

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

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Board of Pilot Commissioners  
Monthly Board Meeting  
October 27, 2011  
9:30 a.m.  
**MINUTES**

**OPEN MEETING****Call to Order and Roll Call – President Miller**

President Knute Michael Miller called the meeting to order at 9:37 a.m. Commissioners Steve Roberts, David Wainwright, John Brooks, and Eric Osen were present, constituting a quorum. The Business, Transportation and Housing Agency was represented by Deputy General Counsel Gabor Morocz who participated by telephone from Sacramento. Members of staff present were Executive Director Garfinkle, Deputy Attorney General Dennis Eagan, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini. Acting Port Agent Peter McIsaac also was seated at the Commission table.

**2) Approval of Minutes – President Miller**

President Miller requested approval of the minutes of the September 22, 2011 Board meeting. Commissioner Roberts 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.

**3) Announcements – President Miller**

President Miller announced that Board Vice President Frank Johnston was still on medical leave but hoped to return to his Board duties in time for the November Board meeting.

President Miller then recognized and welcomed Ms. Sarah H. Weaver, Senior Consultant on the staff of the Joint Legislative Sunset Review Committee, who was in the audience.

Also, President Miller announced that Office Technician Kelly Dolcini had reported to him that all Commissioners have completed the required ethics training and provided her with the required certificates. President Miller thanked his colleagues for their timely attention to the statutory requirement.

#### **4) Board Member Activities – Board Members**

President Miller announced that he had, at his own expense, attended a National Transportation Safety Board meeting in Washington, DC on September 27 and that he would report further later in the meeting.

President Miller announced that he had, at his own expense, journeyed to Sacramento and on October 14 met with senior executives at Business, Transportation, and Housing (BTH) Agency. President Miller stated that he had discussed with BTH staff an array of issues with which the Board presently is dealing.

President Miller then reported that he and Executive Director Garfinkle had, on October 18, met at USCG Sector San Francisco Headquarters on Yerba Buena Island with Captain of the Port Cynthia L. Stowe and her senior staff. Capt. Stowe had requested the meeting in order to learn more about the Board of Pilot Commissioners, our organization, our mission, our activities, and our staff. After a very productive meeting, President Miller and Executive Director Garfinkle were given a tour of the USCG Vessel Traffic Service facility housed at Yerba Buena Island.

Commissioner Roberts reported that on October 26 he and Pilot Fitness Committee member Brigadier General Chet Ward, M.D. attended a sleep and circadian rhythms seminar presented by the University of California, Berkeley. After the seminar Commissioner Roberts and General Ward spoke directly with the presenters who manifested interest in learning more about fatigue issues affecting pilots. Commissioner Roberts believes that the U.C. Berkeley Golden Bear Sleep and Mood Research Clinic may be a good resource for the Board as it continues to consider pilot fatigue and rest period issues.

There were no other reports

#### **5) Executive Director's Report – Executive Director Garfinkle**

A) Correspondence and activities since the September 22, 2011 meeting.

On September 26, 2011 we received word that the Governor signed AB 1025 into law. On October 6, 2011, we received a copy of a PMSA membership advisory (tab 5, 1st item) advising their membership, among other things, to assist in the investigation being conducted by the Board of Pilot Commissioners of charges levied by the SFBP not authorized by existing pilot tariffs. The advisory acknowledges that a charge that does not comport with the current rate may be mistakenly invoiced and to work with SFBP to rectify any such billing errors.

On October 6, 2011 we received correspondence from the Department of Personnel Administration that notified the Board that we would pay a portion of the litigation costs of ongoing legal representation on all the remaining furlough litigation. The costs will be split among 85 departments to insure that the cost is minimized and shared equally throughout the state.

On October 13, 2011 at the Harbor Safety Committee, it was announced that there will be a presentation at California Maritime Academy on Monday, November 14, 2011 on Marine

Diesel Engine Efficiency Enhancement and Green House Gas Abatement. Among the subjects to be discussed is "nano-second pulsed power transient plasma ignition" which could significantly enhance diesel engine efficiency and drastically reduce harmful greenhouse gas emissions. There are flyers on the table for those interested in attending.

On October 26, 2011 we received notification from Assembly Member Alyson Huber, that she welcomes our participation in the sunset review of the Board of Pilot Commissioners. She included a self-evaluation report and asked that it be returned to the Committee by January 1, 2012.

As a final note, sadly we received word that retired SFBP Capt. Donald Grant passed away October 9, 2011. Capt. Grant has been retired since 1981.

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

In September, Board staff renewed licenses for Captains Boriolo, Burger, Holl and Merritt.

Thus far in October, staff renewed licenses for Captains Dowdle and Kleess.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected September surcharges totaling \$223,648.76 broken down as follows: Board Operations surcharge \$105,114.76, Pilot Continuing Education surcharges of \$79,275.00, and Trainee Training surcharges of \$39,259.00.

D) Report on legislative activities and contractual matters.

There were no legislative activities to report.

Staff Services Analyst Brian Vu reported on the following contracts:

San Francisco Bar Pilots (SFBP) contract – the California Highway Patrol (CHP) form 78 (Agreement Request) and scope of work has been sent to CHP. The scope of work had recently been amended to update cost information.

CHP – an interagency agreement has been initiated with CHP for administrative and miscellaneous services. It has a time frame of three years and the cost is as yet unknown. The Board's CHP contracting staff is discussing cost with management, as costs have risen since the inception of the previous contract.

Fiduciary – The Board's contract with Ghirado CPA is set to expire on March 31, 2012. Board staff has initiated the contractual process for a Request for Proposals, small business option.

**6) Port Agent's Report – Captain Pete McIsaac, Acting Port Agent for Captain Bruce Horton**

A) Monthly confidential written report on pilots absent for medical reasons (AFMR) presented to Board.

Captain McIsaac reported that Captain Morgan Hoburg suffered injury from a fall off the pilot ladder on June 14, 2011 while disembarking a vessel. He was found not fit for duty on June 22, 2011 by a BOPC designated physician.

Captain Tony Coppo has been AFMR since October 5, with non-work related injuries. He is working as the Operations Pilot.

All Commissioners were provided with copies of the Port Agent's confidential written report of pilots who have been absent for medical reasons. After the Board had had the opportunity to read the report, President Miller inquired whether any member wished to go into closed session to discuss the contents of the confidential report. There were no requests.

B) Recommended Minimum Rest Period (MRP) Exceptions:

There were 19 MRP's in September. The majority occurred on September 11, 20, and 21. The average exception was 10.2 hours while the shortest was eight hours.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in September 2011 compared to the three-year average were as follows: Bar crossings up 5.4% (590), bay moves down 17.5% (89), river moves up 44% (29), total moves up 2.9% (708) and gross registered tons (GRT) up 8.1% (29,566,510.00) When compared to September 2010, bar crossings are up 8.5%, total moves are up 8.4% and GRT up 11.5%.

The Pilot Vessel CALIFORNIA was out of service September 28 and September 29 for unplanned maintenance. There was a starboard main engine propulsion control issue. There was faulty wiring leading to the main engine computer.

The Pilot Vessel CALIFORNIA was out of service October 12 and October 13 for unplanned maintenance. The port tail shaft seal was repaired, spare seal installed and landing ring faced.

The Pilot Vessel CALIFORNIA was out of service half of September 19 for unplanned maintenance. The starboard main engine keel cooler was retorqued.

The Pilot Vessel GOLDEN GATE was out of service September 3 to September 9 for planned maintenance and yearly dry-docking.

Captain Horton piloted the USS CARL VINSON in and out of San Francisco Bay during Fleet Week. He did not carry a PPU due to having to fly to/from the aircraft carrier via helicopter.

## **7) Pilot Evaluation Committee – Captain Pete McIsaac for Captain Einar Nyborg**

The Pilot Evaluation Committee met on October 19, 2011. In closed session, all six trainees were interviewed individually. The current trainees include: Carr, Johnson, Manes, and Stultz, Lingo and Favro. All trainees are progressing well at this time. The PEC estimated that two pilots will complete the trainee training program and be ready for licensing in six months, two more in nine months, and the two new trainees in 18 months.

Next PEC meeting is scheduled for November 16, 2011.

## **8) Reported Safety Standard Violations and Investigations – Executive Director Garfinkle**

There were no safety standard violations reported since the last meeting.

## **9) Reportable Piloting Events – Executive Director Garfinkle**

Executive Director Garfinkle briefed the Board on the status of the investigations, presenting the Board with a timeline of events for each ongoing incident.

Executive Director Garfinkle reported that the ship interaction between the M/V CHAMPION PIONEER and the M/V SAMOTLOR would be ready for IRC presentation at the November Board meeting. The November meeting day would be the 112nd day since the incident, permissible due to a previously granted Board extension.

Executive Director Garfinkle reported that the allision involving the TUG MARSHALL FOSS with the USS POINT DEFIANCE would also be ready for the IRC presentation on the November Board meeting. The November meeting day would be the 70<sup>th</sup> day since the incident, and within the 90 day limit.

Executive Director Garfinkle reported that a kayaker lost his life in the wake of TUG REVOLUTION while docking the M/T PARTAWATI on October 23, 2011. The investigation process has already been initiated.

## **10) Rules and Regulations Committee – Commissioner Wainwright**

Commissioner Wainwright reported that the Rules and Regulations Committee had met with the Pilot Fitness Committee on October 4, 2011 and October 20, 2011. The Committee worked on drafting regulations and made progress on the agenda. The next meeting is scheduled for November 3, 2011.

**11) Finance Committee – Executive Director Garfinkle**

The next meeting is scheduled for November 4, 2011 at 9:30.

**12) Pilot Fitness Committee – Commissioner Roberts**

There was no report.

**13) Low Sulfur Fuel – Executive Director Garfinkle**

Executive Director Garfinkle reported that there were five losses of propulsion in September. Zero resulted in an IRC investigation. He reminded the Board that the UCSG looks into each and every one of these cases.

**14) Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright**

There was no report.

**15) Continuing Education Committee – Commissioner Roberts**

There was no report.

**16) Pilot Power Committee – Commissioner Roberts**

Commissioner Roberts reported that there are currently 56 pilots. The Board is authorized to license 60. The PEC reported that two trainees could near completion of the program in as little as six months, two in nine months and the final two in 18 months. As a result, there would be a projected forecast of 60 pilots by fall 2012 or early 2013.

**17) Ad Hoc Committee on Blue Card rates – Executive Director Garfinkle**

A) Report on October 11 and October 25, 2011 meetings of the Ad Hoc Committee on Blue card Rates.

President Miller reported that, because Vice President Johnston has been on medical leave for several weeks, President Miller had appointed himself as Acting Chairman of the Ad Hoc Committee until Vice President Johnston can return to his Board responsibilities.

President Miller reported that the Ad Hoc Committee met on October 11 and continues to work on developing “plain English” definitions of the movement and task charges authorized in the Harbors and Navigation Code. Once the Committee has completed these definitions it will move on to other items on the Committee agenda.

President Miller also reported that he had cancelled the October 25 meeting because SFBP Captain Rick Hurt was unable to attend. Captain Hurt has done extensive research into the development and application of Blue Card rates and President Miller thought that his presence and participation in Ad Hoc Committee meetings would be beneficial to the Committee's deliberations.

B) Review, discuss and possibly refine Committee's mission and agenda with a focus on agenda items #4 and #5, which are as follows:

4. Review San Francisco Bar Pilot's (SFBP) application of Blue Card rates to standard and non-standard situations, including other negotiated rates not covered by existing Blue Card structure.

5. Review of other jurisdiction statutes on rates not specifically addressed by schedules and possible recommendation for the addition of such language in our authorizing statutes.

President Miller explained that he had included agenda items #4 and #5 in his charge to the Ad Hoc Committee because issues had risen in recent months regarding SFBP billings involving standard and non-standard services provided by SFBP, and because there is no explicit authorization in the Harbors and Navigation Code for negotiated charges where the services provided are not addressed. Other states address this situation but California's statute does not. President Miller stated his view that the Board should become familiar with these issues and accordingly requested the Ad Hoc Committee to consider them and make recommendations to the Board for its consideration. President Miller went on to state that the Ad Hoc Committee would not consider either agenda items until it had received the report of the Board Counsel and Executive Director with respect to their investigation of the CMA CGM NORMA billing dispute.

Commissioner Osen expressed his concern that he perceived that the Committee's growth in scope was a justification of what he deemed improper charges.

PMSA Vice-President Jacob stated that the audit remained on the agenda, however, it was put off until the Committee had gone through the process.

The Board discussed the two agenda items, and agenda item #8 (calling for an audit of all SFBP invoices issued during the last three years) consideration of which has been explicitly deferred by the Ad Hoc Committee. The Board did not take action to revise the agenda.

#### **18) Report of the Attorney General's Office – Board Counsel Eagan**

There was no report.



**19) Review and discussion of items to be included on pending Financial Integrity and State Manager's Accountability Act of 1983 (FISMA) report due to the Department of Finance by December 31, 2011 – Executive Director Garfinkle**

Executive Director Garfinkle stated that the Board had to submit a FISMA report, due to the Department of Finance by December 31, 2011. He explained that the FISMA required each state agency to maintain effective systems of internal accounting and administrative control, to evaluate the effectiveness of these controls on an ongoing basis and to biennially review and prepare a report on the adequacy of the agency's systems of internal accounting and administrative control. December 31 2011 is the Department of Finance's deadline, however, because Business, Transportation, and Housing needs time to review the Board's FISMA report, it should be submitted to Agency by December 1, 2011.

**Agenda items 20 and 21 were considered concurrently.**

**20) National Transportation Safety Board report on the allision and collision of the EAGLE OTOME with other vessels in the Sabine-Neches Canal in Port Arthur, Texas, January 23, 2010 - President Miller**

A. President Miller's report on the NTSB meeting on September 27, 2011; review of the NTSB synopsis of the investigation report, findings, probable cause, and recommendations.

B. Board discussion of NTSB recommendations and relevance to Board activities and responsibilities.

**21) Minimum Rest Period Exceptions and Board policy and practices with respect to pilot fatigue - President Miller**

Discussion of current BOPC and SFBP practices.

President Miller reported on his attendance at the NTSB meeting on September 27 and the "Synopsis" of the accident, and the NTSB's findings and recommendations pertaining thereto. President Miller discussed the strong focus by NTSB Members and staff on the role of pilot fatigue in the accident. While some might dispute the finding of fatigue, the NTSB finding likely will be generally accepted as accurate. President Miller noted the recommendations that would be forwarded by NTSB to governors in the near future, including California Governor Brown, urging, among other things, that pilot regulating Boards establish maximum length of service rules for pilots under their jurisdiction.

The Board discussed current Board and SFBP practices with respect to pilot rest periods and recent experiences in which pilots experienced less than 12 hours of off-duty time between jobs. Acting Port Agent McIsaac and Commissioner Roberts explained to the Board the many reasons why "minimum rest period exceptions" occur and various steps the SFBP takes to reduce the number and severity of those exceptions. Port Agent McIsaac reported that SFBP had established an internal working group to review SFBP practices and identify opportunities to reduce MRP exceptions.



Commissioner Roberts noted that there presently are 56 serving pilots and six trainees in the training program. Trainees presently in the Board's Pilot Trainee Training Program likely would be ready for licensing within six to 18 months and that no pilot retirements are expected in 2011 or 2012. Once all trainees presently in the program are licensed, the complement of pilots should reach 60 – the maximum number of licenses presently authorized by the Board, and that factor alone should significantly reduce the propensity to experience MRP exceptions.

Commissioner Miller noted that he had requested of Commissioner Roberts that the Pilot Fitness Committee which he chairs consider matters related to pilot fatigue as an additional Committee focus. Commissioner Roberts reported that the Committee had at its most recent (Joint Committee) meeting considered fatigue issues and would continue to focus on them with the intention of providing a report and recommendations to the Board at a later date. The Committee will await publication of the final NTSB report on the EAGLE OTOME accident before delving further into the fatigue issue in order to more fully consider NTSB concerns. That report is expected to be issued within a few weeks.

Several comments and suggestions were received from members of the public.

President Miller expressed his appreciation to all Commissioners, Board staff, and members of the public who participated in the discussion. He stated his belief that the Board was off to a good start in its review of pilot fatigue issues.

**22) Status report on progress of staff's fact finding concerning pilotage of CGM NORMA and extraordinary pilotage fees charged by the SFBP for use of two pilots servicing the ship – Board Counsel Eagan**

Board Counsel Eagan reported that he had received responses from written inquiries that had been previously sent to key stakeholders. He along with Executive Director Garfinkle will analyze the material and follow up with interviews. In his estimation, the process may be complete by the December Board meeting.

**23) Public Comment on Matters not on the Agenda**

Ms. Sarah H. Weaver expressed her appreciation to the Board for inviting her to the meeting and stated that she looked forward to working with the Board and its staff as her committee proceeds with its review.

**21) Proposals for Additions to Next Month's Agenda**

There were none.

**22) Adjournment**

There being no further business before the Board, the meeting adjourned at 12:45 p.m.