

Minutes January 27, 2005

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, January 27, 2005 Commissioner Falaschi. A quorum was present, including Commissioners Bayer, Lundeborg, Rosequist, Wagner, Welch and Winn. Also in attendance were Port Agent Bill Greig, Board Counsel Raymond Paetzold, Executive Director Moloney and Secretary Alice Evans and various members of the public.

Commissioner Falaschi welcomed Nancy Hall, Deputy Director, Consumer Affairs, who was in the audience and thanked her for attending today's meeting.

Request approval of Minutes of the December 16, 2004 regular Board meeting. The minutes were unanimously approved.

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

1. The Board forwarded a letter dated January 12, 2005 to Mr. Peter Siggins, Legal Affairs Secretary requesting authorization for the BOPC to continue to utilize outside counsel in matters related to maritime issues.

Other Pilot Matters -- Executive Director Moloney

1. The Board issued license renewals to SFBP Captains Anderson, Carlier, Carlson, Coppo, Crowell, Gates, Gjevik, Hand, Kelso, Keon, Maclachlan, McIsaac, Plant, Rioux, Robinson, Shanower, Teague and Waugh during the month of January.
2. The Board has received the manpower reports and statements for pilotage fees and surcharges collected from SFBP through November and Inland Pilot Slough through December 2004. Copies are available in the Board office.

Port Agent's Report -- SFBP Captain Bill Greig

1. Mr. Aaron Peskin, President of the San Francisco Board of Supervisors recognized Captain Rhodes in a ceremony at City Hall on Tuesday January 25. He commended Captain Rhodes for his years of service to San Francisco Bay.
2. At 0330 on Sunday January 9 Captain J. Shanower suffered an injury to his leg while disembarking the M/V CELEIAMAR. His foot and ankle were caught between the hull of the ship and the D-fendering of the Pilot Boat. He has had two major and two minor surgeries and is now on the road to recovery. The accident is being investigated by the USCG. The crew of the Pilot Boat did an excellent job caring for Captain Shanower after the accident and during the trip back to Pier 9.
3. NFFD: Captains Gans, Sweeney and Rhodes are being treated for illnesses and injuries not relating to piloting.
As previously reported Captain Shanower is being treated for a piloting-related injury.
Captain Dohm is caring for a terminally ill family member; however, he is spending some time as Operations Pilot.
Captain Cota is undergoing evaluation.

4. **MRP Violations**
There were 2 MRP violations since the last meeting: an 11 hour 50 minutes rest with 7 pilots off the board, 3 on comp and 4 sick; a 10 hour 10 minute rest with 5 pilots off the board, 4 sick and 1 comp. Contributing to the second incident, the pilot had been called in early for a river job.
5. **Pilot Boats:** The P/V GOLDEN GATE was down from December 26 through January 10 due to mechanical failure.

The P/V GOLDEN GATE had a collision with a fishing boat on January 17 at 1940. The collision occurred just east of Pier 9. No one was injured, there was very minor damage to the GOLDEN GATE and moderate damage to the fishing vessel. The USCG was on scene and boarded both vessels. The USCG is investigating the incident. There was no lost time on the GOLDEN GATE.
6. **Vessel movements through December compared to a three-year daily average:**
GRT: +10.9%
Bar Crossings +3.5%
Bay Moves -5.0%
River Moves +4.4%
Total Moves +1.6%
7. **Spot Bill Language:** The SFBP are introducing legislation that would allow BOPC to authorize the use of the Pilot Vessel Surcharge to recover the Pilots' costs for life extension modifications to existing pilot boats. The language for the proposed code change is available in the BOPC office. This proposal is in preliminary stage and will be discussed further with industry representatives and the BOPC. This bill will also be available if there are any changes to the Code recommended by BOPC committees. The proposed change is to Harbors and Navigation Code 1190 (a)(1)(B). It is requested that this item be placed on the Board's agenda for further discussion. Commissioner Falaschi said this item would be placed on the agenda for discussion at the February meeting.

Unfinished Business

1. **Open Incidents** --Commissioner Executive Director Moloney
 - a. M/V CMA-CGM YANTIAN, alleged violation of RNA speed restrictions, San Francisco Bay, September 19, 2004
Executive Director Moloney reported that the USCG has been investigating this incident and that he would be unable to access the supporting evidence until the Coast Guard has concluded its action. The pilot concerned has recently been given a letter of warning from the USCG and has 30 days to respond. The IRC requests an additional extension until the next Board meeting. It was moved and seconded to extend the IRC report until the next Board meeting. Commissioner Falaschi asked for discussion. There being no further discussion the motion passed unanimously.
 - b. M/V MANDARIN GLORY, allision with Richmond Levin Terminal 5B, November 29, 2004 – Executive Director Moloney said the IRC will report this incident at the next Board meeting.

2. Pilot Ladder reportable incidents -- Executive Director Moloney

VESSEL	PILOT	DATE	DISCREPANCY
M/V EVER DIADEM	Chadwick	1/24/05	Pilot was embarking and there was no responsible crew member on deck to communicate with the bridge or assist pilot; the crew was assisting Sea Marshals embarking by helicopter elsewhere on the ship.

Discussion continued regarding the potential dangers related to this pilot ladder incident and the pilot ladder procedures that are in place. The IRC was directed to investigate further, notify the agent and shipowner by letter and report at the next meeting.

Executive Director Moloney continued with another incident unrelated to pilot ladders and referred to UPRRB Occurrence Report submitted by SFBP Captain McBride regarding M/V PORT PEGASUS, January 24, 2005. Captain McBride reported that the UPRR Bridge was not raised at the requested time resulting in a potentially dangerous situation. USCG Cdr. Cook, VTS, who was in the audience reported that the USCG is reviewing the tapes and would be meeting with local management regarding any communication problems. Board Counsel noted that the UPRRB Working Group has been meeting every six months but that an earlier meeting can be requested if warranted. This incident will be relayed to all members of the Working Group. This item will be added to the agenda for the February meeting.

3. Rules and Regulations Committee -- Commissioner Welch said there is no report.

4. Pilot Training Curriculum Committee -- Commissioner Wagner said there is no report.

5. Pilot Evaluation Committee--Capt. Melvin -- Report on January 19 meeting -- report on trainees' progress in training program -- possible recommendation to appoint members on Pilot Evaluation Committee to fill two anticipated vacancies; **possible Board action re same**

SFBP Captain Melvin reported that at the last Board meeting the Committee was tasked to present an overview of the PEC's activities and background of the pilots recommended for appointment to fill current vacancies on the committee. He reported that the PEC oversees the training of the trainees. It regularly reviews the trainee cards that are filled out by each pilot accompanied by a trainee. The PEC ultimately makes a recommendation to the Board when a trainee has successfully completed the training program in accordance with the Board's regulations and is ready to be licensed as a SFBP. The PEC also works closely with the Board's contractor to develop the testing for entry into the Pilot Trainee Training Program.

Captain Melvin then continued with the following report: The Pilot Evaluation Committee met at Pier 9 on January 19, 2005 at 1000 hours. Each of the seven trainees were interviewed and found to be performing well. Their evaluation cards for the previous month's work were reviewed by the committee and discussed with each trainee separately and where appropriate, individual instructions were given. I'm pleased to report that thus far, the transition from having three trainees in the program to the current number of seven trainees has gone very well.

As requested by the Board President, the Committee also addressed the issue of recommending replacements to fill upcoming vacancies on the Evaluation Committee. Captain Kelso's term expires February 22 and Captain Maclachlan's term will expire March 27. In addition, Captain Gjevik has advised that he would like to resign at the end of June. I am personally very grateful

for the dedication these gentlemen have given to this Committee and to the Pilot Training Program, which has continued to improve dramatically as a result of their hard work.

I am also pleased to report an increased interest by the rest of the pilot group in these vacancies. As you know, to be considered for such an appointment, a pilot must have at least ten years of experience. Nine pilots applied for the three anticipated vacancies. The Committee not only used its personal knowledge of these pilots, but also consulted former trainees (now pilots) to get an updated feel for an individual's skill as an instructor, a skill which doesn't necessarily reflect on one's piloting ability. In addition, we also reviewed the last six months of evaluation cards to determine the quality and degree of interest given to their evaluations. Although other very good pilots were considered and such a decision is always difficult, the Committee unanimously recommends the following three pilots to the Board in this order to fill the upcoming vacancies on the Evaluation Committee as they occur:

Captain Thomas Miller, Captain David Gates and Captain Steve Roberts.

Captain Miller was born in Berkeley, California. He is a graduate of the California Maritime Academy, class of 1980. After graduation he was employed with Crowley Maritime, then various other local tug companies. From 1981 through 1986, he was employed by Bay & Delta Tugboat Company, during which time he obtained First Class Pilotage for San Francisco Bay including the Ports of Stockton and Sacramento. In October of 1986 he passed the first Pilot Trainee Exam given by the Board of Pilot Commissioners after the 1985 amalgamation. He entered the Pilot Training Program and was appointed July 1, 1987. Captain Miller has always shown a lot of interest in the Trainees and is particularly good in classroom instruction, where he was volunteering his services long before he had the ten years required to become an Evaluation Pilot.

Captain David Gates was born in Washington D.C. He is a graduate of the Massachusetts Maritime Academy. After sailing as mate aboard U.S. flag merchant vessels, he sailed out of Baltimore aboard ocean and coastwise towing vessels to the East and Gulf Coasts, the Caribbean and South America. Captain Gates served as Tug Captain and Docking Pilot for Curtis Bay Towing Company where he piloted nearly 1,000 vessels in the port of Baltimore. Prior to entering the Pilot Training Program in San Francisco, Captain Gates was a Los Angeles Port Pilot for eight years where he served as Lead Pilot supervising the pilots, dispatch and boat crews on his watch, as well as serving as Training Pilot. During his employment in Los Angeles, he piloted over 3,500 vessels. He entered the Pilot Training Program in San Francisco in January 1990 and was licensed by the Board in January 1992.

Captain Steve Roberts is a graduate of the California Maritime Academy, class of 1977. From 1977 to 1981, he was employed as a deck officer with Exxon Co., USA. From 1981 to 1982 he worked for Sanders Towboat Co. while simultaneously training to become an Inland Docking Pilot. He continued as an Inland Docking Pilot until 1985 when as a result of the amalgamation of nearly all pilots in the Bay Area, he joined the San Francisco Bar Pilots. The Evaluation Committee received feedback from former trainees that indicated he is very patient and demonstrates a great deal of interest in their training.

If the Committee can be of further help on these recommendations, please do not hesitate to ask.

The Committee has scheduled its next regular meeting for February 16 at the SFBP office, Pier 9 East End, San Francisco at 1300 hours.

It was moved and seconded to accept the PEC recommendation, and pursuant to the noticed agenda -- *"to fill two anticipated vacancies"* -- to appoint SFBP Captains Miller and Gates to fill

the next two vacancies on the Pilot Evaluation Committee. Commissioner Falaschi asked for discussion. There being no further discussion the motion passed unanimously.

This item will remain on the agenda for the next Board meeting to address any additional vacancies.

6. Pension Committee -- Commissioner Bayer -- Report on status of review of statutory pension plan recommendations for the plan's interpretation and implementation, developing proposed procedures for submitting and handling requests for disability determination under the pension plan, fiduciary oversight and pension matters in event that Board loses quorum after February 2005 -- **possible Board action**

Commissioner Bayer said there is no report and would attempt to make a report at the next Board meeting.

7. Ad Hoc Pilot Power Committee -- Commissioner Wagner said there is no report.

Commissioner Falaschi noted that agenda items 8., 9., and 10 continue to remain on the agenda as placeholders and that there are no reports on these items.

8. Vessel Interactions -- Review incident frequency, Board's role in addressing the problem-- Commissioner Falaschi/Executive Director Moloney -- report on 2-year summary, possible reasons for decline in frequency of incidents.
9. Pilot Security -- Commissioner Falaschi
10. Ad hoc Committee for Pilot Fitness -- Commissioner Falaschi -- status of appointments of committee members
11. California Performance Review -- recommendations re Pilot Commission -- Executive Director Moloney -- review status of CPR/Governor recommendations to eliminate Pilot Commission, transfer functions to Dept. of Consumer Affairs -- **possible Board action re same**

Commissioner Falaschi noted that this item is open for discussion, to determine how the Board members stand on the following issues and what form of action to take, if any. He stated the importance to work together as part of the administration. The following informational memos addressed to all Board members from Board Counsel were referenced:

Memo dated January 26, 2005 re Board Meeting 1/27/05 – Agenda Item F.11. California Performance Review – status of Governor's recommendations to eliminate Pilot Commission, transfer functions to Department of Consumer Affairs

Memo dated January 13, 2005 re Licensing functions during periods Board is without a quorum

Memo dated January 26, 2005 re IRC Functions during periods Board is without a quorum

All memos were made available to the audience. Copies are available in the Board office.

The Board discussed each issue in detail. Various concerns were discussed regarding potential problems if the Board's functions are transferred to the Department of Consumer Affairs. Concerns regarding the industry's ability to monitor pilotage surcharges and how they are spent and the ability to work quickly on safety issues were discussed in detail.

Nancy Hall, Deputy Director Consumer Affairs, who was in the audience, addressed the Board and noted that the Department of Consumer Affairs would continue the same practice of segregating the pilotage surcharges in a special fund as required by law and, that Board staff would report directly to Consumer Affairs. An advisory committee would be established with meetings held in compliance with the Bagley-Keene Open Meeting Act. She also emphasized the importance of working together as part of the administration.

Commissioner Falaschi thanked Ms. Hall for attending today's meeting and for her report.

Commissioner Rosequist expressed his concern that an advisory committee would have no authority to take action and that the local economy, safety and environment may suffer if the functions of the Board are transferred to a large bureaucratic agency in Sacramento.

Executive Director Moloney commented on his attendance of the Little Hoover Commission hearing January 26. He noted the Pilot Commission's maritime expertise and the fact that each public member appointed to the Incident Review Committee to date has had significant maritime experience.

Commissioner Falaschi commented after this detailed discussion that all Commissioners agree that the work of this Commission is most important to safety, economics and environmental concerns for the Bay Area. A motion was made and seconded to direct the Board President and Executive Director to send a letter to the Governor, Little Hoover Commission and elected officials advising of the Pilot Commission's concerns. The motion was amended to e-mail the draft letter for review by all Commissioners. The amendment was withdrawn after a discussion of possible Open Meeting Act concerns. Commissioner Falaschi asked for further discussion. There was none. The motion passed unanimously as originally made.

New Business

1. Authorization for Board President and/or Executive Director to sign the following contracts: FY05/06 legal contracts with The Paetzold Law firm up to \$300,000 and Farbstein & Blackman, APC up to \$30,000; FY05/06 miscellaneous office machine contracts; and Investigator Fred Jones for FY05/06, 06/07 and 07/08 up to \$7,000 per year. **Possible Board action re same**

It was moved and seconded to authorize Board President and/or Executive Director to sign the following contracts: FY05/06 legal contracts with The Paetzold Law firm up to \$300,000 and Farbstein & Blackman, APC up to \$30,000; FY05/06 miscellaneous office machine contracts; and Investigator Fred Jones for FY05/06, 06/07 and 07/08 up to \$7,000 per year. Commissioner Falaschi asked for discussion. There was no further discussion. The motion passed unanimously.

2. Pension Committee -- Review of Pension Benefits -- possible recommendation to the Board to increase monthly benefits not to exceed 50 percent of the cumulative increase in CPI, as authorized by Harbors & Navigation Code §1167. **Possible Board action re same**

Commissioner Bayer reported that the Committee met on Wednesday January 26 in a regularly noticed meeting open to the public to review the changes in the Consumer Price Index for the San Francisco Bay Area over the last three years. The purpose of this meeting was to discuss the three- year COLA issue and address it prior to the possible loss of a Board quorum after the February meeting.

The Committee found that pension benefits under the statutory pension plan were last adjusted for changes in the consumer price index in April 2002.

Based on data available from the Bureau of Labor Statistics of the U.S. Department of Labor, the cumulative increase in the applicable consumer price index between December 31, 2001 and December 31, 2004 was 4.7%. Harbors and Navigation Code Section 1167 authorizes the Board to increase the monthly pension benefits specified in the Code by an amount not exceeding 50% of that increase, after taking into consideration "the maritime industry practice in the United States as brought to the attention of the Board by the pilots, inland pilots or industry."

No evidence of the maritime industry practice has been offered. After due consideration, the Committee recommends, and Commissioner Bayer moved, that the Board increase the monthly pensions specified in Section 1163 of the Code by 2.35% (which represents 50% of the cumulative increase in the CPI) effective April 1, 2005 and authorize the Board's fiduciary to make the necessary calculations for each pension recipient as required by the Code and to make the adjustments in the surcharge authorized by Section 1165.

The Committee notes for the record that, while its recommendation today is to increase the pension benefits by the maximum authorized under Section 1167, future pension benefit reviews as may be authorized by law should not be deemed to result in an automatic increase of a like amount or preclude the consideration of maritime industry practice as may be brought to the attention of the Board or any successor agency at that time.

3. Pension Committee -- Review Request for disability determination by Capt. Charles E. Rhodes pursuant to Harbors & Navigation Code Sect. 1164(b) -- **Possible Board action re same**

Commissioner Bayer reported that the Committee also met on Wednesday January 26 to consider Captain Rhodes' request for a disability pension and recommends that the Board make the following determinations:

- (1) There is sufficient, competent medical evidence to conclude that Captain Rhodes is "disabled" within the meaning of the San Francisco Pilot Pension Plan due to a condition which renders Captain Rhodes unable to perform the duties of a pilot and which is of extended and uncertain duration;
- (2) The date of disability for purposes of calculating Captain Rhodes' pension benefits under that plan is January 10, 2005, the date of the letter from Captain Rhodes' treating physician describing the nature and extent of his condition and declaring him completely disabled;
- (3) Captain Rhodes began service as a Board-licensed pilot on January 1, 1991, and was authorized to pilot under the authority of that license for 14 years and 9 days, thereby entitling him to 14 "full years of service" for pension purposes;
- (4) The last year prior to Captain Rhodes' disability was 2004; and
- (5) Captain Rhodes is entitled to receive the benefits for a disabled pilot as set forth in Harbors and Navigation Code §1163 beginning April 1, 2005.

It was moved and seconded to accept the Pension Committee's recommendation. Commissioner Falaschi asked for discussion. There was no further discussion. The motion passed unanimously.

4. Recommendations for Board actions pending loss of possible quorum re license issuance/renewal and re functioning of Incident Review Committee -- **Possible Board action re same**

Commissioner Falaschi noted the importance of the Incident Review Committee's ability to continue its function in the event the Board lacks a quorum after February 2005. In the past, when the IRC filed an accusation, the Board has elected to hear the matter sitting with an Administrative Law Judge (ALJ). It was moved and seconded that in the event that an accusation is filed, the matter would be referred for hearing before an ALJ. The motion was amended that this would apply only if the Board is without a quorum to act at that time. After discussing the fact that the Board could review and reverse its decision if it had a quorum, the proposed amendment was withdrawn. Commissioner Falaschi asked for further discussion on the original motion. There was no further discussion. The motion passed unanimously as originally made.

5. M/V PORT PEGASUS, grounding Lt. 31, San Joaquin River, January 19, 2005 – Executive Director Moloney said this incident is under investigation.

6. Public Comment on matters not on the agenda

Retired Captain Buttner, who was in the audience, thanked the Pension Committee and Board for addressing the COLA issue.

Executive Director Moloney noted that Consumer Affairs Legal Counsel Anita Scuri suggested that interested representatives of the Maritime Industry and Commissioners who are waiting for reappointment contact the Governor's Appointment's Secretary to ensure that the Secretary's staff was aware of the impending loss of a quorum.

7. Proposals for additions to next month's agenda

SFBP Capt. Melvin, Chair of the Pilot Evaluation Committee, requested that the following be added to the next regular scheduled Board meeting agenda: Possible recommendation to appoint additional members on Pilot Evaluation Committee to fill anticipated vacancies; possible Board action

Schedule next regular meeting – the next regular scheduled meeting is February 24, 2005 at 9:30 a.m.
The Finance meeting is scheduled for 8:45 a.m.

Adjournment – the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Alice A. Evans
Secretary