

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

March 13, 2008

Present:

Vice Chairman: Chuck Davis

Commissioners: Ole Mackey, Pat Hannigan, Bill Snyder, Vince Addington, Craig Lee, Norm Davis,
Elsie Hulsizer

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Del Mackenzie, Walt Tabler, Don Mayer, Dave Sanders, Eric vonBrandenfels, Mel Flavel: Puget
Sound Pilots

Gary Nelson: Port of Grays Harbor

Mike Moore, Jordan Royer, John McLaurin: Pacific Merchant Shipping Association

Bill Lowery, Dave Surface, Matt Hannuksela, Tim Dawson, David Brusco, Irv Berndt: Pilot aspirants

REGULAR MEETING

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

Minutes. It was moved by Commissioner Snyder and seconded by Commissioner Hannigan to strike the last two sentences of paragraph two on page three of the February 14, 2008 Minutes. Following discussion, an amendment to the motion was made by Commissioner Addington and accepted by Commissioners Snyder and Hannigan to re-word the language as follows: *The term "Safe Assignment Level" was discussed with regard to the appropriateness of its use with the "149" number that is referred to from time to time by the Board.* The motion carried with Commissioner Lee abstaining. It was moved by Commissioner Snyder and seconded by Commissioner Addington that the February 14, 2008 Minutes be approved as amended. The motion carried.

OLD BUSINESS

2008 Legislative Activity Report - SSB 6602: Modifying Certain Provisions of the Pilotage Act.

The Board's agency request legislation was heard before the House Transportation Committee on February 28, 2008 and has since been passed on to Governor Gregoire for signature. The Legislative Session ends today which means the amendments to the Pilotage Act, chapter 88.16 RCW will take effect in 90 days, on June 12, 2008.

NEW BUSINESS

Approval of Pilot License Upgrade Program for Captain Pat Kelly. The draft letter for Board consideration has been amended by the TEC to eliminate the requirement for trips to the Pierce County Terminal due to the unavailability of vessels in the requisite tonnage category. It was moved by Commissioner Snyder and seconded by Commissioner Hannigan that the license upgrade program for Captain Pat Kelly as drafted and amended by the TEC be approved. The motion carried. Captain Kelly is nearing completion of his second license year. The upgrade programs approved last month for Captains Blake, Bujacich, Carlson and Sliker will also be amended similarly.

Approval of Pilot Training Programs for Captain Jim Hannuksela and Captain George Thoreson.

The TEC met with Captains Jim Hannuksela and George Thoreson yesterday in order to develop their custom training programs for consideration by the Board. It was moved by Commissioner Snyder and seconded by Commissioner Addington that the Board approve the two training programs as drafted by the TEC. The motion carried. Captains Hannuksela and Thoreson have fifteen days to respond to the Board concerning the acceptance of their training programs.

Consideration of Proposed Rule-Making Regarding WAC 363-116-082: Limitations on New Pilots.

Draft language to amend WAC 363-116-082(5)(c) was presented to the Board by the TEC for consideration of emergency rule adoption. Captain Stephen Cooke, Grays Harbor Pilot, is nearing the completion of his third license year and in order to complete license upgrade trips on vessels in the requisite tonnage category by his anniversary date the Board determined that a rule amendment is

necessary. Due to the small pilot workforce in the GHPD it is essential that license upgrades are accomplished without delay. A delay of this sort could result in not having adequate pilot coverage for vessels routinely requiring a pilot, or for vessels in distress not being attended to efficiently. Allowing a Grays Harbor Pilot to perform upgrade trips in the Puget Sound Pilotage District on like vessels and waterways would provide for timely lifting of license limitations. It was moved by Commissioner Snyder and seconded by Commissioner Norm Davis that WAC 363-116-082(5)(c) be modified under emergency provisions as follows: *Prior to the expiration of the third license year, a new pilot must make three license upgrade trips on vessels in excess of 45,000 GT (ITC) or on the nearest larger size vessels available. Two of these trips shall involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway. If these trips are not available in the Grays Harbor pilotage district, specified trips in the Puget Sound pilotage district may be substituted. Two of these trips shall involve docking or undocking and passage to or from the pilot boarding ground in the Puget Sound pilotage district, or docking or undocking between two ports in the Puget Sound pilotage district that are a minimum of twenty miles apart; and one trip shall involve turning, or maneuvering in such a manner to substantially change the heading of the vessel in a waterway similar to that in the Grays Harbor pilotage district.* The motion carried. Captain Cooke's license upgrade program will be issued accordingly.

Consideration of Proposed Modifications to Retirement Language in WAC 363-116-300 (LOA Table). Chairman Dudley presented a draft letter to the Board concerning pilot retirement programs and which addressed proposed modifications to certain language in the LOA Table of the Puget Sound Pilotage District tariff (WAC 363-116-300). Since Chairman Dudley was not present at today's meeting, discussion of his letter was deferred. However, discussion of the proposed WAC language will be discussed later today under agenda item 7.b. *PSPD - Submission of Requests for Tariff Adjustment*, when the Board will consider similar language modifications from PSP and PMSA.

Consideration of Renewal of Vessel Exemption: Motor Yacht *EVVIVA*. A petition for renewal of vessel exemption was received regarding the foreign flagged 164', 492 gross ton Motor Yacht *EVVIVA*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements. It was moved by Commissioner Snyder and seconded by Commissioner Mackey that the Board grant a renewal of exemption for the *EVVIVA* for one year so long as the vessel remains in the charge of Captain Joseph Trailer. The motion carried.

Consideration of Petition for Vessel Exemption: Motor Yacht *ESTANCIA*. A petition for vessel exemption was received regarding the foreign flagged 112', 208 gross ton Motor Yacht *ESTANCIA*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements. It was moved by Commissioner Lee and seconded by Commissioner Snyder that the Board grant a one-year exemption as requested, to the *ESTANCIA* so long as it remains in the charge of Captain Mike Catania. The motion carried. With respect to the request that Bill McDowell also be an approved operator, it was denied because he currently does not hold a license. It was moved by Commissioner N. Davis and seconded by Commissioner Snyder that Vice Chair C. Davis be granted authority to approve Mr. McDowell as an operator if he finds that this vessel, being over 200 gross tons, can operate in Washington State waters without a licensed master. The motion carried with a vote of five in favor and Commissioners Addington and Hulsizer opposed.

2008 Annual Tariff Hearings Preparation. PSPD – Walt Tabler presented a brief overview of the Puget Sound Pilots' 5-Year Capital Spending Plan and fielded various questions from the Board. The PSP 2007 audited Financial Statement was also submitted and distributed.

Letters, both dated March 13, 2008 from Puget Sound Pilots and Pacific Merchant Shipping Association were presented which detailed their requests for rule amendments to the Puget Sound Pilotage District 2008-2009 tariff. It was moved by Commissioner Hannigan and seconded by Commissioner Addington that the Board combine the two proposals and accept the following for filing: The proposed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound Pilotage District for the 2008-2009 tariff year. The low end of the range is proposed by the Pacific Merchant Shipping Association (PMSA) and the high end of the range is proposed by the Puget Sound Pilots (PSP). Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect an across-the-board adjustment to the tariff in a range between a decrease of

10.3% and an increase of 9.2%. Exceptions include some tariff categories which are outside of this range or specifically allocated to new charges which are: (1) The proposed rule reflects no adjustments in the *Transportation* category; and (2) The proposed rule reflects a new category, *British Columbia Direct Transit Charge*, resulting from the enactment of 2008 statutory amendments to the Pilotage Act, specifically RCW 88.16.035(1)(e). These charges, already established outside of Board rules until now, reflect a range of adjustments proposed by PSP and PMSA. The motion carried.

It was moved by Commissioner Hannigan and seconded by Commissioner Snyder that the amendatory language submitted by PSP in their March 13, 2008 letter preceding the LOA Chart be accepted for filing. An amendment to the motion was made by Commissioner Addington and seconded by Commissioner Lee to include the amendatory language submitted by PMSA as a second alternative and Chairman Dudley's language as modified by Susan Cruise as a third alternative. The amendment to the motion carried and the amended motion carried. The proposed rule also reflects three versions of optional amendatory language describing the *LOA Rate Schedule* as it relates to the support of pilot retirement plans as follows:

PSP's Version: The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes funds used by Puget Sound Pilots at its option to reimburse that association for all expenses it incurs by making retirement payments required by the benefits and enforcement provisions of the Puget Sound Retirement Program; and funds used by Puget Sound Pilots to cover that portion of the expense of the Grays Harbor Retirement Program not covered by the Grays Harbor tariff.

PMSA's Version: The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile. Revenue generated by this schedule may include funds used to pay that portion of the expense of the Grays Harbor Retirement Program not covered by the Grays Harbor tariff. Revenue generated by this schedule may be used to pay retirees by a pilot association operating in the Puget Sound District that has opted to form an association retirement plan.

AG's Version: The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes funds used by Puget Sound Pilots for (1) expenses it incurs by making retirement payments required by the benefits and enforcement provisions of the Puget Sound Retirement Program; and (2) that portion of the expense of the Grays Harbor Retirement Program not covered by the Grays Harbor tariff.

A request was made by Peggy Larson to consider an increase in the *Training Surcharge* Category to support pilot training stipends. It was moved by Commissioner Addington and seconded by Commissioner Snyder to include in the tariff proposal an increase in the training surcharge from \$5 to \$10. The motion carried.

It was moved by Commissioner Addington and seconded by Commissioner Hulsizer to file the above components as proposed rule amendments with the Code Reviser for a public hearing to be held May 8, 2008. The motion carried.

Request for Consideration to Extend the Statement of Policy Regarding “Qualifications of Pilot Applicants Under WAC 363-116-075 When Experience is on Vessels Employing More than One Master” to WAC 363-116-0751. Pilot aspirant, Captain Matt Hannuksela has formally requested Board consideration to extend its Statement of Policy concerning sea time on vessels employing more than one master. The current policy will sunset on June 30, 2008 when WAC 363-116-075 is superseded by WAC 363-116-0751. He is asking the Board to continue the policy under the WAC pertinent to pilot exams given after July 1, 2008 since he has a combination of master and junior master sea time. Commissioner Hannigan stated that it is the WAC Committee's recommendation that a definition of “master” be included in the draft proposal of WAC amendments soon to be considered for rule-making. There was no action taken to extend the Statement of Policy at this time, however the Board encouraged him to participate in the rule-making activity for further Board consideration.

Failure of Pilot to Present Proper ID to Customs and Border Protection Agent When Disembarking. Commissioner Addington advised the Board that General Steamship Corp. received a warning from Customs and Border Protection for “failure to provide documentation on arrival” due to a pilot's failure to produce appropriate identification when disembarking a ship at Anacortes on March 7, 2008. Captain Del Mackenzie stated that PSP has resolved the issue with CBP as to what is sufficient

pilot identification; however, Commissioner Addington stressed that the violation as viewed by the CBP goes against the ship and that General Steamship Corp. was issued a Notice of Violation which included a warning that future violations would carry a \$5,000 penalty.

Activity Reports. Gary Nelson, Executive Director, Port of Grays Harbor, reported there were 4 arrivals in February for a total of 9 arrivals ytd and a total of 22 jobs; 5-6 more jobs are anticipated in March; Captain Cooke is on duty in March; and Senator Cantwell hosted a "Doppler Meeting" which was very well attended, to discuss installation of a Doppler radar to establish coverage on the central Washington coast from the Straits of Juan de Fuca to the Columbia River. It was recently announced that Grays Harbor will be the site for construction of the new SR 520 Bridge pontoons.

Captain Del Mackenzie, President, Puget Sound Pilots, reported there are currently 54 active pilots including the president; there were 643 jobs in February compared to 643 the previous February, resulting in a three year February average of 647; 51 comp days were created and 21 days taken; there were two vessel delays; Captains Bill Thorsen and Micheal Wood remain on medical leave; the Safe Practices Committee has begun their e-class (electronic navigation) with twelve pilots this spring and the remainder over the next two years; PSP has contracted with Pacific Maritime Institute to instruct all pilots in a Risk Resource Management class over the next two years; and participants from Crowley Marine, Alaska Tanker Co. and PSP will be taking a simulated escort class in the fall which extends over the next two years. Grays Harbor Pilots are welcome to attend as well. PSP recently went through, and passed, a USCG audit of its drug testing procedures. PSP's drug testing program has been in place since 1993 without incident. PSP hosted the West Coast Pilot's Conference this past week in Seattle; fifty participants attended and Chairman Dudley was one of the featured speakers. Captain Mackenzie also reported on the status of PSP's Technology Committee and the Safe Practices Committee.

Captain Mike Moore, Executive Director, Pacific Merchant Shipping Association, reported that the Harbor Safety Committee has recently become very interested in updating the Standard of Care concerning "Movement in Limited Visibility". John McLaurin, President of PMSA in San Francisco, spoke about California oil spill legislation and pilotage as a result of the *COSCO BUSAN* accident.

Tariff Education Presentations. PSP and PMSA continue to exchange and forward written materials to the Board for presentation and discussion in the interest of educating the Board and clarifying positions of all participating stakeholders. Today's written presentations and responses included (1) Cost of Living and Income Comparisons and (2) The Pilots' Retirement Program and the Tariff. Comments were heard concerning item (2). Item (1) will be held over to the next regular meeting.

Committee Reports.

Trainee Evaluation Committee:

- The TEC met on March 12th.
- The TEC reported on the status of trainees Steve Semler and Katharine Sweeney. Due to the lack of certain ships on which to perform required training assignments, an extension to their training programs may be necessary.

2008 Legislative/WAC Committee: The Committee has completed a draft of proposed amendments to the Pilotage Rules under chapter 363-16 WAC. It urged the Board to schedule an open session to consider written and oral comments in the interest of proceeding with rule-making. It was moved by Commissioner Hannigan and seconded by Commissioner Addington to schedule a special meeting for Friday, March 28, 2008 at 9:30 a.m. for the purpose of reviewing the proposal and receiving stakeholder and Board comments on the Committee's proposed WAC amendments with the intention of filing the amendatory language and scheduling a public hearing. The motion carried.

2008 Pilot Exam Committee: The Committee met on March 12th to review the proposals received in response to RFP No. 08-001 concerning the Puget Sound Pilotage District pilot examination. The Committee determined that the one proposal was responsive. The responder was Comira, a California based company. It was moved by Commissioner Hannigan and seconded by Commissioner Lee that based on the review of the proposal, its responsiveness, and at the recommendation of the Committee,

the Board declare Comira as the "Apparent Successful Contractor". The motion carried. Contract negotiations will begin as soon as possible.

Legal Update. Susan Cruise reported that a law suit has been filed by the State of Washington in connection with Initiative 960.

Administrator's Report. Peggy Larson reported that in response to a request from OFM she submitted a list of agency fees impacted by I-960 as well as a request that legislative authority be given to the Board to adjust the vessel exemption fees within the range currently provided in statute.

Commissioner Comments. Commissioner Hulsizer reported that she had recently acquired a handbook for recreational boaters which seemed to be lacking some pertinent information. Mike Moore and Walt Tabler volunteered to make contact with the Department of Parks and Recreation to assist. Commissioner Addington noted that back in mid-February a vessel named the *QING PING HAI* lost an anchor. Captain Mackenzie stated he would follow up and request the pilot to file a report.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for Thursday, April 10, 2008, at 9:30 a.m. A special meeting is scheduled for Friday March 28, 2008, at 9:30 a.m. Both meetings will be held in the Fourth Floor Rainier Conference Room, 2901 Third Avenue, Seattle.

Review of Pilot Physical Examination Reports. After reviewing the physicians' reports it was moved by Commissioner Snyder and seconded by Commissioner N. Davis that the physical examination reports for Captains C.C. Hunziker, V.K. Justice and M.J. Shuler be accepted for annual license renewal. The motion carried. A physician's letter states Captain W.E. Thorsen is fit for duty and able to resume piloting duties on March 30, 2008. It was moved by Commissioner Lee and seconded by Commissioner Mackey that Captain Thorsen be authorized to return to work and his license be returned to active status effective March 30, 2008. The motion carried. Captain M.D. Wood remains in temporary inactive status due to his current medical condition.

A CLOSED SESSION was called from 2:50 p.m. to 3:20 p.m. for purposes of discussing the status of Captain Bruce Nelson's pilot training program. In attendance were Vice Chairman Davis, Commissioners Mackey, Hannigan, Snyder, Addington, Lee, N. Davis and Hulsizer; Susan Cruise, Peggy Larson and Judy Bell. Regular session was reconvened by the vice chairman immediately following closed session.

There being no further business to come before the Board, the Vice Chairman adjourned the regular session Board meeting at 3:20 p.m.

Respectfully submitted,

Peggy Larson, Administrator

Absent

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 Norman W. Davis

Commissioner Elsie J. Hulsizer