

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

February 8, 2007

Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Ole Mackey, Bill Snyder, Pat Hannigan, Vince Addington, Craig Lee
and Andy Palmer

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Richard McCurdy, Walt Tabler: Puget Sound Pilots

Mary Nelson: Port of Grays Harbor

LCDR Jason Tama, CDR Mark McCadden, Ken Alger, Ron Kinsey: USCG Sector Seattle

Matthew Darbous: Quay Cruise Agencies, USA

Katharine Sweeney: pilot applicant

Eric Skewis, Chad Clapp: pilot aspirants

REGULAR MEETING

The regular meeting of the Board of Pilotage Commissioners was convened at 9:35 a.m. by Chairman Harry Dudley at 2901 Third Avenue, Seattle, Washington.

The Board welcomed Puget Sound Pilot, Captain William Snyder, as the Governor's appointee to the Board to replace Commissioner Jay Niederhauser who resigned in December. Captain Snyder's appointment took effect December 15, 2006.

Minutes. Under NEW BUSINESS on page two, Commissioner Hannigan asked for clarification concerning the TEC's role regarding the *HORIZON PACIFIC*. Chairman Dudley stated it was not his intent in his friendly amendment to Commissioner Hannigan's motion to remove the TEC's involvement from the Board's invitation to Captain Arnold to re-write his MSO report. The December 14, 2006 Minutes stand approved as written.

OLD BUSINESS

Review of Interpretation of RCW 88.16.190 ~ regarding the *MISS CLAUDIA*. The Board asked its legal counsel, Susan Cruise, to perform research on the legislative history of the 1994 amendments to RCW 88.16.190 with respect to the definition of "deadweight tons". This came about when the Board's definition of long tons of 2240 pounds was challenged by PSP who defines it as metric tons of 2200 pounds. Susan presented her analysis and conclusions followed by Walt Tabler presenting for PSP. Other Board members weighed in with various opinions. After debating numerous issues at length Commissioner Hannigan presented a motion, seconded by Commissioner Lee, as follows: "To the extent there is an ambiguity in the language of RCW 88.16.190(e) providing an exception to the tug escort requirement for tankers under 40,000 deadweight tons, it is the interpretation of this Board that the tonnage referred to in this subsection (e) exception is for all tank vessels the metric tonnage specified in Lloyd's Register. This interpretation is guided by the language of the statute and the policies articulated in RCW 88.16.170 which favor a broad application of tug escort requirements to increase the safety margin on transits of loaded tankers in the waters of Puget Sound." Chairman Dudley offered a friendly amendment as follows: "It is the policy of the Board of Pilotage Commissioners that the term "deadweight tons" referred to in RCW 88.16.190 shall be as measured in metric tons." In addition, to clarify that this language only speaks to the requirement for tug escorts, (40,000 DWT, not 125,000 DWT) additional language in the amendment was recommended by Chairman Dudley as follows: "Provided that a tanker assigned a deadweight of less than 40,000 DWT at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 – 88.16.190." In lieu of that, Commissioner Hannigan proposed the insertion of the phrase "with regard to the requirement for escort tugs" after the words "It is the policy of the Board that . . . ". After more discussion, Chairman Dudley cautioned the Board to take their time considering this motion and recommended reading the *Ray v. Atlantic Richfield* decision before voting

on the adoption of this policy statement. It was moved by Commissioner Lee and seconded by Commissioner Addington to table the motion for further consideration. The motion carried. Between now and the next meeting Commissioner Hannigan will fine tune the motion and accept any input from others to make further modifications.

Consideration of Tabled Motion to Enact a Statement of Policy Regarding RCW 88.16.190. The motion on the table is "it is the policy of the Washington State Board of Pilotage Commissioners to recommend to owners or charters of oil tankers under 40,000 DWT as defined in RCW 88.16.190 the use of tug escorts when moving cargo into, out of, or between ports in the Puget Sound Pilotage District beyond a point east of a line extending from Davidson Island Light south to New Dungeness Light." Commissioner Palmer stated that the intent for his motion is advisory to all laden oil tankers, and extends outside the statutory reach. As the maker and seconder of the motion, it was moved by Commissioner Lee and seconded by Commissioner Hannigan that the tabled motion be untabled. The motion carried. It was determined that an amendment proposed by Chairman Dudley could not be accepted since the seconder of the motion, Commissioner N. Davis, was not in attendance. In lieu of that, it was moved by Commissioner Snyder and seconded by Commissioner Hannigan that the motion be amended by replacing the words, "moving cargo into, out of, or between ports" with "underway not in ballast". The motion carried with a vote of six in favor and Commissioner Lee abstaining. After hearing many concerns and discussing the sensitivity of this issue it was moved by Commissioner Palmer and seconded by Commissioner Addington that the amended motion be tabled. The motion carried.

Pilot's Report of Marine Safety Occurrence: *HORIZON PACIFIC*, 11-13-06. In a letter dated 2-7-07 from Mr. Stan Loosmore on behalf of Captain Jed Arnold, the Board has been advised that he has accepted the Board's invitation to consult with the members of the TEC to analyze the November 13th occurrence to prepare a list of lessons learned and to revise his MSO report. The Board granted Captain Arnold more time to complete these tasks.

NEW BUSINESS

2007 Legislative Activity Report. Peggy Larson reported that the agency request legislation and supplemental budget request are ongoing.

Pilot's Report of Marine Safety Occurrence: *ATB TARPON*, 12-26-06. While transiting northbound at the south end of Rosario Straits bound from Seattle to the Anacortes Center Anchorage, the *ATB TARPON* lost a generator. All navigation gear in the wheelhouse stopped working including the steering. The pilot took the engines out of gear and managed to gain control of the vessel's heading and speed. VTS was called and shortly all systems returned to normal. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that this report of a navigational safety concern be filed as a Marine Safety Occurrence. The motion carried.

2007 Annual Tariff Hearings Preparation: Establish PSPD and GHPD Timetables for Document Submission. Timetables for tariff document submission have been drafted for Board consideration for both the PSPD and GHPD. In the interest of providing more time for review and analysis of tariff data, Commissioner Addington requested that the timetable be amended to either advance the submission of the PSP Financial Statement by one month to March 5th, or push back all other elements of the schedule if the financials aren't received until April 5th. As an alternative, Walt Tabler suggested an earlier PSP Financial Statement submittal date as well as moving the April and May meeting dates out but keeping the new tariff effective date of July 1. After further discussion it was moved by Commissioner Addington and seconded by Commissioner Lee that the timetable for the PSPD be adjusted as follows: March 1 & 8 remain unchanged, April 5 changes to April 2, April 12 changes to April 19, April 25 changes to May 3, May 3 changes to May 17, May 10 changes to May 23, and the July 1 effective date remains unchanged. This includes changing the April meeting date to the 19th and the May hearing/meeting date to the 23rd. Also included in the motion is a proviso to revisit this if PMSA and Polar representatives, who are not present today, object. The motion carried. With respect to Grays Harbor, it was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the timetable for the GHPD remains unchanged except that April 12 changes to April 19. The motion carried.

Review and Analysis of Pilotage District Statistical Reports. During the recent agency audit completed by the State Auditor, certain issues were raised concerning the accounting of the trainee stipend revenue. As a result, PSP staff and BPC staff have met and discussed proposed changes to the way PSP reports the surcharge billing, revenue collection and remittance of payments to the BPC. A more comprehensive aging report has been proposed and will be the focus of satisfying the Board and the State Auditor through an improved reporting system. At the request of BPC staff, it was determined that at the time the Board commenced the trainee stipend surcharge program, the surcharge amount was based on the number of pilot assignments, not vessel movements. PSP has amended their reports to reflect the correct identifier and will begin submitting this data monthly rather than quarterly. The tariff language in the WAC will be amended to reflect this clarification at the time of the annual tariff hearing set for May. Also, the Board reviewed a sampling of monthly/quarterly/annual reports submitted by PSP and GHP with an eye for determining if the data has significant value in terms of annual reporting to the Governor, tariff setting, setting the number of pilots, or just simply informational. An inquiry was made regarding whether these reports could be received electronically from PSP.

Approval of Pilot License Upgrade Programs for Captains Blake, Bujacich, Carlson and Sliker. It was moved by Commissioner Addington and seconded by Commissioner Palmer that the license upgrade letters for Captains Michael Blake, Jack Bujacich, Ivan Carlson and Bill Sliker be approved as drafted by the TEC with one minor recommended change by Chairman Dudley. The motion carried.

Appointment of New Trainee Evaluation Committee Member. The Board has received a letter from Captain Jay Niederhauser stating his intent to resign from the Trainee Evaluation Committee effective today. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey to accept the recommendation of the Trainee Evaluation Committee and nominate Commissioner Bill Snyder as the new member of the TEC replacing Commissioner Niederhauser. The motion carried.

Committee Reports: Trainee Evaluation Committee

- The TEC conducted an orientation session on January 2 for new trainees Bruce Nelson and Ed Marmol.
- The TEC reported favorably on the status of all four trainees. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the TEC recommends to the Board that Captain Marmol, having completed his initial evaluation, be approved to advance in the training program pursuant to WAC 363-116-078(5)(c). The motion carried.

Pilots' Activity Reports. Captain Richard McCurdy, President, Puget Sound Pilots, reported that a Chesapeake Federal Pilot recently lost his life while boarding a ship off Cape Henlopen at the mouth of Delaware Bay; there were 559 jobs in November and 666 jobs in December for an average of 633 for the past 3 Decembers; 59 comp days were assigned and 55 were taken in December; the heaviest day in December was 28 jobs; there was one delay due to weather; there were 665 jobs in January resulting in a three year January average of 608; 59 comp days were assigned and 50 taken; the heaviest day in January was 28 jobs; two of the three pilots on major medical are now off - Captain Bock is now exhausting his comp days and Captain Anderson has been granted a disability retirement; Captain Bock has informally told PSP of his intended retirement on July 9, 2007; Captain Fosse who is also out on medical leave anticipates returning to work in May and then retiring on January 8, 2008; various pilots have recently attended various training classes in Port Ashe, Australia as well as locally at PMI; in the interest of expediency Captain McCurdy requested the Board to consider revising the BPC physical exam form to mirror the USCG physical form; a designated group of interested parties including 3 pilots is currently working on revisions to the Tanker Escort Standard of Care; and Captain McCurdy will be chairing the 2007 Maritime Festival scheduled for May 11-13.

Mary Nelson, Director of Finance and Administration, Port of Grays Harbor, stated there were 33 arrivals and 82 jobs in 2006 which was below projections – consequently 2007 projections will be more conservative; the primary reasons for the decline in traffic are Weyerhaeuser's log activity dropping to 12-14 vessels per year and the drop off at the bulk facility due to market conditions ranging from rail costs due to the fuel surcharges to the containerization of products rather than bulk; there were 2 arrivals in January, 1 at Bay City for logs and 1 at the Port for bulk; 2 arrivals are projected in February

at the Port and 2 are projected in March at Bay City; Captain Cooke is on duty in February; the Army Corps of Engineers is doing maintenance dredging of the channel until February 15; and the bio-diesel plant is under construction with first feed stock vessel expected in mid-June.

Miscellaneous Correspondence. Chairman Dudley has furnished the Board with a copy of his letter to the State Executive Ethics Board requesting a ruling on whether or not he, as a state employee, can enter into a consulting contract with a company with whom the Board has previously contracted.

Legal Update. This will be taken up in Executive Session at the close of the meeting to discuss the five appellants' cases regarding the 2005 pilot exam.

Administrator's Report. Peggy Larson reported that the WAC regarding the amount of the trainee stipend surcharge went into effect on January 20, 2007. The surcharge has been reduced to an amount that will currently not totally fund the trainees but it is intentional for a period of time in order to lower the overage in that account. The surcharge amount will be reviewed again at the next PS tariff consideration in May. *Red Book* updates have been circulated to the Board. A letter from Captain Knowles regarding the *APHRODITE* has been received and forwarded to the TEC as directed. Board consideration of it is scheduled for the March meeting. The Governor's office is still in the process of finding a replacement for Commissioner Andy Palmer. New Commissioner Bill Snyder has been appointed to fulfill Commissioner Niederhauser's term which will expire on 12-26-07. He will be eligible for reappointment at that time. WSF has asked the Board to reconsider its request to have them print pilot ID cards in light of the introduction of the TWIC. It was moved by Commissioner Addington and seconded by Commissioner Mackey that with the uncertainty of the TWIC timeline and in the case of a heightened MARSEC level, the Board is requesting that WSF proceed with printing the state ID cards. The motion carried.

Commissioner Comments. Commissioner Hannigan stressed his desire to update the Board's recording system to a more modern, state of the art unit for purposes of recording Board proceedings, writing minutes, and disseminating audio copies. It was moved by Commissioner Hannigan and seconded by Commissioner C. Davis that Peggy be directed to research and purchase an appropriate system. The motion carried.

Chairman Dudley expressed his appreciation to the Board, the staff and to Susan for the extraordinary workload that everyone has recently been handling and for their outstanding performance.

An EXECUTIVE SESSION was called from 2:30 p.m. to 4:00 p.m. for purposes of reviewing pilot physical examination reports and discussing pending litigation. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington, Lee and Palmer; Susan Cruise and Peggy Larson. Regular session was reconvened by the chairperson immediately following executive session.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for March 8, 2007, at 9:30 a.m. The meeting will be held in the Fourth Floor Rainier Conference Room, 2901 Third Avenue, Seattle. The April meeting has been rescheduled to April 19 and the May meeting to May 23.

Review of Pilot Physical Examination Reports. After reviewing the physicians' reports it was moved by Commissioner C. Davis and seconded by Commissioner Addington that the physical examination reports for Captains L.P. Emerson, C.J. Engstrom, T.A. Jacobs, A.J. Newman, J.S. Niederhauser and E.M. vonBrandenfels be accepted for annual license renewal as well as Captain J.E. Arnold subject to satisfactory confirmation that the inconsistencies in his check marks on his report form get resolved. The motion carried. Captains W.A. Bock and A.L. Fosse remain in temporary inactive status due to medical conditions. Staff was directed to follow up with a pilot regarding a hearing issue. It was moved by Commissioner Addington and seconded by Commissioner C. Davis to direct staff to draft a letter regarding the Board's acknowledgement of Captain William K. Anderson's desire to retire under the provisions of WAC 363-116-110(2) which allow him to apply for reinstatement of his state pilot license within five years of his last pilotage assignment. Chairman Dudley will approve its transmittal. The motion carried.

It was moved by Commissioner Hannigan and seconded by Commissioner Addington that an addendum to the Board's personal service contract with Dr. Frank Landy in connection with the 2005 exam appeals be authorized in the amount of \$57,000.00. The motion carried.

The Chairman adjourned the regular session Board meeting at 4:05 p.m.

Respectfully submitted,

Peggy Larson, Administrator

Harry H. Dudley, Chairman

Charles M. Davis, Vice Chairman

Commissioner Oliver E. Mackey

Commissioner Patrick M. Hannigan

Commissioner William H. Snyder

Commissioner Vincent Addington

Commissioner Craig W. Lee

Commissioner Andrew C. Palmer

Absent

Commissioner Norman W. Davis