

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
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February 8, 2010

**BOARD OF PILOT COMMISSIONERS
MINUTES
January 28, 2010
Morning Session at 9:30 A.M.**

OPEN MEETING

Call to Order and Roll Call-9:45AM

President Miller, Vice Present Tate, Commissioners Johnston, Roberts, Osen and Wainwright were all present, constituting a quorum. Ex officio member Dale Bonner, Secretary of the Business, Transportation and Housing Agency was represented by Deputy General Counsel Gabor Morocz, also serving as Acting Executive Director. Commissioner Jack Sullivan was not able to attend. Also present were Assistant Director Nancy Hall Bennett, Port Agent Capt. Peter McIsaac, Dennis Eagan (Board Counsel), Raymond Paetzold (Maritime Counsel), and Staff Services Analyst Katharine Weir. Allen Garkfinkle was present as a member of the public since his appointment to Executive Director would not be official until February 1, 2010.

1) Approval of Minutes

Commissioner Tate made the motion to accept the December 17, 2009 regular Board meeting minutes. Commissioner Wainwright seconded the motion and the minutes were approved by a unanimous voice vote.

2) Announcements – President Miller

President Miller made two announcements:

First, he announced that Governor Schwarzenegger had appointed Capt. Jack Sullivan to serve as a member of the Board. Capt. Sullivan is Vice President of Vessel Operations for Matson Navigation Company. President Miller noted that Capt. Sullivan is a graduate of the United States Merchant Marine Academy at King's Point. He was appointed to fill the Dry Cargo industry member position on the Board. Unfortunately, Capt. Sullivan was not able to attend on this occasion because he was not able to change his prior commitments because of the short period of time since his appointment. President Miller announced that he had appointed Commissioner Sullivan to serve on the Pension, Rules and Regulations, and Pilot Safety Committees. He will chair the Pilot Safety Committee. Commissioner Sullivan will take his

seat on the Pension and Rules and Regulations Committees with respect to new business considered by those Committees. Old business will continue to be addressed by the “pro tem” members now serving. President Miller wished him “welcome aboard.”

Second, President Miller introduced Capt. Allen Garfinkle who, effective February 1, 2010, will be the Board’s new Executive Director. Mr. Garfinkle comes to the Board from Matson, where he sailed for over 20 years, serving as Master on nine vessels. He is a graduate of the California Maritime Academy and of the University of San Francisco School of Law. He holds an unlimited Master’s license from the Coast Guard and is a member of the State Bar of California. President Miller wished him “welcome aboard.”

3) Board Member Activities – Acting Executive Director Morocz

Commissioner Roberts reported that he had attended a meeting at the San Ramon Medical Center regarding prescription drug medication and that he planned to use the information he received in his Pilot Fitness Committee.

Commissioner Johnston reported attending many social engagements, but not acting in his official capacity as a Commissioner of the Board.

4) Acting Executive Director’s Report - Acting Executive Director Morocz

A) Correspondence and activities since December 17, 2009 meeting

- i) Directive to implement and collect all Board surcharges.
- ii) Capt. Coppo Notice of Termination of Medical Disability Leave.
- iii) Letters to new Board member John Sullivan regarding Form 700 and Board ethics orientation completion
- iv) Letter to the Department of Finance regarding Single Audit Management Representation Letter for Fiscal Year 2008-09
- v) 60-day status report to the Bureau of State Audits
- vi) Letter to all Board physicians asking them to make time to meet with Dr. Robert Kosnik as requested by the Pilot Fitness Committee

B) Update on SEIU versus Board furlough litigation.

Mr. Morocz stated that there are many lawsuits currently underway challenging the Governor’s directive to furlough state employees. Currently the furloughs still stand.

Mr. Morocz also reported that the Board was in litigation involving the California Department of Transportation (Caltrans) regarding damages to the Bay Bridge from the COSCO BUSAN incident.

C) Report on pilot licensing matters in the past month and current month.

Ms. Bennett reported that in the month of January ten licenses were renewed. Captains Gates, Robinson, Coppo, McIsaac, Ridens, Rocci, Teague, MacLachlan, Kelso and Carlier. Ms. Bennett reported issuing 2 licenses for February renewals at the time of the Board meeting to Captains Roberts and Vilas. Captains Greig, O’Laughlin, Hoburg and Wagner still needed to be processed.

5) **Port Agent's Report** – Port Agent, Captain Peter McIsaac

Captain McIsaac reported that after discussion with Mr. Morocz he will now be reporting monthly on the status of pilots that are Absent for Medical Reasons, or AFMR:

Captain Haggerty was AFMR after neck surgery on October 14, 2009. He returned to duty January 15, 2010.

Captain Pate was AFMR after undergoing rotator cuff surgery on Oct 28, 2009. He returned to duty on January 27, 2010.

Captain Fuller has been AFMR since January 18, 2010, after injuring his back embarking a ship. He is currently undergoing treatment and hopes to return to duty in February.

Captain Robinson cracked a rib disembarking a vessel at sea during the storm on January 19, 2010. He returned to duty on January 23, 2010.

Pilot Vessel California is currently out of service after suffering a minor casualty to a flex fitting on the P.M.E. exhaust on January 25, 2010. The boat will be out of service for approximately one week due to the replacement part lack of availability.

Pilot Vessel Golden Gate- the boat was out of service from January 13, 2010, to January 15, 2010, due to a stress crack in the hull that was adjacent to a recent repair. An approximate one-foot by one-foot piece was cropped out and replaced. An additional longitudinal support frame was then added. Similar preemptive repairs were done during the service life extension but the areas behind the water tanks were never addressed. The marine superintendent is confident the problem is now solved.

Near Miss- on Jan 19, 2010, a pilot reported a near miss between the M/V MANOA , which he was piloting, and the petroleum barge being towed by the tug LOBO GRANDE. Both vessels were inbound in the Main Ship Bar Channel. The strong southerly wind was causing the light barge to track to the north effectively blocking the whole channel. The MANOA was overtaking the tug on its port hand when the starboard bow light of the barge suddenly came into view. Due to the heavy seas the barge was not marking on the radar. To avoid colliding with the barge the pilot went hard to port and outside of the channel. There is a meeting scheduled February 1, 2010, at Vessel Traffic Service to review this incident and determine if any corrective actions need to be taken. After the pilot reported the near miss the Acting Executive Director was immediately contacted and he determined it was a non-incident.

Low Sulfur Fuel Oil Potential Issues: There were two issues in December. On December 5, 2009, the tank vessel GINGA FALCON would not start astern when entering Anchorage 7. On December 8, 2009, the container vessel APL ITALY lost power after passing through the Golden Gate Bridge outbound to sea. It was determined that a large amount of water was in the fuel tank.

Recommended Minimum Rest Period (MRP) Exceptions: There were 12 over five days

during the month of December. The shortest rest period was 8.8 hours. Five occurred on December 10, 2009, when there were 23 pilots on the board. On December 17, 2009, four more occurred with 21 pilots on the board.

Public Vessel BLACK EAGLE- The vessel was placed in short-term lay-up at Oakland Berth 34, as reported last month. Pilots experienced problems with untended vessels there in the past and have expressed their concerns to the Port of Oakland and advised the master of the vessel that the lines need to be constantly monitored. To date there have been no issues.

Billed Vessel Moves through December 2009 compared to a 3-year average

Bar Crossings -10.8%

Bay Moves: -30.7%

River Moves: -37.8%

Total Moves: -15.7%

GRT: -7.4%

Compared to 2008, bar crossings were down 8.7%, total moves were down 13.3%, and GRT were down 7.6 %.

6) Reported Safety Standard Violations and Investigations - Acting Executive Director Morocz

Nothing to Report

7) Non-Incidents - Acting Executive Director Morocz

There was a reported incident, but Mr. Morocz advised the Board that the incident did not warrant an investigation.

Commissioner Tate made the motion to accept the report as a non-incident. The motion was seconded by Commissioner Johnston and the motion was approved unanimously by a voice vote.

8) Report of New Incidents - Acting Executive Director Morocz

A hard landing occurred on January 20, 2010. The Acting Executive Director Morocz was notified of the incident on January 27, 2010. At the direction of Mr. Morocz, Investigators Capt. Reynolds and Capt. Niem will start the investigation on January 29, 2010.

9) Incident Review Committee Report– Commissioner Johnston and Acting Executive Director Morocz

Mr. Morocz gave a status report on the M/V TASMAN RESOLUTION allision near Light 34, San Joaquin River on August 27, 2009. Mr. Morocz reported that the IRC was prepared to give its full presentation during the afternoon session of the meeting.

10) Rules and Regulations Committee - Commissioner Wainwright and Acting Executive Director Morocz

Commissioner Wainwright reported that the Committee met on January 25, 2010. The Committee reviewed the 2009 and 2010 rulemaking calendar and addressed draft regulations for investigator minimum standards and portable pilot units.

Regarding the Rulemaking Calendar for 2010 the Committee plans to promulgate the following seven items in the next year:

1. Commission investigator standards
2. Conflict of Interest Code amendments
3. Incident Review Committee
4. Pension
5. Reports of navigational incidents or misconduct and other reports by the Port Agent
6. Board physician qualifications
7. General clean-up

Commissioner Wainwright made the motion for the Board to accept these seven items to be submitted to the Office of Administrative Law as our planned regulation projects for the year. The Motion was seconded by Commissioner Tate and was approved unanimously by a voice vote.

Commissioner Wainwright reported that the next Rules and Regulations meeting has been scheduled for February 22, at 9:30 A.M. The Committee plans to meet monthly going forward to address the rulemaking calendar.

11) Finance Committee - Commissioner Osen and Assistant Director Bennett.

Commissioner Osen reported on the Finance Committee meeting that was held on January 7, 2010. At the meeting Acting Executive Director Morocz presented the Committee with a memo that outlined current laws requiring the pilots to submit monthly reports to the Board, accounting for all moneys received by them as a result of providing pilotage services. The recent Bureau of State Audits report noted that the Board has not set forth a procedure for reviewing and recording the pilot accounts.

The Committee directed the San Francisco Bar Pilots to submit their monthly collections of surcharges to the Board, due monthly by the 10th day of each month, with a letter stating that the amount has been verified and that the amount submitted is correct. Further, the Committee directed Board staff to report to the Board monthly on the revenues received. The amount will be reported publicly for Board records, and prior to doing so staff should be pulling a sample of each monthly collection to confirm that the amounts received by the SFBP are the correct amounts.

Commissioner Tate moved that the Board staff devise a monthly procedure to review the verified monthly accounts of monies received by the pilots and a procedure for recording such accounts by the Board pursuant to Harbors and Navigations Code Sections 1136 and 1137. Commissioner Roberts seconded the motion and was it was approved unanimously.

Lisa Paolini from the California Highway Patrol (CHP) and Karin Fish of Business, Transportation and Housing (BT&H) attended the Committee meeting and presented the new

accounting practices that they have initiated to assist the Board in recording their finances. After hearing a broad analysis of the BOPC budget restrictions, the Committee asked the Assistant Director to meet in Sacramento with CHP staff the next week to assist in finalizing all financial processes and procedures in order to have a clearer picture of our financial needs.

Ms. Fish and Ms. Paolini reported that at the time of the committee meeting the Board would need to submit Spring Finance Letters for further expenditure authority for the additional needs of the COSCO BUSAN litigation and for the additional Manned Model Training Class at Port Revel scheduled for the Summer of 2010. This additional Port Revel class was authorized by the Board at the October full Board meeting.

At this time the Board took a recess from 11:01 a.m. – 11:24 a.m. for staff to clarify the prior spring finance letter request concerning legal costs for COSCO BUSAN defense.

After the recess, Commissioner Osen made the motion to direct staff to work with CHP and BT&H to prepare and submit a Spring Finance Letter authorizing an additional class for Manned Model Training class not to exceed \$150,000 in tuition and not to exceed \$6,500 per pilot for travel expenses. Commissioner Johnston seconded the motion and the vote was unanimous.

A motion was made by Commissioner Wainwright and seconded by Commissioner Tate to direct staff to work with CHP and BT&H to prepare and submit a Spring Finance Letter for raising budget authority for COSCO BUSAN litigation defense expenses. The motion was approved with Commissioner Osen abstaining.

President Miller reported on the status of the surcharge audit: He stated that the Board had received a draft statement of procedures for the audit. He further reported that he had discussed it with the audit engagement partner, who will make some changes and clarifications. At this point it appears that the audit can proceed in April because of the time needed to clear the state contracting process.

12) Pilot Evaluation Committee - Captain E. Nyborg and Nancy Bennett

Captain Nyborg was unable to attend the Board meeting and asked Assistant Director Bennett to report that the next PEC meeting was scheduled for February 10, 2010. Further, Ms. Bennett announced that the Comira contract was with Secretary Bonner of BT&H for approval for the non-competitive bid basis of the contract.

Ms. Weir also noted that the reading materials for the training test had been ordered and would be arriving over the next few weeks.

13) Pilot Power Committee - Commissioner Roberts

Commissioner Roberts reported that the Pilot Power Committee met on January 13, 2010. The Committee reviewed the results of the December 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, minimum rest period exceptions and other data.

In December all licensees of the Board were sent a confidential retirement questionnaire. The results came back indicating that six pilots plan to retire by January 1, 2011. The Board is authorized to license up to 60 pilots. As of December 31, 2009, the Board had 55 licensees. With the retirement of Captain Dohm on January 1, 2010, the list is now at 54.

Commissioner Roberts made the motion for the Board to accept the two remaining trainees on the list, to be accepted into the training program within the 2nd quarter of 2010. The motion was seconded by Commissioner Osen and passed with a unanimous vote.

The Committee reviewed the data prepared by Captain David Weiss and a graph prepared by President Miller's wife, Ginna. After reviewing the minimum rest period exceptions and projected needs through 2012, the Committee agreed to not make any changes to the number of authorized pilot licensees.

Commissioner Roberts thanked Mrs. Ginna Miller and Captain Weiss for their work in preparing data for the Committee to review.

The Committee plans to meet again in six months unless circumstances change.

14) Pilot Fitness Committee - Commissioner Roberts

Commissioner Roberts reported that the Pilot Fitness Committee met on January 13, 2010. The interagency contract agreement with the University of California, San Francisco (UCSF) was signed on December 23, 2009, by Assistant Director.

Dr. Robert Kosnik of UCSF attended the Committee meeting and gave an update on his progress. At direction of the Committee, Assistant Director Bennett has sent a letter to all Board physicians introducing them to Dr. Kosnik and alerting them of the UCSF study. The Committee hopes that all Board physicians will make time to meet with Dr. Kosnik in early February so he can evaluate the current practices of Board examinations and report back to the Committee at the next meeting.

Additionally the Port Agent has agreed to work with Dr. Kosnik in scheduling fieldwork for his research aboard vessels with licensed pilots.

The next Pilot Fitness Committee meeting has been scheduled for February 17, at 10 A.M.

15) Pilot Continuing Education Committee – Commissioner Roberts

Commissioner Roberts reported on the Pilot Training Curriculum Committee meeting that was held on January 13, 2010, at the Board office.

The Committee reviewed the curriculum as required by 7 CCR section 215(b)(2) for continuing education. Current regulations mandate that a pilot must participate in a 3-year cycle for the combination course continuing education training requirement. The Port Agent reported that many other piloting organizations are on a 5-year cycle. Commissioner Eric

Osen reported that the Chevron pilots that operate in the San Francisco Bay are on a 5-year cycle as well.

Commissioner Roberts made the motion to move to a 5-year cycle for training for the combination course training and to commence with the rulemaking process to implement this change. Commissioner Wainwright seconded the motion and the vote was passed unanimously.

The Committee reviewed the contracts for both the Maritime Institute of Technology and Graduate Studies and Port Revel concerning evaluations of pilots attending training at those programs as required by H&N Code section 1171.5(c). The MITAGS contract currently has the requirement for evaluations within the contract; the Port Revel Contract does not.

At the Committee meeting staff was directed to amend the current Port Revel Contract to add in the requirement for evaluations. Further, the Committee decided that if a negative evaluation of a pilot were to be received by the Executive Director he is to report the matter to the Chair of the Continuing Education Committee to review for further action.

The Committee reviewed the of recommendation of the Bureau of State Audits with respect to Board's practice of reimbursing pilots attending continuing education instruction at Port Revel for the cost of business-class airfare for intercontinental travel.

The recommendation was included in the Audit Report published in November 2009 in which the auditors recommended that the Board "cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the Bar Pilots accordingly." Key matters discussed by the Committee include the following: The Continuing Education Committee (previously the Curriculum Committee) had considered the appropriateness of business-class intercontinental travel on several previous occasions, and had consistently determined that pilots should be reimbursed for that class of service. The Board has regularly accepted the Committee's recommendations in that regard and authorized contracting with SFBP to purchase travel consistent with the Committee recommendations. Because of SFBP's ability to purchase "bulk" business-class intercontinental travel well in advance of the actual travel by pilots for training, the actual cost of business-class travel was considerably less than the advertised cost offered to the public at large; and further, the "bulk" business-class fare was only slightly higher than the cost of a fully-refundable economy-class ticket. Pilots fly economy class for both domestic travel for the combination course at MITAGS in Baltimore, and they fly economy class between Paris and Lyon, or Hamburg and Lyon. It is only for the intercontinental travel between San Francisco and the European hub that the Board has reimbursed the cost of business-class travel. That fact was not accurately reported in the BSA findings.

While the practices of other jurisdictions, including the federal government, are not binding on California government, including the Board of Pilot Commissioners, all jurisdictions of which the Committee is aware authorize business-class intercontinental air travel.

The Committee received data and charts tracking minimum rest period exceptions (MRP) from August 1, 2004, through June 30, 2009. A Board regulation establishes 12 hours as the suggested period of rest for a pilot after completing one job and before commencing a new job. SFBP Captain David Weiss explained the process of collecting this data as

required by Board regulation, 7 CCR 237(d). The materials demonstrate that there is a measurable increase in number of MRP exceptions experienced during periods of time that pilots are “off the board” (out of the normal work rotation) because of travel to and attendance at training mandated by Board regulation. During a representative period from 2005 to 2007, the overall chance of an MRP exception was 15.7 % compared to 30.7 % on training days.

The Committee discussed the fact that random factors also can increase the incidence of MRP exceptions, but noted that exceptions are regularly and consistently associated with periods when pilots are off the board for training.

The Committee considered alternatives to business-class travel that would not reduce the rest received by traveling pilots prior to resuming their piloting duties upon their return, and that would not increase the incidence of MRP exceptions because of the possible need to extend the rest period for pilots limited to economy-class travel. The Committee also considered the effect on alertness for training following economy-class travel to Port Revel.

After an extended discussion, the Committee came to no resolution on the business-class travel question but determined to continue the discussions at its next meeting.

The Committee plans to meet again in 2 months, with a date to be set as that time approaches.

16) Low Sulfur Fuel – Commissioner Osen

Nothing to report.

17) Executive Director Recruitment – President Miller, Vice President Tate, Assistant Director Bennett

Chairman Miller stated that he was happy to report that the Board hired a new Executive Director. Also, Chairman Miller took the opportunity to express his appreciation for the leadership in recruiting and search process provided by Vice President Ben Tate. President Miller stated that Vice President Tate “knows how to run a recruiting process, and how to develop and administer candidate interviews, and how to keep a search committee focused and on task.”

Chairman Miller next stated his appreciation for the hard work and productive efforts by Acting Executive Director Morocz since October 1, 2009, when the office of Executive Director became vacant. Similar sentiments were expressed by all Commissioners.

18) Bureau of State Audits Report - President Miller and Acting Executive Director Morocz

Report on submitting 60-days compliance update to the Secretary of Business, Transportation and Housing and the Bureau of State Audits.

19) Public Comment on Matters not on the Agenda

Captain McIsaac expressed his appreciation to Mr. Morocz for all of the hard work he had given the Board as the Acting Executive Director.

20) Proposals for Additions to Next Month's Agenda

21) Recess for lunch

At 12:15 P.M. President Miller recessed the Board until 1:30 P.M.

22) Presentation by IRC of its Investigation Report on the following incident:

The Board was called back into session at 1:35 P.M. for a hearing under Harbors and Navigation Code section 1180.6 involving the M/V TASMAN RESOLUTION allision near Light 34, San Joaquin River on August 27, 2009

The Board received the report of the Incident Review Committee on the M/V TASMAN RESOLUTION incident on August 27, 2009. The Incident Review Committee consisted of Commissioner Frank Johnston as Chairman and Gabor Morocz as Acting Executive Director. Mr. Morocz presented the report and the IRC prepared this report pursuant to California Harbors and Navigation Code Section 1180.3 and Title 7, California Code of Regulations Section 210 with the assistance of Capt. Bob Reynolds and Maritime Counsel Ray Paetzold. Captain Reynolds sat with the IRC, Mr. Paetzold was unable to attend this portion of the meeting. At the conclusion of Mr. Morocz's presentation he reported that the IRC recommends that the Board find no pilot error in this incident; and that this investigation be closed without further action.

Capt. Bruce Alden, the pilot involved in the incident, was present and was represented by attorneys George Nowell and John Cigavic. Mr. Nowell spoke to issues raised by the IRC in its report. Commissioners asked questions of the IRC and of Capt. Alden's counsel, both of whom responded. President Miller inquired of Capt. Alden if he wished to speak to the Board. He declined.

At 2:05 P.M. the Board went into closed session to discuss the IRC report and presentation.

The Board reconvened in open session at approximately 2:45 P.M.

President Miller announced that the Board, on a vote of four Yeas, one Nay, accepted the IRC recommendations, found no pilot error in this incident, and directed that this investigation be closed without further action.

23) Adjournment

President Miller adjourned the meeting at 2:50 P.M.

MEMORANDUM

To: Full Board Meeting
January 28, 2010. **Date:** 01/24/2010

From: Frank Johnston, Chair of IRC
Gabor Morocz, Acting Executive Director

Prepared by: Gabor Morocz

Subject: **Report of Pending Incident Investigation**

INCIDENT REVIEW COMMITTEE REPORT
Agenda Item No. 9, January 28 2010, Board Meeting

M/V TASMAN RESOLUTION, allision with levee in the San Joaquin River

Action	Date	Days
Ship Incident	08/27/09	0
Incident Reported to Executive Director	08/28/09	1
Marine Investigator Dispatched	08/28/09	0
Take over from Capt. Moloney	10/01/09	34
Marine Investigation Report Completed (Capt. Moloney)	10/30/09	29
Clarification attempts with USCG and Capt. Moloney	11/18/09	19
1 month extension for completion granted by the Board	11/19/09	1
Capt. Reynolds assigned to complete investigation	11/20/09	1
90 days deadline	11/25/09	5
Follow up investigation, AIS data collection, numerous follow ups with USCG, meetings with USCG investigators, waiting for USCG evidence	12/17/09	22
1 month extension granted by the Board	12/17/09	0
Attempts to obtain more evidence from USCG, finalize report	1/15/10	29
Distribute report to pilot and board members	1/16/10	1
Waiting for Board meeting	1/28/10	12
Days elapsed		154

Presentation of the report is scheduled for 1:30 P.M. under Agenda Item No. 22

