

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
May 3, 2011
9:30 a.m.
MINUTES**

OPEN MEETING**1) Call to Order and Roll Call –**

President Miller called the meeting to order at 9:38 a.m. President Miller, Vice President Johnston, Commissioners Osen, Wainwright and Roberts and Cronin were present, constituting a quorum. Business, Transportation and Housing Agency was represented by BTH Deputy General Counsel Morocz who joined the meeting by telephone. Executive Director Garfinkle, Board Counsel (Deputy Attorney General) Dennis Eagan, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini also were present.

2) Approval of Minutes**A) Approval of the March 24, 2011 Board meeting minutes.**

President Miller requested approval of the minutes of the March 24, 2011 Board meeting. Commissioner Osen objected to the inclusion of the term "COLA" in the minutes relating to Agenda item 21C because the Board's authorizing statute does not make reference to the term or to cost of living increases. Commissioner Wainwright moved approval of the minutes with the reference to the term "COLA" deleted, and with authority to Board staff to make clerical, non-substantive corrections. Vice President Johnston seconded the motion, which passed unanimously on a voice vote.

Executive Director Garfinkle stated that staff had received Board Counsel Eagan's submissions; however, staff did not have the time to incorporate those changes. As a result, he suggested that the Board hold off on approving the minutes until May 3, 2011's Board meeting. The Board agreed. Vice President Johnston withdrew his second and Commissioner Wainwright withdrew his motion. The matter was put over until the May 26, 2011 meeting.

3) Announcements - President Miller

President Miller announced that Ms. Barbara Price, a member of the Board's Pilot Fitness Committee, had invited him to speak to the Alameda Rotary Club at its May 24, 2011 meeting.

4) Board Member Activities – Board Members

Vice President Johnston announced that he had attended a USCG Area MarSec (Maritime Security) meeting that focused on security issues that might arise following the death of Osama Bin Laden. Another meeting is planned soon.

5) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the March 24, 2011 meeting.

Executive Director Garfinkle reported that he received letter from the California State Lands Commission, thanking him for speaking at the March 30, 2011 meeting as well as a letter from Mr. Anthony Williams for the Governor's Appointment Office congratulating Commissioner Cronin on his appointment. Mr. Garfinkle welcomed Commissioner Cronin to the Board.

Executive Director Garfinkle also had a conversation with Mr. Robert Schoening of the United States Coast Guard (USCG) who is in charge of overseeing the civilian mariner drug screening program. In discussing the status of the trainees for drug screening purposes, the Department of Transportation (DOT) position is that the Board is neither a marine employer nor a vessel operator; therefore our trainees do not have to participate in a drug screening program. If, as a matter of policy, we chose to randomly screen them, then the non-DOT ("look alike") form should be employed. This form, however, would not be valid to be used as proof of participation in a random drug screening program for annual physicals purposes and the trainees would have to take an annual test in addition to the random participation.

Mr. Garfinkle then reported that on April 27, 2011, he received a letter from Capt. David "Rusty" McBride noticing his intention to seek a pension under HNC section 1164(b) (disability pension) and requested a determination by the Board that he is disabled within the meaning of the statute.

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

The Commission issued eight licenses in March to Captains Aune, Bridgeman, Lemke, Martin, Pate, Kirk, Melvin, and Pinder.

In April, the Commission renewed the licenses of Captains Livingstone, Fuller, Gabe, Horton, Weiss, Chapman, McCloy and Sweeney.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported the Board collected surcharges totaling \$325,813.35 broken down as follows: Board operations surcharge \$206,676.35, pilot continuing education surcharges of 72,495.00, and trainee training surcharges of \$46,642.00.

D) Report on legislative activities and contractual matters.

Staff Services Analyst Brian Vu reported on the following contracts:

SFBP contract – non-competitive bid (NCB) and issue memo has been sent to CHP.

Portable Precision Piloting Unit (AIRINC) training with California Maritime Academy – an interagency agreement has been sent to CHP and will be on schedule to permit the two classes to be held at the end of May.

Manned model training – CHP is currently working on the Invitation for Bid (IFB).

Investigator services contract – IFB was released on March 22, 2011. Bids are due by April 22, 2011. Due to a low number of bids, the deadline has been extended 30 days to May 27, 2011.

Comira amendment (no cost, time only) – complete

Requisition contract – purchase of a projector, computer and copier enhancements have been sent to CHP. Invoices have been sent and equipment should be arriving shortly.

Court reporter – Initially, the BOPC executed a contract for court reporting on an “X number,” which is a contract for services less than \$5,000. However, with the three-day hearing and last Thursday’s deliberation along with transcripts, the cost limitation was exceeded. As a result, the contract was modified into a standard contract.

6) Port Agent’s Report - Capt. Bruce Horton

A) Monthly confidential written report on pilots 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 the Harbors and Navigation Code, Section 1157.1.**

Captain Rusty McBride was found NFFD on October 15, 2010 by a BOPC designated physician.

Captain Tony Coppo was AFMR beginning April 20, with an anticipated return to work date of May 18, 2011.

B) Recommended Minimum Rest Period Exceptions:

There were 16 in the month of March. Six of them occurred on March 24 with the shortest rest period of 9.2 hours, with 23 pilots on the board.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in March 2011 compared to the three-year average were as follows: Bar crossings up 1.8% (582), bay moves down 16.1% (127), river moves up 23.5% (36), total moves down .6% (745) and gross registered tons (GRT) up 6.4% (27M). When compared to March 2010, bar crossings are up 13%, total moves are up 14.7% and GRT up 16.5%.

The P/V GOLDEN GATE was back in service as of April 18, 2011 and the P/V EAGLET went off hire on April 19, 2011.

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.

7) Pilot Evaluation Committee – Capt. Bruce Horton for Capt. Einar Nyborg

A) Report on April 13, 2011 committee meeting.

The Pilot Evaluation Committee met on April 13, 2011. In closed session, all six trainees were interviewed individually. The current trainees include: Fawcett, Laakso, Carr, Johnson, Manes, and Stoltz. Their time in the program ranges from four months to 24 months. All trainees are progressing well at this time.

One trainee is nearing completion of the program. The others are busy riding and testing with the USCG.

The next PEC meeting is scheduled for May 25, 2011.

B) Possible recommendation from Committee to charge a fee to applicants sitting for the Board's trainee selection examinations. Possible Board action to request authority from the Legislature to charge fees to applicants.

The PEC broached the subject of charging for the entry exam and thought that a \$500.00 application fee plus a \$500.00 test fee might be a good starting point. The reasoning is that it would discourage applicants from submitting incomplete/inadequate files. It will discourage those who come to practice. In addition, the PEC suggests a \$1000.00 total cost if an applicant advances to the written exam.

President Miller thanked the PEC members for their consideration of the issue and noted that he had asked the Finance Committee to consider the question of charging a fee to applicants and that that Committee would review the report and recommendation of the PEC. The Finance Committee will take up the question at its next meeting.

C) Possible recommendation for a determination that a trainee has or trainees have completed the pilot training program. Possible Board Action.

There were no recommendations.

8) Reported Safety Standard Violations and Investigations – Executive Director Garfinkle

There were no safety standard violations reported since the March 24, 2011 meeting.

9) Reportable Piloting Events – Executive Director Garfinkle

Executive Director Garfinkle, citing the demands on staff time as a result of the recent rate adjustment hearing, stated that the incident investigations in connection with the reportable event involving the TUG NARRAGANSETT while towing the TRIPOLI, and the reportable event involving the MOL PROSPERITY were not completed and likely would not be completed by the date of the May Board meeting which was the 90th day after the reported events. Executive Director Garfinkle requested that the Board extend the period of time for completion of the IRC investigation and its reports to the Board to June 23, 2011.

After discussion, Commissioner Wainwright moved that the Board extend to June 23, 2011 the 90 day period specified in Harbors and Navigation Code section 1180.3(c). 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.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee had not met since the last Board meeting and that there was no report. He also stated that his Committee is looking at tentative dates.

11) Finance Committee - Commissioner Osen

Commissioner Osen reported that the Finance Committee had not met since the last Board meeting and that there was no report.

12) Surcharge Audit – President Miller

President Miller reported that public accounting firm, Shea Labaugh Dobberstein, had completed the surcharge audits contracted for by the Board. While the reports are available for Board review, President Miller stated his desire to present them first to the Finance Committee and suggested that the Board take them up at its next meeting. There was no objection and the matter will appear on the agenda for the May 26, 2011 Board meeting.

President Miller announced that the Board would take up Agenda Item 13 at approximately 1:00 P.M. The Board then proceeded to Agenda Item 14.

14) Low Sulfur Fuel – Commissioner Osen

Commissioner Osen reported that there was no report.

Commissioner Osen recognized Capt. Jeff Cowen of who reported that UCSG is looking deeper at the issues and recognizes that low sulfur fuel is contributory to plant failures while underway.

PMSA Vice President Mike Jacob added that there has been a decision in PMSA's litigation against the California Air Resources Board concerning the mandating of use of low sulfur fuel. The State prevailed and PMSA will appeal.

15) Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright

Commissioner Wainwright reported that the Board's Ad Hoc Working Group on Trainee Recruitment had not met and there was no report.

16) Continuing Education Committee – Commissioner Roberts

A) Report on May 3, 2011 Continuing Education Committee meeting.

Commissioner Roberts reported that the Continuing Education Committee met on May 3, 2011 at 8:30 and all agenda items were discussed.

B) Discussion of Board funding of a California Maritime Academy training course dealing with Portable Precision Docking units. **Possible Board action for authorization to initiate contract with California Maritime Academy to train pilots and trainee's in the use of this equipment.**

Commissioner Roberts reported that a simulator study was done to see if piloting megaships into the ports was a viable option. SFBP donated 15 pilots to address the feasibility of ultra large container ships coming in and out of Oakland. The results were forthcoming and as a result, SFBP will purchase AIRINC equipment. As a result, the Continuing Education Committee has recommended to the Board to have staff contract with CMA to train pilots with the Portable Precision Docking units.

Pacific Merchant Shipping Association Vice President Mike Jacob questioned if it was appropriate for committees to seek funding.

Commissioner Osen stated that there was no hard data at all from the port to go ahead with this training.

Board President Miller stated while the Port of Oakland has not sent a letter, the money spent on a feasibility study should be enough.

Commissioner Osen stated that as representing the people of California, he felt this process was being too rushed. It does not benefit the rate payers at large and instead, benefits a small group of ship owners. Commissioner Cronin agreed, citing a lack of proof thereof.

SFBP Port Agent Capt. Horton stated that all indications point to ships arriving in June. The Port of Oakland has approached SFBP as well as customers. A feasibility study was done with 15 pilots attending simulations and the final verdict was that it can be done with AIRINC.

Commissioner Roberts made a motion to the Board to have staff contract with CMA to train pilots with the Portable Precision Docking units. Commissioner Wainwright seconded the motion, which passed 5-1 on a voice vote, Commissioner Osen voting in the negative.

C) Discussion of amendment to CCR 218: Duties of Port Agent. Discussion of increasing length by 25 feet of certain vessels mentioned in sections 218(c)(A), (B), (C). **Possible Board action to direct staff to initiate formal rulemaking incorporating final Committee recommendation.**

Commissioner Roberts stated that “hand holding” regulations needed to be updated. The last time they were updated was six years ago. The proposed changes are:

- (A)(3) 900 feet changed to 925 feet
- (B)(3) 950 feet changed to 975 feet

Commissioner Roberts stated that these changes would require an additional 15-day comment period and explained that these changes can cut down on about nine handholds per week and reduce minimum rest period exceptions.

D) Discussion of pilot travel arrangements in light of Bureau of State Audits findings and the use of refundable tickets for pilot training travel. **Possible Board action to direct staff to initiate formal rulemaking to amend regulations to conform with recommendations of the Committee.**

Commissioner Roberts reported that there was discussion of this at the Committee level and it was decided that, as this has been addressed at the Board level previously, the Committee had no recommendation to revise the "most economical refundable fare" language currently in use.

17) Pilot Power Committee – Commissioner Roberts

There was no report.

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

Board Counsel Eagan reported that the settlement timeline for the environmental lawsuits arising out of the COSCO BUSAN incident was still as outlined at the March meeting and that a final settlement was expected by mid-summer.

19) Rate Hearing –Board Counsel Eagan

The Board considered proposed Findings and Recommendations growing out of its April 28, 2011 actions in response to the rate adjustment petitions of the Pacific Merchant Shipping Association and the San Francisco Bar Pilots. All votes were roll-call votes. Findings in support of the five votes taken by the Board at the April 28 hearing were considered by those members of the Board who were on the prevailing side in the five votes. Board Counsel Eagan explained that majority votes would

suffice for approval of the findings, considering that, in the hypothetical situation where only three votes were on the prevailing side, as in a 3-3 vote where a rate adjustment proposal failed to obtain the four votes necessary for approval, it would be impossible to obtain the four votes that are required under Harbors and Navigation Code section 1150(c) when the Board votes as a whole. The votes on the five sets of proposed findings were as follows:

A) Vote on proposed findings 9-16 in support of vote declining to approve rate proposal of the SFBP: Motion to approve findings by Vice President Johnston, seconded by President Miller. Vote: 4 in favor, none against.

B) Vote on proposed findings 19-22 in support of vote declining to approve rate proposal of the PMSA: Motion to approve findings by Vice President Johnston, seconded by Commissioner Wainwright. Vote: 6 in favor, none against.

C) Vote on proposed findings 24-27 in support of vote in favor of fuel surcharge: Motion to approve findings by Vice President Johnston, seconded by Commissioner Wainwright. Vote: 6 in favor, none against.

D) Vote on proposed findings 29-33 in support of vote in favor of adding four new charges to the rate schedule provided for by Harbors and Navigation Code section 1191: Motion by Vice President Johnston, seconded by Commissioner Roberts. Vote: 5 in favor, none against.

E) Vote on proposed findings 35-43 in support of vote in favor of across-the-board 1.5-percent annual increases in rates under Harbors and Navigation Code sections 1190 and 1191, beginning January 1, 2012: Motion by Commissioner Roberts, seconded by Vice President Johnston. Vote: 5 in favor, none against.

The Board next voted on the remaining findings, the six recommendations, and Appendix 1 to the Findings and Recommendations, which re-states the rate schedule authorized by Harbors and Navigation Code section 1191, including the four new charges, and reflects the recommended 1.5-percent across-the-board increase in rates effective January 1, 2012.

President Miller explained that Appendix 1 is not identical to the rate schedule published by the SFBP, containing only rates provided for in section 1191, and containing some clarifications in the descriptions of some services. He explained that when the schedule is approved it will be a Board schedule and will be published by the Board. SFBP may continue to publish the schedule and include items not within the scope of section 1191. President Miller noted that some of the descriptions of charges in the schedule might benefit from clarification and stated his intention to appoint a committee to review the descriptions. Certain minor errors and omissions were corrected during the discussion of Appendix 1.

Board Counsel Eagan noted that proposed Finding 28 erroneously characterized the two new 1/2-mill rate charges for Pt. Blunt to Dock and from Dock to Pt. Blunt as deriving from 1190. He stated that, although the charges were measured by the mill rate set forth in section 1190, the authority for the charges derived from section 1191, which covers bay moves. The language of the proposed finding was changed to reflect his remarks.

It was agreed that language would be inserted somewhere in the findings that individual findings might not reflect the views of each of the individual Commissioners who were on the prevailing side of a vote.

Certain other minor, non-substantive changes were made in various findings.

A motion to approve the remaining findings, the six recommendations, and Appendix 1 was made by Vice President Johnston, seconded by Commissioner Cronin. The vote was 6 in favor, none against.

Commissioner Roberts, seconded by Vice President Johnston, then made a motion to forward the Findings and Recommendations to the Secretary of the Senate and the Chief Clerk of the Assembly. Vote: 6 in favor, none against. President Miller explained that the submission to the Legislature would also include proposed legislative language to implement the recommended rate adjustments.

At the conclusion of the Board's consideration of Agenda Item 19, President Miller announced that the Board would stand in recess until 1:15 P.M., at which point it would consider Agenda Item 13, the report of the Pilot Fitness Committee. The Board stood in recess at 12:30 P.M.

The Board reconvened at 1:20 P.M. President Miller noted that all Commissioners had returned to the meeting, constituting a quorum, and that Member Morocz was participating again by telephone.

President Miller then called upon Commissioner Roberts, Chairman of the Pilot Fitness Committee, to introduce his Committee to the Board, and to proceed with its report.

13) Pilot Fitness Committee – Commissioner Roberts

A) Report on April 22, 2011 Pilot Fitness Committee meeting.

Commissioner Roberts reported that the Board's Pilot Fitness Committee met on March 22, 2011 at 9:30 a.m. All members were present and the Committee's full agenda was considered.

He then introduced the members of his Committee, Brigadier General Chester Ward, M.D., and Mrs. Barbara Price and Dr. Robert Kosnik. Dr. Kosnik walked the Board through his study.

After the walkthrough of Dr. Kosnik's hardcopy slides, Commissioner Roberts stated his intent for this final study to be accepted by the Board at its next meeting by which time the final edits will be completed. He thanked the Committee members and Dr. Kosnik for formulating a groundbreaking study that will set the precedent for other jurisdictions.

The next scheduled meeting is for May 11, 2011.

The Committee concluded its report at 2:30 P.M. President Miller announced that the Board would stand in recess until 2:40 P.M. The Board stood in recess until 2:40 P.M. at which time it reconvened. President Miller noted that all Commissioners had returned to the meeting, constituting a quorum, and that Member Morocz was again participating by telephone.

20) Discussion and recommendation concerning SB 907 – Executive Director Garfinkle

Executive Director Garfinkle explained that some of the provisions of this bill serve to require the San Francisco Bar Pilots to share information with other pilot organizations concerning safety standard violations that may exist on vessels that pass outside of the pilotage grounds before an investigation is complete, if in his or her discretion the safety violation presents a potential danger. It allows him to rely on preliminary data in providing this information to compile this information and make this determination. This bill may also be a place holder for any rate adjustment that may be authorized by the legislature.

21) Request from Chevron Shipping Company - Executive Director Garfinkle.

On January 4, 2011, Eric Osen – acting in his capacity as Marine Superintendent of the Chevron Shipping Company – sent correspondence addressed to Executive Director Garfinkle concerning a dispute between Chevron Shipping Company and the San Francisco Bar Pilots regarding the propriety of charging for “anchoring after departure” in addition to a vessel movement fee which is not in dispute. In his correspondence, Marine Superintendent Osen requests as follows:

I request the Commission to validate and define what circumstances the code 835AN can be used. As appropriate – please direct the SFBP to refund all 835AN charges to Chevron vessels as well as the incremental percentage of the Pilot Commission charge that would apply for movements that were improperly charged the 835N fee.

The Board will consider the request from Chevron Shipping Company. Commissioner Osen has stated that he will recuse himself from the consideration this matter. **Possible Board action on the requests to “validate and define” and to “direct the SFBP to refund”.**

Commissioner Osen submitted written material and made an oral presentation concerning whether the charge for Anchoring After Departure, which is set forth as Code 853 AN in SFBP’s Service Code and Charge listing, setting forth the rate schedule authorized by section 1191, was being properly applied by SFBP. His position was that the charge should be applied only to situations where a piloted vessel has to anchor during its trip to its intended destination because of reduced visibility or some other reason. Concerning that part of Commissioner Osen’s request that asked the Board to order a refund of past Anchoring After Departure fees charged to Chevron Shipping Company by SFBP, President Miller observed that the Board was not empowered to order refunds. Concerning the application of the charge, Captain Bruce Horton, the Port Agent, stated that the charge applied to any bay move that ended at an anchorage.

Commissioner Osen moved that the Board clarify the meaning of the charge by adopting the following wording:

“Anchor after departure – this fee shall apply whenever, during the course of a Bay Move or shift, the vessel anchors, and the anchorage is not the destination of the vessel.”

Commissioner Roberts seconded the motion, but stated that he would not be voting in favor of it.

Mike Jacob, Vice President of the Pacific Merchant Shipping Association, commented that he agreed that the charge needed to be clear, but that this was a situation where interpretive regulations were appropriate, rather than ad hoc definitions of charges at individual Board meetings.

The vote on the motion was one in favor (Commissioner Osen), five against.

22) Public Comment on Matters not on the Agenda

There were none.

23) Proposals for Additions to Next Month's Agenda

There were none.

24) Adjournment

There being no further business before the Board, it adjourned at 4:48 P.M.