

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
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June 25, 2009

MINUTES
May 28, 2009

OPEN MEETING

A. Call to Order and Roll Call

All board members were present. BTH Deputy GC Gabor Morocz was present as delegate for Secretary Bonner. Also present: Executive Director Capt. Moloney; Port Agent Capt. McIsaac; Attorneys Dennis Eagan (from AG), Anita Scuri (DCA – acting as the Board’s government counsel) and Raymond Paetzold (maritime counsel); Auditors John Lewis, Vance Cable and Tim Jones. Commissioner also noted the presence of former BTH Deputy Secretary for Goods Movement, John Hummer, now with the U.S. Maritime Administration.

B. Request Approval of Minutes

Approval of the April 23, 2009 regular Board meeting Minutes, including announcements of any Board actions taken in the Closed Session meeting at the conclusion of the April 23, 2009, regular Board meeting in accordance with the Open Meeting Act.

Approval of the minutes was deferred until the next meeting. Board President Miller stated that no Board action was taken during the Closed Session at the conclusion of the April 23, 2009 meeting.

C. President’s Report

Commissioner Miller reported that he had participated in a panel discussion of several of the investigations of the COSCO BUSAN incident. The event was one item on the two-day agenda of the Spring Meeting of the National Academies of Science maritime transportation safety subcommittee which was held on May 11 and 12 in Long Beach. The group includes members representing shippers, ship manufacturers, pilots, academics, and port authorities. The other participants were representatives of the NTSB and the US Coast Guard. Commissioner Miller reported that there was substantial interest among members of the audience and that there were some spirited exchanges between panelists, members of the subcommittee, and the audience. A notable aspect of the three investigations was that they all came to similar conclusions concerning the cause of the accident.

Commissioner Miller announced that the Commission had filed with the Governor’s office through BTH a Significant Issue Report (SIR) concerning the final report of the NTSB on the COSCO BUSAN accident. Separately, the Commission received permission from the Governor’s

Office to deliver to the Joint Legislative Budget Committee a report on Commission activities post-COSCO BUSAN as required in the 2008-2009 Budget Act. Both documents are available to the public.

Finally, Commissioner Miller noted that all members of the Commission and staff who are required to file FPPC Form 700 are required to take a state ethics course. Commission staff will make available information to Commissioners and others to assist them in complying with this requirement.

D. Comments from Secretary, Business, Transportation and Housing Agency - Secretary Bonner

There were none.

E. Correspondence/Activities since the April 2009 Meeting - Executive Director Moloney

Capt. Gugg to pilot boat, CHP letter re admin beginning 7/1; two Girardo letters; SFBP request for PPU training cost reimbursement; the SIR.

F. Other Pilot Matters- Executive Director Moloney

Nothing to Report.

G. Port Agent's Report - SFBP Captain Peter McIsaac:

Not Fit For Duty (NFFD):

Captain Welch has been unavailable for assignment since Nov 12th as per BOPC physician. He is scheduled for another evaluation June 13th.

Captain Larwood had arm surgery on April 1st and is expected to be NFFD until August 1st. He is currently working in the ops office.

Captain Haggerty was NFFD from April 4th through May 13th.

Captain Lemke was NFFD from April 24th through May 27th after injuring his elbow climbing a pilot ladder.

New Build- The Pilot Vessel Drake expected delivery has been delayed about 7 weeks until August 28th due to American Bureau of Shipping and shipyard issues.

Recommended Minimum Rest Period Exceptions: there were 15 over four non consecutive days during the month of April. The shortest rest period was 8.3 hours and the average was 10.4. Board pilots ranged from 20 to 22.

This data may change slightly after a quality assurance review by our relief dispatcher. As reported last month one of our dispatchers passed away and we are still in the process of training his replacement.

Billed Vessel Moves in April 2009 compared to a 3 year average

Bar Crossings: -3.2%

Bay Moves: -21.9%

River Moves: -13.1%

Total Moves: -7.4%

GRT: 25.239M -4.3%

Compared to the first 4 months of 2008 total moves were down 5.9% and GRT was down 5%

Board discussed downward trend in ship movements, consistent with the general economic slow down, and the brief increase in passenger vessel traffic due to swine flu (diverted from Mexico).

H. Unfinished Business

1. Board Office Lease - Executive Director Moloney – no new developments.
2. Open Incidents - Executive Director Moloney
M/V CAPE BRASILIA, possible grounding Pinole Shoal Channel; December 19, 2008; Pilot Ed Melvin, SFBP.

This matter was heard at the end of the Board meeting. After discussion and public comment, the Board adopted interim guideline for the informal hearing process under newly mandated reporting procedures (without the swearing of witnesses). The Ad Hoc Committee to Review Investigation Procedures will review those guidelines in publicly noticed meetings before the Board proceeds with formal rulemaking and adopts them as regulations.

The Incident Review Committee presented its report and responded to the Board's questions.

On the morning of 19 December 2008, Capt Melvin boarded the tanker M/V CAPE BRASILIA at Rodeo Terminal Berth 3. The job was to pilot the vessel to Anchorage 9. The vessel was moored port side to and was deeply loaded to 36.3 feet fore and aft.

Prior to leaving the pilot office Capt Melvin reviewed tide and current predictions and the latest Army Corps of Engineer's (ACoE) soundings for Pinole Shoal Channel, which were a little over a month old. He planned what speeds would be possible to obtain maximum rudder control, while keeping adequate underkeel clearance.

Capt Melvin arrived on the bridge of the CAPE BRASILIA at about 0235. He familiarized himself with the bridge layout, pilot card and vessel particulars. During the master/pilot conference he and Capt Roviltis determined that the vessel's draft was 36.3 feet on an even keel. They discussed the slow transit that would be required to ensure adequate underkeel clearance.

Two tugs would be used for undocking. The *Resolute* put up a line on the starboard bow, and the *Goliah* put up a line to the centerline chock on the stern. *Goliah* would be the escort tug for the transit. Both are powerful Z-drive tractor tugs.

As Capt Melvin checked in with Vessel Traffic Service (VTS) he was advised that another, lighter, tanker was downbound for sea in the vicinity of the UPRR Bridge. Relaying through VTS, Capt Melvin and the other pilot agreed to let the other vessel proceed first, since this would allow extra time for the flood tide to allow greater underkeel clearance. The undocking proceeded uneventfully and Capt Melvin held the vessel close to the berth using the tugs until the other vessel passed clear, then the *Resolute* was released.

The transit was made very slowly using a dead slow ahead order. Once the vessel entered Pinole Shoal Channel it was making about 4.1 knots over the ground, against a 0.8 knot current. As the vessel approached marker 15 to enter the channel at about 0410 the height of tide was 4.6'. The controlling depth of the channel is 34.4' (per operations pilot), giving 39.0 feet of water. The vessel was drawing 36.3 feet leaving a static underkeel clearance of 2.7'.

The SFBP consider the underkeel to be from the static mode. The San Francisco Harbor Safety Plan states the following:

The following are guidelines for underkeel clearance of tank vessels:

b. Tank vessels under way east of the Golden Gate Bridge:

Two feet (2) As the vessel approached markers 11 and 12, Capt Melvin had the speed increased to half ahead to improve maneuvering characteristics for the 21° turn to port. The speed increased to slightly over 6 knots over ground (in deep water the speed would have been 10 knots).

After the vessel completed the turn Capt Melvin looked back to the range markers and observed that the vessel was slightly to the north of centerline of the channel. He was standing on the port side of the bridge at the time. The channel heading is 238°T so he had the helmsman steer 237°T. The flood current in that leg of the channel was fine on the starboard bow.

At 0444 by using the radar heading flasher, visual parallel indexing and ranging the channel lights Capt Melvin observed the vessel to be slightly left of centerline. At 0445 he had the helmsman steer 238°T. To assist the helmsman in changing course he left the engine at half ahead. A minute later he observed that the vessel was on the proper heading but was still moving to the left side of the channel. He ordered right ten degrees rudder, with no apparent effect. He increased to right twenty degrees rudder, followed by hard right, but the vessel did not respond.

At 0447 the vessel's speed began to drop. There was still no response to the rudder. At 0450 the vessel stopped. Capt Melvin could see that buoys 10 and 8 were open (not in line) which indicated the vessel was still in the channel. The Chief Mate's 0445 position showed the vessel in the channel, confirming Capt Melvin's observation of the track. Capt Rovitis had been monitoring the fathometer during the transit and reported 0.8 meter under the keel.

In an effort to get the vessel moving, the bow thruster was used, the engine run at different speeds, shifting the rudder. The tug was directed to pull the stern to port to bring the bow toward the channel. The situation was reported to VTS and the Port Agent. The bow began to swing to port so Capt Melvin had the escort tug shift to the port bow and push on it. After several more maneuver attempts Capt Melvin decided the vessel was aground at the stern.

About a half hour after grounding, and just before high water the vessel began moving and the transit was resumed. A USCG boarding team arrived to give breathalyzer tests; the Port Agent and BoPC Executive Director boarded in the vicinity of Angel Island. The transit was uneventful and the vessel anchored in Anchorage 9 at 0840 and was boarded by a representative from Office of Oil Spill Prevention and Response and another USCG investigation team. The vessel was inspected by a diver and found to be undamaged and was allowed to proceed.

The Operations Pilot requested the ACoE do an emergency survey to determine the accurate depth of the channel. The survey was accomplished that day and generated a chart that showed shoaling, particularly on the south side of the channel. In an area about 800 feet long from grid marks 252-262 the soundings show depths as low as 33.4 feet. The project depth of the channel is 35 feet and the SFBP uses 34.4 feet as the controlling depth. The 33.4 foot area had been a foot and a half deeper in the survey Capt Melvin had used in planning his transit made only six weeks before the grounding.

Pilot, Captain Ed Melvin, provided a summary of the events and details of the in-channel grounding and also responded to the Board's questions. He and the vessel's master had agreed on the draft (which was different than what had been written on the pilot card) and on

proceeding with the anticipated under keel clearance which exceeded Harbor Safety Plan guidelines but was less than 15% of the ship's draft. Post-grounding surveys by the Corps of Engineers showed areas of shoaling in the channel and at the channel's edge that had not been there on the last available survey, some six weeks earlier.

After both parties completed their presentation, the Board went into closed session with its government counsel to deliberate. Upon completing its deliberation, the Board unanimously concluded that no pilot error had been established in this incident. The Board returned to Open meeting and announced the results of its deliberation. The Board directed staff to prepare a letter to the Harbor Safety Committee with a copy to the Army Corps of Engineers to inform them of this incident and note that it highlights the importance of making current information on soundings in channels subject to shoaling available to mariners.

3. Vessel Interactions -- Executive Director Moloney
M/V XIN NING BO vessel interaction with *M/V BONASIA* at Oakland 65, February 7, 2009.

The IRC requested an extension until the next Board meeting to report on its investigation of this matter as well as a related matter involving the same vessel and pilot occurring later in the same voyage. It was moved and seconded to grant the requested extension. There was no public comment and the motion was approved.

4. Pilot Ladder Reportable Incidents - Executive Director Moloney – there were no pilot ladder incidents to report.

5. Non-incidents - Executive Director Moloney –
Status of Coast Guard investigation into sea buoy allision, December 30, 2008.

Coast Guard Senior Investigating Officer Ross Wheatly reported that the Coast Guard had completed its investigation and had recovered its costs to replace the buoy from the vessel. No pilot was on board. This matter is closed.

6. Rules and Regulations Committee - Commissioner Wainwright –

Commissioner Wainwright distributed an Updated Legislative and Rulemaking Report, a copy of which is available from the Board. He summarized the status of various rulemaking initiatives detailed in the report.

He reported on the rulemaking training provided by DCA Legal Office and attended by Board staff and counsel for the board.

The rulemaking to adopt regulations regarding Portable Pilot Units is on hold pending appointment of an industry member to fill the vacancy created when Commissioner Soares completed his term.

Commissioner Wainwright provided a detailed report on the proposed clean-up legislation outlined in the agenda. A copy of the full report is available in the Board office. After discussion and opportunity for public comment it was moved and seconded to direct Board staff to seek clean-up legislation as detailed in the report.

7. Finance Committee – Commissioner Osen - Nothing to report.

8. Pilot Training Curriculum Committee – Commissioner Roberts

Commissioner Roberts reported that he had just completed the current training provided at MITAGS, noting that the recent changes made to the training curriculum in response to the Board's request were "outstanding." The contract for the next training cycle has been signed and is in Sacramento.

9. Pilot Evaluation Committee - Captain Nyborg

The Pilot Evaluation Committee met on May 20th, 2009. All seven of the trainees were interviewed individually, their trip cards examined, and their progress in all elements of Title 7, Section 214 of the Harbors and Navigation Code monitored.

The trainee's time in program range from 1 month to 2 years. All trainees are progressing satisfactorily. One individual appears very close to completion.

Two new trainees are to start on June 1st. Capts. Peerey and Kellerman were given a thorough orientation by Capt. Gates. Capt. McCloy gave them a thorough briefing on safety issues and equipment. Both men are very enthusiastic to begin their new position as trainees.

Capt. Lemke and Gates have put outstanding effort into developing a time line benchmark spreadsheet that trainees will fill out and provide at each PEC meeting. This spreadsheet tracks trip numbers, average scores, and Coast Guard exam completion dates and compares their progress with where we expect them to be, based on the performance of past trainees. With this spreadsheet, each trainee can follow their own progress and be constantly aware of their standing.

Commissioner Tate requested and was assured that applicants and trainees would be informed in advance of any benchmark timeline adopted by the PEC.

ONE-YEAR EVALUATION:

Title 7, Section 214f states: "The board may dismiss a pilot trainee from the training program at any time during the first year of the training program without cause." It is PEC's responsibility to assess the trainee's ability to successfully complete the training program within 3 years. It is this committee's intention to develop program benchmarks that will determine a trainee's ability to be successful before the one-year window expires.

PMI TRAIN THE ASSESSOR COURSE:

Capt. Larwood and Lemke attended the PMI Train the Assessor course in Seattle. The intention was to evaluate the course that was being administered to the Southeast Alaska Pilots Association. They flew to Seattle and spent 2 days at the school. Both pilots had favorable reports.

It was recommended that the Board go forward with developing the PMI course for BOPC's specific needs. This would involve combining the two courses into one day. Permitting a PMI director access to a PEC meeting to familiarize himself with our method of assessing the performance of a trainee, reviewing and modifying the proposal sent by PMI.

The simulator exam creation is proceeding ahead of schedule. Several members of PEC attended another session at CMA for an evaluating run of the simulator with one member who hadn't seen it yet.

The roadmap for the entry exam process brings to mind two issues that need the attention of

the Board

1. Completion of the COMIRA contract so that we can proceed with creating more written exam questions.
2. Creation of the security agreement that is required to be signed with all persons involved with making the exam.

Executive Director Moloney reported that the Security Agreement has been prepared and provided to the PEC and that the COMIRA contract remains in the contracting phase.

Each of the items were discussed by the Board. No Board action was required at this time and none was taken.

10. Pilot Power Committee - Commissioner Roberts - Nothing to report.

11. Pension Committee - Commissioners Tate/Miller

Commissioner Miller reported that a renewal of the contract for the annual audit of the pension plan receipts and disbursements was in progress; that a draft report of the actuary study had been made available and that representatives of PMSA and SFBP had met with the actuary to discuss the draft report.

Commissioner Tate said that the request of retired Inland Pilot Reeder was being reviewed.

12. Ad Hoc Committee on Pilot Safety – Commissioner Miller - Nothing to Report

13. Pilot Vessel Advisory Committee – Commissioner Johnston/Port Agent

Port Agent reported that the delivery date of the new station boat has been delayed to August 27 due to ABS and yard issues.

Commissioner Johnston's report:

The pilot vessel advisory committee met on April 27, 2009.

The committee discussed the SFPB's request for preliminary authorization for construction of the new station boat and for a necessity determination and preliminary authorization for load line modifications and strengthening the apron at Pier 9 to accommodate the new station boat.

The committee received and considered oral and written presentations from SFPB on each of these items, along with supporting documentation and breakdown of projected expenses, which are in the board's files.

The committee also received and considered a letter from PMSA dated April 23, 2009 indicating no opposition to SFPB's request with regard to the construction of the station boat and the load line modifications, but objecting to the use of the surcharge to reimburse the SFPB for its costs to modify the dock apron to accommodate the additional station boat.

The committee reviewed documentation of the board's previous inclusion of this type of cost item in the last station boat project in 1999 and the board's rulemaking file for Section 236.1. It noted that the question of whether such dock improvement costs should be covered by the surcharge was addressed during rulemaking but was left unresolved. The committee believes that the item should be recoverable as a necessary part of the acquisition of the new station

boat.

A copy of PMSA's letter and a letter dated April 30, 2009 from board counsel to PMSA and to SFBP on this issue have been provided to the board and are available in the board files and to the public.

Following discussion, the committee unanimously recommended and it was moved and seconded as follows:

1. With regard to construction of the station boat:

That the Board issue a preliminary authorization pursuant to Section 236.1(e) of the board's regulations in the projected amount of \$7,418,641 for the construction of the new station boat as set forth in SFBP's request dated November 13, 2008.

Mike Jacob, VP for PMSA, who was in the audience, stated that PMSA did not object to the motion. After discussion the motion passed.

2. With regard to the load line modifications:

That the board issue a necessity determination and a preliminary authorization pursuant to Section 236.1(d) and (e) of the board's regulations for load line modifications to meet ABS requirements in the projected amount of \$58,590 as set forth in SFBP's request dated March 19, 2009.

Mike Jacob, VP for PMSA, who was in the audience, stated that PMSA did not object to the motion. After discussion the motion passed.

3. With regard to the apron modifications:

That the board issue a necessity determination and a preliminary authorization pursuant to Section 236.1(d) and (e) of the board's regulations for the apron modifications in the projected amount of \$123,460 as set forth in the SFBP's request dated March 19, 2009.

Commissioner Johnston noted that a request for final authorization is necessary before adjusting the surcharge to recover these costs.

Mike Jacob, VP for PMSA, who was in the audience, renewed PMSA's objection for the reasons set forth in its letter to the motion. After lengthy debate and discussion, including the Board's past practice and the rulemaking process for Section 236.1 as detailed in the various correspondence identified in the report (copies of which are available in the Board files), two roll call votes were taken after an inconclusive voice vote. On the first roll call vote, the votes were:

Miller (Pass, followed by No), Johnston (Yes); Osen (No), Roberts (Yes), Tate (Abstain), Wainwright (Yes).

As Section 205 of the board's regulations require four affirmative votes, the matter did not pass.

After a request for a second roll call vote, the votes were: Miller (No), Johnston (Yes), Osen (No), Tate (Abstain), Wainwright (Yes).

As four votes were required, the motion did not pass.

14. UPRR Bridge - Executive Director Moloney - Nothing to report
15. Ad Hoc Advisory Committee on Pilot Selection - Commissioner Tate - Nothing to report
16. Navigation Technology Committee - Commissioner Johnston – Nothing to report
17. Pilot Identification Cards - Executive Director Moloney/Commissioner Osen
Status of obtaining a more substantial Pilot I.D. card. - No new developments.
18. Ad Hoc Committee to Review Investigation Procedures - Commissioner Osen
The next committee meeting will be scheduled some time in June prior to the next Board meeting.
19. Pilot Trainee Selection Process – Captain E. Nyborg

This matter was covered under the PEC report, item 9 above.

20. Pilot Fitness Committee – Commissioner Roberts

Commissioner Roberts provided the following report:

The Pilot Fitness Committee met on May 21, 2009 at the Board office.

The Committee revised its mission statement to add two more items to its list:

- (1) Risks associated with exposure to contagions while engaged in piloting duties; and
- (2) Costs associated with additional testing or evaluation required by a Board examining physician.

A copy of the revised Mission Statement was provided to the Board. It was moved and seconded to approve the revised Mission Statement. A copy is in the Board's files and will be posted on the Board website. After requesting public comment and discussion and receiving none, the motion was passed.

Commissioner Roberts further reported on the scope of work section of an Interagency Agreement with the UCSF Medical Center (or the proper entity for such work affiliated with that institution.)

A copy of the "Contractor - Scope of Work" document approved by the committee was provided to the Board for review and approval. (A copy is available from the Board office.)

Based on the Committee's recommendation, it was moved and seconded that the Board approve this scope of work language for insertion into an appropriate Interagency Agreement or other contract documents as necessary and to authorize the Board President and/or Executive Director to execute all necessary documents in order to commence the study set out in that scope of work as soon as practicable; and that the prospective contractor be required to provide to the Board or its committee within 30 days of the execution of the agreement a proposed work plan setting forth an itemized list of deliverables, timing of progress reports and progress payments.

Attorney Scuri advised that the latter provision would need to be included in the contract language. There was no further public comment or discussion and the motion passed.

Commissioner Roberts further reported that the Committee had reviewed and supports the recommendation of the Rules and Regulations Committee to recommend appropriate clean up legislation to add pilot trainees to the list of persons required to undergo annual physical examinations to determine whether they meet the fitness standards prescribed by the Board for pilots and inland pilots, and who must submit the list of prescribed medications required by Harbors and Navigation Code Section 1176, as amended in 2008 by SB 1217.

The Committee reviewed the recommendations of the NTSB and the US Coast Guard with respect to pilot fitness issues and will keep those items on the agenda. It recommends that the Board's President or Executive Director be authorized to send an appropriate letter to those agencies acknowledging receipt of their recommendations and the assignment to this committee to consider them and to develop recommendations to the Board for action.

This recommendation did not require Board action and the Board president noted that he would take it under advisement.

The Committee reviewed the current guidelines to Board examining physicians and to pilots to comply with Harbors and Navigation Code Section 1176 as amended. The Port Agent reported that he felt that the guidelines to the pilots are adequate. The Executive Director is contacting each of the physicians to ensure they are aware of the current standards and guidelines and to determine whether they have any questions that the Committee may be able to answer.

The Committee reviewed and discussed possible privacy issues. To ensure proper protection and treatment of personal health care information of pilots, inland pilots, pilot trainees and applicants to the training program, the Committee recommends that the Board consider adopting regulations that would limit the access to such records to medical professionals.

This recommendation will be forwarded to the Rules and Regulations Committee for consideration as the issue of the treatment of personal information, including medical records, is already before that committee and will require the advice of appropriate counsel on the interplay between various other statutes.

The next meeting of the Pilot Fitness Committee has been scheduled for July 21, 2009 at 9:00 a.m. at the Board office.

21. Proposal to amend Harbors and Navigation Code Section 1127(e) regarding minimum tonnage of private recreational vessels requiring a pilot - SFBP Captain Peter McIsaac.

Captain McIsaac stated that this matter could be taken off the Board's agenda.

22. Board Audit – update – Commissioner Miller stated that the audit is continuing.

I. New Business

1. See motion under item H.3. above.
2. M/V XIN NING BO, report of excessive speed in Regulated Navigation Area; February 7, 2009. This matter will be reported at the June Board meeting.

J. Public Comment on Matters not on the Agenda - There were none.

K. Proposals for Additions to Next Month's Agenda

Commissioner Wainwright requested that the Apron Expense item (under Item H.13 above) remain on the agenda for possible reconsideration.

CLOSED MEETING

Prior to going into a closed meeting, Board President Miller announced that the Board would go into a closed session to discuss the below item as authorized by the Open Meeting Act, Government Code Section 11126(e)(1) and would return to open session before recessing for lunch. After a lunch recess, the Board would take up the *CAPE BRASILA* grounding, reported under item (H.2. above):

1. Confer with the Board's legal counsel regarding pending litigation in *United States of America vs. M/V COSCO BUSAN*, et al., Case No. C 07 06045 (SC) and in the *People of the State of California (CalTrans) vs. Regal Stone, Ltd, et al.*, filed in Admiralty, Case No. 2268 EMC, pending in the United States District Court for the Northern District of California; in *Anderson, et al. v. Cota et al.*, Case No. CGC-08-483409 pending in San Francisco Superior Court; and in *Regal Stone v. People of the State of California*, Case No. 34-2008-00035818-CU-TT-GDS pending in the Superior Court for Sacramento, including cross-actions, counter-claims and related actions pending in federal and state court arising out of the same incident, as authorized by Government Code Section 11126(e)(1).

No Board action was taken during the Closed Session on pending litigation.

RESUME OPEN MEETING

L. Announcements

Announcement of any Board actions taken in closed session meeting in accordance with the Open Meetings Act. (Any such announcements will be repeated at the Board's June 2009 meeting.)

M. Adjournment - 3:00PM