

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
September 22, 2011
9:30 a.m.
MINUTES

OPEN MEETING

1) **Call to Order and Roll Call** – President Miller

President Knute Michael Miller called the meeting to order at 9:34 a.m. Commissioners 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 Allen Garfinkle, Supervising Deputy Attorney General Chris Tiedemann (substituting for Board Counsel Dennis Eagan), Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini. San Francisco Bar Pilots (SFBP) Port Agent Bruce Horton was also seated at the Commission table.

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

President Miller requested approval of the minutes of the August 25, 2011 Board meeting. Commissioner Roberts 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 reminded all Commissioners that they were required to complete an on-line ethics training program and provide a certification of completion to Board staff not later than October 1, 2011. Office Technician Kelly Dolcini reported that to date three Commissioners had completed the training and provided the required certificates.

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

President Miller announced that Vice President Johnston was unable to attend today's Board meeting because he is attending a U.S. Department of Transportation meeting on the anticipated effects on West Coast ports of the 2013 opening of the expanded locks system of the

Panama Canal. The meeting also will address expanded inland shipping to the Ports of Sacramento and Stockton.

President Miller then announced that on September 14 he had attended a meeting of the Bay Area Maritime Trades Council to hear an address by Richard A. Lidinsky, Jr., Chairman of the Federal Maritime Commission. On September 15 President Miller and Executive Director Garfinkle attended a meeting of the Propeller Club of the San Francisco Bay Area. Chairman Lidinsky addressed that gathering as well.

On September 19 President Miller and Executive Director Garfinkle attended a press conference held at Treasure Island to announce a settlement and consent decree with respect to all civil litigation concerning the COSCO BUSAN allision with the Bay Bridge on November 7, 2007.

President Miller announced that he will attend a dinner meeting of the Pacific Transportation Association on September 22.

President Miller also announced that he will attend a meeting of the National Transportation Safety Board to be held in Washington, DC on September 27. The meeting will receive the report from the NTSB staff of its investigation of the allision of the tanker EAGLE OTOME with cargo vessel GULL ARROW and the subsequent collision with push boat DIXIE VENGEANCE and barges on January 23, 2010 at Port Arthur, Texas. President Miller stated that he would bear all travel costs himself and that no state funds would be used.

5) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the August 25, 2011 meeting.

On August 26, 2011 the Board staff received an invitation from the Seamen's Church Institute to join them on an evening bay cruise, with single ticket options starting at \$70 and going up to tables for ten priced at \$2500 dollars.

On August 30, 2011 the Board staff received correspondence from Pacific Merchant Shipping Association regarding its Public Records Act (PRA) Request of July 15, 2011, renewing a previous request and making additional requests of the Port Agent in his role as a public official. The Port Agent has been advised to work with and is working with Board Counsel on responding to this request.

On September 12, 2011 the Board staff received a copy of a response to the Pacific Merchant Shipping Association's PRA request by Board Counsel Eagan, responding to its concerns.

On September 16, 2011 the Board staff received notice of proposed regulatory action by the California State Lands Commission concerning bio-fouling which will have the State Lands Commission regulating various methods of bio-fouling including ballast water and hull surfaces as vehicles for bio-fouling. The notice is in the 45-day comment period. Copies are available to the public.

The Executive Director reported that retired SFBP Captain Herbert Rosen passed away September 20, 2011.

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

In August, the Board renewed a license for Captain Coney. Since the August Board meeting, the Board renewed licenses for Captains Boriolo, Burger, Holl and Merritt.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected August surcharges totaling \$244,980.37 broken down as follows: Board Operations surcharge \$118,063.37, Pilot Continuing Education surcharges of \$82,950.00, and Trainee Training surcharges of \$43,967.00.

D) Report on legislative activities and contractual matters.

Executive Director Garfinkle reported that California Assembly Bill 1025, which is a consensus bill, has been enrolled and presented to the Governor on September 16, 2011.

Staff Services Analyst Brian Vu reported on the following contracts:

The San Francisco Bar Pilots contract, a non-competitive bid (NCB) contract, was accepted by the Department of General Services, and has been returned to the California Highway Patrol (CHP) for completion.

Two trainees, Captains Matt Lingo and Orrin Favro, have signed their contracts and are ready to begin training on October 1, 2011.

Staff is also in the beginning the process of assessment to acquire psychometric services to support a selection exam in early 2013. Office Technician Kelly Dolcini elaborated, stating that she has been the primary liaison between the Board and Comira, Inc., the current psychometric services provider.

Currently, there is approximately \$14,000 remaining on the Board's contract with Comira, Inc. Its psychometric staff was about to conduct a practice analysis of the San Francisco Bar Pilots, however BOPC staff has learned that Dr. Hertz and Dr. Chin, who have worked with the Commission on exam preparation since the mid-90s, are no longer associated with Comira, Inc. In their absence, Comira has replaced them with two less experienced psychometricians.

Executive Director Garfinkle has recently corresponded with Dr. Chin. Both he and Dr. Chin agree that not performing the scheduled practice analysis would not compromise the validity of the exams previously given. Therefore, it is the staff's recommendation to allow the current Comira, Inc. contract to expire without completing the analysis. In addition, staff will begin a Request for Proposals (RFP) to initiate the contracting phase with psychometric providers for testing services for the next exam in spring 2013.

Commissioner Roberts expressed concern that Comira, Inc. retained the Commission's intellectual property from the previous exams. Executive Director Garfinkle replied that Dr.

Hertz and Dr. Chin provided the Board staff with that property at the completion of the last exam. Commissioner Wainwright inquired whether it was appropriate procedure to not expend the remaining monies on the current Comira, Inc. contract. Executive Director Garfinkle stated that he consulted with the Board's CHP contract liaison who affirmed that this was one option available to the Board.

Commissioner Osen inquired whether the Board needed to continue to address low sulfur fuel as a separate agenda item as it seemed like an issue more appropriate for the Harbor Safety Committee. Executive Director Garfinkle added that low sulfur fuel continues to be a factor considered in many of the Incident Review Committee investigations and is also generally covered by correspondence when available. He suggested that a separate agenda item may not be necessary as the issue will continue to be discussed in both aforementioned forums.

Commissioner Wainwright stated his preference to have the issue remain in the forefront by leaving it on the agenda, a sentiment which had support from the other Commissioners and the President. A discussion of the practical aspects of low sulfur fuel ensued, providing insight to the significance of the issue to a licensing Board.

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 67 MRP's in August. August 21, 22, and 26, 2011 were extremely busy days with 15 MRP's on August 21, 10 MRP's on August 22, and 15 MRP's on August 26. The shortest MRP exceptions were on August 22 and August 26 with only 8.5 hours of rest.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in August 2011, compared to the three-year average were as follows: Bar crossings up 5.5% (643), bay moves down 17.5% (104), river moves up 42% (41), total moves up 2.9% (788) and gross registered tons (GRT) up 8.4% (30.9M). When compared to August 2010, bar crossings are up 8.6%, total moves are up 8.4% and GRT was up by 12.2%.

The Pilot Vessel CALIFORNIA was out of service August 23, 2011 for planned maintenance. The main engine thermostats were replaced.

The Pilot Vessel SAN FRANCISCO was out of service August 31, 2011 for unplanned maintenance. The starboard main engine control batteries failed and were changed out. It was also out of service September 6, 2011 for planned maintenance. The main engine thermostats were replaced.

The Pilot Vessel DRAKE was out of service from September 6, 2011 until September 16, 2011 for its annual dry docking.

The Pilot Vessel GOLDEN GATE was out of service on September 12, 2011. The port and starboard propellers were replaced due to the blades being bent by contact with a submerged object. In addition, the hull zincs (anodes) were replaced.

The San Francisco Bar Pilots received a Public Records Act Request from the Pacific Merchant Shipping Association (PMSA). The requested information was compiled and mailed to Mr. Conte Cicala, an attorney representing PMSA, on September 12, 2011.

7) Pilot Evaluation Committee – Capt. Einar Nyborg

The Pilot Evaluation Committee (PEC) met on September 21, 2011. In closed session, all four trainees were interviewed individually. The current trainees include: Carr, Johnson, Manes, and Stultz. They all have nine months in the program. All trainees are progressing well at this time.

The PEC will welcome two new trainees due to begin training on October 1, 2011. The PEC has planned an orientation day for Monday, September 26, 2011.

Next meeting is scheduled for October 19, 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

A) Report on the progress of the Incident Review Committee (IRC) investigation of the vessel interaction between the M/V CHAMPION PIONEER and the M/T SAMOTLOR. Request for Board to extend the reporting period.

Executive Director Garfinkle briefed the Board on the status of the investigation and requested an extension of time to gather more evidence. After discussion, Commissioner Wainwright moved to approve the request to extend the time to present the IRC report to November 17, 2011. Commissioner Cronin seconded the motion. President Miller called for discussion by the Board and comment by the public. There was none. The motion passed unanimously on a voice vote. (Please see attached IRC extension request timeline.)

B) Report of the September 8, 2011 contact of the USS POINT DEFIANCE with the fender system of the Union Pacific Railroad Bridge while being flat towed from the Suisun Reserve Fleet to Mare Island.

The Executive Director briefed the Board that this allision occurred and that there was some damage to the fendering system of the Union Pacific Railroad Bridge. As for damages to the USS POINT DEFIANCE, she was heading to Mare Island to be scrapped, and damage to the ship would be inconsequential as long as it did not result in the release of oil or other hazardous materials, which it did not.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee had met with the Pilot Fitness Committee on September 7, 2011 at 1:00 p.m. The Committee worked on drafting regulations and made progress on the agenda. The next meeting is scheduled for October 4, 2011.

11) Finance Committee - Commissioner Cronin

A) Report on September 12, 1011 Finance Committee meeting.

The Finance Committee met on September 12, 2011 at 9:30.

B) Review of the number of licensed pilots anticipated on October 1, 2011 and possible adjustment of pilotage rates for the fourth quarter of 2011. [Note that while retirements prior to October 1, 2011 are known, the number of new pilots who might be licensed on or prior to that date is not known. The recommendation to the Board reflects several different possibilities, allowing the Board to authorize that which reflects the anticipated number of licensees as of the date of possible Board action.] **Possible Board Action to change pilotage rates based on anticipated number of pilots as of October 1, 2011.**

President Miller inquired of Executive Director Garfinkle whether the number of licensees on October 1, 2011 would exceed 58 in number. The Executive Director replied that the number would not exceed 58 and that accordingly no change to the rates presently in effect was required. Those rates, as specified in Harbors and Navigation Code section 1190, are ten dollars and 26 cents (\$10.26) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 91.16 mills (\$.09116) per high gross registered ton. Commissioner Roberts moved that the Board, by its staff, notify the San Francisco Bar Pilots that rates currently in force would continue unchanged during the calendar quarter beginning October 1, 2011. 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.

C.) Review of Finance Committee evaluation and recommendation to change the Pilot Vessel surcharge from current 9.45 mills (\$.00945) to 3.27 mills (\$.00327) effective October 1, 2011, due to the reduction in monthly payments. **Possible Board action to reduce Pilot Vessel surcharge effective October 1, 2011.**

The Board received and reviewed the recommendation of the Finance Committee. Commissioner Wainwright moved that the Pilot Vessel surcharge be reduced from the current 9.45 mills (\$.00945) to 3.27 mills (\$.00327) effective October 1, 2011. 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.

D. Review of Board Operations surcharge, Pilot Continuing Education surcharge, and Pilot Trainee Training surcharge and Committee's recommendation to leave these surcharges as they are pending further review. **Possible Board action on Finance Committee's recommendations.**

The Board received and reviewed the recommendation of the Finance Committee that no changes be made at the present time to the Board Operations surcharge, Pilot Continuing Education surcharge, and Pilot Trainee Training surcharge. The Board considered the recommendation and took no action to change the several surcharges.

E) Review of Finance Committee evaluation of Pilot Evaluation Committee proposal to require fees for application and/or sitting for the pilot training program exam. Committee's report of decision to create further framework to make for a smoother transfer to Rules and Regulation Committee following Governor's signing AB 1025 into law.

Commissioner Cronin stated that after Committee discussion and consultation with Business, Transportation, and Housing (BTH) Deputy Counsel Morocz, it was advised that AB 1025 must be signed by the Governor and chaptered as a statute before the Board can proceed. Once effective, BTH would need to know the exact costs and verify that the fees proposed to be charged do not exceed exam costs.

12) Pilot Fitness Committee – Commissioner Roberts

There was no report.

13) Low Sulfur Fuel – Commissioner Osen

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

Executive Director Garfinkle, on behalf of Vice-President Johnston, stated that the Ad Hoc Committee on Blue Card rates met on September 12, 2011 at 10:30 a.m. The Committee reviewed and affirmed previous changes; however, a complete working document for Board review is not available yet.

The next meeting is scheduled for October 11, 2011 at 9:30 a.m.

18) Report of the Attorney General's Office – Board Counsel Eagan [Supervising Deputy Attorney General (SDAG) Tiedemann reported in Board Counsel Eagan's absence]

SDAG Tiedemann reported that the global settlement of civil litigation arising from the COSCO BUSAN allision with the Bay Bridge would result in dismissal of all claims and cross-complaints against the Board of Pilot Commissioners. Dismissal would await expiration of a statutory 30-day public comment period and entry of the decree by the court.

19) Status report on progress of staff's fact finding concerning pilotage of CMA CGM NORMA and extraordinary pilotage fees charged by the SFBP for use of two pilots servicing the ship – Executive Director Garfinkle

Executive Director Garfinkle reported that he and Board Counsel have started the preliminary investigation. Written inquiries were sent to key stakeholders however acknowledgements and correspondences have not been received as of yet. In addition, Executive Director Garfinkle stated that he had discussed the issues with some parties; however, the process is moving slowly.

Port Agent Horton asked if Executive Director Garfinkle foresaw completion of this investigation by the next Board meeting. Executive Director Garfinkle responded that it was very unlikely. Port Agent Horton emphasized that he would like the Board to respond to the two questions he posed in his report to the Board on July 28, 2011, answered as expeditiously as possible. (The first of the two questions posed by Port Agent Bruce Horton is: If services are requested from the SFBP for which there is no rate or other charge approved by the legislature, may the SFBP charge a reasonable rate for those services? The second question is: Is the provision of a second pilot to carry aboard precision positioning equipment, set up the equipment, operate and monitor the equipment, and communicate the resulting information to the pilot who is in charge of navigation the vessel, a service that is not covered by any rate or charge currently approved by the legislature?)

It is the Port Agent's belief that tying the answers to those questions to the fact finding concerning pilotage of CMA CGM NORMA may unnecessarily delay the Board from considering the issues presented. Executive Director Garfinkle responded that the matter would be addressed by Board Counsel when he returns from overseas early next month.

20) Public Comment on Matters not on the Agenda

Port Agent Horton stated that on September 28, 2011 and October 4, 2011, SFBP would be conducting man overboard drills. He invited interested Board members to attend.

Commissioner Roberts stated that he recently spoke to former Commissioner Ben Tate. He passed along Mr. Tate's fondness for the Commission and his best regards.

21) Proposals for Additions to Next Month's Agenda

There were none.

22) Adjournment

President Miller announced that the next Board meeting is scheduled for October 27, 2011 at 9:30 a.m. at the Board offices.

There being no further business to come before the Board, it adjourned at 11:03 A.M.