

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

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E-mail: [brian.vu@bopc.ca.gov](mailto:brian.vu@bopc.ca.gov)website: [www.bopc.ca.gov](http://www.bopc.ca.gov)**Board of Pilot Commissioners  
Monthly Board Meeting****August 26, 2010  
9:30 A.M.  
MINUTES****OPEN MEETING****Call to Order and Roll Call-9:30 a.m.**

President Miller called the meeting into order at 9:33 a.m. President Miller, Vice President Johnston, Commissioners Tate, Osen, Sullivan, Wainwright and Roberts were present, constituting a quorum. Business, Transportation and Housing Secretary Bonner was represented by Business, Transportation and Housing Agency (BTH) Deputy General Counsel Morocz telephonically from Sacramento. Executive Director Garfinkle, Board Counsel Eagan and Staff Services Analyst Brian Vu also were present.

President Miller opened the meeting by noting that since the last Board meeting, the staff of the Board had increased by 100 percent and called upon Executive Director Garfinkle to address the change, which President Miller said he supported.

Executive Director Garfinkle stated that Brian Vu had joined the staff of the Board on August 16, 2010 as the Board's staff services analyst. He discussed Mr. Vu's background and experience. On behalf of the entire board, President Miller welcomed Mr. Vu aboard.

**1) Approval of Minutes**

President Miller requested approval of the minutes of the July 22, 2010 Board meeting. Commissioner Tate moved approval. Commissioner Johnston seconded the motion which passed unanimously on a voice vote.

**2) Incident Review Committee (IRC) Report – Executive Director Garfinkle****A) Completion of Board-mandated Sacramento practice trips by Capt. Kleess.**

Executive Director Garfinkle reported on Board-mandated Sacramento practice trips made by Capt. Guy Kleess in satisfaction of the requirements in a stipulation reached with the Board. Following discussion, Commissioner Wainwright moved to accept the trips as reported in satisfaction

of the stipulation. The motion was seconded by Commissioner Roberts. The motion passed unanimously on a voice vote.

**B) Non-Incident Report on the SANKO INNOVATOR.**

Executive Director Garfinkle delivered the non-incident report. After discussion, Commissioner Sullivan moved that the Board accept the non-incident report from the IRC. Commissioner Tate seconded the motion which passed on a voice vote with Commissioner Osen voting "no" and Vice President Johnston abstaining. The Board directed Executive Director Garfinkle to research the status of the wires that were involved in the non-incident and report on his findings at the September meeting.

**C) IRC Incident Report on the May 26, 2010 grounding of the Tug KEEGAN FOSS while assisting the M/V MEDI OSAKA.**

**Note that this report is considered under item 2C, not 28C, as stated in the published agenda.**

President Miller stated that, because he had been privy to certain elements of the investigation and development of the IRC report of the May 26, 2010 grounding of the Tug KEEGAN FOSS, he had recused himself from consideration of the IRC report and related deliberations. He noted that Vice President Johnston also serves as Chairman of the Incident Review Committee and is thus limited to his IRC role in the report. President Miller then moved that the Board appoint Commissioner Tate to preside during the IRC report and the subsequent deliberations. The motion was seconded by Commissioner Roberts and approved unanimously on a voice vote.

**President Miller departed the dais.**

The IRC was represented by Deputy Attorney General Jonathan Cooper, the Board's licensing counsel. Executive Director Garfinkle delivered the IRC report. The IRC recommended a finding of pilot error and recommended that the Board take no further action.

Capt. Kleess was not present. Capt. Kleess was represented by Rex Clack, Esq. Mr. Clack addressed the Board and stated that his client would accept the recommendation of the IRC in full.

The Board deliberated the IRC report and recommendation. Commissioner Wainwright moved that the Board accept the IRC report, find that there was pilot error, and take no further action. Commissioner Roberts seconded the motion which passed unanimously, Commissioner Osen abstaining, and President Miller and Vice President Johnston not participating. Whereupon President Miller returned to the dais and the Board continued with the agenda.

**3) Announcements-President Miller**

No announcements at this time.

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

President Miller and Commissioner Sullivan stated their intentions to observe one of the SFBP man-overboard drills presently scheduled for September 3 and 7, 2010. There were no other reports of Board member activities.

#### **5) Executive Director's Report – Executive Director Garfinkle**

##### **A) Correspondence and activities since the July 22, 2010 meeting.**

The Board received an Order granting Continuance In the Matter of the Accusation against Michael A. Simenstad. A continuance was granted until not earlier than October 1, 2010. If Capt. Simenstad retires effective September 30, 2010 then the issue becomes moot.

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

There were nine licenses renewed in July (Alden, Larwood, Wainwright, Slack, Nyborg, Kenyon, Long, Haggerty and Miller) and none in August.

##### **C) Report on surcharges received by the Board.**

Executive Director Garfinkle reported the Board collected surcharges totaling \$290,122.11 broken down as follows: Pilot Commission charge \$218,356.11; pilot training surcharges totaled \$35,100.00; trainee surcharges totaled \$36,666.00.

##### **D) Report on legislative activities and contractual matters.**

Executive Director Garfinkle reported to the Board that the Humboldt Bay pilotage bill (AB 2637) has been taken off the calendar for parliamentary reasons but that it will be reintroduced in the next session. AB 1888 has passed both the Assembly and the Senate, is enrolled, and is currently awaiting signature by the Governor. Member Morocz and President Miller prepared an Enrolled Bill Report with a recommendation that the Governor sign the bill as amended. The EBR has been transmitted by BTH to the Governor's staff. The EBR is a public document and is available to anyone who requests it.

#### **6) Port Agent's Report – San Francisco Bar Pilot (SFBP) Port Agent Captain Peter McIsaac**

**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.**



Capt Simenstad has been absent for medical reasons (AFMR) since February 27, 2010. He was found NFFD by a Board-contracted physician. He was found FFD effective August 25, 2010 by a Board-contracted physician.

Capt. McIsaac was AFMR beginning March 16, 2010. On May 4, 2010 he was found NFFD to pilot as per Board physician. He was found FFD by a BOPC-contracted physician effective August 4, 2010.

All Commissioners were provided with copies of the Port Agent's confidential written report of pilots who have been absent for medical reasons. After all Board members had an opportunity to read the report, President Miller inquired whether any member wished to go into closed sessions to discuss the contents of the confidential report. There were no requests.

**B) Recommended Minimum Rest Period Exceptions:**

There were 31 during the month of July on 7 separate days. Three exceptions were due to river pilots being called back early for river moves. The shortest rest period was 7 hours.

**C) Pilot Vessel Report:**

PILOT VESSEL GOLDEN GATE was out of service from August 13, 2010 to August 15, 2010 due to a ruptured fuel line, and again from August 16, 2010 to August 27, 2010 for planned maintenance. On August 22, 2010, PILOT VESSEL DRAKE was involved in a hard landing while disembarking a pilot, which resulted in minor gunwale damage.

**7) Reported Safety Standard Violations and Investigations – Executive Director Garfinkle**

No report at this time.

**8) Reportable Piloting Events- Executive Director Garfinkle**

No report at this time.

**9) Rules and Regulations Committee – Commissioner Wainwright**

**A) Report on August 24, 2010 Committee meeting.**

The Rules and Regulations Committee met on August 24, 2010 at 9:00 a.m. with Commissioner Wainwright presiding and Commissioner Sullivan present, constituting a quorum.

**B) Report on status of various Rules and Regulations Committee agenda items.**

- 1) The committee discussed the status of portable pilot unit and Commission investigator minimum standards rulemaking and these will be presented under Item #11 of today's agenda.
- 2) The Conflict of Interest Code and election and term of office for Commission President and Vice-president regulations are in the public comment period which ends September 7, 2010.
- 3) The pilot continuing education frequency of mandated classes, three to five years, is in the public comment period which ends September 7, 2010.
- 4) Commissioner Wainwright delivered a report on the Committee's progress in drafting a package of cleanup amendments to Board regulation 210, implementing statutory changes in the roles of the Board and the Incident Review Committee in informal and formal license disciplinary actions.
- 5) Commissioner Wainwright reported that the Rules and Regulations Committee is continuing to draft a regulation regarding notice by the Port Agent to the Executive Director as called for in the Harbors and Navigation Code section 1130(c).

C) Review draft of regulatory amendments in 7 CCR section 217, concerning annual pilot physical examinations in conformity with Harbors and Navigation Code sections 1141 and 1176. **Board Action to instruct staff to initiate formal regulatory amendments of Section 217.**

Commissioner Wainwright presented draft amendments to Board regulation 217. The Board reviewed the draft amendments. After discussion, Commissioner Wainwright moved that staff be directed to proceed with formal regulatory amendments to conform 7 CCR 217 regarding annual pilot physical examinations to the requirements of Harbors and Navigation Code sections 1141 and 1176. The motion was seconded by Commissioner Roberts. President Miller called for discussion by the Board and comment from the public. There was none. The motion passed unanimously on a voice vote.

#### **10) Status of Separate Tracking of Board Expenditures – Ex Officio Board Member Morocz**

Member Morocz announced that the presentation concerning the separate tracking of Board expenditures would be taken up at the September meeting.

#### **11) Proposed Regulations for Adoption – Ex Officio Member Gabor Morocz**

A) Presentation and offer of portable pilot unit regulation in Section 219 for adoption.

Member Morocz presented and offered to the Board completed portable pilot unit amendments to Board regulation 219 and asked for their adoption. The Board reviewed the proposed amendments. After discussion, Commissioner Wainwright moved that the Board adopt the proposed amendments and that they be forwarded to the Office of Administrative Law for action. The motion was seconded



by Commissioner Johnston. President Miller called for discussion by the Board. After discussion by the Board the motion passed unanimously on a voice vote.

**B) Presentation and offer of Commission Investigator Minimum Standards regulations in Section 211.5 for adoption.**

Member Morocz presented and offered to the Board completed Commission investigator minimum standards amendments to Board regulation 211.5 and asked for their adoption. The Board reviewed the proposed amendments. After discussion, Commissioner Wainwright moved that the Board adopt the proposed amendments and that they be forwarded to the Office of Administrative Law for action. The motion was seconded by Commissioner Johnston. President Miller called for discussion by the Board. After discussion by the Board the motion passed unanimously on a voice vote.

## **12) Finance Committee – Commissioner Osen**

Commissioner Osen stated that there was no report.

President Miller announced that he, Member Morocz and Executive Director Garfinkle had participated in a conference call with CHP contracts specialists and determined to go forward with an invitation for bid (IFB) with respect to the surcharge audit. The IFB is expected to be completed and published before the September Board meeting.

## **13) Pilot Fitness Committee- Commissioner Roberts**

Commissioner Roberts reported as follows:

The Board's Pilot Fitness Committee met on August 12, 2010. All members were present and the Committee's full agenda was considered. The Committee voted to make two recommendations to the Board. The first would establish minimum qualifications for Board-appointed physicians. The second would adopt specific blood-alcohol definitions.

Commissioner Roberts discussed the reasons for the proposed actions. There was discussion by members of the Board.

**A) Board examining physicians: Recommendation to adopt minimum qualifications for Board examining physicians.**

Commissioner Roberts moved that the Board adopt minimum qualifications for Board-appointed physicians, as follows:

1. Possess current license from the State of California to practice medicine;
2. Possess a minimum of five (5) years experience in occupational medicine; and,

3. Be qualified to determine the suitability of a person to perform the duties of a maritime pilot licensed by the Board of Pilot Commissioners, including familiarity with:

- Duties of a pilot, inland pilot and pilot trainee;
- Techniques and procedures to assess physical fitness for performing piloting duties; and,
- Evaluating the effects of prescription medications on fitness to perform piloting duties.

Commissioner Wainwright seconded the motion. After discussion and the opportunity for comment from the public, the motion passed unanimously on a voice vote.

**B) Adoption of specific blood-alcohol level:** Recommendation to amend 7 CCR § 202 to include specific blood alcohol level to further define the phrase "under the influence".

Commissioner Roberts continued his report as follows:

Throughout the Board's regulations, there are variations on the statutory language. The regulations use, at various points, the following phrases: "under the influence of alcohol" (§ 210(f)(2)), "intoxicated or under the influence of a substance which appreciably impaired his or her ability to conduct the duties of a pilot trainee" (§ 214(f)(6)), "impaired by drug or alcohol" (§§ 218(h) & (i), 219(w)), "intoxicated or under the influence of any substance or combination of substances which so affects his or her nervous system, brain or muscles as to impair, to an appreciable degree, the ability to properly perform his or her duties" (§ 219(s)), "intoxicated or under the influence of any substance or combination of substances which so affects the pilot trainee's nervous system, brain or muscles as to impair, to an appreciable degree, the pilot trainee's ability to properly perform his or her duties" (§ 220(c)).

Rather than try to adopt a standardized version of these various phrases, which would involve making amendments to multiple sections of the regulations, it may be simpler just to adopt some new definitions in section 202 of the regulations that will govern the interpretation of these various similar phrases.

Commissioner Roberts moved that the Board direct the staff to initiate rulemaking to add additional definitions to Board regulation 202, as follows:

(b) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(j) "Intoxication" and "intoxicated" mean, for purposes of Harbors and Navigation Code section 1181(f) and these regulations, and when pertaining to alcohol, an alcohol concentration of .04 percent or more, by weight, in a person's blood, as determined by a chemical test.

(v) "Under the influence" means, for purposes of Harbors and Navigation Code section 1181(f) and these regulations, and when pertaining to alcohol, an alcohol concentration of .04 percent or more, by weight, in a person's blood, as determined by a chemical test.



Commissioner Osen seconded the motion. There was discussion by the Board. Mr. Mike Jacob, Vice President of the Pacific Merchant Shipping Association, made a procedural inquiry. President Miller stated that, if the motion was agreed to, staff would draft the amendments under the oversight of the Rules and Regulations Committee which would provide a forum and opportunity for comment on the proposed amendments.

The motion passed unanimously on a voice vote.

**14) Pilot Pension Committee – Commissioner Tate**

No Report at this time.

**15) Low Sulfur Fuel - Commissioner Osen**

No Report at this time.

**16) Pilot Power Committee – Commissioner Roberts**

Commissioner Roberts announced that the Committee would meet on September 23, 2010 to consider the results of the recent confidential retirement survey.

**17) Continuing Education Committee - Commissioner Roberts**

Commissioner Roberts reported as follows:

The Board's Continuing Education Committee met August 12, 2010. In addition to Committee members present, the meeting was attended by the Board's Executive Director, Port Agent Capt. Peter McIsaac, Capt. Steve Teague (a member of the SFBP Continuing Education Committee), and Board President Mike Miller who attended as a member of the public

All agenda items were discussed.

The Committee discussed the current requirement in the Board's regulations that specifies that manned-model training be at least six days in length. The requirement is found in 7 CCR 215(b)(1). After discussion of the merits of six days versus five days, and noting that the industry standard is four to five days, the Committee voted to recommend that the Board consider amending the regulation to reduce the required duration to five days. . This would not preclude longer training programs, but would allow future sessions limited to five days.



The regulation concerning the length of Board mandated manned-model training has been in place for many years. Over the years, manned-model training has evolved and changed. When the regulation was first put in place training facilities were few and curriculum was developing. Over the past five to seven years the curriculum has become more standardized and most all facilities offer a four and one-half to five day courses. Our Committee could not find another six day course, aside from our own at Port Revel. Our current sixth day curriculum offers review, and open practice. Although valuable, the Committee determined that streamlining may be warranted.

Amending Board regulations would afford the following benefits:

1. The ability to compare “apples to apples” in considering curriculum during a competitive bidding procurement process.
2. Reduced time away from our pilotage grounds, thus reducing minimum rest period exceptions while pilots are in training.
3. Reduced expense of the Board’s continuing education program.

The Board discussed the proposal.

Commissioner Roberts then moved that the Board direct staff to begin the rulemaking process to amend Regulation section 215(b)(1) to mandate manned-model training of at least five days. Commissioner Roberts stressed that his motion was not intended to reverse the prior action of the Board with respect to an amendment to Regulation section 215(b)(2),

Commissioner Wainwright seconded the motion. President Miller called for discussion and comment from the public. There was none. Whereupon the motion passed unanimously on a voice vote.

#### **18) Pilot Safety Committee – Commissioner Sullivan**

Commissioner Sullivan reported that he would be meeting with the other member of the Pilot Safety Committee, Capt. David McCloy, and with others to consider possible modifications to Board procedures in the event reports of pilot ladder safety violations.

**President Miller announced that the Board would take a brief recess. Whereupon the Board stood in recess at 11:24 A.M. and returned to open meeting at 11:40 A.M.**

**President Miller noted that all Commissioners had returned to the meeting constituting a quorum. He noted that the Port Agent, Executive Director, and Board Counsel also had returned to the meeting.**

## **19) Report of the Attorney General's Office – Board Counsel Dennis Eagan**

**A) Simenstad v. Incident Review Committee.** The California Supreme Court has not yet acted on Captain Simenstad's petition for review.

**B) Board Accusation against Captain Simenstad.** In light of Captain Simenstad's expressed intent to retire effective September 30, 2010, the Administrative Law Judge has ordered the hearing continued on a date after September 30.

**C) Remaining COSCO BUSAN litigation.** Concerning the ongoing settlement discussions between Caltrans and Regal Stone, a mediation session has been set for September 9, 2010.

**D) Contacts concerning COSCO BUSAN litigation.** In the event that any Board member receives an inquiry concerning COSCO BUSAN litigation, the person inquiring should be directed to the communications staff of Business, Transportation, and Housing.

## **20) Budget Change Proposal – President Miller and Ex Officio Member Morocz**

President Miller reported that the Board would not be submitting a Budget Change Proposal but that it was likely that adjustments to the Board's budget would need to be made later in the current fiscal year and that changes would be needed for subsequent years. President Miller provided the Board with a list of Board activities that are either necessary to effect changes in procedures that have been mandated by legislation, or that are highly desirable to facilitate the Board's mission. After discussion, the Board agreed to continue discussion of the Board's budget at its next meeting.

## **21) Regional Regulator Meeting – President Miller**

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 on December 7 and 8, 2010. Such a meeting was held in Portland in 2008. The Pacific Pilotage Authority, a part of the government of Canada, which employs pilots serving on the waters of British Columbia, has volunteered to host the meeting. An agenda has not yet been determined, however, once it has, information regarding the meeting will be posted on the Board's website. The Board agreed to discuss its participation at a future Board meeting.

## **22) Board Approval of Pilot Vessel Surveyor and Review of Surveys – Executive Director Garfinkle**

Executive Director Garfinkle presented a resume for the surveyor employed by the San Francisco Bar Pilots, Dana R. Teicheira, CMS. A brief overview of Mr. Teicheira's qualifications was presented. During the discussion there were some concerns of redundancy with the American Bureau of Shipping surveys.



Commissioner Wainwright moved that the Board approve the pilot vessel surveyor. Commissioner Roberts seconded the motion. Commissioner asked for discussion by the Board and comment by the public. There was none. A voice vote was taken and the approval given with Commissioner Osen abstaining.

### **23) Public Comments on Matters not on the Agenda**

Commissioner Roberts voiced his concern over the fact that the pilot trainees were not getting paid. President Miller agreed that the economic uncertainty was pressing, however, due to the lack of a state budget, there was nothing that presently could be done.

### **24) Proposals for Additions to next Month's Agenda**

The Board agreed to meet again September 23, 2010 at 9:30 a.m.

### **25) Pilot Evaluation Committee – Captain Will Lemke**

#### **A) Report on August 18, 2010 Committee meeting.**

The Pilot Evaluation Committee met on August 18th, 2010. Captain Lemke made a recommendation to the Board to stagger any new trainees taken into the training program into groups a few months apart, allowing for less competition and more personalized training.

#### **B) Review of exam process and resulting successful candidates.**

Executive Director provided to the Board a list of potential trainees who were successful on the trainee selection examination given during the week of June 28, 2010. There was discussion of the structure of the examination, and the interaction of the written, simulator and experience points awarded in the examination process. The Board was presented with the explanation and validation documentation prepared by Comira, Inc., the psychometric contractor that consulted with the Board and assisted with the examination process.

After discussion, Commissioner Johnston moved that the Board approve the list. Commissioner Sullivan seconded the motion. President Miller called for discussion and comment from the public. There was none. The motion passed unanimously on a voice vote.

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

Capt. Lemke reported to the Board that at the August 18, 2010 Pilot Evaluation Committee meeting, the Committee completed a final assessment of whether trainee Captain David Merritt has successfully completed all elements of Section 214(f) in the Board's regulations. The Committee

unanimously agreed that he has and has authorized recommending Capt. Merritt for a Certificate of Completion.

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

The Executive Director responded that he had verified that Trainee Merritt had completed all requirements specified in Board regulation 214, demonstrated knowledge required by that section, that he had been in the training program more than one but not more than three years as required by Harbors and Navigation Code section 1171.5(c) and that he had maintained average scores from PEC members on trips handled of 4.0 or better on a scale of 5.0 during each of the last three months. The Executive Director also stated Trainee Merritt had completed 458 training jobs of which 270 were handles. He stated that that it was his opinion that the Board should grant a Certificate of Completion of the Trainee Training Program to Trainee Merritt.

Commissioner Johnston moved that the Board grant a Certificate of Completion to Trainee merit. Commissioner Sullivan seconded the motion. The motion carried on a roll call vote: 7 yeas, 0 nays.

Commissioner Miller congratulated Capt. Merritt on his completion of the trainee training program.

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

Commissioner Johnston moved that the Board grant an initial license as a San Francisco Bar Pilot to Capt. David Merritt. Commissioner Roberts seconded the motion and the motion carried on a roll call vote: 7 yeas, 0 nays.

President Miller congratulated Capt. Merritt on his licensing as a San Francisco Bar Pilot.

## **26) Performance Evaluating of Executive Director – Commissioner Tate**

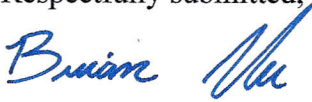
President Miller announced that the Board would consider the performance evaluation of the executive director at its September meeting.



## 27) Adjournment

The Board agreed to meet next on September 23, 2010 at 9:30 a.m. There was no further business, the Board adjourned at 12:50 p.m.

Respectfully submitted,



Brian Vu  
Staff Services Analyst