

**BEFORE THE BOARD OF PILOT COMMISSIONERS FOR THE
BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

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In re Report of the Allision of the)
T/V POLAR DISCOVERY with the)
T/V TORM RESILIENCE at Richmond)
Long Wharf (RLW 4), on November 24, 2019)
Pilot: Captain Roger Kirk.)
_____)

The Board of Pilot Commissioners heard this matter at its meeting of December 10, 2020. The meeting was conducted remotely, using Webex Meetings and telephone call-in. Participating in the hearing were the following commissioners: Vice President Joanne Hayes-White, presiding; Captain Robert Carr; Commissioner David Hoppes; Captain Einar Nyborg; and Commissioner Jennifer Schmid. Also present as a non-voting member of the Board was Stephanie Dougherty, representing David S. Kim, Secretary of the California State Transportation Agency. Prior to the hearing, the Incident Review Committee provided its report to the Board and to Captain Kirk, and Captain Kirk's attorney submitted a brief to the Board on Captain Kirk's behalf. The Incident Review Committee was represented by President Dave Connolly and Executive Director Allen Garfinkle. Captain Roger Kirk was present by telephone and was represented by Rex Clack, Esq. Executive Director Garfinkle introduced the report of the IRC into evidence along with related IRC exhibits. Mr. Garfinkle addressed the Board concerning the IRC report and the brief submitted on behalf of Captain Kirk. Mr. Clack addressed the Board on behalf of Captain Kirk and commented on the IRC's report and the points raised in his brief on behalf of Captain Kirk. At the conclusion of the hearing, the public record was closed and the Board adjourned to closed session to deliberate.

Having considered the evidence and the statements of Executive Director Garfinkle and Mr. Clack, the Board makes the following determinations:

FINDINGS

1. The Board has discretion to take a range of actions in response to incidents involving "misconduct" by a pilot. Where the actions of a pilot are thought serious enough to warrant possible suspension or revocation of the pilot's license, the Board may serve and file an accusation and proceed to a formal administrative hearing under sections 11500 through 11529 of the Government Code. Short of suspension or revocation, the Board may take a variety of lesser actions authorized by the Harbors and Navigation Code (Harb. & Nav. Code, § 1180.6, subd. (b)((2)-(7)) and the Board's regulations (Cal. Code Regs., tit. 7, § 210, subd. (e)). In determining whether to take such lesser actions, including the decision whether to file an accusation, the Board may proceed under the informal administrative adjudication provisions of sections 11400 through 11450.50 of the Government Code. These proceedings were conducted under the informal administrative adjudication provisions of sections 11400 through 11450.50.

2. Section 1181, subdivision (g) of the Harbors and Navigation Code defines “misconduct” to include, among other things, “negligently, ignorantly, or willfully running a vessel on shore, or otherwise rendering it liable to damage, or otherwise causing injury to persons or damage to property.”

3. The facts set forth in the report of the Incident Review Committee and summarized below establish negligent conduct by Captain Kirk in his attempt to dock the POLAR DISCOVERY at Berth 4 of Chevron’s Richmond Long Wharf on November 24, 2019. In this attempted docking, the crude-oil tanker piloted by Captain Kirk allided with the bow of the TORM RESILIENCE, a docked oil-products tanker that was in the process of loading jet fuel from loading arms on the dock. The allision damaged both tankers, the adjacent dock, and the loading arms, and spilled jet fuel onto the deck of the TORM RESILIENCE.

4. Captain Kirk was assigned to pilot the POLAR DISCOVERY, a tanker carrying a cargo of crude oil, from Anchorage 9, situated south of the Bay Bridge, to Chevron’s Richmond Long Wharf, which lies just south of the Richmond-San Rafael Bridge. This is a busy oil terminal facility at which Board-licensed pilots routinely execute without incident the type of docking maneuver attempted by Captain Kirk.

5. Captain Kirk boarded the POLAR DISCOVERY at approximately 0442 on November 24, 2019. He conducted the required master-pilot exchange with the ship’s master, but he did not make all members of the bridge team aware of his planned maneuvers for docking the vessel at the Richmond Long Wharf, nor did he inform them of a contingency plan in the event the docking did not proceed according to plan.

6. Captain Kirk’s plan was to dock the POLAR DISCOVERY at Richmond Long Wharf Berth 4 with its port side against the dock (“port-side-to”). That would leave its bow facing south, pointing at the bow of the TORM RESILIENCE, which was docked starboard-side-to at Richmond Long Wharf Berth 3, with its bow facing north. To accomplish this docking, the POLAR DISCOVERY, assisted by tugs, would have to turn approximately 160 degrees to starboard in the maneuvering basin adjacent to the wharf, then back toward Berth 4.

7. Acting together, the POLAR DISCOVERY and the assisting tugs were capable of accomplishing this docking maneuver. The vessel was equipped with redundant propulsion and steering systems. These systems are aimed at avoiding dependency on a single propulsion or steering system, the loss of which could result in an accident and an oil spill. The POLAR DISCOVERY had two independent engine rooms and two propellers, each propeller having controllable pitch and capable of independent operation. Each propeller had its own rudder, also capable of independent operation. The assisting tugs, SARAH, VIGILANT, and DELTA CATHRYN, are among the most powerful and maneuverable on the Bay, with enhanced capability to brake a vessel by pulling on lines made fast to the vessel and to alter its direction by pulling on a line or pushing against its hull.

8. The POLAR DISCOVERY approached the Richmond Long Wharf by proceeding north in the Southhampton Shoal Channel, which is marked by pairs of buoys on the west and east margins of the channel, odd-numbered buoys to the west, even-numbered buoys to the east. It

entered the channel at buoys 1 and 2. Between these buoys and the next pair of buoys, 3 and 4, the VIGILANT made fast to the POLAR DISCOVERY's stern with a line extending centerline aft, and the DELTA CATHRYN made fast with a line from the starboard bow. The third tug, SARAH, was stationed off the port bow, with no line. Captain Kirk planned to have the SARAH, at the appropriate time, come around and push on the starboard quarter of the POLAR DISCOVERY, thus assisting completion of the 160-degree clockwise turn that would lead to the ship's docking port-side-to at Berth 4.

9. At about 0725, as the ship passed buoys 5 and 6, Captain Kirk initiated a turn to starboard into the wharf maneuvering area, using 45 degrees of rudder and then issuing successive engine orders for slow ahead and half ahead, thereby increasing propeller speed and thus rudder effectiveness by increasing water flow across the surface of the rudders. His speed at this point was 7.6 knots. Although Captain Kirk had reduced the ship's speed prior to ordering the turn, this speed was still too fast, given the maneuver that Captain Kirk intended to complete within the maneuvering basin. In response to the 45-degree rudder order, the ship's rate of turn to the right increased continuously, peaking at 18.8 degrees per minute. When the helmsman advised Captain Kirk that the ship had passed due north in its rotation, Captain Kirk responded, "Ok, you don't need to tell me, thank you." Had the rate of turn been maintained, the POLAR DISCOVERY would have rotated into position for its port-side-to docking. Unaccountably, however, Captain Kirk ordered the rudder reduced, from 45 degrees to the right to 10 degrees to the right, even though the ship still had approximately 90 degrees more to turn to the right to effect the planned maneuver. At this point, the ship was traveling at 5.8 knots, still too fast for the contemplated maneuver. As explained in the IRC report, this excessive speed "foreclosed any maneuvering options should something fail or not go according to plan." Predictably, following the 10-degree rudder order, the rate of turn decreased precipitously from 18.8 degrees per minute, to 10.5 degrees three minutes later, then to 4.4 degrees just prior to the allision with the dock and the TORM RESILIENCE. As a result of the 10-degree rudder order and the consequent reduction in the rate of turn, the turn "stalled."

10. The ship's speed, however, continued unabated, moving the POLAR DISCOVERY toward the dock and the TORM RESILIENCE at an angle of approximately 90 degrees. The ship's master made several attempts, increasingly specific, to prompt Captain Kirk to take action that would brake the vessel's speed. First, he advised that, "I've got the props split so you can back one or the other." Captain Kirk responded with "slow astern," then "half astern," in rapid succession. Then, with less than 100 feet to the bow of the TORM RESILIENCE, the master asked Captain Kirk, "You want me to back full?" That was followed by "You want to get the VIGILANT going there?" meaning getting the aft tug to brake the vessel's speed by pulling aft on the line made fast to the vessel's stern. Faced with inaction by Captain Kirk, the master himself ordered the engines full astern.

11. Apart from his failure to use the POLAR DISCOVERY's engines effectively to slow the ship, Captain Kirk also failed to use the tugs effectively to reduce the ship's speed or aid the ship's rotation. At no time did he order the VIGILANT to pull aft on the line made fast to the POLAR DISCOVERY's stern to slow its headway toward the TORM RESILIENCE and the dock. Concerning rotating the ship clockwise toward the dock, he first ordered the VIGILANT to pull the stern to port. Scarcely one minute from allision with the TORM RESILIENCE, he then

ordered the VIGILANT to cease pulling to port and cross around the stern of the ship to the starboard quarter and to begin pushing there, along with the SARAH. Until the VIGILANT could complete its change of position to the starboard quarter, this movement of the VIGILANT rendered it useless at the very time it was most needed to respond to the emergency that Captain Kirk had created by stalling the POLAR DISCOVERY's turn with a reduced rudder order and failing to reduce vessel speed.

12. Further, as set forth on page 21 of the IRC report, Captain Kirk's instructions to the tugs during this critical period were confusing and sometimes contradictory, resulting in delayed execution of maneuvers that needed to be undertaken immediately to be effective. His communications with both the DELTA CATHRYN and the VIGILANT prompted time-consuming exchanges with the tug operators, who sought clarification. These exchanges delayed ultimate execution of maneuvers that, timely implemented, might have avoided the allision and the resultant damage. For instance, when the operator of the VIGILANT inquired whether Captain Kirk wanted to move the ship away from or toward the dock, Captain Kirk replied "no, away" followed closely by "towards the dock." The operator of the VIGILANT replied, "not sure what you want the VIGILANT to do." Captain Kirk replied with, "VIGILANT, my stern to port full speed." These confused, hurried exchanges, which took place inside one minute from the impending allision, are perhaps understandable, given the little time left to Captain Kirk to react to an emergency situation, but that emergency situation was of his own making.

13. At about 0735, as the POLAR DISCOVERY was "flattening" toward its ultimate position parallel to the dock at Berth 4, its bow allided with the dock and the bow of the TORM RESILIENCE, which was in the process of loading jet fuel from loading arms on the dock. The allision damaged the POLAR DISCOVERY's shell plating, damaged the bow bulwark area of the TORM RESILIENCE, crushed a piling supporting the dock, and displaced the loading arms, spilling jet fuel onto the deck of the TORM RESILIENCE. Fortunately, the jet fuel spill was contained on the deck of the TORM RESILIENCE and found no ignition source.

14. The allision caused damage estimated at six million dollars.

15. In attempting this docking, Captain Kirk lost situational awareness in three important respects. First, from a temporal standpoint, he did not adequately monitor the effect the vessel's speed was having on his docking maneuver; that is, how the vessel's excessive speed was narrowing or eliminating his options should anything go wrong. Second, from a geographical standpoint, he lost sense of how close the POLAR DISCOVERY was to the dock and the TORM RESILIENCE. Even though the Chief Mate on the bow called out the distances between the ship and the dock on his VHF radio, starting at 200 feet, it was only after the Chief Mate reported that the ship was 100 feet off the dock that Captain Kirk ordered half astern and ordered the DELTA CATHRYN to pull three-quarters away in an attempt to pull the bow to starboard and away from the TORM RESILIENCE. And even then, the master had to intervene and order full astern. Third, Captain Kirk lost awareness of the systems available to him to escape this perilous situation. This is evidenced by his belated use of necessary engine orders and also by his failure to timely and effectively use his tugs. Concerning the VIGILANT, he never ordered it to pull straight aft, which would have retarded the ship's headway. And in ordering the VIGILANT to cease pulling to port and to circle around to the starboard quarter to push from there, he lost sight

of the fact that he was depriving the ship of critical tug services while the VIGILANT repositioned itself, just when those services were needed most. Concerning the DELTA CATHRYN, his belated series of increasing "away" orders were too little, too late. Finally, his ability to effectively use all three tugs was compromised by the ship's excessive speed, which resulted in the tugs using a significant portion of their energy just to keep pace with the ship, thereby reducing the power available to retard the ship's headway or assist in the turn.

16. Although it is possible that Captain Kirk may have been fatigued, there is insufficient evidence to establish that fatigue was a contributing factor to this incident. Captain Kirk's duty period began at 2300 hours on November 23, when he drove to the Richmond Long Wharf to leave his car there so he could drive home after the POLAR DISCOVERY assignment, which would be his second job that night. From there, he was taken by car to the Pilot Office at Pier 9 on the San Francisco Embarcadero and then by pilot boat to Anchorage 9 for his first assignment. He had slept from 0100 to 0700 the night before and slept another six hours between 1300 and 2200 the following afternoon and evening, before leaving for Richmond. He therefore had a total of 12 hours of sleep in the 24 hours preceding the start of his duty period at 2300. His first assignment that night was shifting a vessel from Anchorage 9 to Oakland Berth 59. That job started at 0130 and ended at 0345, followed by a trip by pilot boat to the POLAR DISCOVERY, which he boarded about an hour after concluding the first assignment. The allision occurred at about 0735. The total elapsed duty time between 2300 and 0735 was 8 hours and 35 minutes. At that time, the work rules of the San Francisco Bar Pilots prescribed a limit of 10 work hours for duty periods that included hours between 0000 and 0600. This workhours limit was aimed at reducing the possibility of fatigue and consequent reduced effectiveness related to the body's "circadian low," which occurs in the early hours of the morning. In recognition of the different fatigue potential, the work rules prescribed a shorter workhours limit for nighttime work than for daytime work. Even though these two assignments ran through the circadian low in the early hours of November 24, the work period was well within the 10-hour limitation on nighttime work hours prescribed by the work rules of the San Francisco Bar Pilots. It is notable that Captain Kirk could have obtained additional sleep had he not, for reasons of personal convenience, first driven his car to Richmond rather than driving to Pier 9, where the pilot boat awaited to take him to Anchorage 9.

CONCLUSIONS

1. The word "misconduct" is given a specific definition in the statute, separate and apart from its meaning in general usage. Section 1181, subdivision (g) of the Harbors and Navigation Code defines "misconduct" to include, among other things, "negligently, ignorantly, or willfully running a vessel on shore, or otherwise rendering it liable to damage, or otherwise causing injury to persons or damage to property." Because "misconduct" is specifically defined in the statute to include negligence, there is no need to resort to more general definitions of "misconduct" found in a dictionary. In other words, "negligently . . . rendering [a vessel] liable to damage, or otherwise causing injury to persons or damage to property" is alone enough to constitute "misconduct" as defined by section 1181. Where negligence is present, no additional elements need be proven to establish "misconduct." Specifically, for instance, there is no need to go beyond a finding that a pilot was negligent and find further that a negligent act was of "grave and

weighty character,” or “unlawful,” or “premeditated,” or “intentional,” or caused by “obstinate indifference to the consequences of one’s acts.”

2. The IRC report at page 14 sets forth the standard for determining whether a pilot acted negligently:

The negligence standard of care calls for an evaluation of whether a pilot exercised that degree of care and skill possessed by the “average pilot.” He must exercise the degree of skill commonly possessed by others in the same employment, and although a pilot is not liable for mere errors in judgment, he is liable for damage caused by failure to exercise the diligence which others similarly situated would ordinarily have exercised. This is a high standard of care one would expect of an expert, such as a maritime pilot.

3. Captain Kirk was negligent in multiple ways:

- He was moving the POLAR DISCOVERY at excessive speed as it passed buoys 5 and 6 and as he initiated the turn to starboard, and he maintained that excessive speed through the turn and in the approach to the dock due to his insufficient and ineffective use of the ship’s engines and the tugs.
- He lost appropriate rotation of the ship due to misuse of the rudder. After the initial order of starboard 45 degrees, he put the rudder to starboard 10 degrees and never used the rudder again. As a result, the ship’s intended 160-degree clockwise rotation stalled in mid-turn, approximately 90 degrees short of completion of the planned rotation.
- He was too late in issuing astern engine orders, and those engine orders he did issue were too moderate to sufficiently retard the ship’s headway toward the dock. When he failed to timely give a full-astern order after prompting by the ship’s master, the master gave the order himself.
- He made ineffective use of the tugs, both in retarding the ship’s excessive speed and in assisting the rotation. He never ordered the VIGILANT to pull aft on its line to the ship’s stern, even after prompting by the master. And he deprived the ship of the services of the VIGILANT at a critical juncture when, close in time to the allision, he ordered the VIGILANT to cease pulling to port and to come around the stern and commence pushing on the starboard quarter. Finally, his use of the tugs was impaired by confusing and sometimes contradictory orders to the tugs, which resulted in precious time being lost in responding to requests for clarification by the tug operators.
- He failed to adequately share specific details of speed and rotation in his maneuvering plan with the bridge team and failed as well to develop and share with them a plan for possible contingencies that might disrupt the planned maneuver. This tended to isolate him from helpful input that might have avoided the allision. At one point, he even discouraged such input, telling the helmsman, “Ok, you don’t need to tell me, thank you” when the helmsman advised Captain Kirk that the ship had passed due north in its rotation.
- He lost situational awareness in several ways: by failing to appreciate the effect the ship’s excessive speed was having on the docking maneuver; by losing a sense of how close the POLAR DISCOVERY was to the dock and the TORM RESILIENCE; and by losing

awareness of the systems at his disposal—the ship’s engines and rudders and the tugs—all with the result that he alone created an avoidable emergency.

4. Depending on the results of a formal hearing under sections 11500 through 11529 of the Government Code, this negligent conduct may constitute a basis for suspending Captain Kirk’s pilot’s license.

5. Apart from that possible response to this incident, Captain Kirk’s negligent conduct indicates a need for a significant retraining regimen. Such a training regimen may be imposed following a hearing conducted under sections 11400 through 11450.50 of the Government Code, which authorize the informal hearing procedure used here.

ORDER

1. An accusation shall be filed with the Board seeking a 12-month suspension of Captain Kirk’s pilot license.

2. Within one year of the date of this Order, Captain Kirk shall enroll in, and complete at his own expense, the following training: (a) manned model training, (b) a course in bridge resource management, and (c) a course in fatigue risk management. This training shall have the prior approval of the Board’s Executive Director, and its completion shall be certified by those persons or entities providing the training. Captain Kirk has notified the Executive Director that he has a condition that renders him unable to pilot. He shall not be allowed to pilot vessels until the Executive Director notifies him that (a) he has received a fit for duty determination by a Board-appointed examining physician and the Medical Review Officer, signifying that he is mentally and physically qualified for duty as a pilot, and (b) he has completed all of the required training set forth above.

Dated: January 28, 2021


JOANNE HAYES-WHITE
President, Presiding