

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
November 17, 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 9:35 a.m. Vice President Johnston, and Commissioners Steve Roberts, John Cronin, 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 was also seated at the Commission table.

President Miller welcomed Vice President Johnston back to the Board after a period of medical leave. Vice President Johnston expressed his appreciation to all who had called or left messages of support.

President Miller noted the presence of Ms. Sarah Weaver, Senior Consultant to the Joint Legislative Sunset Review Committee and welcomed her to the meeting.

2) Approval of Minutes – President Miller

President Miller requested approval of the minutes of the October 27, 2011 Board meeting. Commissioner Wainwright moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Commissioner Brooks seconded the motion, which passed unanimously on a voice vote.

3) Announcements – President Miller

There were no announcements.

4) Board Member Activities – Board Members

Vice-President Johnston and President Miller stated their intention to attend the Holiday Season Open House sponsored by the San Francisco Bar Pilots on December 8, 2011 in support of the San Francisco Fire Department Toys-for-Tots Program.

5) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the October 27, 2011 meeting.

On November 2, 2011, the staff received a Public Record Act request from a Committee from SFBP asking for materials relating to trainee selection. The materials were provided with any personal information redacted.

On November 3, 2011, we received notice that the California State Lands Commission will hold a public hearing on amendments to the bio-fouling management regulations for vessels, to be held November 16th, 2011 in Oakland. Written comments on the proposed regulations will be accepted until November 21, 2011.

On November 7, 2011, we received notice of Emergency Rule Making from the Office of Spill Prevention and Response to amend regulations pertaining to the non-tank vessel fee requirements. Written comments were received until November 14th, 2011. The increase in fees is to cover expanded monitoring of bunkering operations, particularly when they occur at anchorage.

On November 10, 2011, staff received notice that the National Transportation Safety Board final report on the EAGLE OTOME incident had been published along with recommendations to the United States Coast Guard, American Pilots Association, twenty-four state governors, the governors of Guam and Puerto Rico, the Sabine Pilot Association, and the Jefferson and Orange County Board of Pilot Commissioners.

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

In October, staff renewed licenses for Captains Dowdle and Kleess.

Thus far in November, no licenses have been renewed.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected October surcharges totaling \$211,701.64 broken down as follows: Board Operations surcharge \$99,772.64, Pilot Continuing Education surcharges of \$77,070.00, and Trainee Training surcharges of \$34,859.00.

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 a scope of work have been sent to CHP for processing. The scope of work has been recently amended to update labor cost information. The CHP has notified Board staff that the contract should be to the contractor for signature early next week.

CHP Administrative Services – an interagency agreement has been initiated with CHP for administrative and miscellaneous services. It has a duration of three years. The cost remains the same as our current contract which is \$30,000 per fiscal year, \$90,000 total.

6) Port Agent's Report –Captain Bruce Horton

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

Captain Horton 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.

Captain Carl Martin has been AFMR since November 9, with non-work related injuries.

Captain Peter McIsaac has been AFMR since November 15, with a non-related work injury.

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 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 21 MRP's in October. Eight of those occurred on October 11, 2011, when the United States Navy fleet sailed out following Fleet Week.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in October 2011 compared to the three-year average were as follows: Bar crossings up 4.9% (582), bay moves down 17.9% (99), river moves up 36% (44.5), total moves up 2.4% (717) and gross registered tons (GRT) up 6.9% (27,117,836.0). When compared to October 2010, bar crossings are up 7.2%, total moves are up 7% and GRT is up 9.5%.

The Pilot Vessel GOLDEN GATE was down for two days due to a failed shift solenoid on the port reduction gear.

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

The Pilot Evaluation Committee (PEC) met on November 16, 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. Two trainees have advanced to the final phase of training.

The next PEC meeting is scheduled for December 14, 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 stated that the report on the USS POINT DEFIANCE collision with the Union Pacific Railroad Bridge would be ready for presentation at the December Board meeting. The December meeting will be the 98th day since the incident. Executive Director Garfinkle stated that a request for Board extension was omitted from the agenda, and as a result, approval for an extension would have to be retroactive when granted.

Executive Director Garfinkle stated that the report on the event involving the M/T PARTAWATI docking where loss of life of a kayaker occurred would be presented at the January Board meeting. The January meeting day would be the 96th day since the event.

Executive Director Garfinkle reported that a grounding of the ASTON TRADER II on the San Joaquin River in the vicinity of Light 31 occurred on November 5, 2011. The investigation process has been initiated. The 90 day deadline will be reached on February 3, 2012.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee had met with the Pilot Fitness Committee on November 3, 2011 and November 15, 2011. The Committee worked on drafting regulations and made progress on the agenda. The next meetings are scheduled for November 30, 2011 and December 9, 2011.

11) Finance Committee – Commissioner Cronin

A) Report on the November 4, 2011 Finance Committee meeting.

Commissioner Cronin reported that the Committee had considered the authority conferred upon the Board by the now-enacted AB 1025 (2011) with respect to the Board's ability to charge a fee to applicants to sit for the Board's pilot trainee training program selection exam. The law is effective on January 1, 2012. The Finance Committee recommends that the Board establish, by regulation, a \$1,000.00 fee to be paid by applicants for the exam.

Deputy Counsel Morocz pointed out that the anticipated fees could not exceed the anticipated expense to the Board in preparing and administering the examination.

Board staff will collect information on the examination given in June and July 2010 which will demonstrate that the cost to the Board will greatly exceed the anticipated revenue that would be derived from the \$1,000.00 fee.

B) Review the number of licensed pilots anticipated on January 1, 2012 and possible adjustment of pilotage rates for the first quarter of 2012.

Commissioner Cronin reported that the number of licensed pilots was expected to be 56 on January 1, 2012. Executive Director Garfinkle confirmed that figure. Commissioner Cronin noted that a pilotage rate adjustment was only required if the number of licensed pilots exceeded 58.

Commissioner Wainwright moved that the Board direct its staff to inform the San Francisco Bar Pilots that there would be no change in the authorized pilotage rates for the quarter beginning January 1, 2012. Commissioner Roberts seconded the motion. President Miller called for discussion by the Board and comments from the public. There were none, whereupon the motion passed unanimously on a voice vote.

C) Review of Board Operations surcharge, Pilot Boat surcharge, Pilot Continuing Education surcharge, and Pilot Trainee Training surcharge and Committee's recommendation to leave these surcharges as they are pending further review.

Commissioner Cronin reported that the Committee had reviewed the various surcharges and recommended that there be no adjustments to them at this time. There is no need to change the rates; the Board took no action to do so.

12) Pilot Fitness Committee – Commissioner Roberts

Commissioner Roberts stated that his report on pilot fatigue education and mitigation will be given at a later time. He also reiterated that the Pilot Fitness Committee was prepared to address this issue.

13) Low Sulfur Fuel – Executive Director Garfinkle

There was no report.

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

There was no report.

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

President Miller reported that he had chaired the Ad Hoc Committee on Blue Card Rates meeting on November 4, 2011 as a stand in for Vice President Johnston who was on medical leave.

President Miller reported that the Committee had continued to work on the agenda items previously advanced by the Board and that progress was good.

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

Board Counsel Eagan reported that there was no development in the COSCO BUSAN litigation nor other matters the Attorney General's Office wished to bring to the attention of the Board.

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 staff will be submitting 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.

Executive Director Garfinkle invited comments. There were none.

20) National Transportation Safety Board (NTSB) 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) Discussion on final NTSB report (if available) including findings probable cause and recommendations.
- B) Board discussion of NTSB recommendations and relevance to Board activities and responsibilities.
- C) Minimum Rest Period Exception and Board policy and practices with respect to pilot fatigue. Discussion of current BOPC and SFBP practices.

President Miller spoke to Agenda items A, B, and C:

President Miller reported that the Pilot Fitness Committee as previously reported had continued to examine issues raised by the NTSB report and its letter with recommendations to Governor Brown. He reported that the Pilot Fitness Committee was making good progress in addressing the question of whether the Board's present procedures and requirements were consistent with the NTSB recommendations.

Deputy Counsel Morocz spoke to the relationship between the Board and the NTSB communication to the Governor making clear that the Board was not in direct communication with the NTSB. The communication went from the federal agency to the Governor of California who would direct the appropriate response.

President Miller stated that the Board would not take any action with respect to the NTSB letter and recommendations because that prerogative belonged to the Governor, not the Board. However, he stated that in his view it was appropriate for the Board to examine existing policies and procedures in light of the NTSB recommendations. Commissioner Osen commented that the Board can take one of two directions; the Board can wait for the Governor to request of the Board to take action on the recommendations made by the NTSB or the Board could choose to proactively address the recommendations made to the Coastal Governors by the NTSB and provide an unsolicited response to Governor Brown. Commissioner Osen stated that the first would be reactive, and the second, proactive. Board President Miller and Deputy General Counsel Morocz agreed that taking this action was inappropriate.

21) 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, along with Executive Director Garfinkle, were in the process of scheduling interviews to follow up on document production. In his estimation, the process may be complete by the December Board meeting.

Commissioner Osen, noting the delay in completing the investigation and taking into account previous comments made regarding certain individuals failing to respond to the inquiries of the investigation team, suggested the possibility of using Board investigators to expedite the investigation process. Executive Director Garfinkle stated that using Board investigators was a possibility and would be discussed further among staff.

President Miller announced that there would be a recess of the Board before taking up Agenda item 22.

The Board recessed at 11:09 a.m.

The Board returned to open session at 11:30 am.

President Miller announced that by his inspection of the Board, all were present, constituting a quorum, and that Deputy Counsel Morocz was present by telephone from Sacramento.

22) IRC Incident Report on interaction between M/V CHAMPION PIONEER and M/T SCF SAMOTLOR – Executive Director Garfinkle

The Board received the report of the Incident Review Committee which was delivered by Executive Director Garfinkle.

The Board inquired of the IRC and after discussion, determined not to seek closed session to deliberate. During the discussion of the incident, some of the key points focused on were that the pilot and AMORCO Terminal had no communications during the course of the transit, that by examination of the Bell Book, the pilot made no attempt at reducing speed prior to passing the AMORCO facility, and that the presence of the vessel at the AMORCO pier was not discussed during the master/pilot or pilot/pilot exchange. After further discussion, Commissioner Roberts moved that the Board accept the IRC recommendation that the Board find for no pilot error in this case and that this case be closed with no further action. Commissioner Wainwright seconded the motion. President Miller directed a roll call vote. The vote was 6 votes “aye” and no votes “no” (Vice President Johnston abstaining.) Accordingly the motion was agreed to.

23) Public Comment on Matters not on the Agenda

There were none.

24) Proposals for Additions to Next Month’s Agenda

Commissioner Osen requested that the agenda for December contain an item to how best put into effect lessons learned from the IRC presentation on the M/V CHAMPION PIONEER. He suggested that the item direct staff to arrange a meeting between the SFBP and Tesoro, the

operator of the AMORCO pier to establish a protocol which might prevent or mitigate any future interactions at that location.

25) Adjournment

There being no further business before the Board, the meeting adjourned at 12:39 p.m.