

**Minutes**  
October 23, 2008

**OPEN MEETING**

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun regular meeting was held in the Port of San Francisco, Pier 1 Bay Side #1, San Francisco, CA commencing at 9:30 a.m. on October 23, 2008. Commissioner Miller presiding. A quorum was present including Commissioners Johnston, Osen, Soares, Tate and Wainwright. Also present were Acting Port Agent Captain Hurt, Board Counsel Gleason, Executive Director Moloney and Secretary Evans.

Request approval of Minutes of the September 26, 2008 regular Board meeting. (Including announcement of Board actions taken during closed meeting at the conclusion of the September 26, 2008 regular Board meeting.) The minutes were unanimously approved. Commissioner Miller reported that there was no Board action taken in the closed meeting at the end of the September Board meeting.

Board President Miller addressed the Board and the public as follows:

The Board will now move to consideration of Agenda item G.2.a., the report of the Board's Incident Review Committee on the M/V COSCO BUSAN allision while underway with the Bay Bridge, November 7, 2007, piloted by Capt. John Cota.

Before we begin, some background may be helpful to members of the audience who are not familiar with the Board and its role in the aftermath of the November 7<sup>th</sup> incident.

The Board's Incident Review Committee, or "IRC" as we often refer to it, is established by California Harbors and Navigation Code sections 1180 and following.

By law, the membership of the Committee is composed of one public member of the Board and the Board's Executive Director. Until December 31, 2007, the IRC membership consisted of Commissioner Gunnar Lundeberg and Capt. Pat Moloney who conducted or oversaw the COSCO BUSAN investigation. Commissioner Lundeberg was termed out as a member of the Board on that date. Thereupon as President of the Board, I appointed myself to serve as the IRC public member for purposes of the COSCO BUSAN incident. I appointed Commissioner Frank Johnston to serve as the IRC public member for all other purposes.

Shortly I will ask our staff to distribute to Board members and to the public copies of the IRC report. I will call a recess so that members of the Board can familiarize themselves with the written report. We then will hear from IRC counsel, Mr. Gleason, who will speak to the investigation undertaken by the IRC and to the IRC's conclusions on the question of whether pilot error was involved in the allision of the COSCO BUSAN.

The Board has jurisdiction over pilots' licenses, but does not have the power to impose fines

or other civil penalties. Because Captain Cota's license was terminated by operation of law upon his retirement effective October 1, 2008, there are no actions available to the Board beyond the IRC report process before us today.

After receiving and considering the report, the Board may accept, reject, or return the report to the IRC for further investigation.

With that, I would request our staff to distribute the written report at this time.

Also, at this time I will call a recess in order that Commissioners have the opportunity to read and familiarize themselves with the written report. I would caution Commissioners not to discuss the report with each other or with members of the public until we reconvene.

The Board stood in recess. After approximately 25 minutes Commissioner Miller inquired whether the Board members had had sufficient time to read and familiarize themselves with the written report. All indicated that they had had sufficient time.

Commissioner Miller called on Incident Review Committee counsel, Gary Gleason, for his report.

Mr. Gleason delivered his report to the Board.

At the conclusion of his report, Commissioner Miller called for questions and comments from the Board. After inquires from Board members, Commissioner Miller called for questions and comments from the public.

Mr. John Meadows, counsel to Capt. Cota, addressed the Board. At the conclusion of Mr. Meadows' remarks, Commissioner Miller called for questions or discussion from the Board, and questions or further comments from the public. There were none.

A motion to accept the IRC report was moved and seconded. After an opportunity for discussion by the Board and comment from the public, Commissioner Miller called for a roll call vote.

The results were: five commissioners, "aye;" one commissioner voting "present." Commissioner Miller announced the vote and stated that the IRC report was accepted.

Commissioner Miller went on to explain that his vote of "present" was cast to indicate that he was present during the roll call vote, but did not vote either "aye" or "no." As IRC chairman for the COSCO BUSAN incident investigation he was precluded from voting on the question of whether or not to accept the IRC report.

Whereupon, the Board stood in recess for approximately 40 minutes.

***The complete written report can be found on the Board of Pilot Commissioners' web site: [www.pilotcommission.org](http://www.pilotcommission.org)***

***It is requested that the public obtain a copy from the BOPC web site. If an interested member of the public does not have access to the web site, please contact the Board office (415) 397-2253 and a copy will be mailed.***

President's Report -- Commissioner Miller gave the following report:

Since the September 26, 2008 meeting, Commissioner Miller attended a two-day course given by the National Transportation Safety Board that focused on the NTSB investigation process as it applies to marine incidents. The program is designed for maritime professionals. Commissioner Miller stated that the program proved educational and helpful. He noted that USCG Sector San Francisco Chief Investigator, Ross Wheatley (who was present in the audience) also attended the program.

On October 17, 2008 Commissioner Miller met in Sacramento with executives of the Business, Transportation and Housing Agency to discuss the Board's transition from independent agency to a constituent agency of BT&H as mandated by the recently enacted SB 1627. Commissioner Miller stated that there would be additional meetings in the future.

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

1. The Board forwarded a letter dated October 2, 2008, to trainee Captain File regarding suspension from the training program pursuant to Section 217(e)(2).
2. The Board received a letter dated October 13, 2008, from Jeffery L. Bornstein, K&L/Gates, who represents Capt. Cota in matters of criminal defense, requesting that the Board delay any release of the COSCO BUSAN report until after the criminal trial. Board counsel Gleason has responded with a letter dated October 16, 2008 stating that the IRC would proceed as planned on October 23, 2008 and present its report to the Board.

Other Pilot Matters -- Executive Director Moloney

1. The Board issued licenses to SFBP Captains Burger, Coney and Holl during the month of October 2008.
2. The Board has received manpower reports and statements for pilotage fees and surcharges collected from SFBP through August and Inland Pilot Captain Slough through September 2008.

Port Agent's Report -- SFBP Captain Richard Hurt (Acting Port Agent)

1. NFFD: Captain Frank Hoburg has been NFFD since July 2. He recently underwent knee

replacement surgery; Captain Gans has been NFFD since September 3 while being treated for a condition not related to piloting; Captain McBride has been NFFD since October 15 while being treated for three cracked ribs suffered in an incident not related to piloting; Captain Pinetti has been NFFD since October 20. He recently underwent knee replacement surgery.

Captain Morgan Hoburg who has been NFFD is FFD as of October 20, 2008. Captain Atthowe has been NFFD since September 17 while being treated for a back strain. He is FFD as of October 22, 2008.

2. Recommended Minimum Rest Period Exceptions: There were 35 in September with the shortest rest period being 8.2 hours. A full detailed report is not available at this time due to computer issues.
3. Pilot Vessel Report:

New build: The station boat new build project is on schedule for delivery in May 2009.

The P/V SAN FRANCISCO completed her annual dry docking and was placed back in service October 20.

#### Unfinished Business

1. Board office lease -- Executive Director Moloney reported the landlord Signature Yachts is working with the Port of San Francisco to resolve their lease. The BOPC office will remain on a month-to-month lease.
2. Open Incidents -- Executive Director Moloney
  - a. M/V COSCO BUSAN, allision while underway with Bay Bridge, November 7, 2007, SFBP Captain John Cota.

This item was reported at the beginning of the meeting.

- b. M/V RATU TEMBAGA, allision with RWC 3, Redwood City while docking, July 24, 2008.

Executive Director Moloney reported that incident remains under investigation and that the IRC requests an extension until the next Board meeting. It was moved and seconded to extend the 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.

- c. M/V DELTA PRIDE, Fender damage while docking, Bay Bulk Terminal Pittsburg, August 27, 2008.

Executive Director Moloney reported this item remains under investigation.

3. Vessel Interactions -- Executive Director Moloney

a. M/V STAR HIDRA/HANJIN BOMBAY, Bay Bulk Terminal Pittsburg, July 4, 2008

Executive Director reported this item is ready to report, however the IRC was unable to schedule a meeting with the pilot. The IRC requests an extension until the next Board meeting. It was moved and seconded to extend the 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.

4. Pilot Ladder reportable incidents -- Executive Director Moloney said there are no pilot ladder incidents to report.

5. Rules and Regulations Committee -- Commissioner Wainwright said there is no report.

6. Finance Committee -- Commissioner Osen -- report on October 22, 2008 Committee meeting, status of Budget Change Proposal to seek expenditure authority for anticipated legal defense costs in COSCO BUSAN litigation; review **BOPC Fund Condition**, revenue and expenditure projections; including

(a) **Board Operations Surcharge** (currently 2.4%); (b) **Pilot Training Surcharge** (currently \$45/move), (c) **Trainee Training Surcharge** (currently \$9/trainee/move); and (d) **Pilot Vessel Surcharge** (currently 10.74 mils); possible recommendations to adjust one or more of the surcharge rates as warranted -- **possible Board action re same**

Commissioner Osen reported the Committee met October 22. The budget analyst responsible for the Board reported to the Committee that the BCP likely will be approved in early November. The Committee inquired with the Budget office on how it interprets HNC 1159.1 regarding legal expenses due to the COSCO BUSAN incident. This is an agenda item for the next Committee meeting. The Committee reviewed the Pilot Vessel Surcharge. There is no recommendation. The Committee reviewed the BOPC Fund Condition. There is no recommendation. The next Committee meeting is scheduled for November 19, 2008 at 10:30 a.m.

7. Pilot Training Curriculum Committee -- Commissioner Wagner -- report on October 23, 2008 meeting; report of training curriculum for serving pilots, including enhanced training in electronic navigation systems and other requirements set forth in Board regulations, Title 7 Calif. Code of Regulations Section 215(b)(2); possible training curriculum recommendation; **possible Board action re same**

Commissioner Miller said the Committee meeting had been cancelled and there is no report.

8. Pilot Evaluation Committee -- Capt. Roberts -- report on October 15, 2008 meeting; possible recommendation to amend conditions of probation or take other action authorized by Section 214(f) of the Board's regulations; possible recommendation to place trainee on probation or suspend from training; possible report of trainees' medical status, it may be heard and

considered in closed session at end of agenda as authorized by Government Code Section 11126(a)(1) **possible Board action re same.**

SFBP Captain Roberts reported the following: The Pilot Evaluation Committee met on October 15, 2008. All trainees were interviewed individually, their trip cards examined, and their progress with all elements of the program monitored.

Two new trainees completed their contracting process and went through a new pilot trainee orientation on October 6 and went on the board October 7.

The trainees range in time in the program from (2) who just started; (2) at 10 months; (1) at 1 year 4 months; (1) at 1 year and 7 months; and (1) at 1 year and 10 months. Most trainees are proceeding satisfactorily and at their own speed. One trainee is on Board probation. He is continuing his progress in the training program and a report will be made in closed session today. One trainee's fitness for duty status has been determined. A report will be made in the closed session today.

9. Pilot Power Committee -- Commissioner Wagner -- Commissioner Miller said there is no report.
10. Pension Committee -- Commissioners Tate/Miller -- Report on status of contract with third party contractor to provide actuarial study.

Commissioner Miller reported that the Actuary contract was awarded and that an informational meeting is scheduled for October 28, 2008 at 1:30 p.m. in the Board office.

11. Ad Hoc Committee on Pilot Safety -- Commissioner Soares said there is no report.
12. Pilot Vessel Advisory Committee -- Captain Figari -- Mike Jacob, PMSA Vice President, who was in the audience said there is no report.
13. UPRR Bridge -- Executive Director Moloney said there is no report.
14. Ad Hoc Advisory Committee on Pilot Selection -- Commissioner Tate said there is no report.
15. Navigation Technology Committee -- Commissioner Johnston said there is no report.
16. Incident Review Committee Reporting Procedures -- Commissioner Johnston said there is no report.

John V. Hummer, Business Transportation and Housing Agency, Deputy Secretary for Goods Movement, who was in the audience inquired of the 90 day time frame of reporting an incident and noted that the COSCO BUSAN had gone over this time requirement. Commissioner Miller gave an overview of the Accusation, Stipulation and retirement date of Captain Cota that caused the report to be given after the 90-day requirement.

17. Pilot Identification Cards -- Executive Director Moloney -- status of obtaining a more substantial Pilot I.D. card. Executive Director said there is no report.

#### New Business

1. M/V TINA LITRICO, allision with MANSON BARGE, RCH 20 (Parr 5-B), October 9, 2008 -- Executive Director reported this incident is under investigation.
2. MALTESE FALCON and sailing vessel STAND BY collision October 4, 2008 -- Executive Director Moloney reported that the IRC had determined this was a non-incident. Executive Director read a letter from SFBP Captain Fuller dated October 4, 2008 regarding the collision.

A further report on the non-incident will be provided by Incident Review Committee at the next Board meeting.

3. Public Comment on matters not on the agenda -- there were none.
4. Proposals for additions to next month's agenda

A request was made to add an agenda item to discuss the Pilot's role when refused conn.

Schedule next meeting -- the next meeting is scheduled for November 20, 2008 at 9:30 at the BOPC office. The meeting date is moved due to the Thanksgiving holiday.

The meeting was closed at 12:10

#### **RESUME OPEN MEETING**

- I. Announce Board actions taken in closed meeting in accordance with Open Meeting Act requirements. (Any such announcements will be repeated at the Board's November meeting.)

Commissioner Miller reported there was no action taken in the closed session.

- J. Adjournment -- the meeting was adjourned at 1:00 p.m.

Respectfully submitted,

Alice A. Evans  
Secretary