

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
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August 24, 2009

**BOARD MEETING
MINUTES
July 23, 2009
9:30 A.M.**

OPEN MEETING

1) Call to Order and Roll Call: 9:35AM

President Miller presided. Vice President Tate, Commissioners Johnston, Osen, Roberts and Wainwright were all present, constituting a quorum. Business, Transportation and Housing Deputy GC Gabor Morocz was present as delegate for Secretary Bonner. Also present: Executive Director Capt. Moloney, Assistant Director Nancy Hall Bennett, Port Agent Capt. McIsaac, Attorneys Dennis Eagan (from Office of the Attorney General) and Raymond Paetzold (maritime counsel), and Staff Services Analyst Katharine Weir.

Additionally Captain Einer Nyborg, USCG Senior Investigator Ross Wheatley, and PMSA Vice President Mike Jacob were present in the audience.

President Mike Miller introduced the new Assistant Director, Nancy Bennett, appointed by Governor Schwarzenegger and asked her to brief the Board on her background.

2) Request Approval of Minutes

President Miller asked to amend the June 25, 2009 minutes to identify each commissioner by name and to note that Vice President Ben Tate presided. A motion was made and seconded to approve the June 25, 2009 regular Board meeting minutes with edits. There was no further comment or discussion and the motion passed unanimously.

3) President's Report

President Miller noted that on a trip to Asia he observed the sparse shipping activity in ports well as the now-famous parking lot for various ships at anchor in Singapore and in Hong Kong.

Effective July 1, 2009 administrative support for the Board will be provided by the California Highway Patrol, a department of BTH. The transfer from DCA to CHP appears to be proceeding smoothly. On July 20, 2009, President Miller, Vice President Tate, Executive Director Moloney, Assistant Director Bennett and Staff Services Analyst Weir met with CHP management staff to make their acquaintance and identify appropriate responsibilities and procedures. BTH Deputy General Counsel Morocz and Deputy Secretary Fish also participated. The meeting was very helpful to all concerned.

Vice President Tate commented that President Miller's experience with government agencies would help with the transition.

4) **Comments from Secretary, Business, Transportation and Housing Agency** - Secretary Bonner

Mr. Morocz reported that SEIU had filed a lawsuit against BOPC and other specially funded agencies regarding forced furloughs.

Mr. Morocz also stated that the Legislature was meeting today and cuts would have to be made but was not sure of the details. He expressed that the transition to CHP would be a good fit for BOPC.

5) **Correspondence/ Activities since the May 2009 Meeting** - Executive Director Moloney

Received:

1 July from Stone Clinic regarding knee surgery on one of the pilots
14 July from Ghirardo CPA regarding SFBP July 09 Pension Allocation and Mill Calculation Worksheets

Sent:

15 July to Capt Craig Reeder regarding his application for Inland Pilot Pension
16 July to the Harbor Safety Committee regarding the grounding of M/V CAPE BRASILIA

6) **Other Pilot Matters-** Executive Director Moloney
None to Report

7) **Port Agent's Report** - SFBP Captain Peter McIsaac

Not Fit For Duty:

Captain Welch has been NFFD since Nov 12, 2008 as per BOPC physician.

Captain Larwood had arm surgery on April 1, 2009. He is expected to be FFD next week.

Captain Pinder had back surgery on July 3, 2009 and is expected to be NFFD for at least 60 days.

Captain McCloy had knee surgery on June 30, 2009 and is expected to be NFFD for 30 days.

New Build

ABS required x-rays of 8 random welded hull seams. Some were found to be deficient which prompted a complete inspection of all hull welds. As a result six stem to stern welds had to be scarfed out, re-profiled and re-welded. This may delay delivery somewhat but per the contract all additional costs, including delay penalties, will be borne by the shipyard.

Load Line Modification

As previously discussed the Pilot Vessels *California* and *San Francisco* now require a load line certificate. The applications have been turned in to the American Bureau of Shipping office in Houston. Our marine architect is in weekly contact with them. ABS still has not issued a final change order which may delay the dry dockings of the these boats.

P/V Golden Gate- was taken out of service for 4 hours to change the hull zincs.

P/V San Francisco- there was an accident last night while boarding a pilot which damaged a rail. The boat will be out of service for 1 to 2 days. The accident is under investigation.

California Air Resources Board has mandated the use of low sulfur fuel oil within 24 miles off the CA coast. The new rule went into effect July 1st. Since implementation there have been a number of loss-of-propulsion incidents reported in LA and SF. The USCG and the Harbor Safety Committee (HSC) are tracking the problems. There is an HSC Navigation subcommittee meeting on August 12th in Oakland. Captain Bruce Horton is the chair of that committee and all interested parties have been invited to participate.

Recommended MRP Exceptions

There were 19 minimum rest period exceptions over a five-day period during the month of June. The shortest rest period was 8.9 hours and the average was 10.8. Nine of the exceptions occurred during Board-mandated training. Board pilots ranged from 20 to 25.

Billed Vessel Moves in May '09 compared to a 3-year average

Bar Crossings: -5.4%

Bay Moves: -23.30%

River Moves: -23.5%

Total Moves: -9.7%

GRT: 25.4M -5.7%

Compared to the first six months of 2009 total moves were down 7.2% and GRT was down 5%. Total bar moves were down a relatively modest 3.1%

8) Unfinished Business

- A) Board Office Lease - Executive Director Moloney
Nothing to report
- B) Vessel Interactions -- Executive Director Moloney
M/V XIN NING BO vessel interaction with M/V BONASIA at Oakland 65,
February 7, 2009
- C) Open Incidents - Executive Director Moloney
M/V XIN NING BO report of excessive speed in Regulated Navigation Area;
February 7, 2009

Commissioner Johnston stated that counsel for the pilot had asked for an extension. It was noted that it was the pilot's first time to ask for the extension and extensions would be exceptions rather than the rule.

Commissioner Johnston made a motion to grant an extension until the next Board meeting, which was seconded by Vice President Tate and unanimously approved.

- D) Pilot Ladder Reportable Incidents - Executive Director Moloney
Nothing to report
- E) Non-incidents - Executive Director Moloney
Nothing to report
- F) Rules and Regulations Committee - Commissioner Wainwright
Nothing to report
- G) Finance Committee – Commissioner Osen
- i) Commissioner Osen reported that the Committee met on July 14th to discuss Executive Order S09-09. The Executive Order required that the Commission reduce non-excluded expenditures by 15 percent. The Committee recommended the following spending plan to comply with the Governor's Executive Order.

FY 08/09 (figures provided by CHP)

Contracts:	\$2,177,529
Purchase Orders:	2,283
Cal-Card Expenditures:	7,384
<i>SUBTOTAL:</i>	<i>\$2,187,196</i>
<i>Subtract Approved Exemptions and Interagency Contracts:</i>	<i><\$1,757,131></i>
<i>TOTAL:</i>	<i>\$430,065</i>

<i>Targeted 15% Reduction</i>	<i>\$64,509</i>
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DRAFT Proposed Plan:

•2% reduction to AG Budget Change proposal	2% of 600,000	=	\$12,000
•2% reduction to external legal services	2% of 431,008	=	8,620
•Reduction in General Expenses (65,552 to 55,552)	savings of	=	10,000
•50% reduction to Staff Training (15,000 to 7,500)	savings of	=	7,500
•Cancel contract with SF Port for meeting space	saving of	=	4,500
•2.8% reduction to Pilot training allotment budget	saving of	=	<u>22,368</u>
TOTAL			\$64,988

Commissioner Osen reported that the Committee recommended and he moved that the Board approve various line item cuts to operating expenses and equipment purchases to meet the mandate of Executive Order S09-09 and requests staff to report back to the Finance Committee quarterly on the progress of this recommendation. Commissioner Osen also recommended that the Board authorize staff to adjust further line items if needed due to direction from the Governor's office. The motion was duly seconded and unanimously approved without further comment or discussion.

- ii) No IOUs were issued to trainees. Capt. Nyborg reported that a trainee had contacted DCA and received a letter that they would not be receiving IOUs.

H) Pilot Training Curriculum Committee – Commissioner Roberts

The Pilot Training Curriculum Committee met on July 21 at the Board office. In light of recent statutory changes in referring to pilot training as "pilot continuing education," and of additional changes pending in the form of SB 300 to make that term consistent throughout the code, the Committee, with the approval of the Board President, has been renamed the "Pilot Continuing Education Committee." If SB 300 passes and becomes law, appropriate changes to the Board's regulation will be necessary to conform its terminology to that of the Code.

The Committee discussed each of the issues on the agenda.

i) Extension to Complete Training:

Section 215 of the Board's regulations provides for a three-year training cycle for Bridge Resource Management and other specified topics, currently taught at MITAGS under a multi-year contract with the Board, and a five-year training cycle in manned model training, currently taught at Port Revel under a similar contract. Pilots are scheduled to attend based on the scheduling of classes and on the needs of pilotage. From time to time, a pilot is unable to complete the training at the time he or she is scheduled to go due to health or other reasons, and has to be rescheduled within the constraints of the contracts. Sometimes this results in the pilot's completion of the training requirements beyond the period provided in the Board's regulation. The Committee recommended that the regulation be amended to provide for a process to extend the time required to complete the training in appropriate circumstances.

The Committee recommended that the Board proceed with rulemaking to amend Section 215 to authorize the Executive Director, for good cause, to extend by up to three months, and to authorize the Board, for good cause, to extend by up to twelve months, the period in which a pilot or inland pilot must complete the training (continuing education) mandated by this section. Good cause should include matters affecting the pilot's or inland pilot's health or the health of the pilot's or inland pilot's spouse or circumstances beyond the pilot's or inland pilot's control -- such as limitations on the Board's funding or spending authority or overriding safety demands on the number of pilots needed to provide pilotage service -- sufficient to warrant postponement of the mandated training.

Commissioner Roberts made a motion to adopt the Committee's recommendations and to proceed with the proposed rulemaking. The motion was duly seconded. Commissioner Tate commented that "good cause" should not have to be defined in regulation. The issue was noted and can be addressed during rulemaking. There was no further discussion and the motion was passed unanimously.

ii) Pilot Performance Evaluation Reports/PEC:

Harbors and Navigation Code Section 1171.5 provides in part that evaluation reports on the performance of a pilot or inland pilot in a training program mandated by the Board must be sent to the pilot evaluation committee. It also provides that the PEC "shall conduct and supervise the pilot training programs pursuant to the direction and regulation of the board and consistent with the intent of this division."

The Continuing Education Committee is working with the Board's pilot training/continuing education providers to provide meaningful evaluation reports as required by the code. The Committee believes that the required evaluation reports should be sent to the Board (or its Executive Director), not to the Pilot Evaluation Committee. The PEC has historically only been tasked by the Board with the supervision of the pilot trainee training program, a policy the Board reconfirmed in 1992 following the establishment of the separate pilot training program.

The Committee recommended that the Board seek legislative amendments to Harbors and Navigation Code Section 1171.5 (c) to provide that copies of the performance evaluations be provided to the pilot or inland pilot and to the Board (instead of to the pilot evaluation committee); and further, that the Board seek legislative amendments to HNC Section 1171.5(f) to provide that the pilot evaluation committee shall conduct and supervise the pilot trainee training program (rather than all training programs.)

Commissioner Roberts made a motion to adopt the Committee's recommendations and to seek the Legislative amendments as recommended. The motion was seconded and unanimously approved, with the exception of Vice President Tate who was not present during the vote.

I) **Pilot Evaluation Committee** - Captain E. Nyborg

The PEC met on July 23, 2009. All six of the current trainees were interviewed individually, their trip cards examined, and their progress in all elements of Title 7, Section 214 of the Harbors and Navigations Code monitored.

The trainees' time in the program range from two months to just over two years. All trainees are progressing at their own rate. The PEC does not expect to make any appointments within the next three months. There are currently no significant problems with the progress of any trainees in the training program.

i) **Progress on the development of the Trainee Selection Exam**

Capt. Nyborg was pleased to report that the work on the simulator scenario was progressing very well. The simulated harbor has been selected and modified, the route through the harbor refined, the virtual harbor has been populated with vessel traffic, environmental effects, sound effects, and visual effects. Three pilots who had no familiarity with its development have tested the scenario so far. Each pilot was able to complete the transit without casualty thus allowing for full opportunity to maximize his score.

ii) **Pacific Maritime Institute "Train the Assessor" course.**

In May, Capts. Larwood and Lemke attended the two day course that was given to the South East Alaska Pilots Association. They both returned with favorable reports and recommended that PEC consider attending the course. After further review the Committee asked PMI to consolidate the course into one day and tailor it specifically to the SFBP and present a proposal. The proposal was presented to the Board. (A copy of the proposal is available at the Board Office.) Capt. Nyborg asked that the Board consider the PEC's recommendation to send all members of the PEC to the course.

Capt. Nyborg reported that the cost was approximately \$13,000 total for the five PEC members. Future costs would be less as the course would not require start up costs.

A motion was made to approve the recommendation. The motion was duly seconded. After discussion it was unanimously adopted. Board staff was requested to review the budget to ensure it could accommodate these expenditures in light of the Board's earlier action to reduce the budget for outside expenditures.

J) **Pilot Power Committee** - Commissioner Roberts

Commissioner Roberts reported that the Committee met July 23, 2009. The Committee reviewed the results of the June 2009 retirement survey and updated

data on the factors listed in Section 237(d) of the Board's Regulations including data of ship movements and pilot assignments, MRP exceptions and other data.

There are currently 57 licensed pilots and 8 trainees. The Board is authorized to license up to 60 pilots; 7 pilots have indicated, via a confidential survey, plans to retire over the next three years.

At this time, the Committee has no recommendations. It plans to meet again in 6 months unless circumstances change.

K) Pension Committee - Commissioner Tate

President Miller stated that the EFI Actuaries firm has responded to comments to its draft report as requested by SFBP, PMSA and the Board. A draft final report has been provided to each stakeholder group for review. A meeting of the stakeholders will be scheduled to discuss the final draft report and any additional changes if appropriate. Once complete, the report will be provided to the Board and to the public.

L) Pilot Vessel Advisory Committee – Commissioner Johnston -

- i) The June 21, 2009 committee meeting focused on load line modifications to existing station boats, reported under (iii) below.
- ii) Reconsideration of Apron Modification issue: There was further extensive discussion of SFBP's request to use the pilot vessel surcharge to reimburse it for the modifications to the Pier 9 apron required to accommodate the new station boat (P/V DRAKE) currently under construction. The arguments in favor and in opposition were discussed at length. It was moved and seconded that the Board issue a necessity determination and a preliminary authorization pursuant to Section 236.1(d) and (e) of the Board's regulations for the apron modifications in the projected amount of \$123,460 as set forth in the SFBP request dated March 19, 2009. After further discussion and opportunity for public comment, the motion passed on a voice vote. There was no request for a roll call vote. Commissioner Roberts made a motion which was and seconded by Commissioner Wainwright to adopt the recommendations of the Committee. Motion was adopted with President Miller and Commissioner Osen voting no. Correspondence from SFBP, PMSA and Board counsel on the issue are available from the board office.
- iii) Load Line Modifications to existing station boats: Commissioner Johnston reported on the committee's review of SFBP's request and its recommendation that the Board issue a Necessity Determination pursuant to Section 236.1(d) for load line modifications to meet American Bureau of Shipping (ABS) requirements for the two existing station boats (P/V California and P/V San Francisco). There was discussion of the federal laws regarding load lines as applied to these station boats and why it had not applied in the past, and the reported denial of a request for a waiver of the load line laws. PMSA VP Jacob requested that a copy of the waiver denial correspondence be included

in the Committee's file on the subject. It was moved and seconded that the Board issue a Necessity Determination for load line modifications to the two existing station boats, as requested by the SFBP. After additional discussion and opportunity for public comment, the motion was passed unanimously.

- M) **UPRR Bridge** - Executive Director Moloney
Nothing to report
- N) **Ad Hoc Advisory Committee on Pilot Selection** - Commissioner Tate
Nothing to report
- O) **Navigation Technology Committee** - Commissioner Johnston
Nothing to report
- P) **Pilot Identification Cards** - Executive Director Moloney/Commissioner Osen
Nothing to report
- Q) **Ad Hoc Committee to Review Investigation Procedures** - Commissioner Osen
Nothing to report
- R) **Pilot Trainee Selection Process** – Captain E. Nyborg
See Pilot Evaluation Committee
- S) **Pilot Fitness Committee** – Commissioner Roberts –
 - i) The committee met at a duly noticed meeting open to the public on July 21, 2009. All items on the committee's agenda were discussed. The Committee noted that it had received reports that some pilot fitness examinations may have been conducted by a physician's assistant or nurse practitioner in the office of a Board approved examining physician. While such medical professionals are authorized to conduct physicals for the Coast Guard, they are not authorized to conduct physicals and attest to the pilot's fitness under the Board's regulations. Commissioner Tate noted that, in his opinion, it would be a waste of time to direct physicians on how to conduct physical examinations and which portions should be done by the physician and which by his or her staff. After discussion, the Board directed that the Executive Director write a letter to the Board examining physicians on the Board-approved list advising them of the regulation requiring that the physical examination performed for the Board must be performed by a physician designated by the Board, who must attest to the pilot's or pilot trainee's fitness to perform piloting duties.
 - ii) Deputy GV Morocz inquired on the status of developing regulations to address the qualifications of Board examining physicians. Commissioner Roberts advised that this was at the top of the committee's agenda following completion of the Interagency Agreement with UCSF and on Dr. Kosnik's work plan, which included developing recommendations for those qualifications. The committee was scheduled to meet in August and would

continue to work on this item along with the other items on its agenda ask tasked by the Board.

- iii) Commissioner Roberts advised that the Coast Guard was forming a Merchant Mariner Medical Advisory Committee and that he had sent a letter to the Coast Guard expressing an interest in opening lines of communication with that committee. He will keep the Board informed of those efforts.

T) Board Audit Update

President Miller reported that the BSA audit is continuing. A report is not expected for several months.

9) New Business

- A) M/V MORNING MERMAID, hard landing, Richmond Berth 8, June 19, 2009
- B) M/V KRITI JADE, mast struck UPRR Bridge and Benicia/Martinez Highway Bridge, June 26, 2009

Captain Moloney stated that both incidents are under investigation.

10) Public Comment on Matters not on the Agenda

Port Agent McIsaac expressed his interest for the Board to explore application fees and testing fees for applicants. Commissioner Roberts recommended that the Board use the State of Washington's fee structure as a model. Mr. Morocz stated that BTH would look into the legal and fiscal issues about the fee structure.

Port Agent McIsaac also noted that this issue of the responsibility for ensuring that pilot trainees meet federally mandated drug testing requirements had not yet been resolved. The SFBP is continuing to ensure that the trainees meet random drug testing requirements pending the Board's completion of contracting with a qualified third party to conduct the testing. AD Bennett said that she was working with the CHP contract administration personnel to contract with the testing agents used by the pilots.

11) Proposals for Additions to Next Month's Agenda

None

President Miller identified the issues that would be taking up in a closed meeting to follow a brief recess and the legal authority for conducting a closed meeting.

The Board ended the Open Session at 12:39 p.m.

CLOSED MEETING-12:50 P.M.

The Board went into closed session to address the following item, as authorized by the Open Meeting Act, Government Code Section 11126(e)(1):

- A) Confer 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; in Anderson, et al. v. Cota et al., Case No. CGC-08-483409 pending in San Francisco Superior Court; and in Regal Stone v. People of the State of California, Case No. 34-2008-00035818-CU-TT-GDS pending in the Superior Court for Sacramento, 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).
- B) Update on Performance Evaluation of Board's Executive Director as authorized by Government Code section 11126(a)(1).

RESUME OPEN MEETING

12) Announcements

No announcement to be made

The Board adjourned at 1:15 P.M.