State of California

Arnold Schwarzenegger, Governor

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November 30, 2009

MINUTES
BOARD MEETING
November 19, 2009
10:00 A.M.

OPEN MEETING

Call to Order and Roll Call

President Miller, Vice President Tate, Commissioners Johnston, Osen, Roberts and Wainwright were all present, constituting a quorum. Also present: Acting Executive Director Gabor Morocz, Assistant Director Nancy Hall Bennett, Port Agent, Capt. Peter McIsaac, Dennis Eagan (Board's government counsel), and Raymond Paetzold (maritime counsel), and Staff Services Analyst Katharine Weir. Business, Transportation and Housing Secretary Bonner was represented by Deputy General Counsel, Gabor Morocz.

OPEN MEETING

Call to Order and Roll Call

1) Request Approval of Minutes-

Approval of the October 22, 2009 regular Board meeting.

It was moved by Vice President Tate and seconded by Commissioner Wainwright that the minutes of the October 22, 2009 regular Board meeting be approved without change. The motion passed unanimously.

It was moved by Vice President Tate and seconded by Commissioner Wainwright that the minutes of the continued meeting of the October 15th meeting which resumed October 22, 2009 be approved without change. The motion passed unanimously.

2) **Announcements** – President Miller

President Miller announced that the Board would receive the IRC reports on three incidents following other items on the meeting agenda. The first IRC report to be received would be the ANATONIA SCHULTE. After consideration of that report, the Board will recess for approximately 90 minutes and return to consider two additional IRC reports, the S.H. GRACE and the VOC ROSE.

President Miller announced that he had appointed Capt. John Schneider, Northern California Marine Superintendant for Tesoro Maritime Corporation, to serve as a member of the Board's Rules and Regulations Committee *pro tem* until a dry cargo appointee is named to the Board. Bringing Capt. Schneider aboard will bring appropriate balance and maritime experience to the Committee and allow it to proceed with its rulemaking agenda, particularly with respect to Navigation Technology and other rulemaking mandated by recent legislation.

3) **Comments from Business, Transportation and Housing Agency Secretary Bonner-**
Acting Executive Director Gabor Morocz
No report

4) **Acting Executive Director's Report** - Acting Executive Director Morocz

A) Correspondence and activities since October 22, 2009 meeting:

Assistant Director Bennett reported that Mr. Morocz sent a letter to the inland pilot regarding the requirement for collection of pilot trainee training surcharges. The inland pilot is now collecting this surcharge.

B) Report on pilot licensing matters

Renewals- Captain Simenstad is not licensed at this time and has not participating in any licensing activities as of November 8th, 2009 due to the fact the office has not received a Fit for Duty.

5) **Port Agent's Report** - SFBP Captain Peter McIsaac

Not Fit For Duty (NFFD):

Captain Fuller was NFFD from Aug 25th through Oct 31st while being treated for severe back pain.

Captain Haggerty has been NFFD since Oct 14th after undergoing neck surgery.

Captain Pate has been NFFD since Oct 28th after undergoing rotator cuff surgery.

Captain Simenstad's license expired on Nov 8th. He has yet to provide a Fit For Duty determination from a BOPC contracted physician.

New Pilot Vessel Drake: is alongside Pier 9 undergoing final outfitting. It is expected to go into Bay service at the end of next week.

Old Pilot Vessel Drake; is in emergency standby status. It is expected to be released to her new owner on Nov 27th.

Pilot Vessel Golden Gate- was out of service Nov 16th & 17th to repair a crack in the hull and replace a bilge pump.

Cable Laying Project- the SFBP recently completed our longest 'Bay move' on record. For approximately 28 days we had two pilots aboard the cable layer Guilio Verne while she buried a 10" diameter electrical transmission line between the UP RR Bridge and Hunters Point. A specially equipped barge handled the section between the bridge and the Pittsburg power plant.

Low Sulfur Fuel Oil Potential Issues: there have been three recent issues.

Oct 26- Markos 1 tank vessel engine would not start from bridge control, had to switch to engine control.

Oct 31- APL Philippines outbound Oakland Bar Channel engine stopped for about 3 minutes. the Master said clogged fuel filter. Last trip into LA they also experienced engine loss.

Nov 11- Chimborazo tank vessel turning and backing into Valero, no astern bell until calls to the engine room. After completing turn and backing in, ordered dead slow ahead early to make sure he got it. He did get it and then ordered another dead slow astern to keep proceeding back. With sternway, ordered dead slow ahead, did not get it, then ordered slow ahead, then ahead, to no avail. Never got any more starts and had to maneuver with the tugs.

DAPI (Drug and Alcohol Program Inspector) Audit- The USCG conducted a DAPI audit of the SFBP Chemical Testing Program on 11-18-09. The SFBP program was found to be in complete compliance. The auditors were advised that SFBP has not been conducting pre-employment testing of new pilots because, until January, 2009, trainees were included in the SFBP in-house program. When SFBP went to a third party vendor to administer the program, the trainees and Capt. Slough couldn't be included because they are not 'employed' by SFBP. The BOPC was to provide a testing program for trainees and Slough going forward. The auditors provided a sample letter that the BOPC can use to document testing of incoming trainees by prior employers, thereby providing an exemption from required pre-employment drug testing. The BOPC will need to provide the SFBP with this same letter for each trainee being licensed and becoming a member of SFBP, documenting their participation in a BOPC administered testing program while training. The auditors are aware that the BOPC is in the process of contracting for a drug testing program for trainees and Captain Slough and that SFBP is administering an interim program until the BOPC program is up and running. The auditors requested and were given BOPC contact information.

Recommended Minimum Rest Period Exceptions: there were 26 over 6 days during the month of October. The shortest rest period was 9 hours. 10 of the exceptions occurred on

10/21 when one pilot was pulled pilot business, 1 pilot was on comp time, 2 were aboard the Guilio Verne, 1 pilot was piloting a passenger vessel into Monterey and 2 pilots were NFFD. Current roster is 55 pilots pilots and we expect to be down to 54 on Jan 1st.

Billed Vessel Moves in Oct 09 compared to a 3 year average
Bar Crossings: -7.9%
Bay Moves: -26.4%
River Moves: -34%
Total Moves: -12.5%
GRT: 25.2M -7.4%

Compared to the first ten months of 2008 bar crossings were down 5.4% total moves were down 9.9% and GRT were down 7.1 %.

6) **Pilot Ladder Reportable Incidents** - Acting Executive Director Morocz

A fax was received by the BOPC office on November 17th reporting a ladder deficiency on the GALVESTON Barge. Investigator Reynolds was dispatched to the scene and Mr. Morocz will report on the incident at the December meeting.

Captain Nyborg thanked the BOPC and for the follow-up on the incident and believes that because of the BOPC's attention to pilot ladder deficiencies there have been less problems for pilots.

7) **Non-Incidents** - Acting Executive Director Morocz

Nothing to report.

8) **Report of New Incidents** - Acting Executive Director Morocz

Private party complaint from Windmill Cove: A private party complaint was received and reported to the BOPC office. The report was damage a recreational boat. The party was referred back to the SFBP as the BOPC is not able to take private party claims as this is not under the jurisdiction of the BOPC and should be filed with the shipping company.

Incident Review Committee Report– Commissioner Johnston and Acting Executive Director Morocz;

In an effort to have clear records for the BOPC Mr. Morocz prepared a memo that listed pending incident investigations. This memo will be produced for every full Board meeting and will give a status report on where the Incident Review Committee is in the process of completion and reporting. This document will be attached to the minutes for Board records.

A) *M/V S.H. GRACE*, grounding in Sacramento DWS Channel, vicinity of Mark 49"A" – Aug. 27, 2009; reported under Agenda Item 27.

B) *M/V TASMAN RESOLUTION*, grounding near Light 34, San Joaquin DWS Channel – Aug. 28, 2009;request to extend time for completion of investigation exceeding 90 days

Mr. Morocz reported that the IRC is not prepared to report on this matter. The former Executive Director was the lead Investigator on this incident and since he resigned the incident has been handed over to Investigator Reynolds. Mr. Morocz asked for an extension to the next Board meeting in December. Captain Wainwright moved the motion and it was seconded by Captain Roberts, the vote was unanimous.

C) *M/V VOC ROSE*, allision/hard landing, Stockton Berths 12/13 – Aug. 29, 2009; reported under Agenda Item 27.

D) M/V *ANTONIA SCHULTE*, vessel interaction with M/V EVER REWARD and Foss Bunker Barge FDH-26-2 at Oakland Berth #37, October 15, 2009 [90-day deadline for report is Jan. 13, 2010.] ; reported under Agenda Item 27.

E) M/V XIN NING BO – alleged violation of RNA speed restrictions while outbound from Oakland Inner Harbor, Feb. 7, 2009, pilot – Capt. M. Simenstad – accusation served in October 2009; status report; **Possible Board Action** to set/approve hearing date, determine whether it will hear case sitting with Administrative Law Judge.

Mr. Morocz reported that the matter of M/V XIN NING BO will be scheduled to be heard before an Administrative Law Judge (ALJ). Mr. Morocz gave the Board the two options in which this process could unfold:

1. The ALJ would sit alone and conduct a hearing. The ALJ then would report back to the Board with his/her findings and the then the Board could adopt of change the decision.

2. The ALJ sits with the Board members and together they ask questions and of the accused and then they all go into closed session to deliberate. The Board would have Government Counsel present as well.

The Board members had a discussion about both processes and it was asked of Mr. Eagan to prepare a memo analyzing both processes in more detail. The matter was asked to be moved to the December meeting to further evaluate and decide at that time.

9) Rules and Regulations Committee - Commissioner Wainwright

Commissioner Wainwright was happy to report that there was a recent appointment by President Miller to the Rules and Regulations Committee, John Schneider. The committee would be meeting in early December to look at PPU regulations.

10) Finance Committee - Commissioner Osen – Report on results of November 17, 2009 Committee meeting, including:

A) Proposal for implementation of Navigation Technology Surcharge to recover pilots' costs for the purchase, lease or maintenance of navigation software, hardware, and ancillary equipment, as authorized by S.B. 300; recommendation to set initial surcharge rate to go into effect on January 1, 2010:

Captain McIsaac presented to the Committee with its Portable Pilot Unit (PPU) project overview. He stated that for reasons related to liability, each pilot owns and is responsible for his or her software and equipment, which was initially purchased by the SFBP to take advantage of volume pricing. The individual pilots were then charged for what they ordered. Captain McIsaac provided all invoices associated with the charge for PPU and the total cost was figured to be $242,032.25.

The Finance Committee recommends to begin collection of the Navigation Technology Surcharge effective January 1, 2009 at $32/move and to evaluate the collections on a quarterly basis to consider adjusting as need be. Commissioner Tate moved to accept the motion and Commissioner Roberts seconded. The vote was unanimous.

B) Possible recommendation for annual audit of all surcharges:

President Miller explained that an audit by an independent CPA firm of all surcharges collected by the San Francisco Bar Pilots Association would serve several important purposes. First, it will be an efficient and cost-effective means for the Board to carry out its responsibilities of oversight of the Association's collection, retention or disbursement of moneys collected pursuant to statutory mandate. In addition, the opinion of the auditing firm will provide assurance to the public, to the shipping community that pays the pilotage fees and surcharges, and to the pilot organization itself, that all moneys have been collected, retained or disbursed properly. The cost is likely to be approximately $25,000

Commissioner Osen moved to authorize the Executive Director or Board President to enter into a contract with a Certified Public Accountant to perform an audit of fall pilotage fees and surcharges billed by the San Francisco Bar Pilots during the year ended December 31, 2009 and in addition, pension surcharges for the year ended December 31, 2008. The audit will verify billings, collections and proper disbursements or retention of surcharge monies collected. The motion was seconded and the vote was unanimous.

C) Possible report on fund status, expenditure and revenue projections for Board Operations, Continuing Education and Trainee Training; possible recommendation to adjust surcharges for same;

The Committee took no action at its meeting regarding the changes to the surcharges. The Committee hopes to meet in Mid-December.

11) <u>Pilot Evaluation Committee</u> - Captain E. Nyborg

The Pilot Evaluation Committee met Nov. 18, 2009. In closed session, all eight trainees were interviewed individually. The current trainees include: Tylawski, Bridgeman, Martin, Ruff, Merritt, Fawcett, Peery, Kellerman. Their time in the program ranges from 6 months to 28 months. All trainees are progressing at their own rate. The PEC is certain there will be no recommendations for appointment within 2 months. There may be recommendations

for 1-3 appointments within the next 6 months.

Request for a new December BOPC Agenda Item
The PEC requested that the Board consider adding to next month's agenda a discussion on a Fee Based Trainee Entry Exam. The item has been touched on at past Board meetings. Capt. Nyborg recognized that it cannot be put into effect for the up-coming exam, but also envisions that it could take some years to pass legislation if the BOPC deems it appropriate. PEC is in agreement that such a change would be beneficial. As per Capt. Nyborg's request, President Miller stated that it would be on the December meeting's agenda.

12) <u>Pilot Trainee Selection Process</u> - Captain E. Nyborg and Nancy Bennett

Roadmap for the Trainee Entry Exam
With the help of President Miller, Assistant Director Bennett, and Board Council Paetzold, the PEC was able to decide on a date for the 2010 Trainee Entry Exam. After deliberation on such items as applicant notice, CMA simulator availability, Board staff availability, PEC workload, and SFBP off site training, the PEC would like to recommend to the Board that we hold the exam during the week of ***June 28, 2010***.

Commissioner Roberts made the motion to authorize Board staff to take all steps necessary to administer the next trainee selection examination during the week of June 28, 2010 at the California Maritime Academy, and to set the Application Cut-Off date for April 30, 2010. Commissioner Wainwright seconded the motion and it was adopted unanimously.

The COMIRA contract is well underway. Assistant Director Nancy Bennett was confident that this will not hold us up for an early summer exam. The current CMA contract expires this summer. Assistant Director Bennett has been in contact with CMA and is in the process of writing a contract that will take us into the coming year or years.

Board staff has contacted several publications, maritime academies, and other venues for spreading the word to a diverse and qualified group of mariners that may be interested in becoming an applicant. A revision of the advertisement used for the last exam is nearly ready for submission. It is most important to PEC that mariners are given as much advance notice as possible for the application deadline and the exam date. As previously addressed, mariners' work schedules are usually set far in advance and changing them to attend an exam can be very difficult.

Captain Nyborg recognized that Capt. Moloney served a key role in the previous exams and all matters regarding trainees. With his maritime knowledge and familiarity, he was able to weed through the many applicants and the endless issues that came up regarding licenses, sea time, pilotage, discharges, recency, etc. Hopefully the questions that have already been presented to Board staff by applicants have made it clear how important it is that the new Director has a maritime background. PEC will be required to work closely with the new Director, and therefore considers it prudent to respectfully point out our concern in this matter.

Progress on the Trainee Entry Simulator Exam: PEC's work with the simulator is largely finished. The PEC is awaiting the input from Dr. Hertz before dedicating further PEC and CMA time and expense to this process.

Progress on the written portion of the Entry Exam:
PEC is beginning to write questions for the written portion of the exam. The hope is to make some headway with this task before the help of the psychometritians will be required. Board staff is working to refine the list of books, check for latest editions, and order copies for the Board that may be used by us to develop more questions. Capt. Nyborg reported that 5 pilots have volunteered to help write questions.

PMI Train the Assessor course for PEC members.
The PEC is waiting the funding from the Commission to proceed with scheduling this training. The PEC hopes to attend the course this winter. Capt. Nyborg stated that PEC members have agreed to personally pay for the out of state travel expenses if this would facilitate the contracting process. The PEC members were convinced that this training would benefit PEC, the trainees, and help to protect the Board from litigation in the future.

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. This program is not the financial responsibility of the SFBP as it is not the Maritime Employer of the trainees. Capt. Nyborg stressed that this contract is not a large financial burden on the SFBP and did not consider the transfer of it to BOPC a top priority. Capt. Nyborg recognized the burden board staff is currently under with all the other priorities that confront them. PEC is satisfied with the current arrangement for now in view of the larger items that need the Board's attention.

Capt. Nyborg thanked the Board and the board staff members Assistant Director Nancy Bennet and Board Council Ray Paetzold for the extra effort and support they have given the PEC. With this support PEC will meet it's goal to conduct the trainee entry exam in time to have new trainees wearing ties by January 2011.

The next PEC meeting is scheduled for December 16th, 2009.

14) <u>Pilot Power Committee</u> - Commissioner Roberts

A) Possible recommendation to conduct an updated confidential pilot retirement survey in time to receive the results for a Committee meeting in January, 2010

Commissioner Roberts reported that the retirement survey would be going out to all pilots next week.

B) Possible recommendation to contract with one or more additional trainees from the present eligibility list - No action

15) <u>Pension Committee</u> – Vice President Tate

Consideration of disability pension application of Captain Dennis Welch –

Vice President Tate reported that the Pension Committee met at 8 a.m. on November 19th to review the request from Captain Welch for permanent disability. After reviewing the materials provided by Captain Welch the Committee members requested more information from Captain Welch and will review his request again once that information is received.

16) Pilot Vessel Advisory Committee - Commissioner Johnston

Commissioner Johnston was happy to report that the Pilot Vessel DRAKE is docked at the end of the Pier.

The Pilot Vessel Committee would be meeting in December to review the final authorization request for both the apron modification and the P/V DRAKE.

17) Ad Hoc Advisory Committee on Pilot Selection – Vice President Tate

Vice President Tate reported that he was exploring resources within the California Highway Patrol (CHP). He spoke with the CHP and found that a study was done regarding diversity training within their department and he was in the process of getting the results from that study.

18) Navigation Technology Committee - Commissioner Johnston
Nothing to report.

19) Ad Hoc Committee to Review Investigation Procedures - Commissioner Osen
Nothing to Report.

20) Pilot Fitness Committee - Commissioner Roberts

The Committee would be meeting January 13, 2010. Commissioner Roberts was also happy to report that Dr. Kosnick would be starting in two or three weeks pending the completion of the UCSF contract.

21) Board Audit - President Miller

President Miller reported that the Bureau of State Audits Report is scheduled for release on Tuesday, November 24. By law, none of those who have read the draft report can discuss its contents prior to release. The Board's agenda for the December meeting will include discussion of the Audit Report, with attention to the recommendations of the Bureau of State Audits and steps taken or to be taken by the Board in response.

22) Pilot Pension Calculation - Assistant Director Bennett

Assistant Director Bennett reported that she has developed a standardized years-of-service form used to calculate a pilot's pension to be included in the pilot's permanent file and it is with the Board President for review and possible edits.

23) Low Sulfur Fuel – Commissioner Osen
Effect on vessel safety of implementation of recent CARB regulations

Commissioner Osen reported the CARB met with interested parties in Sacramento. CARB will be contracting with the California Maritime Academy for a study on the impact of regulations on the shipping industry and maritime operations.

24) Executive Director Recruitment – President Miller, Assistant Director Bennett

Assistant Director Bennett reported that applications are coming into the office steadily and believed that BOPC would receive more as the filing deadline approaches.

25) Confidential Information - Assistant Director Bennett

Staff recommendations on the protection of confidential information and establishment of information security policies for Pilots-

Assistant Director Bennett reported that Board staff is continuing to develop policies and procedures regarding this matter and handed out a draft procedure at the time. She asked the Commissioners to review the memo and to get back to her with any suggestions to improve upon the process.

26) Ethics Orientation Program of the BOPC – Acting Executive Director Morocz
Acting Executive Director Morocz provided the Commissioners, as well as all other form 700 filers with a handout titled "Board of Pilot Commissioners Ethics Orientation Program". He asked everyone to take it home and review. Then sign the certificate and mail it to the Assistant Director's attention for the filing within the BOPC records.

28) Public Comment on Matters not on the Agenda

Commissioner Roberts reported that the Continuing Education Committee would be meeting January 13, 2010.

Port Agent McIsaac reported that the SFBP is working on compiling data regarding minimum rest periods in relation to continuing education requirements.

At 1210 p.m. the Board recessed for a break prior to taking up the IRC reports at 1:30 p.m.

27) Presentation by IRC of its Investigation Reports for following incidents:

A) **Hearing under Harbors and Navigation Code section 1180.6**

On August 27, 2009 there was a reported grounding involving the M/V S.H. GRACE piloted by Captain G. Kless, in the Sacramento DWS Channel, in the vicinity of Mark 49A. The IRC report has been presented to the Board by Commissioner Johnston. The IRC found no pilot error but recommended ordering four additional practice trips with deep vessel draft vessels for the pilot, within six month, two of them overnight. Defense counsel for Capt. Klees stated that the pilot agreed with the recommendation. After deliberation in closed session, the Board has accepted the IRC report and its recommendation for the four additional practice trips. Execution of the order was left to the discretion of the Executive Director and to the Port Agent.

B) **Hearing under Harbors and Navigation Code section 1180.6**

On August 29, 2009 there was a reported allision/hard landing involving the M/V VOC ROSE, piloted by Captain G. Kless, at Stockton Berths 12/13. The IRC report has been presented to the Board by Maritime Counsel Raymond Paetzold. The IRC found pilot error in that he was unable to stop the forward momentum of the ship before alliding with the structure of the pier. The IRC recommended ordering four additional practice trips to the specific berth for the pilot, within six month, two of them overnight. Defense counsel for Capt. Klees stated that the pilot agreed with the recommendation. After deliberation in closed session, the Board has accepted the IRC report and its recommendation for the four additional practice trips. Execution of the order was left to the discretion of the Executive Director and to the Port Agent.

C) **Hearing under Harbors and Navigation Code section 1180.6**

On October 15, 2009 there was a possible vessel interaction reported involving the M/V ANTONIA SCHULTE piloted by Captain D. Boriolo with the M/V EVER REWARD and Foss Barge FDH 26-2 at Oakland Berth 37. The IRC report has been presented to the Board by Acting Executive Director Gabor Morocz. The IRC found no pilot error or conduct resulting damage to the bunkering ship at the berth. The pilot followed all necessary precautions and procedures and the damage appeared to be the result of poor mooring arrangement between the bunkering barge and the Ever Reward. Capt. Boriolo was not present and has not been represented by anyone. After deliberation in closed session, the Board has accepted the IRC report and its recommendation of finding no pilot error and closing the case without further action.

30) Adjournment

A motion was made to adjourn at 3:00 p.m., the motion was seconded and the vote was unanimous. The next Board meeting was scheduled for December 17, 2009