

MINUTES
February 26, 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, on February 26, 2009, at 9:35 a.m., Commissioner Tate presiding. A quorum was present including Commissioners Osen, Johnston, Tate, Wainwright, and Wagner. Also present were Port Agent Peter McIsaac, Deputy Secretary for Goods Movement of the Business, Transportation and Housing Agency (BTH) John Hummer, Department of Consumer Affairs Supervising Legal Counsel Anita Scuri, Maritime Counsel Ray Paetzold, Executive Director Pat Moloney, Associate Governmental Program Analyst Lynda Jacobsen, and Executive Assistant Alice Evans.

B. Request Approval of Minutes of the January 22, 2009, Regular Board Meeting.

Commissioner Wagner suggested two changes to the Minutes. The words "Commissioner McIsaac" should be changed to read "Captain McIsaac" and the words "his or her" on Page 8 in the Pilot Evaluation Committee report should be changed to read "their." A Motion was made and seconded to approve the corrected Minutes. There being no further discussion, the Motion was adopted unanimously.

C. Election of President.

Commissioner Tate moved this Agenda item to be discussed earlier in the meeting. Commissioner Tate moved to elect Commissioner Miller as President. There being no other appointment motions, the Motion was seconded and adopted unanimously.

D. President's Report.

President Miller announced that on January 22, 2009, the Board approved the

Closed Session Minutes of the December 2008 closed session but took no other action.

President Miller announced that Executive Assistant Alice Evans' last day will be February 27, 2009, and thanked Ms. Evans for her 14 years of service.

Commissioner Miller next announced that Commissioner Wagner's last day will also be February 27, 2009, and thanked Commissioner Wagner for her 8 years (and 2 months) of service to the Board. President Miller next announced that Commissioner Soares' last day was February 25, 2009, and that he had withdrawn his application for reappointment. The Board and the audience commended Ms. Evans, Commissioner Wagner, and Commissioner Soares for their excellent service to the Board.

President Miller noted that the Governor's appointments staff is working diligently on the appointments and reappointments to the Board in order to meet the February 28, 2009, deadline.

President Miller stated that the Oregon Board of Pilot Commissioners has published its Minutes and, if possible, that document will be posted on the Board's website.

President Miller also noted that the NTSB's synopsis of its report regarding the **COSCO BUSAN** incident should soon be available on the Board's website. The full report should be available in 3-5 weeks. President Miller commended the report for everyone's reading and said that the content of the report speaks for itself.

Captain McIsaac stated that he was concerned that the NTSB report did not find limited visibility as one of its factors contributing to the cause of the **COSCO BUSAN** allision. President Miller explained that member Hersman had a different view of probable cause and that the NTSB vote regarding the report was not unanimous but rather 4-1.

President Miller announced that Deputy Secretary Hummer has been delayed and that he asked that the Board meeting proceed without him.

E. Port Agent's Report.

Captain McIsaac reported the following:

Not Fit for Duty (NFFD): Captain Welch has been unavailable for assignment since November 12, 2008, as per the Board's physician; Captain Pinder has been NFFD since December 3, 2008, while recovering from a rotator cuff surgery and expects to be found fit for duty (FFD) in March 2009; Captain Coney has been NFFD since January 20, 2009, after injuring his shoulder. He is undergoing physical therapy and expects to be FFD in mid-March 2009; Captain Gans was FFD effective February 23, 2009 and he is currently riding for recency; Captain Pinetti was NFFD beginning October 22, 2008, while recovering from knee replacement surgery. He was found FFD on January 26, 2009.

Captain McIsaac noted that with the pending retirement of Captain Atthowe, the roster is now at 56 pilots, with 3 NFFD. Two of those pilots are expected to be FFD in mid-March 2009.

Captain McIsaac also reported that the *PV SAN FRANCISCO* underwent a scheduled main engine top end overhaul, which took it out of service from February 2 through February 13, 2009.

Recommended Minimum Rest Period Exceptions:

Captain McIsaac reported 58 recommended minimum rest period (MRP) exceptions in January 2009 spread out over eleven days with most of them occurring on five separate days; on average there were 22 pilots on the board. The shortest MRP was 7.3 hours. The average MRP was 10.5. Two of the exceptions were caused by pilots being called in early for river jobs.

Billed Vessel Moves in January 2009 compared to January 2008:

Bar Crossings: 606 - + 4.5%
Bay Moves: 163 - + 1.9%
River Moves: 34
Total Moves: 803 - + 5.8%
GRT: - + 5.0%

F. Unfinished Business.

1. Board Office Lease – Executive Director Patrick Moloney
Mr. Moloney said that there was nothing new to report.
2. Open Incidents – Executive Director Patrick Moloney
 - a. *M/V CAPE BRASILIA* – Mr. Moloney reported that he has been unable to close the case due to other pressing business. Commissioner

Wainwright asked about the lack of investigators. Commissioner Wagner moved to grant a 30-day extension to complete the investigation. The Motion was seconded. There being no further discussion, the Motion was adopted unanimously.

Deputy Secretary John Hummer arrived 10:04 a.m.

3. This item was taken out of order.
M/V XIN NING BO – Vessel interaction with *M/V BONASIA* at Oakland 65, February 7, 2009. Mr. Moloney noted that this was a vessel interaction item and that a full report would be presented when the investigation has been completed.
4. Vessel Interactions – Executive Director Patrick Moloney
5. Pilot Ladder Reportable Incidents – Executive Director Patrick Moloney
 - a. *M/V HANJIN PITTSBURG*
Mr. Moloney reported one Pilot Ladder Incident. He explained that on February 6, 2009, the ladder on the *M/V HANJIN PITTSBURG* had non-horizontal runs; but that everyone safely disembarked. He faxed the report to the Coast Guard and he also reported that he notified the ship's agent. To date, he has received no response. The Board discussed follow-up procedures to determine whether the problem had been corrected
6. Non-Incidents – Executive Director Patrick Moloney
 - a. No new non-incidents to report.
7. Rules and Regulations Committee – Commissioner Wainwright
Commissioner Wainwright reviewed the items on the Board's Rulemaking calendar for 2009 and summarized the Committee's work at its February 3rd and 19th meetings. Minutes for those meetings are available from the Board office and are on the Board's website.
8. Finance Committee – Commissioner Osen
Commissioner Osen reviewed the subjects discussed at the February 23, 2009 Finance Committee meeting. He noted that the Board Operations Surcharge has been at 6.6% since January 1, 2009 and that the statutory maximum is 7.5%. He further noted that at present projections, the Board's expenses could exceed revenues, largely due to the Board's projected legal defense

costs, and that the Finance Committee will review updated projections at its March 26, 2009 meeting.

9. Pilot Training Curriculum Committee – Commissioner Wagner

There was no report.

10. Pilot Evaluation Committee – Captain Roberts

Captain Roberts stated that the Pilot Evaluation Committee met on February 18, 2009, at 7:00 a.m. All 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 (2) at 5 months, (2) at 1 year 2 months, (1) at 1 year 8 months, (1) at 1 year and 11 months, and (1) at 2 years 2 months.

He further stated that most trainees are proceeding satisfactorily and at their own speed. One trainee is on board probation and he noted that he would address the specifics of that probation in the Closed Session.

Captain Roberts next reported that on February 25, 2009, he received a letter of resignation for a pilot trainee and he said that he would share that letter with the Board in the Closed Session also.

Captain Roberts also said that he plans to report to the Board later in the meeting about the PEC's recommendations concerning the upcoming Pilot Trainee selection process and Pilot Evaluation Committee assessor training.

11. Pilot Power Committee – Commissioner Wagner

Commissioner Wagner requested that the PEC review the number of trainees in its program and include this item on next month's Agenda.

12. Pension Committee – Commissioners Tate/Miller

Commissioner Tate reported that the Pension Committee met on February 24, 2009 to review the request of SFBP Captain Atthowe for a disability determination. After a review of the medical records, the opinions of Captain Atthowe's treating physicians, the Board examining physician's finding that Captain Atthowe was permanently not fit for duty (PNFFD), Captain Atthowe's service summary and the applicable guidelines and regulations, the Committee determined that there was competent medical evidence to support a determination that Captain Atthowe was unable to perform the duties of a pilot due to a condition that was

permanent or of extended and uncertain duration and thus met the requirements for a disability retirement under Harbors and Navigation Code Section 1164, and that he had 24 years of service with a disability date that coincided with the Board examining physician's PNFFD determination. It was moved and seconded to approve the Committee's recommendations and adopt its findings and to authorize a disability pension based on 24 years of service to Captain Atthowe as provided under the Code. President Miller asked for comments from the Board and from the public, and for discussion. There were no further comments or discussion and the Motion passed unanimously.

13. Ad Hoc Committee on Pilot Safety

There was no report.

14. Pilot Vessel Advisory Committee – Captain Figari

President Miller noted that Captain Figari has retired and that Commissioner Johnston has taken over as Chair of this Committee.

15. UPRR Bridge – Captain Steve Roberts

Captain Roberts noted that the pilot trainees are being trained and tested in the UPRR Bridge Communications Protocol.

16. Ad Hoc Advisory Committee on Pilot Selection – Commissioner Tate

There was no report.

17. Navigation Technology Committee – Commissioner Johnston

There was no report.

18. Pilot Identification Cards – Commissioner Osen

Commissioner Osen stated that the subject of Pilot Identification Cards was discussed at the Finance Committee meeting held on February 24, 2009, at 10:00 a.m. and stated that he will continue to keep the Board advised regarding his progress on Pilot Identification Cards.

19. Ad Hoc Committee to Review Investigation Procedures –

Commissioner Osen

Commissioner Osen stated that the Board is now down to one investigator. He further noted that the IRC prefers to have a minimum of three. He also noted that the current qualification criteria for a pilot investigator do not meet the standards in the *Wiggins*' bill. Commissioner Osen said that the

Committee proposes submitting the draft qualification standards to the Board for approval. Copies of the draft qualification standards were also made available to the Board and public.

Commissioner Osen further stated that he believes that the Board needs to hire additional investigators in order to meet the requirements of an “urgent” situation and that it should contract with at least two additional investigators immediately.

Commissioner Osen moved to authorize the Executive Director to approve the draft standard qualifications criteria and that the contract process begins immediately on an “emergency” basis.

Mr. Hummer discussed the Request for Proposal (RFP) process and asked if the contract for new investigators would be a short-term or long-term contract. Commissioner Osen responded that Mr. Morocz raised this same issue during the Committee’s meeting and that he suggested a contract could be put into place through end of the year because of the immediate need.

After discussing the terms "emergency" and "urgent" it was agreed to amend the motion to refer to the need for additional investigators as "urgent." There was further discussion of using the Committee's draft language for proposed "Standards for Commission Investigators" as guidelines in the selection of the two additional investigators, and removing the terms "minimum" and "draft" from the document. With those amendments, the motion was seconded.

President Miller asked for any further comments from the Board and the public and for discussion. There were no further comments or discussion and the motion passed unanimously.

Commissioner Osen amended his Motion to use the term “urgent” instead of “emergency.” Commissioner Tate seconded. There being no further discussion, the Motion was adopted unanimously.

President Miller suggested that the Board review the qualification standards before acting on this matter. Commissioner Osen concurred. Commissioner Tate asked what guidelines have been used in the past. Mr. Paetzold replied that the IRC set the guidelines that are currently in place.

Ms. Scuri noted that it would be appropriate to use the Committee's Draft Minimum Standards Qualifications as a guideline since no regulation on this subject is in place at this time.

In response to a member from the public, Commissioner Osen stated that he would suggest changing the title of the "Minimum Standards Qualifications" document to read "Standards Qualifications" rather than "Minimum Standards Qualifications" and that he would further propose removing the word "Draft" from the document also.

Commissioner Tate inquired about training pilots in the area of chain of custody requirements.

A Motion was made and seconded. There being no further discussion, the Motion was adopted unanimously.

Ms. Scuri recommended that there be a third motion establishing a maximum amount of \$150 per hour. Commissioner Osen suggested that the Board may want to defer the hourly rate discussion until later in Agenda.

20. Report of December 30, 2008 – SF Buoy

Senior Investigating Officer G. Ross Wheatley with the U.S. Coast Guard addressed the Board and said that the Coast Guard is progressing with this investigation and that the sea buoy has been recovered. Mr. Moloney explained that a SF buoy was reportedly struck by an outbound vessel after a pilot disembarked. This item will be kept on the agenda until the Coast Guard's report is available and has been reviewed.

G. New Business

1. Renewal of Investigator Reynolds' Contract and for Authority for Executive Director to Hire Two Additional Investigators

The Board continued the discussion of new investigators, the training required and availability of qualified investigators, information on the hourly rates for persons with the level of qualifications set forth in the proposed "Standards for Commission Investigators," and the qualifications, experience and training of Commission Investigator Captain Reynolds. It was moved and seconded to renew the contract with Captain Reynolds at the rate of \$150 per hour and to permit Board staff to determine the rates for the two additional investigators dependent on their qualifications, up to a

maximum of \$150 per hour.

2. Contract for Legal Services with Emard Danoff Port Tamulski & Paetzold LLP and Farbsteinn & Blackman, APC for Fiscal Year 09/10

It was moved and seconded to renew the contracts for outside maritime legal services with Emard Danoff Port Tamulski & Paetzold LLP for an amount not to exceed a total of \$300,000 for F/Y 09/10 and with Farbstein & Blackman, APC for an amount not to exceed a total of \$30,000 for F/Y 09/10. There was discussion of the prospects of obtaining assistance from part time government counsel, which BTH is working on, and that through the end of the current fiscal year, DCA Legal Department (primarily through its Supervising Legal Counsel, Anita Scuri) would continue to be available to provide non-maritime legal services to the Board outside of litigation. President Miller asked if there were additional comments from the Board or from the public and for discussion. There were no additional comments or discussion and the motion passed unanimously.

3. M/V COSCO BUSAN

There was further discussion of various issues raised by the COSCO BUSAN and the NTSB report, including the Coast Guard's methods of tracking mariners' DUIs, communications between the Coast Guard and the Board, limitations on the use of a DUI as evidence of pilot misconduct in state pilot suspension hearings, recent legislation requiring pilots to report changes in prescription medication to Board examining physicians and the possibility of requiring additional legislation to implement proposals for the enhancement of pilot oversight. No immediate action was proposed or taken.

4. Pilot Trainee Selection Process – PEC

Captain Roberts addressed the Board and stated that in light of the Board's action to contract with five 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 two names left. He explained that based on past experience, not all of the names on the list can be expected to accept an opening in the training program. It is possible that the current eligibility list could be exhausted by year's end, well before another selection process can be completed.

From the PEC's experience, 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 a copy of a “Road Map” summarizing the steps needed to complete another examination cycle and noted 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.

After discussion of Captain Roberts’ report, the urgency of the need to begin the selection process for additional trainees, and the PEC’s recommendations, the following motion was made and seconded.

That the Executive Director and/or President be authorized to take all the steps to commence preparations for a new trainee selection process as set forth in section 213 of the Board’s regulations, including the following:

- A. Contracting with a qualified provider of psychometric services to assist and advise in the selection process and in the preparation and administration of the written examination and bridge simulator exercise in compliance with Section 213(h) and 213(i);
- B. Contracting with California Maritime Academy to provide services as needed for the administration of the written examination and to assist the PEC in the preparation and administration of the simulator exercise;
- C. Advertising the opening in the training program and the scheduling of the examination through contacts with all U.S. maritime academies, maritime unions with deck officers, and by placing timely ads in appropriate professional maritime journals;
- D. Setting an appropriate cut-off date for submission of applications; and
- E. Taking all other steps necessary to ensure timely completion of the selection process prior to the exhaustion of the current eligibility list, or as soon thereafter as reasonably practicable, recognizing the safety concerns inherent in a delay in having an adequate number of trainees available to meet piloting needs.

After further discussion, the motion was amended to note that the Board

finds that this is an urgent situation requiring expeditious action.

There was also extensive discussion to ensure that the recommendations of the Board's Ad Hoc Committee on Pilot Selection (regarding recruitment strategies and the means to address the diversity concerns set forth in that committee's mission statement) were provided to the PEC and taken into account in going forward with the selection of additional candidates for the training program. The Board reviewed its minimum standards, the numbers of eligible candidates who applied and passed the examinations in 2002, 2006 and 2007 and general information on the shortages of qualified mariners nationally and worldwide.

President Miller asked if there were additional comments from the Board or from the public and for discussion. There were no additional comments or discussion and the motion passed unanimously.

5. Pilot Evaluation Committee Training – PEC

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 these courses had been provided to the Board at the last meeting.

Captain Roberts stated that the PEC believes that there is a need for this type of training, especially for the PEC members. The PEC proposes to send one or two of its members to Pacific Maritime Institute for evaluation. He noted that the PMI will provide the initial evaluation at no cost and that the anticipated costs for two attendees for transportation and lodging are approximately \$1,500 (\$750 per pilot).

A Motion was made and seconded to authorize the expenditure of up to a total of \$1500 for two PEC members to evaluate the two courses at PMI identified in the PEC's recommendation. President Miller asked if there were additional comments from the Board or from the public and for discussion. There were no additional comments or discussion and the Motion passed unanimously.

H. Public Comment on Matters Not on the Agenda.

Captain McIsaac thanked Commissioner Wagner for her 8 years and 2 months of

service. He noted that Captain Wagner was the first female pilot to be licensed in the United States and the third female pilot in the world. To his knowledge, she may also have been the first female pilot to be appointed as a Commissioner, anywhere.

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

Mr. Moloney recommended that the Board place an item on next month's agenda to address the commendation of the pilot involved in the loss of power and steering of the *OVERSEAS CLELIAMAR*. President Miller stated that it would.

J. **Closed Session Meeting.**

President Miller notified the public of the items to be discussed in Closed Session. President Miller announced that the Board would go into closed session to discuss the following items, as authorized by the Open Meeting Act

After a brief recess, the Board went into a 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):

1. Request approval of Minutes of Closed Meeting held January 22, 2009.
2. 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. To meet with Board Counsel (including Deputy Attorneys General) to review pending litigation against the Board of Pilot Commissioners in *United States v. M/V COSCO BUSAN* et al, Case No. C 07 06045 (SC) and *The People of The State of California (CalTrans) v. Regal Stone, Ltd et al* filed in Admiralty Case No. 2268 EMC, both filed and pending in the U. S. 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 various cross-actions, counter-claims and related actions pending in federal and state court arising out of the same incident which are incorporated by reference in the claim by Regal Stone against the Board in the *CalTrans* case referenced above.

K. Return to Open Meeting.

Upon completing the Closed Session, the Board resumed its Open Session. President Miller announced that the Board had deferred approval of the Minutes of the Board's Closed Session held during the January 22, 2009 meeting.

The meeting adjourned at 2:30 p.m.

Respectfully submitted,

Lynda Jacobsen
Associate Governmental Program Analyst