

**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  
July 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 9:36 a.m. Vice President Frank Johnston and Commissioners David Wainwright, Steve Roberts, Eric Osen, John Cronin, and John Brooks were present, constituting a quorum. Business, Transportation, and Housing Agency Acting Secretary Brian P. Kelly was represented by Special Assistant to the Secretary Ben DeAlba. Members of staff present were Executive Director Allen Garfinkle, Board Counsel Dennis Eagan, and Staff Services Analyst Kelly Dolcini. San Francisco Bar Pilots (SFBP) Port Agent Capt. Bruce Horton also was seated at the Commission table.

**2. Request Approval of Minutes – President Miller**

President Miller requested approval of the minutes of the June 28, 2012 Board meeting. Commissioner Wainwright moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Vice President Johnston seconded the motion, which passed unanimously on a voice vote.

**3. Announcements – President Miller**

There were no announcements.

**4. Board Member Activities – Board Members**

President Miller reported that on July 17, 2012 he had attended a meeting of the Propeller Club of Northern California. Representatives of the Ports of Benicia, Redwood City, Richmond, Stockton, and West Sacramento made presentations describing current and future cargo capabilities.

President Miller reported that on July 19, 2012 he had attended the 11<sup>th</sup> Coast Guard District change of command ceremony at Coast Guard Island, Alameda.

Vice President Johnston reported that on July 10, 2012 he had attended a meeting of the Northern California Area Maritime Security Committee. One item that was discussed was the upcoming America's Cup trials, to be held August 21 through August 26, 2012, with three teams currently entered.

Vice President Johnston reported that on July 19, 2012 he had attended a meeting of the Port of San Francisco Maritime Commerce Advisory Committee. There is an increased focus on encouraging expanded development of the Foreign Trade Zone to include north-bay counties such as Marin and Sonoma.

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

### **A) Correspondence and activities since the June 28, 2012 meeting.**

Executive Director Garfinkle reported that on July 3, 2012, the Board was served with a Petition for a Writ of Mandate filed by the Pacific Merchant Shipping Association (PMSA). The suit alleges that both the Port Agent and the Board have refused to produce a document that PMSA describes as the "Pilot Log" in response to two requests under the Public Record Act. An initial court hearing was set for July 27, 2012, in San Francisco Superior Court. The matter has been referred to the Office of the Attorney General for representation.

On July 6, 2012, Board staff received copies of student evaluations from the manned model training at Port Revel for the class that began June 25, 2012. Copies of the evaluations from the manned model classes held earlier in the year as well as the combination course evaluations from this calendar year were made available to the Commissioners in their binders.

On July 9, 2012, the Incident Review Committee received a letter from Forrest Booth concerning the open IRC investigation into the departure of the M/V OVERSEAS TAMPA from Richmond Long Wharf on February 18, 2012.

On July 10, 2012, Commissioner Osen provided Board staff with a copy of a Safety Alert Bulletin from International Marine Transportation, Ltd. titled "Incidents Whilst Vessel Under Pilotage." This bulletin addresses the increasing number of incidents while vessels are being navigated by pilots.

On July 13, 2012, Board staff received word that the Superior Court vacated the July 27, 2102 hearing set by PMSA for hearing the Writ of Mandate and set the Board of Pilot Commissioners deadline for response as August 15, 2012 with a hearing on September 5, 2012.

On July 16, 2012, Board staff received a Notice of Approval for the Board amendments to Section 219(g) of the Harbors and Navigation Code, which was amended to delete language directing the Port Agent to notify the Executive Director of the Board of any

navigational incidents. This provision was recently adopted in Section 218(d)(7) and should not be duplicated in this section.

On July 17, 2012, Board staff received a letter from Ms. Elaine Howle, State Auditor, reminding staff of the Whistleblower Protection Act and of a duty to notify each employee of the Whistleblower Protection Act notice by e-mail. All Board employees were duly notified.

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

Between the May and June Board meetings, Board staff renewed licenses for Captains Kenyon, Alden, Haggerty, Larwood, Wainwright, Nyborg, Gabe, Slack, Long and Cloes.

Since the June Board meeting, the Board staff has not renewed any licenses.

**C) Report on surcharges received by the Board**

For the month of May, the Board received \$178,024.71 broken down as follows:

Board Operations Charge: \$85,064.71

Continuing Education Surcharge: \$61,005.00

Trainee Training Surcharge: \$31,955.00

**D) Report on legislative activities and contractual matters.**

Executive Director Garfinkle reported that the second hearing on Assembly Bill No. 2042 (Huber) to Sunset the Board had been cancelled at the request of the author.

Senate Bill No. 1408 (Blakeslee) on pilot safety was amended a second time and re-referred to the Senate Appropriations Committee.

Assembly Bill 2287 (Swanson) on Bar Pilotage Rates, has also been re-referred to the Appropriations Committee.

Executive Director Garfinkle reported that he, Commissioner Roberts and Staff Services Analyst Kelly Dolcini had met with principals at California Maritime Academy to discuss details of a contract to provide the Board mandated combination course. For discussion of this item, please refer to agenda item 14, the Continuing Education Committee report.

He also reported that Board staff had made a conditional offer of employment to an Office Technician candidate and were beginning work on several contracts. Specifically those contracts address an analysis of the cost to implement recommended modifications to the Board's pilot fitness oversight procedures, trainee entrance exam development, and digitization of files.

## **6. Port Agent's Report – SFBP Port Agent Capt. Bruce Horton**

### **A) Monthly report on SFBP ship piloting activity.**

Capt. Horton reported that billed vessel moves in June, when compared to a three year average, were as follows: 580 bar crossings (down 4.3%), 87 Bay moves (down 11.9%), 33 river moves (up 32.2%), making total billed moves 665 (down 3.9%), with a gross registered tonnage of 27,887,506 (up 4.2%). When compared to a three year average, bar crossings are down 8.1%, total moves are down 7.3% and gross registered tonnage is down 2.2%.

Capt. Horton reported that the P/V GOLDEN GATE was out of service for a day due to a shift solenoid failure on the starboard reduction gear. He also reported that the P/V DRAKE had to return from station due to a failure of a rudder draglink pin and was out of service for one and one-half days. (New pins were fabricated and installed.) The P/V PITTSBURG was out of service for one-half a day for radar repairs and the P/V SAN FRANCISCO dry-docking is being completed and the boat will be returning to Pier 9 on July 27, 2012. The P/V CALIFORNIA is scheduled for dry-docking on August 13, 2012.

### **Monthly report on pilot availability and absences.**

Capt. Horton reported that Capt. Morgan Hoburg has been on medical disability leave since November 7, 2011 by order of the Board and that Capt. David Chapman is currently absent for medical reasons with a non-work related injury.

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

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

## **8. Reportable Piloting Events – Executive Director Garfinkle**

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

### **A) 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 August 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 the Board staff is operating at 50 percent of authorized strength. Commissioner Wainwright moved to grant an extension to August 23, 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.

**B) 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 August 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 the Board staff is operating at 50 percent of authorized strength. Commissioner Wainwright moved to grant an extension to August 23, 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.

**C) 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 August 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 the Board staff is operating at 50 percent of authorized strength. Commissioner Wainwright moved to grant an extension to August 23, 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.

**D) Status report of practice trips by Capt. Kleess stipulated to as a result of M/V S.H. GRACE grounding on the Sacramento Deep Water Ship Channel on August 27, 2009.**

Executive Director Garfinkle reported that Capt. Kleess has completed all practice trips mandated by the Board pursuant to the stipulation by Capt. Kleess in connection with the M/V S.H. GRACE grounding on August 27, 2009.

## **9. Rules and Regulations Committee – Commissioner Wainwright**

Chairman Wainwright reported that the Rules and Regulations Committee had met jointly with the Pilot Fitness Committee on July 17, 2012, and have plans to meet again on August 7, 2012 and August 29, 2012. The Committee continues to work on pilot fitness regulations.

## **10. Finance Committee – Commissioner Cronin.**

There was no report.

## **11. Pilot Fitness Committee – Commissioner Roberts**

Commissioner Roberts reported that the Pilot Fitness Committee met on July 19, 2012 and discussed additional requirement for the Port Agent’s Minimum Rest Period (MRP) reporting to the Board. The Board discussed the proposed additions.

The Board reviewed the additional reporting requirements recommended by the Pilot Fitness Committee. President Miller inquired of the Port Agent whether it would be feasible to expand MRP reporting to include the recommended information. Capt. Horton responded that it would.

Commissioner Osen commented that the most important person that should have this information is the master of the ship the pilot is boarding. Commissioner Roberts noted that there are no federal or state standards for pilot rest, but there are the SFBP’s guidelines. Commissioner Wainwright made the point that if a pilot is fatigued he or she should not even be on that ship. Commissioner Roberts noted that there is no universally accepted standard at this time, therefore offering a number would have no context. The additional information the Pilot Fitness Committee is suggesting having the Port Agent report is to help the Board with its oversight responsibilities.

Commissioner Brooks inquired about how “rest” is defined. President Miller responded that it is defined as time off between jobs. A “job” could include more than one vessel movement. Commissioner Wainwright added the clarification that the underlying assumption is in the 12 hours of rest there is time for eight hours of sleep.

After discussion, Commissioner Wainwright moved that the Board adopt the recommendation of the Pilot Fitness Committee and that the Port Agent be requested to include the additional information in his monthly reports to the Board. Commissioner Roberts seconded the motion. President Miller called for additional discussion by the Board and comments from the public. There were none. Whereupon the motion passed on a voice vote, 6 voting yes, none voting no, and Commissioner Brooks abstaining.

**12. Low Sulfur Fuel – Executive Director Garfinkle**

There was no report.

**13. Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright**

There was no report.

**14. Continuing Education Committee – Commissioner Roberts**

Commissioner Roberts reported that the Continuing Education Committee had made good progress in developing a curriculum for future combination course instruction to be delivered by the California Maritime Academy. CMA faculty members were present in the audience. Dr. Jim Burns, Dean of Extended Learning, and Capt. Vic Schisler addressed the Board and expressed their enthusiasm for providing continuing education training for the Board's licensees.

**15. Pilot Power Committee – Commissioner Roberts**

A) Report on July 17, 2012 Pilot Power Committee meeting

Commissioner Roberts reported that the Pilot Power Committee had met on July 17 and reviewed the results of the most recent confidential retirement survey and the progress of trainees presently in the Board's trainee training program.

B) Possible Committee recommendation to offer one or more applicants a position in the training program

Commissioner Roberts reported that the Committee had reviewed the results of the confidential retirement survey as well as the progress of trainees presently in the Board's trainee training program and that the Committee believes that no additional trainees should be brought into the program at this time.

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

There was no Committee report. Port Agent Bruce Horton inquired as to the status of the Committee and when it might meet again. President Miller noted that there is still work for the Committee to complete, but that due to the increased pace of the Joint Rules and



Regulations and Pilot Fitness Committee work, Commissioners are suffering from “Committee Fatigue”. Thus the process has slowed but has not been completed.

#### **17. Report of the Attorney General’s Office – Board Counsel Eagan**

Board Counsel Eagan reported on Pacific Merchant Shipping Association v. Board of Pilot Commissioners and Capt. Bruce Horton, as Port Agent, a lawsuit filed in San Francisco Superior Court by PMSA on July 3, 2012. The suit seeks from the Board and the Port Agent what PMSA alleges are public records under the California Public Records Act. Mr. Eagan explained that the California Public Records Act applies to state agencies and officers and provides that public records, subject to certain exceptions, are open to public inspection. In January, PMSA requested that the Port Agent provide it with copies of what PMSA described as the “Pilot Log.” After efforts to better ascertain what PMSA was requesting, the Port Agent responded that he did not have such a record. PMSA then requested that the Board produce copies of the “Pilot Log.” The Board responded that it did not have such a record. PMSA then requested the Business, Transportation and Housing Agency to intervene. When BT&H declined to do so, PMSA filed the lawsuit. The Board and the Port Agent will file a response to the lawsuit by August 15, 2012, and a court hearing is set for September 5, 2012.

President Miller inquired whether any members wished to go into closed session to discuss matters subject to attorney-client privilege in connection with the pending litigation. There were no requests.

#### **18. Pilot Evaluation Committee – Captain Einar Nyborg**

Port Agent Horton reported on behalf of Captain Nyborg that the Pilot Evaluation Committee had met on July 25, 2012. All trainees are progressing well and their time in the program ranges from ten to nineteen months. The next Pilot Evaluation Committee meeting is scheduled for August 22, 2012 at 7:00 a.m.

#### **19. Consideration of Board report to the National Transportation Safety Board (NTSB) in response to NTSB recommendation M-11-19 which reads “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”. The NTSB classified the previous response from Traci Stevens, Acting Secretary of Business, Transportation and Housing, as “Open – Acceptable Response” pending their receipt and review of the BOPC’s report.**

Executive Director Garfinkle reported that he had been in discussions with Member Morocz about the appropriate content of a response to NTSB and that he was prepared to draft a document for Board consideration. He reported that the Pilot Fitness Committee did not believe it was the appropriate venue within the Board structure to address issues of “safety” because many safety concerns do not involve health or pilot fitness issues. Alternate



Member DeAlba expressed the expectation by Agency that the draft document would be acted upon not later than the Board's September meeting. President Miller responded that he was confident that Board staff would be able to meet that deadline and requested that Board staff proceed with drafting.

**President Miller announced that the Board would stand in recess for 15 minutes. The Board stood in recess at 11:12 a.m.**

**The Board reconvened in open session at 11:28 a.m.**

President Miller noted by inspection that all Commissioners were present, a quorum was present, and that Alternate Member DeAlba also was present. Vice President Johnston, chairman of the Incident Review Committee, was seated in front of the Commission table.

**President Miller announced that the Board would next consider Agenda items 21 and 22.**

## **21. Public Comment on Matters not on the Agenda**

Commissioner Brooks requested a copy of the criteria for entrance to the trainee training program. It was agreed that Board staff would provide him with Section 213 of the Board regulations in electronic format.

## **22. Proposals for Additions to Next Month's Agenda**

There were none.

## **20. IRC Incident Report on the M/V TATJANA's November 28, 2011 grounding at Stockton Berth 10-11. – Vice President Johnston and Executive Director Garfinkle**

Executive Director Garfinkle presented the IRC report to the Board. He began by presenting a narration of the events. The evening of the incident, Capt. Sweeney had piloted the M/V TATJANA into Stockton at high tide and safely berthed the ship. After successfully docking the ship he disembarked. Shortly after he left the ship, the tide began to recede and the ship settled onto the bottom, eventually taking on a list outboard. It later became clear that the ship had settled onto silting alongside the dock, which caused the ship to list. The master of the M/V TATJANA believed that Capt. Sweeney had informed him of 35 feet at the berth. Capt. Sweeney recalled informing the master that he could not guarantee 35 feet at the berth. Capt. Sweeney had relied on the most recent soundings available to him when planning and executing the passage. Those soundings were from 2009. Had those soundings been correct on the day of the incident, the M/V TATJANA would have remained afloat. Following the incident, the Port of Stockton commissioned soundings which showed considerable silting in this area.

Executive Director Garfinkle reasoned that Capt. Sweeney could not be held accountable for information that he did not have or could not have reasonably obtained and that the silting

constituted a hidden danger of which he had no knowledge. Executive Director Garfinkle recommended that the Board close the case with a finding of “no pilot error” and send a letter to the Port of Stockton emphasizing the importance of current soundings to the safety of vessels calling in their port.

Vice President Johnston did not concur with the Executive Director’s recommendation and instead recommended that the Board find for “pilot error” in this case, that the pilot be issued a letter of warning for inattention to duty as to whether calculations of depth at the docking facility were adequate for the proposed operations and that a letter of caution be sent to the Operations Pilot on duty at the time of this incident admonishing him for not verifying the depth at the Pier 10/11 Stockton at the time of the incident, and a letter to both the Port of Stockton and the ship’s agent, Transmarine Navigation Corporation, stating our concern about lack of notification to the San Francisco Bar Pilots on silting at Pier 10/11 and the consequences of that lack of information.

After conclusion of the presentation by the Incident Review Committee, response by Capt. Sweeney’s counsel, and questioning by Board members, President Miller announced that the Board would go into closed session to deliberate the IRC report and possibly make a decision with respect to possible pilot error.

**The Board went into closed session at 12:26 p.m.**

**The Board returned to open session at 1:12 p.m.**

President Miller announced that the Board had deliberated the IRC report and returned with a finding of “no pilot error.” The case was closed with further action being the drafting of a letter to the Port of Stockton emphasizing the importance of regular soundings to the safety of vessels calling in their port.

Commissioner Osen reported difficulty in reaching a conclusion because of what he what he was not able to consider. He criticized the report for lacking interviews with the pilot, the operations pilot, and the ship’s agent.

There being no further business, the meeting adjourned at 1:18 p.m.

Respectfully Submitted,



Allen Garfinkle  
Executive Director