

**Board of Pilot Commissioners for the Bays
of San Francisco, San Pablo and Suisun**

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**BOARD OF PILOT COMMISSIONERS
MINUTES
March 25, 2010
Morning Session at 9:30 A.M.**

OPEN MEETING**Call to Order and Roll Call-9:34 a.m.**

President Miller, Vice President Johnston, Commissioners Tate, Roberts, Wainwright, Osen and Sullivan 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 by teleconference. Also present were Port Agent Capt. Peter McIsaac, Dennis Eagan (Board Counsel), Raymond Paetzold (Maritime Counsel), Executive Director Allen Garfinkle and Staff Services Analyst Katharine Weir. There were no members of the public at the teleconference location.

1) Approval of Minutes

Vice president Johnston made the motion to accept the February 25, 2010 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 four announcements:

- (1) The Ad Hoc Executive Director Search Committee met at 0915 today (March 25, 2010). The only item of business was the approval of the minutes of the November 30, 2009 meeting (which was continued to other days). The Committee approved the minutes and adjourned *sine die*.
- (2) On March 2nd Executive Director Garfinkle and President Miller attended a pre-hearing conference with Senate Budget Subcommittee Two staff, the subcommittee with jurisdiction over the Board's budget. Member Morocz and Deputy Secretary Fish also attended. They responded to questions from staff concerning the Board's request for an additional full time clerical position, as well as questions concerning findings and recommendations from the Board of State Audits report.

Executive Director Garfinkle and President Miller then met with Emily Rogers, a legislative aide to Assemblyman Chesbro whose district includes Humboldt Bay. They used the occasion to introduce themselves and the Board to her and provide information relevant to AB 2637, introduced by Mr. Chesbro. They did not take a position on the bill. There will be a

stakeholders' meeting with Miss Rodgers (at her request) on April 5. Executive Director Garfinkle and President Miller will participate.

(3) On March 11, the same parties attended a meeting of Senate Budget Subcommittee Two and responded to questions on the same subjects from members of the Subcommittee. There was discussion of our request for an additional clerical position and the Department of Finance supported our request. Unfortunately, the Senators voted to reject the Board's request.

The Board and BTH are continuing to pursue the additional staffing on the Assembly side of the Legislature.

(4) President Miller stated that the final announcement was bittersweet. He stated that today would be the last Board meeting attended by the Board's Staff Services Analyst, Katharine Weir. Kat has accepted a position as the northern California lobbyist for the California Realtors Association. March 30 will be her last day with the Board. President Miller expressed the Board's appreciation for her help during the year she has been with the Board and wished well in her new endeavors.

3.) Board member Activities - Executive Director Garfinkle

President Miller reported that he had attended the dedication of a plaque memorializing the 150th anniversary of the arrival of the *Kanrin Maru*, the first Japanese sailing ship to sail across the Pacific and call at San Francisco following many years of Japan's isolation. Following the dedication of the plaque (which is in the Embarcadero sidewalk just outside the Board's office), he attended a reception held at the SFBP offices, but not sponsored by the SFBP.

There were no other reports.

4) Executive Director's Report— Executive Director Garfinkle

a.) The Commissioners were reminded again of the duty to file Form 700 with Fair Political Practice's Commission by April 6th, 2010.

b.) Executive Director Garfinkle presented National Transportation Safety Board (NTSB) SB-10-06 brought to his attention by Maritime Counsel Ray Patzold. The title of this Safety Bulletin was "FATIGUE ENDANGERS TRANSPORTATION WORKERS AND PASSENGERS ACROSS ALL MODES, NTSB CHAIRMAN WARNS". The bulletin notes in part that "the major challenge is to ensure that all those in transportation report to work rested and fit for duty". The article goes on to point out how this issue has been on the NTSB "most wanted" list of safety improvements for 20 years and considers the United States Coast Guard's progress on the subject "unacceptable".

c.) There were no licenses due to be renewed in March, and in April there will be seven renewed plus two new ones issued making the total licenses 56 plus one Inland Pilot.

5. Port Agent's Report— Acting Port Agent, Captain Bruce Horton

Absent for Medical Reasons (AFMR)

Captain Simenstad is undergoing an evaluation for a syncopal episode which occurred on a vessel. His prognosis is good, with no return date available at this time.

Captain McIsaac is recuperation from shoulder surgery with an expected return date of April 13, 2010.

Pilot Vessel CALIFORNIA is in the yard for maintenance dry-docking and American Bureau of Shipping (ABS) modifications. The work is a bit behind schedule but is expected to be completed April 2nd.

Pilot Vessel SAN FRANCISCO is scheduled for the dry dock on April 14th, 2010.

Low Sulfur Fuel Oil Potential Issues – There were 3 in February: One vessel could not run on dead slow or full ahead, one vessel would not start astern if the speed was more than 3 knots, and one vessel's engine failed to start astern on final approach to the dock.

Recommended Minimum Rest Period Exceptions (MRP's) - There were 4 over 3 days during the month of February. The shortest rest period was 6.2 hours when a pilot was called in early to cover a river job. Two occurred on February 2nd when there were 21 pilots on the board.

Simulation – The Army Corps of Engineers (ACOE) is planning a major upgrade to the Sacramento Deep Water Ship Channel. Part of that process is to run transit simulations at their Vicksburg, Mississippi facility. This simulation is about finished with the last of 2 pilots finishing up tomorrow.

Container Cranes for the Port of Oakland – Three new post-panamax container cranes for the Port of Oakland were successfully brought into the port on March 16th, after three months of planning. This vessel passed under the Golden Gate Bridge with feet to spare, and the California Highway Patrol conducted a traffic stop at 0915 when the vessel went under the Bay Bridge. Two cranes are already offloaded with the other one expected to be offloaded in the next few days.

Billed Vessel Moves in February 2010 compared to a 3 year average

Bar Crossings: (460) -17%

Bay Moves: (87) -44%

River Moves: (14) -40%

Total Moves: (561) -23%

GRT: -14%

6) Reported Safety Standard Violations and Investigations- Executive Director Garfinkle

No new reports have been received.

7) Non-Incidents- Executive Director Garfinkle

The report of the MAERSK BERING was not completed at the time of the meeting and will be presented at the next scheduled Board meeting.

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8) Report of New Incidents - Executive Director Garfinkle

No new incidents to report.

9) Incident Review Committee Report – Vice President Johnston and Executive Director Garfinkle

A) Proposal by Capt. Kleess to amend Board order for practice trips by substituting simulator time at the Army Corp of Engineers simulator in Mississippi was discussed but no action was taken at this time to allow for further research by Board Counsel into whether the board is allowed to take such an action and for the Executive Director to gather more complete information on whether the simulations were substantially similar to the mandated practice trips.

B.) The IRC met with Maritime Counsel to discuss handling of reported events that result in a recommendation that the event be classified as a Non-Incident. Included in this report to the Board was a memo from maritime counsel that guided the discussion. It was pointed out that typically 16% of all reported events result in Non-Incident findings (source: Bureau of State Audits 2009 report on the BOPC) and that a considerable amount of time is spent investigating events that result in a Non-Incident finding. Current practice is for the Board meeting minutes to be the sole record on Non-Incidents. As an alternative, staff will create and maintain a separate file for investigations that result in a recommendation of Non-Incident.

10) Rules and Regulations Committee- Commissioner Wainwright

A) The Commission Rules and Regulations committee met at 0935 on March 23, 2010. After approval of the minutes from the February meeting, it was noted that review of January minutes would need to wait until the return of N. Bennett, Assistant Director.

B) PPU's - The committee reviewed Regulations Coordinator Terri Toohey's 3/15/10 suggested changes to format and text of the committee's February draft. The committee made minor changes in text and agreed to all of Ms. Toohey's suggested changes in format. Essentially, Ms. Toohey had reformatted our draft into rulemaking form.

Ms. Toohey will incorporate the committee's minor text changes into a final draft for Commission approval. That draft should be ready for the April Commission meeting.

C) **Commission Investigator Standards** – The committee used maritime counsel R. Paetzold's 3/22/10 memo as a "mark up" of the committee's February draft. The committee had asked Mr. Paetzold to review its work on investigator standards. His questions and suggestions were substantive and provided for extensive discussion.

The committee eventually made technical changes to educational, licensing and experience requirements, making for a more air-tight and practical regulation.

Ms. Toohey will incorporate the committee's changes into a final draft for Commission approval. That draft should be ready for the April Commission meeting.

11) Finance Committee—Commissioner Osen

Commissioner Osen reported on the Finance Committee review of Board financial state. It was noted that the SFBP moves are down and revenue was down a corresponding amount. The Finance

Committee recommends to the Board that there be no change to the current mil rate and Commissioner Osen moved to keep the current mil rate as per 58 pilots. The motion was seconded and passed unanimously. He then made a motion to keep surcharges at the current level. The motion was seconded and passed unanimously.

The Chairman then announced a change in agenda order, leaving item 12 until later in the meeting and moving to item #13.

13) Pilot Fitness Committee- Commissioner Roberts

Commissioner Roberts reported that work on the University of California Study continues as per the work plan. It was reported that a member of the SFBP presented the Fitness Committee with a letter detailing his concerns for medical privacy, particularly with regard to the Port Agents Report to in the open Board meeting. Ex-Officio member Morocz pointed out that one of the primary functions of the Board is to monitor the licensee's fitness and that there is a public interest involved. It was further noted that there are controlling statutes that speak to the Boards responsibility for medical oversight. The issue was referred to Board counsel to attempt to reconcile the Board's duty to monitor the fitness of each pilot with their individual right to privacy within the framework of the Open Meeting Act. This issue was deferred to the April meeting pending memo from Board counsel.

14) Pilot Pension Committee – Commissioner Tate

No report. Staff is reviewing the request of Inland Pilot W. Slough.

15) Low Sulfur Fuel– Commissioner Osen

It was noted that the Port Agent mentioned a few new incidents reported. It was reported that the California Air Resources Board (CARB) has been granting some safety exemptions. There will be a Marine Technical Workgroup meeting on April 28th at the Elihu Harris Building in Oakland.

16) Review and Approval of BOPC 2009 Legislative Report – President Miller, Director Garfinkle, and Ex Officio Member Morocz

Review, discussion and approval of the 2009 Legislative Report mandated by Harbors and Navigation Code section 1157.5.

Member Morocz explained that the report is required by the Yee bill that was enacted in 2008 and that it was the product of the joint efforts of President Miller, Port Agent Capt. McIsaac, and himself. The Board discussed the draft report. Commissioner Roberts requested additional time to review the draft report. President Miller deferred Board action until later in the meeting in order that all Commissioners have additional time to review the draft report. Subsequently, it was moved and seconded that the Board approve the draft report. The motion carried on a unanimous vote.

17) Discussion of Pending Legislation.

President Miller reported that the Board is requested by BTH to provide a bill analysis recommendation through BTH to the Governor of two bills that would affect matters under the

prevue of the Board. Those bills are AB 1888 regarding pilot charges, and AB 2637 which would extend the Board's jurisdiction to include pilotage in Humboldt Bay.

The positions that can be recommended by the Board are:

Support
Support if amended
Neutral
Neutral if amended
Oppose
Oppose unless amended
No position
Defer to another agency

Historically the Board has very rarely been asked to offer an opinion on pending legislation.

Item 17A: AB 1888

President Miller stated that the bill is sponsored by the San Francisco Bar Pilots Association, and authored by Assembly Member Fiona Ma.

The bill which has been amended in its current version would:

- Exempt from pilotage fees and all surcharges domestic and foreign maritime academy training vessels (e.g., the GOLDEN BEAR) and vessels owned and exhibited by nonprofit museums or foundations (e.g. the JEREMIAH O'BRIEN).
- Change the current law exemption from compulsory pilotage for private recreational vessels of less than 300 gross tons to private recreational vessels of less than 750 tons.
- Increase the existing minimum charge for bar pilotage of \$662 for each vessel piloted to a new minimum charge of \$1,500.

The bill in its amended form contains reporting requirements requested by PMSA. PMSA has stated that it is neutral on the bill if amended to eliminate the surtax exemption for academy training vessels and vessels owned by nonprofits. PMSA has no objection to the other provision of the bill.

Acting Port Agent Capt. Horton stated that bill has been further amended to strike the provision increasing the minimum charge for bar pilotage.

PMSA has raised a concern that it may not be appropriate for the Board to opine on legislation involving rate changes; however, with the minimum charge provision eliminated from the bill, the point should be moot.

There was discussion of the bill by members of the Board but there was not consensus regarding whether or under what circumstances to recommend a position to the Governor.

President Miller stated that he would prepare a draft Bill Analysis for review by the Board at its April meeting and that the Board could at that time determine its recommendation or it could choose to make no recommendation.

Item 17B: AB 2637

President Miller stated that the bill is sponsored by the Humboldt Bay Harbor, Recreation and Conservation District and authored by Assembly Member Wesley Chesbro.

The bill would:

- Include Humboldt Bay in the waters that make up the jurisdiction of the Board.
- San Francisco Bar Pilots would be licensed by the state to provide pilotage in Humboldt Bay; the Board would recommend pilotage rates and perform all the other functions it now performs with respect to our current jurisdiction.
- Section 21 of the bill would amend HNC section 1195 to add a new subdivision (d) as follows:

(d) A pilot licensed for Humboldt Bay by the Humboldt Bay Harbor, Recreation, and Conservation District shall be accepted into the pilot trainee training program for training on the Bays of San Francisco, San Pablo, and Suisun.

- Section 22 of the bill reads as follows:

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Member Morocz explained that this provision would not affect the Board and was standard language in bills of this sort.

There was discussion of the bill by members of the Board but there was not consensus regarding whether or under what circumstances to recommend a position to the Governor.

President Miller stated that he would prepare a draft Bill Analysis for review by the Board at its April meeting and that the Board could at that time determine its recommendation or it could choose to make no recommendation.

18) Discussion of Proposal for Staggering of Commissioner Terms

President Miller described his proposal that the Board's authorizing statute be amended to stagger one industry member's term (wet cargo, as it happens, held by Commissioner Osen, the

senior of the two industry members) and one pilot member's term (Commissioner Wainwright, the senior of the two pilot members). The proposal is to add one year to each of their terms. Thereafter, those two seats would "cycle" on 12/31/2013 and every four years thereafter. Both members are in their second terms. Without the change, both will be termed out on 12/31/2012.

This change would require an amendment to the language of HNC 1150.

The reason to make the change is to avoid the problem that recurs every four years when five of the seven appointed members of the Board are either termed out or are up for reappointment. The Board has been without a quorum for this reason on more than one occasion. Staggering the terms of the two proposed seats will all but eliminate this problem in the future.

President Miller stated that he had received verbal support from SFBP, PMSA, as well as the two members who would be affected by the change (Commissioners Wainwright and Osen). The change could be added to AB 1888 as an amendment.

The Board discussed the proposal and took no action. There was no opposition expressed by members of the Board.

19) Discussion of Contract Amendment on Continuing Education:

Contract with San Francisco Bar Pilots for travel to Port Revel has language regarding Business Class travel. Discuss and possibly amend to "most economical" travel.

The Board discussed the proposed change. It was moved and seconded to direct staff to amend the contract with Port Revel to delete the directive to purchase business class travel for pilots attending training at Port Revel, and to replace it with language specifying that the travel would be the "most economical refundable" travel. After discussion and comment from the public, the motion passed unanimously.

**Chairman Miller recessed the meeting for a short break (12:17 p.m.)
The meeting reconvened at 12:30 p.m. and returned to Item #12**

12) Pilot Evaluation Committee- Captain Einar Nyborg

A) Report on the March 17, 2010 Committee meeting.

The PEC Committee met on March 17, 2010. In closed session all eight trainees were interviewed individually. The current trainees include, Tylawski, Bridgman, Martin, Ruff, Merritt, Fawcett, Peery, and Kellerman. Their time in the program ranges from 10 months to 32 months. All trainee's are progressing at their own rate. The trainees with less than 12 months in the program were counseled on PEC's expectations to ensure the successful outcome of their pending 12 month review. The next PEC meeting is scheduled for April 21st, 2010.

B) Possible recommendation for the appointment of a new pilot or pilots.

Capt. Nyborg reported that two trainees have completed the training program and the members of the PEC were unanimous in recommending to the Board that Certificates of completion be issued to these two trainees, Capt. Carl Martin and Capt. Dan Bridgman. Capt. Nyborg then offered a brief background on each trainee concluding with their Training Program Performance Summary. Capt. Carl Martin completed 515 jobs of which he handled in 379 of them. 80 of those jobs were with members of the PEC and his average score (with PEC members) over the last 3 months was 4.13 on a scale of 5. Capt. Martin completed all requirements to become a state licensed pilot. Capt. Dan Bridgman completed 488 jobs of which he handled in 335 of them. 85 of those jobs were with members of the PEC and his average score (with PEC members) over the last 3 months was 4.14. Capt. Bridgman completed all requirements to become a state licensed pilot.

A motion was made by Commissioner Roberts to award a Certificate of Completion to Capt. Carl Martin. The motion was seconded by Vice President Johnston and was passed unanimously by voice vote. Vice President Johnston then moved to issue a license to Capt. Martin as of today, March 25, 2010. This motion was withdrawn when it was noted that the San Francisco Bar Pilots were not prepared to hire Capt. Martin until April 1, 2010. It was then moved by Commissioner Johnston to issue a license to Capt. Martin dated April 1, 2010. This was seconded by Commissioner Wainwright and passed unanimously by voice vote.

It was then moved by Commissioner Roberts to award a Certificate of Completion to Capt. Dan Bridgman. The motion was seconded by Commissioner Wainwright and passed unanimously by voice vote. Commissioner Roberts then moved to issue a license to Capt. Bridgman dated April 1, 2010, which was seconded by Commissioner Johnston. A unanimous voice vote was taken in favor of the motion.

C) Confirmation of reappointment of Captains Lemke and Gates as members of the Pilot Evaluation Committee.

It was noted that both Captains Lemke and Gates were not officially reappointed when their terms expired. A motion was made by Vice President Johnston to reappoint both Captains Lemke and Gates as members of the PEC. It was seconded by Commissioner Tate and unanimously passed by voice vote.

The new licensees were then given the Oath of Office by Board President Mike "knute" Miller and the Chair recessed the meeting at 12:55 for a lunch break.

The meeting reconvened at 1:30 p.m. with all Commissioners present.

23) Presentation on Pension Calculations by Graham Schmidt, EFI Actuaries

Mr. Schmidt discussed the report his firm had prepared for the Board and responded to questions from Commissioners and others.

Former Port Agent Capt. Bill Grieg, who was involved in the initial discussions concerning soliciting a bid to provide an actuarial study, noted that the initial agreement was to determine the cost of the present pension and not to compare it to any other types of pension plans.

There was discussion of the report. At the conclusion of the discussion, the Board thanked Mr. Schmidt for his presentation and took no action.

22) Presentation by IRC of its Investigation Report on the MOL PREMIUM:

The Executive Director gave an opening statement briefly summarizing the facts of the incident which involved a container ship docking in heavy weather. He then presented the Incident Report of the MOL PREMIUM to the Board and asked that the report be entered into evidence. The Executive Director then summarized the report for the Board. At the conclusion he stated he believed the incident was fully investigated and recommended to the Board the finding of no pilot error.

The Board then went into closed session to deliberate, as authorized by the Open Meeting Act, Government Code Section 11126(c)(3).

The Board returned to Open Session and reported that they have accepted the report and the finding of no pilot error.

20) Public Comment on Matters not on the Agenda

There was none.

21) Proposals for Additions to Next Month's Agenda

There were none.

21) Adjournment

President Miller adjourned the meeting at 3:45 p.m.