

Agenda Item 13B: Possible Joint Pilot Board Advisory Committee and Finance Committee recommendation regarding public comments received on the proposed changes to the Pilot Boat Regulations

Agenda Item 13B-01: Revised Express Terms for Pilot Boat Regulations

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

REVISED EXPRESS TERMS

November 14, 2024

Title 7. Harbors and Navigation
Division 2. State Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo, and Suisun

CHANGES TO THE TEXT

The amendments that were the subject of the 45-day comment period are shown in underline to indicate additions and ~~strikeout~~ to show deletions.

Following the 45-day public comment period that ended on September 13, 2024, in response to public comments, changes were made to Section 236.1, subsection (h). The changes to the proposed regulatory action are denoted by a **yellow highlight** and **red double underlined text** for additions. There were no deletions from the text.

Amend Section 236.1 of Title 7, California Code of Regulations to read as follows:

§ 236.1. Pilot Boats ~~Surcharge~~.

(a) A separate surcharge on pilotage fees called a Pilot Boat Surcharge is authorized by Section ~~190(a)(1)(B)~~1194 of the Harbors and Navigation Code to recover ~~those of~~ the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for extending the service life of existing pilot boats that are authorized by law. The surcharge is in the form of additional mills per high gross registered ton payable to the Pilot Boat Surcharge Account. This section sets forth the procedures for obtaining the Board's authorization for the pilots to recover such costs from the Pilot Boat Surcharge Account and to set and periodically adjust the Pilot Boat Surcharge.

(b) For purposes of this section, the term "new pilot boat" shall include an existing vessel acquired from another owner.

(c) Requests made pursuant to this section shall be submitted to the Board in writing and shall be supported by the data and documentation required by this section. The requesting party must establish to the satisfaction of the Board that the expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are - or, if those costs have already been incurred, were - reasonable and necessary. The process requires a necessity determination, a preliminary authorization and a final authorization, which are described in subsections (d), (e) and (f) respectively.

(d) Necessity Determination

(1) A request for a Board determination that expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are or were necessary may be made prior to or at the same time as a request for preliminary authorization to recover such costs.

(2) The Board may consider a request for a necessity determination at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a necessity determination shall be sufficient to allow the Board to assess the remaining service life of the existing pilot boats, both with the proposed life extension modifications, if any, and without such modifications. ~~The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder.~~

(4) The Board or its advisory committee may request additional documentation or conduct its own review prior to making a necessity determination hereunder.

~~(45) A necessity determination made under this section shall be valid for one year unless directed otherwise by the Board.~~ The Board may issue a necessity determination that may include a validity period.

(e) Preliminary Authorization

(1) A request for the Board's preliminary authorization to recover the pilots' costs of obtaining new pilot boats or funding design and engineering modifications and the cost of ~~of~~ extending the service life of existing pilot boats shall precede a request for a final authorization and shall include a request for a necessity determination unless a necessity determination is pending or has been issued by the Board and remains valid.

(2) A preliminary authorization may be submitted to, considered, and approved by the Board in project stages.

(3) A preliminary authorization may be submitted to, considered, and approved by the Board in conjunction with a necessity determination.

~~(24)~~ The Board may consider a request for preliminary authorization at a duly noticed regular or special meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

~~(35) Documentation in support of a request for preliminary authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include basic design and performance specifications, cost estimates, proposed timeline of major milestones for design and construction of a new pilot boat or for acquisition and modification of an existing vessel, or installation of life extension modifications onto an existing pilot boat, and may include plans for long term financing. The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a preliminary authorization hereunder.~~

(6) The Board or its advisory committee may request additional documentation from the requesting party or conduct its own review prior to issuing a preliminary authorization hereunder.

~~(47) The purpose of a preliminary authorization is to provide an opportunity for meaningful and early communication among affected parties and the Board on issues relevant to the costs of obtaining new pilot boats or of funding design and engineering modifications of existing pilot boats. Preliminary authorizations may be issued in stages as circumstances dictate.~~

~~(58) The Board may issue a preliminary authorization on such terms as it may deem appropriate to provide guidance to the parties on such matters as have been addressed and to set the conditions and timing for a final authorization determination. The authority to recover costs under this section or to set a Pilot Boat Surcharge rate shall only be issued after a final authorization.~~

(f) Final Authorization

(1) A request for final authorization to recover the pilots' costs of obtaining new pilot boats or of funding design and engineering modifications intended to extend the service life of existing pilot boats may be submitted to the Board at such time as may have been directed in the Board's preliminary authorization issued pursuant to subsection (e)(~~58~~).

(2) A final authorization may be submitted to, considered, and approved by the Board in project stages.

~~(23) The Board may consider a request for final authorization at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.~~

~~(34) Documentation in support of a request for final authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include such information and data as determined in the preliminary authorization.~~

~~(4) In the case of service life extension modifications, the documentation shall also include sufficient data to determine and quantify the associated operational savings, including reduced repair and maintenance expenses that are reasonably expected to result from the service life extension modifications, and shall set forth the proposed basis for periodic review to determine actual savings over the life of the pilot boat.~~

(5) The Board or its advisory committee may request additional documentation from the requesting party or conduct its own review prior to issuing a final authorization hereunder.

(6) ~~(A)~~ The Board may issue a final authorization ~~setting that shall set forth the costs to be recovered by the pilots under this section, and the reasons therefor, the initial surcharge rate and the date it is to go into effect.~~

(B) Boat repair and maintenance costs cannot be included in a final authorization.

~~(7) The Board may, as a condition of issuing a final authorization relative to proposed service life extension modifications to existing pilot boats, require periodic data from the requesting party to identify any associated operational savings, including reduced repair and maintenance expenses, resulting from such modifications and adjust the Pilot Boat Surcharge rate from time to time to reflect such savings.~~

~~(8) The Port Agent shall provide timely information to the Board of the sale or other disposition of any pilot boats, of the net proceeds from such sale or disposition, and of the manner in which the net proceeds are to be used to reduce the debt or pay the outstanding cost associated with the new pilot boat or with the modifications to existing pilot boats hereunder. The Board may adjust the Pilot Boat Surcharge rate or reduce the costs to be recovered thereby to ensure compliance with the debt reduction provision of Harbors and Navigation Code Section 1190(a)(1)(B). For purposes of this section, "sale of existing pilot boats" shall include donation or other disposition of an existing pilot boat, and "net proceeds" from such sale includes the tax benefit realized from such donation less the costs associated with the donation.~~

(g) A Pilot ~~Vessel~~Boat Advisory Committee may be appointed pursuant to Section 208 to review and assess the documentation relative to the requests pursuant to subsections (d)(~~34~~), (e)(~~36~~) and (f)(~~36~~) of this section, to conduct independent investigation of the issues and request additional documentation as it may deem appropriate, and to develop recommendations to the Board relevant to such requests or as otherwise directed by the Board. Actions on the requests shall only be taken at duly noticed meetings of the Board.

(h) The Finance Committee of the Board shall periodically, or at such times as the Board may direct, review the costs authorized or anticipated to be authorized, for recovery and the current and projected income from the Pilot Boat Surcharge and shall prepare recommendations to the Board for periodic adjustments to the surcharge rate to ensure that the surcharge rate is sufficient to recover all costs - and only those costs - authorized or anticipated to be authorized by the Board for recovery. The rate should be sufficient to ~~maintain a commercially reasonable reserve to allow for ordinary or anticipated~~ fluctuations in surcharge income until all costs authorized have been recovered. The rate should also be sufficient to cover the administrative costs of the Board with respect to administration of the Pilot Boat Surcharge Account, including any audits of the usage of the Pilot Boat Surcharge Account funds, not to exceed five (5) percent of all moneys collected. Any rate adjustment shall be made by Board action at a duly noticed meeting and shall take effect at such dates as the Board may direct.

~~(i) For purposes of this section, “sale of existing pilot boats” shall include donation or other disposition of an existing pilot boat, and “net proceeds” from such sale includes the tax benefit realized from such donation less the costs associated with the donation.~~

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1159.1, ~~1190(a)(1)(B)~~1194 and 1194.1, Harbors and Navigation Code.

Agenda Item 13B-02: Public Comment Letter #1

From: Millspaugh, Matthew@BOPC
To: Garfinkle, Allen@BOPC
Subject: FW: Proposed Regs Comment Period
Date: Monday, September 9, 2024 2:09:20 PM

FYI

From: Anne McIntyre [REDACTED]
Sent: Monday, September 9, 2024 1:48 PM
To: Millspaugh, Matthew@BOPC [REDACTED]; Mike Jacob
[REDACTED]
Cc: Kevin Baldwin [REDACTED]
Subject: Proposed Regs Comment Period

EXTERNAL EMAIL. Links/attachments may not be safe.

Hi Guys,

Kevin has completed a review of the regs that are out for public comment. He raised the below point. It seems this is something we should review to make sure that the regs are aligned so that we can prospectively collect funds?

The only thing I see that might be an issue is that the rules don't allow for prospective mill rate adjustment—the finance committee can only review the currently authorized costs and projected income. They cannot, for example, raise the mill rate in anticipation of the need to build new boats for which final authorization has not yet been given. Seems like it might be advantageous to be able to plan ahead with mill rate adjustments.

Capt. Anne L. McIntyre
Business Director
San Francisco Bar Pilots

Agenda Item 13B-03: Public Comment Letter #2



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 Bay 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,



Mike Jacob
President