

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

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**BOARD OF PILOT COMMISSIONERS  
BOARD MEETING MINUTES  
August 23, 2012 9:30 a.m.****OPEN MEETING****1. Call to Order and Roll Call – President Miller**

President Knute Michael Miller called the meeting to order at 9:31 a.m. Vice President Frank Johnston and Commissioners David Wainwright, John Cronin, and John Brooks were present, constituting a quorum. Business, Transportation, and Housing Agency Acting Secretary Brian P. Kelly was represented by Special Assistant to the Secretary, Ben DeAlba. Members of staff present were Executive Director Allen Garfinkle, Board Counsel Dennis Eagan, Staff Services Analyst Kelly Dolcini, and Office Technician Sigrid Hjelle. San Francisco Bar Pilots (SFBP) Port Agent Capt. Bruce Horton was also seated at the Commission table. Commissioner Osen listened to the meeting telephonically but did not speak or otherwise participate.

President Miller noted the presence of a new staff member, the Board's Office Technician Sigrid Hjelle, and invited Executive Director Garfinkle to introduce her. President Miller welcomed Ms. Hjelle aboard.

Executive Director Garfinkle took a moment to welcome Office Technician Sigrid Hjelle with a brief description of her background and previous employment.

**2. Request Approval of Minutes – President Miller**

President Miller requested approval of the minutes of the July 26, 2012 Board meeting. Commissioner Brooks moved approval of the minutes with authority to Board staff to make clerical, non-substantive changes. Vice President Johnston seconded the motion, which passed unanimously on a voice vote.

**3. Announcements – President Miller**

There were no announcements.

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

There were no reports.

#### **5. Executive Director's Report – Executive Director**

##### **A) Correspondence and activities since the July 26, 2012 meeting.**

Executive Director Garfinkle reported that, on August 4, 2012, Board staff received a copy of the State of Texas Sunset Advisory Commission report on the Port of Houston Authority. The Houston Port Authority also serves as the Board of Pilot Commissioners for the Ports of Harris County, which includes the Port of Houston. In item eight of the report the Advisory Commission reviewed the Board of Pilot Commissioners, wherein the Advisory Commission found that the Board had not implemented the NTSB recommendations stemming from the EAGLE OTOME investigation report, and that ten out of eleven meetings of the Board convened and adjourned in one minute or less.

On August 6, 2012, the Board received a copy of a letter from Deborah Hersman, Chairman of the National Transportation Safety Board (NTSB) to Patti Tyson, Interim C.E.O. of Humboldt Bay Harbor, Recreation and Conservation District, noting that the only pilots regulated by the State of California are the San Francisco Bar Pilots, and therefore the recommendations stemming from the January 23, 2010 EAGLE OTOME accident are being issued to individual pilotage oversight jurisdictions within the State of California for action.

On August 15, Board staff received an invitation to attend the Seaman's Church Institute Sunset Cruise on the San Francisco Bay on Thursday, October 4, 2012. Admission is \$75 per person and the cruise leaves from San Francisco's Pier Three.

On August 18, 2012, Board staff received a copy of a letter to Vice President Johnston from Governor Brown congratulating him on his Senate confirmation to the Board.

On August 20, 2012, Board staff received a copy of a letter to Vice President Johnston from Darrell Steinberg congratulating him on his confirmation to the Board on August 9, 2012 by a vote of 39-0.

On August 20, 2012, Staff received word from Chris Johnson, SFBP Marine Superintendent, that the P/V CALIFORNIA will be dry-docked at Bay Ship in Alameda until August 31, 2012.

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

Between the June and July Board meetings, staff<sup>s</sup> did not renew any licenses. Between July and August, staff renewed licenses for Captains Laakso, Burger, and Coney.

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

For the month of July, the Board received \$204,549.65 broken down as follows:

Board Operations Charge: 92,848.65

Continuing Education Surcharge: \$74,235.00

Trainee Training Surcharge: \$37,466.00

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

Executive Director Garfinkle reported that the second hearing on Assembly Bill 2042 had been cancelled at the request of the author with no rescheduled date.

Senate Bill 1408 was amended on August 21, 2012 for a third time and re-referred to the Senate Appropriations Committee.

Assembly Bill 2287 was also re-referred to the Senate Appropriations Committee.

Executive Director Garfinkle also reported that Board staff is currently working to locate firms that can perform a market analysis function to accompany the Pilot Medical Assessment rulemaking.

Staff is also beginning the contracting process to digitize Incident Review Committee reports and to begin the trainee applicant exam, which includes contracts with California Maritime Academy, retired pilot Capt. David Gates, and psychometricians.

**6. Port Agent's Report – SFBP Port Agent Capt. Bruce Horton**

**A) Monthly report on SFBP ship piloting activity.**

Capt. Horton reported that billed vessel moves in July, when compared to a three year average were as follows: 577 bar crossings (down 3.8%), 102 bay moves (down 9.8%), 33 river moves (up 25.1%), making total billed moves 701 (down 3.9%), with a gross registered tonnage of 29,255,670 (up 4.1%). When compared to a three year average, bar crossings are down 8.1%, total moves are down 7.3% and gross registered tonnage is down 2.3%.

Capt. Horton reported that the P/V CALIFORNIA was taken out of service on August 13, 2012 for planned maintenance and repairs. The planned maintenance includes hull gauging, and tail shaft removal and inspection. There are also modifications being made to reduce overall tonnage of the vessel to below 200 gross tons.

**B) Monthly report on pilot availability and absences.**

The Port Agent stated that on a daily basis, he is continually watching the traffic list for any possible minimum rest period (MRP) exceptions. If there are potential MRP exceptions he uses many different measures to mitigate them. These measures include, but are not limited to, suspending continuing professional development protocols, cancelling scheduled meetings, cancelling previously granted comp time requests, suspending our policy of reporting 30 minutes early to the job, suspending SFBP's internal working rules, or calling in off-watch pilots.

There were three MRP exceptions during the last month:

On July 10/1801 hours – 11.7 hours off duty, 36 assignments on that date, three pilots short of authorized number of 60, one pilot NFFD;

July 13/0530 hours – 11.5 hours off duty, 31 assignments on that date, three pilots short of the authorized number of 60, one pilot on comp time. This MRP exception occurred because of the need to special assign a specific pilot ahead of his turn to do a job at the San Francisco dry dock;

July 25/0430 hours – 10.8 hours off duty, 26 assignments on that date, three pilots short of the authorized number of 60, one pilot NFFD, one pilot on comp time, and one pilot on pilot business. This MRP exception occurred because of the need to special assign a pilot who is experienced in turning 1200 foot vessel, in order to safely turn the MSC ALTAIR in the Oakland turning basin.

Two pilots were absent for medical reasons: Captain Dave Chapman was found not fit for duty (NFFD) on July 10, 2012 with a non work-related illness. Captain Chris Anderson was found NFFD on July 30, 2012 by a Board-appointed physician.

**C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board.**

The Board reviewed the confidential written report. After all Board members had had the opportunity to review the report, President Miller asked whether any member wished to go into closed session to discuss the report. There were no requests.

**7. Pilot Evaluation Committee – Capt. Einar Nyborg.**

**A) Report on August 22, 2012 Committee meeting**

Capt. Nyborg was unable to attend the meeting. Capt. Horton presented the report on his behalf. He reported that the Pilot Evaluation Committee (PEC) met on August 22, 2012. In closed session, all four trainees were interviewed individually. The current trainees include Captains Carr, Johnson, Lingo, and Favro. Their time in the program ranges from 11 to 20 months. All trainees are progressing well at this time. Next month's PEC meeting is scheduled for Sept 26, 2012.

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

There was no recommendation.

- C) Possible Executive Director recommendation for the appointment of a new pilot or pilots.**

There was no recommendation.

**8. Reported Safety Standard Violations and Investigations – Executive Director Garfinkle**

There have been no safety standard violations reported since the last meeting.

**9. Reportable Piloting Events – Executive Director Garfinkle**

There have been no reported piloting events reported since the last meeting.

- A) Status report of the M/V BERLIN TRADER interaction with the M/V GLOBAL PIONEER while approaching berth 19-20 in Stockton on January 19, 2012. Request for an extension from the Board to present this report at the September 27, 2012 Board meeting.**

Executive Director Garfinkle announced that the Incident Review Committee has completed its investigation and that the IRC report would be presented later in the meeting. Accordingly, the Board took no action with respect to Agenda Item 9(A).

- B) Status report of the M/V MULBERRY WILTON interaction with the M/T OVERSEAS TAMPA while passing Plains Terminal, Martinez, on January 27, 2012. Request for an extension from the Board to present this report at the September 27, 2012 Board meeting.**

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the interview and selection process associated with hiring a new staff member, and because the Board staff has until recently been operating at 50 percent of authorized strength. Commissioner Wainwright moved to grant an extension to September 27, 2012. Commissioner Cronin seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

- C) Status report of the OVERSEAS TAMPA alleged near miss while departing Richmond Long Wharf Berth #2 on February 18, 2012. Request for an extension from the Board to present this report at the September 27, 2012 Board meeting.**

Executive Director Garfinkle reported on the status of the IRC investigation and stated that he had been unable to complete the report in time for today's meeting because of the press of other Board business, the interview and selection process associated with hiring a new staff member, and because the Board staff has until recently been operating at 50 percent of authorized strength. Commissioner Wainwright moved to grant an extension to September 27, 2012. Commissioner Cronin seconded the motion. President Miller called for discussion by the Board and comments by the public. There were none. Whereupon the motion passed unanimously on a voice vote, Vice President Johnston abstaining.

#### **10. Rules and Regulations Committee – Commissioner Wainwright**

- A) Report on the August 7, 2012 Joint Rules and Regulations Committee and Pilot Fitness Committee meeting.**

Chairman Wainwright reported that the Rules and Regulations Committee had met jointly with the Pilot Fitness Committee on August 7, 2012 and reviewed the draft regulations for Section 217 of the Harbors and Navigation Code. The Committee is nearing the end of the revision process and will meet again on August 29, 2012 and September 11, 2012.

- B) Discussion and review of whether “medical disability leave” should be revised to establish time limits.**

Commissioner Wainwright reported that in the process of preparing draft pilot fitness regulations for Board review, the Joint Committee reviewed current provisions of law and regulations related to licensees in “medical disability leave” status. The Joint Committee believes that the Board should consider whether modifications to current regulations or to the underlying statute are needed. After discussion by the Board, President Miller requested that the Joint Committee place on its agenda development of recommendations to the Board with respect to possible modifications to current regulations or to the underlying statute. There was consensus among Board members that this additional agenda item should not delay completion of the Joint Committee's work in finalizing draft pilot fitness regulations.

#### **11. Finance Committee – Commissioner Cronin.**

Commissioner Cronin reported that the Finance Committee will meet on September 12, 2012 at 9:30 a.m.

## **12. Pilot Fitness Committee – Commissioner Roberts**

Commissioner Roberts was not present. Commissioner Wainwright reported on his behalf that the Committee had not met since the last Board meeting but was working actively on new fitness recommendations with the Rules and Regulations Committee.

## **13. Low Sulfur Fuel – Executive Director Garfinkle**

Executive Director Garfinkle reported that Capt. Cowan of the California Office of Spill Prevention and Response had provided him with a table of loss of propulsion incidents thus far in 2012, with June showing five reported “loss of propulsion” incidents with two related to fuel switching and three suspected to be related to fuel switching. July showed that there had been seven “loss of propulsion” incidents with three related to fuel switching and three suspected to be related to fuel switching.

## **14. Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright**

Commissioner Wainwright reported that the Ad Hoc Working Group on Trainee Recruitment will meet on September 6, 2012 at 9:30 a.m.

## **15. Continuing Education Committee – Commissioner Roberts**

### **A) Report Continuing Education Committee activities since the last Board meeting.**

Executive Director Garfinkle reported on behalf of Commissioner Roberts that the Committee had not met since the last Board meeting.

### **B) Committee report on proposal to utilize California Maritime Academy as the provider for the Pilot Continuing Education Combination Course.**

Executive Director Garfinkle reported that the option of shifting the Bridge Resource Management (BRM)/Combination Course instruction from the Maritime Institute of Training and Graduate Studies (MITAGS) to the California Maritime Academy had been discussed at the July Board meeting but that the Board could not take action as the issue was not on the agenda for Board action at that meeting.

The proposed inter-agency agreement would be a three-year agreement with options to renew for two one-year intervals. Executive Director Garfinkle explained that there would be cost savings from the arrangement as the Board would not incur travel expenses associated with sending licensees to MITAGS, which is located near Baltimore, MD, and that there are possible savings in lodging costs. He also noted that there are other advantages such as the future opportunity to work on exercises with local tug operators. President Miller noted that because pilots would not have to spend time traveling to the East Coast, using CMA would have less impact on the duty board than currently is the case with travel to MITAGS.

Commissioner Wainwright moved that staff be directed to establish an inter-agency agreement (IAA) with the California Maritime Academy to provide BRM/Combination Course instruction for the Board's licensees. Commissioner Cronin seconded the motion. President Miller called for further discussion by the Board and comments from the public. There were none. Whereupon the motion passed unanimously on a voice vote.

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

There was no report.

**17. Ad Hoc Committee on Blue Card Rates – Vice President Johnston**

There was no report. Capt. Horton expressed interest in seeing this Committee continue work on its agenda. Vice President Johnston, who chairs the Committee, requested that the staff schedule another meeting as soon as possible.

**President Miller announced that the Board would take a 10 minute break. The Board stood in recess at 10:17 a.m.**

**The Board reconvened in open session at 10:31 a.m.**

President Miller stated that, by inspection, all Commissioners except Commissioners Roberts and Osen had returned and that a quorum was present. He noted that Alternate Member DeAlba also was present. Commissioner Osen continued to listen to the meeting telephonically.

**The Board then moved to consideration of Agenda Item # 18.**

**18. Incident Review Committee Report on the M/V BERLIN TRADER interaction with the M/V GLOBAL PIONEER while approaching berth 19-20 in Stockton on January 19, 2012 – Vice President Johnston and Executive Director Garfinkle.**

The Pilot involved in the incident, Capt. Don Cloes, was represented by attorney David Russo of Sterling and Clack.

Executive Director Garfinkle, in his capacity as member of the Incident Review Committee (IRC), presented the factual background of this incident. He explained that the M/V BERLIN TRADER was passing the M/V GLOBAL PIONEER on approach to Stockton, berth 19/20 and interaction between the two vessels caused damage to the gangway of the M/V GLOBAL PIONEER.

The IRC report examined the rebuttable presumption, derived from in relevant case law, that the M/V BERLIN TRADER was accountable for the damage to the gangway. This presumption can be rebutted by a showing that the passing vessel was proceeding carefully

and prudently and that the moored vessel was not seaworthy or not properly moored. The moored vessel must be moored so as to resist ordinary and normal swells in narrow waters where heavy traffic may be anticipated.

It was shown to be likely that the M/V GLOBAL PIONEER did move when the M/V BERLIN TRADER passed. From the statements in evidence, the crew on the M/V GLOBAL PIONEER allowed a greater range of motion by taking lines off the mechanical brakes or in one case, slacking the lines.

In addition, evidence showed that it was more probable than not that the gangway of the M/V GLOBAL PIONEER had a damaged roller on the bottom of the gangway preventing it from moving easily with the vessel when it surged at the dock.

Based on the evidence before them, the IRC concluded that the M/V BERLIN TRADER was proceeding reasonably and in a cautious manner and that the M/V GLOBAL PIONEER was not moored in such a way as to withstand ordinary suction. The report went on to recommend a finding of no pilot error and to close the case with no further action.

President Miller inquired of the pilot's counsel, David Russo, whether he would like to make a statement. Mr. Russo stated that he had nothing to add to the report by the IRC. Commissioner Brooks moved that the Board accept the recommendation of the IRC that the Board find no pilot error and that the investigation be closed with no further action. Commissioner Cronin seconded the motion. President Miller inquired whether any Commissioner wished to go into closed session to deliberate. There were no requests. President Miller called for further discussion by the Board. There was none.

The motion passed unanimously on a voice vote, with Vice President Johnston abstaining.

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

Board Counsel Eagan reported on Pacific Merchant Shipping Association (PMSA) v. Board of Pilot Commissioners and Capt. Bruce Horton, as Port Agent, which is pending in San Francisco Superior Court. The lawsuit is brought under the California Public Records Act and seeks an order requiring both the Board and the Port Agent to produce a document that PMSA describes as the "Pilot Log." Prior to the lawsuit, both the Board and the Port Agent advised PMSA that they did not have such a document.

The lawsuit also seeks a declaration that all documents in the Port Agent's possession that are "related to the business and official duties of pilots" are public records.

On August 8, the court granted a motion by the San Francisco Bar Pilots and Capt. Horton, as president of the SFBP, to intervene in the action, represented by private counsel. The purpose of the intervention was to prevent disclosure of SFBP's private records to PMSA.

On August 15, the Board, the SFBP, and Capt. Horton, in his capacity as Port Agent and separately in his capacity as president of the SFBP, filed their respective oppositions to PMSA's petition.

In brief, the position of the Board is that:

- Records created and maintained by private, nongovernmental organizations such as the SFBP are not subject to the California Public Records Act.
- The Port Agent is not a state officer subject to the Public Records Act.
- The only records subject to disclosure under the Public Records Act are those that the Port Agent provides to the Board pursuant to Board regulation or Board request.

PMSA has until August 27 to file a reply, and the court hearing is scheduled for September 5.

President Miller inquired whether any Board member wished to go into closed session to confer with Board Counsel on matters subject to the attorney-client privilege. There were no requests.

## **20. Public Comment on Matters not on the Agenda**

There were no comments.

## **21. Proposals for Additions to Next Month's Agenda**

There were no proposals.

## **22. Adjournment**

There being no further business, the Board adjourned at 11:03 a.m.

Respectfully Submitted,



Kelly Dolcini  
Staff Services Analyst