

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

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BOARD OF PILOT COMMISSIONERS BOARD MEETING MINUTES October 25, 2012 9:30 a.m.

OPEN MEETING

1. Call to Order and Roll Call – President Miller

President Knute Michael Miller called the meeting to order at 9:33 a.m. Vice President RADM. Frank Johnston and Commissioners Capt. David Wainwright, Capt. Steve Roberts, Eric Osen, Capt. John Cronin, and RADM. Jack Brooks were present, constituting a quorum. Business, Transportation, and Housing Agency Acting Secretary Brian P. Kelly was represented by BTH Deputy General Counsel Gabor Morocz. Members of staff present were Executive Director Allen Garfinkle, Board Counsel Dennis Eagan, Staff Services Analyst Kelly Dolcini, and Office Technician Sigrid Hjelle. San Francisco Bar Pilots (SFBP) Acting Port Agent Capt. Peter McIsaac was also seated at the Commission table.

2. Request Approval of Minutes – President Miller

President Miller requested approval of the minutes of the September 27, 2012 Board meeting. Vice President Johnston moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Commissioner Wainwright seconded the motion, which passed unanimously on a voice vote, Commissioner Brooks abstaining.

3. Announcements – President Miller

There were no announcements

4. Board Member Activities – Board Members

Vice President Johnston reported that on October 11, 2012 he had attended the swearing in of the new president of California Maritime Academy, Rear Admiral Thomas A. Cropper. Following the ceremony, Vice President Johnston attended a lunch on the training ship T.S. Golden Bear, also attended by the United States Secretary of Transportation Ray LaHood and the Administrator of the Maritime Administration, David Matsuda.

Vice President Johnston was due to attend a ceremony in Stockton celebrating the commencement of the new “Marine Highway” joining central valley ports with the Port of Oakland on October 12, 2012, however it was cancelled due to a labor dispute.

He also reported that he attended a meeting of the Maritime Security Council on October 16, 2012, and the Pacific Transportation Association Annual Steamship Night on the same evening.

5. Executive Director’s Report – Executive Director

A) Correspondence and activities since the September 27, 2012 meeting.

Executive Director Garfinkle reported that on October 3, 2012, Board staff received a copy of a letter to Governor Brown from Pacific Merchant Shipping Association (PMSA) Vice President Mike Jacob submitting recommendations for dry cargo nominees to serve as the dry cargo Commissioner on the Board of Pilot Commissioners. The names put forward are Mr. Earl Agron, a maritime industry consultant, and John McLaurin, President of PMSA.

On October 3, 2012, staff received a copy of a letter to Commissioners Wainwright and Roberts from PMSA Vice President Mike Jacob containing comments in support of and seeking amendments to the draft pilot fitness regulations as amended on September 20, 2012.

On October 4, 2012, Board staff received a letter from San Francisco Bar Pilot Capt. Christopher Anderson requesting a disability pension commencing on January 1, 2013.

On October 11, 2012, Board staff received a notice that U.S. Coast Guard Sector San Francisco will be hosting a facility safety and security information sharing session on November 15, 2012.

Also on October 11, 2012, the Harbor Safety Committee adopted a recommendation from the Tug Work Group to amend the Harbor Safety Plan to include best practices for dead ship tows in the San Francisco Bay Area.

Also on October 11, 2012, Board staff received an agenda for the October 19, 2012 meeting of the California State Lands Commission to be held in Sacramento, California.

On October 17, 2012, Board staff received notice that the Court of Appeal issued an order staying the trial court order that required production of documents characterized as “pilot logs” from the San Francisco Bar Pilots (SFBP) Port Agent.

On October 19, 2012, Board staff received a copy of the petition filed with the Court of Appeal of the State of California for an immediate stay of the order for disclosure of records in the case of Pacific Merchant Shipping Association vs. the Board of Pilot Commissioners, and Capt. Bruce Horton in his capacity as Port Agent.

On October 19, 2012, Executive Director Garfinkle received a letter from Don Hermanson, Chief of Marine Facilities Division of the California State Lands Commission agreeing to a request from Board staff to join in a discussion of issues surrounding ship interaction along Bulls Head Channel, and designating Northern California Field Office Supervisor Chris Beckwith to serve as the point of contact for this project.

On October 23, 2012, Board staff received an email from USCG Commander Jason Tama detailing an event on the Bay in which the Bulk Carrier M/V SOPHIE OLDENDORFF drug anchor and carried "SC" buoy 400 yards off station.

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

Between the August and September Board meetings, staff renewed a license for Captain Holl.

Since the September Board meeting, staff has renewed licenses for Captains Boriolo, Kleess, and Dowdle.

C) Report on surcharges received by the Board

For the month of September, the Board received \$134,535.23 broken down as follows:

Board Operations Charge: \$42,900.23

Continuing Education Surcharge: \$64,575.00

Trainee Training Surcharge: \$27,060.00

D) Report on legislative activities and contractual matters.

Executive Director Garfinkle reported that the second hearing on Assembly Bill 2042 had been cancelled at the request of the author with no rescheduled date.

Senate Bill 1408 was enrolled and signed by Governor Brown on September 29, 2012 and adds Sections 1102, 1144, 1146, 1156.7, 1176.5, 1177.5, 1178.5, 1196.4, and 1196.5 to the Harbors and Navigation Code, and to amend Section 1808.1 of the Vehicle Code, relating to bar pilots.

Executive Director Garfinkle also reported that Board staff is currently working to initiate an inter-agency agreement with UCSF Medical Center for the market analysis of the pilot fitness regulations.

Board staff continues to work with the California Highway Patrol on an invitation for bids on a financial audit to audit the surcharges collected and disbursed during calendar years 2012, and 2013, which should be advertised by November 1, 2012.

Board staff is also beginning the contracting process to digitize historical Incident Review Committee (IRC) reports and begin preparation for the trainee applicant exam, which includes contracts with California Maritime Academy, retired pilot Capt. James Gates, and psychometricians.

6. Port Agent's Report – SFBP Acting Port Agent Capt. Peter McIsaac

A) Monthly report on SFBP ship piloting activity.

Capt. McIsaac reported that billed vessel moves in July, when compared to a three year average were as follows: 547 bar crossings (down 4.1%), 91 bay moves (down 7.1%), 28 river moves (up 29.2%), making total billed moves 661 (down 3.9%), with a gross registered tonnage (GRT) of 27,664,405 (up 3.2%). When compared to a three year average, bar crossings are down 9.1%, total moves are down 8.0% and gross registered tonnage is down 4.1%.

Capt. McIsaac reported that the SFBP had recently discovered that some recent updates to software had changed a billing code, which had the effect billing some river moves as bay moves. The agents affected have been contacted and re-billed. Internal procedures were adjusted to ensure that the software company is not able to change codes in the future. As a result of the glitch, the number of bay moves had been slightly over-reported while the number of river moves had been slightly under-reported during the months in question. The numbers submitted at the meeting had been audited and found to be accurate.

He also reported that the P/V DRAKE was out of service from September 24, 2012 through October 10, 2012 for its annual dry-docking. The P/V GOLDEN GATE was taken out of service on October 29, 2012 for its annual dry-docking. The P/V SAN FRANCISCO was taken out of service on October 15, 2012 to accomplish tonnage modifications, which were expected to be completed on October 25, 2012.

B) Monthly report on pilot availability and absences.

Capt. McIsaac reported that there was one minimum rest period (MRP) exception on September 7, 2012 with the pilot returning to duty after 11.9 hours of rest.

Four pilots were absent for medical reasons: Captain Hugo Kenyon was not fit for duty (NFFD) on August 29, 2012 with a non-work-related injury and was put on medical disability leave by Board staff on October 3, 2012. Captain Erik Fawcett was NFFD on September 29, 2012 with a non-work-related injury. Captain Chris Anderson was placed on medical disability leave on September 13, 2012 by Board staff, and Captain Tim Holl was NFFD on October 11, 2012 due to a non-work-related illness.

C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board.

The Board reviewed the confidential written report. After all Board members had had the opportunity to review the report, President Miller asked whether any member wished to go into closed session to discuss the report. There were no requests.

7. Pilot Evaluation Committee – Capt. Einar Nyborg

A) Report on August 22, 2012 Committee meeting

Captain Nyborg reported as follows:

The Pilot Evaluation Committee (PEC) met on September 26, 2012.

In closed session, all four trainees were interviewed individually. The current trainees include Captain's Carr, Johnson, Lingo and Favro. Their time in the program ranges from 12 to 21 months. All trainees have advanced to the final level of training.

Next month's PEC meeting is scheduled for November 14, 2012.

President Miller called for discussion by the Board and comments from the public. There were none.

B) Possible recommendation for a determination that a trainee has or trainees have completed the pilot trainee training program; Possible Board action.

There was no recommendation.

C) Possible Executive Director recommendation for the appointment of a new pilot or pilots; Possible Board action.

There was no recommendation.

8. Reported Safety Standard Violations and Investigations – Executive Director Garfinkle

There have been no safety standard violations since the last meeting.

9. Reportable Piloting Events – Executive Director Garfinkle

There have been no reportable piloting events since the last meeting.

Status report of the OVERSEAS TAMPA alleged near miss while departing Richmond Long Wharf Berth #2 on February 18, 2012. Request for an extension from the Board to present this report at the November 15, 2012 Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that the IRC was not prepared to present the report at today's meeting because the pilot's counsel was unavailable during the month of October due to a scheduling conflict. A meeting with the pilot and his counsel is scheduled for November 1, 2012. Commissioner Roberts moved to grant an extension to November 15, 2012. Commissioner Wainwright seconded the motion. President Miller called for discussion by the Board and comments by the public. Commissioner Osen commented on the lengthy time interval between the event and the interview and suggested that the Board impose a time limit on obtaining an interview with a pilot involved in an event. The Executive Director responded to the comment by explaining that the backlog of incident investigations and the complex issues raised by this particular event posed a challenge to the IRC and Board staff. It was advantageous to allow all the issues involved to be fleshed out prior to conducting the pilot interview so that it would not have to be repeated. After further discussion, a vote was taken on the motion and it passed unanimously on a voice vote, Vice President Johnston abstaining.

10. Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee had met jointly with the Pilot Fitness Committee on October 9, 2012. They are working through adaptations to the fitness regulations as required by the passage of Senate Bill 1408. The Committee will meet again on October 30, 2012 and November 8, 2012.

11. Finance Committee – Commissioner Cronin.

Commissioner Cronin reported that the Finance Committee had not met since the last Board meeting but would meet prior to the November Board meeting.

12. Pilot Fitness Committee – Commissioner Roberts

Commissioner Roberts reported that the Pilot Fitness Committee had met jointly with the Rules and Regulations Committee on October 9, 2012 but that he had nothing to add to the report presented by Commissioner Wainwright, who had reported on behalf of both Committees.

13. Low Sulfur Fuel – Executive Director Garfinkle

Executive Director Garfinkle reported that he had been provided with a report detailing loss of propulsion (LOP) incidents thus far in 2012 with the month of September showing five reported loss of propulsion incidents in California, one related to switching to low sulfur fuel and one suspected to be related to fuel switching. Capt. Jeff Cowen of the State of California's Department of Fish and Game, Office of Spill Prevention and Response, was asked if he would like to elaborate on the LOP incidents. Capt. Cowen noted that ships arriving in California for the first time have the highest incidence of LOP events.

14. Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright

Commissioner Wainwright reported that the Committee met on October 4, 2012. It was a very productive meeting but they have not worked through all of the issues sufficiently to present them to the Board at this time.

15. Continuing Education Committee – Commissioner Roberts

Commissioner Roberts reported that the Committee had not met since the last Board meeting but that the San Francisco Bar Pilots Professional Development Committee was engaged in researching manned-model training facilities worldwide and would be prepared to brief the Board on the facilities capabilities and relative strengths once the research is completed.

President Miller called for discussion by the Board and comments from the public. There were none.

16. Pilot Power Committee – Commissioner Roberts

Commissioner Roberts reported that the Pilot Power Committee had not met since the September Board meeting. He also reported that SFBP staff is collecting data required pursuant to Board regulation section 237(d) and would have a report for the Board in January, 2013. He also reported that the Committee expected to have the results of a new confidential retirement survey about the same time.

President Miller called for discussion by the Board and comments from the public. There were none.

17. Ad Hoc Committee on Blue Card Rates – Vice President Johnston

Vice President Johnston reported that the Ad Hoc Committee had not met and had experienced difficulty in identifying a date when all members could attend. Staff Analyst Dolcini reported that she recently had had additional responses from Committee members and that she would work with Vice President Johnston to identify an appropriate meeting date.

President Miller called for discussion by the Board and comments from the public. There were none.

18. Report of the Attorney General's Office – Board Counsel Eagan

Report on current litigation: Pacific Merchant Shipping Association vs. BOPC and Bruce Horton as Port Agent, Writ of Mandate. **The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code Section 11126(e)(i) of the Bagley-Keene Open Meeting Act.**

Board Counsel Dennis Eagan delivered an update on the lawsuit filed by the Pacific Merchant Shipping Association against the Board and the Port Agent under the California Public Records Act.

The lawsuit seeks an order requiring both the Board and the Port Agent to produce, for the years 2002 through 2011, documents that PMSA describes as “Pilot Logs.” In their responding papers filed with the superior court, both the Board and the Port Agent advised that they do not have such documents. The Port Agent further stated in his declaration filed with the court that the San Francisco Bar Pilots do maintain a dataset that includes some of the types of information that PMSA asserts are contained in the “Pilot Logs.” He further stated, however, that he does not use this information in the performance of his duties as Port Agent.

As reported at the last meeting, the superior court on September 18 concluded that the Port Agent was a “public official” under the California Public Records Act and that he used “Pilot Logs” in the performance of his duties. The court ordered the Port Agent to produce the requested Pilot Logs or submit a query to the San Francisco Bar Pilots database that would produce the data that PMSA asserts is in the “Pilot Logs.” The deadline for this document production by the Port Agent was October 18.

On October 15, the Board and the Port Agent filed a petition with the state Court of Appeal in San Francisco, asking the Court to review the trial court’s order and to relieve the Port Agent of the obligation to disclose the records, pending further order of the Court of Appeal. On the same day, the San Francisco Bar Pilots and Captain Bruce Horton, acting in his capacity as President of the Bar Pilots, filed a

petition asking for the same relief. On October 17, the Court of Appeal granted the two stay applications and established a briefing schedule. PMSA has until November 2 to file a brief in opposition to the petitions and the Board and the other petitioners have until November 16 to file reply briefs. Pending further order of the Court of Appeal, the Port Agent is relieved of the obligation to disclose any records in response to the superior court's order.

At the conclusion of Board Counsel Eagan's report, President Miller asked whether any Board member wished to go into closed session to discuss matters subject to the attorney-client privilege. There were no requests.

19. Report on and Discussion of Board staff response to NTSB Safety Recommendation M-11-19: "Ensure that local pilot oversight organizations effectively monitor and, through their rules and regulations, oversee the practices of their pilots to promote and ensure the highest level of safety." – Executive Director Garfinkle

Executive Director Garfinkle reported that the response was not complete and would be submitted at the next Board meeting.

20. Public Comment on Matters not on the Agenda

There were none.

21. Proposals for Additions to Next Month's Agenda

President Miller noted that SFBP will be electing a new Port Agent on November 7, 2012 and that the agenda should include an item for the Board to confirm the new Port Agent should be added to the agenda.

Commissioner Roberts inquired about committee make-up pending the end of several Board members' terms. President Miller advised that committees should be evaluated and re-organized once the new and renewed appointments are made. Appointments to the committees would be the prerogative of the new Board president.

22. Adjournment

There being no additional matters to be brought before the Board, it adjourned at 10:43 a.m.

Respectfully submitted,

Kelly Dolcini
Staff Services Analyst