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BOARD OF PILOT COMMISSIONERS
MONTHLY BOARD MEETING

July 22, 2010
9:30 A.M.

MINUTES

OPEN MEETING
Call to Order and Roll Call-9:30 a.m.

President Miller called the meeting to order at 9:38 a.m. President Miller and Commissioners Tate, Osen, Wainwright and Roberts were present, constituting a quorum. Vice President Johnston and Commissioner Sullivan were absent. Business, Transportation and Housing Secretary Bonner was represented by BTH Deputy General Counsel Morocz, who participated by telephone from Sacramento. Executive Director Garfinkle and Board Counsel Eagan were also present.

1) Approval of Minutes

President Miller requested approval of the minutes of the June 24, 2010 Board meeting. Commissioner Wainwright requested that staff be authorized to make clerical, non-substantive changes to the draft that had been circulated for review. Commissioner Tate moved approval with the requested authorization to staff. Commissioner Wainwright seconded the motion, which passed unanimously on a voice vote.

2) Announcements – President Miller

President Miller announced that Assistant Director Nancy Hall Bennett had submitted her resignation to Governor Schwarzenegger, effective July 15. Ms. Bennett has accepted a position with the California League of Counties. President Miller noted that she served in a critical executive capacity during very difficult times for the Board. President Miller, joined by the other members of the Board, expressed appreciation for her work for the Board during the past 12 months and wished her well in her new endeavors.

President Miller announced that he had been in correspondence with representatives of several West Coast pilotage regulatory organizations in connection with a proposal to hold a regional regulators' meeting later in 2010. Such a meeting was held in Portland in 2008. The Pacific Pilotage Authority, part of the government of Canada, which employs pilots serving on the waters of British Columbia, has volunteered to host the meeting. Neither a date nor an agenda have been determined. Once they are determined, information regarding the meeting will be posted on the Board's website. The Board will have an opportunity to discuss its participation at a future Board meeting. President Miller anticipates that representatives of the Alaska Board of Marine Pilots, the Washington Board of

Pilotage Commissioners, the Oregon Board of Marine Pilotage, and the Pacific Pilotage Authority will participate in addition to representatives of the California Board of Pilot Commissioners. Representatives of industry attended and participated in the 2008 meeting.

President Miller noted that Mr. Mike Jacob, Vice President of the Pacific Merchant Shippers Association, was present in the audience. President Miller inquired whether PMSA would be inclined to attend and participate. Mr. Jacob responded that it would be so inclined.

3) Board Member Activities – Board Members

President Miller stated that he and Vice President Johnston had served as proctors for the written segment of the trainee selection examination at the California Maritime Academy on Monday, June 28. President Miller stated that he had attended the briefing and training session for evaluators for the simulator segment of the examination, also held at CMA, on Wednesday, June 30.

Commissioner Roberts stated that he had participated in the simulator examination "Angoff session" (by which the trainee selection examination questions were validated) on Friday, July 2.

4) Executive Director's Report – Executive Director Garfinkle

A) Correspondence and activities since the June 24, 2010 meeting.

The Executive Director attended the July 8, 2010 Harbor Safety Committee meeting and discussed Assembly Bill 234, which in part requires vessels engaged in bunkering or lightering operation to pre-boom each oil transfer for the duration of the transfer, unless pre-booming is determined not to be safe and effective. The Harbor Safety Committee found the pre-booming not practical or effective and potentially very unsafe and opposes AB 234 as applied to San Francisco Bay.

The Board of Commissioners of the Stockton Port District sent the Board a letter confirming that at their June 14, 2010 meeting the Board approved ten pilot commissions for the 2010-2011 fiscal year, including Alden, Haggerty, Hurt, Kleess, Miller, O'Laughlin, Pinetti, Ridens, Slough and Sweeney.

The Board also received a letter of intent to retire from Capt. Michael Simenstad, which is of special note, as it may have an effect on the pending Board Accusation.

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

Nine pilots had license renewal in July: Alden, Larwood, Wainwright, Slack, Nyborg, Kenyon, Long, Haggerty and Miller.

C) Report on surcharges received by the Board.

The Board received a total of $273,199.23 in surcharges, broken down as follows: Pilot Commission surcharge $200,731.23; Pilot Continuing Education surcharge $32.985.00; Pilot Trainee surcharge $39,483.00.

D) Report on legislative activities and contractual matters.

Board office lease negotiations are continuing, with the Department of General Services close to signing with the Port of San Francisco. The Board has a new state-format website up and running: www.bopc.ca.gov.

5. Port Agent's Report – San Francisco Bar Pilots (SFBP) Port Agent Captain Peter McIsaac

Absent For Medical Reasons (AFMR) & Not Fit For Duty (NFFD) Report

Capt Simenstad has been AFMR since Feb 27. Our records indicate he was found not fit for duty (NFFD) by a Board physician. He expects to remain unfit through at least Aug 20.

Capt. McIsaac was AFMR beginning March 16. On May 4 he was found NFFD to pilot as per Board physician. He is expected to remain unfit until early August but will continue his duties as Port Agent.

Recommended Minimum Rest Period Exceptions:

There were 19 during the month of June on seven separate days. Three exceptions were due to river pilots being called back early for moves. The shortest rest period was nine hours.

Pilot Vessel Report:

The Pilot Vessel SAN FRANCISCO was out of service from June 1, 2010, through June 29, 2010, for planned maintenance and American Bureau of Shipping mandated modifications.

The load lines for the Pilot Vessel SAN FRANCISCO and Pilot Vessel CALIFORNIA are in the process of being assigned and should be complete by July 27, 2010.

The Pilot Vessel GOLDEN GATE is scheduled to undergo a biennial condition and valuation survey on August 17, 2010. When it is complete a copy of the written report will be submitted to the Board. The surveys on the other four boats have been completed and the reports submitted. The survey cycle will commence again in 2012.

Billed Vessel Moves in June 2010 compared to a three-year average

Bar Crossings: (585) -10%
Bay Moves: (117) -28%
River Moves: (29) -15%
Total Moves: (731) -13.6%
Gross Registered Tonnage: (26.7M) -10.2%

When compared to the first six months of 2009, bar crossings are down 5%, GRT down 6.6%, while total moves are down 6%. It is an improvement when compared to the first quarter of 2010.

President Miller announced that the Board would go into closed session at the conclusion of other business to deliberate the Port Agent's confidential report on pilots who were AFMR, should any Commissioner wish to do so. He then inquired of the Commissioners if any wished to deliberate in closed session. None requested a closed session and none was held.

6) Pilot Evaluation Committee Report – Capt. Einar Nyborg

A) Report on July 21, 2010 committee meeting:

The Pilot Evaluation Committee met on July 21, 2010. In closed session, all five trainees were interviewed individually. The current trainees include: Ruff, Merritt, Fawcett, Kellerman and Laakso. Their time in the program ranges from two months to 15 months. All trainees are progressing well at this time. There may be a recommendation for one certificate of completion at the August Board meeting.

B) Report on conclusion of trainee selection exam process:

Capt. Nyborg expressed great pleasure in reporting the successful completion of the latest trainee selection exam. On Monday, June 28, 2010, the written exam was given to 27 candidates. On Thursday and Friday, July 1 and 2, 2010, 21 candidates continued on with the simulation exam. From the combination of the two exams, plus experience points, a list of future trainees is now available to the Board. Capt. Nyborg was pleased to report that the mariners who excelled in the process were for the most part the same candidates whom he would consider trainable based on the performance he witnessed in the simulation.

He also made the point that this exam was only accomplished with the time and effort of many people. He thanked Capt. Garfinkle for taking on the challenge of this exam with so little staff help, with no previous experience, under considerable time restrictions, but with the wisdom and energy far beyond what we had the right to expect. Additionally, Capt. Gates, now retired, was the driving force for this exam. Honorable mention also goes out to Captains Noonan and Buckley of CMA, Drs. Hertz and Chinn of Comira, all of the members of the Pilot Evaluation Committee and the pilots who contributed their effort in creating the exam, and also the pilots who covered for their work while they were away.

Capt. Nyborg stated that, in the last six months, the exam process consumed 150 pilot days. That does not account for the Board time or that of the contractors. The Board and the SFBP are lucky that this exam fell at a time when work was fairly slow. He pointed out that in times of heavy vessel traffic, the quantity of minimum rest period exceptions would be unacceptable. Capt. Nyborg observed that it may be time to consider a more efficient exam process.

Executive Director Garfinkle expressed his appreciation to Raymond Paetzold, Esq., who supported *pro bono* the examination process for both days of the simulator examination. President Miller concurred and expressed the Board's gratitude for Mr. Paetzold's graciousness and generosity.

A motion was made by Commissioner Osen to accept the list of successful applicants resulting from the exam process. There was discussion on the motion as to whether a proper evaluation could be made without considering a manpower investigation and a more formal presentation on how the test was administered to arrive at the list of trainees. There was no second and the motion died.

Training Program Improvements

Going forward the Pilot Evaluation Committee (PEC) would like to begin to seriously consider some changes to the training program. The changes the PEC has made to date to improve the program might not survive under different leadership within PEC. Effecting long-lasting improvements might require changes in the regulations. In the coming months Capt. Nyborg stated that he would make suggestions to the Board and the Rules and Regulations Committee. Such suggestions include:

1. Requiring the PEC be required to hold trainees to benchmarks established by regulation that culminate in a PEC and Board review at the end of 12 months in the program.

2. Extending the period for "dismissal without cause" to 18 months. This would give PEC adequate time to evaluate a trainee after he has completed his licensing, which takes far longer now than it did in the past.

3. Reconsideration of the application requirements regarding sea time to allow deep-sea mariners with master's time of less than that required of towing masters (acknowledging the difficulty of acquiring deep-sea master's time.)

Status of the Trainee Drug Testing Program.

The program is active and working well, but needs to transfer over to the custodianship of the Board. The contact information for Executive Director Garfinkle was provided to the collection company, as the new administrator for the trainee drug testing program. No pilot is currently involved with the trainee drug-testing program.

The next PEC meeting is scheduled for August 18.

7) Reported Safety Standard Violations and Investigations - Executive Director Garfinkle

One Pilot Boarding Arrangement Deficiency Report was received. On the morning of July 11, 2010, Capt. Wagner was disembarking the MOL PARTNER at the Sea Buoy and was alerted to a problem with the starboard pilot ladder by the pilot boat personnel. She observed that the bottom four rungs of the ladder were twisted and bent and the last of the four damaged to the point of being unusable. Because the ship was outbound, a Board investigator was not dispatched. The United States Coast Guard, Sector San Francisco, Office of Port State Control (Lt. JG Sandy Carmine) was notified and provided with a copy of the report filed by Capt. Wagner. In addition, the local agent for the ship, Norton-Lily (Mr. Matt Braddon), was notified of the violation.

8) Reportable Piloting Events - Executive Director Garfinkle

On July 19, 2010, the SANKO INNOVATOR, outbound from Sacramento with Inland Pilot W. Slough aboard, made contact with an overhead power line at the Ryer Island Ferry. There was no damage. The power line was supposed to be 140 feet above the water, but was actually approximately 133 feet above the water.

9) Rules and Regulations Committee - Commissioner Wainwright

Report on July 20, 2010 committee meeting: The Rules and Regulations Committee met at 0910 on July 20, 2010. Present were Chairman Wainwright and Commissioner Sullivan. A quorum was established. Minutes of the May and June meetings were approved.

Much of the meeting covered rulemaking status reports—reports on rulemaking items which have been processed by our committee and are either grinding through the rulemaking mill, or have been passed to staff or onto other Commission committees for substantial policy discussion and decisions. The status report is as follows:

1. Portable Pilot Units rulemaking is in its 45-day comment period, which ends July 28. Sean Gabe of the SFBP Technical Committee is refining his comments and concerns through Terri Toohey.

2. Investigator Minimum Standards –45-day comment period expires July 28.

3. Conflict of Interest Code – Office of Administrative Law (OAL) notice period ends August 30, 2010, and Fair Political Practices Commission (FPPC) period ends August 23, with approval hopefully in September.

4. Terms of office for Commission President and Vice-President – OAL notice to be published July 23.

5. Frequency of pilot training (3 to 5 years) – OAL notice to be posted July 23.

6. Prescription medications, medical review officer, standards for physicians, 7-day, 30-day, 60-day, NFFD, FFD, AFMR pilot reporting – all referred to the Pilot Fitness Committee.

7. Evaluation of pilots by training facilities upon completion of periodic training referred to Pilot Continuing Education Committee.

8. We request that Board regulation Sec. 210(f)(1) & (2) "under the influence" be referred to another committee for review. President Miller referred the issue to the Pilot Fitness Committee.

9. The committee completed work on cleanup regulation for Sec. 210 (regarding the Incident Review Committee). A draft is being prepared and we should have a motion at next months meeting.

10. The committee completed work on Sec. 217(b) – annual pilot and trainee physicals (to meet statutory requirements). A draft is being prepared and we should have a motion at the August Board meeting.

11. Port Agent reporting of pilot incidents – staff is drafting these reporting standards after receiving input from the committee and Port Agent.

12. Annual Executive Director evaluations – the Committee discussed the necessity for legislation.

Commissioner Wainwright reported that the Rules and Regulations Committee meeting adjourned at 1133.

10) Finance Committee –Commissioner Osen

Commissioner Osen reported that the Committee had not met and that there was no report.

President Miller announced that an RFP for the surcharge audit had not yet been prepared at CHP. Member Morocz stated that the contracts specialist at CHP had requested a teleconference to discuss whether to pursue an invitation for bid (IFB) or a request for proposal (RFP) vehicle to solicit the contract.

11) Pilot Fitness Committee - Commissioner Roberts

Commissioner Roberts reported that a meeting of the committee is scheduled for August 12, 2010, and he hopes to have more deliverables from Dr. Kosnik of University of California Medical Center at that time.

12) Pilot Pension Committee – Commissioner Tate

No report at this time.

13) Low Sulfur Fuel – Commissioner Osen

No report at this time.

14) Pilot Power Committee – Commissioner Roberts

Commissioner Roberts reported that Section 237(d) data is up to date and ready for evaluation.

15) Continuing Education Committee – Commissioner Roberts

A meeting of the committee is scheduled for August 12, 2010. Items on the agenda include considering changing the manned-model training from six days to industry standard five days, and discussing options for manned-model training from other facilities.

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

A) Simenstad v. Incident Review Committee. This is an action to restrain the IRC from presenting its report to the Board. The superior court dismissed the action, and the California Court of Appeal has now dismissed Simenstad's appeal. He has petitioned the California Supreme Court for review. The Supreme Court has discretion whether to accept the case for review. The Supreme Court will likely act on the petition by either the August or September Board meeting.

B) Anderson v. Board of Pilot Commissioners. This is an action by approximately 70 crab fishermen for economic losses caused by the COSCO BUSAN spill. This action was dismissed by the superior court and the plaintiffs will not be appealing in exchange for our waiver of costs.

C) Remaining COSCO BUSAN litigation. Litigation settlement is still pending.

D) By letter dated July 19, 2010, the Attorney General concluded that the Board may go into closed session to consider possible action on reports from the Port Agent concerning pilot illness. Board President Miller stated, without objection, that the letter would be available to the public. There was no objection and the letter is now a public document.

17) Status of Separate Tracking of Board Expenditures – Ex Officio Board Member Morocz

President Miller announced that the Board would consider CHP's development of the accounting systems necessary to separately track expenditures relevant to Board operations, pilot continuing education, and pilot trainee training at the August meeting. Due to technical difficulties, the CHP was not able to make its presentation at the meeting on July 22.

18) Public Comment on Matters not on the Agenda

No comments were presented.

19) Proposals for Additions to Next Months' Agenda

The Board agreed to meet next at 9:30 a.m. on Thursday, August 26, 2010.

20) Incident Review Committee Report – Executive Director Garfinkle

IRC Incident Report on the May 26, 2010 grounding of the tug KEEGAN FOSS while assisting the M/V MEDI OSAKA: Executive Director Garfinkle requested that the Board grant an extension of time to present the report at the next monthly Board meeting on August 26 (two days in excess of the 90 day reporting period) because counsel for the pilot involved in the incident was out of town during today's meeting. A motion was made by Commissioner Tate and seconded by Commissioner Wainwright to grant the extension, and the motion was unanimously approved on a voice vote.

There being no further business, the Board adjourned at 11:30 a.m.

Respectfully submitted,

Allen Garfinkle
Executive Director