected to fuel costs and damaged vehicle equipment caused by poor road quality, creating higher insurance costs. Traffic bottlenecks and delay reduce reliability, particularly in California's urban areas. According to a Texas Transportation Institute study, in 2011, congestion in 498 metropolitan areas caused urban Americans to travel 5.5 billion hours more to purchase an extra 2.9 billion gallons of fuel for a congestion cost of $121 billion.[47] This severe congestion also greatly affects the trucking industry.

California's seaports are faced with competition from Canada, Mexico, and East Coast and Gulf Coast ports, which have gained substantial import volume and invested heavily in port and landside improvements. The West Coast ports have also made major investments knowing that it is critical to respond to those competitive challenges. Although container volumes in North America have slightly risen, the West Coast ports have seen their proportional share of the total volume drop as compared to their competitors. With the pending opening of the expanded Panama Canal in 2016, discretionary cargo (cargo that could go through another port) could intensify this trend, with larger ships going to the East Coast and Gulf Coast ports in order to eliminate cross-country land transport. By providing closer access to the Mid-West and East Coast markets via these ports shipping costs may be reduced. However, the voyage through the Panama Canal can add many days of travel and it is still uncertain how much trade will shift from West Coast ports to those in the Gulf and Atlantic regions. To remain competitive, it may

BEFORE THE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN

In re Petitions of the PACIFIC MERCHANT SHIPPING ASSOCIATION and the SAN FRANCISCO BAR PILOTS for an Adjustment of Pilotage Rates under Harbors and Navigation Code sections 1200-1203.	)	**FINDINGS AND RECOMMENDATIONS**

FINDINGS

1. On February 11, 2011, the Pacific Merchant Shipping Association (PMSA) and the San Francisco Bar Pilots (SFBP) filed separate petitions for adjustment of pilotage rates under the provisions of sections 1200 through 1203 of the Harbors and Navigation Code. On February 18, 2011, in compliance with the notice requirements of Harbors and Navigation Code section 1201 and section 236(b) of its regulations,[1] the Board of Pilot Commissioners set April 6, 2011, as the date for a public hearing to obtain information and data relating to the issues raised in the petitions.

2. PMSA and SFBP submitted written evidence in support of their respective petitions and written evidence responding to each other's petitions within the time limits set forth in section 1201.5.

3. The Board's president convened a pre-hearing conference with the parties, as authorized by section 236(g), which was held on March 29, 2011. At that conference, the Board president requested submission of additional evidence as permitted by section 236(j).

4. Prior to the hearing, the Board, in compliance with section 236(e), was provided with copies of the audited annual financial statements for 2009 and 2010 of the San Francisco Bar Pilots and the San Francisco Bar Pilots Benevolent and Protective Association.

5. The public hearing to obtain information and data relating to the issues raised in the petitions commenced on April 6, 2011, and concluded on April 8, 2011. The hearing was conducted in accordance with the Bagley-Keene Open Meeting Act, and the proceedings were recorded by a certified shorthand reporter.

6. On April 28, 2011, following submission of closing briefs by PMSA and SFBP, the Board met to deliberate concerning what pilotage rate changes, if any, it should recommend to the Legislature, given the evidence before it. Members of the Board considered each of the

[1] All references to sections 1201, 1201.5, 1202, or 1203 are to those sections of the Harbors and Navigation Code, unless otherwise specified. All references to section 236 are to section 236 of the Board's regulations (Cal. Code Regs., tit. 7, § 236), unless otherwise specified.

factors in section 1203 and section 236(f). The meeting was conducted in accordance with the Bagley-Keene Open Meeting Act and was recorded by a certified shorthand reporter. The Board voted on five different rate proposals, declining to recommend approval of two of the proposals—the ones submitted by SFBP and PMSA—and voting to recommend three others. The respective findings in support of each of those five votes are identified in Finding Nos. 8, 18, 23, 28, and 34 below. These findings reflect statements made by individual commissioners on the prevailing side of a vote and supporting evidence in the record. Because, in casting their votes on the prevailing side, individual commissioners may not have shared identical supporting reasons, individual findings may not reflect the unanimous view of all of the commissioners who were on the prevailing side.

Rate adjustments requested by SFBP

7. The SFBP petition requested two surcharges, a transportation fee, additions to the Service Code and Charge Listing published by SFBP, and percentage increases in all rates, effective in 2014 and 2015, as follows:

(a) A fuel surcharge effective January 1, 2012, to cover fuel costs in operating pilot boats. The surcharge would cover the entire cost of fuel for the pilot boats, not just the cost of fuel over and above some base level of fuel cost. The surcharge would be calculated as follows: For the first quarter of 2012, a fuel surcharge mill rate would be obtained by dividing the actual fuel cost for the third quarter of 2011 by the total tonnage moved during that quarter. The mill rate thus obtained would be applied to the high gross registered tonnage of a vessel on all invoices for the first quarter of 2012. For the second quarter of 2012, the mill rate would be obtained by dividing the actual fuel cost for the fourth quarter of 2011 by the total tonnage moved during that quarter. Quarterly recalculation of the mill rate for subsequent quarters would continue in this way through the end of 2015.

(b) A rent surcharge effective January 1, 2012, to cover the amount of rent for that year set forth in the lease with the Port of San Francisco for SFBP's leased premises at the end of Pier 9 on the Embarcadero. The surcharge would cover the entire rental amount set forth in the lease, not just the rental cost over and above some base level of rent. The rent surcharge would be calculated as follows: For 2012, the rent surcharge mill rate would be obtained by dividing the 2012 rent provided for in the lease by the projected tonnage for 2012, which is the actual tonnage for 2010, totaling 310,651,138 tons. That mill rate would be applied to all invoices in 2012. Similar calculations would be made for 2013, 2014, and 2015, using the same actual 2010 tonnage figure as the projected tonnage for these years.

(c) A transportation fee would be charged for each vessel move to cover costs of returning pilots to their cars or the pilot office after completing a vessel move. The fee would be $87.75 per vessel move in 2013, $89.51 per vessel move in 2014, and $91.30 per vessel move in 2015.

(d) Four new charges would be added to the Service Code and Charge Listing for ship movements or special operations, under Harbors and Navigation Code section 1191, as follows:

Code 892 IP, Additional Pilot, Pt. Blunt to Dock, 1/2 listed rates
Code 892 OP, Additional Pilot, Dock to Pt. Blunt, 1/2 listed rates
Code 815 TP, Two Pilot Requirement, double charge
Code 841 CS, Cancel Service Less Than 8 Hours (Stockton/Sacramento), $258

(e) A six-percent increase in the current rates per draft foot and per high gross registered ton imposed by Harbors and Navigation Code section 1190, effective January 1, 2014, and a further six-percent increase to those rates, effective January 1, 2015.

(f) A six-percent increase in the Service Code and Charge Listing as published by the SFBP, effective January 1, 2014, and an additional six-percent increase, effective January 1, 2015.

8. The Board declined to recommend approval of the rate adjustments proposed by the San Francisco Bar Pilots, as submitted, by a vote of four votes against the proposal, two votes in favor. Finding Nos. 9 through 16 below set forth the reasons for the rejection of SFBP's proposed rate adjustments, as submitted.

9. Neither the proposed fuel surcharge nor the proposed rent surcharge is a surcharge in the usual sense. Normally, surcharges are charges that apply above a certain base level of expense. These proposed charges encompass the entire cost of the expense item, starting with the first dollar of expense. Both surcharges would require shipping companies to bear the entire amount of these expenses, thereby removing any incentive for the SFBP to control these costs.

10. A proliferation of surcharges is bad policy. Surcharges or special fees for the normal expenses of a business that are either well known in advance or determinable within reasonable limits, such as rent or transportation, are just part of the mix of business expenses, and to the extent possible should be controlled by the owners of the business to maximize efficiency and net return. Surcharges for the entirety of those items shift all of the business risk associated with them to the rate-payers, who have no ability to intervene to control costs passed through to them.

11. The two proposed surcharges are unlike the pilot-vessel surcharge authorized by Harbors and Navigation Code section 1190(a)(1)(B), which funds acquisition of new pilot boats and the cost of design and engineering modifications for the purposes of extending the service life of existing pilot boats, excluding the costs of repair or maintenance. Such purchases and upgrades are infrequent events with large price tags. Further, shippers participate directly during the design phase and the open public process whereby the Board authorizes construction. The process is transparent. Industry has a voice.

12. The several surcharges mandated by statute relate to the duties of the Board of Pilot Commissioners and are not part of the business of SFBP, other than the pilot-vessel surcharge, and, for a brief period, the now-expired navigation-technology surcharge—another non-recurring, special-circumstance surcharge approved by the Legislature with the shippers' concurrence.

13. The proposed fuel surcharge is a more difficult case. The cost of fuel is a significant expense in the overall cost of providing pilotage service, is highly variable, and is largely beyond the control of the SFBP. There might be some savings to be had at the margin by reducing the speed at which the boats operate, or other operational modifications, but in the main, the cost of fuel is dictated by market conditions that cannot be controlled by either the pilots or by shippers. Fuel surcharges are common in other industries for similar reasons.

14. A major problem with the SFBP surcharge proposals and the proposed transportation fee is that they all start with the first dollar. With these new charges structured in that manner, the charges would cover not merely the marginal increase in expense experienced in recent years, but instead the entire expense. To the extent that the proposed new charges cover expenses that have been a part of the business mix for decades—rent, transportation, fuel—there is in fact a hidden generic rate increase. A generic rate increase may be justified, but it ought to be open and obvious—not hidden.

15. The proposals for the addition of four new charges in SFBP's Service Code and Charge Listing appear to be reasonable and in the public interest, both with respect to environmental and other public safety risks, and with respect to increasing the efficiency of maritime commerce on the waters within the Board's jurisdiction. With some clarifying modifications concerning when the charges apply, these changes appear appropriate.

16. With respect to the proposed six-percent across-the-board rate increases proposed for 2014 and 2015, some increase is justified, but the full increases requested seem excessive.

Rate adjustments requested by PMSA

17. The PMSA petition requested a percentage reduction in the bar pilotage mill rate established in section 1190 of the Harbors and Navigation Code, as follows:

- Minus 7.4 percent, effective January 1, 2012
- Minus 1.39 percent, effective January 1, 2013
- Minus 1.39 percent, effective January 1, 2014
- Minus 1.39 percent, effective January 1, 2015
- Minus 1.39 percent, effective January 1, 2016

18. The Board declined to recommend approval of the rate adjustments proposed by the Pacific Merchant Shipping Association, as submitted, by a vote of six votes against the proposal, none in favor. Finding Nos. 19 through 22 below set forth the reasons for the rejection of PMSA's proposed rate adjustments, as submitted.

19. The Board's responsibility is to assess the economic environment as it exists today, not the economic environment that existed nine years ago when the Board last authorized an adjustment in rates. The Board is not bound by assumptions used by the Board in 2002, either as to future shipping calls or that Board's apparent assumption that future levels of gross registered tonnage would remain "flat." Nor is the Board bound by any "trend line" for appropriate increases in pilot net income that may have been contemplated by the Board in 2002.

20. This Board must make its own present-day assessments and predictions regarding future shipping traffic across the bar and in the bay and its tributaries, and regarding the future costs of providing pilotage service.

21. Similarly, this Board must make its own present-day judgments concerning pilot compensation, given the evidence available to it in this proceeding.

22. PMSA's proposal focused predominantly on the Board's 2002 rate decision and the assumptions that may have motivated it. PMSA devoted relatively little attention to the factors listed in section 1203 and section 236(f) that the Board is to consider in preparing a recommendation to the Legislature. Based on the evidence presented to it in this proceeding, this Board does not believe that the rate rollback requested by PMSA is warranted.

Other rate adjustments considered by the Board

23. By a vote of six in favor, none against, the Board approved a recommendation that the Legislature adopt a fuel surcharge, effective January 1, 2012. The surcharge would be based on a benchmark per-gallon cost for California No. 2 Diesel Ultra Low Sulfur fuel (0-15 parts per million). If the average per-gallon cost to SFBP during a defined three-month period exceeded the benchmark per-gallon cost, the excess per-gallon cost over the benchmark figure, multiplied by gallons purchased, would be recoverable in the succeeding quarter on a per-move basis, with each vessel piloted paying the same amount as a fuel surcharge. The recoverable excess cost would be divided by total vessel moves by pilots during the same defined three-month period to get the cost per vessel to be charged in the succeeding quarter. The recommended fuel surcharge is described in more detail in Recommendation No. 1 below. Finding Nos. 24 through 27 below set forth the reasons for adoption of this fuel surcharge recommendation.

24. The cost of providing fuel to SFBP's five pilot boats is a significant element of SFBP's expenses and has recently increased sharply.

25. The cost of fuel is volatile and difficult to predict.

26. The level of fuel use and its consequent cost are largely beyond the ability of SFBP to control. There might be some savings to be had at the margin by reducing the speed at which the boats operate, or other operational modifications, but in the main, the cost of fuel is dictated by market conditions that cannot be controlled by either the pilots or shippers. Fuel surcharges are common in other industries for similar reasons, and they are appropriate here.

27. In response to the foregoing factors, it is appropriate to authorize a fuel surcharge to be recalculated for each quarter and charged and collected only in those circumstances where average per-gallon fuel costs exceed the benchmark per-gallon price.

28. By a vote of five in favor, one against, the Board approved a recommendation to add, effective January 1, 2012, four charges to those authorized by Harbors and Navigation Code section 1191. Two of the charges involve a charge equal to 50 percent of the mill rate under

Harbors and Navigation Code section 1190 where considerations of safety require that an additional pilot board the vessel within the bay to bring a vessel to or from the dock. A third charge involves a doubling of the charge for bay and river moves not covered by bar pilotage rates, again where considerations of safety require use of an additional pilot. The fourth charge sets the minimum time at eight hours for cancellation of requested services for vessel departures from the Ports of Sacramento and Stockton. These recommended charges are described in more detail in Recommendation No. 2 below. Finding Nos. 29 through 33 below set forth the reasons for adoption of this recommendation.

29. Considerations of safety may require that an additional pilot be used in the navigation of a vessel in transit or in its docking or departure from a dock. Such safety concerns may arise because the size or configuration of the vessel may limit visibility from the bridge or cause difficulties in handling, particularly in confined or shallow waters. Safety considerations may also be associated with the approaches to the dock or visibility restrictions caused by conditions of fog, weather, or darkness. Finally, the nature of the cargo may involve the need for an additional pilot to provide an additional margin of safety.

30. An additional pilot may need to board a vessel within the bay to help pilot it to or from a dock if the vessel is one of the new class of "mega-vessels" that may visit the bay in the future. The length and width of these vessels would closely approach the limiting sizes of channels and turning basins in the bay, particularly in the Port of Oakland. These close tolerances, together with visibility and handling difficulties associated with these vessels, require more precise navigational aids and may require an additional pilot. Simulations at the California Maritime Academy have been conducted at the request of the Port of Oakland to assess whether such vessels can be piloted safely within the bay. It was determined that such vessels can be piloted safely within the bay with the use of specialized aids to navigation and the services of an additional pilot on board.

31. River moves at night of certain vessels, particularly vessels carrying hazardous cargoes, such as anhydrous ammonia, may be conducted with safety, but only if a second pilot is used for the transit. In such situations, the second pilot would be on board for the entirety of a given segment of the transit for which a separate rate has been approved under section 1191 of the Harbors and Navigation Code. Accordingly, the rate would be doubled to reflect the presence of a second pilot for the entire segment. The doubled rate would not apply to bar pilotage mill rate established in section 1190.

32. The justifications for a second pilot that are set forth in Finding Nos. 29 through 31 are not the only situations in which a second pilot might be used, but they were mentioned as likely examples during testimony at the hearing.

33. Late cancellations of vessel departures from the Ports of Sacramento and Stockton are more costly than cancelled departures downriver from those ports or in the bay in terms of time lost and unnecessary travel expenses incurred by pilots, who must begin travel to these distant locations hours before the scheduled departure. Presently a late-cancellation charge is made for all cancellations when the cancellation occurs later than four hours prior to departure, regardless of point of departure. Establishing a separate minimum time of eight hours for cancellation of

departures from the Ports of Sacramento and Stockton will encourage shipping companies to give sufficient notice to avoid this expense and inconvenience to the pilots.

34. By a vote of five in favor and one against, the Board approved a recommendation that the rates under both Harbors and Navigation Code section 1190, subdivision (a)(1) and Harbors and Navigation Code section 1191 be increased in four annual increments of 1.5 percent each on January 1 of 2012, 2013, 2014, and 2015. These recommended rate adjustments are described in more detail in Recommendation Nos. 4 and 5 below. Finding Nos. 35 through 43 below set forth the reasons for adoption of this recommendation.

35. On average SFBP's costs have increased at a steady rate since the last rate adjustment in 2002 and can be expected to continue on that trend into the future. While there has been a significant rent increase for the office space occupied by SFBP at the end of Pier 9, that space is appropriate to SFBP's needs, as opposed to the shortcomings of alternative space considered by the pilots prior to their recent renewal of the lease with the Port of San Francisco. It makes sense to have the small office staff co-located with the pilot boats.

36. Concerning whether the net return to pilots is sufficient to attract and hold qualified pilots, the goal, given the unique and challenging navigational environment in which the pilots operate, is to attract the best pilots available, not simply those candidates who meet minimum requirements.

37. Since the last rate hearing in 2002, the Consumer Price Index has increased at an annual rate of between 2.2 percent (San Francisco–Oakland–San Jose Area) and 2.5 percent (West Region Area).

38. When compared to pilotage charges for other ports deemed comparable under section 236(f)(4), the current rates for the pilotage grounds served by the SFBP are "in the middle of the pack," neither the highest nor the lowest.

39. Similarly, the net income of the local pilots, compared to income levels for pilots of the comparable ports for which information was available, is again about in the middle, neither the highest nor the lowest. Concededly, there may be differences among the different pilot groups concerning the composition of their total compensation package and the expenses that are or are not borne by the pilots themselves, but there was no evidence that any such differences so skewed the income figures being compared as to render the comparison meaningless.

40. Concerning possible impacts of any rate adjustments on local shipping, there was no significant evidence that there would be diversion of ship traffic away from the Bay Area as a result of the rate increases under consideration. The preponderance of the evidence was to the contrary.

41. The volume of future ship traffic, both in terms of vessel calls and the gross registered tonnage of individual vessels—both of which have a direct effect on pilot net income—are difficult to predict. SFBP predicted that aggregate gross registered tonnage would remain at or about current levels for the next four or five years, while PMSA predicted a steady increase. The

PMSA prediction is more consistent with historical trends. It is likely that, given the gradual recovery from the recession and the recent statistics concerning bar crossings, that aggregate gross registered tonnage will gradually increase over the period covered by the recommended rate adjustments. Paired with the modest increase in rates recommended here, the increased shipping volume should produce an appropriate net income for the pilots.

42. Concerning the number of pilots available, 60 pilots have been authorized by the Board. The current number of pilots is 55, two of whom, the Port Agent and the Operations Pilot, are not themselves piloting vessels. Given the number of pilot trainees currently in the training program, the Board expects that the number of pilots will reach 60 within the next several years.

43. Those choosing to become pilots incur significant economic and career risks in addition to the physical risk that is inherent in the job. Among those risks are the following:

(a) There has been a significant increase in medical oversight as a result of legislation enacted in 2008, and that is likely to be further increased with the contemplated adoption of physical and mental fitness standards for pilots.

(b) Following the *COSCO BUSAN* incident, pilots are now faced with possible criminal prosecution for perceived misconduct.

(c) Economically, trainee applicants incur significant risk by abandoning their prior maritime employment and entering a one-to-three-year training program at substantially less income, not knowing if they will complete the program successfully and become licensed as a pilot.

(d) Newer vessels are larger and more difficult to pilot in the bay's confined channels and difficult currents, thereby increasing a pilot's exposure to liability.

These factors may be impediments to persons considering a career as a pilot in the Bay Area, and pilot income has to be high enough to overcome any reservations about such a career change, so as to attract the best available potential candidates to the training program.

RECOMMENDATIONS

1. The Board of Pilot Commissioners recommends approval of a fuel surcharge for all vessel moves by the San Francisco Bar Pilots. The surcharge would be effective January 1, 2012, and would be calculated and collected as follows:

(a) The benchmark price for California No. 2 Diesel Ultra Low Sulfur fuel (0-15 parts per million) will be set at $2.75 per U.S. gallon, inclusive of tax, if any, paid by the San Francisco Bar Pilots.

(b) By December 5, March 5, June 5, and September 5 of each year, the SFBP shall provide the Board an accounting of (1) total gallons of fuel purchased for the exclusive use of the pilot boats during the three months that precede, respectively, December, March,

June, and September, (2) the average per-gallon price of that fuel, and (3) total vessel moves during the same three-month period. The first such accounting shall be due by December 5, 2011.

(c) For the purpose of this surcharge, the average price per gallon shall be the price paid by the SFBP, inclusive of tax, if any.

(d) If the average price paid per gallon for any three-month period exceeds the benchmark price, a fuel surcharge will be charged and collected for the appropriate quarter beginning January 1, April 1, July 1, and October 1.

(e) The total dollar amount subject to recovery by the surcharge will be obtained by subtracting $2.75 from the average price per gallon paid over the three-month period, then multiplying the resulting figure by the total gallons of fuel purchased during the three-month period.

(f) The surcharge to be charged each vessel shall be obtained by dividing the total dollar amount subject to recovery by the surcharge by the total vessel moves during the three-month period.

(g) Annually, prior to April 1, the fuel surcharges for the previous calendar year ending December 31 shall be reconciled to ensure that the total surcharges collected for the year were not more or less in amount than those calculated in the manner set forth above. Any differential, positive or negative, shall be subtracted from or added to, as appropriate, the total dollar amount subject to recovery by the surcharge for the quarter beginning April 1.

2. The Board of Pilot Commissioners recommends the addition, effective January 1, 2012, of four new charges to the Schedule of Pilotage Rates for Ship Movements or Special Operations that are authorized by subdivision (a) of Harbors and Navigation Code section 1191 and that are restated in the Service Code and Charge Listing published by San Francisco Bar Pilots, as follows:

(a) Code 892 IP. When, because of safety considerations, an additional pilot is required between Pt. Blunt and the dock, the charge for the additional pilot shall be one-half the rate under subdivision (a)(1) of Harbors and Navigation Code section 1190.

(b) Code 892 OP. When, because of safety considerations, an additional pilot is required between the dock and Pt. Blunt, the charge for the additional pilot shall be one-half the rate under subdivision (a)(1) of Harbors and Navigation Code section 1190.

(c) Code 815 TP. When, because of safety considerations, two pilots are required in areas subject to rates prescribed under Harbors and Navigation Code section 1191, the charge shall be double the rate under Harbors and Navigation Code section 1191.

(d) Code 841 CS. If a requested departure from the Port of Sacramento or the Port of Stockton is canceled less than eight hours prior to the scheduled time for the move, the charge shall be $262.

3. The Board of Pilot Commissioners recommends that the Legislature adopt the restatement of the Schedule of Pilotage Rates for Ship Movements or Special Operations, amended to include the four new charges set forth in Recommendation No. 2, that is attached as Appendix 1.

4. The Board of Pilot Commissioners recommends that the draft-foot and mill rates for bar pilotage in effect under subdivision (a)(1) of Harbors and Navigation Code section 1190, unaffected by adjustments under subdivision (a)(1)(A) of section 1190, be increased as follows: those rates that are in effect on December 31, 2011, shall be increased by 1.5 percent on January 1, 2012; those that are in effect on December 31, 2012, shall be increased by 1.5 percent on January 1, 2013; those that are in effect on December 31, 2013, shall be increased by 1.5 percent on January 1, 2014; and those that are in effect on December 31, 2014, shall be increased by 1.5 percent on January 1, 2015.

5. The Board of Pilot Commissioners recommends that the minimum rates for ship movements and special operations in effect under section 1191 of the Harbors and Navigation Code be increased as follows: those rates that are in effect on December 31, 2011, shall be increased by 1.5 percent on January 1, 2012; those that are in effect on December 31, 2012, shall be increased by 1.5 percent on January 1, 2013; those that are in effect on December 31, 2013, shall be increased by 1.5 percent on January 1, 2014; and those that are in effect on December 31, 2014, shall be increased by 1.5 percent on January 1, 2015.

6. Section 1122 of the Harbors and Navigation Code provides for a charge against the owner, operator, or agents of any vessel that carries a pilot to sea against his will or unnecessarily detains a pilot when a pilot vessel is standing by to receive the pilot. Past legislative approval of increases in this charge have been incorporated into the Schedule of Pilotage Rates for Ship Movements or Special Operations provided for under subdivision (a) of section 1191 of the Harbors and Navigation Code. In Recommendation No. 5 above, the Board recommends annual increases to this and other charges beginning January 1, 2012. The increase in this particular charge more properly belongs in section 1122. Accordingly, the Board recommends that the successive 1.5-percent annual increases in this charge that are provided for in Recommendation No. 5 be accomplished by amendment of Harbors and Navigation Code section 1122.

DATED:

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K. MICHAEL MILLER
President of the Board

Exh. 40 - Fees per Move with Yr.-Yr. Growth and Projections

Year	Pilotage Fees Earned	Total Moves	Pilotage Fees / Move	Yr.-Yr. Growth	Average Fees per month x 2.1% (15-19)	
1995	$15,684,790	8,489	$1,848			
1996	$16,299,650	7,993	$2,039	10.4%		
1997	$16,555,759	7,711	$2,147	5.3%		
1998	$17,644,966	7,778	$2,269	5.7%		
1999	$19,620,156	8,473	$2,316	2.1%		
2000	$21,221,807	8,435	$2,516	8.7%		
2001	$22,372,301	7,971	$2,807	11.6%		
2002	$22,927,581	8,003	$2,865	2.1%		
2003	$26,274,483	8,344	$3,149	9.9%		
2004	$29,032,632	8,235	$3,526	12.0%		
2005	$32,762,467	8,765	$3,738	6.0%		
2006	$39,264,873	9,806	$4,004	7.1%		
2007	$37,523,239	9,296	$4,036	0.8%		
2008	$37,330,873	9,156	$4,077	1.0%		
2009	$34,071,805	7,935	$4,294	5.3%		
2010	$34,456,762	8,008	$4,303	0.2%		
2011	$37,281,993	8,534	$4,369	1.5%		
2012	$36,341,646	8,104	$4,484	2.6%		
2013	$38,276,060	8,326	$4,597	2.5%		
2014	$39,754,055	8,390	$4,738	3.1%	$4,738	Projected Total Pilotage Fees w/ ULCVs
2015		8,390			$4,840	$40,603,886
2016		8,390			$4,943	$41,471,885
2017		8,390			$5,049	$42,358,439
2018		8,390			$5,157	$43,263,945
2019		8,390			$5,267	$44,188,808

06='14 avg. = 2.1%

Source: Jacob Declaration, Exhibits A & B

BEFORE THE BOARD OF PILOT COMMISSIONERS
FOR THE BAYS OF SAN FRANCISCO, SAN PABLO AND SUISUN

In Re the Petition of the San Francisco Bar Pilots For Fuel and Rent Surcharges and a Change in Pilotage Rates	)	DECLARATION OF JOHN CINDEREY

I, John Cinderey, declare as follows:

1. I am the Business Director of the San Francisco Bar Pilots. I have held this position since May 26, 2010.

2. Attached hereto and marked as Exhibits A through L, respectively, are true and correct copies of the following documents, all of which I personally prepared or which members of my staff at the San Francisco Bar Pilots prepared under my supervision:

3. Exhibit A: a chart of the net return (income) of the San Francisco Bar Pilots for the years 2006 to 2010.

4. Exhibit B: all expenses of the San Francisco Bar Pilots from the years 2006 to 2010, with projections for 2011, in summary form and broken down by Pilot Office, Pilot Boats, Terminal and General Expenses.

5. Exhibit C: a spreadsheet showing average net pilot income as projected for the years 2012 through 2015, (a) under the current statute and without surcharges, and (b) with the fuel and rent surcharges being requested by the SFBP.

6. Exhibit D: a graph of vessel moves by the SFBP for the years 2007 to 2010.

7. Exhibit E: a graph of ship movements by the SFBP for the year 2010, broken down among bar crossings, bay moves and river moves.

8. Exhibit F: 2 graphs of bar crossings by the SFBP for the years 2007 to 2010, by month and by vessel type.

9. Exhibit G: a chart of the amounts billed and number of bar crossings, broken down by type of vessel, for the years 2004 to 2010.

10. Exhibit H: a chart of the estimated revenues which will be produced by the rent surcharges, fuel surcharges and transportation charges being requested by the SFBP in this rate proceeding.

11. Exhibit I: a summary billing report for calendar year 2010, showing revenue to the San Francisco Bar Pilots under all applicable rates and surcharges.

12. Exhibit J: a chart of rent payments to the Port and City of San Francisco by the SFBP for the years 2008 to 2015; the figures for years 2008 to 2010 are actual payments, and the figures for 2011 to 2015 are the rent totals set forth in the SFBP's lease for its facility at Pier 9. The SFBP's current lease does not expire until 2026.

13. Exhibit K: a chart showing rent payable to the Port and City of San Francisco under the SFBP lease for the years 2012 to 2015, and the Mill rate which will be required to produce that revenue, based upon anticipated annual tonnage of 310,651,138 tons. The SFBP's rent payable to the Port and City of San Francisco increased 323% from 2010 to 2011.

14. Exhibit L: a chart showing the total a vessel owner would have paid for the SFBP to bring a "typical" 55,860 GRT containership across the Bar and to dock, in the years 2006 to 2010.

I declare under penalty of perjury under the laws of the State of California at San Francisco, California that the foregoing is true and correct on the 3rd date of March, 2011.

John Cinderey

12174/0000/891127.1

SFBP CURRENT RATES	2011		2012		2013		2014		2015		Change 2011 to 2015	
Total Pilotage Revenues	$34,532,817		$34,532,817	1.1%	$34,926,843	0%	$34,926,843	0%	$34,926,843	0%	$394,026	1%
Memo: Adjuster Added in 2012			$394,026									
Total Expenses	$12,620,933		$12,685,551	0.51%	$12,939,262	+2%	$13,198,047	+2%	$13,462,008	+2%	$841,075	7%
Net Income	$21,911,884		$22,241,292		$21,987,581		$21,728,796		$21,464,835		($447,049)	-2%
Average # Pilots	56		60		60		60		60			
Average Net Income per Pilot	$391,284		$370,688	-5.26%	$366,460	-1.14%	$362,147	-1.18%	$357,747	-1.21%	($33,536)	-9%
SFBP CASE - PETITION	2011		2012		2013		2014		2015		Change 2011 to 2015	
Total Pilotage Revenues	$34,532,817		$34,532,817	1.1%	$34,926,843	0%	$37,022,454	6%	$39,243,801	6%	$4,710,984	14%
Memo: Adjuster Added in 2012			$394,026									
Add Rent Surcharge			$1,237,644		$1,274,988		$1,312,388		$1,351,708			
Add Fuel Surcharge			$1,009,134		$1,033,353		$1,058,154		$1,083,549			
Add Transportation Charge			$0		$688,971		$716,805		$731,141			
Adjusted Total Revenues	$34,532,817		$37,173,621	7.65%	$37,924,155	2.02%	$40,109,801	5.76%	$42,410,199	5.74%	$7,877,382	23%
Total Expenses	$12,467,342		$12,675,302	1.67%	$12,928,808	+2%	$13,187,384	+2%	$13,451,132	+2%	$983,790	8%
Net Income	$22,065,475		$24,498,319		$24,995,347		$26,922,416		$28,959,067		$6,893,592	31%
Average # Pilots	56		60		60		60		60			
Average Net Income per Pilot	$394,026		$408,305	3.62%	$416,589	2.03%	$448,707	7.71%	$482,651	7.56%	$88,625	22%
PMSA PETITION REQUEST	2011		2012		2013		2014		2015		Change 2011 to 2015	
Total Revenues	$36,580,510		$33,562,618	-8.25%	$33,089,385	-1.41%	$32,622,825	-1.41%	$32,162,843	-1.41%	-$4,417,667	-12%
Operating Expenses	$11,935,239		$12,265,443	2.77%	$12,595,648	2.69%	$12,925,853	2.62%	$13,256,057	2.55%	$1,320,818	11%
Net Income	$24,645,271		$21,297,175		$20,493,737		$19,696,972		$18,906,786		-$5,738,485	-23%
Average # Pilots	60		60		60		60		60			
Average Net Income per Pilot	$408,429		$354,953	-13.1%	$341,562	-3.77%	$328,283	-3.89%	$315,113	-4.01%	($93,316)	
PMSA-Dr. Haveman Testimony	2011		2012		2013		2014		2015		Change 2011 to 2015	
Total Revenues	$36,580,510		$38,519,276	5.30%	$40,175,605	4.30%	$41,903,155	4.30%	$43,704,990	4.30%	$7,124,480	19%
Operating Expenses	$11,935,239		$12,265,443	2.77%	$12,595,648	2.69%	$12,925,853	2.62%	$13,256,057	2.55%	$1,320,818	11%
Net Income	$24,645,271		$26,253,833		$27,579,957		$28,977,302		$30,448,933		$5,803,662	24%
Average # Pilots	60		60		60		60		60			
Average Net Income per Pilot	$408,429		$435,238	6.56%	$457,340	5.08%	$480,629	5.09%	$505,156	5.10%	$96,727	24%

Oakland Reports Progress in Recovering from Labor Standoff – Journal of Commerce, March 6, 2015

For Many Shippers, it's Time for a West Coast Review - Journal of Commerce, March 1, 2016

Carrier Debt Hard to Sustain Amid Declining Demand, AixPartners Finds – Journal of Commerce, March 20, 2015

Panama Canal Aims to Keep Volume Gains Fueled by West Coast Congestion – Journal of Commerce, February 23, 2015

Port of Oakland Cargo Volume Down 36.6% in February – Port of Oakland Press Release, March 17, 2015

Cargo Count Slides in February – Port of Long Beach Press Release, March 17, 2015

Oakland Port Congestion Receding After 37 Percent Volume Decline – Journal of Commerce, March 17, 2015

Ports Gridlock Reshapes the Supply Chain – Wall Street Journal, March 5, 2015

Planned Deployment of New Asia-East Coast Services Rattles West Coast Ports – Journal of Commerce, March 19, 2015

$500 Million Oakland Logistics Center Takes Trucks Off Roads, Adds Rail Cars – Bay Area News Group, March 4, 2015

Federal Maritime Commission Chairman: US Must Invest In Port Infrastructure – Long Beach Press Telegram, March 19, 2015

After Labor Deal, Western Ports Turn To Long-Term Challenges – Bond Buyer, March 19, 2015

Giant Ships In West Coast Ports' Future – San Jose Mercury News, February 28, 2015

Drewry: L.A./Long Beach Q4 delays cost carriers $150M – Cargo Business News, March 18, 2015

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Oakland reports progress in recovering from labor standoff

Bill Mongelluzzo, Senior Editor | Mar 06, 2015 9:37AM EST

After two weeks of working all-out to clear its worst congestion problem since 2002, the Port of Oakland on Friday reported reduced vessel backups and yard congestion, improved truck transaction times and better terminal productivity.

"This isn't victory — there's still a great deal of work to do — but we're seeing good collaboration between labor, terminal operators and harbor truckers, and our customers will soon benefit from faster, smoother cargo flow," said John Driscoll, the port's maritime director.

Oakland executives say the crippling backup of vessels at anchor, and containers on the marine terminals, resulted from labor-management disputes during the nine months of negotiations between the International Longshore and Warehouse Union and the Pacific Maritime Association. A tentative contract was announced on Feb. 20 that is still subject to ratification.

Since the announcement, marine terminals having been working nights and weekends. Requests for longshore labor are being filled. Sustained container lifts per crane, per hour, are in the range of 25 to 30. Oakland crane operations have always been the best on the coast, and port executives said they anticipate a return to the historical level of 30 to 35 moves per hour when the port returns to normal.

On Thursday, six vessels were anchored in San Francisco Bay or were outside the Golden Gate Bridge. That is down from a high of 20 in mid-February. The vessel logjam is expected to dissipate in 10 days, port officials said. Terminal operators have cleared out the huge backlog of loaded import containers, bringing the facilities down to covering 50 to 60 percent of yard capacity. Import containers are now available for immediate pickup when they are lifted off of the ships.

The terminals are once again accepting export loads and empty containers. That is good news because chassis were in short supply when the terminals were unable to receive exports and empties. Now, when those containers are removed from the chassis, the equipment is freed up to remove import loads from the terminals.

Despite improvements in several areas, port executives say it will take about two more months to completely clear the backlogs and for vessel rotations to return to normal. The main problem is that Los Angeles-Long Beach will struggle with severe congestion for the next two to three months, and therefore vessels will continue to run off schedule for some weeks, affecting Oakland, where nearly all its vessel calls are on rotations that first call at LA-Long Beach.

The normal rotation in the Pacific Southwest services is Los Angeles-Long Beach inbound and Oakland outbound. The good news is that lines which had been truncating voyages in Southern California to get back on schedule are resuming their calls in Oakland.

Truckers are benefiting from the reduced congestion. Gate times are faster and waits in the yards are shorter. Because the terminals are once again accepting export containers and empties, drivers are getting more opportunities for two-way hauls.

"Gains in container movement are visible from ship to shore," the port stated.

Contact Bill Mongelluzzo at bmongelluzzo@joc.com and follow him on Twitter: @billmongelluzzo.

Port News › US Ports › Port of Oakland
Port News › Longshoreman Labor › International Longshore and Warehouse Union
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For many shippers, it's time for a West Coast review

Bill Mongelluzzo, Senior Editor | Mar 01, 2015 8:49AM EST

Cargo interests undoubtedly are relieved that the International Longshore and Warehouse Union and the Pacific Maritime Association reached a tentative contract deal on Feb. 20 after more than nine months of unexpectedly difficult negotiations, but now it's time for importers and exporters to reassess their commitment to West Coast ports.

Many of these same shippers struggled through the 2002 contract negotiations, which were marked by ILWU work slowdowns and a 10-day employer lockout of the union. Back then, some of the retailers and larger importers said they would never again be held hostage by a militant waterfront union and a hard-nosed employers' group that held their cargo hostage for weeks at a time.

Indeed, the 2002 contract negotiations were the trigger for importers with a national presence to establish large import warehouses and distribution centers close to ports in New Jersey, Virginia,

South Carolina and Georgia. East Coast ports gained market share at the expense of West Coast ports.

Also since 2002, the Port of Prince Rupert, British Columbia, opened a container terminal with direct intermodal service to Chicago provided by Canadian National Railway, and Port Metro Vancouver also took market share from West Coast ports with intermodal rail service to Chicago.

In 2012, however, coastwide contract negotiations between the International Longshoremen's Association and United States Maritime Alliance on the East and Gulf coasts also turned into a contentious affair marked by work stoppages and federal mediation. East Coast ports' reputation took a hit as contract negotiations dragged into 2013, and some cargo that had been diverted from the West Coast ports after 2002 returned there.

East Coast ports sustained another blow in the frigid, icy winter of 2013-14, when marine terminals, truckers and intermodal rail services suffered through one of the worst winters on record for freight movement.

Although these labor and weather events were disruptive for importers and exporters, the long-term decisions as to how their supply chain logisticians route freight in the future will be influenced in large part by several factors: cost, infrastructure, and port and labor reliability. In a survey published on Feb. 25, 65 percent of shippers surveyed by JOC.com said they plan to divert cargo away from the West Coast, nearly an identical percentage as those who responsed to the same question in December.

Shipping lines in the Asia-U.S. trade, the nation's largest, have determined that most of the cargo they carry will be shipped on vessels capable of carrying 8,000 to 14,000 20-foot containers. According to maritime research firm Alphaliner, carriers during the three-year period ending Dec. 31, 2016, will have taken delivery of 285 ships into their global fleets, with capacities exceeding 7,500 TEUs each.

Those large vessels already dominate the trans-Pacific trade to the West Coast. Furthermore, West Coast ports generally have the deep water, relatively large container terminals and extensive intermodal rail infrastructure needed to accommodate the big ships and the vessel-sharing alliances that operate the vessels.

West Coast ports also have a robust warehouse and distribution network. Southern California boasts 1.5 billion square feet of industrial space within about 50 miles of Los Angeles-Long Beach. The second-largest industrial real estate hub is Chicago, with slightly more than 1 billion square feet, and West Coast ports are the logistical choice for most shipments to Chicago.

East Coast ports are spending billions of dollars to develop the infrastructure necessary to handle the big ships. All of the major load centers there will be able to handle 10,000-TEU vessels and larger fully laden within a few years. Vessels of 9,000 TEUs already are calling at those ports on some services via the Suez Canal routes from Asia.

The big game changer will occur in early 2016 when the Panama Canal expansion project is completed and vessels of up to 13,000-TEU capacity can transit the canal. The Panama Canal route is considered superior to the Suez route for shipments originating in northern Asia, especially China.

Big ships will be the workhorses in most of the U.S. trades in the future because, compared to a 4,800-TEU Panamax ship, the 8,000- to 13,000-TEU ships offer slot-cost reductions of 47 to 60 percent, according to Alphaliner. Shipping containers on a large vessel can reduce costs by $300 to $400 per 40-foot container compared to a Panamax ship.

West Coast ports handle about 48 percent of the total U.S. container trade. That's down from 50 percent as recently as 2007, according to PIERS, the data division of JOC Group. When 2014 numbers are released, the West Coast is likely to show further deterioration in market share.

More than 60 percent of the containers moving through West Coast ports are considered discretionary, meaning they can move through any number of ports. Because two-thirds of the U.S. population lives east of the Mississippi River, ports on the East and Gulf coasts come to mind first as the beneficiaries of cargo diversions from the West Coast.

But East Coast ports currently don't have the capacity or inland infrastructure to handle a double-digit diversion of cargo from the West Coast. That 40 to 50 vessels have been anchored off the West Coast for the past three months, rather than going directly to the East Coast, demonstrates that East Coast ports were operating close to their limits.

Therefore, the damage caused to West Coast ports by this second round of unexpected and unnecessary labor disruptions in the past 12 years will probably be in the single digits, although that still will mean tens of thousands of lost man-hours for members of the ILWU.

The logical question to be asked, then, is, "For what?" The tentative contract calls for a 14 percent wage increase over the five-year life of the contract, on top of average earnings for full-time longshoremen that the PMA lists at $147,000 a year. Employers would have offered that wage increase, and probably more, on day one of the negotiations last May if they thought it would have produced a contract agreement. Pensions will top out at about $90,000 a year. Employers will continue to pay 100 percent of the premiums in the ILWU medical plan, and longshoremen will pay only $1 co-pay for medicine.

The PMA also gave in to the ILWU's demand that longshoremen inspect and repair chassis before they leave the marine terminals. The only exceptions, according to the PMA, are terminals that have contracts with the International Association of Machinists, and chassis that are owned by truckers.

Chassis issues could be an Achilles' heel in the proposed contract because the PMA's member carriers no longer own most of the chassis. They are owned by chassis-leasing companies that aren't members of the PMA. Therefore, legal challenges are possible. Did the PMA give to the ILWU jurisdiction that wasn't the PMA's to give?

The chassis jurisdiction issue also could play a prominent role in the next ILA contract negotiations on the East Coast in 2018. Because chassis-leasing companies now own the vast majority of the chassis used at all U.S. ports, will they choose to go to war with the longshore unions to protect their right to maintain and repair chassis at their own facilities, or will they absorb the higher costs involved in ILWU and ILA chassis maintenance and repair in order to keep peace with the unions?

The issue that for weeks held up a successful conclusion to the negotiations was a late ILWU demand that the union and the PMA be able to unilaterally fire an area arbitrator, even though those arbitrators are approved by both parties. The PMA said the ILWU wanted to fire the arbitrators in Southern and Northern California because they occasionally ruled against the union.

Arbitrators play a key role in resolving the hundreds of labor-management disputes and health and safety claims that arise each year at West Coast ports. The absence of the arbitration process when the ILWU refused to extend its previous contract on July 1 dealt a heavy blow to West Coast ports in the latest round of negotiations. When crane productivity in Seattle, Tacoma and Oakland plunged by more than 40 percent in late October, and the ILWU in Los Angeles-

Long Beach slashed its dispatch of skilled yard crane operators by 60 percent, employers were defenseless because the grievance machinery expired with the previous contract.

The ILWU denied it engaged in illegal work slowdowns, but when the tentative contract was approved on Feb. 20, the grievance and arbitration process was reinstated, and productivity immediately returned to normal levels. Longshoremen in Oakland that weekend tested the process, and the area arbitrator ruled that Local 10 was engaging in an illegal work stoppage and the "hard-timing" was over in less than a day.

All of these issues surrounding the arbitration process sent a chill down the spine of importers and exporters. The ILWU had proved again that without a fair and impartial grievance machinery in place, longshoremen had no qualms about engaging in job actions that delayed the delivery of cargo by weeks.

Does the same fate await cargo interests in 2019 when the next contract negotiations are held? Conversely, will the PMA and ILWU use the next five years to begin working on a new contract that reflects the realities of ocean shipping in the 21st century?

Terminal operators on the West Coast are systematically replacing facilities designed to handle 5,000-TEU ships with terminals that can handle the 18,000-TEU ships already operating in the Asia-Europe trade. These modern facilities will fail to do the job, though, if current work practices and abuses of health and safety claims don't reflect the reality that even a temporary disruption in the handling of today's big ships is enough to disrupt supply chains for weeks.

Reliability of the marine terminal and labor force, rather than freight rates and speed to market, will therefore be the main forces that dictate cargo routing in the years ahead.

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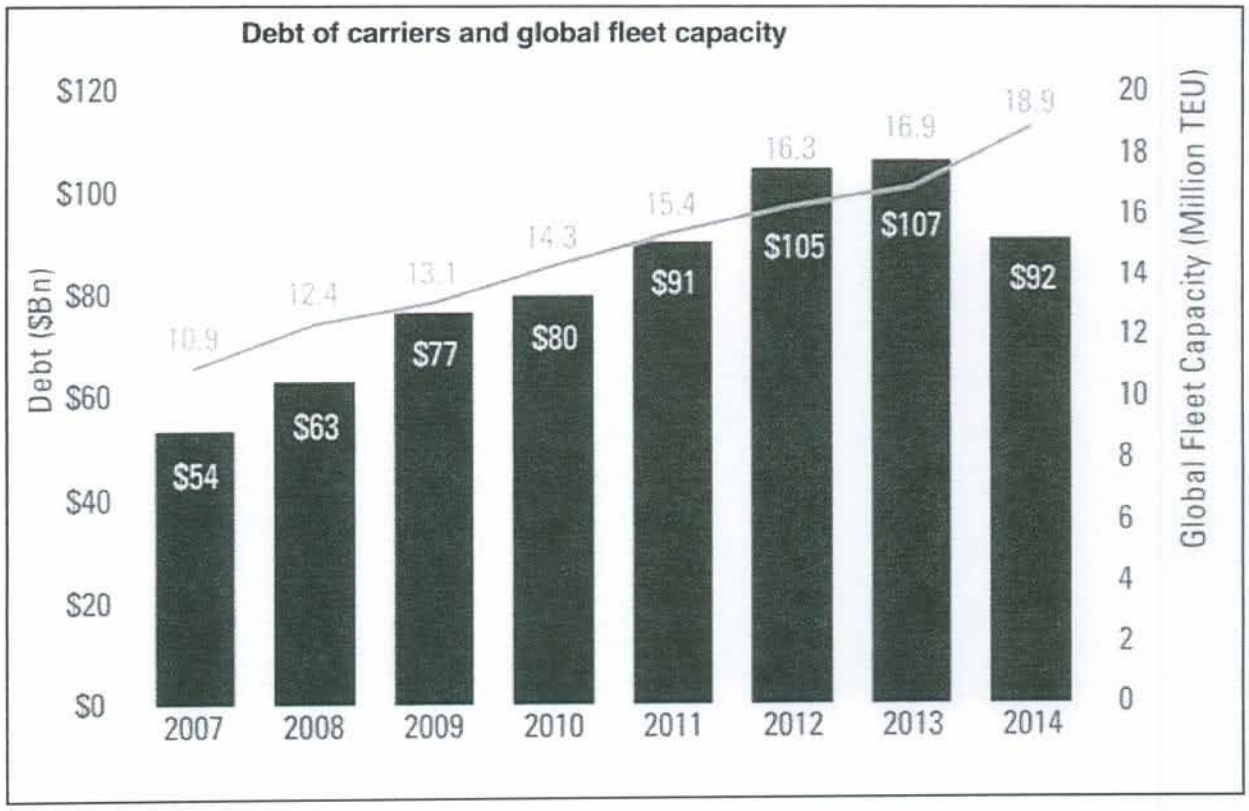
Carrier debt hard to sustain amid declining demand, AlixPartners finds

JOC › Maritime News

Greg Knowler, Senior Asia Editor | Mar 20, 2015 1:32AM EDT



Source: AlixPartners.

HONG KONG — Many container shipping lines have amassed huge debt by ordering mega vessels in a bid to drive down unit costs, but weak demand and an oversupply of tonnage will make it difficult to improve financial performance, according to AlixPartners' 2015 Container Shipping Outlook.

Rising fuel prices in the past decade drove global carriers into a race to build and operate the largest and most fuel efficient ships available to push down slot costs, but this saw carriers taking on huge debt, the report noted.

"The market has seen a significant influx of supply as these megavessels came online, but demand has languished, causing a significant imbalance that has plagued carriers looking to right their balance sheets," the report said.

AlixPartners said most of the carriers were "finally" reigning in their capital expenses, indicating the race to add larger and larger vessels may be coming to an end. This was borne out in comments made by OOCL acting chief financial officer Alan Tung during the carrier's recent results announcement, where he said orders for new container ships had peaked and, provided no major orders were placed, would begin to drop off in 2016.

But looking forward, the container shipping outlook expects carriers to struggle to improve their financial performance in the face of supply and demand imbalances.

"Recent decreases in bunker fuel prices are welcome but will likely not offer a permanent fix. Carriers looking to change their fortunes should focus on the container shipping business by continuing to divest of noncore assets and by closely scrutinizing the profitability of the markets they serve, the routes they sail, and the customers they conduct business wit," according to the report.

The consultants took a good look at the carrier finances for 2014, and found that for the 15 publicly traded carriers included in the Outlook, revenue for 2014 decreased 3 percent compared with 2013, following a 5 percent decline from 2012. It found that today, industry revenue remains more than 16 percent below its 2008 peak of more than $200 billion.

Yet despite declining revenue, carriers managed to achieve a 7 percent increase in EBITDA during the same period. Analysis by AlixPartners suggests that carriers have responded to a declining macroeconomic environment by focusing on their core container businesses, cutting costs, and exiting noncore businesses through asset sales.

Capex investments for larger, longer-term projects are also on the decline, falling to $18 billion in 2014 from $21 billion in 2013, and from $25 billion in 2012. By focusing on their core businesses carriers are restricting the scope of their investments, but to remain competitive and to provide a base for future growth, carriers must invest in new and larger vessels.

AlixPartners believes the industry remains a long way from stability. It measured the carriers using the Altman Z-score, an indicator of financial distress, and found the lines to be only slightly higher in 2014 compared with 2013, suggesting minimal improvements in the carriers' ability to stave off bankruptcy.

"The container carrier industry has grappled with financial distress for much of the past decade. The rate of decline appears to be moderating, but these results are not sustainable," the Outlook report said.

The chase for fuel efficiency placed challenges on the industry that will affect it this year. Since the end of 2013, the average-size vessel operating on the Asia–North America trade increased 9 percent to 6,566 TEU capacity. AlixPartners found that in that same time frame, the average-size vessel operating on the Asia–North Europe trade increased 4 percent to 10,559 TEU. Average-size vessels in those same trade lanes have increased an astounding 19 percent and 32 percent, respectively, since 2010.

The number of megavessels, those greater than 13,300-TEU capacity, in service — which predominantly serve these major East-West trade lanes — is forecast to double by the end of 2017, and this segment of the global fleet will eventually account for more than 10 percent of global TEU capacity.

"Lagging demand has left few choices for carriers with growing fleets of large vessels: they simply have to work together. Longer service strings with more port calls help carriers deploy excess capacity that would otherwise be running empty or mothballed at great expense," the report noted.

Many of these strategic and tactical decisions were caused in recent years by historically high oil prices, AlixPartners said in its outlook, with bunker costs represented an estimated 22 percent of total container shipping unit costs in 2013.
However, the consultants said even a prolonged reduction in bunker prices would have limited impact on container operators' overall performance for two reasons. First, shippers will likely capitalize on it as an opportunity to continue pressuring container operators to further reduce already rock-bottom freight rates, siphoning off the benefits of reduced fuel prices.

Second, as the benefits of slow steaming on reducing fuel costs continue to narrow, carriers are taking a hard look at their slow-steaming strategies, AlixPartners said. The benefits of slow steaming have narrowed, causing carriers to speed up vessels to increase throughput and revenue. This will have a negative effect because it serves to further increase capacity in a market that's already oversupplied.

The outlook report concluded that carriers needed to continue focusing on core business activities and on customer and service profitability. "On a global basis, supply-and-demand imbalances will continue to drive rate volatility. However, even in this uncertain environment, carriers can expand margins by focusing on route profitability, selective customer targeting, and smarter allocation of scarce inland dray resources."

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Maritime News
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Source URL: http://www.joc.com/maritime-news/carrier-debt-hard-sustain-amid-declining-demand-alixpartners-finds_20150320.html

Panama Canal aims to keep volume gains fueled by West Coast congestion

Peter T. Leach, Editor-at-Large | Feb 23, 2015 11:36AM EST

The Panama Canal Authority is setting its sights on retaining the increase in container volumes from Asia to the U.S. East and Gulf Coast ports it gained in recent months, thanks to shippers diverting cargo from congested West Coast ports.

Even though it has not experienced any increase in the number of Panamax vessels transiting the canal during the labor strife that clogged West Coast ports, the canal agency aims to boost containership traffic by both individual carriers and by carrier alliances when it opens its new locks to post-Panamax vessel traffic next year.

After the 2002 lockout on the West Coast, when shippers diverted their cargo on Panamax ships through the Panama Canal to the East Coast, a lot of those shipments did not return to the West Coast after the contract was settled. The same thing is likely to happen even though the

International Longshore and Warehouse Union and the Pacific Maritime Association have reached tentative agreement on a new contract

"I think that any changes to the carrier networks would probably stay for now," said Doug Hayes, vice president of equity research, freight transport, at Morgan Stanley in London.

Although the Suez Canal captured all of the increase in post-Panamax container ship traffic diverted to the East Coast from Asia during recent months of West Coast port congestion, the Panama Canal saw a big increase in the number of containers loaded aboard the Panamax ships on the 10 all-water services from Asia that use that route.

"We are not getting more ships, but what we have seen is more loaded containers," Panama Canal Administrator Jorge Quijano said. "Carriers are loading more containers on their ships to the East Coast, so we are benefitting from that because we charge on loaded containers as well as on the ship."

Spot rates from Asia to the U.S. East Coast reflect the sharp increase in demand for space on ships bound for the East Coast. Spot rates from Asia to the U.S. East Coast in mid-February before the Chinese New Year were almost double year-over year earlier as shippers sought alternate routes through the Suez and Panama Canals. Spot rates to the West Coast were up about 10 percent.

"What's shifting now is that the vessels are shifting through the Suez Canal, because almost all of them are 8,000 TEUS and above and some up to 14,000 TEUS are arriving at West Coast ports," Quijano said.

It is likely to take months to clear up the backlog of ships waiting to unload at West Coast ports now, so cargo diversions to the East Coast will probably continue for at least the first half of the year.

Quijano hopes to retain the increase in container volumes and boost its still further next year when the Panama Canal Authority opens the new set of locks under construction that will accommodate the post-Panamax ships that are now using the Suez Canal to travel from Asia to the East Coast.

"If this persists and we are able to open the new locks in the first quarter of next year, at the latest by April 1, then there could be a significant shift of post-Panamax vessels through here," Quijano said. "There's definitely going to be some shifting from the West Coast to the East Coast through the Panama Canal, which may become permanent."

The canal agency is proposing a new toll structure on container shipping that it wants to introduce in the second quarter of next year after the new lock open.

"We are taking more risk under the new toll structure to lure more liners to come over and maybe re-network around the Panama Canal." Quijano said.

The new structure rewards frequent container customers with premium prices once they reach a particular volume of 20-foot-equivalent units on ships transiting the canal.

"In our proposal, we are planning to lure not only the liners individually but the alliances as well by our loyalty program," he said. "If you are in an alliance, you will get credit for transits by the vessels in that string. If you are in an alliance where NYK has some part of the vessel and "K" Line has some part of the string as well, then if the alliance has two transits, each will get credit

for two transits. The more vessels in that alliance passing through the canal, the more each member carrier will benefit from the canal's new loyalty structure."

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Port News › Panama Canal News
Central America › Panama

Source URL: http://www.joc.com/port-news/panama-canal-news/panama-canal-aims-keep-volume-gains-fueled-west-coast-congestion_20150223.html

John McLaurin

From: Port of Oakland <portofoakland@public.govdelivery.com>
Sent: Tuesday, March 17, 2015 8:59 AM
To: John McLaurin
Subject: Press Release: Port of Oakland Cargo Volume Down 36.67% in February

PORT OF OAKLAND

PRESS RELEASE

FOR IMMEDIATE RELEASE

Port of Oakland cargo volume down 36.67% in February

After-effect of U.S. West Coast contract dispute; recovery from backlog moving ahead

Oakland, Calif. – March 17, 2015 – February cargo volume at the Port of Oakland declined 36.67 percent from last year, the Port said today. But it added that the cargo backlog that caused the decline is on its way out.

"Cargo is moving and the backlog is shrinking," said Maritime Director John Driscoll. "With capacity again available in our marine terminals, volumes should begin building soon."

The Port said containerized import volume dropped 39% in February from the same period last year. Exports were down 34%.

Similar results are expected at most other major West Coast ports when results are announced this week. That's the after-effect of a nine-month waterfront contract dispute that constricted cargo movement from Seattle to San Diego. Labor and management reached tentative agreement on a new pact Feb. 20. It awaits union ratification.

Analysts forecast an uptick in containerized West Coast trade volume as the cargo backlog disappears. In a sign that Oakland is recovering, the Port said today only three vessels were holding station in the Pacific Ocean just beyond the Golden Gate awaiting terminal berths. That's a significant drop from the 20 vessels awaiting berths in mid-February, the Port said.

A large part of the Oakland backlog resulted from severe congestion at Southern California ports. Late-arriving vessels from Los Angeles and Long Beach bunched up in Oakland, disrupting schedules and causing container yards to overflow. The Port said it has now cleared out much of the cargo backlog. Some lingering cargo delays are caused by ships still stranded in Southern California.

Import containers in Oakland are getting to customers faster the Port said, because terminals have room to operate. It added that terminal gate operations have improved, which reduces waiting time for harbor truckers. The Port warned of periodic volume spikes that could temporarily slow operations if Southern California's vessel backlog is cleared.

About the Port of Oakland:

The Port of Oakland oversees the Oakland seaport, Oakland International Airport, and 20 miles of waterfront. Together with its business partners, the Port supports more than 73,000 jobs in the region and nearly 827,000 jobs across the United States. Connect with the Port of Oakland and Oakland International Airport through Facebook, or with the Port on Twitter, YouTube, and at www.portofoakland.com.

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Port of LONG BEACH
The Green Port

News Release

Cargo Count Slides in February

Ongoing congestion caused 20 percent decline

March 17, 2015

Cargo terminals in February at the Port of Long Beach moved 20.1 percent fewer containers than the same month last year due to congestion issues faced by all West Coast seaports.

A total of 413,114 TEUs (twenty-foot equivalent units) of containerized cargo were moved through the Port in February. Imports were recorded at 204,462 TEUs, a 24.7 percent decrease. Exports fell 22.9 percent to 110,711 TEUs. Empty containers saw a decline of 3.9 percent to 97,941 TEUs. With imports exceeding exports, empty containers are sent overseas to be refilled with goods.

The congestion issues that worsened in February played the biggest role in the cargo declines, just as they did in January, which had seen an 18.8 percent drop from the same month last year. However, the outlook is more promising. By the end of February, a tentative new contract for dockworkers was announced, federal regulators granted permission for Long Beach and its neighbor the Port of Los Angeles to collaborate on congestion relief, and private chassis fleets in the region agreed to pool their resources.

Last year, against which 2015 is being compared, was the third-busiest year in port history with a total of 6.82 million TEUs.

With an ongoing $4 billion program to modernize its facilities, the Port of Long Beach continues to invest in long-term, environmentally sustainable growth.

For all the latest monthly cargo numbers, click here.

For more details on the cargo numbers, please visit www.polb.com/stats

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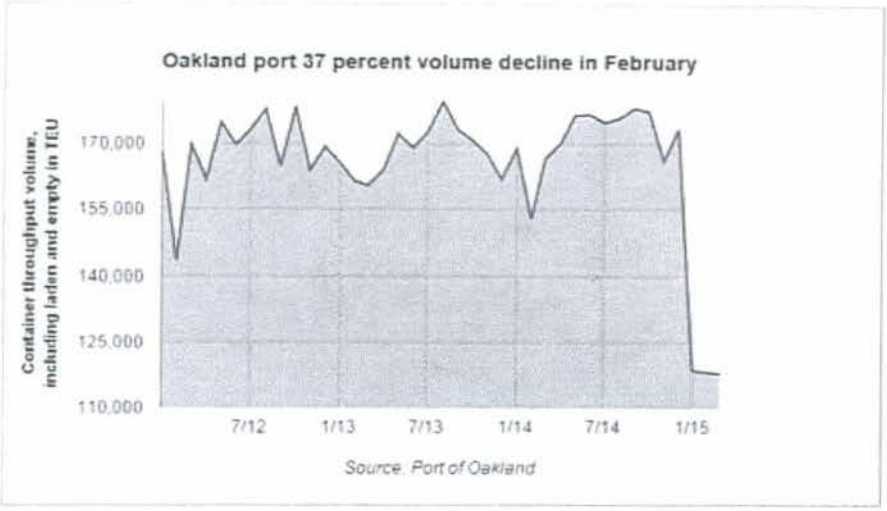
Published on *JOC.com* (http://www.joc.com)

Oakland port congestion receding after 37 percent volume decline

Bill Mongelluzzo, Senior Editor | Mar 17, 2015 1:41PM EDT

Container volume at the Port of Oakland plunged 36.7 percent in February due to terminal congestion, labor issues and cargo diversion, but the problems that caused the loss of cargo are slowly receding.



Oakland reported that containerized imports in February were down 39 percent from February 2014 and exports declined 34 percent. Cargo volumes are expected to gradually return to normal in the coming months because a tentative agreement was reached on Feb. 20 in the coastwide contract negotiations between the International Longshore and Warehouse Union and the Pacific Maritime Association.

"Cargo is moving and the backlog is shrinking," said John Driscoll, maritime director. "With capacity again available in our marine terminals, volumes should begin building soon."

West Coast ports for the past year have contended with congestion problems that originated with cargo spikes generated by the big ships now in use in the trans-Pacific trades. Chassis shortages and dislocations developed as shipping lines sold their chassis to equipment-leasing companies without a transition plan in place.

The main cause of the congestion and subsequent cargo diversion, however, was a decision by the ILWU in early November to reduce productivity during the protracted and

increasingly caustic coastwide contract negotiations. Oakland, for example, had a stellar reputation on the West Coast when it came to crane productivity. Employers over the years reported sustained container moves per crane, per hour, of 30 to 35, which was easily the best on the coast. The PMA reported that productivity beginning in November plunged to the low 20s. Despite documented evidence of poor productivity, the ILWU denied engaging in work slowdowns, pointing instead to the congestion problems that had surfaced in the summer of 2014 as the cause of the problem.

Employers reported that soon after the Feb. 20 tentative agreement, crane productivity jumped back up to the high 20s. Rather quickly, the container backlog that had plagued the Northern California port for the previous four months began to dissipate.

"Import containers in Oakland are getting to customers faster because terminals have room to operate," the port stated.

Terminal gate operations have improved and truckers are experiencing faster turn times. Only three vessels were at anchor outside of the Golden Gate Bridge on Tuesday, down from 20 in mid-February.

Oakland is not out of the woods yet, however. Vessels in the trans-Pacific have been thrown completely off schedule the past few months, and the Los Angeles-Long Beach port complex remains severely congested. The Marine Exchange of Southern California reported Tuesday that 26 containerships were at anchor outside the ports, two more than on Monday.

What happens in Southern California is important to Oakland because the normal vessel rotation in the Pacific Southwest services is Los Angeles-Long Beach inbound and Oakland outbound. Oakland reported there are still some lingering delays caused by the ships that are stranded in Southern California, and occasional spikes in vessel calls will continue in the coming weeks until the Southern California ports dig out of their backlog.

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Port News › US Ports › Port of Oakland
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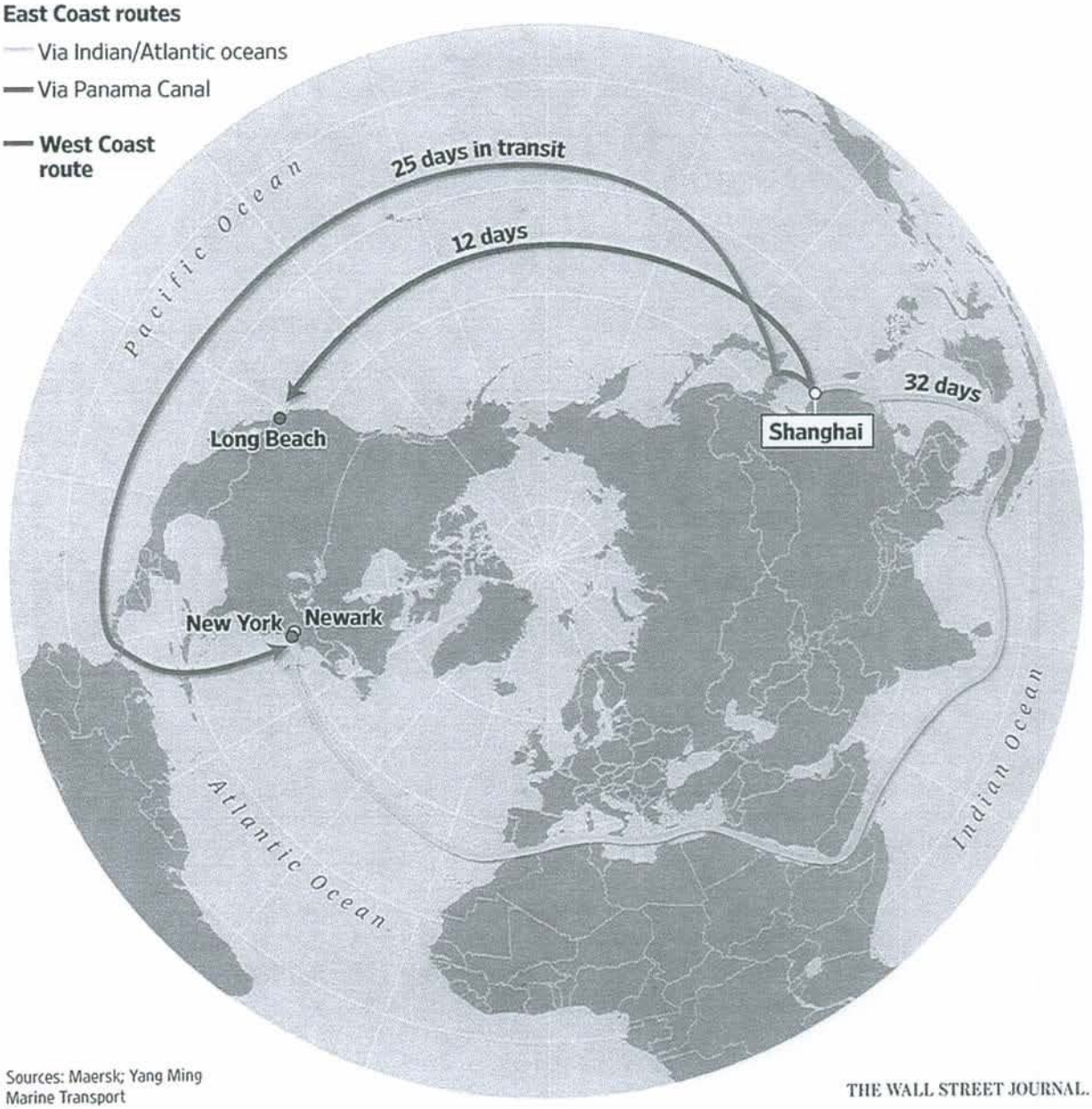
Source URL: http://www.joc.com/port-news/us-ports/port-oakland/oakland-port-congestion-receding-after-37-percent-volume-decline_20150317.html

Ports Gridlock Reshapes the Supply Chain

More cargo is being shifted away from congested West Coast trade routes

Rerouted

Companies have increasingly shifted cargo to East Coast ports to avoid congestion at West Coast ports, despite the longer trips.



Sources: Maersk; Yang Ming Marine Transport

By Laura Stevens and

March 5, 2015 10:01 a.m. ET

THE WALL STREET JOURNAL.

The labor dispute that caused months of gridlock at West Coast ports may be over, but the disruption is expected to redraw the trade routes that goods take to reach U.S. factories and store shelves.

About half of all U.S. cargo has flowed through the country's West Coast ports, including imports as diverse as sneakers, soy sauce and auto parts, most manufactured in Asia. But over the past year, supply-chain managers have increasingly shifted cargo to ports on the East Coast, Gulf Coast and in Western Mexico and Canada in attempts to avoid growing congestion resulting from labor talks between the International Longshore and Warehouse Union and the Pacific Maritime Association.

That trend has accelerated over the past several months, as ships lined up along the West Coast and port operations ground to a halt, according to shippers, supply-chain experts and port officials on both coasts.

This is bad news for West Coast ports, truckers and railroads already worried that the expansion of the Panama Canal, due for completion next year, would begin to divert more business to the East Coast. Already it is expected to take three to six months for West Coast ports to return to normal, while 29 ships were still anchored outside the ports of Los Angeles and Long Beach on Thursday.

"About a third of our cargo is purely discretionary," meaning it can be shifted to other ports, said Gene Seroka, executive director of the Port of Los Angeles. "Some of that cargo has moved to other port complexes. It's going to be extremely difficult to earn that business back." The port couldn't provide an estimate on the amount of diverted cargo, but imports fell 28% year-over-year in January.

Supply-chain flexibility has become increasingly important since the 2008 economic crash, as businesses have become more focused on keeping inventories lean and scheduling deliveries to arrive just as they are needed. Decisions are made on a day-to-day basis, with the most sophisticated shippers tracking progress of their shipments via cloud-based technology.

The West Coast port chaos is just the latest event prompting shippers to both diversify transportation modes and ports. Hurricanes, a winter involving polar-vortex weather, or labor issues all can trigger severe product delays or even empty shelves, costing companies tens of millions of dollars.

The biggest shippers, including Wal-Mart Stores Inc., Home Depot Inc. and Target Corp. , have employed for years what is known in the industry as a four-corner strategy, in which networks are expanded to include warehouses at northern and southern ports on both coasts and the Gulf of Mexico. Now even smaller companies are diversifying.

A survey of 138 shippers last week by the Journal of Commerce showed that 65% said they planned to ship less cargo through the U.S. West Coast through 2016, with a similar percentage planning to permanently reroute some cargo.

The leasing of industrial real estate rose along the East Coast last year, including in Savannah, Ga., where vacancy rates fell to 5% in the fourth quarter, compared with 9% in 2013, according to Colliers International in Savannah. West Coast ports' volume growth evaporated, while East Coast ports reported gains. For example, volume fell 32% at the Port of Oakland in January, compared with a 15% gain at the Port of Virginia. Ocean carriers also experienced increased demand for space on ships bound for the East Coast, said a spokesman for Maersk Line, a unit of A.P. Møller Maersk A/S of Denmark.

Container ships docked at the Port of Los Angeles last month. It is expected to take three to six months for West Coast ports to return to normal after a labor dispute. *PHOTO: EUROPEAN PRESSPHOTO AGENCY*

Toy maker Hasbro Inc. switched its cargo to the East Coast over the past several months, shipping most containers of Transformers, My Little Pony and other toys via the Panama Canal to the Port of Savannah, instead of splitting cargo between the two coasts. Until the backlog is cleared, Hasbro said it would continue to do so, but the company declined to outline longer-term plans.

The longer route adds time and cost: It is roughly double the typical 14 days to Los Angeles from Asia. Still, Hasbro's profit margins rose last year, as the company squeezed out expenses elsewhere and learned to manage the longer route more smoothly. "The more we do it, the better we get at it," Hasbro Chief Executive Brian Goldner said in an interview.

Target has been using its massive network to reroute inventory, expedite shipments and preorder goods to avoid product shortages. After the backlog is cleared, the retailer will assess whether any permanent changes should be made. "When we get through it, we'll look at what worked," said Target's chief financial officer, John Mulligan . "There will be some learnings that come out of that."

Not every shipper will be able to diversify. Geography dictates which ports farmers use for their exports, for instance. Small businesses will be crimped by cost. And many will simply choose not to.

"Currently, the lowest-cost option is to go to the West Coast ports," said Yossi Sheffi, director of the MIT Center for Transportation & Logistics, at the Massachusetts Institute of Technology. "The supply-chain procurement managers are doing this on day-to-day price cost pressures. Why rock the boat?"

Published on *JOC.com* (http://www.joc.com)

Planned deployment of new Asia-East Coast services rattles West Coast ports

Bill Mongelluzzo, Senior Editor | Mar 19, 2015 6:22PM EDT

The announcement last week by carrier alliances that beginning in late March they will deploy three new all-water services from Asia to the East Coast through the Panama Canal was a dagger to the hearts of West Coast ports besieged by congestion and labor problems.

Still to be answered is the question, will the new services with small, inefficient Panamax vessels transition in 2016 into permanent services utilizing vessels with capacities of up to 12,000 20-foot container units through the enlarged Panama Canal? Or are these services a temporary move to avoid West Coast port congestion until the ports return to normal?

Opinions by industry experts vary as to the long-term impact of the disastrous 2014-15 contract negotiations between the International Longshore and Warehouse Union and the Pacific Maritime Association. Some observers, especially those on the East Coast, see the events of the past nine months as ushering in a second round of permanent cargo losses similar to the diversions that took place after the 2002 contract negotiations that ended in an employer lockout and a Taft-Hartley injunction.

"This was not a one-year event," said John Wheeler, vice president of carrier sales at the South Carolina State Ports Authority. Wheeler said about 10 percent of the cargo diversion that took place in 2002 ended up being permanent. He estimates that 15 percent of this year's loss of cargo at West Coast ports will be permanent. "This is going to be another watershed moment," he said.

Jon Slangerup, chief executive at the Port of Long Beach, said that after meeting with retailers and other beneficial cargo owners that ship through Southern California, he is convinced a wholesale shift of cargo to the East Coast "is not a sustainable move." The larger BCOs told him the extra expense of higher freight rates to the East Coast and backhauls to interior destinations is adding $2 million to their transportation costs, Slangerup said.

Paris-based Alphaliner announced last week that carrier alliances that include about a dozen trans-Pacific carriers will introduce three new services from Asia to the East Coast through the Panama Canal this spring. The services, all with vessels with capacities of less than 5,000 TEUs, will remain in operation at least through the 2015 peak-shipping

season this autumn. The services will add about 6 percent capacity to the Asia to East Coast trade lane, Alphaliner said.

If there had been no West Coast labor issues, carriers would not have even considered launching these services. Carriers since 2013 have been cutting back on their Panama Canal services because, as Maersk Line CEO Soren Skou told the JOC's TPM conference in Long Beach that year, carriers could not make money utilizing Panamax vessels on long routes. According to Alphaliner, an 8,000 TEU vessel, compared to a Panamax ship, has a 47 percent lower slot cost, and a 13,000-TEU vessel has a 60 lower slot cost than a 4,800-TEU Panamax vessel..

Therefore, initiation of three additional Panama Canal services with these smaller ships, "Could be a message of times to come," said Gene Seroka, executive director of the Port of Los Angeles. It certainly lets West Coast ports, terminal operators and longshore labor know that carriers and BCOs are unhappy with the treatment they have experienced in recent months and the West Coast transportation industry must earn back their trust, Seroka said.

A major factor that BCOs will consider in planning their cargo routing in the months ahead will be where freight rates are headed. At present, there is so much demand for vessel space to the East Coast that carriers are able to earn a profit on their Panama Canal services. The current spot rate for shipping a 40-foot container from Shanghai to the East Coast is $4,659, compared to spot rates of about $3,200 last year, according to the Shanghai Container Freight Rate Index. The rates had actually spiked at $5,049 per FEU in February.

By contrast, the SCFI spot rate from Hong Kong to Los Angeles last week was $1,835. Even with the addition of an intermodal rail charge of $2,000 to the East Coast, all-in costs on the all-water services are noticeably higher, and the all-water route adds an extra week to 10 days of inventory carrying cost to the shipment. For freight moving to key import hubs in the interior such as Chicago, Columbus, Kansas City and Dallas, the backhaul makes the East Coast routing much longer and more costly — in normal times.

However, as Adam Hall, senior director of international logistics at Dollar General told TPM 2015 earlier this month, diverting freight away from the West Coast became a matter of survival for retailers if they were going to get merchandise, especially seasonal merchandise, to their shelves on time. Despite the inherent advantages in the West Coast gateways in normal times, Hall said retailers are not married to any one port. "We will move back and forth if we have to," he said.

In other words, port reliability is an important factor in cargo routing, even more so today. Home-improvement stores and other retailers with spring merchandise, for example, encouraged carriers the past few months to increase capacity with so-called extra-loaders, or single-voyage sailings, to the East Coast. Wheeler said there have been at least 27 extra-loaders since the West Coast congestion problems began, and he expects others this spring. West Coast ports project that conditions will not return to normal until May, providing the ILWU membership in April votes to approve the tentative contract that was reached on Feb. 20.

At the same time, many BCOs this month are entering into service contract negotiations for the 2015-16 season that runs from May 1-April 30. If BCOs commit large volumes of cargo to the all-water services for the coming year, the new services will certainly continue through the peak-shipping season, if not beyond.

However, the current situation is fluid. If the West Coast ports indeed eliminate the backlog of vessels and on-terminal containers by May, they could see more large vessels coming their way. Seroka said carriers are scheduled to receive a number of large ships into their global fleets, most of which will go into the Asia-Europe trades, where they will bump vessels of about 14,000 TEUs into other trades. Carriers are indicating a number of those ships could be deployed to Los Angeles-Long Beach if the ports earn back their trust, he said.

Maersk Line spokesman Tim Simpson said he is seeing rapid improvement in Los Angeles, and he expects Maersk's three Southern California services to be back to normal in the next several weeks. When carrier rotations and port operations on the West Coast are back to normal, carriers and BCOs will look closer at the economics of their operations, including unit costs, fuel burn, transit times and freight rates. "This is a price game," he said.

That is why it is so important that the Southern California ports continue to address productivity issues that will still be in play after the current congestion problems are resolved. The ports, along with the three major chassis providers, on May 2 initiated a neutral, or gray chassis pool, and equipment availability is already noticeably improved, Seroka said. The ports are also rolling out a free-flow program for delivering containers to higher-volume importers, and importers and their truckers are reporting improved efficiencies, Seoka said.

Slangerup added that improvements can be seen week-to-week now, with terminals turning ships in three to four days compared to four to five days last week. Additional skilled yard crane operators are exiting the training programs each week, and truck turn times are improving, he added.

Yet these improvements will not be enough if the ports fail to win back the trust of BCOs through consistently reliable performance, Slangerup said. "We betrayed that trust," he said, and the ports must win it back. "That's where our focus is," he said.

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$500 million Oakland logistics center takes trucks off roads, adds rail cars

Rail workers install railroad tracks on the old Oakland Army Base property as part of a new rail yard consisting of 16 new parallel tracks stretching 4,000 feet off Maritime Street in Oakland, Calif., Friday, Feb. 11, 2015. Laura A. Oda — Bay Area News Group

By Doug Oakley, Bay Area News Group

Posted: 03/04/15, 5:14 PM PST |

0 Comments

Over 320,000 square feet of warehouses have been demolished and crews continue to level and grade the grounds to prepare to build new warehouses on the old Oakland Army Base property as part of a new rail yard off Maritime Street in Oakland, Calif., Friday, Feb. 11, 2015. Laura A. Oda — Bay Area News Group

OAKLAND >> With hopes of reducing truck traffic on local highways, making shipping more efficient and creating jobs, a massive $500 million redevelopment project is taking shape at the Port of Oakland.

Building begins this year on the publicly and privately financed project managed by the city of Oakland to replace a 330-acre U.S. Army base closed in 1993. Crews already have demolished 320,000 square feet of warehouses.

Cleaning toxic waste left by the military and stabilizing soil for earthquakes is ongoing.

Once the Oakland Global Trade & Logistics Center is finished, the port can use more trains to haul cargo and do more freight packing and unpacking on site rather than at locations outside the Bay Area. That, in turn, will reduce the number of cargo-carrying trucks heading out from the port along Interstates 80 and 880.

"Everything we eat and wear is delivered by truck," said Phil Tagami, president of California Capital & Investment Group, the primary developer chosen by the city of Oakland. "Our objective is to shorten truck trips and do it in an environmentally responsible way. If we get more cargo on rail, we can reduce roadway congestion and emissions."

Motorists driving south on Interstate 880 just past the Grand Avenue exit can see some of the work begun last year, including a new $100 million rail yard with 16 parallel tracks stretching 4,000 feet. The rail yard will allow more trains to come to the port and increase the amount of cargo coming in and going out.

Transforming the former base is a monumental process.

"We've had 140 public meetings over three years, received 137 permits and approvals, and we're under the purview of 22 regulatory agencies," Tagami said. "The master plan is 1,700 pages in three volumes. This project is definitely not for the faint at heart."

Tagami will start construction of a 34-acre bulk shipping terminal this year, where unpackaged commodities such as logs, steel, grain and potash will be loaded and unloaded from ships.

Next year, new warehouses will start going up, allowing shippers to consolidate and break down shipments on site and load them on trains in the new rail yard.

Currently, much of the packing and unpacking of loads is done off site, in places like Stockton or Reno. By doing it at the port, Tagami's group estimates 112,000 truck trips will be cut from local freeways each year.

"The warehouses will allow shippers to consolidate and deconsolidate cargo in a number of hours," said Port of Oakland Maritime Projects Administrator Mark Erickson. "Shippers are always looking for ways to cut costs out of the supply chain, so we expect this to be very well received. Our goal is to balance the 85 percent of port traffic that comes by trucks by increasing rail trips."

When the entire logistics center is finished in 2020, volume at the port is expected to increase by about 200,000 containers a year, a 9 percent increase over 2014.

The new rail yard will make more room for trains to easily come and go, increasing the port's capacity from 17-car trains to 200-car trains.

The whole project is expected to create 1,800 permanent jobs and 1,500 construction jobs. It also will bring the city of Oakland about $2 million a year in rents.

A second phase on land controlled by the Port of Oakland, where more warehouses will be built, has not yet broken ground. The port is negotiating exclusively with Tagami's team for that part of the project as well, Tagami said.

While job estimates at the port have changed over the last few years, the city has been closely monitoring a hard-fought local rule that requires 50 percent of construction jobs to go to Oakland residents. Last year, a contractor in charge of tearing down warehouses was kicked off the job for not hiring enough local labor.

"It's one of the biggest developments Oakland is going to have in our lifetime," said Kate O'Hara, executive director of East Bay Alliance for a Sustainable Economy, who fought for the local hire job rule. "It's a public investment on public property."

So far, the project has generated 694 construction jobs where the city of Oakland is building warehouses and 427 on the rail yard project, which is under control of the port. While the city is meeting its local hiring obligations, the port is not subject to it, but has managed to hire 27 percent from Oakland and the remainder from local areas, including cities in Alameda and Contra Costa counties.

Also part of the project is a 379,610-square-foot indoor recycling facility. The city is negotiating with California Waste Solutions to run that facility and hopes to sign a deal to sell the land to the company by July 2016, said Doug Cole, project manager for the city of Oakland.

The timeline for finishing the logistics center was accelerated a bit because development on one large parcel had to be shelved due to an overwhelming amount of toxic waste under the surface. On that piece of land, crews found an entire building buried in the dirt.

"The question is more like, 'What didn't we find there?'€‰" Tagami said. "It's basically an Army debris field."

By abandoning immediate development of that parcel, the city was able to focus on other areas, said Cole.

"When we found that buried building — we call it Building 99 — we went back to the City Council in November and asked to put that area on hold," Cole said. "That way we can redistribute our money to different areas, so we can meet our goals by 2019 and 2020."

The amount of demolition and recycling that has been completed is staggering. For example, 800,000 board feet of lumber was saved; 25,000 tons of concrete and asphalt were taken to grinding facilities to be reused on road projects; 383 tons of metal were recycled and another 1,650 tons of construction materials were recycled.

Cole said that without a $242 million infusion from the state, the project never would have gotten off the ground.

"There would have been no way the city could do this project alone," Cole said. "So there will be some big changes out there that otherwise would not have happened. It will put the old Oakland Army Base into productive use that will benefit the local and regional economy. Otherwise, it would have just sat there for who knows how long."

Federal Maritime Commission Chairman: U.S. must invest in port infrastructure

Federal Maritime Commission Chairman Mario Cordero says congestion at the ports will continue to be a problem until the nation invests in long-term maritime infrastructure. Brittany Murray — Staff Photographer

By Karen Robes Meeks, Long Beach Press Telegram

Posted: 03/19/15, 5:06 PM PDT |

LONG BEACH >> Congestion that has slowed goods movement to a crawl at U.S. ports such as Los Angeles and Long Beach will continue to be an ongoing issue for years, until the nation invests in long-term maritime infrastructure, the chairman of the Federal Maritime Commission said Thursday.

At the 2015 Legal Ports Conference in Long Beach, Mario Cordero said the issue of congestion was not brought on by any one event, not even the recent labor talks between West Coast dockworkers and their employers. Rather, it has been the result of a new, ever growing model for how cargo is being delivered.

"Congestion has been a problem long before labor negotiations ... and will continue to be a challenge," Cordero said.

He spoke of the growing number of megaships being ordered by the world's top ocean carriers. Ships have been getting larger since the 1970s, when the industry began using standard container sizes that could carry more cargo. It has evolved from vessels ferrying 2,000 container units to ships carrying 10,000 to 13,000 units that regularly call at the ports of Los Angeles and Long Beach, the nation's two busiest seaports handling about 40 percent of U.S. imports.

Now the world's largest shipping line, Maersk, is in talks to order up to 10 ships, each with the capacity to carry 20,000 container units, while Japanese carrier MOL earlier this month confirmed orders for ships ferrying 20,150 units.

"Clearly the world is preparing for increased trade," he said.

This increased influx of cargo arriving all at once has led to about two dozen container ships stranded at sea off Long Beach daily, waiting to unload at the ports; long truck lines; clogged terminals; and, weekslong delays in shipments, prompting customers to divert their goods to other ports or ship them by air.

Port officials have been working on solutions to pare down the backlog.

"It's going to take some time, but when that's done, I'm very hopeful that not just the West Coast, but our country, will rise up and step up to the plate to continue to be a leader in competing in this area of international trade."

But to do that, funding the nation's maritime-related infrastructure, such as dredging and bridge building, is needed to accommodate the bigger ships, Cordero said.

An estimated $78 billion of President Barack Obama's $478 billion, six-year surface transportation reauthorization proposal has been slated for infrastructure related to the port/freight network, the FMC chairman said.

Meanwhile, the rest of world is investing an estimated $2 trillion in the next six to eight years in port-related projects, with 60 percent of that investment coming from Asia, Cordero said.

"Compare that to what we're doing here, we've got a lot of work to do," he said.

Contact Karen Robes Meeks at 562-714-2088.

After Labor Deal, Western Ports Turn to Long-Term Challenges

BY KEELEY WEBSTER
MAR 19, 2015 1:46pm ET

LOS ANGELES — Ports on the West Coast are recovering from the cargo backup that developed during a recent labor dispute and are turning their attention to long-term strategic threats from ports in other regions.

The tentative labor agreement was reached Feb. 21 between the Pacific Maritime Association, which represents management, and the 20,000-member International Longshore and Warehouse Union on a five-year contract. The agreement still must be approved by ILWU members, a process anticipated to take until mid-April, according to Phillip Sanfield, a Port of Los Angeles spokesman.

The ILWU represents workers at 29 ports, including some of the nation's busiest container ports in Los Angeles, Long Beach, Calif., Oakland, Calif., Tacoma, Wash. and Seattle.

The agreement came after several months of work slowdowns by dockworkers, and weekend lockouts by the terminal operators, creating large backlogs of cargo and ships.

The long-term economic impact of the protracted labor dispute remains to be seen given the risk that temporary measures to divert cargo to ports in Canada, Mexico and the East Coast could become permanent, said Jock O'Connell, international trade advisor for Beacon Economics.

"What shippers are likely to do in the short run is redirect to ports on the Eastern seaboard and to the Gulf Coast," O'Connell said. "Whether they want to diversify into the Gulf and East Coast ports in the long term will depend on fundamental factors."

Ongoing work to widen the Panama Canal is expected to entice shippers to use larger vessels to move containers through the canal to the East Coast as an alternative to offloading the ships on the West Coast and moving the cargo overland.

For now, labor peace means the ports' capital and borrowing plans remain on track.

"The labor battle accelerated a slide in market share for the ports of Los Angeles and Long Beach, and was endangering their plans to issue bonds to finance $5 billion in improvements," Miller Tabak Asset Management, LLC wrote in a March 3 report that cites PMA data.

"The two largest U.S. ports by container volume, with $2.1 billion in bonds, planned to issue a combined $315 million this year. If labor slowdowns and bottlenecks continued to send cargo elsewhere, they would have had to scale back their capital projects – and with that, their borrowing," the report said.

The Port of Long Beach and the Port of Seattle both have plans to issue bonds. Fresh off a September issuance, the Port of Los Angeles tentatively has a refunding planned, but the decision isn't impacted by the protracted labor negotiations, according to Marla Bleavins, the port's chief financial officer.

The Port of Long Beach is seeking approval on March 23 from its board to issue $230 million in revenue bonds. Of that, $150 million would be new money and up to $80 million would refund 2005 bonds, according to Betsy Christie, the port's finance director.

The proceeds would be used to fund the port's Middle Harbor terminal development project and several rail projects.

While the January and February cargo numbers were low, Christie said, they are expecting a rebound in March and April.

The Port of Los Angeles only tentatively plans to refund bonds this year, but that is because it priced $337 million on Sept. 3 and 4 and doesn't need to price a new money issuance this year, Bleavins said.

The September sale comprised $45 million of new money and the remainder was a refunding. The projects are typically funded by lease revenues. The port tends to issue commercial paper and then uses long-term debt to take that out, Bleavins said.

One of the refundings completed in September involved taking out $220 million in commercial paper, so Bleavins said that, even though it was classified as a refunding, it was more like new money.

The port could push this year's refunding out to next year, but that is because some of the bonds it intends to refund are not callable until 2016, Bleavins said. It might result in lower issuance costs to head to market once to refund bonds callable this year and next year, she said.

For January and February, twenty-foot equivalent units are down 20% on a year-over-year basis, Bleavins said. Revenues are up slightly, less than 1% for the same period, but down 4% based on what had been budgeted, she said.

The Los Angeles port doesn't anticipate needing to issue new money long-term debt for the next few years, even though its capital projects budget for fiscal 2015 is $280 million, Bleavins said.

"Our strategy is to use cash, revenue and commercial paper and then take out short-term debt with long-term financing," she said.

The West Coast's third largest port heads to market on March 24; The Port of Seattle plans to price $155.1 million of limited tax general obligation and refunding bonds in a competitive sale.

The new Port of Seattle bonds will be backed by property taxes, as opposed to port revenues; they received ratings of Aa1, AAA, and AAA from Moody's Investors Service, Fitch and Standard and Poor's, respectively.

Even before the protracted labor negotiations caused problems, the West Coast ports were losing market share, according to the MTAM report.

The facilities handled 43.5% of U.S. imports in 2013, down from 48.6% five years earlier, according to PMA data cited in the report.

Miller Tabak said the firm is "monitoring the long-term situation with the planned expansion of the Panama Canal and the potential for East Coast ports to be more viable as a result."

MTAM said it "views the resolution and five-year labor agreement as removing a potentially negative development for port credits, as recent slowdowns and cargo diversions at many west coast ports have underscored the importance of stable working conditions and a dependable schedule for shippers."

With the expectation that it will take months to clear the backlog and for operations to return to normal levels, Fitch Ratings "expects to see some negative impact to fiscal 2015 throughput levels even while national GDP is trending positive."

The double-A rated ports are among the highest rated by Fitch in the sector, analysts wrote.

"In Fitch's view, the leading west coast ports are collectively critical to maritime trade and their strong market position protects them sufficiently to be relatively resilient to the interruptions from a financial/credit perspective in the near to medium term," Emma Griffith and Seth Lehman wrote in the Feb. 24 report.

In a recent report, UCLA Anderson Forecast Economist Jerry Nickelsburg wrote that the short term impact of the port's labor issues is assumed to be relatively small.

He wrote that shippers, manufacturers and retailers will consider the costs and risks of moving supply chains away from the West Coast ports after 2016 when the widened Panama Canal is open, but that it is not clear that they will.

"The Panama Canal is congested at present and increased shipments through the canal to East and Gulf Coast ports will add considerable time to the journey," Nickelsburg wrote. "Similarly, diversion through the Suez Canal is more costly in transit time. The non-U.S. West Coast ports are small and congested and while they can take some additional cargo from U.S. West Coast ports, their capacity is limited."

From the shippers' point of view, Nickelsburg writes, these additional costs have to be balanced against the risk of future port labor unrest.

It has always been more cost-effective to bring products through the West Coast ports and transport them east by rail or truck to the Midwest, O'Connell said.

The fact that the Long Beach and Los Angeles ports have handled 40% of all inbound containerized traffic to the U.S. doesn't suggest an easy fix, he said. Moving that traffic would just ship congestion elsewhere, O'Connell said, noting that East Coast ports to which shippers recently diverted also experienced congestion.

"They do face competition, and it's not just Panama," O'Connell said. "They also face intense competition from Canadians, who have done a lot of work developing their ports."

What California has is the lack of inclement weather. Blizzards have resulted in East Coast port closures while hurricanes have impacted Gulf of Mexico ports.

Nevertheless, Philip Sanfield, a Los Angeles port spokesman, said there is always concern that shippers using east coast ports will not come back.

"That is why Gene [Seroka, the port's CEO], is in Washington D.C., and why he has been in Europe," Sanfield said. "The industry has never been more competitive than it is today."

When there are opportunities for other ports to take advantage of "what we believe is a temporary situation, there is concern."

What tempers concerns of Canadian competition and that East Coast ports are widening their terminals in anticipation of Panama opening is the fact that the deep water twin ports of Southern California can service ships large enough to haul 13,000 containers.

"We intend to work with the stakeholders," Sanfield said. "We are addressing the concerns day-by-day and month-by-month."

Giant ships in West Coast ports' future

By Pete Carey pcarey@mercurynews.com
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With a bitter battle over a dockworkers' contract tentatively resolved, West Coast ports and their terminal operators are back dealing with an even bigger challenge -- the mega-ship.

Bulked up like weightlifters on steroids, the new container vessels have set off a competitive scramble by the ports, which are dredging new channels, buying equipment and planning vast additions to warehouse space to accommodate the mega-ships, with the price tag for improvements running into billions of dollars.

"There are monsters out there, and unless we learn how to deal with these monsters, we're going to lose business and tremendously affect the economies of the ports and the regions around them," said Jock O'Connell, international trade adviser for Beacon Economics.

The megaship MSC Sola waits to be off loaded at berth 25 at the Ports of America at the Port of Oakland in Oakland, Calif., on Wednesday, Feb. 25, 2015.

Staying competitive with ports elsewhere is crucial for this region's economy. The West Coast ports handled 43.5 percent of U.S. containerized imports in 2013, down from 50 percent in 2002, according to the Pacific Maritime Association. The good news is that the recovering economy has increased the flow of goods across the Pacific as retail sales bounce back in the U.S.

For ocean carriers, building bigger ships is a matter of economics: The larger vessels are, the lower the cost of moving a container. The trend began as the industry recovered from the recession, which had hammered revenue and profits. Experts say the message from the shipping lines to the ports is this: Get ready for us or we'll find a port that is.

West Coast ports returned their attention to mega-ships after a nine-month labor dispute that bogged down the flow of cargo, sending some shippers to ports on the Gulf and East Coast and forcing some importers to air express shipments. Although they're working through a two- to four-month backlog of cargo, the ports are wooing importers to return. The West Coast is still the fastest route to the inland U.S., and Los Angeles boasts a big local market of 13 million people.

To prepare for the big ships, berths at the Port of Oakland have been dredged to a depth of 50 feet. Cranes have been raised by terminal operators to reach over taller, wider loads. Railroads that operate out of the port have increased their capacity to deliver imported products across the U.S. A $1 billion project for new warehouses and a facility to ready imported goods for domestic shipment is planned on port property and the old Oakland Army Base.

The new warehouses will be a selling point the port can use to convince shippers to unload more of their cargo in Oakland rather than Long Beach and Los Angeles, said Chris Lytle, the port's executive director. "We think it's a great advantage for shippers," he said.

The ports of Los Angeles and Long Beach are each spending $1 million or more a day on ambitious plans to get ready for all but the biggest of the mega-ships. Long Beach plans to spend $4 billion over 10 years on improvements.

"The challenge for Los Angeles and Long Beach and the terminals around the country is adjusting to this new reality, these larger ships," said Phillip Sanfield, spokesman for the Port of Los Angeles.

The terminals were built to handle smaller ships, he said. Although the port has dredged deeper channels and raised its cranes, "the logistics of the terminals are a work in progress."

In the past, shipments at the port might peak a couple times a year, said Noel Hacegaba, chief commercial officer at the Port of Long Beach. "Now, it's happening every time one of these big vessels arrives." Also, he said, unloading cargo has become more complex as alliances of ocean carriers pool their loads on a single mega-ship. The port has 4,000 vessel calls a year, with about two mega-ships a week, a frequency that is expected to increase in the coming years.

"The emergence of the big ships, the mega-vessels, comes down to simple economics," said Hacegaba. "Ocean carriers will continue to invest in larger and larger ships in years ahead to reduce cost per container and to reduce costs to customers. It's good for them and their customers, but the terminals and the ports where these big vessels call have to make drastic changes to be able to accommodate the surge in volume."

Container ships have grown from those capable of carrying 8,500 20-foot-long containers in the early 2000s to one on the drawing boards today expected to haul almost 24,000 containers. Anything exceeding 10,000 containers is considered a mega-ship. Regardless of the vessel's size, shippers want them unloaded quickly, so they can return to Asia for more cargo. And they just keep growing in the number of containers they can carry.

The 1,191-foot-long MSC Sola, which berthed at the Port of Oakland this week, was one of the largest when it was built in 2008. It is just 14 feet short of the maximum length the port's berths can handle.

Able to carry 11,660 containers, MSC Sola has since been outstripped by newer vessels, including the recently launched 1,300-foot MSC Oscar. The Oscar can carry 19,224 20-foot-long containers, and will, like the largest of the mega-ships, ply the route from Asia to Europe trade via the Suez Canal.

But as vessels grow ever larger, the Oscar conceivably could be diverted to the Asia-Pacific routes served by California ports, O'Connell said.

"It's not going to be tomorrow," said O'Connell, adding half-seriously, "but in the fullness of time, which in the maritime industry seems to be about a year and a half."

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Cargo Business News
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Drewry: LA/Long Beach Q4 Delays Cost Carriers $150 Million

Shipping lines collectively lost around $150 million in the fourth quarter of 2014 due to U.S. West Coast congestion, according to Drewry Maritime Research. In the most recent issue of Container Insight, researchers note that carriers experienced various levels of disruption from the port labor dispute, and attempted to quantify the losses by examining available data.

According to the report, APL is the only carrier that provided a set figure representing the extra costs it accrued due to U.S. West Coast congestion in Q4, although it is vague about the details. NOL/APL said that the port delays added $15 million to the company's liner division core EBIT loss in the last three months of 2014.

To quantify the extra costs, Drewry mined data from the Marine Exchange of Southern California. They found the average vessel turnaround time at LA/LB during 4Q14 was 126 hours, or 5.25 days, meaning the average ship turnaround time had doubled since August.

Around 55 percent of all containerships calling at LA/LB in Q4 of 2014 were turned around in 5 days or fewer, while 13 percent of ships stayed for 10 days or more. The 10,000-TEU CSCL East China Sea had the longest stay, waiting a whopping 32 days to depart after its arrival on 21 December. Inevitably, ships that were anchored ended up with the longest turnaround times. Out of the 51 ships that were resident for 10 days or more, 45 had been anchored outside port.

APL was actually one of the least affected by quarter, but if that same ship belonged to OOCL it would have taken just over 8 days. The researchers said nine of the ten carriers (Horizon Lines was the exception) with the fastest implied Q4 turnaround time had some form of interest in a terminal within the LA/LB complex.

Drewry says more carriers should come up with actual numbers to quantify their extra outlay due to West Coast delays, since greater transparency would increase their chances of recovering the extra costs from their customers. "They are clearly hurting, but the failed blanket $1,000 surcharge at the end of last year was self-defeating as it looked like an ill-thought out revenue generating scheme."

Even though USWC port labor contract has seemingly been resolved, Drewry asserts that carriers will continue to accrue costs through the first quarter of

vessel anchorage and long delays, the researchers note, while OOCL, CSCL, NYK and Hanjin took more than their fair share of the pain.

In terms of turnaround times, APL also came out on top, with OOCL coming in last. Drewry reckons it would have taken just under four days to turn around a 6,086-TEU APL ship in the fourth 2015 at least. The number of ships anchored outside LA/LB was worse in the first two months of 2015 so the cost to the industry will be larger than the fourth quarter bill. The analysts conclude that carriers should be more open with the associated costs, especially as many customers will think the issue has now been resolved.