

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

September 14, 2006

Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Ole Mackey, Jay Niederhauser, Pat Hannigan, Vince Addington,
Craig Lee and Norm Davis

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Gary Nelson: Port of Grays Harbor

Richard McCurdy, Rob Kromann, Calvin Hunziker, Burt Knowles, Walt Tabler: Puget Sound Pilots

Mike Moore, John Berge: Pacific Merchant Shipping Association

Jeff Thompson: General Steamship Corporation

John Ward: pilot trainee

Eric Klapperich, Jostein Kalvoy, Katharine Sweeney: pilot applicants

Tom Paul: attorney for Burt Knowles

PUBLIC HEARING

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

WAC 363-116-078: Training Program. The Board initiated rulemaking in order to clarify the requirements and expectations for pilot trainees while engaged in a training program and to define the criteria for training stipend eligibility. In subsection (5) "Initial Evaluation", a requirement for Board approval is specified regarding the initial evaluation portion of each applicant's training program established by the Trainee Evaluation Committee. In subsection (10) "Stipend", language was added which clarifies the criteria for a pilot trainee to earn a training stipend and the process for administering the stipend payments. Entitlement to a monthly stipend payment will be based upon a pilot trainee's commitment to full-time training, fulfillment of a set minimum number of monthly training trips, timely completion of hard-to-get trips, and proper documentation of completed training trips. Walt Tabler representing Puget Sound Pilots stated he felt the language should be made even clearer regarding the stipend entitlement provision and proposed that the required minimum number of trips to be made each month by a trainee be based on the total number of trips required in the training program divided by the number of months in the training program. There was no other testimony presented. Chairman Dudley closed the public hearing at 9:40 a.m.

REGULAR MEETING

The regular meeting of the Board of Pilotage Commissioners was convened immediately following the public hearing.

Consideration of Preceding Hearing: WAC 363-116-078. It was moved by Commissioner Hannigan and seconded by Commissioner Lee that the proposed rule be amended by adding the language submitted by the PSP and TEC which provides the necessary clarification that a certain minimum number of training trips are required each month for eligibility to receive the stipend. An amendment to the motion by Commissioner Addington was accepted which corrected "first right of refusal" to read "right of first refusal". The amended motion carried. It was moved by Commissioner Niederhauser and seconded by Commissioner Hannigan that the proposed rule with the amendments be filed under the normal rulemaking provisions. The motion carried.

Minutes. It was moved by Commissioner Addington and seconded by Commissioner Lee to amend the August 10, 2006 Minutes: on page one, regarding the *MISS CLAUDIA*, strike the parenthetical language (in long tons) in the motion; and on page two, regarding the SWAN, replace "The pilots had used flawed calculations made by the ship's master and the bridge engineers." with "The pilots

were given incorrect air draft and bridge height data that was calculated by the ship's master and the bridge engineers." The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the August 10, 2006 Minutes be approved as amended. The motion carried.

OLD BUSINESS

Pilot's Report of Incident: *APHRODITE*, 6-27-06. The Board received the written incident report on 7-10-06 and a follow-up report on 8-30-06 submitted by Puget Sound Pilot, Captain Burt Knowles. While departing the Pierce County Terminal, in the Blair Waterway, Tacoma, the pilot confused the positions of the stern and bow tugs which resulted in damage to both the *APHRODITE* and the dock. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that this matter be declared an "Incident with damage and with pilot error". The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board find Captain Knowles in error of inattention to duty, pursuant to RCW 88.16.100, which led to his failure to perform his duties under this chapter. The motion carried. It was moved by Commissioner Addington and seconded by Commissioner Lee that the Board impose a fine of \$2500 on Captain Knowles and require him to continue the process he has already started with his inspection of the *APHRODITE* incident and look at the issue of "error chain recognition" and provide the TEC and ultimately the Board with a written report of his findings for future distribution to the pilotage community. An amendment to the motion by Commissioner Niederhauser was accepted which suspends the fine until April 1, 2007, pending receipt and acceptance of the report by the Board, at which time the fine is dismissed. The amended motion carried. Chairman Dudley will work with legal counsel to proceed with the Board's action.

An EXECUTIVE SESSION was called from 10:55 a.m. to 11:25 a.m. for purposes of discussing litigation issues and pilot physical examination reports. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Niederhauser, Hannigan, Addington, Lee and N. Davis; Susan Cruise, Judy Bell and Peggy Larson. Regular session was reconvened by the chairperson immediately following executive session. Susan Cruise and Judy Bell were excused.

Pilot's Report of Marine Safety Occurrence: *WESTERDAM*, 6-11-06. Commissioner Hannigan briefed the Board on the circumstances of the event. After departing Terminal 30 and in the vicinity of West Point, the pilot sounded the danger signal twice and ultimately altered course to avoid a sail boat headed across the bow of the *WESTERDAM*. It was a close quarter's situation with no consequences. It was moved by Commissioner C. Davis and seconded by Commissioner Lee that this report be filed as a Marine Safety Occurrence. The motion carried.

Pilot's Report of Marine Safety Occurrence: *NORWEGIAN STAR*, 8-6-06. During a night transit in limited visibility, Puget Sound Pilot Captain Norm Werner and the mate of the *NORWEGIAN STAR* had a verbal disagreement concerning the use of a particular radar. Captain Werner filed a report with the Board on the heels of Norwegian Cruise Line (NCL), through their agent Quay Cruise USA, registering a complaint with the Puget Sound Pilots concerning Captain Werner's conduct. The audio tapes of the event, requested by the Board, were not produced by Norwegian Cruise Line (NCL). Commissioner Addington informed the Board that NCL does not want to pursue the matter. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that Chairman Dudley draft two letters for the Board to review at the next meeting: one letter would go to NCL and would summarize what the Board understands as having happened on the bridge of the vessel, and one letter would go to the shipping companies with an emphasis on passenger vessels reminding them of the provisions of WAC 363-116-405 and of our compulsory state pilotage laws. This letter would be sent twice, once now and once in the Spring just prior to cruise ship season. An amended motion was made by Commissioner Addington and seconded by Commissioner Lee that a third letter be written to Captain Werner. After further discussion, the amended motion was withdrawn by Commissioner Addington with the understanding that the letter to NCL include an invitation to counter or provide more information on what occurred on the bridge. Commissioner Lee concurred. The original motion carried with a vote of six in favor and Commissioner Addington abstaining.

Consideration of Correct Tonnage to Use When Interpreting RCW 88.16.190 ~ *MISS CLAUDIA*. This item was deferred.

Proposed Agency Request Legislation: Bill Request # Z-0106.1/07. The Code Reviser's Z-Draft has been made available for review by the Board and all stakeholders. Today, Gary Nelson submitted an additional amendment for consideration. The Board would like a final review by Susan Cruise before submitting the request package. The deadline for filing non-fiscal legislative requests is September 29, 2006. The Administrator will request an extension of the filing deadline in order to give the Board the October meeting to discuss the final submittal package.

Discussion and Consideration of WAC 363-116-065: Number of Pilots. In response to Chairman Dudley's request for Board members to present ideas and feedback that would establish specific data needs for their consideration in setting the number of pilots, Commissioner Addington submitted a written proposal to the Board. After reviewing this document and all other information received, the Board will work towards taking action at the October meeting to set the number of pilots. This will aid the TEC when recommending how many trainees to start in the next program. Chairman Dudley urged more input from everyone.

NEW BUSINESS

Consideration of Petition for Vessel Exemption: Motor Yacht *KALEEN VIII*. A petition for vessel exemption was received regarding the foreign flagged 130', 298 gross ton Motor Yacht *KALEEN VIII*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements and was issued an interim exemption by Chairman Dudley on August 24, 2006, subject to final Board approval at today's meeting. It was moved by Commissioner Lee and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *KALEEN VIII* for three months so long as it remains in the charge of Captain Stephen Quentel. The motion carried.

Review and Consideration of Licensure of PSPD Trainee: Captain John Ward. On behalf of the Trainee Evaluation Committee (TEC) Commissioner Niederhauser reported that after a thorough review of all *Pilot Trainee Trip Reports* submitted to the Board, the TEC unanimously voted to recommend the issuance of a state pilot license to Captain John Ward who has successfully met the requirements of his seven-month training program. It was moved by Commissioner Niederhauser and seconded by Commissioner Addington that license #168 for the Puget Sound Pilotage District be issued to Captain John K. Ward. The motion carried. The TEC has been continuously reviewing summaries of training reports on this trainee for the past seven months. In addition, the Board has also reviewed these evaluations. These reviews, along with the recommendation by the TEC are the basis for the licensing action taken today. Captain Ward's license will be dated and signed today, and he will be eligible for dispatch beginning tomorrow. The PSP roster is now at 55 licensed pilots.

Approval of Pilot Training Program for Captain David Grobschmit and Captain Jostein Kalvoy. The TEC met on August 22 to finalize the training programs for distribution to the two applicants and the Board members for review. Captains Grobschmit and Kalvoy have accepted their training programs conditioned upon the Board's approval today provided there are no changes to the programs as presented by the TEC. It was moved by Commissioner Hannigan and seconded by Commissioner Niederhauser that the Board approve the two training programs as written by the TEC and accepted by Captains Grobschmit and Kalvoy and that training licenses numbered 7 and 8 respectively be issued. The motion carried.

Approval of Pilot License Upgrade Program for Captain John Scoggins. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the license upgrade letter for Captain John Scoggins be approved as drafted by the TEC. The motion carried.

Approval of Amendments to Pilot License Upgrade Program for Captain Jonathan Ward. The TEC found it necessary to make some adjustments to Captain Jonathan Ward's license upgrade

program and elected to forward this information to the Board for concurrence. It was moved by Commissioner Mackey and seconded by Commissioner C. Davis that the Board endorse the changes to the upgrade requirements for Captain Jonathan Ward. The motion carried.

Pilot's Report of Marine Safety Occurrence: WESTERDAM, 9-10-06. While proceeding up the Seattle East Waterway, stern first, to Terminal 30 South, the WESTERDAM encountered a man in the water and a small fishing boat running in circles with no one on board. The man was retrieved from the water at Pier 34 and treated and the fishing boat was taken over by a fire rescue vessel. It was moved by Commissioner Niederhauser and seconded by Commissioner C. Davis that this report of a navigational safety concern be filed as a Marine Safety Occurrence. The motion carried.

Committee Reports: Trainee Evaluation Committee.

- Draft amendments to WAC 363-116-082 were presented to the Board for discussion. The TEC is recommending adjustments to the license limitation and upgrade sequence for Puget Sound and Grays Harbor Pilots. One significant change being considered is to shorten a new pilot's first year from 12 months to 8 months after which a course of manned model training in Port Revel would be required. Another proposal would be to change the license categories to "Level-one pilot" rather than "First-year pilot", and so on. It is the intent to have the amended language in place by the time the recently licensed new pilots complete their first eight months of active piloting (mid-March). It was moved by Commissioner Lee and seconded by Commissioner Hannigan that a CR 101 be filed announcing the Board's intended rulemaking. The motion carried.
- The TEC will conduct an orientation session on October 3 for new trainees David Grobschmit and Jostein Kalvoy.

Miscellaneous Correspondence Review. Chairman Dudley and Susan Cruise will finalize two draft responses to Mrs. June Raker of Kingston concerning alleged wake damage to her property. The second response is in answer to a letter that was received since the last Board meeting. The Board concurred that both letters be sent upon completion of Susan's review.

Chairman Dudley will draft a written response for Board review to Captain Eric Klapperich concerning a letter he submitted at the last meeting.

A letter was received from Captain Eric Skewis on August 15, 2006 requesting the Board's review and determination of his qualifications to sit for the next pilot exam. This letter and several others will be considered by the TEC for preparation of draft responses for the Board's review.

Legal Update. Susan Cruise's report was given in EXECUTIVE SESSION earlier in the meeting.

Administrator's Report. Peggy Larson reported the status of the stipend revenue account. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board determined there is no longer a need for the initial \$10 charge per vessel, used to establish the stipend account, thus reducing the amount to \$0, subject to Susan's opinion as to whether or not a public hearing is required to amend WAC 363-116-300. The motion carried. It was moved by Commissioner Addington and seconded by C. Davis that the Board direct PSP to stop collecting the initial \$10 charge on October 1, 2006, subject to Susan's opinion. The motion carried. If Susan is of the opinion that a public hearing on the WAC is necessary to amend the initial stipend charge, it will remain and the Board will proceed with rulemaking.

The 2005 Annual Report of the Board has been published and distributed and can be found on the website at www.pilotage.wa.gov.

The Agency is currently undergoing an audit by the State Auditor's Office covering the period from July 1, 2001 through June 30, 2006.

The 2007-09 Agency budget has been submitted to OFM for review which includes a special request package to fund a pilot exam sometime during that biennium.

A supplemental appropriation request will be made during the 2007 Legislative Session to fund the unanticipated expenses relating to the 2005 exam appeals which is severely impacting the current 2005-07 biennial budget.

Pilots' Activity Reports. Captain Richard McCurdy, President, Puget Sound Pilots, reported that there were 775 jobs in August compared to an average of 760 for the past 3 Augests; one pilot has submitted a letter of intent to retire; two pilots are currently using comp days in anticipation of retiring; two pilots remain out on major medical; there are only two more weeks of cruise season; all pilots will be attending BRM and ECDIS training; PSP is involved in the Blair Waterway widening project near the Weyco Chip facility and a Hylebos Waterway encroachment review; and the *SWAN* is being replaced by the *TEAL* who is delivering more Tacoma Narrows Bridge decking sections.

Gary Nelson, Executive Director, Port of Grays Harbor, reported that there have been 24 arrivals through August for an average of 3 vessels per month, which is 1 vessel per month less than projected; both pilots are on a monthly rotation; the BioDiesel plant is under construction; and Weyerhaeuser is still active even though they have announced they are moving to Olympia and they have 9 or 10 vessels scheduled for next year.

Commissioner Comments. Commissioner Mackey invited the Board to visit Grays Harbor and hold a future Board meeting there if they desired. A Port Angeles meeting was also considered. Budget constraints at this time may keep this from happening unless Commissioners are willing to absorb their own travel expenses.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for October 12, 2006, at 9:30 a.m. The meeting will be held in the Fourth Floor Rainier Conference Room, 2901 Third Avenue, Seattle. Chairman Dudley and Commissioner Lee may be absent.

Review of Pilot Physical Examination Reports. After reviewing the physicians' reports it was moved by Commissioner Hannigan and seconded by Commissioner C. Davis that the physical examination reports for Captains B.F. Henshaw and W.H. Snyder be accepted for annual license renewal, Captain John K. Ward for initial licensure, and Captains D. Grobschmit and J. Kalvoy for training licensure. The motion carried. The Board has received follow-up information concerning Captains V. Engstrom, I. Carlson and P. Kelly and will continue to monitor their status with their Board-Designated Physicians. Captains W.K. Anderson and W.A. Bock remain on medical leave.

The Chairman adjourned the regular session Board meeting at 2:25 p.m.

Respectfully submitted,

Peggy Larson, Administrator

Harry H. Dudley, Chairman

Charles M. Davis, Vice Chairman

Commissioner Oliver E. Mackey

Commissioner John S. Niederhauser

Commissioner Patrick M. Hannigan

Commissioner Vincent Addington

Commissioner Craig W. Lee

Absent

Commissioner Andrew C. Palmer

Commissioner Norman W. Davis