

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

660 Davis Street, San Francisco, CA 94111
Phone: (415) 397-2253 Fax: (415) 397-9463
E-mail: brian.vu@bopc.ca.gov
website: www.bopc.ca.gov



**Board of Pilot Commissioners
Monthly Board Meeting
July 28, 2011
9:30 a.m.
MINUTES**

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

President Miller called the meeting to order at 9:30 a.m. Commissioners Johnston, Wainwright, Cronin, Brooks, and 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. Executive Director Garfinkle, Deputy Attorney General Dennis Eagan, Port Agent Bruce Horton, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini also were present.

After the meeting to order, President Miller announced that Governor Brown had appointed John "Jack" Brooks to fill the vacant public member seat on the Board. President Miller welcomed Commissioner Brooks aboard and invited him to tell the Board and the public about himself.

Commissioner Brooks offered the Board some of his background including making mention that he was a graduate of the U.S. Merchant Marine Academy at Kings Point, NY, that he had sailed during World War II, rising to the rank of Chief Engineer, and that he had also served in the U.S. Navy.

2) Approval of Minutes – President Miller

President Miller requested approval of the minutes of the June 23, 2011 Board meeting. Commissioner Osen moved approval. Commissioner Wainwright seconded the motion, which passed unanimously on a voice vote. President Miller and Commissioner Brooks abstained.

3) Announcements – President Miller

President Miller announced that he had received e-mail correspondences from two National Transportation Safety Board staff members requesting information regarding the Board's regulation of maximum hours of work and rest periods. President Miller read the e-mail request from Capt. Rob Jones.

Commissioners,

It was very much appreciated when you (or your predecessor) participated in our Public Hearing during the Cosco Busan accident investigation. I would like to ask once again for your assistance in answering a looming procedural question. We have not singled out your Commission or your Pilot Associations for any reason other than your help during the Hearing was of great value to our efforts and yours is the most current contact information among Commissions.

The Board (NTSB) is concerned about ensuring that operators in all modes of transportation are sufficiently rested when they report for duty. In anticipation of their inquiries on an investigation that is nearing completion, we are endeavoring to reach out and gather information about current practices. Therefore, please let us know the answers to the following:

1. What are the hours of service rules that are in force in your jurisdiction?
 - a. Are these rules your rules, or Coast Guard rules?
 - b. What is the longest period of time a pilot can legally work in a 24- and a 48-hour period under these rules?
 - c. What are the minimum hours of rest between assignments and also during a 24- and a 48- hour period under these rules?
 - d. How do the rules ensure that pilots are not working at times that are at odds with their circadian rhythms or body clocks?
2. How do you ensure that pilots follow these rules?

Thanks very much for your assistance

Captain Rob Jones

Sr. Marine Accident Investigator

Office of Marine Safety – NTSB

490 L'Enfant Plaza East, S.W.

Washington, DC 20594-2000

202-314-6458 office

202-320-0074 cell

President Miller stated that he had requested the Board's staff to draft a response to Captain Jones, that the draft response would be reviewed by Board Counsel and by Deputy Attorney General Judith Loach.

President Miller next announced the establishment of the Ad Hoc Committee on Blue Card Rates, stating the following:

The Board needs to study the existing “Blue Card” service codes and develop plain English definitions for them. The Board also needs to identify an appropriate procedure for our licensees to use to bill fairly for pilotage services not specified in statute or on the existing “Blue Card” schedule. This may develop into a recommendation to the Legislature for statutory changes. The Committee may address other matters that come to its attention in connection with its review of Blue Card service codes or that may be referred to it by the Board.

Vice President Johnston has agreed to serve as Chairman. Herewith I appoint the following members to the Ad Hoc Committee:

Vice President Frank Johnston, Chair
Commissioner John Cronin
Commissioner Dave Wainwright
PMSA Vice President Mike Jacob
SFBP Business Director John Cindery

President Miller noted that the meetings of the Ad Hoc Committee would be subject to the Bagley-Keene Open Meeting Act and that he anticipated active participation by the Port Agent.

4) Board Member Activities – Board Members

President Miller stated that on June 20, 2011 he had visited the manned-model training center at Port Revel, France. Six of the Board’s licensees were beginning their required continuing education training at the time. President Miller observed both the theory and hands-on training they received. President Miller noted that he had paid for all expenses associated with the visit himself and that no Board or other state funds had been used in connection with the visit.

Vice-President Johnston noted that on July 25, 2011, he, along with Executive Garfinkle and Staff Services Analyst Brian Vu, went to the Reserve Fleet to view maritime artifacts that may eventually be loaned to the Board staff for display in the office.

5) Executive Director’s Report – Executive Director Garfinkle

A) Correspondence and activities since the June 23, 2011 meeting.

Executive Director Garfinkle reported that on July 7, 2011, staff received written confirmation from the Department of Finance, dated June 15, 2011, approving the Board’s request to lower the Board Operations surcharge from 6.6% to 3%. It was reportedly delayed by the move of the Board office from Pier Nine to Davis Street.

Executive Director Garfinkle reported that Capt. Jeff Cowan alerted Board staff to United States Coast Guard Marine Safety Alert 11-01, which concerns fuel switching safety procedures. The purpose of the Alert is to increase awareness, provide guidance in an effort to prevent propulsion loss,

and to make new arrivals to California aware of fuel switching issues. The Alert looks remarkably like the work on fuel switching issues prepared by Capt. Cowan and presented to the Board earlier this year.

On July 14, 2011, staff received notice from the Office of Administrative Law (OAL) that OAL had approved the regulatory action amending sections 210 and 221 dealing with the Incident Review Process and transferring final decisions from the Committee to the Board. This regulation becomes effective on August 12, 2011.

On July 15, 2011, staff received a copy of a Public Records Act request asking the Port Agent to produce specific records enumerated in the request. Board Counsel has been assigned to assist with this request and on July 20, 2011 we received a copy of an initial response by Deputy Attorney General Judith J. Loach, and later a copy of a response from Board Counsel Dennis Eagan.

Staff also received an email announcing a new manned-model facility in Louisiana called Maritime Pilots Institute. They will be sending a full package on their facility shortly. In addition we received notification that the manned-model facility in the United Kingdom has opened up a facility near Southampton at Timsbury Lake as part of the Warsash Maritime Academy.

Commissioner Osen inquired if that was the complete correspondence from the Warsash facility, as he noted that he has been in communication with them concerning the bidding on the manned-model training contract. He went on to inquire as to whether staff had received correspondences from other manned-model facilities stating their desire to bid on the manned-model training contract, however found the scope of work so tight that it could only be for one facility. Executive Director Garfinkle explained that there were communications concerning the contract bidding that would be taken up at the August Board meeting where it would be an agenda item at Commissioner Osen's request. Commissioner Osen also stated that he had been in contact with DGS; however, he would go into greater detail when it is discussed as an agenda item.

Lastly, Executive Director Garfinkle reported that staff received a copy of a letter from Pacific Merchant Shipping Association to the Board President expressing support for an inquiry into the facts and events surrounding the NORMA billing incident and requesting further inquiry into this issue.

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

In June, the Board renewed licenses to Captains Wehr, Haggarty, and Hurt. Since the June Board meeting the Board renewed licenses for Slack, Miller, Wainwright, Alden, and Nyborg.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported that the Board collected June surcharges totaling \$349,330.81 broken down as follows: Board Operations surcharge \$220,738.81, Pilot Continuing Education surcharges of \$78,960.00, and Trainee Training surcharges of \$49,632.00

D) Report on legislative activities and contractual matters.

AB 656 - Executive Director Garfinkle reported that the Huber bill has a hearing date set for August 15, 2011. July 1, 2011 was the bill's last action date, on which it was referred to the Senate Appropriations Committee.

AB 907 – The hearing set for June 28, 2011 was cancelled at the request of the author. No new date has been set.

AB 1025 – The bill will be going before the Senate Appropriations Committee on August 18, 2011.

Staff Services Analyst Brian Vu reported on the following contracts:

San Francisco Bar Pilots (SFBP) contract – the non-competitive bid (NCB) is currently with the Department of General Services (DGS) for review and approval. Commissioner Osen inquired as to why the SFBP contract was done on a NCB basis instead of using the state travel service. Executive Director Garfinkle responded by explaining the unique position SFBP is in to provide the services under this contract, which includes reimbursing SFBP for trainee expenses as well as providing travel arrangements for pilots in connection with their continuing education training courses.

President Miller stated that using SFBP as the conduit for services under this contract was more efficient if done under one roof.

Manned-model training – The contract for manned-model training with Port Revel has been approved by the Department of General Services. Staff provided a letter to DGS explaining why there was only one bidder on this contract.

Investigator services contract – The Board is currently contracted with four investigators, each with a two-year, \$20,000 term.

Staff is also awaiting new office furniture and a laser printer, acquired under a contract of requisition.

6) Port Agent's Report – Captain 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 Horton reported that Captain Dustin Slack sustained a non-work related injury and has been AMFR since July 18, 2011. He is expected to return to work on July 29, 2011.

Captain Horton also 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 NFFD 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.

Captain Horton continued with his report.

B) Recommended Minimum Rest Period Exceptions:

There were 31 MRP's in June. Seven occurred on June 10, the shortest being 9.4 hours rest, with 24 pilots on the board.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in June 2011 compared to the three-year average were as follows: Bar crossings up 3.6% (606), bay moves down 18.8% (86), river moves up 26.8% (29), total moves up .6% (721) and gross registered tons (GRT) up 6.9% (28.6M). When compared to June 2010, bar crossings are up 9.7%, total moves are up 9.1% and GRT up 14%.

The Pilot Vessel PITTSBURG was out of service on July 14, 2011 for a planned outboard drive mechanism and engine servicing.

The Pilot Vessel SAN FRANCISCO was out of service from July 5, 2011 to July 26, 2011. This was a planned shipyard visit for normal maintenance and repair items and to also change out the main deck doors. Annual Load Line inspection was accomplished.

7) Pilot Evaluation Committee – Capt. Einar Nyborg

The Pilot Evaluation Committee met on July 20, 2011. In closed session, all five trainees were interviewed individually. Their time in the program ranges from seven to 13 months. All trainees are progressing well at this time. One trainee nears completion and the other four are performing at or ahead of program benchmarks.

In addition, the Pilot Evaluation Committee has asked the Board to consider fees for application to the San Francisco Bar Pilot Trainee Selection Exam. This concept came about a couple of years ago when the Committee realized that mariners were using BOPC's exam as practice for the exam in another port where they actually wanted to become a pilot. Many U.S. ports have modeled their exam process after the BOPC. The BOPC's bridge simulator exam is cutting edge and well suited to honing the skills of pilot exam applicants. The decision-making required in the simulators takes some practice to perfect. Many applicants are purchasing simulator time and others are taking courses designed to prepare them for a pilot exam at considerable expense. Taking the BOPC's exam is the best preparation and it is also currently free to qualifying mariners.

The problems caused by the free exam include:

1. It forces the Board to expend resources looking at applicants who may not qualify or do not intend to become an SFBP pilot.
2. It is a waste of pilot resources. Thousands of hours go into the creation of the exam.

3. Exam security suffers. Even though non-disclosure documents are signed by each applicant, exam security largely depends on the concept of competition. As a competitive exam, those with the best performances get the trainee positions. If an applicant does not care about his/her results, he/she is more likely to share test information – particularly regarding the simulator exam – with those who follow him. It would be very easy to provide critical simulator exam information with applicants who are scheduled to enter the simulator later in the day or on a subsequent day.

Charging an exam application fee would help correct those problems. It would help to discourage applicants who do not intend to become an SFBP pilot and would help to reduce the number of unqualified applicants. It would discourage mariners from taking advantage of a free training opportunity and would improve security by eliminating most of those applicants who have no desire to rank top in the exam results.

It is important that the Board does not drive away qualified applicants due to the cost. It is important that the amount is affordable to the career mariner with two years of master's time on his or her resume. It is not intended to recover the all costs of the exam through this fee.

A survey of other ports revealed that several charge such fees. They include:

- South East Alaska: \$2050
- South West Alaska: \$1600
- Puget Sound: \$4000
- British Columbia: \$300 (Canadian)

Other professional exams are also covered by such fees:

- California State Bar: \$800+
- California Board of Accountancy (CPA exam): \$1200
- California Medical Board: \$500

The Pilot Evaluation Committee recommends to the Board that it consider the adoption Trainee Selection Exam Application Fee in the amount of \$1000.

The next PEC meeting is August 17 2011.

Commissioner Wainwright stated that the pending legislation AB 1025 authorizes such a fee and asked the Board how to proceed next.

President Miller stated that it would not be appropriate to vote on the amount of the application fee until the Board has authority. The Board must wait for legislation to be enacted before it can act on AB 1025.

Vice-President Johnston asked where the monies from the exam fees would go. Deputy Counsel Morocz stated that the Board makes a determination of where it wants the monies to go.

The Board agreed that Trainee Training Fund was the appropriate account to receive these monies because the expenses of preparing and administering the examination are paid from that fund.

Commissioner Osen inquired about fee waivers and possible applicants with economic hardship.

Deputy Counsel Morocz stated that these discussions were best saved for later on.

PMSA Vice-President Jacob recommended that the Board direct the Finance Committee to start a workshop process. Commissioner Cronin agreed to put the question of application fees on the Committee's agenda.

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) There were no new reportable pilot events since the June 23, 2022 Board meeting.

B) Executive Director Garfinkle requested for an extension until the August Board meeting to present the report concerning the M/V ADRIATIC PEARL. The reason for the request was based in part of the delay inherent in receiving Freedom of Information Request data from the USCG. Other reasons included high-priority intervening events re-directing the Executive Director's attention. Vice-President moved approval. Commissioner Wainwright seconded the motion, which passed unanimously on a voice vote.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee meet on July 6, 2011 at 1:05 p.m. Commissioner Wainwright updated the Board on the status of regulations:

- Sec. 215 – giving Executive Director the authority to extend the time period for completing mandated continuing education training. The issues have been discussed, a draft has been prepared and the Committee was waiting for Board Counsel to resolve an issue to proceed.
- Sec. 217 – changes in Pilot Medical Evaluation - in progress. The Rules and Regulations Committee has been meeting with the Pilot Fitness Committee as a “joint committee” to develop recommended amendments to regulation Section 217.
- 1190(a)(1)(c) – The Rules and Regulations Committee has resolved sufficient questions to enable staff to begin drafting language for the Committee's consideration at the next meeting.

Commissioner Wainwright stated that there was no meeting scheduled at this time.

Commissioner Wainwright reported that the Joint Committee with Pilot Fitness met on July 19, 2011 at 9:30. The Committee worked on drafting regulations and made partial progress on the agenda. The next meeting is scheduled for August 5, 2011.

11) Finance Committee - Commissioner Cronin

There was no report.

12) Pilot Fitness Committee – Executive Director Garfinkle

Executive Director Garfinkle, on behalf of Commissioner Roberts, stated that the Pilot Fitness Committee met jointly with the Rules and Regulations which was reported on by Commissioner Wainwright.

Commissioner Wainwright inquired whether more regulations will come out of the fitness study than just the seven currently under review by the Joint Committee. Member Morocz stated that the study has over 20 recommendations. However, the essence of those was captured in seven.

13) Low Sulfur Fuel – Commissioner Osen

No report, although Port Agent Horton stated that he will attend a meeting on July 29, 2011 at 1:00 p.m. with the UCSG to address the issue.

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

There was no report.

15) Continuing Education Committee – Executive Director Garfinkle for Commissioner Roberts

Executive Director Garfinkle, on behalf of Commissioner Roberts, reported that the Continuing Education Committee has not met since the last Board meeting.

Executive Director Garfinkle reported that he met with the Professional Development Committee of the San Francisco Bar Pilots, which has begun work on a recommended course syllabus for the combination course. The contract is due next year. The Board is currently contracted with MITAGS. Executive Director Garfinkle explained that if the California Maritime Academy can show that it can provide a course that is professional and can be presented timely, there will be no need to bid. As a state entity, an interagency agreement would be used.

Commissioner Osen asked for clarification and guidance on the different types of contracts the Board uses.

Executive Director Garfinkle stated that our CHP contract liaison has sent staff an information packet with guidelines on what to include in the scope of contracts and will provide Commissioner Osen with these guidelines.

16) Pilot Power Committee – Executive Director Garfinkle

Executive Director Garfinkle reported that the Pilot Power Committee has not met recently, although he reported that retirement surveys have been sent out and were almost all received back. In addition, SFBP is preparing 237(d) data to inform the Board of minimum rest period exceptions.

SFBP Capt. Nyborg asked whether the Board could contract with trainees in time for a September start date. Executive Director Garfinkle responded that the start date would be a function of how swiftly the contracting process could be carried out. More than likely, the trainees would be able to start in October.

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

There was no report

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

- A) Presentation of IRC Report on the February 25, 2011 event involving the MOL PROSPERITY while docking at Oakland 32. It is alleged that the ship made contact with the gantry crane causing minor damage. Board permission granted to extend report presentation to July 28, 2011.

Executive Director Garfinkle reported that on the morning of February 25, 2011, the MOL PROSPERITY was piloted from sea to Oakland, Berth 32 by SFBP Capt. Robinson. The ship transited from the pilot station to Oakland Outer Harbor without incident, in spite of wind gusts reported up to 50 knots in the central bay. Following docking, the Manager, Safety, Security, and Labor Relations for TRAPAC, James Yanak, boarded the ship and informed the Master that a witness claimed the ship made contact with gantry #3 during docking, bending a pad eye welded to the gantry leg.

No one on board the ship witnessed the alleged contact and the one person who made the initial report declined to be interviewed by the Executive Director of the Commission. A Commission Investigator was dispatched who interviewed witnesses, took photos, and made copies of relevant documents used in the investigation.

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 nor the appearance of pilot error. Commissioner Wainwright moved that the Board accept the non-incident report from the IRC, find that there was no pilot error and take no further action. Commissioner Osen seconded the motion which passed unanimously on a voice vote with Vice-President Johnston abstaining.

- B) Presentation of IRC Report on the February 25, 2011 event involving the TUG NARRAGANSETT while towing the TRIPOLI. Board granted permission to extend report presentation until July 28, 2011.

Executive Director Garfinkle reported that on February 25, 2010, an incident occurred involving the TUG NARRAGANSETT while towing the TRIPOLI. While inbound from the pilot station in strong winds, the tow cable or bow of the TRIPOLI snagged Main Ship Channel

buoy #8. While there was damage to the buoy in that it had to be repositioned, the IRC finds this an incident where there were reasonable responses by the pilot and recommended no pilot error.

Commissioner Wainwright moved that the Board accept incident report from the IRC, find that there was no pilot error and take no further action.

Commissioner Osen inquired as to whether the IRC had weather printouts from the weather service on that given day, which, in his opinion may have given some indication that gust of up to 50 knots were predictable. He also questioned if the tow cable length could have been second guessed by the pilot, speculating that if it had been shortened, the incident could have been averted.

Commissioner Cronin asked if the Board knew of Capt. Kirk's experience with tugs. Executive Director Garfinkle stated that Capt. Kirk had extensive knowledge in towing, having come from a towing background. In addition, it is customary for a pilot to rely on a tug master's judgment with respect to the appropriate length of the tow line, and particularly in this incident where the tug master had served on this particular tug and tow combination since the service began in 2003.

Commissioner Cronin seconded the motion which passed on a voice vote with Vice-President Johnston abstaining and Commissioner Osen voting "no."

19) Review of facts surrounding pilotage of CMA-CGM NORMA – Port Agent Bruce Horton

Port Agent Horton read his report to the Board. A copy of the report is attached to these minutes.

Commissioner Brooks asked if the Port Agent could define what constituted an extraordinary move. Port Agent Horton stated that they are maneuvers that are not in SFBP's operations guidelines.

Commissioner Osen asked if there was ever a contractual agreement. Port Agent Horton stated that there was not.

Commissioner Osen asked why in the rate hearing, when he explicitly asked for more information regarding these "megaships", SFBP representatives responded that they had no knowledge of when the ships would call, their size or what carrier would operating them. Port Agent Horton stated that at the rate hearing, they were taking about 1200 foot ships. The CMA-CGM NORMA was 1145 ft.

Commissioner Osen asked how a company knows whether the SFBP will work a ship of any given size. Port Agent Horton stated that a company can look at the SFBP operations guidelines or call the operations pilot.

President Miller recommended that the Board seek necessary legal opinions and then move forward. He identified two issues that need to be clarified: Authority of the SFBP to bill in advance of legislation; and definitions of various services listed on the SFBP "blue card" rate schedule. The Ad Hoc Committee on Blue Card Rates will examine these issues as part of its agenda. The outcome will be relevant to the Board's review of the NORMA billing incident.

Commissioner Cronin inquired if it was within SFBP authority to move vessel of a certain size without Board authority. President Miller stated that, as a licensing body, the Board does not have authority over what ships come to the Bay, nor does the Board have authority to assert control over how its licensees do their work. The NORMA review is simply fact finding. The Board itself is a licensing body and would never infringe on SFBP doing their job.

PMSA Vice-President Mike Jacob agreed with President Miller's recommendation of finding and presenting the facts and expressed his opinion that he did not believe the facts presented today were the whole story.

President Miller made a motion to direct Executive Director Garfinkle and Board Counsel Eagan to engage in an inquiry into facts and events surrounding pilotage of the CMA-CGM NORMA and extraordinary fees charged by SFBP for two pilots. The inquiry extends to other vessels subject to extraordinary pilotage fees. Commissioner Osen seconded the motion which passed unanimously on a voice vote.

Commissioner Wainwright asked How the Ad Hoc Committee would be involved. President Miller stated that, while the Committee would work independently, there would be some overlap of purpose.

President Miller moved to have Board Counsel to provide a legal analysis. Commissioner Wainwright seconded the motion which passed unanimously on a voice vote.

20) Audit of San Francisco Bar Pilots Invoices – Commissioner Osen

Commissioner Osen requested this agenda item be deferred considering the investigation and Committee work which will soon begin as per agenda item #19. Outcome of that investigation will drive whether this agenda item will be necessary going forward.

21) Public Comment on Matters not on the Agenda

Commissioner Osen stated his disappointment with how the manned-model contract bidding process was handled. With Port Revel being the only bidder, Commissioner Osen stated he felt the bid was written so narrowly and specifically that only one service provider could meet the specifications. As a result, it was not consistent with the spirit of bidding nor does he believe it meets the Department of General Services guidelines for contracting.

21) Proposals for Additions to Next Month's Agenda

Commissioner Osen stated that he would like the issue of the manned-model bid be addressed on the August agenda. President Miller responded that the agenda would include a review of the process that resulted in contracting with Port Revel for manned-model training.

22) Adjournment

There being no further business before the Board, the meeting adjourned at 1:13 p.m.