

**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
April 26, 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 9:35 a.m. Vice President Frank Johnston and Commissioners Steve Roberts, David Wainwright, John Cronin, and John Brooks were present, constituting a quorum. Business, Transportation and Housing Agency (BTH) Acting Secretary Brian Kelly was represented by BTH Deputy General Counsel Gabor Morocz, who participated by telephone from Sacramento. Members of staff present were Executive Director Allen Garfinkle, Board Counsel Dennis Eagan, and Staff Services Analyst Kelly Dolcini. Port Agent, San Francisco Bar Pilot (SFBP) Capt. Bruce Horton also was seated at the Commission table. Commissioner Eric Osen listened to the meeting telephonically from a remote location. He did not speak or otherwise participate in the meeting.

2) Request Approval of Minutes – President Miller

President Miller requested approval of the minutes of the March 22, 2012 Board meeting. Commissioner Johnston moved approval of the minutes as amended with authority to Board staff to make clerical, non-substantive changes. Commissioner Roberts seconded the motion, which passed unanimously on a voice vote. Minutes of the continuation of the meeting which was held on April 2, 2012 will be presented at the May 24, 2012 Board meeting.

3) Announcements – President Miller

There were none.

4) Board Member Activities – Board Members

President Miller and Vice President Johnston reported that on March 31, 2012 they attended the ceremony at Coast Guard Island in Alameda at which the US Coast Guard Cutter Stratton was commissioned. Vice President Johnston had participated in the planning of the event by the Navy League.

President Miller reported that he and Executive Director Garfinkle had attended a March 27, 2012 meeting of the San Francisco Bay Region chapter of the Propeller Club of the United States. The speaker was Jim Wunderman, Executive Officer of the Bay Area Council who spoke about the Bay Area's economy and the impact of maritime commerce on the Bay Area.

President Miller reported that he had addressed the West Coast Pilots' Meeting held at the SFBP offices on April 12, 2012. His remarks focused chiefly on the Board's activities to improve its oversight of pilot fitness.

Vice President Johnston reported that he is scheduled to attend the April 27, 2012 change of command ceremony for Vice Admiral Manson K. Brown, USCG Pacific Area Commander and Commander, USCG Defense Force West, who is being assigned to Coast Guard Headquarters in Washington, DC where he will assume the duties of Deputy Commandant for Mission Support.

Vice President Johnston and Commissioner Cronin both reported that they will attend the San Francisco Maritime National Park Association gala event to be held on April 27, 2012, and also graduation ceremonies to be held at the California Maritime Academy on April 28, 2012.

Commissioner Roberts reported that on April 24, 2012 he had attended a hearing on Senate Bill 1408 before the California Senate Government Operations Committee. He spoke on behalf of SFBP.

5) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the March 22, 2012 meeting.

On March 24, 2012, Executive Director Garfinkle sent a letter on behalf of the Board to the Department of Finance requesting a reduction of the Board Operations Surcharge from 3% to 1.5% of total gross pilotage charges to be effective July 1, 2012.

On March 26, 2012, Executive Director Garfinkle received a Public Records Act (PRA) request from Conte Cicala on behalf of the Pacific Merchant Shipping Association (PMSA) requesting "pilot logs" from 2002 to the present.

On April 5, 2012, the Executive Director was copied on a letter from Dennis Eagan on behalf of Attorney General Kamala Harris responding to the PRA request, and stating that the requested documents are not in the possession of the Board and the person stated to be in possession, the Port Agent, is subject to a direct request under the PRA.

On April 9, 2012, the Board received a letter from Mr. Mark Hill, Program Budget Manager for the Department of Finance, granting a reduction in the Board Operations Surcharge from 3% to 1.5% effective July 1, 2012.

On April 12, 2012, the Board received copies of the Audit of Surcharges, Billings and Disbursements for San Francisco Bar Pilots and San Francisco Bar Pilots Benevolent and Protective Association for the calendar year 2011.

On April 16, the Board received a copy of a letter from Kim Duncan, Chair of the Oregon Board of Maritime Pilots covering responses to the National Transportation Safety Board from the Columbia River Pilots, the Columbia River Bar Pilots, and the Coos Bay Pilots Association.

On April 20, Executive Director Garfinkle received an email from Fred King of Cal Marine Electronics containing a link to an article detailing how the Automatic Identification System standard, RS-422, used to provide data to the pilot plug on the bridge of a ship, can accommodate cable runs as long as 1500 meters and connect up to ten receivers.

On April 24, 2012, staff received a copy of a letter to Vice President Johnston from Annette L. Porini, Appointments Director for the Senate Rules Committee, congratulating him on his reappointment as a member of the Board of Pilot Commissioners.

On April 25, 2012, the Board received a letter of resignation as an active pilot from Capt. Morgan Hoburg effective July 1, 2012. There was concern expressed as to whether this was adequate to receive a disability pension and, after discussion, the Board decided to ask Captain Hoburg to resubmit his letter with a request for disability pension.

Also on April 25, Executive Director Garfinkle received an e-mail from Commissioner Osen containing questions and comments on the IRC report on the M/V ASTON TRADER II for consideration of the Board as they see fit.

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

Between the February and March Board meetings the Board staff renewed licenses to the following pilots: Captains Anderson, Aune, Lemke, Livingstone, Melvin, and Pate.

Since the March Board meeting staff has renewed licenses for Captains Fuller, Kirk, Martin, and Pinder.

C) Report on surcharges received by the Board;

For the month of March the Board received a check for \$188,548.30 broken down as follows:

1. Pilot Commission Charge: \$84,528.30
2. Pilot Training Surcharge: \$64,365.00
3. Trainee Surcharge: \$39,655.00

D) Report on legislative activities and contractual matters.

There are three active bills being considered in the Legislature that may be of interest to the Board:

AB 2042, sponsored by Assemblymember Huber, which if enacted would sunset the Board and transfer all of its functions to the Secretary of BTH in 2022 if no further action is taken. The hearing in the Assembly Appropriations Committee was set for April 25, 2012.

SB 1408, sponsored by Senator Blakeslee, which seeks establish several new provisions in the Harbors and Navigation Code concerning pilot safety. The last action was a hearing by Senate Governmental Organization Committee set for April 24, 2012.

AB 2287, sponsored by Assemblymember Swanson, which would change pilotage rates for certain classes of vessels. The last action was a hearing in the Assembly Transportation Committee on April 23, 2012.

Board staff now has a signed and approved contract with the San Francisco Bar Pilots to cover trainee training costs and certain continuing education costs. This contract is valid for five years. Staff is also working with the California Maritime Academy to determine if they have adequate resources to offer the Combination Course used as part of the continuing education program.

On staffing issues, the Office Technician position open at the Board is currently being advertised and applications are starting to arrive.

6) Port Agent's Report – San Francisco Bar Pilot (SFBP) Port Agent Captain Bruce Horton

A) Monthly report on SFBP ship piloting business activity.

Capt. Horton reported that billed vessel moves in March, when compared to a three year average were as follows: 534 bar crossings (down 2.9%), 111 bay moves (down 9.1%), and 42 river moves (up 38.6%), making the total billed moves 687 in February (down 2%) with a gross registered tonnage of 27,349,590 (up 4.1%). When compared to March 2011, bar crossings are down 6.2%, total moves are down 5% and GRT is down 2.1%.

B) Monthly report on pilot availability and absences.

Captain Morgan Hoburg is on medical disability leave per the BOPC. Captain Sean Gabe is absent for medical reasons.

C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board. **Board may go into Closed Session to discuss contents of the Port Agent's confidential report as authorized by Harbors and Navigation Code, section 1157.1.**

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

7) Pilot Evaluation Committee – Captain E. Nyborg

A) Report on April 18, 2012 Committee meeting.

Captain Nyborg was unable to attend the meeting. Port Agent (Capt.) Horton delivered the report for Capt. Nyborg stating that all trainees are progressing well at this time. The next PEC meeting is scheduled for May 16.

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 recommendation by Executive Director 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 were no reportable safety standard violations since the March meeting.

9) Reportable Piloting Events – Executive Director Garfinkle (Reports received between the issuance of this notice and the meeting will be reported.)

A) Status report of the November 28, 2011 soft grounding of the M/V TATJANA at berth 10/11 in Stockton. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting as he had received a request for additional time from counsel representing the pilot of the M/V TATJANA. Commissioner Roberts moved to grant an extension to May 24, 2012. Commissioner Wainwright seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

B) Status report on the M/V OAKLAND's December 3, 2011 encounter with a small boat in the Sacramento River channel. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the transfer of the Board's staff services analyst to the California Public Health Service, and because of the demands of preparing for Legislative budget hearings. Commissioner Roberts moved to grant an extension to May 24, 2012. Commissioner Wainwright seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

C) Status report of the December 30, 2011 damage to Richmond 8 pier during the docking of the M/V SOLAR WING. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the transfer of the Board's staff services analyst to the California Public Health Service, and because of the demands of preparing for Legislative budget hearings. Commissioner Roberts moved to grant an extension to May 24, 2012. Commissioner Wainwright seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

D) Status report of the M/V BERLIN TRADER interaction with the M/V GLOBAL PIONEER while approaching berth 19-20 in Stockton on January 19, 2012. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the transfer of the Board's staff services analyst to the California Public Health Service, and because of the demands of preparing for Legislative budget hearings. Commissioner Roberts moved to grant an extension to May 24, 2012. Commissioner Wainwright seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

E) Status report of the M/V MULBERRY WILTON interaction with the M/T OVERSEAS TAMPA while passing Plains Terminal, Martinez, on January 27, 2012. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the transfer of the Board's staff services analyst to the California Public Health Service, and because of the demands of preparing for Legislative budget hearings. Commissioner Wainwright moved to grant an extension to May 24, 2012. Commissioner Roberts seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

F) Status report of the M/V THEOTOKOS (mast) allision with the Union Pacific Railroad Bridge on January 30, 2012. Request for an extension from the Board to present this report at the May Board meeting.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the transfer of the Board's staff services analyst to the California Public Health Service, and because of the demands of preparing for Legislative budget hearings. Commissioner Wainwright moved to grant an extension to May 24, 2012. Commissioner Roberts seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

G) Status report of the OVERSEAS TAMPA alleged near miss while departing Richmond Long Wharf Berth #2 on February 18, 2012.

Executive Director Garfinkle reported on the status of the IRC investigation and stated that the report was not yet complete. However, the report may be completed by the May Board meeting which will be within the statutory 90 day limit for completing incident reports. The Board took no action.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee met jointly with the Pilot Fitness Committee on March 21, April 4 and April 18, 2012. They will meet again on May 3 and May 17 and the revision of the pilot fitness study is progressing well. Five meetings ago, Commissioner Wainwright reported that the study would be completed in five meetings, so he is reluctant to give an official finishing date at this time.

11) Finance Committee – Commissioner Cronin

A) Report on Finance Committee activities since last Board meeting.

The Finance Committee met on April 26, 2011 at the BOPC office.

B) Review of surcharge audit report for the year ended December 31, 2011 prepared by Shea LaBagh Dobberstein under contract with the Board. **Possible Board action to accept this report in satisfaction of contract scope of work for 2011.**

At its April 26, 2012 meeting, the Finance Committee reviewed the December 31, 2011 Audit of Surcharges, Billings and Disbursements for San Francisco Bar Pilots and San Francisco Bar Pilot Benevolent and Protective Association with assistance from President Miller. Commissioner Cronin reported that the Finance Committee recommends formal acceptance of the report by the Board in satisfaction of the contract scope of work.

President Miller discussed the nature of the audit work performed by the independent auditors and their report. In summary, the audit report and schedules confirm that surcharges billed by SFBP and collected by them from their customers were properly computed, and that SFBP properly disbursed or retained the surcharges consistent with statutory requirements.

Commissioner Roberts moved that the Board accept the audit report in satisfaction of the contract scope of work for 2011. Vice President Johnston seconded the motion. President Miller called for further discussion by the Board. There was none. He called for comments from the public. Pacific Merchant Shipping Association Vice President Mike Jacob, on behalf of his Association, expressed appreciation to the Board for continuing the surcharge audit procedures.

Whereupon the motion passed unanimously on a voice vote.

C) Review of application and exam fee for the pilot training program exam process. Review and discuss Finance Committee recommendation on how the fee will be administered. **Possible Board action to adopt Board policy on exam fee implementation and administration. Possible Board action to direct staff to begin the rulemaking process with respect to exam fee implementation and administration.**

The Board discussed the idea of fees but referred the matter back to the finance committee for a more detailed recommendation.

12) Pilot Fitness Committee – Commissioner Roberts

Commissioner Roberts reported that the Pilot Fitness Committee met on April 18, 2012 and it is currently making amendments to minimum rest period exception reporting and would present a recommendation at a future meeting.

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

Commissioner Roberts reported that during 2012 two classes of six pilots each will have completed the required Bridge Resource Management/Combination Course at the Maritime Institute of Training and Graduate Studies (MITAGS) and that all pilots will have completed training required through 2013. He reported that there are continued discussions with the California Maritime Academy to determine whether it can provide the training needed at the conclusion of the current contract with MITAGS.

16) Pilot Power Committee – Commissioner Roberts

There was no report.

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

There was no report.

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

Board Counsel Eagan reported that Regal Stone Limited and Fleet Management Limited, the owner and operator, respectively, of the COSCO BUSAN, had filed a lawsuit against Long's Drug Stores and others involved with providing prescription drugs to Capt. John Cota. The plaintiffs seek to recover from the defendants on the theory that defendants' lack of care in dispensing drugs to Capt. Cota contributed to Capt. Cota's impairment at the time of the incident. The complaint also alleges that the defendants should have notified the Board and the Coast Guard, among others, of Capt. Cota's condition.

19) Review and discussion on adopting a Board policy to require a "Pull Notice" from the Department of Motor Vehicles as a component in the licensing process. Possible Board action to approve policy. Possible Board action to send policy to Pilot Fitness Committee for review and recommendation to full Board on implementation and administration.

Member Morocz provided to the Board a description of the "Pull Notice" service available from the California Department of Motor Vehicles (DMV). Commissioner Wainwright noted that the subject arose from a review of Senate Bill 1408, which contains a "Pull Notice" provision. He

stated his support for implementing a “Pull Notice” report in conjunction with a pilot’s annual medical evaluation but stated his preference that it be implemented by regulation rather than statute.

President Miller stated his view that the “Pull Notice” report should be a part of the annual license renewal and that the results of the report should be communicated to the Board appointed physician and medical review officer for their consideration in determining a pilot’s or a trainee’s fitness for duty.

Commissioner Brooks inquired whether the Board has the power to act on the information once it has it, and if the Board does not have this authority, why obtain the information at all? President Miller responded that it is relevant information that should be available to the Board appointed physicians.

Commissioner Wainwright moved that the Board request the Pilot Fitness Committee to assess the proper role of a “Pull Notice” report in determining a pilot’s or a trainee’s fitness for duty, and to make recommendations to the Board with respect to policy, implementation, and administration. Vice President Johnston seconded the motion. President Miller called for further discussion by the Board and comments from the public. There were none. Whereupon the motion passed unanimously on a voice vote.

20) Review and discussion of formal legislative analysis prepared by Board staff following March Board meeting discussion and vote on Board’s position on pending legislation, SB 1408 – Member Morocz.

Member Morocz reported that Senate Bill 1408 had been gutted prior to the meeting and would need further review. The Board agreed to review and analyze the bill at its next meeting.

21) Review and discussion of formal legislative analysis prepared by Board staff following March Board meeting discussion and vote on Board’s position on pending legislation, AB 2042 – Member Morocz

Member Morocz reported that the Acting Secretary of BTH had signed off on the Board’s Analysis and opposition to AB 2042 and forwarded it to the Governors office.

22) Discussion, analysis, and determination of Board position on pending legislation, AB 2287 – Member Morocz

Member Morocz reported that he had not yet received a report from the Governor’s office on AB 2287 so it may not be appropriate for the Board to take an official position at this time. PMSA Vice President Michael Jacob stated that the bill has been substantially amended, yet PMSA remains opposed to the bill. Mr. Jacob read a list of business entities who have come out in opposition to the bill and stated that he feels there is broad concern in the shipping industry about the potential impact of the bill.

President Miller announced that the Board would take a short recess. The Board recessed at 11:06 a.m.

The Board reconvened in open session at 11:22 a.m. President Miller stated that by inspection, all Commissioners (except Commissioner Osen) had returned and that a quorum was present. Member Morocz was present by telephone from Sacramento.

23) Opinion of counsel concerning validity of pilotage fees for CMA CGM NORMA and other fees not expressly provided for by statute – Board Counsel Eagan.

Board Counsel Eagan reported on the April 25, 2012 opinion from the Attorney General’s Office concerning nonstatutory pilotage fees. The opinion concluded that while pilots are free to negotiate compensation for services other than pilotage, they are not free to negotiate rates for pilotage services for which rates are prescribed by the Legislature. In response to the position that provision of a second pilot or special equipment constituted a special “premium” service that was not covered by existing legislative rates, the opinion distinguished new component costs of providing a particular pilotage service, such as a second pilot and special positioning equipment when providing bar pilotage to larger vessels, from the service itself. The legislative rates focus on the service, not the individual cost elements of providing the service. If the legislative rates are thought to be inadequate because of increased costs associated with providing the service, the remedy lies with the Legislature. The opinion also concluded that the reference to “minimum” rates in Harbors and Navigation Code section 1191 did not authorize negotiation of rates higher than those adopted by the Legislature under that section.

Port Agent (Capt.) Horton expressed appreciation to Board Counsel Eagan for his research and analysis.

President Miller thanked Board Counsel Eagan for his thorough research and thoughtful opinion.

24) Presentation of surveyor selected by the San Francisco Bar Pilots to conduct biennial surveys on the five pilot boats, and a review of surveyor’s credentials.

Executive Director Garfinkle addressed the Board on the statutory requirement that the Board every two years confirm that its licensees had available to them proper vessels for boarding on and off ships to be piloted.

Previously, Dana R. Teicheira, CMS has been approved and used as the principle surveyor for the pilot boats. All five pilot boats will require surveys this calendar year. The Board members reviewed Mr. Teicheira’s resume.

After discussion by the Board, Commissioner Wainwright moved that the Board approve Dana Teicheira to conduct biennial surveys on the pilot boats used by SFBP. The approval would expire at the completion and reporting of the five surveys. Commissioner Cronin seconded the

motion. President Miller called for additional discussion by the Board and comments from the public. There were none. Whereupon the motion passed unanimously on a voice vote.

25) IRC Incident Report on ASTON TRADER II November 5, 2011 grounding on the San Joaquin River in the vicinity of Light 31 – Vice President Johnston and Executive Director Garfinkle.

Executive Director Garfinkle and Vice President Johnston presented the IRC report on the M/V ASTON TRADER II. After a thorough investigation, it was determined that the crux of the matter was that the ship's anchor failed to deploy when the crew was ordered to do so by the pilot. The anchor was to be given the same value, or more value than the engines or rudder, and not having the anchor available deprived the pilot of all the tools required to maintain control of the ship. The Committee recommended that the Board find no pilot error in this case. George Nowell, attorney for the pilot involved, stated that he agreed with the IRC findings and appreciated its hard work.

The Committee recommended a finding of no pilot error and that the case be closed with no further action.

After discussion, Commissioner Roberts moved to accept the IRC report and the recommendation of no pilot error. Commissioner Wainwright seconded the motion, which passed unanimously on a roll call vote with Vice President Johnston abstaining.

26) IRC Incident Report on M/V OAKLAND's December 3, 2011 encounter with a small boat in the Sacramento River channel – Vice President Johnston and Executive Director Garfinkle.

The Board, having previously granted an extension of time for receiving the IRC report, took no action.

27) IRC Incident Report on M/V SOLAR WING damage to Richmond Pier 8 during docking on December 30, 2011 – Vice President Johnston and Executive Director Garfinkle.

The Board, having previously granted an extension of time for receiving the IRC report, took no action.

28) IRC Incident Report on M/V THEOTOKOS (mast) allusion with the Union Pacific Railroad Bridge on January 30, 2012.

The Board, having previously granted an extension of time for receiving the IRC report, took no action.

29) Public Comment on Matters not on the Agenda

There were no comments.

30) Proposals for Additions to Next Month's Agenda

There were none.

31) Adjournment

There being no further business to come before the Board, it adjourned at 12:24 p.m.