

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
August 25, 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 9:33 a.m. Commissioners Frank Johnston, Steve Roberts, David Wainwright, John Cronin, 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. Port Agent Bruce Horton also was seated at the Commission table.

2) Approval of Minutes – President Miller

President Miller requested approval of the minutes of the July 28, 2011 Board meeting. Commissioner Wainwright moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Commissioner Cronin seconded the motion, which passed unanimously on a voice vote.

3) Announcements – President Miller

President Miller announced that all Commissioners and other state officers are required to complete an ethics training course shortly after appointment and every two years thereafter. Board records indicate that all Commissioners should complete the training and provide the required certificate of completion to Board staff not later than October 1, 2011. President Miller complimented Vice President Johnston for being the first Board member to complete the requirement.

4) Board Member Activities – Board Members

President Miller announced that he had been a guest aboard the sailing schooner *SEAWARD* participating in the Master Mariners Regatta on May 28. The *Seaward's* participation in the race was sponsored by the San Francisco Bar Pilots.

Vice President Johnston reported that he would be unable to attend the September 22, 2011 Board meeting as he will be attending a meeting called by the U.S. Department of Transportation. The meeting will examine the likely effects on shipping to the San Francisco Bay region following the opening of the enlarged Panama Canal in 2013. The meeting also will consider the American Waterways program, a program planned to operate barge service in a partnership between the Ports of Oakland and West Sacramento/Stockton. President Miller asked Vice President Johnston to brief the Board on the DOT meeting at the October 27 Board meeting.

5) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the July 28, 2011 meeting.

Executive Director Garfinkle reported that Capt. Jeff Cowan of the California Department of Fish and Game, Office of Spill Prevention and Response had provided a monthly and yearly table of loss of propulsion (LOP's) incidents. As of July, there were 10 incidents with four directly related to fuel switching. For the yearly table from 2004 to 2011, the number of loss of propulsion incidents was around 20.. However, since the California Air Resources Board requirement for low sulfur fuel has been in place, incidents have increased to 60 or more per year, signifying a direct correlation to fuel switching. The United States Coast Guard has been watching this closely and is working with industry to educate crews and vessel operators and reduce the number of incidents.

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

In July, the Board renewed licenses to Captains Slack, Miller, Wainwright, Alden and Nyborg. Since the July Board meeting, the Board renewed licenses for Captains Blake and Coney.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected June surcharges totaling \$378,986.73 broken down as follows: Board Operations surcharge \$265,951.73, Pilot Continuing Education surcharges of \$70,245.00, and Trainee Training surcharges of \$42,790.00.

D) Report on legislative activities and contractual matters.

The Office of Administrative Law (OAL) has accepted amendments to Sec. 218 of the Board Regulations dealing with the Port Agent's duties and the amended regulation will be effective September 15, 2011.

Executive Director Garfinkle reported that the Commission was removed from California Assembly Bill 656, known as the "Huber Bill," which would have given the Legislature jurisdiction over the Board for review and would have subjected it to the possibility of "sun setting." The Board is now no longer included in the legislation.

The Executive Director also reported on the progress of California Assembly Bill 1025, which is a consensus bill with no opposition. The third reading was scheduled for August 24, 2011 in the Senate Appropriation Committee.

The San Francisco Bar Pilots contract, a non-competitive bid (NCB) contract, has been accepted by the Department of General Services.

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.

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 54 MRP's in July. July 27th and 28th 2011 were extremely busy days with 16 MRP's on the 27th and 15 MRP's on the 28th with 23 pilots on the board. The shortest MRP exception was on the 27th with only 6.9 hours of reset.

Commissioner Osen inquired whether ship masters were notified of MRP "violations." Port Agent Horton replied in the negative. Commissioner Osen recommended that that SFBP should notify the ship masters so that they could make proper assessment before moving forward with that particular pilot. Deputy Counsel Morocz cautioned against this policy. The MRP violation is not a "violation" because it is not in law. President Miller concurred, stating that the Board uses the term "exception." The Board has never established a 12 hour guideline and whether or not pilots notify shipmasters is strictly a SFBP internal matter.

Commissioner Osen stated that if it was noteworthy to report to the Board, then ships should be notified for them to make a full and proper assessment. President Miller inquired of Board Counsel as to whether this was in the realm of Board jurisdiction or an SFBP internal mechanism. Board Counsel Eagan stated that the Board would not have jurisdiction but would have to look into it further. According to Section 237 of Board regulations, the MRP is a factor to be considered by the Board in setting number of pilots.

Executive Director Garfinkle stated his view that this was a matter for master/pilot exchange and pilot's own judgment. If a pilot felt he was tired, he could remove himself from the board. President Miller stated that the Board cannot tell SFBP how to run its business and emphasized that the Board was a licensing body. He recommended that Pilot Power Committee put the question on its agenda for consideration.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in July 2011 compared to the three-year average were as follows: Bar crossings up 4.1% (618), bay moves down 18.4% (94), river moves up 35% (42), total moves up 1.4% (754) and gross registered tons (GRT) up 7.3% (30.1). When compared to July 2010, bar crossings are up 8.1%, total moves are up 7.5% and GRT up 12.2%.

Deputy Counsel Morocz inquired as to the cause for the drop in bay moves. In addition, is the increase in river moves due to seasonal agriculture? Port Agent Horton responded that he knew of no particular reason that bay moves were down but believed that companies have increased the number of ships calling in Stockton is due to exporting products.

The Pilot Vessel CALIFORNIA was out of service from August 8, 2011 until August 22, 2011 for its annual dry docking and other planned maintenance and repairs.

SFBP had received a Public Records Act Request by PMSA. The requested information was mailed to Mr. Conte Cicala, an attorney representing PMSA, on Tuesday August 16, 2011.

President Miller deferred agenda item 7, which will be the last agenda item of the day.

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 reported that there has been one new reportable piloting event since the last Board meeting. On July 28, 2011 there was a reported ship interaction between the M/T CHAMPION PIONEER, which was bound upriver to Stockton, and the SCF SAMOTLOR, which was moored at the Amorco Martinez dock. There was damage to the Amorco gangway alleged to be caused by the ship interaction. This event is under investigation at this time.

The Board then considered Agenda item 20.

20) Incident Review Committee – Vice-President Johnston and Executive Director Garfinkle

Presentation of Incident Review Committee (IRC) Report on the May 28, 2011 event involving the ADRIATIC PEARL wherein the ship lost propulsion while down bound on the Sacramento River, was forced to do an emergency anchoring, and once anchored, made unintended contact with the river bank. The Board previously granted permission to extend the report presentation to August 25, 2011.

Executive Director Garfinkle reported that on the morning of May 8, 2011, the M/V ADRIATIC PEARL was being piloted down bound from Sacramento by Capt. Raymond Ridens. At 1150, power to the main engine was lost while in vicinity of Lights “11”-“12”. The vessel continued to drift downriver approximately one mile until passing Light “7”. It was at this point the decision was made to execute an emergency anchoring. The vessel was still in the limit of the navigable channel, however once anchored, it swung 180 degrees, eventually facing up river. In the process of swinging, the bow contacted the north bank of the river.

Following investigation, the IRC recommended a finding that there was no pilot error. The IRC finds this to be a non-incident with no pilot error or the appearance of pilot error. Commissioner Roberts moved that the Board accept the non-incident report from the IRC, find that there was no pilot error, take no further action and issue a letter of commendation for Capt. Ridens. Commissioner Wainwright seconded the motion which passed unanimously on a voice vote with Vice-President Johnston abstaining.

Commissioner Brooks questioned why the IRC process was needed for an incident and damages so minor. Executive Director Garfinkle stated that it is not always immediately clear whether there is pilot error and that due diligence in fact finding is necessary. In addition, a thorough report provides transparency and lends assurance to the public and Board members that the Board exhausted all investigative opportunities. UCSG conducts its own investigation as well. Vice-President Johnston added that since COSCO BUSAN incident, it is necessary to be as thorough as possible.

The Board then considered Agenda item 23.

23) Discussion and review of form of contracting used for manned model training contract – Commissioner Osen

Commissioner Osen presented his view that the invitation for bid (IFB) for the manned model training contract was so narrowly drawn that only one bidder, Port Revel, could meet the course and facility requirements specified in the IFB. He said the IFB tracked very closely the description of the training program in the Port Revel brochure. Port Revel was the only bidder on the contract. It was his view that section 215(b)(1) of the Board’s regulations set forth the course requirements and that the IFB could not add additional, more specific course requirements. Commissioner Osen solicited responses from four training facilities concerning why they had not submitted bids. Three of the facilities mentioned the requirement of Det Norske Veritas training course certification and that they were unable to bid because their certificates were from other sources. Two mentioned that they could not meet other specifications set forth in the IFB, for

example, lake size and the requirement that all trainers be pilots. Two stated their belief that their training programs were nonetheless of high quality.

The Executive Director, Board member Morocz, and Commissioner Roberts, all of whom were involved in the IFB preparation, responded to Commissioner Osen's concerns. Mr. Morocz explained that there were two approaches to the competitive bidding process: issuing a Request for Proposals (RFP) or, alternatively, an IFB. RFPs can be drafted more generally than IFBs, leaving to the prospective bidders the details of how they propose to accomplish the contract goals. IFBs, on the other hand, must be quite specific, to ensure that all bidders are bidding on the same thing. He explained that he had worked closely with the Executive Director and Commissioner Roberts, as well as with the Business, Transportation, and Housing Agency and the Department of General Services, which checks for compliance with state contracting law, in crafting an IFB that met all legal requirements. Both of these agencies approved the IFB. It was conceded that certifications other than that issued by Det Norske Veritas might have sufficed, but that no inquiries were received concerning the possibility of substituting these other certifications.

Commissioner Osen moved that the IFB for the manned model training be re-drafted to include only the details set forth in section 215(b)(1) of the regulation, that the new IFB be resubmitted to all known manned model training centers, world wide, and that the existing contract with Port Revel remain valid pending receipt of bids and awarding of a new contract in accordance with the State Contracting Manual. The motion did not receive a second and there was no vote.

At the conclusion of Board consideration of Agenda item 23, President Miller directed that the Board in recess for 10 minutes. The Board stood in recess at 11:16 a.m.

The Board reconvened at 11:23 a.m. President Miller noted by inspection that all Commissioners were present and that a quorum was present.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee had met with the Pilot Fitness Committee on August 3, 2011 and August 23, 2011 at 9:30. The Committee worked on drafting regulations and made progress on the agenda. The next meeting is scheduled for September 7, 2011.

11) Finance Committee - Commissioner Cronin

There was no report.

12) Pilot Fitness Committee – Commissioner Roberts

Commissioner Roberts stated that the Pilot Fitness Committee's involvement in the joint meeting with the Rules and Regulations Committee had been reported by Commissioner

Wainwright as part of his report on Rules and Regulations Committee activities during the month.

13) Low Sulfur Fuel – Commissioner Osen

There was no report. Commissioner Osen recommended that all future fuel switching reports be made by the Executive Director as part of his regular monthly report. Executive Director Garfinkle stated that all future correspondence would be sent to Commissioner Osen for his review.

14) Ad Hoc Working Group on Trainee Recruitment – Executive Director Garfinkle

There was no report.

15) Continuing Education Committee –Commissioner Roberts

There was no report.

16) Pilot Power Committee – Commissioner Roberts

Commissioner Roberts reported on the results of the retirement survey made during July and August, 2011. The results indicate no retirements anticipated in 2011, or 2012, and only one in 2013. President Miller discussed a spreadsheet (distributed to the Board and to the public) that has been used by the Board to predict the number of serving pilots and trainees in the Board's trainee training program from time to time. That spreadsheet predicts that the number of licensees will steadily increase to 60 by the second quarter of 2013. Commissioner Roberts moved that the Board direct staff to contract with two additional trainees to begin training on October 1, 2011, or earlier if possible. Commissioner Wainwright seconded the motion which passed unanimously on a voice vote.

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

Vice President Johnston reported that the first meeting of the Ad Hoc Committee on Blue Card Rates was held on August 18, 2011. The Committee was created at the request of the President of the Board to further investigate the existing blue card service charges and to develop definitive definitions for each of the charges.

The Committee's mission is a workshop to clarify various areas of confusion and to define present blue card service and charge information. A lively and informative session was conducted with excellent input from both the Committee members and the public attendees. The Committee was able to analyze a portion of the service code and charge information provided by John Cinderey and will continue this discussion at its next meeting which will be held September 12, 2011 at 10:30.

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

There was no report.

19) 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 reported that letters requesting documents and interviews were being sent out to parties with knowledge of the NORMA pilotage as well as other instances where pilotage fees may have been charged for services not listed in the rate sheet approved by the Legislature.

Agenda item 20 was addressed by Board earlier in the meeting, so President Miller moved on to agenda item 21.

21) Review and discussion of staff analysis of AB 1025 – Executive Director Garfinkle

Executive Director Garfinkle discussed the staff analysis of Assembly Bill 1025. After discussion by the Board, Vice President Johnston moved that the Board approve the analysis and forward it to the Business, Transportation, and Housing Agency for further action. Commissioner Roberts 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.

22) Review and discussion of staff analysis on AB 656 legislation – Executive Director Garfinkle.

Executive Director Garfinkle reported that AB 656 had been amended to remove the Board of Pilot Commissioners from the bill. Accordingly, Member Morocz advised that the Board need not take action on the staff analysis.

The Board took no action on the staff analysis of AB 656.

Having addressed agenda item 23 earlier in the meeting, President Miller moved on to item 24.

24) Public Comment on Matters not on the Agenda

There were none.

25) Proposals for Additions to Next Month's Agenda

There were none.

The Board then considered Agenda item 7.

7) Pilot Evaluation Committee – Capt. Einar Nyborg

A) Report on August 17, 2011 meeting.

The Pilot Evaluation Committee met on August 17, 2011. In closed session, all five trainees were interviewed individually. The current trainees include: Laakso, Carr, Johnson, Manes, and Stoltz. Their time in the program ranged from eight to 14 months. All trainees are progressing well at this time. Next meeting is scheduled for September 21, 2011.

B) Possible recommendation for a determination that a trainee has or trainees have completed the pilot trainee program; possible Executive Director recommendation for the appointment of a new pilot or pilots; possible Board action.

Captain Nyborg introduced Captain Kris Laakso, and proceeded to detail the Pilot Evaluation Committee's recommendation that Capt. Kris Laakso be issued a Certificate of Completion of the Board training program:

Capt. Laakso entered the training program in June 2010. To date, Capt. Laakso has a total of 443 training jobs with the San Francisco Bar Pilots. 181 jobs were as observer and 206 jobs were handles and 55 partially handled, directing the navigation and control of the vessel under the direct supervision of an SFBP pilot.

Capt. Laakso has worked extensively with the PEC, acquiring 81 PEC rides, 29 of which were in the last 90 days. As a requirement of the Certificate of Completion, Capt. Laakso maintained an average score over 4.0 in each of the last three months with PEC members, resulting in a three-month average score of 4.33.

The Committee used detailed trip reports and personal observation to ensure Capt. Laakso demonstrated a working knowledge of the fundamentals of ship handling in each of the categories listed in subsections 214 (c) and (h) of the Board's Regulations, and has demonstrated the skills and knowledge necessary to become a Board licensed pilot.

Capt. Nyborg reported to the Board that at the June 15, 2011 meeting, the Committee completed a final assessment of whether trainee Laakso had successfully completed all elements of Section 214(h) in the Board regulations. The Committee unanimously agreed that he has, and has authorized recommending Capt. Laakso for a Certificate of Completion.

At the conclusion of Capt. Nyborg's report and upon receiving the PEC recommendation, President Miller inquired of Executive Director Garfinkle whether he had verified that Trainee Laakso had met the requirements for being issued a Certificate of Completion.

The Executive Director responded that he had verified that Trainee Laakso had completed all requirements specified in Board Regulation 214, that he had been in the training program more than one but not more than three years as required by Harbors and Navigation Code section 1171.5(c) and that he had maintained average scores from PEC members on trips handled of 4.0 or better on a scale of 5.0 during each of the last three months. He stated that that it was his opinion that the Board should grant a Certificate of Completion of the Trainee Training Program to Trainee Laakso.

Commissioner Wainwright moved that the Board grant a Certificate of Completion to trainee Laakso. Commissioner Roberts seconded the motion. President Miller called for discussion. There was none. President Miller called for the yeas and nays. The motion carried on a roll call vote: 7 yeas, 0 nays.

President Miller inquired of Executive Director Garfinkle whether he had received an application for licensing from Capt. Laakso. The Executive Director stated that he had, that there currently are vacancies with respect to the number of authorized licenses, that Capt. Laakso had completed the Board's trainee training program, that the Board had received a fit for duty determination for Capt. Laakso from a Board designated physician, that Capt. Laakso held a United States Coast Guard master's license for vessels of 1600 tons or larger, with radar observer's endorsement, and that Capt. Laakso held United States Coast Guard endorsements for all pilotage grounds in San Francisco Bay and its tributaries. The Executive Director stated that in his opinion Capt. Laakso was eligible to be licensed as a San Francisco Bar Pilot.

Commissioner Wainwright moved that the Board grant an initial license as a San Francisco Bar Pilot to Capt. Laakso. Vice President Johnston seconded the motion. President Miller called for discussion. There was none. President Miller called for the yeas and nays. The motion carried on a roll call vote: 7 yeas, 0 nays.

22) Adjournment

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