

# MEETING MINUTES

## STATE OF WASHINGTON ~ BOARD OF PILOTAGE COMMISSIONERS

January 12, 2012

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Present:

Chairman: Harry Dudley

Commissioners: Norm Davis, Chuck Adams, Ned Kiley, Pat Hannigan, Don Mayer, Craig Lee,  
Doug Coburn, Elsie Hulsizer

Assistant Attorney General: Guy Bowman, Mark Lyon

Administration: Shawna Erickson, Peggy Larson

Captains Andy Coe, Del Mackenzie, Dick McCurdy, Gordon Wildes, Ivan Carlson and Mr. Walt Tabler:  
Puget Sound Pilots

Gary Nelson: Port of Grays Harbor

Mike Moore, Jordan Royer, Vince Addington: Pacific Merchant Shipping Association

Captain Jim Kearns and Alex: PSPD Pilot Candidate and Daughter

Captain Tom Coryell: PSPD Pilot Applicant

Ron Kinsey, LT Julie Blanchfield, ENS Ana Fuschetto: USCG Sector Puget Sound

Tom Paul: representing Captain Gordon Wildes

Andrew Gauthier: Crowley Marine Services

Brian Jensen: Foss Maritime

Alex Johnson: Pilot Aspirant

Loren Lee, Adam Seamans: Public

### **PUBLIC HEARING**

A public hearing of the Board of Pilotage Commissioners was convened at 9:35 a.m. by Chairman Harry Dudley in the Alki Conference Room, 2901 Third Avenue, Seattle, Washington. Commissioner Chuck Adams did not attend these proceedings except for the portion regarding WAC 363-116-200.

**WAC 363-116-200: Duties of Pilots.** This proposed rule is intended to expand the definition of an "Incident" to include situations wherein a pilot or pilot trainee falls while embarking or disembarking a vessel or is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee. The proposed modifications further expand the definition of a "Marine Safety Occurrence" to specify that a pilot or pilot trainee can voluntarily report safety issues encountered or observed on the vessel, the dock or in the area around the vessel. The proposed rule also provides for a 10-day reporting period for any incident that becomes known to a pilot or pilot trainee sometime after the conclusion of his/her piloting assignment. These amendments were drafted by the Legislative/WAC Committee. Committee Chair, Chuck Adams noted an inconsistency in subsection (10) and (11)(b) where "pilot trainee" was not inserted. The intent was to amend the rule to include pilot trainees as well as pilots for purposes of filing "Incident" reports and reports of "Marine Safety Occurrence". He asked for that correction to be made. There was no public testimony.

**WAC 363-11: Practice and Procedure – Board of Pilotage Commissioners.** The purpose of the proposed revisions to this Chapter is to update the Board's Practices and Procedures for Administrative Hearings so they are consistent with the Administrative Procedure Act Model Rules of Procedure (Chapter 10-98 WAC), and Chapter 363-116 WAC, and the Civil Rules of Washington. The proposed changes are also intended to modify the scope of hearings and associated discovery currently permitted under Chapter 363-11 WAC. Housekeeping revisions will also be made as necessary. These amendments were drafted by the Board's attorney, Guy Bowman. Written comments were submitted by the Puget Sound Pilots addressing their concern about three specific sections dealing with discovery, witnesses and testimony. PSP takes exception to the application of this new language when applied to appeals dealing with pilot discipline and believes it should only apply to cases relating to examination and training appeals. PSP requested that all new proposed language be deleted in WAC sections 363-11-280(4), 363-11-410(3) and 363-11-420(3). They also offered compromise language modifications as an alternative solution. There was no other public testimony.

**WAC 363-116-0751: Qualifications for pilot applicants taking examinations on or after 7/1/08.**

**WAC 363-116-076: Examination for pilot applicants.**

**WAC 363-116-077: Simulator evaluation for pilot applicants.**

**WAC 363-116-078: Training program.**

**WAC 363-116-080: Licensing of pilots.**

**WAC 363-116-083: Written examination protest and appeal procedures.**

**WAC 363-116-084: Simulator evaluation review and appeal procedures.**

These rule modifications are being considered in anticipation of administering a state pilot exam in 2012 to qualify applicants for entrance into a training program. For the first time, the Board intends to test applicants for both the Puget Sound and Grays Harbor Pilotage Districts under one exam. Modifications, updates, clarification and house-keeping are among the elements reflected in these proposed rules concerning qualifications, testing, training, licensing and appeal procedures. These rule amendments were drafted by the Legislative/WAC Committee (without Chuck Adams) who encourages passage of these new rules in order to implement them prior to announcing the next pilot exam. Committee member Vince Addington gave an overview of the primary objectives of each modified WAC section. Gary Nelson asked for verification that the proposed amendments do not provide for dual-licensing or cross-licensing; they do not. An applicant will be trained in only one pilotage district. There was no other public testimony. The public hearing was closed by Chairman Dudley at 10:30 a.m.

### **REGULAR MEETING**

The regular meeting of the Board was convened at 10:30 a.m. by Chairman Harry Dudley. Commissioner Chuck Adams excused himself from the meeting until WAC 363-116-200 was discussed and considered.

#### **Consideration of Preceding Hearing:**

Motion: Hannigan/Mayer – adopt **WAC 363-11** as filed with the exclusion of sections 363-11-280(4), 363-11-410(3) and 363-11-420(3). It was the consensus of the Board to take more time to consider these modifications to the proposed WAC. The hearing was continued to February 9<sup>th</sup> at 9:30 a.m. and Commissioner Hannigan withdrew his motion.

Motion: Coburn/Lee - adopt **WACs 363-116-0751, 363-116-076, 363-116-077 and 363-116-078** as filed with the housekeeping and editorial revisions as presented by the Legislative/WAC Committee as well as the deletion of “from the relative pilotage district” in WAC 363-116-078(11) where it describes the make-up of the Trainee Evaluation Committee, in part, . . . “one representative of the marine industry from the relevant pilotage district . . .” – Carried.

Motion: Hannigan/Kiley – adopt **WACs 363-116-080, 363-116-083 and 363-116-084** as filed – Carried.

Motion: Adams/Lee – adopt **WAC 363-116-200** as filed with the addition of two editorial revisions to include “pilot trainees” in subsections (10) and (11)(b) – Carried. (11:20 a.m.)

**Minutes.** Motion: Hannigan/Davis – Approve the October 13, 2011 Minutes with the following two corrections: modify the description of the *JAG LALIT* Incident to indicate the “early discharge of tugs” was not a contributing factor; and the Standard of Care for Tanker Escorts that the Harbor Safety Committee recently distributed is a “Draft” – Carried. The November 10, 2011 Minutes stand approved as written.

### **OLD BUSINESS**

**Discussion Concerning Setting the Number of Pilots in the Puget Sound Pilotage District.** There was no discussion about changing the number of pilots. During the months of December and January Captain Marin Johnson and Captain Jay Niederhauser retired respectively. This brings the number of licensed pilots to 50. The number of pilots in the PSPD is currently 52, set by the Board on September 30, 2010. This item will remain on future agendas for discussion purposes only until a resolution for change has potential.

**Consideration of Licensure of PSPD Pilot Candidate: Captain James Kearns.** On behalf of the Trainee Evaluation Committee (TEC) Commissioner Hannigan reported that after a thorough review of Captain Kearns' five-month *Post-Training Program* the TEC unanimously recommends the issuance of a state pilot license to Captain Kearns. Motion: Hannigan/Lee - issue Captain James T. Kearns state pilot license #182 for the Puget Sound Pilotage District - Carried. This action brings the number of licensed pilots in the PSPD to 51, one short of the set number. Recognition was given to incoming pilot Captain James Kearns and outgoing pilots Captain Marin Johnson and Captain Jay Niederhauser.

**Discussion of Adoption of Board "Information Bulletin 11-1".** This item was deferred.

**Pilot's Report of Incident: PS Pilot Gordon Wildes – LILY OLDENDORFF, 10-4-11**

Upper turning basin - Hylebos Waterway	Vessel made contact with dock while turning.	No injuries. No vessel damage.	Board investigator Captain Dick McCurdy presented a video display of the events of this incident. His initial findings were submitted in a written report to the Board.	The Board requested Captain McCurdy to obtain data recorder info from the vessel principals. No action taken.
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**NEW BUSINESS**

**Approval of Pilot License Upgrade Program: Captains David Grobschmit and Jostein Kalvoy.** Captains Grobschmit and Kalvoy are nearing completion of their fifth and final limited license year. The TEC recommended a few modifications to their program requirements that were drafted in the letters presented. Motion: Hannigan/Adams - approve the license upgrade programs for Captains Grobschmit and Kalvoy as discussed and amended - Carried.

**Consideration of Request for Vessel Exemption:**

**Motor Yacht LEGACY** – 164', 492 gross tons, Cayman Islands registry, Captain Kerry Piesch. Motion: Lee/Kiley – concur with Chair's granting of interim three-month exemption – Carried.

**Motor Yacht SPELLBOUND** – 84', 81.84 gross tons, Cayman Islands registry, Captain Regis Michael Cregan. Motion: Lee/Kiley – concur with Chair's granting of interim three-month exemption – Carried.

**Notification of intent to retire under the provisions of WAC 363-116-110(2) and the terms of the Puget Sound Pilots' Disability Retirement Plan.** Captain Marin I. Johnson, Puget Sound Pilot, has informed the Board that the USCG has determined that he is ineligible for merchant mariner medical certification due to a current medical condition. His federal license expired on December 14, 2011 and he has chosen to retire under the PSP Disability Retirement Plan. Under the provisions of our WAC 363-116-110(2) Captain Johnson has a five-year window in which to return to active piloting provided he can meet all physical standards requirements. He will get a formal acknowledgement from the Board.

**Review and Consideration of NTSB Safety Recommendations regarding the EAGLE OTOME, GULL ARROW, KIRBY 30406 and DIXIE VENGEANCE.** A request was made by Governor Gregoire's office to assist in the preparation of a response to the NTSB concerning an oil tankship collision with a cargo vessel approximately two years ago at the Port of Port Arthur, Texas. Motion: Hulsizer/Adams – forward Chairman Dudley's drafted response to the Governor's office – Carried.

**Pilot's Report of Marine Safety Occurrence: HELLENIC SKY, 11-2-11**

Commencement Bay, Tacoma	When entering the Bay the main engine failed to start astern. Vessel proceeded to general anchorage with tug assist.	Navigational Safety Concern	<u>Motion:</u> Lee/Davis File as a Marine Safety Occurrence	Carried
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**Pilot's Report of Marine Safety Occurrence: COSCO LONG BEACH, 11-10-11**

Outbound from Pier 37, Seattle	Main engine problem with turbo charger. Vessel proceeded to anchor in Elliott Bay East with tug assist.	Navigational Safety Concern	<u>Motion:</u> Lee/Kiley File as a Marine Safety Occurrence	Carried
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**Pilot's Report of Marine Safety Occurrence: *SUNNY AMAZON*, 11-11-11**

North-bound abeam Meadow Point	One of the four turbochargers of the main engine failed. Vessel turned around and returned to Elliott Bay East Anchorage.	Navigational Safety Concern	<u>Motion:</u> Lee/Adams File as a Marine Safety Occurrence	Carried
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**Pilot's Report of Marine Safety Occurrence: *APL SPAIN*, 11-21-11**

Elliott Bay off West Waterway	While docking the vessel the bow thruster failed. Docking completed with tug assist.	Navigational Safety Concern	<u>Motion:</u> Lee/Hannigan File as a Marine Safety Occurrence	Carried
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**Pilot's Report of Marine Safety Occurrence: *CALIPSO*, 12-19-11**

Near Foul-weather Bluff	Engine malfunction due to broken #2 piston. Vessel ran at reduced speed to anchor in Seattle with tug assist.	Navigational Safety Concern	<u>Motion:</u> Lee/Kiley File as a Marine Safety Occurrence	Carried
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Commissioner Coburn continues to furnish vessel owners/agents with copies of these reports to give them an opportunity to comment or attend a Board meeting.

**Committee Reports.**

**Trainee Evaluation Committee:**

- The TEC met on January 11th.
- Training status of all trainees was reviewed - Captain Kearns has been successfully participating in post-training graduate studies up until his licensure today; before completion of his training program Captain Anacker has five charts to do for his full federal PS pilotage endorsement, two trips with TEC pilots, and his final local knowledge exam; Captain Anthony has more or less 80 trips left to take and is doing well; Captain Engstrom has finished the observation phase of his training program and is starting the training phase; and Captains Carley and Lowery began their training programs on December 1<sup>st</sup> and are in the observation phase. Motion: Hannigan/Lee - modify Captain Engstrom's training trip forms, and letter if necessary, to reflect that interventions are not recorded as such until after trip 200, not 100, in order to be consistent with new trainees Carley and Lowery – Carried.
- A TEC review indicates the last two applicants will be called into training in the near future.
- TEC member Captain Dan Shaffer will be working with GH Pilot Steve Cooke to develop a GH pilot training program.
- Captain McCurdy and Captain Lee have agreed to stay on the TEC even after they are no longer Board members. There is interest in having a Grays Harbor pilot on the TEC as well.

**Pilot Exam Committee:** A draft *Request for Proposal* was presented to the Board for review and consideration as the committee moves ahead with the development of a pilot exam later this year. Motion: Hannigan/Coburn - empower the Pilot Exam Committee to finalize the RFP concerning the 2012 state pilot written examination and simulator evaluation - Carried.

**Legislative/WAC Committee:** No Report.

**Tariff Policy Committee:** No Report.

**Activity Reports.** Gary Nelson, representing Port of Grays Harbor, reported that there were 72 ship arrivals in 2011 which is down about 8% from the estimated 78 arrivals; Captain Cooke is on duty in January and Captain D'Angelo will be on duty in February; the Harbor Safety Committee meeting is scheduled for February 14 which is the same day as the Shipping Club Annual Crab Feed. Chairman Dudley acknowledged that the Port of Grays Harbor, who celebrated their 100<sup>th</sup> Anniversary last year, was named the Washington Public Ports Association Port of the Year for its exceptional success in port industry growth and diversification.

Captain Andy Coe, representing Puget Sound Pilots, reported for the months of October, November and December during which there were a total of 1,810 assignments – October and November were roughly the same as last year but December was up 99 assignments over last December; assignments year-to-date for 2011 were 7,614 compared to 7,338 in 2010 which is an increase of 3.76%; 74 comp days were accrued and 176 used during October, November and December, decreasing the year-end total by 102 to 3,138 which is 103 less than the 2010 year-end total; and 5 pilots were in training during October and November. Captain Del Mackenzie presented an extensive narration of the events according to Captain Gary Hurt regarding the MSO involving the pilot boat *PUGET SOUND* and the *NANUQ* discussed at the 11-10-11 Board meeting. Captain Hurt submitted a follow-up letter to the Board as well. Motion: Adams/Kiley – direct the Chair to write to Edison Chouest stressing the importance of pilot ladder safety and relaying some of the concerns about the conflicting reports of this Marine Safety Occurrence – Carried.

Mike Moore, representing Pacific Merchant Shipping Association, reported that y-t-d through December vessel arrivals are up by 66 – cargo up 89, cruise ships down 29, tank vessels up 23, ATB's down 17; pilot assignments through December are up by 276 and revenue is up \$1,665,490 compared to 2010. Various recent articles were shared concerning port competitiveness and other current shipping news.

**Correspondence Review.** Foreign flag representative, Commissioner Doug Coburn, informed the Board that regrettably he is resigning from the Board effective tomorrow, 1-13-12. He is unable to continue to devote the necessary time and attention to the Board at this time but will continue to stay active in other pilotage activities.

**Legal Update.** The Board's Reviewing Officer, Chuck Adams, has filed his *Review of Initial Order of ALJ Richard J. Roberts and FINAL ORDER* regarding the Captain Bruce Nelson case in which he affirms the Board's December 15, 2008 decision to deny him a pilot license. A *Motion for Summary Judgment* is being heard tomorrow on the Nelson case. The Captain Katharine Sweeney case is still in the discovery phase.

**Legislative Update.** Walt Tabler reported that the Board's statute, RCW 88.16, regarding private yacht exemptions is being reviewed by the legislature at the request of a private entity. He believes the legislation proposes an increase to the gross tonnage limitation but not the vessel length limitation. The Board's agency request legislation is in the process of being considered for approval.

**BPC Staff Report.** Staff remains busy with various year-end reporting and production concerning public records requests.

**Commissioner Comments.** Chairman Dudley recognized Captain Dick McCurdy for his service on the Board and welcomed his replacement, Captain Don Mayer, Puget Sound Pilot. He also acknowledged that Commissioner Craig Lee's second term expired on 12-26-11, and noted he is ineligible for reappointment; however, he remains eligible to sit on the Board until he is replaced. He and Captain McCurdy will remain on the TEC and Captain Lee will remain on the Exam Committee.

**Confirmation of Next Regular Meeting Date.** The next regular meeting is scheduled for Thursday, February 9, 2012. The continued hearing concerning WAC Chapter 363-11 will begin at 9:30 a.m. followed by the regular Board meeting. The hearing and meeting will be held in the Alki Conference Room, 5<sup>th</sup> floor, 2901 3<sup>rd</sup> Avenue, Seattle.

**Review of Pilot/Trainee Physical Examination Reports.** Motion: Lee/Kiley - accept the physicians' reports for Captains S.E. Moreno, J.E. Arnold, E.M. vonBrandenfels, J.B. Harris, D.G. Mackenzie, L.P. Emerson, A.J. Newman, T.A. Jacobs, C.J. Engstrom, M.G. Mendenhall, J.T. Scoggins and E.C. Klapperich for annual pilot license renewal and Captain J.T. Kearns for initial pilot licensure - Carried. Captain E. Marmol was declared fit for duty on 11-21-11 and Captain J.E. Ward was declared fit for duty on 12-6-11 and both were returned to work by Chairman Dudley after reviewing physical reports from their Board-Designated Physicians. Motion: Lee/Adams – affirm Chairman Dudley's action to reinstate

licenses for Captains E. Marmol and J.E. Ward in order to return them to work – Carried. Captain S.D. Semler remains on medical leave.

There being no further business to come before the Board, Chairman Dudley adjourned the regular session Board meeting at 2:35 p.m.

Respectfully submitted,

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Peggy Larson, Executive Director

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Harry H. Dudley, Chairman

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Commissioner Charles F. Adams

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Commissioner Edmund I. Kiley

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Commissioner Patrick M. Hannigan

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Commissioner Donald W. Mayer

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Commissioner Craig W. Lee

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Commissioner Douglas S. Coburn

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Norman W. Davis, Acting Vice Chairman

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Commissioner Elsie J. Hulsizer