



September 13, 2024

Allen Garfinkle, Executive Director
Board of Pilot Commissioners
State of California
660 Davis St.
San Francisco, CA 94111
Delivered via email to bopc@bopc.ca.gov

COMMENTS: Proposed Rulemaking – Amendments to §236.1. Pilot Boat Surcharge

Dear Executive Director Garfinkle,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), which includes ocean carriers and marine terminal operators conducting business at California’s public seaports, we respectfully submit these comments regarding the Board of Pilot Commissioners (BOPC) proposed amendments to 7 CCR §236.1 regarding Pilot Boat Surcharges.

PMSA is supportive of these proposed changes.

The proposed amendments reflect and put into operation a number of statutory changes to the Harbors and Navigation Code that were made effective upon the passage of AB 2056 (Chap. 769, Statutes of 2022). This bill was co-sponsored by PMSA along with the San Francisco Bar Pilots (SFBP). We believe that these proposed amendments to these regulations effectively implement the changes enacted by AB 2056 consistent with the intent of that legislation.

These amendments to §236.1 reflect the creation of the new Pilot Boat Surcharge Account to be managed by the Board and further update and revises the very successful system of necessity, preliminary authorization, and final authorization determinations by the BOPC to further reflect statutory changes and lessons learned from utilization of this process.

PMSA does not suggest any changes to the draft language, nor do we believe that amendments and a 15-day process are necessary, however we do have one observation to make. We respectfully request that the BOPC Final Statement of Reasons affirmatively address this observation per the below and clarify the intent as stated herein.

Under the prior statutes and current §236.1, the pilot boat surcharge was only collected and then allocated to cover already spent sums, and therefore a pilot boat surcharge rate was always retrospective and authorized for recovery only. Under proposed §236.1 (h), this language is retained. We believe that this is proper, in that the surcharge rate can only generate revenues sufficient to recover costs authorized by the Board for recovery as a matter

of law. However, if one were to potentially adopt an alternative reading of this language, it could be inferred that since this rule language has not been changed, it therefore would continue to disallow the use of prospective boat surcharge adjustments to generate the revenues sufficient to cover future cost recovery.

In response to this issue, we respectfully request that the FSOR clarify that, under AB 2056 and these regulations as applied, that the BOPC can review and adjust the pilot boat surcharge prospectively with the understanding that the proceeds of the surcharge generated would then be available to be used to recover Board-authorized expenses.

PMSA does not request a public hearing for this proposed rule or to discuss the FSOR.

Sincerely,

A black rectangular redaction box covering the signature of Mike Jacob.

Mike Jacob
President