

MINUTES
January 22, 2009
Board Meeting
OPEN MEETING

A. Call to Order and Roll Call.

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) regular meeting was held in the Board office, Pier 9 Suite 102, San Francisco, CA, commencing at 10:10 a.m., on January 22, 2009, Commissioner Miller presiding. A quorum was present including Commissioners Osen, Soares, Tate, Wainwright, and Wagner. Also present were Port Agent McIsaac, Maritime Counsel Paetzold, Executive Director Moloney, Associate Governmental Program Analyst Lynda Jacobsen, and Executive Assistant Alice Evans.

Commissioner Miller welcomed Mr. John Hummer, Secretary for Goods Movement of the Business, Transportation and Housing Agency (BTH). Mr. Hummer will serve as BTH's Secretary Bonner's delegate; with BTH Deputy General Counsel Gabor Morocz serving as Mr. Hummer's alternate. Commissioner Miller noted that the Board has received a letter from Secretary Bonner confirming the delegation. He further noted that pursuant to SB 1627 (Wiggins), which became effective on January 1, 2009, the Secretary of BTH, or his delegate or alternate, serves as a Member of the Board of Pilot Commissioners, ex officio. A copy of Secretary Bonner's correspondence will be made a permanent record of the Board.

Commissioner Miller welcomed Deputy Attorney General Judith Loach who is part of the team representing the Board in the several litigation actions arising out of the *COSCO BUSAN* allision. Commissioner Miller next welcomed Department of Consumer Affairs (DCA) Supervising Attorney Anita Scuri. Commissioner Miller noted that Ms. Scuri will advise the Board during both open and closed sessions. Commissioner Miller observed that Maritime Counsel Ray Paetzold was also present and will continue to advise the Board on maritime law and related matters.

B. Request Approval of Minutes of the December 18, 2008, Regular Board Meeting.

Commissioner Miller announced that on December 18, 2008, the Board approved the Minutes of the November 20, 2008 closed session but took no other action.

Commissioner Soares requested clarification regarding the ability of Commissioners whose terms have expired to vote and otherwise participate in Board functions. Supervising Attorney Anita Scuri explained that Commissioners whose terms had expired could continue to serve and vote for 60 days after his or her term expires or until his or her successor is appointed, whichever comes first.

The Minutes were unanimously approved, with the two amendments made by Commissioner Miller. The amendments included replacing the word "*according*" with the word "*pursuant*"

on page 1, second paragraph of the Draft Minutes and the insertion of the language “*by NTSB staff*” between the words “report” and “made” on page 1 in the President’s Report section of the Draft Minutes.

C. President’s Report.

Commissioner Miller reported that he continued to work with Deputy Secretary Hummer and other executives at BTH on the transition from DCA to BTH and also noted that the Memorandum of Understanding with DCA remains in force through June 30, 2009. The Board will receive communications assistance from the BTH Communications Team – Deputy Secretary Mike Bowman and his colleague Steve Gallagher. Commissioner Miller also noted that the Board will receive assistance from BTH Deputy Secretary for Information Technology Michael Liang and his colleague Dawn Larson.

Commissioner Miller further explained about upcoming changes and announced that the Board’s website will migrate to BTH and that the Board Commissioners and staff will receive state Email addresses and Internet access.

Further, Commissioner Miller announced the upcoming retirement of Alice Evans, effective March 1, 2009. Ms. Evans will be available to the Board as a retired annuitant for a few days a month. Ms. Evans’ position has been posted on the State Personnel Board’s website.

D. John Hummer, Secretary for Goods Movement of the Business, Transportation and Housing Agency Comments.

John Hummer, Deputy Secretary for Goods Movement of the Business, Transportation and Housing Agency, conveyed greetings from BTH Secretary Dale Bonner and the executive staff at BTH. He further informed the Board of contacts who are available to the Board and also stated that BTH is excited about the historical Board becoming part of BTH and that the agency is looking forward to working with the Board.

Following Secretary Hummer’s remarks, Commissioner Miller informed the Board and the public that the NTSB Board Meeting date to receive and act on the NTSB’s staff draft report on the *COSCO BUSAN* incident had not yet been announced but is anticipated for February 18, 2009. Commissioner Miller stated that he plans to attend this meeting. He further stated his understanding that the Port Agent has independently decided to attend as well.

Commissioner Miller inquired of PMSA Vice-President Michael Jacob, who was in the audience, whether he had additional information on the NTSB meeting or draft report, and whether he or others from PMSA intended to attend. Mr. Jacob did not have additional information and stated that PMSA staff is not planning on attending that meeting.

Commissioner Miller went on to explain that the draft staff report will not be made public prior to its possible amendment and adoption by NTSB members.

E. First Closed Session Meeting. (Second Closed Session – See Section O, Page 10)

Commissioner Miller announced that the Board would go into its first closed session to

receive a litigation report from Deputy Attorney General Judith Loach.

The Board adjourned into its first closed session to address some or all of the following items, as authorized by the Open Meeting Act, Government Code Section 11126(a)(1) and 11126(e)(1):

(Items not discussed during the first closed session meeting may be discussed during the Board's second closed session meeting to be held later in the day).

1. Request approval of Minutes of Closed Meeting held December 18, 2008.
2. Possible Pilot Evaluation Committee report on progress of trainee on probation; possible recommendation to amend conditions of probation or take other action authorized by Section 214(f) of the Board's regulations.
3. Conferring with the Board's legal counsel regarding pending litigation in *United States of America vs. M/V COSCO BUSAN*, et al., Case No. C 07 06045 (SC) and in the *People of the State of California (CalTrans) vs. Regal Stone, Ltd, et al., filed in Admiralty*, Case No. 2268 EMC, pending in the United States District Court for the Northern District of California, and in *Anderson, et al. v. Cota, et al.*, Case Number CGC-08-483409, pending in San Francisco Superior Court, including cross-actions, counter-claims and related actions pending in federal and state court arising out of the same incident, as authorized by Government Code section 11126(e)(1).
4. Update on Performance Evaluation of Board's Executive Director.

F. Return to Open Meeting.

When the Board returned to open session, Commissioner Miller announced that no action was taken during the closed session.

G. Correspondence and Activities since the December 2008 Board Meeting -- Executive Director Moloney.

1. The Board forwarded to all Board Appointed Examining Physicians a memo dated January 6, 2009, regarding physical examinations of State Licensed Pilots, Inland Pilot and Pilot Trainees.
2. The Board received a letter dated January 7, 2009, from San Francisco Board Pilot Captain William Atthowe, regarding his request for disability retirement to be effective January 6, 2009. He further noted that the Board has also received a letter dated December 16, 2008, from Judy A. Day, D.C., a Certified Industrial Disability Examiner regarding SFBP Captain Atthowe.

H. Other Pilot Matters -- Executive Director Moloney.

1. The Board issued license renewals to SFBP Captains Anderson, Carlier, Carlson, Coppo, Gates, Kelso, MacLachlan, McIsaac, Ridens, Rocci, Robinson, L. Teague and S. Teague during the month of January 2009.
2. The Board has received manpower reports and statements for pilotage fees and surcharges collected from SFBP and Inland Pilot Captain Slough through December 2008.

I. Port Agent's Report.

Not Fit For Duty (NFFD): SFBP Captain Peter McIsaac reported that Captain Gans has been NFFD since September 3, 2008, while being treated for a condition not related to piloting. Captain Pinetti has been NFFD since October 22, 2008, while recovering from knee replacement surgery. Captain Welch has been unavailable for assignment since November 12, 2008, as per the Board physician. Captain Pinder has been NFFD since December 3, 2008, while recovering from rotator cuff surgery. Captain Atthowe has been NFFD since December 7, 2008, and was subsequently found to be permanently not fit for duty (PNFFD). Captain Coney has been NFFD since January 20, 2009, after injuring his shoulder and that Captain Sweeney has been NFFD since January 21, 2009, after he suffered a leg injury last week which became infected.

Recommended Minimum Rest Period Exceptions: Captain McIsaac reported that there were 20 minimum rest period exceptions in December 2008, as follows: One occurred on December 9, 2008; four pilots were NFFD, and twenty-one pilots were on the board; Seven occurred on December 10, 2008; four pilots were NFFD, and twenty-one pilots were on the board; One occurred on December 15, 2008; two pilots were NFFD, one pilot was pulled for pilot business, one pilot was on "comp" time, and twenty-two pilots were on the board; Four occurred on December 16, 2008, two pilots were NFFD, one pilot was pulled for pilot business, and twenty-three pilots were on the board; Three occurred on December 30, 2008; three pilots were NFFD, one pilot was pulled for pilot business, and twenty-two pilots were on the board; Four occurred on December 31, 2008; three pilots were NFFD, and twenty-three pilots were on the board.

Captain McIsaac also reported that the shortest MRP was 8.5 hours. Two of the exceptions were caused by pilots being called in early for river jobs. He next reported that December 31, 2008, was an extremely busy day that was exacerbated by a heavy fog that settled in early and stayed late. Captain McIsaac further reported that at one point, in the early afternoon on December 31, 2008, there were twenty-six pilots sitting on vessels at a dock or anchorage. He noted that fortunately this event occurred during a watch change, which kept the MRP's to a minimum. He also noted that the wind picked up about 1500, moving the fog off the water allowing a number of vessels to be able to move in and out of the Central Bay.

Captain McIsaac further stated that this day (January 22, 2009) was another busy day. He said that “We are again short of pilots for a variety of reasons. There is the potential that some pilots will have a second MRP exception in a row. Therefore, no pilots will be dispatched with less than eight hours off. There may be some delays to vessel sailings later this afternoon and evening.”

Captain McIsaac also noted that Pacific Coast Maritime (PCM) has been chronically late in paying pilotage bills. Despite frequent reminders, PCM has not paid bills from October 2008. As of January 1, 2009, the amount of unpaid bills totaled approximately \$120,000, which includes approximately \$6,000 of commission surcharges. On January 8, 2009, PCM was put on notice by San Francisco Bar Pilots’ (SFBP) counsel that until all bills are paid, PCM was placed on a cash-only basis. Client ships would be provided pilotage services into and within the pilotage grounds but no pilotage services would be provided to take a client ship to sea until the pilot bills and any other unpaid bills were paid. He noted that to date, PCM has paid approximately \$20,000, leaving an unpaid balance of approximately \$100,000.

Pilot **Boat Report** – the new build construction is progressing well. All outstanding ABS issues have been rectified.

P/V GOLDEN GATE was taken out of service on January 5, 2009, for one day to replace a propeller that had been bent and was also taken out of service on January 20, 2009 to fix a water leak. It is still out of service.

Billed Vessel Moves through December 2008 compared to a three-year average:

Bar Crossings:	-1.1%
Bay Moves:	+1.4%
River Moves:	-19.7%
Total Moves:	-1.4%
Gross Registered Tons...	+4.3%

When compared year to year with 2007, total moves are down 1.5%, bar crossings are down 2.6%, Gross Registered Tons (GRT) was up 0.8%.

J. Unfinished Business.

1. **Board Office Lease** -- Executive Director Moloney
Nothing to Report.
2. **Vessel Interactions** -- Executive Director Moloney
Nothing to Report.
3. **Pilot Ladder Reportable Incidents** -- Executive Director Moloney
 - a. **M/V MARUBA CONFIDENCE**, report on manrope/pilot ladder incident.

Commissioner Wagner expressed concern about the appearance of delayed reporting.

b. **M/V BLUE LEO**, report of missed communication at changing pilot area.

4. **Non-Incidents** -- Executive Director Moloney
 - a. Rule 9 Violation by small craft, vicinity of UPRR Bridge December 30, 2008.
Executive Director Moloney explained that the ship had to take evasive action due to a small craft anchored in the channel. The ship then anchored. Flood current caused the ship to swing at anchor and the ship was forced to go back under the United Pacific Railroad (UPRR) Bridge before making a second approach.
5. **Rules and Regulations Committee** -- Commissioner Wainwright
Commissioner Wainwright announced that a meeting has been scheduled for February 3, 2009, at 8:30 a.m., to discuss regulations that may be necessary due to the recently-enacted legislation.
6. **Finance Committee** -- Commissioner Osen
Commissioner Osen reported the status of a Budget Change Proposal to seek expenditure authority for anticipated legal defense costs in the **COSCO BUSAN** litigation. He next reviewed the Board's fund condition, revenue and expenditure projections; including: (a) Board Operations Surcharge (currently 6.6% effective January 1, 2009); (b) Pilot Training Surcharge (currently \$45/move), (c) Trainee Training Surcharge (currently \$9/trainee/move); and (d) Pilot Vessel Surcharge (currently 10.74 mils).

Commissioner Osen reported that the next Finance Committee meeting has been scheduled for February 24, 2009, at 1:00 p.m.

7. **Pilot Training Curriculum Committee** -- Commissioner Wagner
There was no report.
8. **Pilot Power Committee**
Commissioner Wagner reported that the Ad Hoc Pilot Power Committee met on January 15, 2009. The committee reviewed the Section 237(d) data for the last year and the results of the latest retirement survey.

Commissioner Wagner reported that the committee concluded that the number of pilot licenses should remain at 60 to ensure the availability of an adequate number of qualified rested pilots to provide timely pilotage services for existing traffic. A hearing to determine the number of licensed pilots is not warranted at this time.

Commissioner Wagner further noted that the retirement survey indicates that eight pilots anticipate retirement by January 1, 2012. Due to recent retirements, there are

only 57 licensed pilots. As of February 11, 2009, there will be 56 licensed pilots due to a pilot who has been found PNFFD. Currently, there are seven trainees in the training program, including one on probation. Therefore, the committee recommends that five trainees be added to the training program, as follows: three starting April 1, 2009, and two starting June 1, 2009, in order to maximize training opportunities.

Commissioner Wagner moved to authorize the Board President and/or Executive Director to execute all necessary documents to contract with three trainees for entry into the training program, effective April 1, 2009, and to contract with two-trainees for entry into the training program, effective June 1, 2009, or as soon thereafter as the contracts can be executed. The Motion was seconded after clarification that the Motion intends to have all five trainee contracts processed at the same time even though the contracts may have different start dates. There being no public comment, the Motion was adopted unanimously.

Commissioner Wagner next reported that a new retirement survey will be prepared in July 2009, and that the committee plans to review the survey results and the updated Section 237(d) data prior to the July 2009 Board meeting.

Training for Pilot Evaluation Committee

Captain Roberts discussed the merits of two training courses offered at Pacific Maritime Institute in Seattle. These courses were developed for the "Southeast Alaska Pilots Association," entitled "Training Tools for Training Pilots" and "Train the Assessor." A description of the two courses has been provided to the Executive Director. Captain Roberts noted that the Pilot Evaluation Committee (PEC) believes that there is a need for this type of training, especially for the PEC members. The PEC proposes to send one of its members and/or the Executive Director to evaluate the training and requests guidance for the steps needed to obtain approval and funding for such an evaluation of the training, and, if it appears to meet the PEC's needs, to obtain approval for such training.

This item will be placed on next month's Agenda.

Trainee Selection Road Map

Captain Roberts noted that in light of the Board's action to contract with more trainee applicants to enter the pilot trainee training program by June 2009, the Board should consider beginning the process for another trainee selection examination. The current eligibility list has eight names. From past experience, not all of them can be expected to accept an opening in the training program. He further noted that it is possible that the current eligibility list could be exhausted by year's end, well before another selection process can be completed. He further explained that the PEC's experience with preparing the written examination and simulator exercise is a labor-intensive process requiring substantial commitment of time and resources from pilots, Board staff, and professional assistance.

Captain Roberts provided to the Board a “Road Map” that summarizes the steps needed to complete another examination cycle. A copy of the Road Map is available from the Board office.

Captain Roberts also reminded the Board that the examination held in August 2007 followed a very intensive period leading up to that examination because the previous list had been exhausted well before it was to expire. He explained that this was the result of an unprecedented surge in pilot retirements. The current list included all applicants that met the Board’s minimum eligibility requirements and received passing scores on both the written examination and the simulator exercise. He noted that concern has been expressed that the number of minimally qualified candidates has fallen since the previous examination.

This item will be placed on next month’s Agenda.

9. **Pilot Evaluation Committee** -- Captain Roberts reported that the Pilot Evaluation Committee met on January 14, 2009. All trainees were interviewed individually, their trip cards examined, and their progress with all elements of the program monitored. He explained that the trainees range in time in the program from two at 4 months, two at 1 year 1 month, one at 1 year 7 month, one at 1 year and 10 months, and one at 2 years 1 month. Captain Roberts also noted that most trainees are proceeding satisfactorily and at their own speed. One trainee is on Board probation and noted that he would address the specifics of that probation in a closed session discussion.

Portable Pilot Units: Captain Roberts noted that the PEC is in the process of developing guidelines for training pilot trainees in the use of Portable Pilot Units.

10. **Pension Committee** -- Commissioners Tate/Miller
There was no report.
11. **Ad Hoc Committee on Pilot Safety** -- Commissioner Soares
There was no report.
12. **Pilot Vessel Advisory Committee** -- Captain Figari
Mr. Michael Jacob of PMSA responded in Captain Figari’s absence and stated that there was no report.
13. **UPRR Bridge** -- Executive Director Captain Moloney
There was no report.
14. **Ad Hoc Advisory Committee on Pilot Selection** -- Commissioner Tate
There was no report.

15. **Navigation Technology Committee** -- Commissioner Johnston
Commissioner Johnston was absent. However, Port Agent McIsaac reported that software for the Portable Pilot Units has been selected and that hardware has been ordered. He further noted that he expects training to begin in February or March 2009.
16. **Pilot Identification Cards** -- Executive Director Patrick Moloney
Commissioner Soares suggested that the issue of creating ID cards with heavier lamination than those currently used by the Board should be completed at the earliest possible time. Commissioner Miller noted that the Board had received cost estimates ranging from \$2,000 to \$3,000 for heavy duty lamination equipment, which was outside the Board's budget. Commissioner Miller suggested that Commissioner Osen may wish to discuss this item at the next Finance Committee meeting. Commissioner Wagner expressed concern about the delay in issuing these identification cards, especially in light of the events that occurred on September 11th, and other potential threats. Commissioner Osen offered to take responsibility on following-up on this item and make a determination as to when the identification cards may be issued.
17. **Legislative Report** -- Commissioner Miller
Commissioner Miller reported on changes to Board structure, staffing, incident review procedures, and other changes mandated by the newly-enacted legislation. He further discussed the Board's transition from an independent agency to a constituent element of BTH. He also discussed mandated rulemaking and reiterated that the rulemaking committee is scheduled to meet on February 3, 2009, to discuss these issues, as well as rulemaking procedures and potential recommendations for Board action.
18. **Election of President, Vice-President**
Commissioner Tate moved to postpone the election of the Board President and to hold the election of the Board's Vice-President at this time in order to preserve continuity during the Board's transition to BTH. The Motion was seconded and there being no public comment, the Motion was adopted unanimously. Commissioner Miller moved that Commissioner Tate be elected as Vice-President. The Motion was seconded and there being no public comment, the Motion was adopted unanimously

K. New Business

1. **M/V CAPE BRASILIA** – Executive Director Moloney
Possible grounding Pinole Shoal Channel, December 19, 2008. Executive Director Moloney stated that this item remains under investigation.
2. **Report of December 30, 2008.** Commissioner Moloney explained that a SF buoy was reportedly struck by an outbound vessel after a pilot disembarked. Commissioner Osen suggested that this issue be discussed at a later date after receipt of the Coast Guard's report. Mr. Ross Wheatley, representing the United States Coast Guard, was

present in the audience and informed the Board that the Coast Guard had identified the vessel to be the **OOCL LONG BEACH**. He further informed the Board that this incident is currently under investigation. This item will be kept on the agenda until the Coast Guard's report is available and has been reviewed.

3. **Ad Hoc Committee to Review Investigation Procedures.**

Commissioner Osen submitted the Committee's report dated January 20, 2009. The report contains the results of the Committee's January 20, 2009, meeting. A copy of the report is available from the Board office (and on the Board's website). A Motion was made to accept the report and there being no public comment, the Motion was adopted unanimously.

4. **Pilot Fitness Committee.**

Commissioner Miller reported that he appointed Captain Roberts to Chair the Pilot Fitness Committee and briefly discussed the committee's charge, status of remaining appointments to the Committee and pursuit of contracting with the University of California, San Francisco, for the services of Dr. Kosnick as a possible member of the Committee, in addition to one of the Board examining physicians.

L. **Public Comment on Matters Not on the Agenda.**

None.

M. **Proposals for Additions to Next Month's Agenda.**

As noted above.

N. **Scheduled Board Meetings for Remainder of 2009.**

The Board adopted unanimously the following dates for the meetings scheduled for the remainder of 2009: February 26, 2009, March 26, 2009, April 23, 2009, May 28, 2009, June 25, 2009, July 23, 2009, August 27, 2009, September 24, 2009, October 22, 2009, November 19, 2009, and December 17, 2009.

O. **Second Closed Session Meeting.** (First Closed Session – See Section E, Page 2)

Commissioner Miller announced that the Board would go into its second closed session meeting to discuss any remaining items listed in Section E, Page 2.

P. **Resume of Open Meeting and Announcement of Board Actions Taken in Closed Session in Accordance with Open Meeting Act requirements.**

Commissioner Miller announced that the Board had approved the minutes of the closed meeting session held on December 18, 2008, and took no other Board action.

Q. **Adjournment** – There being no further business, the meeting was adjourned at 2:45 p.m.