

Minutes November 30, 2007

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun regular meeting was held in Port of San Francisco, Pier 1, Bayside Rooms 1 and 2, San Francisco, Ca commencing at 10:30 a.m. on Friday, November 30, 2007, Commissioner Miller presiding. A quorum was present including Commissioners Lundeborg, Osen, Tate, Wagner and Wainwright. Also present were SFBP Port Agent Captain McIsaac, Board Counsel Paetzold, Executive Director Moloney and Secretary Alice Evans.

Introductory Remarks - by Commissioner Miller:

There are many in the audience today who may not be familiar with this Board, and I thought it might be appropriate if I spoke briefly about who we are and what we do.

To provide you with a little more detail than I will provide, our staff has left on the table closest to the audience copies of an Overview of what the Board is about. That document is also available on the Board's website, which is www.pilotcommission.org

As I said a moment ago, for purposes of today's meeting, a brief discussion of the Pilot Commission and its role in investigating navigational accidents appears to be in order.

The Board (or "Pilot Commission" as it generally is known) licenses and regulates 60 maritime pilots and one inland pilot who provide pilotage services to commercial vessels from the high seas into, through and beyond San Francisco Bay. It also holds hearings on pilotage rates and makes recommendations to the Legislature, which establishes such rates by enactment.

The Commission was established in 1850 by the California Legislature. Its jurisdiction extends inland as far as the Ports of Sacramento and Stockton, and to Monterey Bay.

The Commission's operations are funded entirely by user fees paid by shipping companies that use services provided by pilots we license. There is no taxpayer funding of Board operations.

Pilots in other ports (for example, the Ports of Los Angeles, Long Beach, San Diego, Eureka, Hueneme) are not under the jurisdiction of the Board but may be regulated by local entities.

The Commission has a staff of two: An Executive Director and a secretary. The Board is composed of seven Commissioners. Each Commissioner is appointed or reappointed by the Governor of California.

By law, two Commissioners must be pilots, two must be representatives of shipping companies, and three must be public members. All Commissioners are appointed for four-year staggered terms and may be reappointed for an additional four-year term.

The Board generally meets once per month. From time to time the Board holds hearings that may last several days.

There are several committees, both statutory and ad hoc. Generally the President of the Board appoints a member from each of the three cohorts - the public, industry, and the pilots - to serve on the committees. Members of advisory committees need not be Commissioners. The committees meet from time to time as the need arises.

One exception is the Incident Review Committee - or "IRC." This Committee is provided for in the California Harbors and Navigation Code. By law, the IRC has only two members: the Executive Director and a public member of the Board.

The IRC investigates all reports of navigational incidents involving a vessel piloted by a pilot licensed by the Board. Such incidents may involve groundings, allisions or collisions or reports of dock damage from normal wear and tear in the docking or undocking of a vessel or in the passing of a ship that resulted in a moored vessel moving along the dock. The purpose is to determine what happened and whether there was pilot error.

The IRC has limited authority to take corrective action where warranted. It prepares a report on each incident it investigates. Unless an accusation is filed, the report is presented to the Board for acceptance, rejection, or return seeking additional information. With limited exceptions, the reports of the IRC are public documents. The IRC investigates about 8-10 incidents per year.

If the IRC determines that there was pilot error warranting suspension or revocation of the pilot's license, it may file an accusation leading to proceedings governed by the state Administrative Procedures Act.

Under that Act, the Board has the option of referring the entire matter to an Administrative Law Judge to hear the evidence and develop proposed findings and recommendations or acting as the finders of fact in a hearing presided over by the ALJ.

We may discuss the IRC and hearing procedures in more detail when we address the COSCO BUSAN allision.

Request approval of Minutes of the October 25, 2007 regular Board meeting. The minutes were unanimously approved.

TAKEN OUT OF ORDER:

New Business

1. M/V COSCO BUSAN, allision Bay Bridge, November 7, 2007; possible IRC report or recommendation; **possible Board action re same**

Commissioner Miller reported that on November 7, the 900-foot container ship, COSCO BUSAN struck the fendering system protecting the Delta Tower of the Bay Bridge after departing the Oakland Inner Harbor bound for sea.

She was piloted by Capt. John Cota, a San Francisco Bar Pilot who has been licensed by this Board

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for 26 years. The collision resulted in a 200-foot long gash in the side of the ship that opened up two fuel tanks, resulting in the loss of an estimated 58,000 gallons of fuel oil into the waters of San Francisco Bay.

The accident made national headlines and has resulted in a number of ongoing investigations and hearings at the state and federal level into what caused the accident, the ensuing clean up efforts and whether current laws and procedures are adequate to protect the public.

Before the Commission begins its consideration of the COSCO BUSAN incident, I think it appropriate that I address the investigation into that incident now underway, and also the present status of the pilot.

First, the **Investigation**: As I mentioned earlier, the Board's Incident Review Committee (we call it the "IRC") is assigned the responsibility of investigating navigational incidents involving Board licensed pilots. That investigation is ongoing.

Upon completing its investigation, the IRC has various options as set forth in the law.

Without prejudging the results in this case, one such option is to file an "accusation" - written charges of pilot misconduct that – if proven - could lead to the suspension or revocation of the pilot's license.

If an accusation is filed, those Board members who are not involved in the investigation are authorized by law to act as the triers of fact – to hear the evidence relevant to the issues raised by those charges and to the pilot's defense to those charges.

The procedures for such an action are set forth in the California Administrative Procedures Act and provide for a hearing presided over by an Administrative Law Judge (or "ALJ").

The significance of these differing Board roles is that the majority of the Board members, those who are not involved in the investigation, must seek to maintain their neutrality and avoid discussing the substance of the investigation with the members of the IRC or otherwise taking action that might result in disqualifying them to act as a finder of fact in the event that this matter should proceed to a hearing on charges of pilot misconduct.

A Board member may be disqualified from participating in such a proceeding for reasons of bias, prejudice or interest in the proceeding or its outcome.

Reflecting this division of responsibility, members of the IRC and the investigators are prohibited by law from discussing any ongoing investigation with the Board or with any Board member until the matter has been finally disposed of by the IRC or final action has been taken by the Board.

Now, I'd like to address the **Pilot's Current Status**: A key factor in the safe navigation of a ship in piloting waters is the effective working relationship between and among the members of the "bridge team." The pilot, as a temporary member of that team, acts as an advisor to the master, providing intimate knowledge of the local conditions and navigational hazards along with expert shiphandling skills, while the master and his or her officers and crew provide familiarity with the ship and her

equipment.

An incident of this magnitude has the potential for creating doubt and questioning the competence of the pilot, regardless of fault, thereby interfering with that relationship.

This is particularly true when public speculation about the cause of the accident and the pilot's role has been in the national and local news, as has been the case during the period immediately following this accident.

Under the Board's regulations, the Port Agent has the responsibility of assigning pilots to vessels. In carrying out that responsibility the Port Agent is to be "primarily guided by the need for safety of persons, property, vessels and the marine environment."

Pursuant to that authority, and to my request as Board President, the Port Agent has assigned Capt. Cota to administrative duties not associated with piloting ships until the IRC has completed its investigation or the Board has taken further action.

This should not be viewed as a prejudgment of pilot error, but was simply to avoid placing the pilot and a ship's master in an untenable position.

If the IRC has sufficiently completed its investigation to the point that it believes that an accusation will be filed, and if there is reasonable cause to believe that the public interest requires it, the Board may also summarily suspend a pilot's license pending a hearing on the charges. The summary suspension would cease if an accusation is not served on the pilot within 6 days or the matter is not brought to a hearing and a decision issued within 40 days.

In this instance, Capt. Cota is currently not being assigned to pilot any vessels. No charges of misconduct have been filed.

I will ask the IRC to report on the status of its investigation.

IRC Report:

Executive Director Patrick Moloney reported that the Incident Review Committee's (IRC) investigation has reached the stage where it is ready to file an accusation alleging pilot negligence in causing the allision of the M/V COSCO BUSAN with the fendering system of Delta Tower of the Bay Bridge on November 7, 2007. The IRC recommends that the Board exercise its discretion under Section 1180 of the Harbors and Navigation Code to summarily suspend Captain Cota's license.

This not intended as a punitive step or to prejudge Captain Cota's conduct but is to protect the public interest. This incident has resulted in an extraordinary amount of public speculation about the causes of the incident, including various theories of pilot error. To assign Captain Cota to pilot a ship at this time, pending the completion of the IRC's investigation and a hearing on any charges that might be filed, would do a disservice to both the pilot and the master of any ship to which he might be assigned. The mutual trust and working relationship

between pilot and master could be seriously compromised by public speculation during this time of uncertainty as to Captain Cota's role in this incident.

The IRC therefore recommends that Captain Cota's license be summarily suspended for the period authorized by Section 1180.

It was moved and seconded to accept the IRC's report and recommendation that Captain Cota's license be summarily suspended for the period authorized by Section 1180. Commissioner Miller asked for comments from the public and discussion.

The IRC's and Board's statutory roles were discussed. It was noted that the IRC's recommendation was focused on the need to protect public safety within the limited authority provided by Section 1180, and not based on any determination of pilot error. While the recommendation assumes that charges will be filed, none have yet been filed and the Board should refrain from speculating on or discussing the possible causes of the allision or the pilot's role or taking any action that could compromise their ability to afford the pilot a fair hearing if charges are filed.

Mr. John Meadows, counsel for Captain Cota, who was in the audience, asked the Board not to rush to judgment and noted that Captain Cota was already on administrative leave and that suspending his license was unnecessary. He suggested that his client could not get a fair hearing noting problems with obtaining access to interview the ship's crew and examine the ship's navigation equipment. He also sought to discuss Captain Cota's defenses. Mr. Meadows was advised that those arguments were premature and that if timely charges are filed by the IRC, Captain Cota would have an opportunity and a process under the State Administrative Procedures Act to have his concerns heard.

Commissioner Miller asked for a roll call vote on the motion. The motion passed with six YEAH and zero NAY.

2. Possible discussion of SFBP use of computer generated maritime charts, personal laptops and other personal navigation equipment available to pilots
3. Possible discussion of developing lessons learned from COSCO BUSAN incident prior to completion of IRC investigation

Commissioner Miller reported that a Committee would be formed to address items G. 2. and 3. above and that he would announce the chair and members at the next meeting.

Commissioner Miller requested a recess at 11:00 a.m. and the meeting reconvened at 11:20 a.m.

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

1. The Board received a letter dated October 23, 2007 from SFBP Captain Thomas E. Hand Jr., notifying of his intent to retire at 2400, December 31, 2007.

2. The Board received a letter dated October 29, 2007 from SFBP Captain Paul Lobo, notifying of his intent to retire effective January 1, 2008.
3. The Board received a letter dated October 26, 2007 from SFBP Captain Daniel O. Keon, notifying of his intent to retire at 2400, December 31, 2007.
4. The Board received a letter dated October 29, 2007 from SFBP Captain Russell M. Nyborg, notifying of his intent to retire effective January 1, 2008.
5. The Board received a letter dated October 31, 2007 from SFBP Captain Gregory K. Waugh, notifying of his intent to retire effective January 1, 2008.
6. The Board received a letter dated November 16, 2007 from Jeffrey A. Bauer, Sr. Leasing Manager, Port of San Francisco, that the office space at 10 Lombard is no longer available.
7. The Board received a letter dated November 16, 2007 from Anthony Montapert urging the BOPC to fire Captain John Cota because of the oil spill.
8. The Board received a letter dated November 23, 2007 from Alma Blackwelder urging the BOPC to fire Captain John Cota because of the oil spill.

The Board discussed staff's responsibility to respond to items 7. and 8. above. A letter will be sent acknowledging their concern.

Other Pilot Matters -- Executive Director Moloney

1. The Board issued license renewals to SFBP Captains Dowdle and Simenstad during the month of November.
2. The Board received manpower reports and statements for Pilotage fees and surcharges collected from SFBP through September and Inland Pilot Captain Slough through October 2007.

Port Agent's Report -- SFBP Captain Peter McIsaac

1. NFFD: Captains Plant and R. Nyborg are not-fit-for-duty.
2. Recommended Minimum Rest Period Exceptions: There is no report available for this meeting; a report for October and November should be available at the next meeting. The exceptions have been minimal.
3. Pilot Vessels: 11/18 P/V GOLDEN GATE taken out of service for routine maintenance. 11/18 P/V CALIFORNIA was taken out of service to repair the port tail shaft bearing.

4. Billed Vessel Moves through October 2007 compared to 3-year average:

Bar Crossings:	+6%
Bay Moves:	flat
River Moves:	-3%
Total Moves:	+4%
GRT:	+12%

When compared to first 10 months of 2006 total moves are down 6% and GRT is down 1%.

Unfinished Business

1. Board office relocation -- Executive Director Moloney reported that the 10 Lombard location is no longer available and that the office remains on a month-to-month lease with Signature. Commissioner Miller requested that Board staff contact Sacramento to request the status of a long-term lease.

2. Open Incidents -- Executive Director Moloney

a. M/V CAP LARA, allision with Valero Terminal, August 2, 2007

Executive Director reported that due to the IRC's investigation of the M/V COSCO BUSAN incident the report on the CAP LARA is not ready to be presented. The IRC requests an extension until the next Board meeting. It was moved and seconded to extend the IRC report until the next Board meeting. Commissioner Miller asked for comments from the public and discussion. The motion passed unanimously.

3. Pilot Ladder reportable incidents -- Executive Director Moloney said there is no report at this time.

4. Rules and Regulations Committee -- Commissioner Wainwright -- no report.

Commissioner Miller reported that in order to permit Board consideration of the Pilot Vessel Advisory Committee's recommendation regarding Pilot Boat expenditures prior to the Finance Committee's report, he would take that recommendation out of order.

14. Pilot Vessel Advisory Committee -- Capt. Bill Figari -- report on November 9, 2007 Committee meeting; possible recommendation to respond to: (a) SFBP's 10/29/07 request for Final Authorization to recover specified costs incurred for engineering and legal services for Life Extension Modifications to P/V GOLDEN GATE; (b) SFBP's 10/29/07 request for Preliminary Authorization and possible Final Authorization to recover specified costs to purchase main engines, reduction gears and generators and for shipyard labor for Life Extension Modifications to P/V GOLDEN GATE; (c) SFBP's 10/29/07 request for Final Authorization to recover specified costs incurred for design and engineering services, deposit on engines and for legal services for new station boat (to replace P/V DRAKE); and (d) SFBP's 10/29/07 request for Preliminary Authorization and possible Final Authorization to recover specified costs to purchase shaft material and reduction gears and for the balance due on main engines for new station boat (to replace P/V DRAKE); **possible Board action re same**

Committee member Mike Jacob, PMSA Vice President, gave the following report: The Committee met on November 9, 2007 to review various requests by the SFBP relative to recovering its costs for proposed Life Extension Modifications to the P/V GOLDEN GATE and for building a new station boat to replace the aging P/V DRAKE.

The Committee reviewed the proposed timelines for both projects and documentation to support the requests.

The Committee concluded that the documentation examined by the Committee supported the SFBP's request for Final Authorization to recover the following costs:

1. \$3,139.47 in engineering and legal services incurred for the proposed Life Extension Modifications to the P/V GOLDEN GATE; and
2. \$510,706 for the main engines and specified design, engineering and legal services for the new station boat.

The Committee recommends that the Board issue its Final Authorization to recover SFBP's costs through the Pilot Vessel Surcharge in those amounts.

It was moved and seconded to accept the Pilot Vessel Advisory Committee's report and to issue Final Authorization for SFBP to recover through the Pilot Vessel Surcharge \$3,139.47 in costs for engineering and legal services associated with the proposed Life Extension Modifications to the P/V GOLDEN GATE and \$510,706 in costs for the main engines and for design, engineering and legal services for the new station boat as detailed in the Pilot Vessel Advisory Committee's report. Commissioner Miller asked for comments from the public and discussion. There were no comments and no discussion. The motion passed unanimously.

The Committee has also concluded that the documentation provided by SFBP in support of its request for Preliminary Authorization to purchase shaft materials and reduction gears for the new station boat was sufficient to support that request and recommends that the Board issue its Preliminary Authorization to recover such costs, which are expected to total \$149,307.40.

It was moved and seconded to accept the Pilot Vessel Advisory Committee's report to issue Preliminary Authorization to authorize SFBP to recover its costs to purchase shaft material and reduction gears for the new station boat in the amount of \$149,307.40. Commissioner Miller asked for comments from the public and discussion. There were no comments and no further discussion. The motion passed unanimously.

5. Finance Committee -- Commissioner Osen - report on November 30, 2007 meeting, Finance Committee's role in budget process, current and projected expenses and revenues for Pilot Vessel Surcharge and possible recommendation to adjust surcharge rate (current rate is 4.5 mils); report on status of BOPC budgets for FY07/08, FY/08/09, Budget Change Proposals and possible recommendation to seek additional expenditure authority if necessary; **possible Board action re same**

Commissioner Osen reported that the Committee met today and reviewed current and projected expenses and revenues for Pilot Vessel Surcharge as noted in the Pilot Vessel Advisory Committee's report above. The Committee recommends in the form of a motion to increase the Pilot Vessel Surcharge to 6.05 mils effective January 1, 2008 (current rate is 4.5 mils). The motion was seconded. Commissioner Miller asked for comments from the public and discussion. There were no comments and no further discussion. The motion passed unanimously.

6. Pilot Training Curriculum Committee -- Commissioner Wagner -- no report
7. Pilot Evaluation Committee -- Capt. Roberts -- report on November 14, 2007 meeting -- possible recommendation to issue Certificate of Completion and license to one or more Trainees if warranted; **possible recommendation to Board re same**

The Pilot Evaluation Committee met on November 14, 2007. All 11 trainees were interviewed individually, their trip cards examined, and their progress with all elements of the program monitored. The trainees range in time in the program from 4 months to 1 year 11 months. All continue their progress satisfactorily and at their own speed. One Trainee is completing his final stages of training. The PEC would expect to have a recommendation to the board at its December 13 meeting.

PEC plans to hold an orientation meeting for 3 new pilot trainees on December 31. These 3 are scheduled to start January 1, bringing the total in the program to 13. PEC has received a verbal intent of resignation from one PEC member and the PEC is currently canvassing Pilots licensed with 10 or more years experience to fill this opening. A recommendation may be made at the January meeting.

The report was accepted without objection.

8. Pilot Power Committee -- Commissioner Wagner -- no report
9. Pension Committee -- Commissioners Miller/Tate -- report on November 6, 2007 Committee meeting-- Report on status of request for offer/proposal to provide fiduciary services and for actuarial study; possible recommendation to respond to request for long-term disability by SFBP Captain Dennis Plant; **possible Board action re same**

Commissioner Tate reported that the Pension Committee met November 6, 2007 to consider the request of SFBP Capt. Dennis Plant for a determination that he is disabled within the meaning of Harbors and Navigation Code Section 1164 (b).

The Committee interviewed Capt. Plant and reviewed his medical records and the results of an independent medical examination by Board physician Dr. Gunderson in a closed session, and Captain Plant's licensing history in an open session. After a thorough review the Committee concluded the following:

- (a) That there is competent medical evidence sufficient to conclude that Captain Plant is currently “disabled” within the meaning of the statutory pension plan, that is, that he has a medical condition that is “permanent or of extended and uncertain duration” and that prevents him from performing his duties as a pilot;
- (b) That there is competent medical evidence to conclude that the date on which Capt. Plant became disabled is October 29, 2007, which is the date on which he was examined by a Board physician and found to be unfit to return to piloting duty;
- (c) That Captain Plant had **15** years **228** days of “service,” to be credited as **16** full years of service for pension purposes [15 years and 303 days through the date of disability less 75 days during which Capt. Plant’s federal license was suspended in 1993];
- (d) That the last year prior to Capt. Plant’s disability is 2006; and
- (e) That Capt. Plant’s disability pension benefits are to begin on January 1, 2008.

It was moved and seconded to accept the Pension Committee’s report and recommendation. Commissioner Miller asked for comments from the public and discussion. Mike Jacob, PMSA Vice President noted that PMSA does not oppose Captain Plant’s disability determination, but wanted it noted for the record that “service dates” will continue to be addressed at the Rulemaking Hearing. There was no further discussion. The motion passed unanimously.

Commissioner Tate noted that Captain Plant’s September 17, 2007 request for possible re-licensing if he returns to a fit-for-duty status remains under consideration by the Committee.

- 10. Vessel Interactions -- Executive Director Moloney -- no report
- 11. Pilot Security -- Commissioner Miller -- no report
- 12. Pilot Identification Cards -- Executive Director Moloney -- status of federal proposal for Transportation Worker Identification Credential (TWIC), obtaining a more substantial Pilot I.D. card. Executive Director Moloney reported that application is available at the Port of Oakland.
- 13. Ad Hoc Committee on Pilot Safety -- Commissioner Soares -- no report
- 14. Pilot Vessel Advisory Committee -- REPORTED ABOVE after No. 4
- 15. UPRR Bridge -- Executive Director Moloney -- report on 10/31/07 meeting with USCG, UPRR, Ports of Stockton and Sacramento and various HSC members re 35 mph wind restrictions at UPRR Bridge. SFBP Port Agent Captain McIsaac reported this is an on-going discussion and that no decision was made at the last meeting.

16. Ad Hoc Advisory Committee on Pilot Selection -- Commissioner Tate -- report on November 6, 2007 Committee meeting, status of progress in achieving goals in mission statement. Commissioner Tate reported that the Committee met November 6 and cancelled the meeting scheduled for November 27 because of other Board issues. Another meeting will be scheduled in January 2008.

G. New Business

1. M/V COSCO BUSAN, allision Bay Bridge, November 7, 2007, REPORTED ABOVE after Introductory Remarks
2. Possible discussion of SFBP use of computer generated maritime charts, personal laptops and other personal navigation equipment available to pilots, REPORTED ABOVE after Introductory Remarks
3. Possible discussion of developing lessons learned from COSCO BUSAN incident prior to completion of IRC investigation, REPORTED ABOVE after Introductory Remarks
4. Public Comment on matters not on the agenda -- there were none.
5. Proposals for additions to next month's agenda -- there were none.

Schedule December meeting -- the next meeting is scheduled for 12/13/07 due to holidays. It will be at the Board office, Pier 9, Suite 102, San Francisco, CA. The Continuation of the Rulemaking Hearing is scheduled immediately following the Board meeting (approximately 10:30 a.m.).

Adjournment the meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Alice A. Evans
Secretary