

Minutes
December 13, 2007

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 December 13, 2007, Commissioner Miller presiding. A quorum was present including Commissioners Lundeberg, Osen, Soares, Tate, Wagner and Wainwright. Also present were SFBP Port Agent Captain McIsaac, Board Counsel Paetzold, Executive Director Moloney and Secretary Alice Evans.

Request approval of Minutes of the November 30, 2007 regular Board meeting. The minutes were unanimously approved.

TAKEN OUT OF ORDER

Unfinished Business

1. Open Incidents -- Executive Director Moloney
 - b. M/V COSCO BUSAN, allision Bay Bridge, November 7, 2007, SFBP Captain John Cota - (If accusation filed and timely hearing requested, **possible Board action** to decide whether to hear case with ALJ or assign to ALJ

Introductory Remarks - by Commissioner Miller

It has now been just over a month since the COSCO BUSAN allided with the fendering system of the Delta Tower of the Bay Bridge. The accident and resulting oil spill from the ship's fuel tanks has resulted in investigations by the NTSB, the Coast Guard and various other federal and state agencies.

A number of lawsuits have been filed seeking civil fines and monetary damages, and there have already been several hearings by Congressional and state lawmakers into what went wrong and whether our current laws are sufficient to protect the public.

The pilot on the COSCO BUSAN was Captain John Cota. Because he held a state pilot license, the Board's Incident Review Committee also conducted its own investigation.

At the Board's last meeting held two weeks ago, the IRC recommended that the Board summarily suspend Captain Cota's license pending a hearing on charges of misconduct. It is an action that is authorized by Harbors and Navigation Code when the Board believes that the public interest requires such action. It is not dependant upon a determination of fault or pilot error. To maintain the summary suspension, charges of misconduct must be filed within 6 days and a hearing must ordinarily be held within 40 days.

At its November 30 meeting, the Board determined that it was in the public interest to summarily suspend Captain Cota's license and ordered that suspension.

On December 6, the IRC filed an accusation with the Board and served it on Captain Cota. The accusation is a written statement of the charges describing the acts or omissions with which the pilot is charged so that he may be able to prepare his defense. It was served on him the same day. By law, Captain Cota has 15 days (or until December 21st) to file his response to the charges and to request a hearing.

Once a timely request for a hearing has been filed by the pilot, the Board must decide whether it will hear the case sitting with an administrative law judge, or assign the matter to an ALJ for hearing.

First option -- If the Board decides to hear the Accusation as participant in the hearing – as a trier of fact - then the Board members who did not participate in the investigation would hear the evidence in a hearing presided over by an ALJ.

It would be for the Board members to determine what weight to give to particular evidence, assess each witness' credibility and resolve any conflicts in the evidence. The ALJ would rule on admissibility and preside over the hearing.

After all evidence is in and the parties have given closing arguments, the Board members would deliberate in a closed session with the ALJ as legal advisor.

If the Board determines that there was pilot misconduct, it would then hear evidence in mitigation or aggravation before deciding the proper sanction. Authorized sanctions could include suspension or revocation of the pilot's state license.

The Board has no authority to issue fines or award money damages.

Second option -- If the matter is submitted to an ALJ for hearing, the ALJ would hear the evidence and be the fact finder. Upon conclusion of the hearing, the ALJ would render a written proposed decision and recommended action. The Board's role would be to review the written record and decide whether to adopt the ALJ's proposed decision. The Board could return the case to take additional evidence or reject the ALJ's proposed decision and decide the matter on the written record.

Either action would be subject to judicial review if appealed by the pilot.

At this point in time, no request for a hearing has been received but it is not yet due.

The Board can wait until such a request has been filed by the pilot, or it could decide which of the two options it would exercise, subject to the timely filing of a request for a hearing.

It was moved and seconded that the Board hear the case sitting with an ALJ, contingent on the receipt of a timely request for a hearing.

Commissioner Miller asked for comments from the public and discussion. A concern was discussed that an ALJ would not have sufficient maritime experience. The Board's past practice in such cases was also discussed. The motion passed unanimously.

Request for Continuance -- Commissioner Miller noted:

Where the Board hears the case sitting with an ALJ, the Board can set the hearing date, after consulting with the ALJ. I understand that Captain Cota, through his counsel, has asked to continue any hearing sufficiently to permit adequate opportunity for discovery and preparation of his defense and has proposed to waive the 40-day limit on the summary suspension and to provide certain other assurances.

Ordinarily, requests for continuances are made to the ALJ.

Subject to any action by the ALJ, I recommend that the Board authorize the IRC to determine the terms under which a waiver of the 40-day limit will be accepted and provided the waiver is accepted by the IRC, to work out a reasonable timeline within the authority provided under the Administrative Procedures Act. Any stipulation or differences should be submitted to the ALJ for resolution. Thereafter, the ALJ will ordinarily manage any other pre-trial matters and will direct the parties to inform the Board when the case is ready to be set for hearing.

Mr. John Meadows, counsel for Captain Cota, who was in the audience, asked the Board for reasonable additional time to prepare for a hearing as information from the shipowner had not been easily accessible and that Capt. Cota would waive the 40-day limit on the suspension of his license pending a hearing.

The Board discussed clarification of what constituted a "reasonable amount of time", that it was not open-ended, that the parties should proceed expeditiously and that the IRC would need to keep the Board informed. It was also noted that Commissioner Lundeborg's term ends 12/31/07 and he may not be able to continue on the IRC. The motion was amended as follows:

It was moved and seconded that the Board authorize the IRC to determine the terms under which a waiver of the 40-day limit will be accepted and provided the waiver is accepted by the IRC, to work out a reasonable but expeditious timeline within the authority provided under the Administrative Procedures Act.

Commissioner Miller asked for a roll call voted on the amended motion. The motion passed with six YEAH and one abstained.

Subject to the timely receipt from Capt. Cota a request for hearing, Board counsel was directed to make the necessary arrangements with the Office of Administrative Hearings and with counsel for the parties. The parties were asked to keep the Board informed through Board counsel of the progress in bringing this matter to a hearing and of the estimated number of days they expect the hearing to take, after a pre-hearing conference with the ALJ. Board members were asked to keep Board secretary informed of their calendars.

Commissioner Miller noted that a Board member may be disqualified from participating in the hearing for reasons of bias, prejudice or interest in the proceeding or its outcome. He advised that those Board members who are not involved in the investigation should seek to maintain their neutrality and avoid discussing the substance of the investigation with the members of the IRC or otherwise taking action that may result in disqualifying them to act as a finder of fact.

Commissioner Miller also noted: "I am mindful that my greater involvement in remaining abreast of the progress in the IRC's investigation and fulfilling my duties as president could potentially require me to evaluate whether to voluntarily disqualify myself. That decision need not be made until some time closer to the taking of evidence."

Board Counsel noted that while the Board is accustomed to receiving advice on maritime legal matters from its counsel, that was not the case during a hearing on misconduct charges. Assuming this matter goes to a hearing with the Board members sitting as the trier of fact, the members will be advised on the law by the ALJ. The ALJ will also assist the Board in its deliberation and will prepare the written decision of the Board.

Commissioner Miller called for a 15-minute recess. The meeting resumed at 10:10 a.m.

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

1. The Board received a letter dated December 5, 2007 from Deborah Hersman, National Transportation Safety Board, expressing the NTSB's appreciation for Executive Director Moloney's effort in responding to the allision of the COSCO BUSAN.
2. The Board received a letter dated December 6, 2007 from Shea Labagh Dobberstein regarding Fiduciary Instructions Regarding Pilot Pension.
3. The Board forwarded letters dated December 7, 2007 to SFBP Captains Hand, Keon, Lobo, R. Nyborg, Plant and Waugh regarding their Monthly Target Retirement Benefit.

Executive Director gave an overview in the BOPC role as fiduciary and it was noted that these are estimated monthly target retirements benefits and that they were based on estimates for 2007 income data.

4. The Board received a letter dated December 10, 2007 from Thomas K. Roth-Roffy, P.E., National Transportation Safety Board, regarding M/V COSCO BUSAN Investigation, request for comment on need for public hearing. It was discussed and noted that the letter has not been answered at the time.
5. The Board forwarded a letter dated December 10, 2007 to Anthony Montapert regarding his interest in the M/V COSCO BUSAN incident.
6. The Board forwarded a letter dated December 10, 2007 to Alma Blackwelder regarding her interest in the M/V COSCO BUSAN incident.

Other Pilot Matters -- Executive Director Moloney

1. The Board issued license renewals to SFBP Captains Gans, McBride and Welch during the month of December.

2. The Board received manpower reports and statements for Pilotage fees and surcharges collected from SFBP through October and Inland Pilot Captain Slough through November 2007.

Port Agent's Report -- SFBP Captain Peter McIsaac

1. NFFD: Captains Plant and R. Nyborg remain not-fit-for-duty.
2. Recommended Minimum Rest Period Exceptions: Four in October over a 3-day span; shortest rest period 8.1 hours; two pilots were NFFD and one was on comp time. Six in November on 3 separate days; shortest rest period was 9.1 hours; one pilot NFFD; one pilot on administrative leave.
3. Billed vessels moves through November 2007 compared to 3-year average:

Bar Crossings:	+ 6.1%
Bay Moves:	Flat
River Moves:	- 0.5%
Total Moves:	+ 4.0%
GRT:	+ 12.0%

When compared to the first eleven months of 2006, total moves are down 5%, GRT down 1%.

Unfinished Business

1. Board office lease -- Executive Director Moloney reported that the Board continues on a month-to-month basis. Communication continues with the Sacramento Real Estate office, however they were unable to respond for today's meeting.

Commissioner Miller asked that item 2 a. be deferred until later in the meeting to accommodate a Committee chair's schedule.

2. Open Incidents -- Executive Director Moloney
 - a. M/V CAP LARA, allision with Valero Terminal, August 2, 2007
 - b. M/V COSCO BUSAN, allision Bay Bridge, November 7, 2007, SFBP Captain John Cota - (If accusation filed and timely hearing requested, **possible Board action** to decide whether to hear case with ALJ or assign to ALJ -- *REPORTED AT BEGINNING OF THE MEETING*)
3. Pilot Ladder reportable incidents -- Executive Director Moloney said there is no report.
4. Rules and Regulations Committee -- Commissioner Wainwright said there is no report.
5. Finance Committee -- Commissioner Osen said there is no report.
6. Pilot Training Curriculum Committee -- Commissioner Wagner said there is 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 Board action re same**

SFBP Capt. Roberts introduced Capt. Rueben Rocci and gave the following report:

The PEC met on November 14, 2007 at which time it completed a final assessment of whether trainee Captain Reuben Rocci has successfully completed all elements of Section 214 of the training requirements of the Board's Regulations. (A copy of that regulation is before you).

The Committee unanimously agreed on its conclusion and has authorized me to present its recommendations to you at today's meeting.

Capt. Rocci's introduction to the maritime world was at the age of 14 upon joining the youth group, Sea Explorers. After four years as an active participant, he obtained his first Coast Guard license when he was 18. He then went on to attend the California Maritime Academy, graduating in 1986 with high honors, as well as receiving the Ross O'Laughlin Award given by the San Francisco Bar Pilots for outstanding shiphandling.

After graduating from Cal Maritime, Capt. Rocci began working on San Francisco Bay at Sander's Towboat, primarily in ship assist. He worked at Sanders for 11 years, then moved on to towing barges for various companies, most recently Foss Maritime. By the time Capt. Rocci entered the Board's pilot trainee training program on December 20, 2005, he had acquired twenty years of experience working on San Francisco Bay in a wide variety of towing and ship assist duties, including Tanker Escort, Dredging, and Flat Towing.

Capt. Rocci resides in Benicia, California with his fiancée, whom he met while sailing on San Francisco Bay. They are active members of the Richmond Yacht Club, and participate frequently in Bay Area regattas.

To date, Captain Rocci has a total of 552 trips in the training program, riding as observer on 177 jobs, (including the required trips on local tugboats) and directing the navigation of the vessel under the direct supervision of a pilot or inland pilot on another 375 jobs.

Captain Rocci has worked extensively with members of the Pilot Evaluation Committee, acquiring far more than the 50 rides required by law (100), with 13 of those rides completed within the last 90 days.

As I have reported to you in the past, the Committee regularly reviews each trainee's progress through periodic meetings with him and through its review of evaluation cards (trip reports) from other pilots. Each Committee member personally rode numerous times with Captain Rocci before making this recommendation.

Captain Rocci continues to meet all statutory prerequisites for being licensed as a pilot. He has maintained in excess of a 4.0 score on his evaluations by the Committee during each of

the last three months and has adequately demonstrated each of the specific items of local knowledge required by the regulation.

In addition the Committee used detailed trip reports and personal observation to ensure that Captain Rocci demonstrated a working knowledge of the fundamentals of shiphandling in each of the circumstances listed in subsection (h) of the regulation, and has demonstrated the skills and knowledge necessary to become a Board licensed pilot.

On behalf of the Pilot Evaluation Committee, it is my great pleasure to recommend that the Board issue to Captain Rocci a certificate of successful completion of the Board's pilot trainee training program effective December 31, 2007 and, that it authorize the issuance of a pilot's license to Captain Rocci effective January 1, 2008.

It was moved to accept the PEC's report, to issue a Certificate of Completion to Capt. Rocci effective December 31, 2007 and to issue a Pilot's License to Captain Rocci effective January 1, 2008. Commissioner Miller asked for comments from the public and discussion. There were no comments and no discussion. The motion passed unanimously.

Commissioner Miller and the Board congratulated Captain Rocci on his achievement and noted that the swearing in would take place immediately after the meeting.

Commissioner Miller asked to continue with the following:

2. Open Incidents -- Executive Director Moloney
- a. M/V CAP LARA, allision with Valero Terminal, August 2, 2007

PROBABLE CAUSE

In the afternoon of August 2, 2007, Capt E. Nyborg and one of the trainees boarded the M/V CAP LARA off the city front to pilot the vessel to the Valero Terminal in Benicia. The trainee had the conn under Capt Nyborg's supervision. The transit of San Francisco and San Pablo Bays was uneventful. During the transit the tugs *Resolute* and *Delta Deanna* joined the vessel. The *Resolute* put up a line to the port bow and the *Delta Deanna* put a line to the port quarter. In the vicinity of the pier, the vessel was turned to starboard and backed into position for docking (known as a "cow turn"). The flood current was pushing the vessel toward Benicia/Martinez highway bridge which is several hundred yards upstream of the terminal. When the turn was finished, the vessel was about 20 feet off the dock and parallel to it. The engine was used to stem the current and maintain position relative to the pier.

In a flood condition, the current banks off the west end of the dock, requiring a vessel to be pushed into the pier. At the east end, the current tends to curve around Army Point to enter Suisun Bay, requiring a vessel to be held off the dock. A westerly wind would tend to push a vessel off the dock, with the greatest effect being on the sail area of the superstructure.

The forward tug was directed to push full ahead and the after tug was left stopped to move the vessel bodily toward the pier. After several minutes the bow began to move in and the tug was eased, then stopped. Capt Nyborg could see the bow closing faster than the stern and told the trainee to get the forward tug ready to back, then back it to control the bow. The bow

continued to close the mooring dolphin so he had power increased on the forward tug and had the after tug push to attempt to land the vessel flat on the mooring platforms. The bow landed first at a slight angle and compressed the fender on the mooring dolphin, causing the vessel's hull plating to lightly contact the dolphin's walkway. There was minor damage to the fender and the walkway with subsequent repairs being charged at \$15,000.

OPINIONS

1. Environmental conditions were routine for the job. The tugs assigned were ample for the conditions.
2. The pilot and trainee were well rested. There were no fatigue issues.
3. The vessel was sound (less than a year old and on her 2nd stop in the Bay Area). There was no scheduling urgency in the docking. Master and crew were competent and cooperative. There were no communication problems. Capt Nyborg was particularly complimentary of the master's professionalism.
4. A delay in controlling the vessel's bow allowed it to land on the mooring dolphin at a slight angle, harder than anticipated.

RECOMMENDATIONS

1. Close this case, minor pilot error. The vessel's transit and turn were uneventful. The set up for docking was carried out well. During the final push in to the berth, Capt Nyborg could see the bow starting to angle in and coached the trainee to adjust for it with increasing levels of tug backing power. A slight misjudgment in timing allowed the bow to land first, with more pressure than desired, on the forward fender. The vessel's hull contacted the dolphin walkway causing minor damage. Neither the pilot nor trainee were aware of the contact until they were advised of it on the pier after having left the vessel.

This report serves as "lessons learned", the lesson being to coach trainees early enough to keep out of reportable situations. It should be noted that getting the tug into its line a matter of seconds earlier would have prevented this very minor incident. Capt Nyborg reports that the trainee would not make the same mistake at this point in the training program.

It was moved and seconded to accept the IRC report. Commissioner Miller asked for comments from the public and discussion. It was discussed there was no forward draft measurement and the master's name is unknown. This was the second visit by this vessel to the Bay Area and that Capt. E. Nyborg was her pilot on the prior visit. It was noted that the trainee on board did not anticipate the amount of time needed by the tug to respond. Comments were made that tug companies in the Bay Area are also training operators and that a pilot's familiarity with the tug operator's experience level can be useful in constrained circumstances. The motion passed unanimously.

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

8. Pilot Power Committee -- Commissioner Wagner said there is no report.
9. Pension Committee -- Commissioners Miller/Tate -- Report on status of requests for offer/proposal by third party contractors to provide fiduciary services, for actuarial study and for audit; **possible Board action re same**

Commissioner Miller reported that Board staff continues to work with DCA “contracts” staff to contact firms interested in the Request for Offer for fiduciary services. DCA will extend the area to Sacramento. A request to all qualifying small businesses in the Bay Area resulted in no offers to provide the requested service.

Commissioner Tate said there is no further report from the Pension Committee.

10. Vessel Interactions -- Executive Director Moloney said there is a report that is not included as it was inadvertently left off of the agenda and that the IRC requests an extension until the next Board meeting for the following: M/V SITEAM ANATAS, possible vessel interaction at Bay Bulk Pittsburg, September 2, 2007. 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. There were no comments and no discussion. The motion passed unanimously.
11. Pilot Security -- Commissioner Miller said there is 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. Commissioner Lundeborg gave an update of the TWIC center in Oakland and others that are opening in So. California.
13. Ad Hoc Committee on Pilot Safety -- Commissioner Soares said there is no report.
14. Pilot Vessel Advisory Committee -- Captain Figari -- PMSA Mike Jacob, vice president said there is no report.
15. UPRR Bridge -- Executive Director said there is no report.
16. Ad Hoc Advisory Committee on Pilot Selection -- Commissioner Tate said a further meeting would be scheduled in January 2008.

New Business

1. Navigation and Technology Committee -- RAdm Frank Johnston -- Commissioner Miller reported he had asked RAdm Frank Johnston (MARAD) to chair the Committee, and SFBP Capt. Sean Gabe to act as member. PMSA has been requested to recommend an industry member.

2. Public Comment on matters not on the agenda -- Commissioner Miller noted that Commissioner Lundeberg's term ends 12/31/07 and that if a new Commissioner is not appointed before then, Commissioner Lundeberg's term would be extended by law below until the end of February 2008.
3. Proposals for additions to next month's agenda -- there were none.

Schedule 2008 meetings -- Commissioner Miller distributed tentative meeting dates for 2008 (generally the 4th Thursday of each month).

January 24,

February 28,

March 27

April 24

May 22

June 26

July 24

August 28

September 25

October 23

November 20 (possible change for Thanksgiving)

December 18 (possible change for Christmas)

Adjournment -- The meeting was adjourned at 11:05.

Respectfully submitted,

Alice A. Evans
Secretary