

## **Minutes September 23, 2004**

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun regular meeting was held in the Board of Pilot Commissioners office, Pier 9, Suite 102, San Francisco, CA, commencing at 9:30 a.m. on Thursday, September 23, 2004 Commissioner Lundeberg presiding. A quorum was present, including Commissioners Bayer, Rosequist, Wagner, Welch and Winn. Also in attendance were Port Agent Captain McIsaac, Board Counsel Raymond Paetzold, Executive Director Moloney and Secretary Alice Evans and various members of the public.

Request approval of Minutes of the August 26, 2004 regular Board meeting. The minutes were unanimously approved.

Correspondence and Activities since the August meeting -- Executive Director Moloney

1. The Board received letters dated August 24 and 27, 2004 from the California State Auditor re survey of workforce development programs administered by state entities. Board staff completed the survey September 7, 2004.

Other Pilot Matters -- Executive Director Moloney

1. The Board issued license renewals to SFBP Captains Burger, Coney and Hurt during the month of September.
2. The Board has received the manpower reports and statements for pilotage fees and surcharges collected from SFBP and Inland Pilot Slough through July 2004. Copies are available in the Board office.

Port Agent's Report -- Acting Port Agent Captain Greig

1. There are currently three pilots NFFD.  
Captain J. Weiss is being treated for a condition not related to work.  
Captain Rhodes is being treated for a condition not related to work.  
Captain Dohm has been NFFD since June 7 while caring for a terminally ill family member.  
Captain McIsaac was NFFD from August 25 through September 3 after undergoing an appendectomy.
2. There were two 12-hr MRP violations on September 2 with the shortest rest period being 9.25 hours. Four pilots were off the board, three NFFD and one with a suspended license.  
  
There were two 12-hr MRP violations on September 7 with the shortest rest period being 10.5 hours. Five pilots were off the board, 3 NFFD, one on comp time and one with a suspended license.
3. P/V CALIFORNIA was out of service from September 4 through September 18 due to failure of a circuit board in the electronic propulsion controls.  
  
P/V SAN FRANCISCO was taken out of service from August 31 through September 4 for planned maintenance and repair. The boat was taken out of service again from September 18 – 26 to complete the planned maintenance and repair.
4. SFBP continues to meet with the Port of San Francisco to discuss the repairs to the pier aprons and a possible lease extension.

5. The Governor signed Senate Bill 1303, the language clean up bill, on September 16.
6. Vessel movement numbers through August 2004, compared to three-year daily average:
 

Bar crossings	+0.9%
Gross Tons	+7.5%
Bay moves	-3.3%
River moves	-8.5%
Total moves	-0.4%

Unfinished Business

1. Open Incidents --Commissioner Executive Director Moloney
  - a. S/S MAUI, grounding, entrance to Oakland Estuary, January 28, 2003 SFBP Captain J. Weiss; hearing taken off calendar -- report pending dismissal of administrative proceedings pursuant to stipulation. Executive Director Moloney reported that this investigation would be presented at the next Board meeting.
  - b. S/S KENAI, allision with dock, Amorco, March 11, 2004 -- SFBP Capt. M. Sweeney

Executive Director Moloney reported that the IRC met with Captain Sweeney to review additional information. Captain Sweeney requested more time, as there is additional information that he was unable to present to the IRC that day. Executive Director requested an extension of time. It was moved and seconded and subsequently amended to extend the IRC final report until the next Board meeting. Commissioner Lundeberg asked for discussion, there being no further discussion the motion passed unanimously.

- c. M/V PACIFIC HIGHWAY allision with fendering W. Span, Richmond-San Rafael Bridge following maneuver to avoid sailboat July 11, 2004

Executive Director Moloney said the incident is being investigated.

2. Pilot Ladder reportable incidents -- Executive Director Moloney said there are no incidents to report during the month of September.
3. Rules and Regulations Committee -- Commissioner Welch -- report on status of proposed rulemaking re amendments to Continuing Professional Development Program and Pilot Trainee Selection Procedures -- Commissioner Welch referred to Board Counsel Paetzold who reported that the rulemaking package for amendments to Sections 213 and 218 should be completed and ready for review by the Office of Administrative Law within the next two weeks.
4. Finance Committee -- Commissioner Winn report -- report on September 23, 2004 meeting -- Commissioner Winn reported that the Committee met today and reviewed the SFBP August 31 variance report. Income is up 8%, expenses up 9%, net income up 4%. Expenses are up due to extended yard period for pilot boats, increase in fuel costs and volume of work.

BOPC expenses were reviewed. There is still a declining surplus of \$1.9 million. The Committee will begin looking at the surpluses in the Board operations and training funds with the intent of determining the various rate levels to set for each surcharge once we have reached the appropriate reserve levels.

Pilot Vessel Surcharge - current surplus is \$113K, which is higher than anticipated due to the unexpected increase in vessel traffic. The Committee will review this surcharge at our next meeting to determine if an adjustment is necessary.

The next Finance Committee meeting is set for 8:45 October 28, which is just prior to the October Board meeting.

It was moved and duly seconded to accept the report. There was no further discussion and the motion passed unanimously.

5. Pilot Training Curriculum Committee -- Commissioner Wagner said there is no report.
6. Pilot Evaluation Committee--Capt. Melvin -- Report on September 22 meeting and trainees' progress in training program – Executive Director reported that the Committee met September 22. There was no quorum and no business was conducted. The trainee cards were reviewed and all trainees are progressing well. New trainee Captain Holl already had pilotage for the entire Bay Area and has begun handling vessels.
7. Pension Committee -- Commissioner Bayer -- Report on the September 1, 8 and 21 meetings as follows:

Report on status of the review of statutory pension plan, including recommendations for the plan's interpretation and implementation -- Commissioner Bayer reported that the Pension Committee has held several public meetings and completed most of its work on this item.

Report on status of developing proposed procedures for submitting and handling requests for disability determination under the pension plan – Commissioner Bayer reported that the Committee would continue its work on this item, to include lessons learned from the resolution of Captain Weiss' request. The Committee plans to provide recommendations on both items in a single report at a later date.

Request for disability determination by Capt. J. Weiss pursuant to Harbors & Navigation Code Sect. 1164(b) -- report on Pension Committee's recommendations and **possible Board action re same**

Commissioner Bayer reported that the Committee met with Captain Weiss and his counsel on September 8 and 21 to review the medical evidence and the requirements of the Harbors and Navigation Code. The Committee's recommendations and its reasoning is set forth in the written report, which was provided to all Board members for their review prior to this meeting. Captain Weiss and his counsel have also been provided copies of the Committee's report and are in the audience.

The Committee recommends that the Board make the following determinations in response to Captain Weiss' request:

- (1) There is sufficient, competent medical evidence to conclude that Captain Weiss is "disabled" within the meaning of the San Francisco Pilot Pension Plan due to permanent, uncorrectable hearing loss;
- (2) The date of disability, for purposes of calculating his pension benefits under that plan is August 2, 2004, which is the date of the letter from Captain Weiss' treating physician in which he described the nature, extent and irreversibility of Captain Weiss' hearing loss and declared him permanently not-fit-for duty as a pilot.

- (3) Captain Weiss began service as a Board-licensed pilot on March 26, 1976, and was authorized to pilot under the authority of that license for 27 years and 7 months; thereby entitling him to 28 "full years of service" for pension purposes;
- (4) The last year prior to Captain Weiss' disability was 2003;
- (5) Captain Weiss is entitled to receive the benefits for a disabled pilot as set forth in HNC §1163 beginning October 1, 2004.

The recommendation was seconded. Commissioner Lundeberg asked for discussion. Board Counsel asked Captain J. Weiss and Mr. Meadows, who were in the audience, if they were in agreement with the recommendation. They both replied yes. There being no further discussion the motion passed unanimously.

Commissioner Rosequist expressed his appreciation for the professional manner in which Mr. Meadows represented Captain Weiss before the Committee on this matter.

8. Ad Hoc Pilot Power Committee -- Commissioner Wagner -- report on meetings of September 17 and 21, results of retirement survey, projections for pilot vacancies, updated §237(d) data and on recommendations regarding the number of additional trainees to enter the training program (and their timing) -- **possible Board action re same**

Commissioner Wagner reported that the Committee met on September 17, 2004. A detailed report of the Committee's findings and recommendations has been provided to all Board members, San Francisco Bar Pilots and PMSA in advance of the meeting. Additional copies are available and were provided to the audience.

Commissioner Wager stated that if everyone on the Board has had an opportunity to review the report, she would like to move that the Committee's report be accepted by the Board and its recommendations be approved, specifically:

- (1) That the Board authorize its president and/or executive director to execute all necessary documents to contract with four (4) additional trainees in time to commence training on or about January 1, 2005, and
- (2) That the Board place this matter on its December 2004 agenda to consider the timing of contracting with three (3) additional trainees.

The Committee understands that the terms of five current Board members are set to expire on December 31, 2004. In the event that the Governor does not act to re-appoint these members or fill their vacancies, the Board will be without a quorum qualified to take Board action after the end of February 2005.

If all of the above circumstances remain unchanged at the time of the Board's December 2004 meeting, the Committee recommends that the Board authorize its President and/or Executive Director to execute all necessary documents to contract with three (3) additional trainees prior to the expiration of the current eligibility list (scheduled to expire June 2005).

The Committee believes that these recommendations should ensure the timely availability of trained pilots to meet current projected needs for the next three years without overburdening the training program or the pilot evaluation committee.

Commissioner Wagner moved that the Board approve the Committee's report and the two recommendations proposed for Board action today. Commissioner Lundberg asked for discussion. There was no further discussion. The motion passed unanimously.

9. Vessel Interactions -- Review incident frequency, Board's role in addressing the problem-- Commissioner Falaschi/Executive Director Moloney – Executive Director Moloney noted that there were no vessel interactions to report. Commissioner Bayer requested Board staff prepare a vessel interaction summary for the last two years that includes historical data, when and where they occurred, reasons for decline in the number of vessel interaction incidents and investigate and report on a vessel interaction at C&H Sugar that he believed occurred in the past year. The information may be prudent to share with all shipping companies to lessen future vessel interactions.
10. Pilot Security -- Commissioner Falaschi – SFPB Port Agent McIsaac reported that the SFBP were notified that one of the oil terminals had gone to MARSEC Level 2, resulting in increased security measures.
11. Ad hoc Committee for Pilot Fitness -- Commissioner Falaschi -- status of appointments of committee members – Board Counsel Paetzold reported that Commissioner Falaschi was waiting for a response from one additional public member.
12. California Performance Review -- recommendations re Pilot Commission -- Executive Director Moloney -- **possible Board action re same**

Executive Director Moloney reported that the BOPC had received copies of letters from MM&P and SFBP opposing the recommendations to eliminate this Board.

SFBP Captain McIsaac gave an overview of the CPR report. The CPR report was published August 4. It recommends eliminating the Board of Pilot Commissioners by July 1, 2005. Some of the functions of the Board would be directed into two new government entities. There are other functions that are not addressed in the current document.

Public hearings are scheduled by the CPR Commission from August 13 to September 27. Captain McIsaac summarized the process as follows: Written comments are due by September 30. The CPR report and comments will then be submitted to the Governor. The Governor will then submit the CPR, with any revisions, to the Little Hoover Commission, which by law reviews all proposals to reorganize state government. That Commission will then have 60 days to hold additional hearings and solicit comments prior to making recommendations to the Governor. The Governor can make revisions prior to sending the bill to the Legislature. The Legislature can only pass or not pass the bill. It cannot amend the bill. If the legislature does not pass the bill, the Governor may put the CPR recommendations on a ballot measure.

The SFBP position is that the CPR recommendation to eliminate the Pilot commission ignores safety of navigation and protection of the environment. BOPC is efficient with a small staff, small budget, big responsibility, and a proactive philosophy. BOPC is at no cost to the citizens of California, funded by user fees, not taxes. BOPC is similar in organization and function to that of all other states with state pilotage with the exception of one, Hawaii. The CPR recommendation will result in loss of needed local knowledge and maritime expertise in the oversight of pilots, who pilot vessels that transit through multiple jurisdiction.

SFBP action: Letters to the Governor and CPR Commission were sent September 17. SFBP will testify at the hearing in Davis on September 27.

Commissioner Lundeberg thanked Captain McIsaac for his very informative report. His organization will support SFBP's position and understands that industry will do the same. He urged all interested parties to express their concerns to the CPR Commission.

#### New Business

1. Public Comment on matters not on the agenda – SFBP Captain Pinetti gave an overview of his personal experience with the state of Hawaii's regulation of pilots.
2. Proposals for additions to next month's agenda

It was noted that five Board members' terms will expire December 31, 2004, raising the possibility that the Board would lose a quorum if the governor did not act in time to reappoint those members or appoint their replacements.

The Board may wish to review what other proactive actions it should take while it still has a quorum in addition to ensuring an adequate number of trainees and appropriate surcharge rates.

Schedule next regular meeting – the following meetings were scheduled:

October 28, 2004 at 9:30 a.m. – Finance meeting scheduled for 8:45 a.m.

November 18, 2004 at 9:30 a.m.

December 16, 2004 at 10:00 a.m.

Adjournment – the meeting was adjourned at 10:15 a.m.

Respectfully submitted,

Alice A. Evans  
Secretary